The Ontario Securities Commission

OSC Bulletin

May 9, 2008

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The Ontario Securities Commission administers the
Securities Act of Ontario (R.S.O. 1990, c. S.5) and the
Commodity Futures Act of Ontario (R.S.O. 1990, c. C.20)

The Ontario Securities Commission
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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

MAY 9, 2008

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

Unless otherwise indicated in the date column, all hearings will take place at the following location:

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
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20 Queen Street West
Toronto, Ontario
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SCHEDULED OSC HEARINGS

May 14, 2008 10:00 a.m.	**Goldpoint Resources Corporation, Lino Novielli, Brian Moloney, Evanna Tomeli, Robert Black, Richard Wylie and Jack Anderson** s. 127(1) and 127(5) M. Boswell in attendance for Staff Panel: TBA
May 16, 2008 9:00 a.m.	**Adrian Samuel Leemhuis, Future Growth Group Inc., Future Growth Fund Limited, Future Growth Global Fund limited, Future Growth Market Neutral Fund Limited, Future Growth World Fund and ASL Direct Inc.** s. 127(5) M. Britton in attendance for Staff Panel: WSW/MCH
May 20, 2008 10:00 a.m.	**John Illidge, Patricia McLean, David Cathcart, Stafford Kelley and Devendranauth Misir** S. 127 and 127.1 I. Smith in attendance for Staff Panel: WSW/DLK/ST
May 22, 2008 2:00 p.m.	**Xi Biofuels Inc., Biomaxx Systems Inc., Ronald David Crowe and Vernon P. Smith** and **Xiiva Holdings Inc. carrying on Business as Xiiva Holdings Inc., Xi Energy Company, Xi Energy and Xi Biofuels** s. 127 M. Vaillancourt in attendance for Staff Panel: WSW/DLK

May 23, 2008 10:30 a.m.	**Sulja Bros. Building Supplies, Ltd. (Nevada), Sulja Bros. Building Supplies Ltd., Kore International Management Inc., Petar Vucicevich and Andrew DeVries** s. 127 & 127.1 J. S. Angus in attendance for Staff Panel: JEAT/MCH
May 27, 2008 2:30 p.m.	**Borealis International Inc., Synergy Group (2000) Inc., Integrated Business Concepts Inc., Canavista Corporate Services Inc., Canavista Financial Center Inc., Shane Smith, Andrew Lloyd, Paul Lloyd, Vince Villanti, Larry Haliday, Jean Breau, Joy Statham, David Prentice, Len Zielke, John Stephan, Ray Murphy, Alexander Poole, Derek Grigor and Earl Switenky** s. 127 and 127.1 Y. Chisholm in attendance for Staff Panel: WSW/DLK
June 2, 2008 9:30 a.m.	**Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton** s. 127 H. Craig in attendance for Staff Panel: WSW/DLK
June 10, 2008 2:30 p.m.	**Saxon Financial Services, Saxon Consultants, Ltd., International Monetary Services, FXBridge Technology, Meisner Corporation, Merchant Capital Markets, S.A., Merchant Capital Markets, MerchantMarx et al** s. 127(1) & (5) M. Boswell in attendance for Staff Panel: JEAT/CSP
June 12, 2008 10:00 a.m.	**Swift Trade Inc. and Peter Beck** s. 127 E. Cole in attendance for Staff Panel: TBA
June 16, 2008 10:00 a.m.	**Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)** s.127 and 127.1 D. Ferris in attendance for Staff Panel: TBA
June 16, 2008 2:30 p.m.	**FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun** s. 127 M. Mackewn in attendance for Staff Panel: LER/ST
June 18, 2008 10:00 a.m.	**Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva, Gurdip Singh Gahunia aka Michael Gahunia and Abraham Herbert Grossman aka Allen Grossman** s. 127(7) and 127(8) M. Boswell in attendance for Staff Panel: JEAT/DLK
June 20, 2008 10:00 a.m.	**First Global Ventures, S.A., Allen Grossman and Alan Marsh Shuman** s. 127 D. Ferris in attendance for Staff Panel: WSW/ST/MCH
June 24, 2008 2:30 p.m.	**Stanton De Freitas** s. 127 and 127.1 P. Foy in attendance for Staff Panel: JEAT/ST

June 24, 2008 2:30 p.m.	**David Watson, Nathan Rogers, Amy Giles, John Sparrow, Leasesmart, Inc., Advanced Growing Systems, Inc., The Bighub.com, Inc., Pharm Control Ltd., Universal Seismic Associates Inc., Pocketop Corporation, Asia Telecom Ltd., International Energy Ltd., Cambridge Resources Corporation, Nutrione Corporation and Select American Transfer Co.** s. 127 and 127.1 P. Foy in attendance for Staff Panel: JEAT/ST
July 14, 2008 10:00 a.m.	**Merax Resource Management Ltd. carrying on business as Crown Capital Partners, Richard Mellon and Alex Elin** s. 127 H. Craig in attendance for Staff Panel: TBA
July 14, 2008 10:00 a.m.	**Gold-Quest International, Health & Harmoney, Iain Buchanan and Lisa Buchanan** s.127 H. Craig in attendance for Staff Panel: ST
July 22, 2008 2:30 p.m.	**Sunwide Finance Inc., Sun Wide Group, Sun Wide Group Financial Insurers & Underwriters, Wi-Fi Framework Corporation, Bryan Bowles, Steven Johnson, Frank R. Kaplan and George Sutton** s. 127 C. Price in attendance for Staff Panel: JEAT/MCH
September 3, 2008 10:00 a.m.	**Shane Suman and Monie Rahman** s. 127 & 127(1) C. Price in attendance for Staff Panel: TBA
September 26, 2008 10:00 a.m.	**Hollinger Inc., Conrad M. Black, F. David Radler, John A. Boultbee and Peter Y. Atkinson** s.127 J. Superina in attendance for Staff Panel: LER/MCH
September 30, 2008 10:00 a.m.	**Al-Tar Energy Corp., Alberta Energy Corp., Drago Gold Corp., David C. Campbell, Abel Da Silva, Eric F. O'Brien and Julian M. Sylvester** s. 127 & 127.1 M. Boswell in attendance for Staff Panel: JEAT/DLK
October 6, 2008 10:00 a.m.	**Norshield Asset Management (Canada) Ltd., Olympus United Group Inc., John Xanthoudakis, Dale Smith and Peter Kefalas** s.127 P. Foy in attendance for Staff Panel: TBA
October 8, 2008 10:00 a.m.	**MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric** s. 127 & 127(1) D. Ferris in attendance for Staff Panel: TBA
November 3, 2008 10:00 a.m.	**Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited** s. 127 E. Cole in attendance for Staff Panel: TBA

January 12, 2009 10:00 a.m.	**Franklin Danny White, Naveed Ahmad Qureshi, WNBC The World Network Business Club Ltd., MMCL Mind Management Consulting, Capital Reserve Financial Group, and Capital Investments of America** s. 127 C. Price in attendance for Staff Panel: TBA	TBA	**Frank Dunn, Douglas Beatty, Michael Gollogly** s.127 K. Daniels in attendance for Staff Panel: TBA
		TBA	**Limelight Entertainment Inc., Carlos A. Da Silva, David C. Campbell, Jacob Moore and Joseph Daniels** s. 127 and 127.1 D. Ferris in attendance for Staff Panel: JEAT/ST
January 26, 2009 10:00 a.m.	**Darren Delage** s. 127 M. Adams in attendance for Staff Panel: TBA	TBA	**Gregory Galanis** s. 127 P. Foy in attendance for Staff Panel: TBA
February 2, 2009 10:00 a.m.	**Biovail Corporation, Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk and Kenneth G. Howling** s. 127(1) and 127.1 J. Superina/A. Clark in attendance for Staff Panel: TBA	TBA	**Peter Sabourin, W. Jeffrey Haver, Greg Irwin, Patrick Keaveney, Shane Smith, Andrew Lloyd, Sandra Delahaye, Sabourin and Sun Inc., Sabourin and Sun (BVI) Inc., Sabourin and Sun Group of Companies Inc., Camdeton Trading Ltd. and Camdeton Trading S.A.** s. 127 and 127.1 Y. Chisholm in attendance for Staff Panel: JEAT/DLK/CSP
March 23, 2009 10:00 a.m.	**Imagin Diagnostic Centres Inc., Patrick J. Rooney, Cynthia Jordan, Allan McCaffrey, Michael Shumacher, Christopher Smith, Melvyn Harris and Michael Zelyony** s. 127 and 127.1 H. Craig in attendance for Staff Panel: TBA	TBA	**LandBankers International MX, S.A. De C.V.; Sierra Madre Holdings MX, S.A. De C.V.; L&B LandBanking Trust S.A. De C.V.; Brian J. Wolf Zacarias; Roger Fernando Ayuso Loyo, Alan Hemingway, Kelly Friesen, Sonja A. McAdam, Ed Moore, Kim Moore, Jason Rogers and Dave Urrutia** s. 127 M. Britton in attendance for Staff Panel: LER/ST
TBA	**Yama Abdullah Yaqeen** s. 8(2) J. Superina in attendance for Staff Panel: TBA		
TBA	**Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell** s. 127 J. Waechter in attendance for Staff Panel: TBA		

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

Andrew Keith Lech

S. B. McLaughlin

Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein, Robert Topol

Portus Alternative Asset Management Inc., Portus Asset Management Inc., Boaz Manor, Michael Mendelson, Michael Labanowich and John Ogg

Maitland Capital Ltd., Allen Grossman, Hanouch Ulfan, Leonard Waddingham, Ron Garner, Gord Valde, Marianne Hyacinthe, Diana Cassidy, Ron Catone, Steven Lanys, Roger McKenzie, Tom Mezinski, William Rouse and Jason Snow

Euston Capital Corporation and George Schwartz

Al-Tar Energy Corp., Alberta Energy Corp., Eric O'Brien, Bill Daniels, Bill Jakes, John Andrews, Julian Sylvester, Michael N. Whale, James S. Lushington, Ian W. Small, Tim Burton and Jim Hennesy

Global Partners Capital, WS Net Solution, Inc., Hau Wai Cheung, Christine Pan, Gurdip Singh Gahunia

Land Banc of Canada Inc., LBC Midland I Corporation, Fresno Securities Inc., Richard Jason Dolan, Marco Lorenti and Stephen Zeff Freedman

1.1.2 CSA Staff Notice 52-320 - Disclosure of Expected Changes in Accounting Policies Relating to Changeover to International Financial Reporting Standards

CSA STAFF NOTICE 52-320
DISCLOSURE OF EXPECTED CHANGES IN ACCOUNTING POLICIES
RELATING TO CHANGEOVER TO INTERNATIONAL FINANCIAL REPORTING STANDARDS

Purpose

This notice provides guidance to an issuer on disclosure of expected changes in accounting policies relating to an issuer's changeover to International Financial Reporting Standards (IFRS) as the basis for preparing its financial statements. This guidance applies to disclosure relating to each financial reporting period in the three years before the first year for which an issuer prepares its financial statements in accordance with IFRS.

Background

The Canadian Accounting Standards Board recently confirmed January 1, 2011 as the date IFRS will replace current Canadian standards and interpretations as Canadian generally accepted accounting principles (Canadian GAAP) for publicly accountable enterprises (which include investment funds and other reporting issuers). As discussed in CSA Concept Paper 52-402 *Possible changes to securities rules relating to International Financial Reporting Standards*, the Canadian Securities Administrators (the CSA) is considering allowing domestic issuers to adopt IFRS at an earlier date.

Changing from current Canadian GAAP to IFRS will be a significant undertaking that may materially affect an issuer's reported financial position and results of operations. It may also affect certain business functions. Investors and other market participants will need timely and meaningful information about these matters during the reporting periods leading up to an issuer's changeover to IFRS.

Disclosure of changeover to IFRS by issuers other than investment funds

Form 51-102F1 *Management's Discussion & Analysis* (the MD&A form or 51-102F1) requires an issuer to discuss and analyze any changes in the issuer's accounting policies that the issuer has adopted or expects to adopt subsequent to the end of its most recently completed financial year, including changes due to a new accounting standard that the issuer does not have to adopt until a future date. Changes in an issuer's accounting policies that an issuer expects to make on changeover to IFRS are changes due to new accounting standards and therefore fall within the scope of section 1.13(a) of the MD&A form. That section specifies that the discussion and analysis should include:

- a description of the new accounting standard,
- disclosure of methods of adoption permitted and the method the issuer expects to use,
- discussion of expected effects on the issuer's financial statements, and
- potential effects on the issuer's business.

The MD&A form requirements apply to annual and interim MD&A filed by a reporting issuer in compliance with National Instrument 51-102 *Continuous Disclosure Obligations* as well as MD&A in the form of 51-102F1 that is included in a prospectus filed in compliance with Form 41-101F1 *Information Required in a Prospectus*.

CSA staff recognize that an issuer will likely be able to provide only limited information on the topics specified in section 1.13(a) in its MD&A three and two years before the first day of an issuer's financial year for which financial statements are prepared in accordance with IFRS (issuer's changeover date). An issuer will generally be able to provide more detailed information about the expected effects of IFRS on its specific circumstances in its MD&A for interim and annual periods of the year before the issuer's changeover date. As an issuer moves closer to its changeover date, the issuer should consider how it might make available meaningful quantified information to allow investors to understand the impact of IFRS on the issuer's financial statements. The following sections describe this incremental approach to disclosure for the reporting periods prior to adoption of IFRS.

This guidance applies to an issuer whose changeover date is on or after January 1, 2011. It also applies to an issuer that adopts IFRS earlier if permitted by the CSA, to the extent that the periods referred to in the guidance have not already passed.

While this notice focuses on disclosure in MD&A, we encourage an issuer to consider whether additional disclosure beyond MD&A might contribute to informing investors about how the issuer expects it will be affected by changeover to IFRS. An issuer

should also consider whether requirements in securities legislation other than section 1.13 of the MD&A form might also require the issuer to disclose specific information about the broader implications of its changeover to IFRS.

Interim and annual MD&A three years before changeover to IFRS
(e.g., the interim and annual periods of the financial year ending December 31, 2008 in the case of an issuer that will change to IFRS for its financial year beginning January 1, 2011)

If at the time of preparing its MD&A for the interim periods of the financial year beginning three years before the issuer's changeover date, an issuer has developed an IFRS changeover plan, the issuer should discuss in the interim MD&A the key elements and timing of its plan. No later than in its annual MD&A for the year beginning three years before an issuer's changeover date, the issuer should discuss the status of the key elements and timing of its changeover plan. Key elements of an issuer's plan may address the impact of IFRS on:

- accounting policies, including choices among policies permitted under IFRS, and implementation decisions such as whether certain changes will be applied on a retrospective or a prospective basis,
- information technology and data systems,
- internal control over financial reporting,
- disclosure controls and procedures, including investor relations and external communications plans,
- financial reporting expertise, including training requirements, and
- business activities, such as foreign currency and hedging activities, as well as matters that may be influenced by GAAP measures such as debt covenants, capital requirements and compensation arrangements.

If at the time of preparing its MD&A for the interim and annual periods in the financial year beginning three years before an issuer's changeover date, an issuer is well advanced in its IFRS changeover project, then the issuer should discuss the impact of IFRS changeover on its financial reporting.

Interim MD&A two years before changeover to IFRS
(e.g., the interim periods of the financial year ending December 31, 2009 in the case of an issuer that will change to IFRS for its financial year beginning January 1, 2011)

An issuer should provide an update of progress on its IFRS changeover plan and any changes in its plan, in the issuer's MD&A for interim periods of the financial year beginning two years before the issuer's changeover date.

Annual MD&A two years before changeover to IFRS
(e.g., the financial year ending December 31, 2009 in the case of an issuer that will change to IFRS for its financial year beginning January 1, 2011)

To comply with section 1.13 of the MD&A form, an issuer should discuss in its MD&A for the financial year beginning two years before an issuer's changeover date, the issuer's preparations for changeover to IFRS. Relevant details include those discussed in the preceding two sections. In addition, an issuer should describe the major identified differences between the issuer's current accounting policies and those the issuer is required or expects to apply in preparing IFRS financial statements. Such differences include any difference due to an expected change in accounting policy even though the issuer's existing policy under Canadian GAAP is permissible under IFRS. While such information may be narrative only at this stage, it should enable an investor to understand the key elements of the issuer's financial statements that will be affected by the changeover to IFRS. In identifying the accounting policies that an issuer is required or expects to apply under IFRS, an issuer should consider IFRS as they exist at the date the issuer prepares its MD&A. When an issuer believes it is also appropriate to consider the potential impact of projects that the International Accounting Standards Board currently has in process in identifying the accounting policies the issuer expects to apply on initial adoption of IFRS, the issuer should disclose any assumptions made about future changes to IFRS.

Annual and Interim MD&A for the year before changeover to IFRS
(e.g., the interim and annual periods of the financial year ending December 31, 2010 in the case of an issuer that will change to IFRS for its financial year beginning January 1, 2011)

To comply with section 1.13 of the MD&A form, an issuer should provide an updated discussion of the issuer's preparations for changeover to IFRS in its annual and interim MD&A for the financial year beginning one year before an issuer's changeover date. Relevant details include those discussed in the preceding sections. By this time, an issuer will generally be able to discuss in more detail the key decisions and changes the issuer has made, or will have to make, relating to the changeover to

IFRS. The issuer's discussion of changes relating to accounting policies should include decisions about accounting policy choices available under IFRS 1 *First-time Adoption of International Financial Reporting Standards* and other individual IFRS standards that are relevant to the issuer.

IFRS 1 requires disclosure of comparative and reconciliation information in the interim and annual financial statements of the year beginning on an issuer's changeover date. To comply with this requirement, an issuer will need to prepare quantified information about the impact of IFRS on each line item presented in the financial statements for the interim and annual periods of the year preceding changeover (e.g., for the year ending December 31, 2010 in the case of an issuer that will change to IFRS for the financial year beginning January 1, 2011). If an issuer has quantified information about the impact of IFRS on the key line items in the issuer's financial statements available when it prepares its interim and annual MD&A for the financial year beginning one year before an issuer's changeover date, an issuer should include this information in its MD&A.

Disclosure of changeover to IFRS by investment funds

An investment fund that is a reporting issuer is required under item 2.4 of Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* (MRFP) to discuss developments affecting the investment fund. As well, section 2.1(2) of Companion Policy 81-106 *Investment Fund Continuous Disclosure* discusses disclosure in an investment fund's financial statements and indicates that an investment fund should include information necessary to ensure disclosure of all material information concerning the financial position and results of the investment fund. An investment fund should discuss the changeover to IFRS for each fund or fund family in either the MRFP or the notes to the financial statements.

In the annual and interim filings three, two and one year(s) before changeover, as appropriate, an investment fund should disclose relevant information about its changeover to IFRS, including:

- the key elements and timing of its changeover plan,
- impact on business arrangements,
- impact, if any, on net asset value per unit,
- accounting policy and implementation decisions the fund will have to make,
- major differences the fund has identified between its current accounting policies and those it expects to apply under IFRS, and
- progress made on the fund's changeover plan.

In the year before changeover, disclosure should include quantitative impact of the changeover to IFRS. Consistent with Instructions for the MRFP, disclosure should be clear and concise, focusing on specific material information, risks and uncertainties to enable readers to better assess the impact on the investment fund.

May 9, 2008

1.1.3 RS Notice – Commission Approval of RS Proposal – Allocation of Costs – First Group

MARKET REGULATION SERVICES INC.

NOTICE OF COMMISSION APPROVAL OF RS PROPOSAL

ALLOCATION OF COSTS – FIRST GROUP

The Ontario Securities Commission has approved RS's allocation model for a series of direct charges to recover operational and capital costs caused by the introduction of multiple marketplaces (the Allocation Model). The other applicable securities regulatory authorities also approved or did not object to the amendments. A copy and description of the original amendments were published on November 17, 2006 at (2006) 29 OSCB 9127. Three comment letters were received. The final version of the amendments is published in Chapter 13 of this Bulletin. The summary of comments and responses can be found on the RS website (www.rs.ca).

1.1.4 Combination of TSX Group Inc. and Bourse de Montréal Inc. – Amended Exemption Order for Bourse de Montréal

COMBINATION OF TSX GROUP INC. AND BOURSE DE MONTRÉAL INC.

AMENDED EXEMPTION ORDER FOR BOURSE DE MONTRÉAL

TSX Group Inc. ("TSX Group") and Bourse de Montréal Inc. ("Bourse") combined their organizations resulting in the Bourse becoming a direct subsidiary of TSX Group ("Transaction"), effective May 1, 2008.

The Commission recognizes both TSX Group and TSX Inc. as an exchange. On February 8, 2008, the Commission published TSX Group's submission that no changes were necessary to TSX Group and TSX Inc.'s current recognition order ("TSX recognition order") as a result of the Transaction. No comments were received.

The Commission exempts the Bourse from the requirement to be recognized as an exchange in Ontario. As a result of the Transaction, the Autorité des marchés financiers (AMF) issued an amended recognition order for the Bourse dated April 10, 2008, effective May 1, 2008. On April 30, 2008, effective May 1, 2008, the Commission approved an amended exemption order for the Bourse (Bourse exemption order). The amended AMF recognition order of the Bourse is attached as a schedule to the Bourse exemption order. Please note that an English translation (unofficial version) of the AMF recognition order of the Bourse is available on our website at: www.osc.gov.on.ca.

The Bourse exemption order is being published in Chapter 2 of this bulletin.

1.2 Notices of Hearing

1.2.1 Goldpoint Resources Corporation et al. - ss. 127(7), 127(8)

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
GOLDPOINT RESOURCES CORPORATION,
LINO NOVIELLI, BRIAN MOLONEY,
EVANNA TOMELI, ROBERT BLACK,
RICHARD WYLIE, AND JACK ANDERSON

NOTICE OF HEARING
Sections 127(7) and 127(8)

WHEREAS on April 30, 2008, the Ontario Securities Commission (the "Commission") issued a temporary cease trade order pursuant to sections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering: that all trading in securities by Goldpoint Resources Corporation shall cease; that all trading in Goldpoint Resources Corporation shall cease; and, that Lino Novielli, Brian Moloney, Evanna Tomeli, Robert Black, Richard Wylie, and Jack Anderson are ordered to cease trading in all securities;

TAKE NOTICE THAT the Commission will hold a hearing pursuant to subsections 127(7) and (8) of the Act at the offices of the Commission, 20 Queen Street West, 17th Floor, Large Hearing Room, commencing on May 14, 2008 at 10:00 a.m., or as soon thereafter as the hearing can be held;

TO CONSIDER whether it is in the public interest for the Commission:

1) to extend the Temporary Order pursuant to subsections 127(7) and (8) of the Act until the conclusion of the hearing, or until such further time as considered necessary by the Commission;

2) to make such further orders as the Commission considers appropriate;

BY REASON OF the facts recited in the Temporary Order and of such allegations and evidence as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that any party to the proceedings may be represented by counsel at the hearing;

AND TAKE FURTHER NOTICE that upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party and such party is not entitled to further notice of the proceeding.

DATED at Toronto this 1st day of May, 2008

"John Stevenson"
Secretary to the Commission

1.2.2 Adrian Samuel Leemhuis et al. - s. 127

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c.S.5, AS AMENDED

AND

IN THE MATTER OF
ADRIAN SAMUEL LEEMHUIS,
FUTURE GROWTH GROUP INC.,
FUTURE GROWTH FUND LIMITED,
FUTURE GROWTH GLOBAL FUND LIMITED,
FUTURE GROWTH MARKET NEUTRAL FUND LIMITED,
AND FUTURE GROWTH WORLD FUND

NOTICE OF HEARING
(Section 127)

TAKE NOTICE that the Ontario Securities Commission will hold a hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act") at the offices of the Commission, 20 Queen Street West, 17th Floor, in the Large Hearing Room, Toronto, Ontario commencing on May 6, 2008, at 2:30 p.m. or soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest for the Commission:

(a) To extend the Temporary Order pursuant to subsection 127(7) and (8) of the Act until the conclusion of the hearing or for such further time as considered necessary by the Commission; and,

(b) To make such further orders as the Commission considers appropriate.

BY REASON of the facts recited in the Temporary Order and of such allegations and evidence as counsel may advise and the Commission may permit.

AND TAKE FURTHER NOTICE that any party to the proceeding may be represented by counsel at the hearing;

AND FURTHER TAKE NOTICE that upon failure of any party to attend at this time and place, the hearing may proceed in the absence of that party and such party is not entitled to any further notice of the proceeding.

DATED at Toronto this 30th day of April, 2008.

"Daisy Aranha"
Per: Secretary
Ontario Securities Commission

1.2.3 Adrian Samuel Leemhuis et al. - ss. 127(7), 127(8)

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c.S.5, AS AMENDED

AND

IN THE MATTER OF
ADRIAN SAMUEL LEEMHUIS,
FUTURE GROWTH GROUP INC.,
FUTURE GROWTH FUND LIMITED,
FUTURE GROWTH GLOBAL FUND LIMITED,
FUTURE GROWTH MARKET NEUTRAL FUND LIMITED,
FUTURE GROWTH WORLD FUND,
AND ASL DIRECT INC.

AMENDED NOTICE OF HEARING
(Section 127(7) and Section 127(8)

WHEREAS it appears to the Ontario Securities Commission (the "Commission") that on April 22, 2008, the Commission made a Temporary Order pursuant to section 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") against Adrian Samuel Leemhuis, Future Growth Group Inc., Future Growth Fund Limited, Future Growth Global Fund Limited, Future Growth Market Neutral Fund Limited, Future Growth World Fund (collectively, the Respondents) that all trading in securities of the Non-Individual Respondents cease and trading in any securities by the Respondents cease and that any exemptions contained in Ontario securities law do not apply to the Respondents.

AND WHEREAS the Commission issued a Notice of Hearing dated April 30, 2008 which advised that the Commission would hold a hearing at its offices at 20 Queen Street West, 17th Floor, Large Hearing Room on Tuesday, May 6th, 2008 at 2:30 p.m. to consider whether it would be in the public interest for the Commission to extend the temporary order dated April 22, 2008.

AND WHEREAS the Commission made a further Temporary Order pursuant to section 127(1) and (5) that ASL Direct Inc. ("ASL") cease trading in all securities and any exemptions contained in Ontario securities law do not apply to ASL.

TAKE NOTICE that the Commission will hold a hearing pursuant to section 127 of the *Securities Act*, at its offices at 20 Queen Street West, 17th Floor Hearing Room on Tuesday, the 6th of May, 2008 at 2:30 p.m. or as soon thereafter as the hearing can be held:

TO CONSIDER whether, pursuant to section 127(7) and/or section 127(8), it is in the public interest for the Commission:

(1) to extend the Temporary Order made April 22, 2008 until the conclusion of the hearing or until such further time as

considered appropriate by the Commission;

(2) to extend the Temporary Order made May 1, 2008 until the conclusion of the hearing or until future time as considered appropriate by the Commission;

BY REASON of the facts recited in the Temporary Order and of such allegations and evidence as counsel may advise and the Commission may permit.

AND TAKE FURTHER NOTICE that any party to the proceeding may be represented by counsel at the hearing;

AND FURTHER TAKE NOTICE that upon failure of any party to attend at this time and place, the hearing may proceed in the absence of that party and such party is not entitled to any further notice of the proceeding.

DATED at Toronto this 2nd day of May, 2008.

"Daisy Aranha"
Per: Secretary
Ontario Securities Commission

1.3 News Releases

1.3.1 OSC Issues Temporary Cease Trade Order Against ASL Direct Inc.

FOR IMMEDIATE RELEASE
May 2, 2008

OSC ISSUES TEMPORARY CEASE TRADE ORDER AGAINST ASL DIRECT INC.

TORONTO – On May 1, 2008, the Ontario Securities Commission (OSC) issued a Temporary Cease Trade Order against ASL Direct Inc. (ASL). ASL is registered with the Commission as a Mutual Fund Dealer and a Limited Market Dealer, and is a member of the Mutual Fund Dealers Association of Canada (MFDA).

Staff of the Commission are investigating the conduct of ASL and are concerned that it may have participated in the distribution of securities in the Future Growth Group of Funds without a prospectus and without an exemption to the requirement for a prospectus. In addition, ASL may have failed to comply with its obligations as a registrant contrary to Ontario securities law.

On April 22, 2008, the OSC also issued a Temporary Cease Trade Order respecting the principal of ASL, Adrian Leemhuis (Leemhuis), and the Future Growth Group of Funds. The orders were obtained in the course of investigations conducted by staff of the OSC, the Autorité des marchés financiers (Québec) and the MFDA.

Clients of ASL who may have questions concerning their investments through ASL should direct their enquiries to the MFDA at 1-888-466-6332.

Copies of the Temporary Cease Trade Order dated May 1, 2008 respecting ASL and the Temporary Cease Trade Order respecting Leemhuis are available on the OSC's website (www.osc.gov.on.ca).

For media inquiries:
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& Public Affairs
416-593-8120

Laurie Gillett
Manager, Public Affairs
416-595-8913

Carolyn Shaw-Rimmington
Assistant Manager,
Public Affairs
416-593-2361

For investor inquiries:
OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4 Notices from the Office of the Secretary

1.4.1 John Daubney and Cheryl Littler

FOR IMMEDIATE RELEASE
May 1, 2008

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
JOHN DAUBNEY AND CHERYL LITTLER

TORONTO – The Commission issued its Reasons and Decision in the above noted matter.

A copy of the Reasons and Decision dated April 30, 2008 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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For investor inquiries: OSC Contact Centre
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1-877-785-1555 (Toll Free)

1.4.2 Darren Delage

FOR IMMEDIATE RELEASE
May 1, 2008

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
DARREN DELAGE

TORONTO – The Commission issued an Order setting the hearing on the merits in the above named matter to commence on Monday, January 26, 2009 for a period of one week.

A copy of the Order dated April 30, 2008 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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1.4.3 Goldpoint Resources Corporation et al.

FOR IMMEDIATE RELEASE
May 1, 2008

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
GOLDPOINT RESOURCES CORPORATION,
LINO NOVIELLI, BRIAN MOLONEY,
EVANNA TOMELI, ROBERT BLACK,
RICHARD WYLIE, AND JACK ANDERSON

TORONTO – The Office of the Secretary issued a Notice of Hearing today setting the matter down to be heard on May 14, 2008 at 10:00 a.m. to consider whether it is in the public interest for the Commission to extend the Temporary Order made April 30, 2008.

A copy of the Notice of Hearing dated May 1, 2008 and Temporary Order dated April 30, 2008 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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SECRETARY

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1-877-785-1555 (Toll Free)

1.4.4 Adrian Samuel Leemhuis et al.

FOR IMMEDIATE RELEASE
May 1, 2008

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
ADRIAN SAMUEL LEEMHUIS,
FUTURE GROWTH GROUP INC.,
FUTURE GROWTH FUND LIMITED,
FUTURE GROWTH GLOBAL FUND LIMITED,
FUTURE GROWTH MARKET NEUTRAL FUND LIMITED,
AND FUTURE GROWTH WORLD FUND

TORONTO – The Office of the Secretary issued a Notice of Hearing setting the matter down to be heard on May 6, 2008 at 2:30p.m. to consider whether it is in the public interest for the Commission to extend the Temporary Order made April 22, 2008.

A copy of the Notice of Hearing dated April 30, 2008 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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1.4.5 Adrian Samuel Leemhuis et al.

FOR IMMEDIATE RELEASE
May 5, 2008

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
ADRIAN SAMUEL LEEMHUIS,
FUTURE GROWTH GROUP INC.,
FUTURE GROWTH FUND LIMITED,
FUTURE GROWTH GLOBAL FUND LIMITED,
FUTURE GROWTH MARKET NEUTRAL FUND LIMITED,
FUTURE GROWTH WORLD FUND,
AND ASL DIRECT INC.

TORONTO – The Office of the Secretary issued an Amended Notice of Hearing setting the matter down to be heard on May 6, 2008 at 2:30p.m. to consider whether it is in the public interest for the Commission to extend the Temporary Order made May 1, 2008.

A copy of the Amended Notice of Hearing dated May 2, 2008 and the Temporary Orders dated April 22, 2008 and May 1, 2008 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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1.4.6 John Alexander Cornwall et al.

FOR IMMEDIATE RELEASE
May 6, 2008

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
JOHN ALEXANDER CORNWALL,
KATHRYN A. COOK, DAVID SIMPSON,
JEROME STANISLAUS XAVIER,
CGC FINANCIAL SERVICES INC. AND
FIRST FINANCIAL SERVICES

TORONTO – Following a hearing held on February 27, 2008, the Commission issued its Reasons and Decision on Sanctions and Costs in the above noted matter.

A copy of the Reasons and Decision on Sanctions and Costs dated May 5, 2008 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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SECRETARY

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1.4.7 Irwin Boock et al.

FOR IMMEDIATE RELEASE
May 6, 2008

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
IRWIN BOOCK, SVETLANA KOUZNETSOVA,
VICTORIA GERBER,
COMPUSHARE TRANSFER CORPORATION,
FEDERATED PURCHASER, INC.,
TCC INDUSTRIES, INC.,
FIRST NATIONAL ENTERTAINMENT CORPORATION,
WGI HOLDINGS, INC. AND
ENERBRITE TECHNOLOGIES GROUP

TORONTO – The Commission issued a Temporary Order in the above named matter which provides that pursuant to section 127(6) of the Act this order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission.

A copy of the Temporary Order dated May 5, 2008 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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1.4.8 Adrian Samuel Leemhuis et al.

FOR IMMEDIATE RELEASE
May 7, 2008

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
ADRIAN SAMUEL LEEMHUIS,
FUTURE GROWTH GROUP INC.,
FUTURE GROWTH FUND LIMITED,
FUTURE GROWTH GLOBAL FUND LIMITED,
FUTURE GROWTH MARKET NEUTRAL FUND LIMITED,
FUTURE GROWTH WORLD FUND,
AND ASL DIRECT INC.

TORONTO – Following a hearing held in the above noted matter, on May 6, 2008 the Commission issued an Order that the Temporary Orders issued on April 22, 2008 and May 1, 2008, are continued until May 16, 2008 and that this matter is adjourned until May 16, 2008 at 9:00 a.m.

A copy of the Order is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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1.4.9 XI Biofuels Inc. et al.

FOR IMMEDIATE RELEASE
May 7, 2008

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
XI BIOFUELS INC., BIOMAXX SYSTEMS INC.,
RONALD DAVID CROWE AND VERNON P. SMITH

AND

IN THE MATTER OF
XIIVA HOLDINGS INC.
CARRYING ON BUSINESS AS
XIIVA HOLDINGS INC., XI ENERGY COMPANY,
XI ENERGY AND XI BIOFUELS

TORONTO – Following a hearing on May 5, 2006, the Commission ordered that the Temporary Orders are extended to May 23, 2008, and that the XI Hearing and the Xiiva Hearing for the extension of the Temporary Orders and the hearing of the Respondents' Motion are adjourned to May 22, 2008 at 2:00 p.m.

A copy of the Order dated May 5, 2008 is available at **www.osc.gov.on.ca**.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Capital International Asset Management (Canada), Inc. and Capital International – Canadian Core Plus Fixed Income

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions - Exemption granted from requirements contained in paragraphs 2.5(2)(a) and 2.5(2)(c) of NI 81-102 - Top mutual fund proposing to invest up to 10% of its net assets in securities of mutual fund governed by the laws of Luxembourg - Underlying Luxembourg mutual fund managed by an affiliate - Relief granted subject to certain conditions, including that the investment in Luxembourg mutual fund be limited to no more than 10% of net assets of the top mutual fund, and that the top mutual fund be required to divest if laws applicable to Luxembourg mutual fund cease to be materially consistent with Part 2 of NI 81-102 - National Instrument 81-102 Mutual Funds.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.5(2)(a), 2.5(2)(c), 19.1.

April 16, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
CAPITAL INTERNATIONAL ASSET MANAGEMENT
(CANADA), INC.
(the Filer or Capital International)

AND

CAPITAL INTERNATIONAL – CANADIAN CORE PLUS
FIXED INCOME
(the New Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the New Fund for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the New Fund from

(i) the prohibition contained in paragraph 2.5(2)(a) of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) against a mutual fund investing in another mutual fund that is not subject to NI 81-102 and National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**), and

(ii) the prohibition contained in paragraph 2.5(2)(c) of NI 81-102 against a mutual fund investing in another mutual fund's securities where those securities are not qualified for distribution in the local jurisdiction (together with paragraph (i) above, the **Exemption Sought**),

to enable the New Fund to invest up to 10 percent of its total net assets from time to time in Capital International Funds Global High Yield Fund (the **Underlying Fund**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) the Filer has provided notice that section 4.7 of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in all of the provinces and territories of Canada (other than Ontario).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

"Capital Group" means The Capital Group Companies, Inc.

"CIF" means Capital International Fund, an umbrella fund with eleven sub-funds, including the Underlying Fund, organized as a SICAV with UCITS status (as defined below) under the laws of Luxembourg and managed by an affiliate of Capital International.

"Funds" means the mutual funds known as the Capital International Funds that are managed by Capital International and governed by NI 81-102.
"New Fund" means Capital International – Canadian Core Plus Fixed Income, an open-ended mutual fund trust established and managed by Capital International and governed under the laws of Ontario.

"SICAV" means Société d'Investissement à Capital Variable, an open-end investment company, governed by the laws of Luxembourg.

"UCITS" means *Undertakings for Collective Investment in Transferable Securities* and refers to the investment funds authorized by the European Union as investment funds suitable to be distributed in more than one country of Europe.

Representations

This decision is based on the following facts represented by the Filer:

Capital International

1. Capital International is registered in Ontario, British Columbia and Québec as an investment counsel and portfolio manager (or equivalent). Its head office is located in Toronto, Ontario.

2. Capital International is a wholly-owned subsidiary of Capital International Asset Management, Inc., a company based in Los Angeles, California, which is wholly owned by Capital Group. Capital Group is a global investment management firm founded in 1931, which through its affiliated companies manages stock and bond portfolios for institutional and retail clients around the world. Capital Group is one of the largest and oldest investment management organizations in the United States. In addition to Canada, Capital Group and its subsidiaries maintain offices in the United States, Switzerland, England, Hong Kong, Japan and Singapore.

3. Capital International is the manager and portfolio manager of the Funds, which presently consist of five mutual funds, each complying with NI 81-102 and having a simplified prospectus and annual information form prepared in accordance with NI 81-101. As of January 31, 2008, the Funds had assets under management of $1.267 billion.

4. Capital International and the Funds are not in default of securities legislation in any Canadian jurisdiction.

5. A wholly-owned subsidiary of Capital Group, Capital Group International, Inc., is the parent company of the Geneva, Switzerland-based subsidiary, Capital International S.A. (**CISA**). As of January 31, 2008, CISA managed approximately €11 billion, €4.48 billion of which was invested in eleven investment funds, which are all sub-funds of CIF (as defined above). CIF includes the Underlying Fund. As of January 31, 2008, the Underlying Fund had €297.7 million assets under management.

6. The Underlying Fund is distributed in several European countries, pursuant to the European Union regulations of collective investment schemes, known as the UCITS Directives which permit the distribution of UCITS in more than one country provided the UCITS Directives are followed. As SICAVs, organized under Part I of the Luxembourg law on collective investment vehicles, CIF and all of its sub-funds including the Underlying Fund, qualify as UCITS.

The New Fund

7. The investment objective and strategies of the New Fund are to provide steady income, capital preservation and long-term total return consistent with prudent management by investing in a broad range of Canadian and global fixed-income securities. The New Fund's fixed-income investment objective focuses on Canadian bonds issued by corporations and governments.

8. Section 2.5 of NI 81-102 would permit the New Fund to invest in the Underlying Fund but for the fact that the Underlying Fund is a non-Canadian fund that is neither subject to Canadian laws nor distributed in Canada under a simplified prospectus.

The Underlying Fund

9. The Underlying Fund is a sub-fund of CIF, an umbrella SICAV with UCITS status under the laws of Luxembourg. The Underlying Fund has filed a prospectus with Luxembourg's financial sector regulator, Commission de Surveillance du Secteur Financier, that contains disclosure regarding the Underlying Fund. The Underlying Fund is subject to laws that are substantially similar to those that govern the New Fund. The Underlying Fund is a conventional mutual fund and would not be considered a hedge fund. The Underlying Fund does not invest in mutual funds.

10. The investment objective of the Underlying Fund is to seek a long-term high level of total return through investing primarily in corporate or government high yield bonds that are usually listed or traded on other regulated markets and denominated in various national currencies (including emerging markets currencies) or multinational currencies. Unlisted high yield bonds may also be purchased.

11. In order for the New Fund to achieve its investment objective on a diversified basis and obtain broad exposure to the sectors it proposes

to invest in, including global high yield exposure, it is critical that it be permitted to allocate up to 10 percent of its net assets to the Underlying Fund.

12. The Underlying Fund is a low-cost mutual fund whose investment strategy and objective make it a very suitable investment for the New Fund. The Underlying Fund is managed by portfolio managers within the Capital Group, and accordingly, Capital International will benefit from understanding its investments and the management style of its portfolio managers, which understanding will benefit the New Fund.

13. The Filer believes that it is in the best interests of the New Fund for investments to be made in the Underlying Fund. Investing directly in separate securities to allow direct exposure to the securities invested in by the Underlying Fund is a less desirable option owing to the increased costs and inefficiencies that are associated with such direct investing.

14. The New Fund's investment in the Underlying Fund is not for the purpose of distributing the Underlying Fund to the Canadian public. The investments by the New Fund in the Underlying Fund are proposed not to allow the Underlying Fund to be indirectly distributed in Canada, but to allow the New Fund to achieve its investment objective by investing, to a very limited extent, in a unique, suitable and professionally managed lower-cost mutual fund, where the investment style and approach is known to the manager of the New Fund.

15. The New Fund would otherwise comply fully with section 2.5 of NI 81-102 in investing in the Underlying Fund and would provide all disclosure mandated for mutual funds investing in other mutual funds.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

(A) The Underlying Fund qualifies as UCITS and is distributed in accordance with the UCITS Directives, which subject the Underlying Fund to laws that are substantially similar to those that govern the New Fund;

(B) The investment of the New Fund in the Underlying Fund otherwise complies with section 2.5 of NI 81-102 and the New Fund provides the disclosure contemplated for fund of fund investments in NI 81-101. Specifically, the investment by the New Fund in the Underlying Fund is disclosed in its simplified prospectus;

(C) The New Fund does not invest more than 10 percent of its total net assets taken at market value at the time of acquisition of such assets in the Underlying Fund; and

(D) The New Fund shall not acquire any additional securities of the Underlying Fund and shall dispose of the securities of the Underlying Fund then held in an orderly and prudent manner, after the date that the laws applicable to the Underlying Fund that are at the date of this decision substantially similar to Part 2 of NI 81-102, change to be materially inconsistent with Part 2 of NI 81-102.

"Rhonda Goldberg"
Manager, Investment Funds Branch
Ontario Securities Commission

2.1.2 Cygnal Technologies Corporation

Headnote

NP 11-203 - Application for an order that the issuer is not a reporting issuer – Filer has no publicly held securities – no intention to seek public financing.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10).

April 30, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, ALBERTA AND QUEBEC
(the "Jurisdictions")

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
CYGNAL TECHNOLOGIES CORPORATION
(the "Filer")

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the "Decision Maker") has received an application from the Filer for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the Filer be deemed to have ceased to be a reporting issuer in the Jurisdictions (the "Exemptive Relief Sought").

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application),

(a) the Ontario Securities Commission is the principal regulator for the application, and

(b) the decision is the decision of the Principal Regulator and evidences the decision of each other Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

The decision is based on the following facts represented by the Filer:

1. The Filer is a corporation governed by the *Business Corporations Act* (Ontario) (the "OBCA") with its head office located at 70 Valleywood Drive in Markham, Ontario.

2. The Filer obtained creditor approval of a joint plan of arrangement and reorganization (the "Plan") of the Filer and its subsidiaries, Cygnal Technologies Ltd. and Accord Communications Ltd. on March 7, 2008. The Ontario Superior Court of Justice (the "Court") made a final order (the "Order") approving the Plan under the *Companies' Creditors Arrangement Act* (the "CCAA") on March 17, 2008.

3. The Plan provides, among other things, that upon implementation thereof, all of the common shares of the Filer will, in effect, be cancelled. Each common share will be converted into a 0.000001 redeemable share ("Redeemable Share") of the Filer.

4. The Plan was implemented and effective the first moment in time on April 1, 2008.

5. Upon Plan implementation, all of the outstanding rights, warrants and options of the Filer were cancelled.

6. Upon Plan implementation, each Redeemable Share was redeemed and new common shares of the Filer were issued to CYN Holdings, LLC., an affiliate of Laurus Master Fund Ltd., such that CYN Holdings, LLC is now the sole shareholder of the Filer.

7. As at the close of business on April 1, 2008, the common shares of the Filer were de-listed from the Toronto Stock Exchange.

8. As a result of Plan implementation, the outstanding securities of the Filer, including debt securities are beneficially owned, directly or indirectly, by less than 15 securityholders in each of the jurisdictions in Canada and less than 51 securityholders in total in Canada.

9. The Filer's securities are not listed on any stock exchange or publicly traded on a marketplace (as defined in National Instrument 21-101 - Marketplace Operations).

10. The Filer has no current intention to seek public financing by way of an offering of securities.

11. The Filer applied to voluntarily surrender its status as a reporting issuer in British Columbia under BC Instrument 11-502 on April 1, 2008 and ceased to be a reporting issuer in British Columbia effective April 12, 2008.

12. Upon the grant of the Requested Relief, the Filer will not be a reporting issuer or the equivalent in any jurisdiction of Canada.

13. The Filer is not in default of any of its obligations as a reporting issuer under the Legislation except for its obligation to file the following documents (collectively, the "Disclosure Documents"):

    (a) The annual financial statements, related management's discussion and analysis and officers' certificates for the year ended December 31, 2007; and

    (b) The annual information form of the Filer for the year ended December 31, 2007.

14. On March 30, 2008, the last date by which the Applicant was required to file the Disclosure Documents, the Applicant's Creditors and the Court had approved the Plan, with the result that CYN Holdings, LLC would became the sole shareholder of the Filer on April 1, 2008, the Plan implementation date. Consequently, the Filer has not filed the Disclosure Documents.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for a Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted.

"David L. Knight"

"Margot C. Howard"

2.1.3 frontier*Alt* Energy 2006 Flow-Through Limited Partnership and frontier*Alt* Energy 2006-II Flow-Through Limited Partnership

Headnote

NP 11-203 – Exemptions granted to flow-through limited partnerships from the requirements in National Instrument 81-106 Investment Fund Continuous Disclosure to file an annual information form, to maintain and prepare an annual proxy voting record, to post the proxy voting record on its website, and to provide it to securityholders upon request. Flow-through limited partnerships have a short lifespan and do not have a readily available secondary market.

Applicable Legislative Provisions

National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 9.2, 10.3, 10.4, 17.1.

April 30, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
FRONTIER*ALT* ENERGY 2006
FLOW-THROUGH LIMITED PARTNERSHIP
(the frontier*Alt* 2006 Partnership)
AND
FRONTIER*ALT* ENERGY 2006-II
FLOW-THROUGH LIMITED PARTNERSHIP
(the frontier*Alt* 2006-II Partnership)

(collectively, the Partnerships)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Partnerships for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for relief from:

(a) the requirement in Section 9.2 of National Instrument 81-106 – *Investment Funds Continuous Disclosure* (**NI 81-106**) to prepare and file an annual information form (the **AIF**) for each financial year;

(b) the requirement in Section 10.3 of NI 81-106 to maintain a proxy voting record (the **Proxy Voting Record**); and

(c) the requirements in Section 10.4 of NI 81-106 to prepare a Proxy Voting Record on an annual basis for the period ending June 30 of each year, to post the Proxy Voting Record on the Partnerships' website no later than August 31 of each year, and to send the Proxy Voting Record to the limited partners of the Partnerships (**Limited Partners**) upon request,

((a), (b), and (c) are collectively, the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) the Partnerships have provided notice that Section 4.7(1) of Multilateral Instrument 11-102 – *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador, and Prince Edward Island.

Interpretation

Terms defined in National Instrument 14-101 – *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Partnerships:

1. The frontier*Alt* 2006 Partnership and the frontier*Alt* 2006-II Partnership were formed pursuant to the provisions of the *Limited Partnerships Act* (Ontario) on February 6, 2006 and August 23, 2006, respectively.

2. The frontier*Alt* 2006 Partnership and the frontier*Alt* 2006-II Partnership received receipts dated March 31, 2006 and October 5, 2006, respectively, issued under MRRS by the Ontario Securities Commission on behalf of each of the provincial regulators, except Québec, with respect to (final) prospectuses dated March 30, 2006 and October 4, 2006, respectively, offering for sale up to 5,000,000 and 1,600,000 limited partnership units (Units), respectively, of the Partnerships at a price of $10 per unit and $25 per unit, respectively. The Partnerships are reporting issuers in each of the provinces of Canada, except Québec. No additional Units have been or will be issued.

3. The principal office of the Partnerships is located in Toronto, Ontario.

4. The Partnerships were formed to invest in certain common shares (**Flow-Through Shares**) of companies that operate, as their principal business, in oil and/or gas exploration, development and/or production industries in Canada (**Resource Issuers**) pursuant to agreements (**Investment Agreements**) between the relevant Partnership and the Resource Issuer. Under the terms of each Investment Agreement, the Partnership will subscribe for Flow-Through Shares of the Resource Issuer and the Resource Issuer will agree to incur and renounce to the Partnership, in amounts equal to the subscription price of the Flow-Through Shares, expenditures in respect of resource exploration and development that qualify as Canadian exploration expense and that may be renounced as Canadian exploration expense to the Partnership.

5. It is contemplated that the frontier*Alt* 2006 Partnership will terminate on June 30, 2008 and the frontier*Alt* 2006-II Partnership will terminated on December 31, 2008. Prior to those dates, the general partner of each Partnership may propose to the Limited Partners at a special meeting of Limited Partners to be held prior to the termination dates, one or more alternatives to the dissolution of the Partnership and distribution of the net assets of the Partnership to the Limited Partners, including, without limitation, a proposal that the Partnership exchange its assets for securities of a mutual fund corporation or other appropriate investment vehicle (including a fund in the frontier*Alt* Group of mutual funds), and distribute such securities to the Limited Partners on a tax deferred "rollover" basis, which alternatives may be proposed by the general partner and must be approved by a majority of the Limited Partners at a special meeting.

6. The Partnerships are not operating businesses. Rather, each Partnership is a short-term special purpose vehicle that will be dissolved within approximately two years of its formation. The primary investment purpose of the Partnerships is not to achieve capital appreciation, although this is a secondary benefit, but rather to obtain for the Limited Partners the significant tax benefits that accrue when Resource Issuers renounce resource exploration and development expenditures to the Partnerships through Flow-Through Shares.

7. The Units are not listed or quoted for trading on any stock exchange or market. The Units are not redeemable by the Limited Partners. Generally, Units are not transferred by Limited Partners, since Limited Partners must be holder of the Units on the last day of each fiscal year of the Partnership in order to obtain the desired tax deduction.

8. It is a term of the partnership agreements governing the Partnerships that the general

partners of the Partnership have the authority to manage, control, administer and operate the business and affairs of the Partnerships, including the authority to take all measures necessary or appropriate for the business, or ancillary thereto, and to ensure that the Partnerships comply with all necessary reporting and administrative requirements.

9. Each of the Limited Partners of the Partnerships has, or will be expected to be, by subscribing for Units of the Partnerships, agreed to the irrevocable power of attorney contained in the partnership agreement and has thereby, in effect, consented to the making of this Application.

10. Since its formation, the Partnerships' activities have been limited to (i) completing the issue of the Units under its respective prospectus, (ii) investing its available funds in accordance with its respective investment objectives, and (iii) incurring expenses as described in its prospectus.

11. Given the limited range of business activities conducted by the Partnerships, the short duration of their existence and the nature of the investment of the Limited Partners, the preparation and distribution of an AIF by the Partnerships would not be of any benefit to the Limited Partners and may impose a material financial burden on the Partnerships. Upon the occurrence of any material change to a Partnership, Limited Partners would receive all relevant information from the material change reports the Partnership is required to file in the Jurisdiction and the other provinces of Canada, except Québec.

12. As a result of the implementation of NI 81-106, investors purchasing Units of the Partnerships were provided with a prospectus containing written policies on how the Flow-Through Shares or other securities held by the Partnership are voted (the **Proxy Voting Policies**), and had the opportunity to review the Proxy Voting Policies before deciding whether to invest in Units.

13. Generally, the Proxy Voting Policies require that the securities of companies held by the Partnerships be voted in a manner most consistent with the economic interests of the Limited Partners of the Partnership.

14. Given the short lifespan of the Partnerships, the production of a Proxy Voting Record would provide Limited Partners with very little opportunity for recourse if they disagreed with the manner in which the Partnership exercised or failed to exercise its proxy voting rights, as the Partnerships would likely be dissolved by the time any potential change could materialize.

15. Preparing and making available to Limited Partners a Proxy Voting Record will not be of any benefit to Limited Partners and may impose a material financial burden on the Partnerships.

16. Through inadvertence, the Filers were not included in the application and exemptive order granted on April 29, 2008 to frontier*Alt* Energy & Precious Metals Flow-Through Limited Partnership, frontier*Alt* 2008 Precious Metals & Energy Flow-Through Limited Partnership and frontier*Alt* Capital Corporation for the same exemptive relief as the Exemption Sought.

17. Proxy Voting Records for the Partnerships for the period ended June 30, 2007 were maintained, prepared, posted and made available to Limited Partners through the website of the Partnerships.

18. The Partnerships are of the view that the Exemption Sought is not against the public interest, is in the best interests of the Partnership and their Limited Partners and represents the business judgment of responsible persons uninfluenced by considerations other than the best interest of the Partnership and their Limited Partners.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted.

"Rhonda Goldberg"
Manager, Investment Funds Branch
Ontario Securities Commission

2.1.4 Coxe Commodity Strategy Fund

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from National Instrument 81-106 Investment Fund Continuous Disclosure to permit an investment fund that uses specified derivatives to calculate its NAV on a weekly basis subject to certain conditions – relief required from the requirement that an investment fund that uses specified derivatives calculate its NAV daily.

Applicable Legislative Provisions

National Instrument 81-106 Investment Fund Continuous Disclosure, s. 14.2(3)(b).

May 1, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the "Jurisdiction")

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
COXE COMMODITY STRATEGY FUND
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the "**Legislation**") for relief from Section 14.2(3)(b) of National Instrument 81-106 ("**NI 81-106**"), which requires the net asset value of an investment fund that uses specified derivatives (as such term is defined in National Instrument 81-102) to be calculated at least once every business day (the "**Exemption**").

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) the Filer has provided notice that section 4.7(1) of Multinational Instrument 11-102 *Passport System* ("MI 11-102") is intended to be relied upon in the jurisdictions of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon Territory and Nunavut.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a non-redeemable investment fund (as defined in NI 81-106) to be established under the laws of the Province of Ontario pursuant to a declaration of trust. BMO Nesbitt Burns Inc. (the "**Administrator**") is the administrator of the Filer. The principal office of the Filer and the Administrator is located at 1 First Canadian Place, 100 King Street West, 4th Floor, P.O. Box 150, Toronto, Ontario M5X 1H3.

2. Donald G.M. Coxe (the "**Portfolio Consultant**" or "**Mr. Coxe**") is the portfolio consultant to the Filer. Harris Investment Management, Inc. ("**Harris**") has been retained to implement the Filer's investment strategy. The Administrator will be responsible for the management and administration of the Filer. Decisions as to the purchase of securities and all other portfolio transactions will be made by Harris in consultation with the Portfolio Consultant.

3. The Filer is authorized to issue an unlimited number of Combined Class A Units and Combined Class F Units (collectively, "**Combined Units**"). Each Class A Combined Unit consists of one Class A Unit and one transferable Warrant for one Class A Unit. Each Class F Combined Unit consists of one Class F Unit and one transferable Warrant for one Class F Unit. The Class A Units and the Class F Units together are referred to herein as the "**Units**". The Filer will offer Combined Units under a prospectus. The Class F Units will not be listed on a stock exchange.

4. The Fund filed a preliminary prospectus in each of the provinces and territories of Canada on April 10, 2008 (SEDAR Project No. 1247037).

5. The Filer has been created to provide investors with long-term capital growth by executing the commodity investment strategies of the Portfolio Consultant.

6. The net proceeds from the offering of Combined Units will be invested in an actively managed portfolio (the "**Portfolio**") consisting primarily of equity securities. The Filer will provide exposures to commodity-related securities that approximate target weightings established for the Fund from

time to time by Mr. Coxe in the agriculture, base metals & steel, energy and precious metals sectors. The Portfolio is expected to be well-diversified within these sectors and to consist primarily of exchange-traded equities, but may contain debt securities, cash and/or cash equivalents.

7. The Filer may be exposed to a number of different currencies and does not currently intend to hedge its foreign currency exposure. However, from time to time, up to 100% of the value of the Portfolio's non-Canadian currency exposure may be hedged back to the Canadian dollar. The Filer does not intend to borrow money or employ other forms of leverage to acquire securities for the Portfolio.

8. Although the Filer will be a mutual fund trust for purposes of the Income Tax Act (Canada), it will not be a mutual fund for purposes of securities legislation and its operation will differ from that of a conventional mutual fund as follows:

   (a) The Filer does not intend to continuously offer Units once the Filer is out of primary distribution.

   (b) The Class A Units are expected to be listed and posted for trading on the Toronto Stock Exchange (the "**TSX**"). As a result, Class A Unitholders will not have to rely solely on the redemption features of the Class A Units (as described in the Preliminary Prospectus) in order to provide liquidity for their investment. The Class F Units will be convertible into Class A Units and, like the Class A Units, can be redeemed on a monthly basis.

9. Commencing in 2009, Units may be surrendered for redemption on any business day during the period from the first day of September until 5:00 p.m. (Toronto time) on the last business day prior to the 16th day of September in each year (the "**Notice Period**") subject to the Fund's right to suspend redemptions in certain circumstances. Units properly surrendered for redemption during the Notice Period will be redeemed on the last business day of September of each year (the "**Annual Redemption Date**") and the Unitholder will receive payment on or before the 15th day following the Annual Redemption Date. Redeeming Unitholders will receive a redemption price per Unit equal to the applicable NAV per Unit less any costs and expenses incurred by the Fund in order to fund such redemption.

10. In addition, Units of each class may be surrendered for redemption in any month. Units properly surrendered for redemption by a Unitholder on any business day during the period from the first day of a month until 5:00 p.m. (Toronto time) on the last business day prior to the 16th day of such month will be redeemed on the last business day of that month ("**Monthly Redemption Date**") and the Unitholder will receive payment on or before the 15th business day following such Monthly Redemption Date, subject to the Fund's right to suspend redemptions. A holder of Class A Units who properly surrenders Class A Units for redemption will receive the amount (the "**Monthly Redemption Amount**") equal to the lesser of (A) 96% of the weighted average trading price of the Class A Units on the TSX during the 15 trading days preceding the applicable Monthly Redemption Date, and (B) the "closing market price" of the Class A Units on the principal market on which the Class A Units are quoted for trading. A Class F Unitholder who surrenders a Class F Unit for a monthly redemption will receive an amount equal to the product of (i) the Monthly Redemption Amount and (ii) a fraction, the numerator of which is the most recently calculated NAV per Class F Unit and the denominator of which is the most recently calculated NAV per Class A Unit.

11. The basic NAV and diluted NAV, which would reflect the effect the exercise of the outstanding warrants would have on the basic NAV, and NAV per Unit of each class will be made available at no cost on a weekly basis on a website established for such purpose.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption sought relating to investment fund continuous disclosure is granted provided that:

(a) the net asset value calculation is available to the public upon request; and

(b) the public has access to a website for this purpose;

for so long as:

(c) the Class A Units are listed on the TSX; and

(d) the Fund calculates its net asset value at least weekly.

"Rhonda Goldberg"
Manager, Investment Funds
Ontario Securities Commission

2.1.5 Canadian Apartment Properties Real Estate Investment Trust

Headnote

MI 11-102 and NP 11-203 – relief from filing business acquisition reports – using income from the continuing operations of the filer to determine the significance of certain acquisitions leads to anomalous results – filer permitted to use a net operating income test rather than the income test provided for in Part 8 of National Instrument 51-102 Continuous Disclosure Obligations – filer failed to obtain relief prior to due dates for the business acquisition reports – relief provided is as of the date of the decision document only and does not terminate or alter any right of action, remedy, penalty or sanction available to any person or company or to a securities regulatory authority against the filer prior to the date of the decision document.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, s. 8.3.

May 1, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the "JURISDICTION")

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
CANADIAN APARTMENT PROPERTIES
REAL ESTATE INVESTMENT TRUST
(the "FILER")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "Legislation") granting relief to use the NOI Test (as defined below) rather than the Income Test (as defined below) for the REIT's continuous disclosure obligations under Part 8 of National Instrument 51-102 – Continuous Disclosure Obligations ("NI 51-102") in respect of: (i) the July 10, 2007 acquisition of two land lease adult lifestyle communities referred to as the Rice Portfolio; and (ii) the February 1, 2007 acquisition of 17 apartment buildings referred to as the BSA Portfolio (the "Exemption Sought").

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application (the "Principal Regulator"), and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 Passport System ("MI 11-102") is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut and Yukon.

Interpretation

Terms defined in National Instrument 14-101 Definitions and MI 11-102 have the same meaning if used in this decision, unless otherwise defined in this decision.

Representations

This decision is based on the following facts represented by the REIT:

1. The REIT is an internally managed unincorporated open-ended real estate investment trust owning interests in multi-unit residential properties including apartment buildings and townhouses located in major urban centres across Canada and two land lease adult lifestyle communities.

2. The REIT was established under the laws of the Province of Ontario by a declaration of trust and its head office is located in Toronto, Ontario.

3. The REIT is a reporting issuer under the securities legislation of each of the provinces and territories of Canada.

4. The units of the REIT are listed and posted for trading on the Toronto Stock Exchange under the trading symbol CAR.UN.

5. The REIT completed its initial public offering on May 21, 1997 pursuant to its final long form prospectus dated May 12, 1997.

6. As at March 3, 2008, the REIT had ownership interests in 26,366 residential suites well diversified by geographic location and asset class and 1,258 land lease sites.

7. As at and for the year ended December 31, 2006 the REIT had assets in excess of $2 billion, net operating income ("NOI") (calculated as revenue less operating expenses (including trust expenses, interest income and interest on bank indebtedness), but before deducting interest expense and depreciation expense) of approximately $132.5 million and income from continuing operations of approximately $722,000.

8. As at and for the year ended December 31, 2005 the REIT had assets of approximately $1.9 billion,

NOI of approximately $120.9 million and income from continuing operations of approximately $1.3 million.

9. Under Part 8 of NI 51-102, the REIT is required to file a business acquisition report ("BAR") for any completed acquisition that is determined to be significant based on the acquisition satisfying any of the three significance tests set out in subsection 8.3 (2) of NI 51-102.

10. For the purposes of completing its quantitative analysis of the income test (the "Income Test") prescribed under Part 8.3 of NI 51-102, the REIT is required to compare its income from continuing operations against the proportionate share of income from continuing operations of the Rice Portfolio and the BSA Portfolio, respectively.

11. In each case, the application of the Income Test produces an anomalous result for the REIT in comparison to the results of the other tests of significance set out in subsection 8.3 (2) of NI 51-102, which were not triggered by the acquisitions.

12. The use of a test based on a comparison of the REIT's proportionate share of the NOI of the Rice and BSA Portfolios, respectively, to its own NOI based on the most recently completed financial year of each ended before the date of each acquisition (the "NOI Test"), more accurately reflects the significance of these acquisitions from a business and commercial perspective and its results are generally consistent with the other tests of significance set out in subsection 8.3 (2) of NI 51-102.

13. The NOI of the Rice Portfolio represents approximately 3.18% of the REIT's NOI for the fiscal year ended December 31, 2006. However, based on the application of the Income Test, pursuant to paragraph (1) of Part 8.2 of NI 51-102, the REIT was required to file a BAR with respect to its acquisition of the Rice Portfolio on or before September 21, 2007 and has not yet done so.

14. The NOI of the BSA Portfolio represents approximately 2.78% of the REIT's NOI for the fiscal year ended December 31, 2006. However, based on the application of the Income Test, pursuant to paragraph (1) of Part 8.2 of NI 51-102, the REIT was required to file a BAR with respect to its acquisition of the BSA Portfolio on or before April 17, 2007 and has not yet done so.

15. The REIT represents that any right of action, remedy, penalty or sanction available to any person or company or to a securities regulatory authority against the REIT from September 21, 2007, in respect of the Rice Portfolio, and from April 17, 2007, in respect of the BSA Portfolio, until the date of this decision document are not terminated or altered as a result of the Principal Regulator granting the Exemption Sought.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted as of the date hereof.

"Erez Blumberger"
Manager, Corporate Finance
Ontario Securities Commission

2.1.6 Claymore Investments, Inc. et al.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions– Extension of lapse date of prospectus of mutual funds. – Due to inadvertence, the mutual funds failed to comply with the time lines for a renewal of a prospectus under the Legislation which caused the prospectus to lapse. – Mutual funds will not issue any units under the prospectus in a jurisdiction after the lapse date of the prospectus in that jurisdiction until the extension is granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 62(5).

April 21, 2008

IN THE MATTER OF
THE CANADIAN SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,
MANITOBA, ONTARIO, NEW BRUNSWICK,
PRINCE EDWARD ISLAND, NOVA SCOTIA,
NEWFOUNDLAND, YUKON, NUNAVUT AND
NORTHWEST TERRITORIES
(collectively, the "Jurisdictions')

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
CLAYMORE INVESTMENTS, INC.
("Claymore")

AND

IN THE MATTER OF
CLAYMORE GLOBAL BALANCED INCOME ETF
CLAYMORE GLOBAL BALANCED GROWTH ETF
CLAYMORE GLOBAL ALL EQUITY ETF
CLAYMORE EUROPE FUNDAMENTAL INDEX ETF
CLAYMORE GLOBAL MONTHLY YIELD HOG ETF
CLAYMORE S&P/TSX CDN PREFERRED SHARE ETF
CLAYMORE S&P GLOBAL WATER ETF
(collectively, the "Funds")

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions ("Decision Maker") has received an application from Claymore, on behalf of the Funds, for a decision under the securities legislation of the Jurisdiction (the "Legislation") that the time limits for the renewal of the Prospectus, as defined below, be extended to those time limits that would be applicable if the lapse date of the Prospectus was April 21, 2008 (the "Exemptive Relief Sought").

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

1. the Ontario Securities Commission is the principal regulator for this application; and

2. the decision is the decision of the principal regulator and evidences the decision of the Decision Makers.

Interpretation

Defined terms contained in National Instrument 14-401 - Definitions have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts as represented by Claymore and the Funds:

1. Claymore is the manager of the Funds.

2. Claymore is also the manager of the following funds offered under a prospectus dated June 7, 2007: Claymore International Fundamental Index ETF, Claymore US Fundamental Index ETF C$ hedged, Claymore Japan Fundamental Index ETF C$ hedged, Claymore Oil Sands Sector ETF, Claymore BRIC ETF, Claymore CDN Dividend & Income Achievers ETF, Claymore Canadian Fundamental Index ETF and Claymore S&P/TSX Global Mining ETF (collectively, the "Other Funds").

3. The Funds and Other Funds are unincorporated mutual fund trusts established under the laws of Ontario pursuant to a Declarations of Trust.

4. The Funds and Other Funds are reporting issuers under the laws of Ontario and each of the other Jurisdictions where such status exists. Common Units and Advisor Class Units of the Funds are qualified for distribution pursuant to a prospectus dated April 5, 2007 (the "Prospectus"). The Funds have not been noted in default of the Legislation.

5. Under the Legislation a distribution may continue under a prospectus for twelve months from the date of the last prospectus relating to the distribution or from the date of the receipt for the last prospectus relating to the distribution. The date to which a distribution may continue under a prospectus is the "lapse date". The distribution may be continued for a further twelve months if the provisions of the Legislation are complied with.

6. The Funds filed a combined pro forma and preliminary prospectus dated March 14, 2008 (the

"Combined Prospectus"). The Combined Prospectus was a pro forma in respect of the Funds and the Other Funds and a preliminary prospectus with respect to two new classes of Claymore US Fundamental Index ETF C$ hedged.

7. In order to qualify for the time lines stipulated for a renewal of a prospectus under the Legislation, it was necessary to file the Combined Prospectus no later than March 5, 2008. As of April 7, 2008 the Prospectus of the Funds has lapsed.

8. The Funds have ceased to distribute securities as of April 7, 2008. The Funds will not issue any units under the Prospectus in a Jurisdiction until the Requested Relief is granted.

9. Due to inadvertence the Funds did not file a pro forma prospectus on or before March 5, 2008 in order to qualify for the time lines for a renewal of a prospectus under the Legislation.

10. The Other Funds, whose renewal is provided for in the Combined Prospectus, have a lapse date of June 7, 2008. However, in the interest of reducing the cost and simplifying the process of renewing its funds going forward, Claymore wishes to combine the Prospectus for the Funds with the prospectus of the Other Funds.

11. If the Exemptive Relief Sought was not granted, it would be necessary to prepare and file a preliminary prospectus in respect of the Funds in order to re-qualify the distribution of Funds.

12. Since the date of the Prospectus, no undisclosed material change has occurred. Accordingly, the Prospectus continues to provide accurate information regarding the Funds. The requested extension will not affect the currency or the accuracy of the information contained in the Prospectus, and therefore will not be prejudicial to the public interest.

Decision

Each of the Decision Makers are satisfied that exemptive relief application meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted.

"Rhonda Goldberg"
Manager, Investment Funds Branch
Ontario Securities Commission

2.1.7 FP Resources Limited - s. 1(10)

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Issuer deemed to no longer be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10).

Mr. Graham Roome, Chief Operating Officer
FP RESOURCES LIMITED
70 O'Leary Avenue
St. John's, Newfoundland
A1C 5L1

Dear Mr. Roome:

Re: FP Resources Limited (the "Applicant") - Application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the "Jurisdictions") that the Applicant is not a reporting issuer

The Applicant has applied to the local securities regulatory authority or regulator (the "**Decision Maker**") in each of the Jurisdictions for a decision under the securities legislation (the "**Legislation**") of the Jurisdictions that the Applicant is not a reporting issuer.

As the Applicant has represented to the Decision Makers that:

1. the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada;

2. no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;

3. the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

4. the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is deemed to have

ceased to be a reporting issuer and that the Applicant's status as a reporting issuer is revoked.

Dated this 1st day of May, 2008.

"H. Leslie O'Brien"
Chairman
Nova Scotia Securities Commission

2.1.8 Goldcorp Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief from requirement to file a technical report concurrently with annual information form (AIF) – Filer's AIF will contain feasibility study results on a material property that are new material or scientific technical information – Technical report will not be finalized in time to be filed contemporaneously with AIF – Relief granted provided that AIF includes appropriate cautionary language and Filer files the technical report as soon as practicable but in any event not later than 45 days from the due date for filing AIF.

Applicable Legislative Provisions

National Instrument 43-101 Standards of Disclosure for Mineral Projects, ss. 4.2(1)(f), 4.2(4), 9.1.

March 28, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC,NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND, NEWFOUNDLAND AND LABRADOR, YUKON, NORTHWEST TERRITORIES, AND NUNAVUT
(the Jurisdictions)

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
GOLDCORP INC.
(the Filer)

MRRS DECISION DOCUMENT

Background

1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer is exempt from the requirement in National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) that an issuer file a supporting technical report not later than the time it files its annual information form (AIF) which contains new material scientific or technical information (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

(a) the British Columbia Securities Commission is the principal regulator for this application, and

(b) this MRRS decision document evidences the decision of each Decision Maker.

Representations

2 This decision is based on the following facts represented by the Filer:

1. the Filer is a natural resource company with its head office located in Vancouver, British Columbia;

2. the Filer is listed on the Toronto Stock Exchange and the New York Stock Exchange, has a year end of December 31 and is required to file its annual information form (AIF) for the year ended December 31, 2007 on or before March 31, 2008;

3. the Filer is a reporting issuer, or the equivalent, in each of the Jurisdictions and is not in default of any requirement under the Legislation;

4. the Filer indirectly owns 40% of the Pueblo Viejo gold development stage project (the Pueblo Viejo Project) in the Dominican Republic, with Barrick Gold Corporation (Barrick) indirectly owning the other 60%;

5. a subsidiary of Barrick is the operator of the Pueblo Viejo Project;

6. a report entitled "Pueblo Viejo Project, Province of Sanchez Ramirez, Dominican Republic, 43-101 Technical Report and Qualified Person's Review" dated October 26, 2005 (the 2005 Pueblo Viejo Project Report) was prepared for Placer Dome Inc. (since acquired by Barrick) by AMEC Americas Limited, was re-addressed to the Filer and filed by the Filer on SEDAR; the 2005 Pueblo Viejo Project Report was based on a feasibility study prepared by or on behalf of Placer Dome Inc. in 2005 (the 2005 Placer Dome Feasibility Study);

7. on February 21, 2008, the Filer received the results of an update to the 2005 Placer Dome Feasibility Study on the Pueblo Viejo Project prepared by or on behalf of Barrick (the 2007 Feasibility Study); the 2007 Feasibility Study includes, among other elements, an updated production schedule, revised process circuit and an updated capital estimate;

8. on February 26, 2008, Barrick advised the Filer that Project Notice to proceed with the Pueblo Viejo Project and the 2007 Feasibility Study were provided to the Government of the Dominican Republic;

9. on February 27, 2008, the Filer issued a news release announcing that Barrick had submitted Project Notice to proceed with the Pueblo Viejo Project and the 2007 Feasibility Study to the Government of the Dominican Republic;

10. Barrick does not consider the Pueblo Viejo Project to be a material mineral project and, therefore, did not provide the Filer with a technical report that complies with NI 43-101 and has advised the Filer that it does not intend to do so;

11. the Filer believes that in order to provide up-to-date, full, true and plain disclosure, it is necessary that the information contained in the Feasibility Study form the basis of the scientific and technical information on the Pueblo Viejo Project contained in the AIF;

12. as the Feasibility Study information is new material scientific or technical information, filing the AIF containing this information will trigger the requirement under sections 4.2(1)(f) and 4.2(4) of NI 43-101 to file a technical report to support such information not later than the time the AIF is filed;

13. in February 2008, the Filer retained AMC Mining Consultants (Canada) Ltd., KWM Consulting Inc. and Rescan Environmental Services Ltd. to prepare a NI 43-101 compliant technical report on the Pueblo Viejo Project (the Technical Report); representatives of such engineering consulting firms and the Filer are working diligently to complete the Technical Report as quickly as possible; however, the Technical Report is not capable of being filed at the time the AIF is filed which will be no later than March 31, 2008;

14. the Filer will complete and file the Technical Report as soon as practicable but, in any event, not later than May 15, 2008;

15. the AIF will contain the following statement (the Cautionary Language) in

close proximity to the information regarding the Feasibility Study results:

> "The technical disclosure in this annual information form relating to the Pueblo Viejo Project has not been supported by a technical report prepared in accordance with NI 43-101. The technical report is being prepared by qualified persons under NI 43-101 and it will be available on the SEDAR website located at *www.sedar.com* under the Corporation's profile on or before May 15, 2008. Readers are advised to refer to that technical report when it is filed."

16. the Filer has no reason to believe that the information in the Technical Report will be materially different from the information in the AIF.

Decision

3 Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted, provided that:

(a) the AIF includes the Cautionary Language; and

(b) the Filer files the Technical Report as soon as practicable but, in any event, not later than May 15, 2008.

"Martin Eady, CA"
Director, Corporate Finance
British Columbia Securities Commission

2.1.9 Diamond Holdings Trust - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 14.2(3)(a) and 17.1 - NAV calculation - An investment fund wants relief from the requirement in s. 14.1(3)(a) of National Instrument 81-106 to calculate its net aset value at least once in each week - The fund is a closed-end investment fund that allows redemptions or retractions no more frequently than once per month; units of the fund are either: (a) listed or to be listed on a stock exchange and unitholders can buy or sell units of the fund through the exchange, or b) convertible into units listed or to be listed on a stock exchange; the fund calculates its net asset value on a regular basis and makes that calculation available to the public on request.

Applicable Legislative Provisions

National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 14.2 (3)(a), 17.1.

April 22, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NOVA SCOTIA, NEW BRUNSWICK, NEWFOUNDLAND AND LABRADOR, YUKON, NORTHWEST TERRITORIES AND NUNAVUT
(the Jurisdictions)

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
DIAMOND HOLDINGS TRUST
(the Filer)

MRRS DECISION DOCUMENT

Background

1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under section 17.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) that the Filer be exempt from the requirement in section 14.2(3)(a) of NI 81-106 to calculate net asset value on a weekly basis (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

(a) the British Columbia Securities Commission is the principal regulator for this application; and

(b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

2 Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are otherwise defined in this decision.

Representations

3 This decision is based on the following facts represented by the Filer:

1. the Filer is a non-redeemable investment fund (as defined in NI 81-106) established under the laws of the Province of British Columbia pursuant to a declaration of trust dated October 23, 2007;

2. Facet Management Ltd. (the Administrator) is the administrator of the Filer, and Douglas W. Bailey, Terrence W. Janes, Richard Molyneux, Dr. Rory Moore and James R. Rothwell are the initial trustees of the Filer (the Trustees);

3. the principal office of the Filer and the Administrator is located in Vancouver, British Columbia;

4. the Filer is authorized to issue an unlimited number of units (the Units) and certain convertible securities, including warrants;

5. the Filer has filed a preliminary prospectus (the Preliminary Prospectus) dated November 13, 2007 with the securities regulatory authorities in each Jurisdiction under SEDAR project number 1181470;

6. the Filer has applied to list the Units on the Toronto Stock Exchange (the TSX);

7. the Filer was established to invest, though its wholly-owned subsidiary, Diamond Investments Limited (Diamond Investments), substantially all of its assets in rough diamonds, with the balance of its assets, after retaining funds reasonably required for working capital purposes, invested, either directly by the Filer or indirectly through one or more of its offshore wholly-owned affiliates, in Government of Canada and U.S. Government short-term debt obligations;

8. the Filer will not trade (directly or indirectly) in derivatives;

9. Diamond Management Ltd. (the Manager) will manage Diamond Investments' diamond portfolio and provide management services to Diamond Investments;

10. the Units will be redeemable at the option of the Unitholder on a monthly basis as required under the *Income Tax Act* (Canada) to qualify as a "mutual fund trust" at a redemption price per Unit, which will be equal to the lesser of:

    (a) 90% of the "market price" of the Units on the principal market on which the Units are quoted for trading during the 20 trading day period ending immediately before the monthly redemption date; and

    (b) 100% of the "closing market price" on the principal market on which the Units are quoted for trading on the monthly redemption date computed by reference to the market price of the Units;

11. although the Filer will be a mutual fund trust for purposes of the *Income Tax Act* (Canada), it will not be a mutual fund for purposes of securities legislation and its operation will differ from that of a conventional mutual fund as follows:

    (a) the Filer does not intend to continuously offer Units once the Filer is out of primary distribution; and

    (b) the Units are expected to be listed and posted for trading on the TSX; as a result, Unitholders will not have to rely solely on the redemption features of the Units (as described in the Preliminary Prospectus) in order to provide liquidity for their investment;

12. Diamond Investments has retained WWW International Diamond Consultants Ltd. (WWW Consultants) to be the independent valuator of the diamond portfolio;

13. WWW Consultants will conduct one physical valuation per year and three quarterly "price book" valuations of Diamond Investments' rough diamonds;

14. in conducting the physical valuation, WWW Consultants will sort and classify the rough diamonds in the diamond portfolio into groups on the basis of physical characteristics such as size, shape, clarity and colour, and will apply the appropriate price point to each rough diamond based on its proprietary price book;

15. WWW Consultants will also physically evaluate all diamonds purchased by Diamond Investments before such diamonds are placed into safekeeping to enable WWW Consultants to provide future quarterly price book updates;

16. quarterly valuations of the diamond portfolio will be conducted by WWW Consultants by applying updated price book data to the physical characteristics of each diamond within the diamond portfolio based on its prior physical inspection;

17. the information derived from semi-annual window sales and other sales by Diamond Investments will also be provided to WWW Consultants in order to assist WWW Consultants in valuating the diamond portfolio;

18. the NAV per Unit will be calculated quarterly by the Administrator as at the last day of each financial quarter, as well as on such additional dates as the Trustees, in their discretion, may determine, or is otherwise required by applicable law and the value of the diamond portfolio, which value will be obtained exclusively from WWW Consultants (as described above) in connection with its quarterly valuation process, will form part of the calculation of the NAV of the Filer and the NAV per Unit;

19. physical valuation of rough diamonds takes a significant amount of time and is quite costly;

20. to the Administrator's knowledge, there is no reputable public information source that provides prices of rough diamonds on a regular basis;

21. unlike commodity funds which invest directly in commodities such as gold and uranium, there is no terminal market or spot pricing for rough diamonds; and

22. De Beers, as the dominant diamond producer and trader of rough diamonds, through its affiliate Diamond Trading Company, officially announces price changes once or twice each year, which the industry will use as a guideline for trading rough diamonds.

Decision

4 Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the authority to make the decision has been met.

The decision of the Decision Makers is that the Requested Relief is granted, provided the Filer's prospectus discloses:

(a) that the net asset value calculation is available to the public upon request; and

(b) a toll-free telephone number or website that the public can access for this purpose;

for so long as:

(c) the Units are listed on the TSX; and

(d) the Filer calculates its net asset value at least quarterly.

"Andrew Richardson, CA"
Acting Director, Corporate Finance
British Columbia Securities Commission

2.1.10 Medisys Health Group Income Fund

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions -Application by reporting issuer for an order that it is not a reporting issuer – Requested relief granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10).

May 2, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, MANITOBA, ONTARIO AND QUEBEC
(the "Jurisdictions")

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
MEDISYS HEALTH GROUP INCOME FUND
(the "Filer")

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the "**Decision Maker**") has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that the Filer is not a reporting issuer in each of the Jurisdictions in accordance with the Legislation (the "**Requested Exemptive Relief**").

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application):

a) the Autorité des marchés financiers is the principal regulator for this application; and

b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions* have the same meaning if use in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is an unincorporated, open-ended, limited purpose investment trust governed by the laws of the Province of Ontario, established pursuant to the Filer Declaration of Trust, dated November 19, 2004, as amended and restated on December 29, 2004, and as further supplemented by a first supplemental indenture dated January 31, 2005 and as further amended by the first amendment dated as of March 28, 2008 (the "**Declaration of Trust**").

2. The registered office and principal office of the Filer are each located at 500 Sherbrooke Street West, Suite 1100, Montreal, Quebec, H3A 3C6.

3. The authorized capital of the Filer consists of an unlimited number of ordinary trust units and an unlimited number of special voting units.

4. 6799221 Canada Limited (the "**Offeror**"), a wholly-owned subsidiary of Persistence Capital Partners LP offered to acquire all of the issued and outstanding ordinary trust units (the "**Units**") of the Filer (the "**Offer**"), upon the terms and subject to the conditions described in the Offer and the accompanying circular dated February 13, 2008.

5. On March 19, 2008, the Offeror provided notice to CIBC Mellon Trust Company, as depositary (the "**Depositary**") confirming that all of the conditions of the Offer had been satisfied or waived, and confirming that the Offeror would take up and pay, before March 28, 2008, for the Units validly deposited under the Offer and not withdrawn.

6. On March 24, 2008, the Offeror instructed the Depositary to take up the Units validly deposited under the Offer and not withdrawn. The Offeror paid for such Units on March 27, 2008.

7. Section 13.13 of the Declaration of Trust permits an offeror to acquire the Units not tendered to an offer (a "**Compulsory Acquisition**") if, within the time provided in the offer for its acceptance or within 45 days after the date the offer is made, whichever period is the shorter, the offer is accepted by the holders representing at least 90% of the total outstanding Units, including the special shares of Medisys GP Limited, Class B Units of Medisys Holding LP and the Class C limited partnership units of Medisys Holding LP that are exchangeable for Units under the terms of an amended and restated exchange agreement dated May 31, 2005 entered into by the Filer, Medisys Health Group Trust, Medisys Holding LP, the general partner of Medisys Holding LP, Dr. Sheldon Elman, 4093496 Canada Inc. and 4107225 Canada Inc. and the holder of Class C

limited partnership units of Medisys Holding LP (the "**Exchangeable Securities**"). All special voting units of the Filer, which were formerly held by the holders of the Exchangeable Securities, were acquired by the Offeror on March 20, 2008.

8. The Offeror acquired the Units not tendered to the Offer through the Compulsory Acquisition on March 28, 2008.

9. Following the completion of the Compulsory Acquisition on March 28, 2008, the Offeror is the sole holder of all Units of the Filer.

10. The outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada.

11. The Units were de-listed from the Toronto Stock Exchange on March 31, 2008. No securities of the Filer are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operations*.

12. The Filer is not in default of any of its obligations under the Legislation as a reporting issuer, other than its obligation to file annual financial statements, related management's discussion and analysis, annual information form and officers' certificates in respect of the year ended December 31, 2007.

13. The Filer has no intention to seek public financing by way of an offering of securities.

14. The Filer is applying for a decision that the Filer is not a reporting issuer in each of the Jurisdictions. On April 1, 2008, the Filer filed a notice of voluntary surrender of reporting issuer status in British Colombia pursuant to British Colombia Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status*. As a consequence of filing this notice, the Filer is not a reporting issuer in British Columbia effective as of April 11, 2008.

Decision

Each of the Decision Makers is satisfied that the exemptive relief application meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Requested Exemptive Relief is granted.

"Marie-Christine Barrette"
Manager, Financial Information
Autorité des marchés financiers

2.1.11 Mavrix Québec 2007-II Flow Through LP and Mavrix Fund Management Inc.

Headnote

MI 11-102 and NP 11-203 - Exemptions granted to flow-through limited partnerships from the requirements in National Instrument 81-106 Investment Fund Continuous Disclosure to file an annual information form, to maintain and prepare an annual proxy voting record, to post the proxy voting record on their website, and to provide it to securityholders upon request – Flow-though limited partnerships are short-term investment vehicles formed solely to invest its available funds in flow-through shares of resource issuers – The securities of flow-through limited partnerships are not redeemable and there is no readily available secondary market for the securities – A flow-through limited partnership's other continuous disclosure documents will provide all relevant information necessary for investors to understand the its investment objectives and strategies, financial position and future plans.

Rules Cited

National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 9.2, 10.3, 10.4, 17.1.

April 24, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
MAVRIX QUÉBEC 2007-II FLOW THROUGH LP
(the Partnership) AND
MAVRIX FUND MANAGEMENT INC.
(Mavrix)
(collectively, the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers on behalf of the Partnership and each future limited partnership promoted by Mavrix or its affiliates that is identical to the Partnership in all respects which are material to this decision (Future Partnerships, and together with the Partnership, the LPs) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) for relief from the requirement to:

(a) prepare and file an annual information form (the AIF) pursuant to Section 9.2 of National Instrument 81-106 – Investment Funds Continuous Disclosure (NI 81-106) for each financial year;

(b) maintain a proxy voting record (the Proxy Voting Record) pursuant to Section 10.3 of NI 81-106; and

(c) prepare and make available to limited partners of the LPs (the Limited Partners) the Proxy Voting Record on an annual basis for the period ending on June 30 of each year pursuant to Section 10.4 of NI 81-106 (Exemption Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) the Filers have provided notice that Section 4.7(1) of Multilateral Instrument 11-102 Passport System (MI 11-102) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, and Prince Edward Island (the Jurisdictions).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filers:

1. The Partnership was formed, and Future Partnerships will be formed, to invest in certain common shares (Flow-Through Shares) of companies that operate, as their principal business, in any of the energy, precious metals, base metals, minerals, mining, oil and gas or other resource-based industries (Resource Issuers) pursuant to agreements (Investment Agreements) between the relevant partnership and the Resource Issuer. Under the terms of each Investment Agreement, the relevant partnership will subscribe for Flow-Through Shares of the Resource Issuer and the Resource Issuer will agree to incur and renounce to the relevant partnership, in amounts equal to the subscription price of the Flow-Through Shares, expenditures in respect of resource exploration and development that qualify as Canadian exploration expense and that may be renounced as Canadian exploration expense to the relevant partnership.

2. The Partnership was formed on July 25, 2007. On August 24, 2007, the Partnership became a reporting issuer in Ontario and Québec. Any Future Partnerships will be reporting issuers in some or all of the provinces of Canada.

3. On or about November 30, 2009, the Partnership will be dissolved and the Limited Partners of the Partnership will receive their *pro rata* share of the net assets of the Partnership. It is the current intention of the general partner of the Partnership that the Partnership will transfer its assets to an open-end mutual fund corporation managed by Mavrix, in exchange for shares of a class of shares of such mutual fund corporation. Upon dissolution, the Limited Partners would receive their *pro rata* share of the shares of that mutual fund. Any Future Partnership will be terminated approximately two years after it is formed on the same basis as the Partnership.

4. The LPs are not, and will not be, operating businesses. Rather, each LP is, or will be, a short-term special purpose vehicle that will be dissolved within approximately two years of its formation. The primary investment purpose of the LPs is not to achieve capital appreciation, although this is a secondary benefit, but rather to obtain for the Limited Partners the significant tax benefits that accrue when Resource Issuers renounce resource exploration and development expenditures to the LPs through Flow-Through Shares.

5. The units of the LPs (the Units) are not, and will not be, listed or quoted for trading on any stock exchange or market. The Units are not redeemable by the Limited Partners. Generally, Units are not transferred by Limited Partners, since Limited Partners must be holder of the Units on the last day of each fiscal year of the LP in order to obtain the desired tax deduction.

6. It is, and will be, a term of the partnership agreement governing the LPs that the general partner of the of LP has, and will have, the authority to manage, control, administer and operate the business and affairs of LPs, including the authority to take all measures necessary or appropriate for the business, or ancillary thereto, and to ensure that the LPs comply with all necessary reporting and administrative requirements. Under its general authority, the general partner may apply on behalf of the LPs for relief.

7. Each of the Limited Partners of the LPs has, or will be expected to be, by subscribing for units of the LPs, agreed to the irrevocable power of attorney contained in the partnership agreement and has thereby, in effect, consented to the making of this Application.

8. Given the limited range of business activities to be conducted by the LPs, the short duration of their existence and the nature of the investment of the Limited Partners, the preparation and distribution of an AIF by the LPs would not be of any benefit to the Limited Partners and may impose a material financial burden on the LPs. Upon the occurrence of any material change to the LPs, Limited Partners would receive all relevant information from the material change reports the LPs are required to file in the Jurisdictions.

9. As a result of the implementation of NI 81-106, investors purchasing Units of the LPs were, or will be, provided with a prospectus containing written policies on how the Flow-Through Shares or other securities held by the LPs are voted (the Proxy Voting Policies), and had, or will have, the opportunity to review the Proxy Voting Policies before deciding whether to invest in Units.

10. Generally, the Proxy Voting Policies require that the securities of companies held by the LPs be voted in a manner most consistent with the economic interests of the Limited Partners of the LPs.

11. Given the LPs' short lifespan, the production of a Proxy Voting Record would provide Limited Partners with very little opportunity for recourse if they disagreed with the manner in which the LPs exercised or failed to exercise its proxy voting rights, as the LPs would likely be dissolved by the time any potential change could materialize.

12. Preparing and making available to Limited Partners a Proxy Voting Record will not be of any benefit to Limited Partners and may impose a material financial burden on the LPs.

13. The Filers are of the view that the Exemption Sought is not against the public interest, is in the best interests of the LPs and their Limited Partners and represents the business judgment of responsible persons uninfluenced by considerations other than the best interest of the LPs and their Limited Partners.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted.

"Vera Nunes"
Assistant Manager, Investment Funds Branch
Ontario Securities Commission

2.1.12 Builders Energy Services Trust - 1(10)

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – application for an order that the issuer is not a reporting issuer.

Ontario Statutes

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10).

May 1, 2008

Heenan Blaikie LLP
12th Floor, Fifth Avenue Place
425 - 1 Street SW
Calgary, AB T2P 3L8

Attention: Nicole E. Bacsalmasi

Dear Madam:

Re: Builders Energy Services Trust (the Applicant) - Application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the Jurisdictions) that the Applicant is not a reporting issuer

The Applicant has applied to the local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions for a decision under the securities legislation (the **Legislation**) of the Jurisdictions that the Applicant is not a reporting issuer.

As the Applicant has represented to the Decision Makers that:

1. the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada;

2. no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;

3. the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

4. the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been

met and orders that the Applicant is deemed to have ceased to be a reporting issuer.

"Blaine Young"
Associate Director, Corporate Finance
Alberta Securities Commission

2.1.13 Axcan Pharma Inc. - s. 1(10)

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – application for an order that the issuer is not a reporting issuer.

Ontario Statutes

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10).

April 22, 2008

Axcan Pharma Inc.
597, Boul. Laurier
Mont Saint-Hilaire (Québec)
J3H 6C4

Dear Sirs/Madames:

Re: Axcan Pharma Inc. (the Applicant) - application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the Jurisdictions) that the Applicant is not a reporting issuer

The Applicant has applied to the local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions for a decision under the securities legislation (the Legislation) of the Jurisdictions that the Applicant is not a reporting issuer.

As the Applicant has represented to the Decision Makers that:

- the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada;
- no securities of the Applicant are traded on a marketplace as defined in *Regulation 21-101 respecting Marketplace Operation*;
- the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and
- the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been

met and orders that the Applicant's status as a reporting issuer is revoked.

"Marie-Christine Barrette"
Manager, Financial Information
Autorité des marchés financiers

2.2 Orders

2.2.1 Bank of Montreal and BMO Capital Trust

Headnote

Application by bank (the Bank) and capital trust subsidiary (the Trust) for an order granting the Trust relief from the requirement in OSC Rule 13-502 Fees (the Fees Rule) to pay participation fees - Bank has paid, and will continue to pay, participation fees applicable to it under s. 2.2 of the Fees Rule, and Bank includes capitalization of Trust in its fee calculation - relief analogous to relief for "subsidiary entities" contained in s. 2.9(2) of the Fees Rule - Trust may not, from a technical accounting perspective, be considered to be a "subsidiary entity" of Bank for Canadian GAAP purposes and may not be entitled to rely on the exemption in s. 2.9(2) of the Fees Rule - Trust and Bank satisfy conditions of exemption in s. 2.9(2) but for definition of "subsidiary entity" - Trust exempt from requirement to pay participation fees, subject to conditions.

Applicable Legislative Provisions

OSC Rule 13-502 Fees, s. 2.9(2).

IN THE MATTER OF
ONTARIO SECURITIES COMMISSION
RULE 13-502 FEES

AND

IN THE MATTER OF
BANK OF MONTREAL AND
BMO CAPITAL TRUST

ORDER

WHEREAS the Director has received an application from Bank of Montreal (the "**Bank**") and BMO Capital Trust (the "**Trust**") for an order, pursuant to Section 6.1 of OSC Rule 13-502 Fees (the "**Fees Rule**"), that the requirement to pay a participation fee under Section 2.2 of the Fees rule shall not apply to the Trust, subject to certain terms and conditions.

AND WHEREAS the Bank and the Trust have represented to the Ontario Securities Commission (the "**OSC**") that:

1. The Trust is a trust established under the laws of the Province of Ontario by BMO Trust Company as trustee (the "**Trustee**"), pursuant to a declaration of trust dated October 11, 2000, as amended. The Trust has a financial year-end of December 31. The Trust is a reporting issuer in Ontario and, to its knowledge, is not in default of any requirement under the securities legislation of the Province of Ontario. The Bank is the administrative agent of the Trust pursuant to an administration and advisory agreement pursuant to which the Trustee has delegated to the Bank certain of its obligations in relation to the

administration of the Trust, including the day-to-day operations of the Trust and such other matters as may be requested from time to time by the Trustee.

2. The outstanding securities of the Trust consist of (i) transferable trust units called Trust Capital Securities, or "**BMO BOaTS**", which are non-voting except in limited circumstances, and (ii) Special Trust Securities. All outstanding Special Trust Securities are held by the Bank. The Trust has distributed five series of BMO BOaTS to date pursuant to public offerings. Subject to certain conditions and after a specified date for each Series, the Trust may redeem each Series of BMO BOaTS. In certain circumstances, some series of BMO BOaTS may be exchanged at the option of the holder thereof into preferred shares of the Bank. In addition, each series of BMO BOaTS would be exchanged for preferred shares of the Bank upon the occurrence of certain specified events. The Bank has undertaken to list any such preferred shares that may be issued on the Toronto Stock Exchange.

3. The Trust's only business is to invest its assets and its objective is to acquire and hold specified trust assets that will generate income for distribution to holders of BMO BOaTS and Special Trust Securities. The Trust does not carry on any independent business activities other than to acquire and hold assets to generate income for distribution to holders of the BMO BOaTS and Special Trust Securities (collectively "**Trust Securities**").

4. Pursuant to the MRRS Decision Document dated May 16, 2001 (the "**Continuous Disclosure Exemption**") granted to the Trust by the OSC, as principal regulator, on behalf of itself and other decision makers (collectively, the "**Decision Makers**"), the Decision Makers determined that the requirement contained in the securities legislation of the Province of Ontario and in other applicable jurisdictions (collectively, the "**Legislation**") to:

   (i) file interim financial statements and audited annual financial statements and deliver same to the security holders of the Trust;

   (ii) file interim and annual management's discussion and analysis ("**MD&A**") of the financial conditions and results of operations and deliver same to the security holders of the Trust; and

   (iii) file an annual information form and deliver same to the security holders of the Trust;

   (the obligations set out in clause (i) to (iii) are collectively defined as the "**Continuous Disclosure Obligations**"),

   shall not apply to the Trust for so long as:

   (i) the Bank remains a reporting issuer under the Legislation;

   (ii) the Bank sends its annual financial statements, interim financial statements, annual MD&A and interim MD&A to security holders of the Trust at the same time and in the same manner as if the security holders of the Trust were holders of common shares of the Bank;

   (iii) all outstanding securities of the Trust are either BMO BOaTS or Special Trust Securities;

   (iv) the rights and obligations of holders of additional series of BMO BOaTS are the same in all material respects as the rights and obligations of the holders of the BMO BOaTS – Series A and BMO BOaTS –Series B as of the date of the Continuous Disclosure Exemption; and

   (v) the Bank is the beneficial owner of all Special Trust Securities.

   The Continuous Disclosure Exemption shall expire 30 days after the date a material change occurs in the affairs of the Trust.

5. The Trust was established by the Bank in order to comply with the regulatory requirements of the Office of the Superintendent of Financial Institutions ("**OSFI**") relating to the issuance of innovative Tier 1 capital instruments (as contained in OSFI's Principles Governing inclusion of Innovative Instruments in Tier 1 Capital (the "**OSFI Guidelines**").

6. OSFI maintains strict guidelines and standards with respect to the capital adequacy requirements of federally regulated financial institutions, including the Bank, and, in particular, specifies minimum required amounts of Tier 1 capital to be maintained by such institutions. Tier 1 capital consists of common shareholders' equity, qualifying non-cumulative perpetual preferred shares, qualifying innovative instruments and qualifying non-controlling interests arising on consolidation from Tier 1 capital instruments. Innovative Instruments, such as the BMO BOaTS, must satisfy the detailed requirements of the OSFI Guidelines to be included in Tier 1 capital.

Accordingly, the innovative instruments (BMO BOaTS) must be issued by a special purpose vehicle (BMO Capital Trust), whose primary purpose is to raise innovative Tier 1 capital. OSFI approved the inclusion of the BMO BOaTS as Tier 1 capital of the Bank.

7. No continuous disclosure documents concerning only the Trust will be filed with the OSC.

8. The Trust is a "Class 2 reporting issuer" under the Fees Rule and would be required (but for this Order) to pay participation fees under such rule.

9. The Bank, as a legal and factual matter, controls the Trust through its ownership of the Special Trust Securities issued by the Trust and its role as administrative agent of the Trust. The Bank has paid, and will continue to pay, participation fees applicable to it under Section 2.2 of the Fees Rule.

10. The Fees Rule includes an exemption for "subsidiary entities" in subsection 2.9(2) of the Fees Rule. The Bank and the Trust meet all of the substantive requirements to rely on the exemption in subsection 2.9(2) of the Fees Rule, but for the definition of "subsidiary entity". The Fees Rule defines "subsidiary entity" by reference to the accounting definition under Canadian GAAP, rather than by reference to a legal definition based on control.

11. On November 1, 2004, the Canadian Institute of Chartered Accountants adopted Guideline 15, Consolidation of Variable Interest Entities. Accordingly, the Trust may not, from a technical accounting perspective, be considered to be a "subsidiary entity" of the Bank for Canadian GAAP purposes and may not be entitled to rely on the exemption in subsection 2.9(2) of the Fees Rule.

THE ORDER of the OSC under the Fees Rule is that the requirement to pay a participation fee under Section 2.2 of the Fees Rule shall not apply to the Trust, for so long as:

(i) the Bank and the Trust continue to satisfy all of the conditions contained in the Continuous Disclosure Exemption; and

(ii) The capitalization of the Trust represented by the outstanding BMO BOaTS and any additional Trust Securities that may be issued, from time to time, by the Trust is included in the participation fee calculation applicable to the Bank and the Bank has paid the participation fee calculated on this basis.

DATED April 22, 2008.

"Erez Blumberger"
Manager, Corporate Finance
Ontario Securities Commission

2.2.2 Darren Delage

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
DARREN DELAGE

ORDER

WHEREAS on March 31, 2008, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing and Statement of Allegations with respect to the respondent Darren Delage ("Delage") pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act");

AND WHEREAS the first appearance for this matter was scheduled for April 29, 2008 at 2:30 p.m.;

AND WHEREAS Staff of the Commission ("Staff") and counsel for Delage attended before the Commission on April 29, 2008 at 2:30 p.m.;

AND WHEREAS the Commission heard submissions from the parties regarding scheduling the hearing on the merits of this matter and pre-hearing conferences;

AND WHEREAS the Commission considers it to be in the public interest to make this order;

IT IS HEREBY ORDERED that:

1. the hearing on the merits in this matter is set down to commence on Monday, January 26, 2009, for a period of one week; and

2. the parties shall communicate with the Office of the Secretary to schedule a pre-hearing conference in June 2008.

DATED at Toronto on this 30th day of April, 2008.

"Lawrence E. Ritchie"

"James E. A. Turner"

2.2.3 Goldpoint Resources Corporation et al. - ss. 127(1), 127(5)

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
GOLDPOINT RESOURCES CORPORATION,
LINO NOVIELLI, BRIAN MOLONEY,
EVANNA TOMELI, ROBERT BLACK,
RICHARD WYLIE, AND JACK ANDERSON

TEMPORARY ORDER
Section 127(1) & 127(5)

WHEREAS it appears to the Ontario Securities Commission that:

1. Goldpoint Resources Corporation ("Goldpoint") is an Ontario corporation with a registered office in Toronto;

2. Lino Novielli ("Novielli") is the sole director of Goldpoint;

3. Goldpoint and Brian Moloney ("Moloney") are not registered with the Commission in any capacity;

4. Novielli is registered in Ontario, but only to sell mutual funds.

5. Shares of Goldpoint have been offered for sale and sold to members of the public, in Ontario and elsewhere in Canada, by representatives of Goldpoint;

6. Goldpoint appears to be merely a shell company with no assets;

7. Staff of the Commission ("Staff") are conducting an investigation into the trading of Goldpoint shares, and based on the information collected by Staff to date, it appears that Novielli, Moloney, Tomeli, Black, Wylie, and Anderson have traded in shares of Goldpoint or have acted in furtherance of trades in shares of Goldpoint;

8. Representatives of Goldpoint have made representations about the future listing of the shares of Goldpoint in order to effect sales in those shares contrary to s. 38 of the *Act*;

9. No prospectus receipt has been issued for the Goldpoint securities contrary to section 53 of the *Act*.

10. No exemption from the registration and prospectus requirements under the *Act* applies to the shares of Goldpoint, or to Novielli, Moloney, Tomeli, Black, Wylie, and Anderson.

11. False or misleading information appears to have been posted on the Goldpoint website in furtherance of the sale of shares contrary to s.126.1 of the *Act*. The sale of Goldpoint shares to the public appears to have perpetrated a fraud on the members of the public who purchased the shares.

AND WHEREAS the Commission is of the opinion that the time required to conclude a hearing could be prejudicial to the public interest as set out in s. 127(5) of the *Act*;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

AND WHEREAS by Commission order made April 1, 2008, pursuant to section 3.5(3) of the *Act*, any one of David Wilson, James E.A.Turner, Lawrence E. Ritchie, Paul K. Bates, and David L. Knight, acting alone is authorized to exercise the powers of the Commission under the *Act*, subject to subsection 3.5(4) of the *Act*, to make orders under section 127 of the *Act*;

IT IS ORDERED pursuant to clause 2 of subsection 127(1) of the *Act* that all trading in securities by Goldpoint shall cease and that all trading in Goldpoint securities shall cease;

IT IS FURTHER ORDERED that pursuant to clause 2 of subsection 127(1) of the *Act* that Lino Novielli, Brian Moloney, Evanna Tomeli, Robert Black, Richard Wylie, and Jack Anderson cease trading in all securities; and,

IT IS FURTHER ORDERED that pursuant to subsection 127(6) of the *Act* this order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission.

Dated at Toronto this 30th day of April, 2008

"David Wilson"

2.2.4 Bourse de Montréal Inc. - s. 144

Headnote

Bourse de Montréal – Section 144 order, amending and restating a previous order exempting the Bourse de Montréal from section 21 of the Securities Act, section 15 of the Commodity Futures Act and Part 4 of OSC Rule 91-502 Trades in Recognized Options.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S.5,
AS AMENDED (the "Act")

AND

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, CHAPTER C.20, AS AMENDED
(the "CFA")

AND

IN THE MATTER OF
BOURSE DE MONTRÉAL INC.

AMENDMENT TO EXEMPTION ORDER
(Section 144)

WHEREAS the Commission issued an order dated March 16, 2004 exempting Bourse de Montréal Inc., pursuant to section 147 of the Act, from recognition as a stock exchange under section 21 of the Act, and exempting Bourse de Montréal Inc., pursuant to section 80 of the CFA, from registration as a commodity futures exchange under section 15 of the CFA;

AND WHEREAS the Director issued an order dated March 16, 2004 exempting Bourse de Montréal Inc. from Part 4 of OSC Rule 91-502 Trades in Recognized Options ("Rule 91-502") (collectively, the Commission's order and the Director's order are the "Previous Order");

AND WHEREAS pursuant to a transaction (the "Transaction"), a successor company to Bourse de Montréal Inc. (referred to in this order as the "Bourse") will be formed through a series of amalgamations and the Bourse will become a directly owned subsidiary of TSX Group Inc. ("TSX Group");

AND WHEREAS Bourse de Montréal Inc. has filed an application (the "Application") with the Commission requesting that the Previous Order be amended and restated to reflect the Transaction;

AND WHEREAS the Commission has determined that it is not prejudicial to the public interest to issue an order that amends and restates the Previous Order to reflect the Transaction;

IT IS ORDERED, pursuant to section 144 of the Act, that the Previous Order be amended and restated as follows :

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S.5,
AS AMENDED (the "Act")

AND

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990 CHAPTER C.20,
AS AMENDED (THE "CFA")

AND

IN THE MATTER OF
BOURSE DE MONTRÉAL INC.

ORDER
(Section 147 of the Act, section 80 of the CFA and section 6.1 of OSC Rule 91-502)

WHEREAS the Commission issued an order dated March 16, 2004 exempting Bourse de Montréal Inc., pursuant to section 147 of the Act, from recognition as a stock exchange under section 21 of the Act, and exempting Bourse de Montréal Inc., pursuant to section 80 of the CFA, from registration as a commodity futures exchange under section 15 of the CFA;

AND WHEREAS the Director issued an order dated March 16, 2004 exempting Bourse de Montréal Inc. from Part 4 of OSC Rule 91-502 Trades in Recognized Options ("Rule 91-502") (collectively, the Commission's order and the Director's order are the "Previous Order");

AND WHEREAS pursuant to a transaction (the "Transaction"), a successor company to Bourse de Montréal Inc. (referred to in this order as the "Bourse") will be formed through a series of amalgamations and the Bourse will become a directly owned subsidiary of TSX Group Inc. ("TSX Group");

AND WHEREAS Bourse de Montréal Inc. has filed an application (the "Application") with the Commission requesting that the Previous Order be amended and restated to reflect the Transaction;

AND WHEREAS the Commission has determined that it is not prejudicial to the public interest to issue an order that amends and restates the Previous Order to reflect the Transaction;

AND WHEREAS the Bourse has represented to the Commission and the Director as follows:

1. The Bourse will be amalgamated pursuant to the *Companies Act* (Québec) (the "Companies Act") following receipt of the certificate attesting the amalgamation, prepared and issued by the enterprise registrar acting under the Companies Act.

2. On April 10, 2008, the Bourse was:

   (i) granted an amendment to its recognition as a self-regulatory organization in Québec pursuant to section 68 of the *Act respecting the Autorité des marchés financiers*, R.S.Q., c. A-33.2; and

   (ii) authorized to continue to carry on business as an exchange pursuant to section 170 of the Securities Act, R.S.Q., c. V-1.1;

   under Ruling No. 2008-PDG-0102 issued by the Autorité des marchés financiers (the "AMF") (collectively, the "AMF Decision", attached as Schedule "C").

3. The Bourse is situated in Montréal, Québec, has an office in Toronto, Ontario and a back-up site in Mississauga, Ontario.

4. The Bourse is subject to regulatory oversight by the AMF.

5. The Bourse has been advised that the Commission and the Commission des valeurs mobilières du Québec ("CVMQ") entered into a memorandum of understanding ("MOU") respecting the continued oversight of the Bourse by the CVMQ. Under the terms of the MOU, the CVMQ and its successor, the AMF, are responsible for conducting the regulatory

oversight of the Bourse and for conducting an oversight program of the Bourse for the purpose of ensuring that the Bourse meets appropriate standards for market operation and market regulation.

6. The Canadian Derivatives Clearing Corporation ("CDCC") is a wholly-owned subsidiary of the Bourse and is subject to the regulatory oversight of the AMF.

7. CDCC is the clearing agency for all trades in options, commodity futures contracts and commodity futures options traded on the Bourse.

AND WHEREAS the Bourse has agreed to comply with the terms and conditions set out in Schedule "A";

AND WHEREAS Commission staff have conducted a review of the Application, which included an assessment of the operations of the Bourse, against the criteria set out in Schedule "B";

AND WHEREAS based on the Application and the representations that the Bourse has made to the Commission and the Director, the Commission is satisfied that continuing to exempt the Bourse from recognition and registration would not be prejudicial to the public interest;

AND WHEREAS based on the Application and the representations that the Bourse has made to the Commission and the Director, the Director is satisfied that continuing to exempt the Bourse from Part 4 of Rule 91-502 would not be prejudicial to the public interest;

The Commission hereby amends the Bourse's exemption from recognition as a stock exchange and exemption from registration as a commodities futures exchange so that the exemption pursuant to section 147 of the Act and the exemption pursuant to section 80 of the CFA continue with respect to the Bourse, subject to the terms and conditions attached as Schedule "A".

The Director hereby amends the Bourse's exemption from Part 4 of Rule 91-502 so that the exemption from Part 4 of Rule 91-502 continues with respect to the Bourse, subject to the terms and conditions attached as Schedule "A".

Dated March 16, 2004, as amended on April 30, 2008, to be effective on May 1, 2008.

"James E. A. Turner"

"Lawrence E. Ritchie"

"Brigitte J. Geisler"

SCHEDULE "A"

Terms and Conditions

Regulation of The Bourse

1. The Bourse will continue to be subject to the regulatory oversight of the AMF as described in the AMF Decision attached as Schedule "C".

2. The Bourse will continue to comply with the terms and conditions set out in the AMF Decision attached as Schedule "C".

3. The Bourse will continue to be subject to such joint regulatory oversight as may be established and prescribed by the AMF and the Commission from time to time.

4. The MOU referred to in paragraph 5 of the order has not been terminated.

5. The Bourse will continue to operate an exchange for options, commodity futures contracts and commodity futures options.

Rule and Product Review

6. The Bourse will provide:

   (i) all new rules and amendments (together, "Rules"); and

   (ii) all new contract specifications and amendments;

   to the AMF for review and approval in accordance with the procedures established by the AMF, as amended from time to time. These procedures include the publication of the new Rules for comment in English and French at the same time.

7. The Bourse will concurrently provide the Commission with copies of all Rules that it files for review and approval with the AMF in both English and French. Once the AMF has approved the Rules in English and in French (which will be approved at the same time), the Bourse will provide copies of all final Rules to the Commission within two weeks of approval by the AMF. The Bourse will post the final Rules, in English and French, on its website or will make them publicly available, as soon as practicable.

8. The Bourse will concurrently provide the Commission with copies of all contract specifications and amended contract specifications that it files for review and approval with the AMF, in both English and French. The Bourse will provide copies of all approved contracts to the Commission within two weeks of approval by the AMF.

Information Sharing

9. Upon request by the Commission to the AMF, the Bourse will provide to the Commission through the AMF any information in the possession of the Bourse, or over which the Bourse has control, relating to Approved Participants, Foreign Approved Participants and Restricted Trading Permit Holders and their representatives and the market operations of the Bourse, including, but not limited to, Approved Participant, Foreign Approved Participant and Restricted Trading Permit Holder lists, shareholder lists, products, trading information and disciplinary decisions.

10. The Bourse shall file with the Commission any related information concerning the Bourse that is required pursuant to National Instrument 21-101 *Marketplace Operation.*

Regulation of CDCC

11. The Bourse will, until such time as CDCC is recognized by the Commission as a recognized clearing agency under the Act and recognized clearing house under the CFA or is exempt from any requirement to be recognized,

   (i) cause CDCC to concurrently provide the Commission with copies of all Rules that it files for review and approval with the AMF and cause CDCC to provide copies of all final Rules to the Commission in both English and French;

(ii) cause CDCC to continue to provide the Commission, concurrently with the AMF, with copies of all audited financial statements and reports prepared by an independent auditor in respect of CDCC's financial situation and operations;

(iii) cause CDCC to provide the Commission, concurrently with the AMF, with copies of all internal CDCC risk management reports intended for its members and any outside report, including any audit report prepared in accordance with the Canadian Institute of Chartered Accountants Handbook, on the results of an examination or review of CDCC's risk management policies, controls and standards undertaken by an independent person;

(iv) cause CDCC to promptly notify the Commission, together with the AMF, of any material failures or changes to its systems;

(v) cause CDCC to promptly notify the Commission, together with the AMF, of any material problems with the clearance and settlement of transactions in contracts traded on the Bourse, including any failure by a member of CDCC to promptly fulfil its settlement obligations that could materially affect the operations or financial situation of CDCC;

(vi) promote fair access to CDCC and will not unreasonably prohibit or limit access by a person or company to services offered by CDCC; and

(vii) promote within CDCC a corporate governance structure that minimizes the potential for any conflict of interest between the Bourse and CDCC that could adversely affect the clearance and settlement of trades in contracts or the effectiveness of CDCC's risk management policies, controls and standards.

Coordination of Regulation

12. The Bourse will maintain procedures to co-ordinate trading halts, in addition to circuit breakers, between the Bourse and any marketplace on which any security underlying the Bourse’s products are traded, or its regulation services provider, and any other marketplace on which any related security is traded, or its regulation services provider.

SCHEDULE "B"

Criteria for Exemption

PART 1 CORPORATE GOVERNANCE

1.1 Fair Representation

The governance structure of the Bourse provides for:

(a) fair and meaningful representation having regard to the nature and structure of the Bourse;

(b) appropriate representation on the Bourse's Board and its Board committees of persons who are independent of the Bourse;

(c) appropriate conflict of interest provisions for all directors, officers and employees of the Bourse; and

(d) appropriate conflict of interest provisions between

  (i) the Bourse and CDCC;

  (ii) the directors, officers and employees of CDCC and the directors, officers and employees of the Bourse; and

  (iii) the Bourse and the Bourse's Regulatory Division.

1.2 Appropriate Provisions for Directors and Officers

The Bourse takes reasonable steps to ensure:

(a) appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors and officers; and

(b) each officer and director is a fit and proper person.

PART 2 FEES

2.1 Fees

The Bourse's process for setting fees is fair, transparent and appropriate. Any and all fees imposed by the Bourse on its participants are equitably allocated, do not have the effect of creating barriers to access and are balanced with the criterion that the Bourse has sufficient revenues to satisfy its responsibilities.

PART 3 ACCESS

3.1 Fair Access

The requirements of the Bourse relating to access to the facilities of the Bourse are fair, transparent and reasonable and include requirements in respect of notice, an opportunity to be heard or make representations, the keeping of records, the giving of reasons and the provisions for appeals.

3.2 Details of Access Criteria

In particular, the Bourse:

(a) has written standards for granting access to trading on its facilities to ensure users have appropriate integrity and fitness;

(b) has and enforces financial integrity standards for those persons who enter orders for execution on the system, including, but not limited to, credit or position limits and clearing membership;

(c) does not unreasonably prohibit or limit access by a person or company to services offered by it;

(d) keeps records of each grant and denial or limitation of access, including reasons for granting, denying or limiting access; and

(e) restricts access to adequately trained system users who have demonstrated competence in the functions that they perform.

3.3 Access for Ontario Residents

The Bourse provides direct access, either through terminals, data feeds or third party provided interfaces, to only those persons who are duly registered or licensed under Ontario laws.

PART 4 REGULATION

4.1 Jurisdiction

The Bourse is responsible for and has the jurisdiction to perform member and market regulation, including the ability to set rules, conduct compliance reviews and perform surveillance and enforcement.

4.2 Issuer/Product Regulation

The products traded on the Bourse and the contract specifications are approved by the AMF.

4.3 Transparency

Adequate provision has been made to record and publish accurate and timely trade and quotation information. This information is provided to all participants on an equitable basis.

4.4 Sufficient Systems and Resources

(a) The Bourse has the means to adequately monitor and enforce and actively monitors and enforces Approved Participants, Foreign Approved Participants and Restricted Trading Permit Holders and their representatives for compliance with securities legislation and the Rules of the Bourse.

(b) The Bourse has the means to adequately monitor and enforce and actively monitors and enforces trading in its markets, including cross market conduct, for possible abuses.

4.5 Record Keeping

The Bourse maintains adequate provisions for keeping books and records, including operations of the Bourse, audit trail information on all trades and compliance and/or violations of Bourse requirements and securities legislation.

4.6 Availability of Information to the AMF

The Bourse has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory and enforcement purposes is available to the AMF on a timely basis.

PART 5 RULEMAKING

5.1 Purpose of Rules

The Bourse maintains rules, policies and other similar instruments that:

(a) are not contrary to the public interest;

(b) are fair; and

(c) are designed to, in particular:

(i) ensure compliance with the rules of the Bourse and securities legislation;

(ii) prevent fraudulent and manipulative acts and practices;

(iii) promote just and equitable principles of trade;

(iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, the products traded on the Bourse;

(v) provide appropriate supervision and discipline for violations of securities legislation and the rules of the Bourse;

(vi) ensure a fair and orderly market;

(vii) ensure that the Bourse business is conducted in a manner so as to afford protection to investors; and

(viii) provide for appropriate dispute procedures.

5.2 No Discrimination or Burden on Competition

The rules of the Bourse do not:

(a) permit unreasonable discrimination among issuers or participants; or

(b) impose any burden on competition that is not reasonably necessary or appropriate.

PART 6 SYSTEMS AND TECHNOLOGY

6.1 System Capability/Scalability

For each of its systems that support order entry, order routing, execution, data feeds, trade reporting, trade comparison and system-enforced rules, the Bourse maintains a level of capacity that allows it to properly carry on its business and has in place processes to ensure the integrity of each system. This includes maintaining reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.

6.2 Information Technology Risk Management Procedures

The Bourse has procedures in place that:

(a) handle trading errors, trading halts and circuit breakers;

(b) ensure the competence, integrity and authority of system users; and

(c) ensure that the system users are adequately supervised.

PART 7 FINANCIAL VIABILITY

7.1 Financial Viability

The Bourse has sufficient financial resources for the proper performance of its functions.

7.2 Financial Statements

The Bourse prepares annual audited financial statements in accordance with Canadian GAAP and covered by a report prepared by an independent auditor.

PART 8 CLEARING AND SETTLEMENT

8.1 Relationship with Clearing Agency

All transactions executed on the Bourse are cleared through CDCC.

8.2 Regulation of the Clearing Agency

CDCC is subject to regulation by the AMF that addresses risk and promotes transparency, fairness and investor protection.

8.3 Authority of the Foreign Regulator

The AMF has the appropriate authority and procedures for oversight of the CDCC. This oversight includes rule review and regular, periodic regulatory examinations of CDCC by the AMF.

8.4 Clearing and Settlement Arrangements

The Bourse ensures that:

(i) appropriate clearing and settlement arrangements are in place to provide reasonable assurance that all obligations arising out of transactions on the Bourse will be met; and

(ii) CDCC has policies and procedures to deal with problems relating to clearing and settling contracts.

8.5 Technology of Clearing Corporation

The Bourse has assured itself that the information technology used by CDCC has been adequately reviewed and tested and provides at least the same level of safeguards as required of the Bourse.

8.6 Risk Management of Clearing Corporation

The Bourse has assured itself that CDCC has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

PART 9 INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS

9.1 Information Sharing and Oversight Agreement

Satisfactory information sharing and oversight agreements exist among the Commission and the AMF.

SCHEDULE "C"

DÉCISION N° 2008-PDG-0102

Autorisation donnée à Bourse de Montréal Inc. d'exercer l'activité de bourse au Québec, en vertu de l'article 169 de la *Loi sur les valeurs mobilières*, L.R.Q., c. V-1.1

et

Reconnaissance de Bourse de Montréal Inc. à titre d'organisme d'autoréglementation, en vertu de l'article 68 de la *Loi sur l'Autorité des marchés financiers*, L.R.Q., c. A-33.2

Considérant qu'une bourse doit être autorisée à ce titre pour exercer ses activités au Québec en vertu de l'article 169 de la *Loi sur les valeurs mobilières*, L.R.Q., c. V-1.1 (la « LVM »);

Considérant que l'Autorité des marchés financiers (l'« Autorité») peut, en vertu de l'article 170 de la LVM, décider que la personne qui exerce une activité de bourse soit reconnue à titre d'organisme d'autoréglementation en vertu du titre III de la *Loi sur l'Autorité des marchés financiers*, L.R.Q., c. A-33.2 (la « LAMF »);

Considérant que le 17 décembre 2002, la Commission des valeurs mobilières du Québec, maintenant l'Autorité, prononçait la décision n° 2002-C-0470 (B.C.V.M.Q., 2003-01-17, Vol. XXXIV n° 02, 2), telle que modifiée le 13 mai 2003, par la décision n° 2003-C-0184 (B.C.V.M.Q., 2003-06-13, Vol. XXXIV n° 23, 10) à l'effet d'accorder à la société Bourse de Montréal Inc. la reconnaissance à titre d'organisme d'autoréglementation pour exercer ses activités au Québec en vertu de l'article 169 de la LVM;

Considérant qu'en vertu de l'article 740 de la LAMF, Bourse de Montréal Inc. a été autorisée à poursuivre l'exercice de son activité au Québec conformément aux conditions prescrites;

Considérant que Bourse de Montréal Inc. et Groupe TSX Inc. (le « Groupe TSX ») ont conclu une entente afin de regrouper leurs entreprises, aux termes de laquelle Bourse de Montréal Inc. et des filiales en propriété exclusive de Groupe TSX se regrouperont pour former une société qui remplace Bourse de Montréal Inc., et qui est appelée dans la présente décision la « Bourse »;

Considérant que, dans le cadre de son projet de regroupement avec Groupe TSX, Bourse de Montréal Inc. a présenté à l'Autorité une demande de modification de sa reconnaissance à titre d'organisme d'autoréglementation, en vertu des articles 65 et 66 de la LAMF, et de son autorisation d'exercer l'activité de bourse, en vertu de l'article 169 de la LVM, et lui a demandé de confirmer que les parties peuvent résilier le protocole d'entente intervenu le 15 mars 1999 entre la Bourse de l'Alberta, la Bourse de Montréal, la Bourse de Toronto et la Bourse de Vancouver (la « convention de 1999 ») (collectivement, la « demande »), laquelle comprend un projet d'engagements de Groupe TSX envers l'Autorité;

Considérant qu'en vertu de la décision n° 1999-C-0241 prononcée le 29 juin 1999, la Commission des valeurs mobilières du Québec a approuvé à certaines conditions la convention de 1999 et que cette décision prévoyait que tout projet de modification importante de ce protocole devait être soumis à l'Autorité;

Considérant qu'en vertu de l'article 66 de la LAMF, l'Autorité a publié à son Bulletin (B.A.M.F., 2008-02-01, Vol. 5, n° 4, 380) un avis de la demande et invité les personnes intéressées à lui présenter leurs observations par écrit;

Considérant que les 26 et 27 mars 2008 lors d'une audience publique convoquée par l'Autorité, cette dernière a entendu les parties intéressées à leur faire part de leurs observations;

Considérant que Groupe TSX a déposé des engagements envers l'Autorité, lesquels sont joints à la présente à titre d'Annexe 1 (les « engagements »);

Considérant que Bourse de Montréal Inc. a déposé, à même la demande, un projet de modification de ses documents constitutifs et de son règlement intérieur, en vertu de l'article 74 de la LAMF et de l'article 171.1 de la LVM lesquels deviendront les documents constitutifs et le règlement intérieur de la Bourse;

Considérant que l'Autorité peut, en vertu de l'article 170 de la LVM, autoriser l'exercice d'une activité visée à l'article 169 de la LVM, aux conditions qu'elle détermine;

Considérant que l'Autorité a vérifié la conformité, aux articles 69 et 70 de la LAMF, des documents constitutifs, du règlement intérieur et des règles de fonctionnement proposés par la Bourse;

Considérant qu'en vertu de l'article 74 de la LAMF, tout projet de modification des documents constitutifs, du règlement intérieur ou des règles de fonctionnement d'un organisme reconnu est soumis à l'approbation de l'Autorité;

Considérant que l'Autorité estime que la Bourse possède une structure administrative, les ressources financières et autres pour exercer, de manière objective, équitable et efficace, ses fonctions et pouvoirs, conformément à l'article 68 de la LAMF;

Considérant que la Bourse maintiendra une division indépendante chargée de la fonction de réglementation (la « Division ») ayant pour mission principale de surveiller les fonctions et les activités réglementaires de la Bourse;

Considérant que la Bourse et Groupe TSX sont en accord avec les modalités et conditions de la présente décision;

Considérant que l'Autorité juge opportun d'accorder l'autorisation d'exercer l'activité de bourse à la Bourse, sous réserve du respect de certaines modalités et conditions ainsi que des engagements;

Considérant que l'Autorité juge opportun d'accorder la reconnaissance à titre d'organisme d'autoréglementation à la Bourse, sous réserve du respect de certaines modalités et conditions ainsi que des engagements;

Considérant que l'Autorité juge opportun de ne pas s'opposer à la demande de Bourse de Montréal Inc. de résilier la convention de 1999 à laquelle elle est partie;

En conséquence :

L'Autorité accorde, en vertu de l'article 170 de la LVM, l'autorisation d'exercer l'activité de bourse et, en vertu de l'article 68 de la LAMF, la reconnaissance à titre d'organisme d'autoréglementation à la Bourse sous la dénomination sociale de « Bourse de Montréal Inc. » pour exercer ses activités au Québec.

En outre, l'Autorité ne s'oppose pas à ce que la convention de 1999 soit résiliée.

De plus, l'Autorité, en vertu de l'article 74 de la LAMF, approuve les modifications proposées aux documents constitutifs et au règlement intérieur de la Bourse.

Enfin, l'Autorité révoque la décision n° 2002-C-0470 prononcée le 17 décembre 2002 (B.C.V.M.Q., 2003-01-17, Vol. XXXIV n° 02, 2) ainsi que la décision n° 2003-C-0184 qu'elle a prononcée le 13 mai 2003 (B.C.V.M.Q., 2003-06-13, Vol. XXXIV n° 23, 10).

La présente décision est sujette aux modalités et conditions suivantes :

Aux fins de la présente décision :

a) le terme « participant » inclut les termes « participant agréé », « participant agréé étranger » et « détenteur de permis restreint de négociation »;

b) une personne résidente du Québec s'entend d'un particulier qui est considéré comme un résident du Québec en vertu de la *Loi sur les impôts*, L.R.Q., c. I-3;

c) l'expression « agissant conjointement ou de concert » s'entend du sens donné à « agir de concert » à l'article 1.9 du *Règlement 62-104 sur les offres publiques d'achat et de rachat*, dans sa version modifiée à l'occasion, en y apportant les adaptations nécessaires et, pour plus de certitude, inclut les personnes réputées ou présumées agir de concert au sens de cette expression.

I. ACTIONNARIAT

a) Aucune personne ou société et aucun groupement de personnes ou de sociétés, agissant conjointement ou de concert, ne peut devenir propriétaire ou exercer une emprise sur plus de dix pour cent (10 %) de toute catégorie ou série d'actions avec droit de vote de la Bourse, sans l'approbation préalable de l'Autorité, à l'exception de Groupe TSX ou d'un membre du même groupe que celui-ci.

b) La Bourse informera l'Autorité, par écrit et sans délai, si, à sa connaissance, une personne ou société ou un groupement de personnes ou de sociétés, agissant conjointement ou de concert, est propriétaire ou exerce une emprise, sur plus de dix pour cent (10 %) des actions de toute catégorie ou série d'actions avec droit de vote de la Bourse, sans avoir obtenu l'approbation préalable de l'Autorité, et prendra les mesures nécessaires pour remédier à la situation, sans délai.

c) La Bourse informera l'Autorité, par écrit et sans délai, de tout changement dans la liste de ses actionnaires.

d) La Bourse informera, par écrit et sans délai, l'Autorité, de toute convention entre actionnaires dont elle aurait été informée.

II. STRUCTURE DE GOUVERNANCE

a) Les dispositions prises par la Bourse doivent assurer une représentation juste et significative à son conseil d'administration et aux comités du conseil, compte tenu de la nature et de la structure de la Bourse ainsi que le maintien d'un nombre et d'une proportion raisonnables d'administrateurs qui n'ont pas de liens avec la Bourse, ses participants ou ses actionnaires (autres que Groupe TSX ou un membre de son groupe, à titre d'actionnaires), dans le but d'assurer la diversité du conseil.

b) La structure de gouvernance de la Bourse devra prévoir :

i) une représentation d'au moins cinquante pour cent (50 %) d'administrateurs indépendants au conseil d'administration et aux comités du conseil;

ii) une représentation d'au moins vingt-cinq pour cent (25%) d'administrateurs résidents du Québec sur le conseil d'administration au moment de leur élection ou de leur nomination;

iii) une représentation juste et significative d'administrateurs disposant d'une expertise en matière de produits dérivés au conseil d'administration et au comité spécial de la réglementation (le « comité spécial »);

iv) des dispositions appropriées en matière de qualifications et de rémunération, une limitation de responsabilités et des mesures d'indemnisation pour les administrateurs, les membres de la direction et les employés en général;

v) un code de conduite et d'éthique et une politique écrite concernant les conflits d'intérêts potentiels des membres du conseil d'administration et des comités de la Bourse, incluant la Division, le comité spécial et la Corporation canadienne de compensation de produits dérivés (la « CDCC »), révisés afin de tenir compte du regroupement, et déposés auprès de l'Autorité dans l'année qui suit la date de la présente décision;

vi) des politiques et procédures en matière de conflits d'intérêts permettant aux membres de la direction de la Bourse et de la CDCC de divulguer leurs intérêts et pour prévoir la possibilité qu'une personne puisse se retirer d'un dossier et d'une décision.

La Bourse devra s'assurer, chaque année et chaque fois qu'une nouvelle personne est élue au conseil d'administration, qu'au moins cinquante pour cent (50 %) de ses administrateurs sont indépendants. Un administrateur indépendant s'entend d'une personne qui, notamment, satisfait aux conditions d'indépendance énoncées au paragraphe 1.4 du *Règlement 52-110 sur le comité de vérification*, dans sa version modifiée à l'occasion, et n'a pas de liens avec un participant, un membre de la direction, un employé ou un actionnaire qui est propriétaire ou qui exerce une emprise, directement ou indirectement, sur plus de dix pour cent (10 %) des actions d'une catégorie ou série d'actions avec droit de vote de la Bourse (autre que Groupe TSX ou un membre de son groupe, à titre d'actionnaires).

La Bourse prendra les mesures raisonnables pour s'assurer que chaque administrateur de la Bourse soit une personne apte et compétente et que la conduite antérieure de chaque administrateur donne des motifs raisonnables de croire que l'administrateur s'acquittera de ses fonctions avec intégrité.

Les dispositions prises par la Bourse, relativement à l'indépendance des administrateurs, notamment des critères permettant de déterminer si une personne a une relation importante avec la Bourse et, par conséquent, est considérée comme n'étant pas indépendante, ne pourront être modifiées sans l'approbation préalable de l'Autorité.

Toute modification du code de conduite et d'éthique et de la politique écrite concernant les conflits d'intérêts de la Bourse doit être soumise à l'Autorité, dès son approbation.

c) La Bourse devra voir à ce que le quorum des réunions des administrateurs ne soit pas inférieur à la majorité des administrateurs en fonction.

Si, à un moment quelconque, la Bourse ne satisfait pas aux exigences de la présente section relative à la structure de gouvernance, elle remédiera sans délai à cette situation.

III. PÉRENNITÉ DES ACTIVITÉS AU QUÉBEC

a) Le siège et le bureau de direction de la Bourse et de la CDCC demeureront à Montréal.

b) Le plus haut dirigeant de la Bourse et de la CDCC devront être des résidents du Québec, au moment de leur nomination et pour la durée de leur mandat, et travailler à Montréal.

c) La Bourse conservera et utilisera le nom « Bourse de Montréal Inc./Montréal Exchange Inc. ».

d) La Bourse ne mettra pas fin à son exploitation ni ne suspendra, n'abandonnera ou ne liquidera la totalité ou une partie importante de ses activités ni ne cèdera la totalité ou la quasi-totalité de ses actifs, à moins :

i) d'avoir déposé à l'Autorité un préavis écrit d'au moins six mois de son intention de le faire;

ii) de respecter toutes les modalités et les conditions que l'Autorité pourrait imposer dans l'intérêt public pour que l'abandon de ses activités ou la disposition de ses actifs s'effectue de façon ordonnée.

IV. LANGUE DES SERVICES

La Bourse fera en sorte de maintenir :

i) la gamme étendue de services de la Bourse au Québec requis en vertu des présentes, en français et en anglais, notamment les services d'adhésion, de réglementation et de surveillance des activités des participants de la Bourse;

ii) la disponibilité simultanée en français et en anglais de tout document d'information de la Bourse destiné aux participants ou au public;

iii) le français comme langue utilisée dans toutes les communications et correspondances avec l'Autorité.

V. ACCÈS

a) La Bourse doit permettre à toute personne qui satisfait aux critères d'adhésion applicables d'effectuer des opérations à la Bourse.

b) Sans restreindre le caractère général de ce qui précède, la Bourse :

i) doit énoncer par écrit les critères auxquels doit satisfaire une personne pour pouvoir effectuer des opérations à la Bourse;

ii) ne doit pas déraisonnablement interdire ou limiter l'accès à ses services d'une personne; et

iii) doit tenir des registres de ce qui suit :

a) toutes les demandes d'adhésion acceptées, en précisant les personnes à qui elle a donné accès, et les motifs à l'appui de sa décision; et

b) toutes les demandes d'adhésion refusées ou limitations d'accès, en précisant les motifs à l'appui de sa décision.

VI. FRAIS

a) Tous les frais qu'impose la Bourse à ses participants doivent être transparents et être répartis de façon juste et équitable.

b) Les frais ne doivent pas être un obstacle à l'accès, mais doivent tenir compte du fait que la Bourse doit disposer de revenus suffisants pour remplir ses fonctions et activités de réglementation ainsi que ses activités de Bourse.

c) Toute modification à la liste des frais exigés par la Bourse sera déposée à l'Autorité et ce, conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

VII. DIVISION DE LA RÉGLEMENTATION

a) La Bourse maintiendra une division de la réglementation distincte sous l'autorité d'un comité spécial de la réglementation (le « comité spécial »), nommé par le conseil d'administration de la Bourse et ayant des responsabilités clairement définies de réglementation du marché et de ses participants, et une structure administrative distincte.

b) La Bourse obtiendra l'approbation préalable de l'Autorité avant d'effectuer tout changement à la structure organisationnelle et administrative de la Division ou du comité spécial qui aurait une incidence importante sur les fonctions et activités de réglementation.

c) La Division sera pleinement autonome dans l'accomplissement de ses fonctions et dans son processus décisionnel. L'indépendance de la Division et de son personnel sera assurée et des mesures de cloisonnement strictes seront maintenues, afin d'assurer l'absence de conflits d'intérêts avec les autres activités de la Bourse et de Groupe TSX.

d) La Division remettra à tous les trimestres à l'Autorité son rapport d'activités conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

e) La Bourse remettra tous les ans à l'Autorité un rapport d'activités incluant un rapport d'activités de la Division préparé par cette dernière. Ce rapport devra comprendre l'information qui peut lui être demandée par l'Autorité. Il devra rendre compte du respect des modalités et des conditions relatives à la Division. De plus, il devra être présenté dans une forme acceptable par l'Autorité conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

f) La Division devra informer sans délai l'Autorité lorsqu'elle a des motifs raisonnables de croire à un cas d'inconduite ou de fraude de la part de ses participants et d'autres personnes pouvant entraîner de graves dommages pour les épargnants, les participants, le Fonds canadien de protection des épargnants ou la Bourse.

g) L'Autorité doit être informée tous les mois, conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2, de ce qui suit :

i) toute nouvelle analyse ou enquête entreprise par la Division, et notamment le nom du participant et de la personne approuvée concernés et de l'enquêteur responsable, la date d'ouverture du dossier ainsi que la nature de l'enquête;

ii) toutes les analyses ou enquêtes qui ne se traduisent pas par des procédures disciplinaires et qui sont closes, et notamment la date à laquelle l'enquête a été amorcée, la conduite et les personnes en cause et le règlement de l'enquête.

h) Une politique en matière de conflits d'intérêts devra être maintenue par la Bourse pour permettre au personnel et aux membres du comité spécial de divulguer leurs intérêts et pour prévoir la possibilité qu'une personne puisse se retirer d'un dossier et/ou d'une décision.

i) Toute modification à la politique en matière de conflits d'intérêts sera soumise à l'Autorité dès son approbation.

j) Sous réserve de tout changement dont peuvent convenir la Bourse et l'Autorité, la Division doit être exploitée comme suit :

i) Les fonctions et activités de la Division doivent être indépendantes des activités à but lucratif de la Bourse et distinctes sur le plan organisationnel. La Division doit opérer ses fonctions et activités selon le principe de l'autofinancement et doit être sans but lucratif;

ii) La Division doit constituer une unité d'affaires distincte de la Bourse régie par le conseil d'administration de la Bourse;

iii) Le conseil d'administration doit établir un comité spécial chargé de superviser les fonctions et activités de la Division, composé d'une majorité de personnes qui sont des résidents du Québec, au moment de leur nomination et pour la durée de leur mandat, et de personnes qui satisfont aux conditions d'indépendance applicables aux administrateurs de la Bourse;

iv) Le quorum du comité spécial doit être constitué de la majorité des membres en fonction, et de ce nombre :

a) d'une majorité de personnes qui sont des résidents du Québec au moment de leur nomination et pour la durée de leur mandat;

b) d'une majorité de personnes qui satisfont aux critères d'indépendance applicables aux administrateurs de la Bourse;

v) Le chef de l'exploitation de la Division (le « vice-président de la Division ») doit rendre compte au comité spécial de toute question de nature réglementaire ou disciplinaire. Le vice-président de la Division, ou la personne désignée par lui, doit être présent aux réunions du comité spécial portant sur les fonctions et activités de la Division, sauf indication contraire du comité spécial, et doit fournir, sur demande, au comité spécial, des renseignements concernant les fonctions et activités de la Division. Le comité spécial et le vice-président de la Division sont tous deux tenus de s'assurer que les fonctions et activités de la Division sont exercées convenablement;

vi) La structure financière de la Division devra être distincte de celle de la Bourse. Elle devra opérer sur une base de recouvrement de coûts. Tout surplus, autre que les amendes et autres sommes prévues en VII. j) vii), devra être redistribué aux participants et tout déficit devra être comblé par une cotisation spéciale des participants ou par la Bourse sur recommandation du comité spécial au conseil d'administration;

vii) Les amendes et autres sommes encaissées par la Division aux termes de règlements amiables conclus avec la Division ou de procédures de nature disciplinaire doivent être traitées de la façon suivante :

a) aucun montant ne sera redistribué aux participants de la Bourse;

b) une comptabilité distincte sera maintenue afin de comptabiliser les revenus et les dépenses liés aux dossiers de nature disciplinaire;

c) tout montant encaissé servira d'abord à compenser les coûts directs encourus dans le cadre de telles procédures;

d) tout excédent net devra servir, avec l'approbation préalable du comité spécial à l'une ou l'autre des fins suivantes :

1) à la formation et à l'information des participants aux marchés des produits dérivés et aux membres du public ou aux frais de recherche dans ce domaine;

2) aux versements faits à un organisme exonéré d'impôt, sans but lucratif, qui a notamment pour mission de protéger les investisseurs ou d'exercer les activités mentionnées en VII. j) vii) d) 1);

3) aux projets d'éducation;

4) aux autres fins approuvées par l'Autorité;

viii) La Division doit disposer d'un budget distinct qui doit être approuvé par le conseil d'administration sur recommandation du comité spécial et administré par le vice-président de la Division et le déposer annuellement, à l'Autorité, conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision;

ix) La Bourse doit allouer à la Division le soutien nécessaire de ses autres services, notamment dans le domaine technique, conformément à ses budgets et à ses exigences raisonnables tout en assurant son indépendance;

x) La Bourse doit adopter des politiques et des procédures visant à assurer que les renseignements confidentiels concernant les fonctions et activités de la Division demeurent confidentiels et ne soient pas divulgués de façon inappropriée aux services à but lucratif de la Bourse, de Groupe TSX ou à d'autres personnes. Elle doit aussi déployer tous les efforts raisonnables afin de les respecter;

xi) Le vice-président de la Division, le président de la Bourse, le comité spécial et le conseil d'administration doivent rendre compte à l'Autorité, sur demande, des fonctions et activités de la Division;

xii) La Bourse doit rendre compte à l'Autorité, semestriellement, de l'effectif de la Division, par fonction, en précisant les postes autorisés, comblés et vacants et de toute réduction ou tout changement important de cet effectif, par fonction et ce, conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision;

xiii) La direction de la Bourse, y compris le vice-président de la Division, doit procéder au moins une fois par année à une évaluation interne de l'exécution par la Division de ses fonctions réglementaires et présenter un rapport à ce sujet au comité spécial, accompagné de ses recommandations quant aux améliorations

possibles, le cas échéant. Le comité spécial doit, pour sa part, rendre compte au conseil d'administration de l'exécution par la Division de ses fonctions réglementaires. La Bourse doit remettre des exemplaires de ces rapports à l'Autorité et l'informer de toute mesure proposée par suite de ces évaluations et ce, conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision;

xiv) Les décisions du comité spécial dans les matières disciplinaires sont révisables conformément à la loi;

xv) Les règles concernant le comité spécial et la Division devront être révisées afin de se conformer aux exigences de la présente section sur la Division et être soumises à l'approbation de l'Autorité dans un délai de six mois de la présente décision.

VIII. RESSOURCES FINANCIÈRES ET AUTRES

a) La Bourse maintiendra des ressources financières et autres suffisantes pour assurer :

i) sa viabilité financière et le suivi quotidien de ses opérations;

ii) l'exercice des fonctions d'organisme d'autoréglementation de la Division;

et ce, en conformité avec les modalités et conditions prévues à la présente décision.

IX. RATIOS ET RAPPORTS FINANCIERS

a) La Bourse sera en défaut et informera sans délai l'Autorité lorsque, calculé à partir de ses états financiers consolidés et non consolidés :

i) Son ratio de fonds de roulement sera égal ou inférieur à 1,5 pour 1 (actif court terme liquide, c'est-à-dire l'encaisse, les placements temporaires, les comptes à recevoir et les placements à long terme encaissables en tout temps / passif court terme);

ii) Son ratio de marge brute d'autofinancement-endettement sera inférieur ou égal à vingt pour cent (20 %) (bénéfice net pour les 12 mois les plus récents ajusté des éléments sans incidence sur les liquidités, c'est-à-dire l'amortissement, les impôts reportés et toutes les autres dépenses sans impact sur les liquidités / dettes à court et à long terme);

iii) Son ratio de levier financier sera égal ou supérieur à 4,0 (actif total / capital).

Les ratios mentionnés ci-dessus calculés à partir des états financiers consolidés excluront les éléments suivants :

a) règlements quotidiens à recevoir des membres de la chambre de compensation;

b) règlements quotidiens à payer aux membres de la chambre de compensation;

c) les dépôts de couverture des membres (à l'actif et au passif);

d) les dépôts au fonds de compensation (à l'actif et au passif).

b) Si la Bourse est en défaut de respecter les ratios financiers pendant une période excédant trois mois, la Bourse informera, par écrit et sans délai, l'Autorité des motifs de la déficience et des mesures qui seront prises pour remédier à la situation et rétablir son équilibre financier. De plus, à partir du moment où la Bourse sera en défaut de respecter les ratios financiers pour une période excédant 3 mois et jusqu'à la fin d'une période d'au moins 6 mois suivant le moment où les déficiences auront été éliminées, la Bourse ne procédera pas, sans avoir obtenu l'approbation préalable de l'Autorité, à des dépenses en immobilisations qui n'étaient pas déjà reflétées dans les états financiers ou à des prêts, bonus, dividendes ou toute autre distribution d'actifs à tout administrateur, dirigeant, compagnie liée ou actionnaire.

c) La Bourse fournira un rapport faisant état de chacun des ratios, calculés mensuellement à partir des états financiers consolidés, et non consolidés, joint aux états financiers trimestriels pour les trois premiers trimestres de l'exercice et aux états financiers annuels vérifiés pour le quatrième trimestre, et ce, conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

d) La Bourse déposera ses états financiers annuels vérifiés consolidés et non consolidés ainsi que ceux de chacune de ses filiales et entreprises constituant un placement à long terme dans une société satellite et ce, conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

e) La Bourse déposera ses états financiers trimestriels consolidés et non consolidés de la Bourse ainsi que ceux de chacune de ses filiales et entreprises constituant un placement à long terme dans une société satellite et ce, conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

f) Les états financiers annuels vérifiés et trimestriels consolidés comprendront une analyse budgétaire des résultats ainsi qu'une analyse comparative des résultats avec la période correspondante de l'exercice précédent. Ces analyses seront présentées conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

g) Les états financiers annuels vérifiés et trimestriels non consolidés de la Bourse ainsi que ceux de ses filiales comprendront une analyse budgétaire des résultats ainsi qu'une analyse comparative des résultats avec la période correspondante de l'exercice précédent. Ces analyses seront présentées conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

h) La Bourse fournira l'information sectorielle portant sur les résultats annuels et trimestriels de la Division comprenant une analyse budgétaire des résultats, et ce, conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

i) La Bourse déposera son budget annuel consolidé et non consolidé de même que celui de ses filiales ainsi que, le cas échéant, les prévisions budgétaires à long terme, et ce, conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

j) La Bourse informera, par écrit et sans délai, l'Autorité de toute modification importante aux budgets consolidés et non consolidés approuvés par le conseil d'administration.

k) La Bourse fournira toutes autres informations financières qui seront exigées par l'Autorité.

X. IMPARTITION

a) La Bourse devra obtenir l'approbation préalable de l'Autorité avant de conclure ou réaliser toute opération d'impartition de ses fonctions ou activités réglementaires de bourse ou d'organisme d'autoréglementation.

b) La Bourse devra obtenir l'approbation préalable de l'Autorité avant de conclure ou réaliser toute opération en vue de fournir des fonctions ou activités réglementaires de bourse ou d'organisme d'autoréglementation à d'autres bourses de valeurs, organismes d'autoréglementation, personnes exploitant des systèmes de négociation parallèle ou d'autres personnes.

c) Si elle impartit de façon importante certaines de ses fonctions commerciales à des parties autres que Groupe TSX, un membre du même groupe que celui-ci ou une personne qui a un lien avec celui-ci, la Bourse doit procéder conformément aux pratiques exemplaires du secteur. Sans que soit restreinte la portée générale de ce qui précède, la Bourse doit faire ce qui suit :

i) établir et appliquer des politiques et des procédures qui sont approuvées par son conseil d'administration pour l'évaluation et l'approbation des ententes d'impartition importante;

ii) lorsqu'elle conclut une telle entente d'impartition importante, elle doit :

A) évaluer le risque associé à l'entente, la qualité des services devant être fournis et le degré de contrôle qu'elle exercera;

B) signer un contrat avec le fournisseur de services qui traite de tous les éléments importants de l'entente, y compris les niveaux de service et les normes d'exécution;

iii) s'assurer que tout contrat donnant effet à une telle entente d'impartition importante qui est susceptible d'avoir une incidence sur les fonctions de réglementation de la Bourse permette à la Bourse, à ses mandataires et à l'Autorité d'avoir accès à l'ensemble des données et des renseignements tenus par le fournisseur de service que la Bourse doit partager aux termes de l'article 78 de la LAMF ou qui sont nécessaires pour que l'Autorité puisse évaluer l'exécution par la Bourse de ses fonctions de réglementation et la conformité de la Bourse aux modalités et aux conditions des présentes;

iv) surveiller l'exécution des services fournis aux termes d'une telle entente d'impartition importante.

XI. SYSTÈMES INFORMATIQUES

a) À l'égard de chacun de ses systèmes de soutien de l'enregistrement, de l'acheminement et de l'exécution des ordres, de transmission de données, d'information sur les opérations et de comparaison d'opérations et des exigences en matière d'intégrité et de capacité, la Bourse devra aviser, par écrit et sans délai, l'Autorité de toutes défaillances importantes d'un système qui auraient pour impact d'affecter le bon fonctionnement du marché.

b) Avant de procéder à tout changement important à l'égard de chacun de ses systèmes de soutien de l'enregistrement, de l'acheminement et de l'exécution des ordres, de transmission de données, d'information sur les opérations et de comparaison d'opérations et des exigences en matière d'intégrité et de capacité, la Bourse transmettra un préavis écrit de 45 jours à l'Autorité.

XII. COMPENSATION ET RÈGLEMENT

a) La Bourse devra s'assurer que les services de règlement et de compensation sont dispensés par une chambre de compensation autorisée par l'Autorité et disposer de règles et politiques pour encadrer les problèmes liés au règlement et à la compensation des contrats négociés.

XIII. RÈGLES

a) La Bourse et la Division doivent établir les règles, règlements, politiques, procédures, pratiques ou autres normes semblables (ensemble les « règles ») qui sont nécessaires ou appropriés pour régir et réglementer tous les aspects de ses activités et de ses affaires internes de façon à, notamment :

i) assurer le respect de la législation en valeurs mobilières;

ii) empêcher les actes et pratiques frauduleux et de manipulation;

iii) favoriser des principes commerciaux de justice et d'équité; et

iv) encourager la collaboration et la coordination des efforts des personnes chargées de réglementer, de compenser, de régler et de faciliter les opérations sur valeurs mobilières et de traiter l'information concernant ces opérations.

b) Toute modification aux règles de la Bourse devra être soumise pour approbation préalable à l'Autorité conformément à la procédure d'approbation des règles établie de temps à autre par l'Autorité.

XIV. MESURES DISCIPLINAIRES À L'ENDROIT DES PARTICIPANTS ET DE LEURS REPRÉSENTANTS

a) La Bourse, par l'intermédiaire de la Division, doit prendre les mesures disciplinaires qui s'imposent à l'endroit de ses participants et de leurs représentants en cas de violation des règles de la Bourse. En outre, la Bourse remettra à l'Autorité un avis de toute violation de la législation en valeurs mobilières dont elle a connaissance dans le cours normal de ses activités.

XV. ÉQUITÉ DES PROCÉDURES

a) La Bourse, y compris la Division, doit s'assurer que ses exigences en ce qui a trait à l'accès à la Bourse, à l'imposition de limitations ou de conditions à l'accès et au refus d'accès sont justes et raisonnables, notamment pour ce qui est des avis, de la possibilité d'être entendu ou de faire des déclarations, de la tenue de registres, de la présentation de motifs et de la possibilité d'en appeler d'une décision.

b) La Bourse, y compris la Division, doit s'assurer d'entendre les affaires disciplinaires en séance publique.

c) Malgré le paragraphe b), la Bourse, y compris la Division, peut, d'office ou sur demande, ordonner le huis clos ou interdire la publication ou la diffusion de renseignements ou de documents qu'elle indique, dans l'intérêt de la morale ou de l'ordre public.

d) La Bourse, y compris la Division, doit établir par écrit des critères servant à déterminer si une décision est requise dans l'intérêt de la morale ou de l'ordre public et les déposer auprès de l'Autorité dans un délai de six mois de la présente décision.

XVI. TRANSACTIONS D'INITIÉS ET PARTAGE D'INFORMATION

a) La Bourse, y compris la Division, doit maintenir :

i) des règles portant sur les opérations d'initiés;

ii) des systèmes adéquats de surveillance des opérations d'initiés;

iii) une entente écrite avec tout marché sur lequel des titres sous-jacents ou liés à ses produits sont négociés, ou avec le fournisseur de services de réglementation de ce marché, en vue de détecter les opérations d'initiés, les pratiques abusives et la manipulation et faire respecter les règles à cet égard, et mettre en œuvre des procédures en vue de coordonner avec ce marché la surveillance des opérations d'initiés et la mise en application des règles les régissant;

iv) des procédures écrites visant à coordonner les interdictions d'opérations, ajoutées aux coupe-circuits, avec tout marché sur lequel des titres sous-jacents ou liés à ses produits sont négociés, ou avec le fournisseur de services de réglementation de ce marché.

b) La Bourse, y compris la Division, doit collaborer, notamment par le partage d'information, avec l'Autorité et son personnel, le Fonds canadien de protection des épargnants et d'autres bourses, organismes d'autoréglementation et autorités de réglementation chargés de la supervision ou de la réglementation en valeurs mobilières, sous réserve des lois applicables en matière de partage d'information et de protection des renseignements personnels.

XVII. OPÉRATIONS ENTRE PERSONNES APPARENTÉES

Toutes les opérations ou ententes importantes qui seront réalisées entre la Bourse et Groupe TSX ainsi que toutes les sociétés qui lui sont liées devront comprendre des conditions aussi favorables pour la Bourse que les conditions du marché dans de telles circonstances.

XVIII. INFORMATION SUPPLÉMENTAIRE

La Bourse devra déposer toute information la concernant qui sera requise conformément au *Règlement 21-101 sur le fonctionnement du marché*. Le rapport d'examen indépendant portant sur la capacité, l'intégrité et la sécurité des systèmes de la Bourse qui est prévu à ce règlement doit être déposé conformément au délai prévu au tableau de rapports et de documents à fournir joint à l'Annexe 2 de la présente décision.

XIX. DÉFAUT DE SE CONFORMER

Si la Bourse ou Groupe TSX fait défaut de se conformer à une ou plusieurs des modalités ou conditions qui sont énoncées dans la présente décision ou aux engagements, l'Autorité pourra réviser la présente décision.

XX. DROIT APPLICABLE

La Bourse reconnaît et s'engage à respecter le droit applicable au Québec.

La présente décision prendra effet à la date effective du regroupement, date qui sera confirmée dans un avis publié par l'Autorité au *Bulletin de l'Autorité des marchés financiers*.

Fait le 10 avril 2008.

"Jean St- Gelais"
Président-directeur général

ANNEXE 1

April 9, 2008

TSX Group
The Exchange Tower
130 King Street West
Toronto, Canada M5X 1J2
Tél 416-947-4320
Téléc 416-947-4431

REMIS EN MAIN PROPRE ET PAR COURRIEL

M. Jean St-Gelais
Président-directeur général
Autorité des marchés financiers
800, Square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal (Québec) H4Z 1G3

Objet : Demandes de la Bourse de Montréal Inc. / Montréal Exchange Inc. (la « demanderesse ») dans le cadre du regroupement de la demanderesse et de Groupe TSX Inc. (« Groupe TSX »)

Monsieur St-Gelais,

Nous vous communiquons par la présente certains engagements envers l'Autorité des marchés financiers (l'« Autorité ») à l'appui des demandes de la demanderesse déposées aux termes de l'article 169 de la *Loi sur les valeurs mobilières* (Québec) ainsi que de l'article 65 et du deuxième paragraphe de l'article 66 de *la Loi sur l'Autorité des marchés financiers* (les « demandes »), le tout en rapport avec le regroupement mentionné ci-dessus. Dans le cadre du regroupement, la demanderesse participera à une série de fusions dans le cadre desquelles la société issue de ces fusions (la « Bourse ») deviendra une filiale directe de Groupe TSX. À l'appui de ces demandes, Groupe TSX prend envers l'Autorité les engagements énoncés ci-dessous. Groupe TSX comprend que l'Autorité se fonde sur ces engagements en vue de rendre sa décision sur les demandes.

Restrictions relatives à la propriété des actions de Groupe TSX

1. a) Groupe TSX reconnaît qu'il est assujetti à la restriction selon laquelle aucune personne ou société et aucun groupe de personnes ou de sociétés, agissant conjointement ou de concert, ne doit être propriétaire bénéficiaire ni avoir le contrôle de plus de dix pour cent (10 %) de toute catégorie ou série d'actions à droit de vote de Groupe TSX Inc. sans l'approbation préalable de l'Autorité;

   b) Groupe TSX s'engage à informer l'Autorité immédiatement par écrit s'il a connaissance qu'une personne ou société ou un groupe de personnes ou de sociétés, agissant conjointement ou de concert, devient propriétaire bénéficiaire ou exerce le contrôle sur plus de dix pour cent (10 %) de toute catégorie ou série d'actions à droit de vote de Groupe TSX et Groupe TSX devra prendre les mesures nécessaires pour y remédier immédiatement, conformément à l'annexe B des statuts de Groupe TSX.

Aux fins du présent paragraphe 1, le fait qu'une personne ou une société ou un groupe de personnes ou de sociétés agissant conjointement ou de concert soit propriétaire bénéficiaire ou ait le contrôle d'une catégorie ou série d'actions à droit de vote de Groupe TSX sera déterminé conformément aux lois du territoire d'incorporation de Groupe TSX.

Composition du conseil d'administration de Groupe TSX

2. Groupe TSX s'est engagé à désigner chaque année et ce, sans limite de temps, à des fins d'élection au conseil d'administration de Groupe TSX, à chacune de ses assemblées annuelles tenue après la date des présentes, le nombre d'administrateurs résidents du Québec qui représente 25 % du nombre total des candidats aux postes d'administrateurs pour cette année-là.

3. Groupe TSX devra faire en sorte que les cinq candidats désignés par la Bourse soient mis en nomination à des fins d'élection au conseil d'administration de Groupe TSX à chacune de ses trois premières assemblées annuelles convoquées après la date des présentes; toutefois, si l'un ou l'autre des candidats désignés par la Bourse démissionnait de son poste, était inéligible ou était par ailleurs incapable d'exercer ses fonctions d'administrateur de Groupe TSX, les autres candidats désignés par la Bourse auront le droit de désigner le nombre requis de candidats de remplacement à des fins d'élection (les « **autres candidats** »). Parmi ces autres candidats, Groupe TSX sera uniquement tenue de désigner à des fins d'élection à son conseil d'administration ceux qui sont aptes et éligibles à siéger à titre d'administrateur de Groupe TSX selon les exigences applicables aux administrateurs de Groupe TSX.

4. Groupe TSX doit voir à ce qu'au moins une personne parmi les candidats désignés par la Bourse ou les autres candidats qui les remplacent siège à chaque comité du conseil d'administration de Groupe TSX pour une période de trois ans après la date des présentes.

Pour l'application des présentes :

a) les « candidats de la Bourse » sont les cinq personnes désignées par la Bourse à la clôture du regroupement susmentionné en vue de leur élection au conseil d'administration de Groupe TSX;

b) un candidat désigné par la Bourse ou un autre candidat est éligible à siéger au conseil d'administration de Groupe TSX s'il : (i) est indépendant par rapport à Groupe TSX et à ses filiales et n'a aucun lien avec elles (sauf M. Luc Bertrand); (ii) n'a aucun conflit d'intérêts avec Groupe TSX ou ses filiales; (iii) est résident du Québec et (iv) respecte toutes les exigences des lois et politiques applicables, y compris aux termes de la décision de reconnaissance de Groupe TSX; et

c) un administrateur est un résident du Québec s'il est considéré comme un résident du Québec aux termes de la *Loi sur les impôts* (L.R.Q., ch. I-3) au moment de son élection ou de sa nomination.

Activités de la Bourse

5. Groupe TSX s'engage à faire en sorte que les activités existantes liées à la négociation d'instruments dérivés et aux produits connexes de la Bourse continueront à être exercées à Montréal.

6. Groupe TSX s'engage à ne rien entreprendre qui ferait que la Bourse cesse d'être la bourse nationale canadienne de négociation de tous les instruments dérivés et produits connexes, y compris d'être l'unique plateforme de négociation du commerce d'échange de droits d'émission de carbone et d'autres droits d'émission au Canada, sans avoir obtenu l'autorisation préalable de l'Autorité et s'être conformé aux termes et conditions que l'Autorité peut établir dans l'intérêt public en rapport avec tout changement aux opérations de la Bourse.

Changement de propriété

7. Groupe TSX s'engage à ne pas compléter ou autoriser une transaction qui ferait en sorte qu'une personne ou société ou qu'un groupe de personnes ou de sociétés, agissant conjointement ou de concert, devienne propriétaire ou exerce une emprise sur plus de dix pour cent (10 %) de toute catégorie ou série d'actions avec droit de vote de la Bourse, sans l'approbation préalable de l'Autorité, à l'exception de Groupe TSX ou d'un membre du même groupe que celui-ci.

Aux fins du présent paragraphe 7, l'expression « agissant conjointement ou de concert » s'entend du sens donné à « agir de concert » à l'article 1.9 du Règlement 62-104 sur les offres publiques d'achat et de rachat, dans sa version modifiée à l'occasion en y apportant les adaptations nécessaires et, pour plus de certitude, inclut les personnes réputées ou présumées agir de concert au sens de cette expression.

8. Groupe TSX s'engage à continuer d'exercer une emprise sur plus de 50 % de toute catégorie ou série d'actions à droit de vote de la Bourse.

9. Groupe TSX s'engage à ne pas compléter ou autoriser une transaction en conséquence de laquelle il cesserait de contrôler, directement ou indirectement, plus de 50 % de toutes les catégories ou séries d'actions à droit de vote de la Bourse, sans l'approbation préalable de l'Autorité.

Plan stratégique relatif aux instruments dérivés

10. Groupe TSX s'engage à remettre chaque année à l'Autorité, dans les deux mois suivant son approbation, son plan stratégique relatif aux instruments dérivés approuvé par son conseil d'administration.

Accès à l'information

11. Groupe TSX s'engage à permettre à l'Autorité de consulter et d'inspecter et à s'assurer que ses filiales permettent à l'Autorité de consulter et d'inspecter, toutes les données et tous les renseignements qui sont en leur possession respective et dont l'Autorité a besoin pour procéder à son évaluation de l'exercice par la Bourse de ses fonctions de réglementation et de sa conformité avec les modalités et conditions de la décision d'autorisation à titre de bourse et de reconnaissance à titre d'organisme d'autoréglementation de la Bourse rendue par l'Autorité en date des présentes (la « Décision de reconnaisance »).

Ressources

12. Sous réserve du paragraphe 13 et tant et aussi longtemps que la Bourse continuera de faire affaires en tant que bourse, Groupe TSX s'engage à allouer à la Bourse les ressources financières et autres suffisantes pour assurer :

    i) sa viabilité financière et le suivi quotidien de ses opérations;

    ii) l'exercice des fonctions d'organisme d'autoréglementation de la Bourse et de sa Division,

    et ce, en conformité avec les modalités et les conditions prévues à la Décision de reconnaissance.

13. Groupe TSX s'engage à aviser l'Autorité immédiatement s'il se rend compte qu'il ne peut ou ne pourra allouer des ressources financières et autres suffisantes à assurer la viabilité financière de la Bourse et à s'assurer qu'elle pourra exercer ses fonctions de bourse et d'organisme d'autoréglementation de manière consistante avec les modalités et les conditions prévues à la Décision de reconnaissance.

Défaut de se conformer

14. Groupe TSX reconnaît que s'il fait défaut de se conformer à un ou des engagements qui sont énoncés aux présentes, l'Autorité pourra réviser la Décision de reconnaissance.

Généralités

15. Les engagements énoncés aux présentes prendront effet à la date effective du regroupement.

16. Les engagements énoncés aux présentes seront valides jusqu'à ce que l'une ou l'autre des éventualités suivantes se produise :

    a) l'Autorité révoque la décision pour tout autre motif que le manquement de Groupe TSX à son engagement envers l'Autorité;

    b) la Bourse cesse d'exercer ses activités après s'être conformée aux termes et conditions que l'Autorité peut imposer.

Veuillez agréer, cher Monsieur St-Gelais, l'expression de nos sentiments distingués.

Le Co-chef de la direction par intérim de
Groupe TSX,

« M. Ptasznik »

ANNEXE 2

Rapports et documents à fournir par la Bourse

Article visé	Libellé de l'article visé dans la décision de reconnaissance	Périodicité	Délai ou échéance
VI c)	Déposer toute modification à la liste des frais exigés par la Bourse.	Au besoin	15 jours avant la mise en vigueur
VII d)	Remettre à l'Autorité un rapport d'activités de la Division.	Trimestriellement	45 jours suivant la fin de chaque trimestre
VII e)	Remettre à l'Autorité un rapport d'activités de la Bourse incluant un rapport de la Division, préparé par cette dernière. Ce rapport doit rendre compte du respect des modalités et conditions relatives à la Division et être présenté dans une forme acceptable par l'Autorité.	Annuellement	60 jours suivant la fin de l'exercice financier
VII g) i)	Informer l'Autorité de toute nouvelle analyse ou enquête entreprises par la Division, et notamment le nom du participant et de la personne approuvée concernés et de l'enquêteur responsable, la date d'ouverture du dossier et la nature de l'enquête.	Mensuellement	30 jours suivant la fin du mois
VII g) ii)	Informer l'Autorité de toutes les analyses ou enquêtes qui ne se traduisent pas par des procédures disciplinaires et qui sont closes, et notamment la date à laquelle l'enquête a été amorcée, la conduite et les personnes en cause et le règlement de l'enquête.	Mensuellement	30 jours suivant la fin du mois
VII j) viii)	Déposer à l'Autorité le budget de la Division.	Annuellement	Dès son approbation
VII j) xii)	Rendre compte à l'Autorité de l'effectif de la Division, par fonction, en précisant les postes autorisés, comblés et vacants et de toute réduction ou tout changement important de cet effectif, par fonction.	Semestriellement	30 jours suivant la fin du semestre
VII j) xiii)	Remettre à l'Autorité des exemplaires des rapports préparés par la direction de la Bourse, y compris le vice-président de la Division, résultant de l'évaluation interne de l'exécution par la Division de ses fonctions réglementaires, et présentés au comité spécial de la réglementation, accompagnés de ses recommandations quant aux améliorations possibles, le cas échéant et des rapports préparés par le comité spécial sur l'exécution par la Division de ses fonctions réglementaires. La Bourse doit aussi informer l'Autorité de toute mesure proposée par suite de ces évaluations.	Au moins une fois par année	30 jours suivant le dépôt au comité spécial ou au conseil d'administration

ANNEXE 2

Rapports et documents à fournir par la Bourse

Article visé	Libellé de l'article visé dans la décision de reconnaissance	Périodicité	Délai ou échéance
IX c)	Fournir un rapport faisant état de chacun des ratios, calculés mensuellement, à partir des états financiers consolidés, et non consolidés, joint aux états financiers trimestriels pour les trois premiers trimestres de l'exercice et aux états financiers annuels vérifiés pour le quatrième trimestre.	Trimestriellement	60 jours suivant la fin de chaque trimestre et 90 jours suivant la fin de chaque exercice financier
IX d)	Déposer ses états financiers annuels vérifiés consolidés et non consolidés ainsi que ceux de chacune de ses filiales et entreprises constituant un placement à long terme dans une société satellite.	Annuellement	90 jours suivant la fin de l'exercice financier
IX e)	Déposer les états financiers trimestriels consolidés et non consolidés de la Bourse ainsi que ceux de chacune de ses filiales et entreprises constituant un placement à long terme dans une société satellite.	Trimestriellement	60 jours suivant la fin de chaque trimestre
IX f)	Déposer, avec les états financiers annuels vérifiés et trimestriels consolidés de la Bourse ainsi que ceux de ses filiales, une analyse budgétaire des résultats et une analyse comparative des résultats avec la période correspondante de l'exercice précédent.	Trimestriellement et annuellement	60 jours suivant la fin de chaque trimestre et 90 jours suivant la fin de chaque exercice financier
IX g)	Déposer, avec les états financiers annuels vérifiés et trimestriels non consolidés de la Bourse ainsi que ceux de ses filiales, une analyse budgétaire des résultats et une analyse comparative des résultats avec la période correspondante de l'exercice précédent.	Trimestriellement et annuellement	60 jours suivant la fin de chaque trimestre et 90 jours suivant la fin de chaque exercice financier
IX h)	Déposer, avec les états financiers annuels vérifiés et trimestriels, les informations sectorielles pour la Division incluant une analyse budgétaire des résultats.	Trimestriellement et annuellement	60 jours suivant la fin de chaque trimestre et 90 jours suivant la fin de chaque exercice financier
IX i)	Déposer son budget annuel consolidé et non consolidé de même que celui de ses filiales ainsi que les prévisions budgétaires à long terme, le cas échéant.	Annuellement	Dès son approbation
XVIII	Déposer le rapport d'examen indépendant portant sur la capacité, l'intégrité et la sécurité des systèmes de la Bourse qui est établi conformément au Règlement 21-101 sur le fonctionnement du marché.	Annuellement	Dès qu'il est soumis à l'examen de la haute direction

2.2.5 ASL Direct Inc. - ss. 127(1), 127(5)

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

ASL DIRECT INC.

TEMPORARY ORDER
(Sections 127(1) and (5))

WHEREAS it appears to the Ontario Securities Commission (the "Commission") that on April 22, 2008, the Commission made a Temporary Order pursuant to section 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") against Adrian Samuel Leemhuis, Future Growth Group Inc., Future Growth Fund Limited, Future Growth Global Fund Limited, Future Growth Market Neutral Fund Limited, Future Growth World Fund (collectively, the Respondents) that all trading in securities of the Non-Individual Respondents cease and trading in any securities by the Respondents cease and that any exemptions contained in Ontario securities law do not apply to the Respondents.

AND WHEREAS it appears to the Ontario Securities Commission (the "Commission") that:

1. Adrian Samuel Leemhuis ("Leemhuis") is a Canadian resident.

2. ASL Direct Inc. ("ASL") is a corporate entity whose President, sole shareholder and director, is Leemhuis;

3. ASL is registered with the Commission as a Mutual Fund Dealer and a Limited Market Dealer, with its head office located in Toronto, Canada;

4. Leemhuis is the directing mind of ASL and the Respondents;

5. Staff are conducting an investigation of the Respondents and ASL. Based on Staff's investigation to date, it appears that:

   (a) ASL and the Respondents have traded in securities and participated in unlawful distributions of securities contrary to sections 25 and 53 of the Act;

   (b) ASL has, directly or indirectly, facilitated this unlawful activity by actively assisting the Future Growth Group of Funds dealing with investors;

   (c) ASL has conducted activity in breach of OSC Rule 31-505 – Conditions of Registration, Part 2 – the duty to deal fairly and honestly and in good faith with its clients by not paying certain amounts promised and owed to such clients for 18 months;

   (d) Leemhuis and ASL have failed to disclose their involvement in the Future Growth Group and related securities activities in their filings with the Commission;

   (e) Leemhuis and ASL have misrepresented to the Mutual Fund Dealers Association ("MFDA") staff during compliance reviews as to the members involvement in other securities related activities and entities such as their involvement in the Future Growth Group;

   (f) MFDA staff have noted inadequate record keeping and supervision based on compliance reviews by MFDA staff that noted serious concerns in respect of trade supervision and trade records, including lack of evidence of client trade instructions; and

   (g) ASL is not financially viable or solvent based on its lack of profits to date and its inability to resolve a capital deficiency of approximately $42,562, which was identified in the independent audit for the year ended December 31, 2007.

6. The Commission is of the opinion that it is in the public interest to make this order and that the time required to conclude a hearing could be prejudicial to the public interest.

AND WHEREAS by Commission Order made By Authorization Order made April 1, 2008, pursuant to subsection 3.5(3) of the Act, each of W. David Wilson, James E. A. Turner, Lawrence E. Ritchie, Paul K. Bates and David L. Knight, acting alone, is authorized to make orders under section 127(5) of the Act.;

IT IS ORDERED pursuant to section 127(5) of the Act that:

   (a) Under paragraph 2 of section 127(1), trading in any securities by ASL Direct Inc. shall cease; and

   (b) Under paragraph 3 of section 127(1), any exemptions contained in Ontario securities law do not apply to ASL Direct Inc.

IT IS FURTHER ORDERED that pursuant to section 127(6) of the Act this order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission.

DATED at Toronto this 1st day of May, 2008.

"David Wilson"

2.2.6 Xerox Canada Inc. - s. 158(1.1)

Headnote

Order pursuant to subsection 158(1.1) of the Business Corporations Act (Ontario) that an offering corporation is authorized to dispense with its audit committee - Issuer is a subsidiary of a U.S. public parent - Issuer granted exemption from audit committee requirements of National Instrument 52-110 Audit Committees - Relief conditional upon issuer continuing to be exempt from the National Instrument 52-110.

Ontario Legislative Provisions Cited

Business Corporations Act, R.S.O. 1990, c. B.16, s. 158(1.1).
National Instrument 52-110 Audit Committees, s. 1.2.

IN THE MATTER OF
THE BUSINESS CORPORATIONS ACT
R.S.O. 1990, CHAPTER B.16, AS AMENDED
(ONTARIO) (the "OBCA")

AND

IN THE MATTER OF
XEROX CANADA INC. (the "Filer")

ORDER
(Section 158(1.1) of the OBCA)

UPON the application of the Filer to the Ontario Securities Commission (the "Commission") for an order pursuant to subsection 158(1.1) of the OBCA that the Filer be authorized to dispense with an audit committee;

AND UPON considering the application and the recommendations of the staff of the Commission;

The Filer has represented to the Commission that:

1. The Filer is a corporation amalgamated under the OBCA pursuant to articles of amalgamation dated November 30, 1989, as amended. The head office of the Filer is located in Toronto, Ontario.

2. The Filer is a reporting issuer or the equivalent in each of the provinces and territories of Canada and is a "venture issuer" as defined in NI 51-102 (as defined below), NI 52-110 (as defined below) and NI 58-101 (as defined below).

3. The authorized share capital of the Filer consists of an unlimited number of Class A Shares (the "Class A Shares"), an unlimited number of preference shares (the "Preference Shares") and an unlimited number of Non-Voting Exchangeable Class B Shares (the "Exchangeable Shares"). Following the filing of the articles of amendment for the Filer creating the Exchangeable Shares on February 14, 1990, there were approximately 7,950,086 Exchangeable Shares, 29,996,955 Class A Shares, and 160,000 Preference Shares outstanding. As of December 31, 2007, there were 684,584 Exchangeable Shares, 29,996,956 Class A Shares, and 222,376 Preference Shares issued and outstanding.

4. The rights, privileges, restrictions and conditions attaching to the Class A Shares and the Preference Shares are set out in articles of amalgamation of the Filer filed on November 30, 1989, as amended by articles of amendment filed on February 14, 1990.

5. Holders of Class A Shares are entitled (i) to dividends if, as and when declared by the directors of the Filer, (ii) upon the liquidation, dissolution or winding-up of the Filer, to participate rateably with the holders of Exchangeable Shares in the assets of the Filer, and (iii) to one vote in respect of each Class A Share on matters brought before all meetings of holders of Class A Shares.

6. Holders of Preference Shares are entitled (i) to fixed preferential non-cumulative cash dividends as and when declared by the directors of the Filer, in priority to dividends paid on the Class A Shares and Exchangeable Shares, and (ii) upon the liquidation, dissolution or winding-up of the Filer, to receive only a sum equivalent to the amount paid up thereon plus all declared and unpaid dividends thereon. The Preference Shares are redeemable at the option of the Filer at a price equal to the amount paid up thereon plus all declared and unpaid dividends thereon, and are non-voting.

7. The rights, privileges, restrictions and conditions attaching to the Exchangeable Shares are set out in articles of amendment of the Filer filed on February 14, 1990. Holders of Exchangeable Shares are entitled:

   (a) at any time without any conditions to exchange one Exchangeable Share for two common shares of Xerox (each a "Xerox Common Share");

   (b) to receive notice of, to attend all meetings of shareholders of the Filer, and to speak thereat, but are not entitled to vote at any such meeting. However, in the event the Filer does not fulfill its obligations to exchange within 30 days following the exercise of the exchange condition by a holder of Exchangeable Shares, the Exchangeable Shares outstanding, shall on the expiry of such 30 day period, acquire the right to vote, at the rate of one vote per Exchangeable Share, until such time as the default is cured. Holders of Exchangeable Shares do not have voting rights with respect to

Xerox, whether through a voting trust arrangement or otherwise;

(c) to dividends calculated by reference to the dividends, if any, declared from time to time on the Xerox Common Shares;

(d) upon the liquidation, dissolution or winding-up of the Filer or other distribution of assets of the Filer, to participate rateably with the holders of Class A Shares in any distribution of the assets of the Filer. Holders of Exchangeable Shares have no rights upon the liquidation, dissolution or winding-up of Xerox or other distribution of assets of Xerox; and

(e) pursuant to customary "coat tail" provisions, to require the Filer to convert Exchangeable Shares into Class A Shares solely for purposes of tendering such shares taken up as part of a take-over bid. Any Class A Shares obtained upon such conversion that are not taken up as part of the take-over bid would be reconverted to Exchangeable Shares.

The Filer cannot purchase for cancellation any Exchangeable Shares unless there are less than 400,000 Exchangeable Shares outstanding. In such event, they may be purchased at a price equal to the fair market value of such shares. The articles do not provide for a date on which all remaining Exchangeable Shares are automatically exchanged into Xerox Common Shares.

8. The Exchangeable Shares satisfy the criteria of "designated exchangeable securities" within the meaning of section 13.3 of NI 51-102 except that (i) holders of Exchangeable Shares do not have voting rights with respect to matters upon which holders of Xerox Common Shares are entitled to vote, and (ii) the liquidation rights of the Exchangeable Shares are with respect to the assets of the Filer rather than Xerox.

9. In its financial statements, Xerox accounts for the Exchangeable Shares as Xerox Common Share equivalents and thus classifies the Exchangeable Shares as part of Xerox's permanent capital and not as part of minority interests. Xerox also includes the Exchangeable Shares in the calculation of Xerox's basic earnings per share, effectively treating the Exchangeable Shares as issued and outstanding Xerox Common Shares.

10. There are no outstanding securities of the Filer (debt or equity) held by anyone other than Xerox except for (i) the 684,584 issued and outstanding Exchangeable Shares, (ii) restricted stock units granted to employees from time to time pursuant to employee benefit plans which units permit the holder thereof to earn Xerox Common Shares over time, and (iii) stock rights granted to employees prior to 2005 pursuant to employee benefit plans which rights enable the holder, upon exercise, to acquire one Xerox Common Share on payment of an exercise price.

11. Other than the initial issuance of 7,950,086 Exchangeable Shares upon their creation and the issuance to eligible employees of 609,988 Exchangeable Shares up until the end of 1999 pursuant to its Executive Share Purchase Option Plan (the "ESPOP"), the Filer has not issued any Exchangeable Shares since their authorization and has no current intention to issue any further Exchangeable Shares whether pursuant to the ESPOP or otherwise.

12. The rate at which Exchangeable Shares have been exchanged into Xerox Common Shares has declined significantly since their original issuance, as follows:

Year	Shares Exchanged
1990 - 1995	5,172,078 shares
1996 - 2001	2,635,135 shares
2002 - 2007	68,030 shares

13. As at December 31, 2007, there were 634 registered holders of Exchangeable Shares. Based on enquiries made by it, the Filer understands that, as of such date, approximately 94.4% (646,515) of the 684,584 issued and outstanding Exchangeable Shares are beneficially held by two large institutional investors. As a result, the Filer understands that approximately 632 holders appear to hold approximately 5.6% (38,069) of the issued and outstanding Exchangeable Shares and that no individual holds more than 500 Exchangeable Shares.

14. The 684,584 issued and outstanding Exchangeable Shares represent approximately 2.2% of the total issued and outstanding equity securities of the Filer, being the Class A Shares and the Exchangeable Shares. Based on the Filer's understanding of the beneficial shareholdings as set forth above, approximately 2.1% of the total equity securities are held by two beneficial holders of Exchangeable Shares, leaving only 0.1% of the equity securities held by other holders of such shares.

15. The Exchangeable Shares were listed on the Toronto Stock Exchange and the Montreal Exchange until they were delisted on June 18, 1996 following applications for delisting filed by the Filer. Such delisting was sought by the Filer primarily due to significant declines in trading volume, a significant decline in the number of outstanding Exchangeable Shares due to

shareholders' having exercised their exchange right and the high costs of continuing to list the Exchangeable Shares in the context of the number of such shares then outstanding.

16. As at the date hereof, the Exchangeable Shares are not listed or posted for trading on any securities exchange and the Filer has no intention of listing such shares on any securities exchange in the future.

17. Exchangeable Shares trade very infrequently over the counter. The Filer's transfer agent, CIBC Mellon Trust Company, has informed the Filer that there have been no trades in Exchangeable Shares since 2005 (although there may have been some trades within the 3,529 Exchangeable Shares held by CDS that are not owned by the two largest beneficial owners).

18. The Filer has almost $1.7 billion in assets and $1.3 billion in shareholders' equity as of December 31, 2007 and over $1.1 billion of revenue for the year ended December 31, 2007.

19. Xerox, a corporation existing under the laws of the State of New York, is the holder of all of the issued and outstanding Class A Shares (being all of the issued and outstanding voting securities of the Filer) and Preference Shares.

20. Xerox is a reporting issuer or the equivalent in each Jurisdiction. Pursuant to orders received by Xerox in 1990 from the securities regulatory authority in each of Ontario, British Columbia, Manitoba and Saskatchewan, in the context of an application for an exemption from the prospectus and registration requirements in connection with the issuance of the Exchangeable Shares, Xerox is required to deliver to holders of the Exchangeable Shares certain continuous disclosure documents that it is required to prepare and file in accordance with the securities legislation of those jurisdictions or the United States.

21. Xerox is a US domestic registrant under the United States *Securities Exchange Act of 1934*, as amended, (the "1934 Act") and the Xerox Common Shares are listed and posted for trading on the New York Stock Exchange and other stock exchanges outside of, but not in, Canada. Xerox is therefore subject to, among other things, the requirements of section 302(a) of the *Sarbanes-Oxley Act of 2002*. Xerox therefore has in place detailed internal controls over financial reporting and, as a subsidiary of Xerox, the Filer is required to implement and follow similar internal controls over financial reporting regardless of whether the Filer itself is required to prepare audited financial statements.

22. As of December 31, 2007, there were 917,176,350 Xerox Common Shares issued and outstanding. If the exchange rights in respect of the 684,584 issued and outstanding Exchangeable Shares were fully exercised, 1,369,168 Xerox Common Shares would be issued, representing approximately 0.15% of the issued and outstanding Xerox Common Shares after giving effect to such issuance.

23. Neither the Filer nor Xerox is in default of any of their continuous disclosure filing and reporting obligations as reporting issuers in any of the Jurisdictions.

24. The board of directors of the Filer is comprised of four directors, three of whom comprise the audit committee. As a venture issuer, the Filer is exempt from Part 3 of NI 52-110.

25. The local securities regulatory authority or regulator in each of the provinces and territories of Canada has, subject to certain conditions, granted the Filer an exemption (the "MRRS Order") from the requirements of:

    (a) National Instrument 51-102 - *Continuous Disclosure Obligations* ("NI 51-102") in all the Jurisdictions where NI 51-102 has been adopted and from any comparable continuous disclosure requirements under the Legislation that have not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102;

    (b) Multilateral Instrument 52-109 - *Certification of Disclosure in Issuers' Annual and Interim Filings* ("MI 52-109") in all the Jurisdictions where MI 52-109 has been adopted;

    (c) National Instrument 52-110 - *Audit Committees* ("NI 52-110") in all the Jurisdictions where NI 52-110 has been adopted; and

    (d) National Instrument 58-101 - *Disclosure of Corporate Governance Practices* ("NI 58-101") in all the Jurisdictions where NI 58-101 has been adopted;

AND UPON the Commission being satisfied that to do so would not be prejudicial to the shareholders of the Filer;

IT IS ORDERED pursuant to section 158(1.1) of the OBCA that the Filer be authorized to dispense with an audit committee for so long as the Filer is exempt from the requirements of NI 52-110 pursuant to the MRRS Order.

DATED at Toronto, Ontario this 22nd day of April, 2008.

"David Knight"
Commissioner
Ontario Securities Commission

"Margot Howard"
Commissioner
Ontario Securities Commission

2.2.7 Irwin Boock et al. - ss. 127(1), 127(5)

**IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED**

AND

**IN THE MATTER OF
IRWIN BOOCK, SVETLANA KOUZNETSOVA,
VICTORIA GERBER,
COMPUSHARE TRANSFER CORPORATION,
FEDERATED PURCHASER, INC.,
TCC INDUSTRIES, INC.,
FIRST NATIONAL ENTERTAINMENT CORPORATION,
WGI HOLDINGS, INC. AND
ENERBRITE TECHNOLOGIES GROUP**

**TEMPORARY ORDER
(Sections 127(1) and (5))**

WHEREAS it appears to the Ontario Securities Commission that:

1. Compushare Transfer Corporation is a Delaware corporation that operates out of Toronto as a transfer agent;

2. Victoria Gerber is the President of Compushare;

3. Svetlana Kousnetsova owns the premises out which Compushare operates and appears to be involved in the operation of Compushare;

4. Irwin Boock, is a resident of Ontario and, with the assistance of Compushare and its principals, appears to have usurped the corporate identities of the following defunct or dormant publicly traded companies:

    - WGI Holdings, Inc. ("WGI Holdings");
    - Federated Purchaser, Inc. ("Federated Purchaser");
    - First National Entertainment Corporation ("First National");
    - TCC Industries, Inc. ("TCC Industries"); and
    - Enerbrite Technologies Group Inc. ("Enerbrite").

5. It also appears that Boock may have caused these companies to issue shares for trading in the over-the-counter securities market via the Pink Sheets;

6. Staff of the Commission ("Staff") are conducting an investigation into the conduct described herein and it appears that Boock, Compushare, and its

principals, former principals and others, including Gerber and Kousnetsova, may have engaged in acts, practices or courses of conduct relating to the securities of the above listed companies that they knew or reasonably ought to have known perpetrated a fraud on a person or company contrary to subsection 126.1(b) of the Act;

7. The Commission is of the opinion that the time required to conclude a hearing could be prejudicial to the public interest; and

8. The Commission is of the opinion that it is in the public interest to make this order.

AND WHEREAS by Commission Order made April 1, 2008, pursuant to section 3.5(3) of the Act, each of W. David Wilson, James E. A. Turner, Lawrence E. Ritchie, Paul K. Bates and David L. Knight, acting alone, is authorized to make any orders under section 127 of the Act that the Commission is authorized to make and give, except the power to conduct contested hearings on the merits;

IT IS ORDERED, pursuant to subsections 127(1) and 127(5) of the Act, that all trading in any securities by Boock, Gerber and Kousnetsova shall cease;

IT IS FURTHER ORDERED, pursuant to subsections 127(1) and 127(5) of the Act, that trading in the securities WGI Holdings, Federated Purchaser, First National, TCC Industries, and Enerbrite shall cease;

IT IS FURTHER ORDERED, that pursuant to section 127(6) of the Act this order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission.

DATED at Toronto this 5th day of May, 2008.

"W. David Wilson"

2.2.8 Adrian Samuel Leemhuis et al.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
ADRIAN SAMUEL LEEMHUIS,
FUTURE GROWTH GROUP INC.,
FUTURE GROWTH FUND LIMITED,
FUTURE GROWTH GLOBAL FUND LIMITED,
FUTURE GROWTH MARKET NEUTRAL FUND LIMITED,
FUTURE GROWTH WORLD FUND,
AND ASL DIRECT INC.

ORDER

WHEREAS on April 22, 2008, the Ontario Securities Commission (the "Commission") issued a Temporary Order pursuant to section 127(5) *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that all trading in securities of and all trading of securities by Future Growth Group Inc., Future Growth Fund Limited, Future Growth Global Fund Limited, Future Growth Market Neutral Fund Limited, and Future Growth World Fund shall cease, that all trading of securities by Adrian Leemhuis shall cease and that any exemptions contained in Ontario securities law do not apply to the Respondents;

AND WHEREAS on April 22, 2008, the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

AND WHEREAS on May 1, 2008, the Commission issued a Temporary Order pursuant to section 127(5) of the Act that all trading in securities by ASL Direct Inc. shall cease and that any exemptions contained in Ontario securities law do not apply to ASL;

AND WHEREAS on May 1, 2008, the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by the Commission;

AND WHEREAS on May 2, 2008, the Commission issued an Amended Notice of Hearing to consider the extension of the Temporary Order dated April 22, 2008, and the Temporary Order dated May 1, 2008 to be held on May 6, 2008 at 2:30 p.m.;

AND WHEREAS the Commission held a hearing on May 6, 2008 and counsel for Staff and counsel for the Respondents attended before the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order:

IT IS HEREBY ORDERED that pursuant to section 127(8) that the Temporary Order dated April 22, 2008 is extended to May 16, 2008;

IT IS FURTHER ORDERED that the Temporary Order dated May 1, 2008 is extended to May 16, 2008;

IT IS FURTHER ORDERED that the hearing to consider the extension of the Temporary Order dated April 22, 2008 and the Temporary Order dated May 1, 2008 is adjourned to May 16, 2008 at 9:00 a.m.

IT IS FURTHER ORDERED that Staff will file its material in support of the further extension of the Temporary Order dated April 22, 2008 and the Temporary Order dated May 1, 2008 by the end of the day on Thursday, May 8, 2008;

IT IS FURTHER ORDERED that the Respondents will file any responding material by the end of the day on Monday, May 12, 2008;

IT IS FURTHER ORDERED that if Staff elect to file any reply evidence it will be filed by the end of the day on Wednesday, May 14, 2008.

DATED at Toronto this 6th day of May, 2008.

"Wendell S. Wigle"

"Margot C. Howard"

2.2.9 XI Biofuels Inc. et al. - s. 127

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
XI BIOFUELS INC., BIOMAXX SYSTEMS INC.,
RONALD DAVID CROWE AND VERNON P. SMITH

AND

IN THE MATTER OF
XIIVA HOLDINGS INC.
CARRYING ON BUSINESS AS
XIIVA HOLDINGS INC., XI ENERGY COMPANY,
XI ENERGY AND XI BIOFUELS

ORDER
(Section 127 of the Securities Act)

WHEREAS on November 22, 2007, the Ontario Securities Commission (the "Commission") issued a Temporary Order pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that all trading by XI Biofuels Inc. ("XI") and Biomaxx Systems Inc. ("Biomaxx") shall cease, that XI, Biomaxx, Ronald David Crowe ("Crowe") and Vernon P. Smith ("Smith") (the "XI Respondents") cease trading in all securities and that the exemptions contained in Ontario securities law do not apply to these Respondents (the "XI Temporary Order");

AND WHEREAS the Commission further ordered that pursuant to subsection 127(6) of the Act, the XI Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission;

AND WHEREAS on November 22, 2007, the Commission issued a Notice of Hearing to be held on December 7, 2007 at 10:00 a.m., to consider, among other things, the extension of the XI Temporary Order (the "XI Hearing") ;

AND WHEREAS on December 7, 2007, upon being advised that the XI Respondents agreed to extend the XI Temporary Order without prejudice to their ability to argue the merits of the grounds for granting the XI Temporary Order, the Commission ordered that the XI Temporary Order be extended and that the XI Hearing be adjourned to March 25, 2008;

AND WHEREAS on December 14, 2007, the Commission issued a Temporary Order (the "Xiiva Temporary Order") pursuant to subsections 127(1) and (5) of the Act that all trading in securities of Xiiva Holdings Inc. ("Xiiva"), incorrectly described at paragraph 1 of the Xiiva Temporary Order as XI Holdings Inc., shall cease and that the exemptions contained in Ontario securities law do not apply to it;

AND WHEREAS the Commission further ordered that pursuant to subsection 127(6) of the Act, the Xiiva Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission;

AND WHEREAS on December 14, 2007, the Commission issued a Notice of Hearing to be held on December 19, 2007 at 2:00 p.m., to consider, among other things, the extension of the Xiiva Temporary Order (the "Xiiva Hearing");

AND WHEREAS on December 19, 2007, upon being advised that Xiiva agreed to extend the Xiiva Temporary Order without prejudice to its ability to argue the merits of the grounds for granting the Xiiva Temporary Order, the Commission ordered that the Xiiva Temporary Order be extended and that the Xiiva Hearing be adjourned to March 25, 2008 and that paragraph 1 of the Xiiva Temporary Order be amended to replace the reference to "XI Holdings Inc." with "Xiiva Holdings Inc.";

AND WHEREAS the XI Respondents and the Xiiva Respondents (collectively, the "Respondents") served a notice of motion returnable on March 25, 2008 in respect of the XI Temporary Order and the Xiiva Temporary Order (collectively, the "Temporary Orders") and other matters including a constitutional question (the "Respondents' Motion");

AND WHEREAS on March 20, 2008, the Respondents served a Notice of Constitutional Question and an Amended Notice of Constitutional Question;

AND WHEREAS the 15-day notice period for the Notice of Constitutional Question under section 109 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, had not been satisfied;

AND WHEREAS on March 25, 2008, Staff of the Commission ("Staff") and the Respondents agreed to adjourn the XI Hearing and the Xiiva Hearing for the extension of the Temporary Orders to May 5, 2008, at 10:00 a.m., or such earlier date as fixed by the Office of the Secretary, and agreed to the extension of the Temporary Orders to May 6, 2008;

AND WHEREAS on March 25, 2008, the Commission ordered that the XI Hearing and the Xiiva Hearing for the extension of the Temporary Orders and the hearing of the Respondents' Motion be adjourned to May 5, 2005;

AND WHEREAS on March 25, 2008, the Commission ordered that the Temporary Orders be extended to May 6, 2008;

AND WHEREAS on May 5, 2008, the Respondents sought to adjourn the hearing of their motion and the XI Hearing and the Xiiva Hearing to extend the Temporary Orders on the basis that certain of the Respondents are the subject of an application for a bankruptcy order which is scheduled to be heard on May 22, 2008;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS ORDERED that the Temporary Orders are extended to May 23, 2008;

IT IS FURTHER ORDERED that the XI Hearing and the Xiiva Hearing for the extension of the Temporary Orders and the hearing of the Respondents' Motion are adjourned to May 22, 2008 at 2:00 p.m.

Dated at Toronto this 5th day of May, 2008.

"Wendell S. Wigle"

"David L. Knight"

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 John Daubney and Cheryl Littler - s. 127

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
JOHN DAUBNEY AND CHERYL LITTLER

REASONS AND DECISION
(Section 127 of the Securities Act)

Hearing:	October 9, 10, 11, 12, 15 and 17, 2007 Written submissions were completed on November 23, 2007.		
Decision:	April 30, 2008		
Panel:	Robert L. Shirriff, Q.C.	-	Commissioner (Chair of the Panel)
	Carol S. Perry	-	Commissioner
	Margot C. Howard	-	Commissioner
Counsel:	Alexandra Clark	-	For the Ontario Securities Commission
Agent:	James C. Morton	-	For John Daubney

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REASONS AND DECISION

A. OVERVIEW

[1] This was a hearing on the merits before the Ontario Securities Commission (the "Commission") pursuant to section 127 of the Securities Act, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether John Daubney ("Daubney") breached the Act and acted contrary to the public interest.

[2] The parties agreed that this proceeding should be bifurcated; first, a hearing on the merits of the case, and second, if necessary, a hearing on sanctions.

[3] This proceeding arose out of a Statement of Allegations and Notice of Hearing filed by Staff of the Commission ("Staff") on July 14, 2006. Staff alleged that Daubney and Cheryl Littler ("Littler") indiscriminately recommended an aggressive and risky investment strategy to their clients, without taking proper account of their clients' risk tolerance, investment objectives, investment knowledge, age, income or net worth, and thereby provided investment advice that was unsuitable for their clients, contrary to their obligations under section 1.5(1)(b) of OSC Rule 31-505. Staff also alleged that Daubney and Littler failed to deal with their clients fairly, honestly and in good faith, contrary to section 2.1(2) of OSC Rule 31-505. Further, Staff alleged that Daubney and Littler made misleading and inaccurate undertakings about the investment returns that their clients should expect from following their advice, in contravention of section 38(2) of the Act.

[4] Staff and Littler entered into a settlement agreement on October 3, 2007 which was approved by the Commission on October 4, 2007 (the "Settlement Agreement"). As a result, Daubney is the only remaining respondent in this proceeding.

[5] The hearing took place over six days in October 2007. At its conclusion, the parties agreed to submit written submissions on November 2, 2007 (Staff's closing submissions), November 14, 2007 (Daubney's closing submissions) and November 23, 2007 (Staff's reply submissions).

B. THE RESPONDENT

[6] Between 1990 and 2002, Daubney was registered under the Act as a salesperson with the following dealers:

- August 1, 1990 to September 1, 1991: Investors Syndicate Limited, a dealer in the categories of mutual fund dealer and limited market dealer under the Act;
- January 1, 1992 to July 2, 1996: Investors Group Financial Services Inc. ("Investors Group"), a dealer in the categories of mutual fund dealer and limited market dealer under the Act;
- June 30, 1996 to July 22, 1999: Hewmac Investment Services Inc. ("Hewmac"), a dealer in the categories of mutual fund dealer and limited market dealer under the Act; and
- July 30, 1999 to June 17, 2002: Wealth Map Financial Limited ("Wealth Map"), a dealer in the categories of mutual fund dealer and limited market dealer under the Act.

[7] Daubney's registration was suspended by the Commission in January 2003.

C. THE ISSUES

[8] The issues before us are i) whether Daubney made unsuitable investment recommendations to six of his clients in breach of OSC Rule 31-505 and ii) whether Daubney, with the intention of effecting the investments, gave any written or oral undertakings to his clients relating to the future value of the investments he recommended, in breach of section 38(2) of the Act.

D. THE LAW

1. Standard of Proof

[9] There is no dispute in this case about the standard of proof. Staff bears the onus of proving its allegations on a balance of probabilities, the civil standard of proof. Because of the seriousness of the allegations and their consequences for the Respondent, Staff must provide "clear and convincing proof based upon cogent evidence." (*Investment Dealers Association of Canada v. Boulieris* (2004), 27 O.S.C.B. 1597 at para. 33-34, aff'd [2005] O.J. No. 1984 (Div. Ct.).)

2. The Know-Your-Client and Suitability Rule

[10] At all material times, paragraph (b) of subsection 1.5(1) of OSC Rule 31-505– *Conditions of Registration* (1999), 22 O.S.C.B. 731, required a registrant to "make such enquiries about each client" as "are appropriate, in view of the nature of the client's investments and of the type of transaction being effected for the client's account, to ascertain the general investment needs and objectives of the client and the suitability of a proposed purchase or sale of a security for the client."

[11] Staff, in its written submissions, provided an extensive analysis of the know-your-client and suitability rules. Daubney did not challenge Staff's analysis, but submitted that (i) the mere fact that losses were incurred, standing alone, did not demonstrate lack of suitability; and (ii) leveraging is not, *per se*, inappropriate.

[12] We accept Staff's analysis of the know-your-client and suitability rules.

[13] We also accept Daubney's submission that his investment recommendations must be judged as at the time they were made, and not with the benefit of hindsight after a market downturn. Investor losses are neither necessary nor sufficient to show that a registrant failed to comply with his obligations. We accept that determining whether a registrant satisfied his know-your-client and suitability obligations requires a fact-sensitive assessment of the registrant's investment recommendations in light of the circumstances of his clients. Accordingly, we consider that the use of leveraging and investment in exempt products can be appropriate for some investors, a point that Daubney makes and Staff concedes.

[14] The Act imposes certain duties on registrants, including know-your-client and suitability obligations and a general duty to "deal fairly, honestly and in good faith" with clients. The issue before us is whether Daubney fulfilled these obligations under the Act. (Sections 1.5 and 2.1(2) of OSC Rule 31-505 – *Conditions of Registration*, (1999), 22 O.S.C.B. 731, amended (2003), 26 O.S.C.B. 7170 ("OSC Rule 31-505").)

[15] The Commission has recognized that the know-your-client and suitability requirements "are an essential component of the consumer protection scheme of the Act and a basic obligation of a registrant, and a course of conduct by a registrant involving a failure to comply with them is an extremely serious matter" (*Re E.A. Manning Ltd. et al.* (1995), 18 O.S.C.B. 5317 at 5339).

[16] The Alberta Securities Commission (the "ASC") described these two obligations as follows:

> The "know your client" and "suitability" obligations are conceptually distinct but, in practice, they are so closely connected and interwoven that the terms are sometimes used interchangeably.
>
> The "know your client" obligation is the obligation to learn about the client, their personal financial situation, financial sophistication and investment experience, investment objectives and risk tolerance.
>
> The "suitability" obligation is the obligation of a registrant to determine whether an investment is appropriate for a particular client. Assessment of suitability requires both that the registrant understands the investment product and knows enough about the client to assess whether the product and client are a match. (*Re Marc Lamoureux* (2001), ABSECCOM 813127 ("*Re Lamoureux*") at 10.)

[17] Canadian securities authorities have adopted a three-stage analysis of suitability, according to which a registrant is obliged to:

a) use due diligence to know the product and know the client;

b) apply sound professional judgement in establishing the suitability of the product for the client; and

c) disclose the negative as well as the positive aspects of the proposed investment.

(*Re Foresight Capital Corp.*, 2007 BCSECCOM 101 ("*Re Foresight*") at para. 52.)

[18] Knowing the client involves learning the client's "essential facts and characteristics", including the client's:

- age;
- assets, both liquid and illiquid;
- income;
- investment knowledge;
- investment objectives, including plans for retirement; and
- risk tolerance.

(*Re Lamoureux*, *supra* at 12-13.)

[19] In addition, we consider that other essential facts and characteristics would include the client's:

- net worth;
- employment status; and
- investment time horizon.

[20] In this case, where Daubney provided financial planning advice, it is particularly important that all of the above facts and characteristics be considered in addition to the client's cash flow requirements and tax position.

[21] This is commonly done by way of a "Know Your Client" ("KYC") form. The KYC form must be amended whenever the client's circumstances, investment objectives, and risk tolerance change. (*Re Bilinski*, 2002 BCSECCOM 102 at para. 330.)

[22] However, completion of the form is not, by itself, sufficient to ensure that suitability requirements are met. The registrant must make detailed enquiries as to the client's circumstances to ensure that suitable investments are recommended and to assess the client's likely reliance on the registrant's advice and recommendations. (*Re Lamoureux*, *supra* at 12-14.)

[23] Knowing the product "involves carefully reviewing and understanding the attributes, including associated risks, of the securities that they are considering recommending to their clients" (*Re Lamoureux*, *supra* at 14).

[24] With respect to "knowing the product," we agree that a particular investment approach, such as the leveraging strategy recommended by Daubney, is part of the "product."

[25] Where a registrant recommends leveraging, i.e. borrowing money to invest in a recommended product, the registrant is obliged to assess whether the client's circumstances are such that they have the ability to meet debt obligations and tolerate losses under different market scenarios. Because leveraging can magnify losses, it is critical that the registrant ensures the client understands the risks of borrowing to invest, in particular the risks of using collateral, including investments made with monies borrowed, as security for loans.

E. THE POSITIONS OF THE PARTIES

[26] Staff submitted that Daubney's investment recommendations were unsuitable for the six investors called by Staff (the "Six Investors") in two major respects: (i) the use of excessive leveraging; and (ii) in the case of three of the Six Investors, the recommendation to invest in the BPI Global Opportunities Fund ("BPI GOF").

[27] In particular, Staff alleged that Daubney, in advising the Six Investors: (i) did not "know the product"; (ii) did not "know the client"; and (iii) did not demonstrate that an accurate and balanced assessment was made as to the suitability of his recommended investment approach for these clients, given the risks and the clients' circumstances and goals.

[28] Staff alleged that the market downturn in 2000-2001 revealed the high-risk nature and unsuitability of Daubney's investment advice. The combined effect of diminished investment values, margin calls, and continuing debt obligations caused financial and personal hardships for these highly-leveraged clients.

[29] Daubney challenged the evidence of the investors on the basis that (i) as a result of delay in bringing the matter forward, the witnesses' memories had faded; (ii) investors generally have a tendency to overestimate their own investment risk tolerance in search of higher returns; (iii) there would have been no complaint had there not been a market downturn; (iv) the investors had an interest in the outcome of this proceeding because of collateral litigation relating to the matter; and (v) the Six Investors represented only a small proportion of his clientele.

[30] However, there were few significant factual disputes in this case. In general, Daubney took the position that he gave good advice to his clients and complied with the know-your-client and suitability rules.

F. EVIDENCE AND FINDINGS

1. Overview

[31] We heard testimony from twelve witnesses.

[32] Staff called Paul De Souza, an investigator with the Commission ("De Souza"), Littler, and the Six Investors.

[33] Daubney testified on his own behalf, and called three investors as witnesses: Investor Seven, Investor Eight and Investor Nine.

[34] We find that Daubney gave similar investment advice to all of the Six Investors. Indeed, the investors he called to testify also described a similar investment approach.

[35] The general investment program Daubney recommended to the Six Investors involved the following double-leveraging scheme:

- move all existing investments and securities to Daubney, which included liquidating these investments and purchasing units of mutual funds selected by Daubney, and in some cases, converting RRSPs into RRIFs;
- take out or increase a loan (in the form of a mortgage or a line of credit) on their respective homes to approximately 75 percent of their appraised value;
- invest the proceeds of the mortgage in mutual funds selected by Daubney;
- pledge the mutual funds purchased as security for a two-for-one investment loan from a financial institution;
- invest the proceeds of the investment loan in more mutual funds selected by Daubney; and
- where they existed, use withdrawals from the RRIFs to help finance the debt service charges on these loans.

[36] Daubney's investment recommendations for the Six Investors included mainly equity mutual funds. Daubney stated that bond funds were not part of his leveraged investment program because they would not generate sufficient income to meet the debt service obligations of the investment loans. All or a majority of the mutual funds were sold on a Deferred Sales Charge ("DSC") or "back-end load" basis. This meant that the clients would not pay a charge when they initially bought units of a mutual fund, but would pay a charge if they redeemed those units within a prescribed time period. Typically, the DSC was at the outset 6 percent of the net asset value of the mutual fund units purchased, and diminished by 1 percent per year, for six years. If a client held the units for at least six years, they could be redeemed at that time with no DSC payable. Five investors testified that they did not recall knowing what "DSC" meant and the implications of such a sales charge structure in relation to early redemption of their mutual funds in order to meet margin calls on their investment loans.

[37] All of the Six Investors testified that in recommending this investment program, Daubney gave optimistic projections of how their "money" could grow. In many cases, he would show them a financial plan that would generate income for the investor which projected constant equity investment returns of 10 to 12 percent per annum versus annual interest rates on their loans approximating 7 percent. Daubney advised his investors that an annual equity investment return of 12 percent was a conservative estimate. In all the equity investment return and interest cost schedules provided by Daubney to his clients, annual equity investment returns were shown to be constant and ranged from 10 to 12 percent for periods of 10 years or longer. There were no examples of what would happen in a declining market.

[38] The investors testified that Daubney advised of the financial benefits of investing in the equity market, but did not explain what would happen if the market did not increase or went down. For example, one investor was under the impression that she would still receive a return when the market was not doing well, except that the returns would be lower. Daubney also advised several of the investors that even if the market went down, it would always recover, and in the meantime, he could make the portfolio corrections as necessary.

[39] Daubney did not appear to discuss in detail the risks of leveraging. Most of the investors testified that they did not recall discussing with Daubney the risk disclosure forms they signed for Daubney's firms. The risk disclosure forms included Hewmac's "Borrowing to Invest (Leveraging) Disclosure" statement and Wealth Map's "Borrowing Money to Buy Investment Funds (Leveraging)" statement and letter of acknowledgement. Some of the investors also testified that they were not given copies of these documents.

[40] Three of the investors repeatedly expressed to Daubney their concerns about losing their homes, and Daubney dismissed those concerns by denying that this could happen. For example, one investor stated that Daubney's response was that "there was absolutely no concern of losing the house." Despite his investors' expressed concerns, Daubney continued to represent that his investment program was common and safe, and would be beneficial for them to follow.

[41] All of the Six Investors further testified that Daubney did not mention "margin calls" to them when discussing the investment strategy. They recalled being quite confused when they received their first margin call letters in the mail. Several investors testified that Daubney advised them to ignore the margin call letters or throw them away, and that they would stop receiving them when the markets recovered.

[42] The investors indicated in their testimony that they did not understand that if a declining equity market resulted in margin calls being made on their outstanding loans, that it would result in their having less money from their investments to meet their loan obligations.

[43] On Daubney's advice, three of the Six Investors invested in BPI GOF. This was an exempt product, sold under an Offering Memorandum ("OM") rather than a prospectus, and available to Ontario investors with a minimum investment of $150,000.

[44] The BPI GOF OM includes three pages of risk factors, including international markets, emerging market securities, no fixed guidelines for diversification, illiquid securities, short sale equity positions, use of options (which are stated to entail "greater than ordinary market risks"), forward contracts, portfolio turnover, counterparty risk, low rated or unrated debt obligations, offshore residency and assets, conflicts of interest, and unitholder liability. Further, the fund's investment strategies are stated to include leveraging against net asset value and investing in "emerging markets where political volatility has led to deeply discounted stock and bond prices, and 'pre-emerging' markets where a lack of brokerage research coverage has left many productive assets undervalued."

[45] The OM also explains the BPI GOF Income and Capital Gains Distributions policy, as follows:

> It is the Fund's policy to distribute annually to investors sufficient investment income and capital gains (net of applicable losses) so that it effectively will not pay any Canadian federal income tax. … Distributions are paid on the last business day of the year and are automatically reinvested in additional Units at the Net Asset Value per Unit on the date of distribution unless a unitholder elects, by notice to the Manager, to receive such distributions in cash.

[46] Daubney also recommended that some of the Six Investors purchase Universal Life insurance policies, the premiums for which were to be paid from returns on their mutual fund investments. These policies had very high annual premiums, which the investors could not afford to carry.

2. The Investors

a) Investor One

[47] Investor One testified about the investments that he and his wife made through Daubney. Investor One and his wife met with Daubney in 2000 to discuss investing through him. They were 53 and 50 years old respectively. That year, Investor One was employed as a real estate broker and had an income of $51,000. Investor One's wife was a retired nurse and had an income of approximately $3,000. Together, they had an income of approximately $54,000 that year.

[48] At that time, the major assets of Investor One and his wife consisted of a mortgage-free house worth $140,000, investments held in RRSP accounts worth approximately $287,000, and mortgage investments worth approximately $156,000. Overall, their net worth was approximately $583,000. At that time, they had no significant liabilities although they had an available line of credit secured against their house from which they were able to withdraw up to $96,000.

[49] Investor One and his wife had some limited investment experience. Investor One had experience with Guaranteed Investment Certificates ("GICs") and mutual funds purchased through banks and their financial advisors. He also had invested in several mortgages. Investor One's wife had done some limited investing through a stockbroker.

[50] By investing through Daubney, they had hoped to attain early retirement, have a retirement income, preserve capital and save on income tax. Investor One and his wife however, had concerns of losing their home as a result of the leveraging strategy. When Investor One's wife repeatedly expressed her concern to Daubney, Daubney advised that they had "absolutely no concern of losing the house", that they had enough money to carry them for 15 years if "that should even come close to happening", and that it would not happen because he had his pulse on the market and would make portfolio corrections as necessary. Despite the concerns of Investor One and his wife, Daubney assessed their risk tolerance as "medium-high" in their KYC form. The actual risk assessment was not discussed with them.

[51] The investment program Daubney recommended to Investor One and his wife consisted of transferring their existing investments to his firm and converting their RRSP investments into RRIFs, and taking out loans to invest. In recommending this program, Daubney advised them that he was always able to get a 12 percent annual return for his clients, and in many cases 14 percent. He assured them that they could expect a 12 percent annual return on their investment portfolio even though others would only quote 10 percent, because he was confident that he could get a 12 percent return on a steady basis.

[52] Daubney showed Investor One and his wife a number of scenarios projecting increases in income, including forecasts that showed loans eventually being paid out and net assets increasing, and charts showing how long it would take them to go through their money. Investor One did not recall on the other hand, any discussion of what would happen in the years that the market returns and income did not increase or went down, or the possibility of margin calls.

[53] Under Daubney's direction, Investor One and his wife drew on their unused line of credit on their house to borrow funds, from which $95,000 was provided to Daubney to invest in mutual funds. In March 2000, Investor One and his wife applied to Laurentian Bank and received a two-for-one loan in Investor One's name in the amount of $230,000, and three months later in June 2000, they applied for a further loan of $150,000 on a one-to-one basis from M.R.S. Trust in Investor One's wife's name. The proceeds of both loans were provided to Daubney to invest. In March 2001, due to the declining value of their leveraged investments, $150,000 of the two-for-one loan was converted to a one-to-one investment loan.

[54] Investor One and his wife signed risk disclosure forms pertaining to the loans, but the forms did not appear to be signed contemporaneously with the loan application. With respect to both the Laurentian Bank two-for-one loan and the M.R.S. Trust one-to-one loan, the risk disclosure forms were signed after the loan applications were already made. In 2001, when Investor One and his wife applied to convert $150,000 of their two-for-one loan to a one-to-one loan, they executed a risk disclosure document several days after the loan application. By this time, Investor One was getting "suspicious" of Daubney's advice and made a point of dating the document.

[55] Investor One also testified that he did not recall signing the risk disclosure forms, except that he was asked to "sign here, sign here", and did not remember a discussion of the forms or receiving a copy of them. Investor One testified that he was asked to sign so many documents that he did not know what he was signing. He also signed many blank forms authorizing trades in his mutual funds because he was told that it would be easier for Daubney to do the investment switching.

[56] Investor One's understanding of "DSC" was that it stood for "delayed service charge," that as long as you left the fund in place for 7-10 years, you did not have to pay a fee.

[57] In total, Investor One and his wife borrowed approximately $475,000 to invest through Daubney. In 2001, they switched to new financial planners and sold securities to retire both their loans. At that time, the majority of their line of credit secured on their house was still outstanding. Investor One is still working and feels he is "working harder than ever".

b) Investor Two

[58] Investor Two testified about the investments that he and his wife made through Daubney. Investor Two and his wife met Daubney in 1999 when they were 56 and 49 years old respectively. At that time, Investor Two was working as a forklift operator earning approximately $49,000 per year and his wife was providing childcare services in the couple's home, earning approximately $20,000 per year. Their combined household income was approximately $69,000 per year.

[59] At that time, the assets and liabilities of Investor Two and his wife included a house that was worth $330,000 subject to a mortgage of $117,500, leaving them with home equity of $212,500; financial investments comprising approximately $52,000 held in RRSP accounts, $15,000 in non-RRSP stocks, and investment club holdings of approximately $8,000; a car worth $6,000; cash savings of $7,000; and, other liabilities consisting of a $29,500 line of credit, a loan of $13,500 and $4,000 in credit card debt. Taken together, their net worth was approximately $254,000.

[60] Investor Two and his wife had some limited investment experience. They had previously held mutual funds that were recommended by a financial planner and Investor Two had participated in an investment club at his workplace. Investor Two however, did not propose or select investments.

[61] Investor Two and his wife were referred to, and met with Daubney because Investor Two was recently informed that his employer was closing its business and he was about to lose his job. He was concerned about his prospect of finding a new job given his age and limited education and experience, and worried that he would have to sell their house. By investing through Daubney, Investor Two and his wife had hoped to maintain their current lifestyle and home, retire comfortably, improve investment returns, travel and save on income tax. Investor Two did, in fact, lose his job in February 2000.

[62] Given their circumstances, Investor Two and his wife felt they could not afford any high risk investments and informed Daubney accordingly. Investor Two testified that he and his wife repeatedly expressed their concerns about risk and that they wanted to keep their house because it was their "dream home". On their KYC form, Daubney indicated that their risk tolerance was "medium".

[63] The investment scheme Daubney recommended for Investor Two and his wife consisted of moving their current investments into his care and taking out loans to generate additional funds for Daubney to invest. When Daubney presented Investor Two and his wife with investment proposals, he showed them charts with different returns based on the amount of initial investment and a rate of 12 percent annually over 15 years. Daubney also advised that it was not unusual for annual returns to be more than 12 percent, even up to 20 percent. Although specific rates of return were never guaranteed, these were always presented as fair figures. On the other hand, Investor Two does not recall Daubney discussing the risks of investing or what would happen if the markets declined, such as the possibility of margin calls on his loans.

[64] In accordance with Daubney's investment plan, in November 1999, Investor Two and his wife transferred the investments held in their RRSP accounts, and increased their mortgage to $210,000, which paid off the existing mortgage and left $92,500 of the proceeds to be invested through Daubney.

[65] In December 1999, under Daubney's direction, Investor Two and his wife obtained a two-for-one loan in the amount of $100,000 from M.R.S. Trust, the proceeds of which also went to Daubney for investment.

[66] In the same month, Investor Two and his wife took out a second mortgage on their house in the amount of $40,000, but it is unclear from the evidence whether the proceeds were sent to Daubney to invest.

[67] When Investor Two received his severance payment as a result of losing his job in February 2000, the majority of the payment also went to Daubney to be invested in mutual funds.

[68] Investor Two testified that he does not recall discussing the risk disclosure forms that he signed. Some of the forms authorizing trades in his mutual funds were signed in blank. Investor Two was not aware of what "DSC" meant in relation to the purchase of mutual funds.

[69] In total, Investor Two and his wife borrowed approximately a minimum of $193,000 to invest in mutual funds through Daubney. They also purchased a Universal Life insurance policy through Daubney in 2000.

[70] In 2001, Investor Two and his wife left Daubney and retained new financial advisors. A mortgage on their home of approximately $178,000 is still outstanding.

c) Investor Three

[71] Investor Three met Daubney in 1991 and was 46 years old at that time. She was a widow with two grown children, and was employed as a secretary with an income of approximately $18,000 per year.

[72] At the time, her major assets included a mortgage-free condominium worth approximately $140,000, an RRSP account holding approximately $50,000, and a residential mortgage investment of $100,000. She also had a car loan of $14,000. Taken together, her net worth was approximately $276,000.

[73] Investor Three had limited investment knowledge. Her RRSP account was established by her husband, which she believed was invested largely in GICs and term deposits, and her mortgage investment was arranged by her brother who was a real estate agent. She did not know much about mutual funds and felt she needed to rely on the advice of others.

[74] Investor Three's investment goal through Daubney was to achieve some financial security so that she would be able to retire at age 65. Her circumstances changed when she met her common-law partner in 1996 and relocated to Meaford, Ontario and stopped working. Daubney's advice was that she could afford to do so.

[75] Investor Three testified that she repeatedly informed Daubney of not wanting high-risk funds and that she was not comfortable in having loans or borrowing. In response, Daubney told her that she should not worry and that borrowing is "how wealthy people do it." Despite Investor Three's desire for safe investments, Daubney assessed her risk tolerance as "high" in her KYC forms.

[76] Daubney's investment program involved Investor Three transferring her current RRSP investments to him, and as her mortgage investments came due, transferring the resulting funds to him, the proceeds of which were invested in mutual funds recommended by him. These mutual funds were pledged as security for loans to make further investments. In recommending borrowing to invest, Daubney assured her that paying back the loans would not be a problem. He showed Investor Three charts estimating 10 and 12 percent in annual returns, and advised that 10 percent was a conservative estimate. Investor Three testified that Daubney advised that she would not notice the loan payments because they would come automatically from the return on the mutual funds. In terms of advising her of risks, Daubney advised that there may be blips in the mutual fund market, but that it always went back up so that she didn't need to worry.

[77] Accordingly, Daubney arranged for a loan to be taken out with the Bank of Montreal for $50,000, the proceeds of which paid off her existing car loan and left approximately $36,000 for Daubney to invest in mutual funds.

[78] When Investor Three moved to Meaford in 1996, she sold her condominium and after a portion of the proceeds was used to purchase a house in Meaford, Daubney requested that she invest the remaining funds with him, which amounted to approximately $70,000.

[79] Further, in May 1997, Daubney arranged for Investor Three to take out a two-for-one loan with National Trust in the amount of $125,000 to invest in mutual funds.

[80] In recommending the two-for-one loan, Investor Three testified that Daubney did not advise her of the possibility of margin calls. Although she worried about taking out further loans, Daubney told her not to worry. Gains from her mutual funds would enable her to keep making the loan repayments as well as provide her with income. Investor Three did not recall whether she knew what "DSC" meant in relation to the purchase of mutual funds.

[81] Investor Three also testified that she signed blank forms authorizing trades in her mutual funds, "usually five at a time" for Daubney. She understood that it was necessary so that "when things needed to be moved around, if the timing was right, it could be done."

[82] One of the investments Daubney arranged for Investor Three was BPI GOF. Investor Three was under the impression that it was just a regular mutual fund and did not recall being told of the $150,000 minimum investment requirement. Investor Three invested $190,000 in BPI GOF in October 1999 and recalled that Daubney intended to invest all of her assets into this fund. In December 2000, her entire investment portfolio was invested in this fund.

[83] In December 2000, when Investor Three was experiencing a significant decline in the value of her leveraged investments, Daubney recommended that she increase the mortgage on her house to 75 percent of the appraised value and use the proceeds to increase her investments. Investor Three testified that he advised her that "now that it had dipped this low, if you take a mortgage, these funds will really do really, really well, and bring it right back up for you". Daubney also provided tables showing the cost of borrowing estimated at 7 percent per annum against an annual investment rate of return estimated at 12 percent. In that instance however, Investor Three did not follow Daubney's recommendation.

[84] In total, Investor Three borrowed approximately $160,000 to invest through Daubney. From the mutual funds, she withdrew approximately $28,000 for a new car and an unknown amount for tax liabilities and living expenses. In 2004 or 2005, Investor Three paid off the last of her loans.

d) Investor Four

[85] Investor Four met Daubney in March 1997. She was 71 years old. She was a widow who had retired from her position as a secretary and stated that it was not possible for her to return to the workforce. Her income consisted of pension and old age security payments of approximately $32,000 per year.

[86] At the time, her only major asset was her house, which was worth $250,000 and secured an outstanding mortgage of $46,000. Other assets and liabilities consisted of a car that was worth approximately $6,000, a bank account with approximately $3,000 in savings, and consumer loans of approximately $9,000. Taken together, her net worth was approximately $204,000.

[87] Investor Four had very limited investment knowledge. She primarily dealt with Canada Savings Bonds purchased through her bank and had once bought common shares through a payroll deduction plan. Investor Four did not know what DSC meant in relation to the purchase of a mutual fund.

[88] Investor Four wanted to invest in order to increase her monthly retirement income, but informed Daubney several times that she only wanted investments that were similarly safe as savings bonds, because she felt she would be unable to return to work. In her KYC forms however, Daubney assessed her risk tolerance as "medium" in 1997.

[89] Daubney's advice included a financial plan showing annual returns of 10 or 12 percent such that Investor Four would be receiving extra income each month. From her discussions with Daubney, Investor Four was under the impression that she would receive a return each month, which would vary according to how well the markets were performing. She understood that if the markets were doing well, her returns would be extremely good, but if the markets were down, that her returns would be less.

[90] Investor Four's investment program recommended by Daubney consisted of taking out loans to invest. Investor Four testified that Daubney's advice did not include the risks of using borrowed money to invest, the possibility of selling investments to make loan payments or the possibility of margin calls. She also did not know what a two-for-one investment loan meant.

[91] First, Daubney arranged for Investor Four to apply for an increase in Investor Four's mortgage on her house to 75 percent of its value. The bank however, only granted a mortgage of $176,250, of which $46,000 was used to pay off the existing mortgage and approximately $130,000 was given to Daubney to invest in mutual funds.

[92] Shortly afterwards, Daubney arranged for a two-for-one loan of $120,000 with National Trust by pledging the mutual funds as security. The proceeds of the loan were also invested in mutual funds under Daubney's direction.

[93] It appears that Investor Four did not sign any risk disclosure forms at the time these investments were made, although it appears she signed some risk disclosure forms subsequently. There is also evidence that in 1998, she signed blank forms authorizing trades in her mutual funds, which were given to Daubney.

[94] It also appears that subsequent to Daubney's investment strategy being put in place, Investor Four changed investment advisors for a period. Investor Four's evidence was that she believed Daubney remained as her investment advisor until March 2001.

[95] In total, Investor Four borrowed approximately $250,000 to invest through Daubney. From the investments in mutual funds, Investor Four testified that the only personal benefit she received from her investments was the $23,000 she withdrew to buy a used car. In 2003, Investor Four still had approximately $150,000 outstanding on her mortgage. The mortgage is still outstanding.

e) Investor Five

[96] Investor Five testified about the investments that he and his wife made through Daubney. Investor Five and his wife met Daubney in the fall of 1996, at which time they were 65 and 67 years old respectively. Investor Five had been retired from his position as a schoolteacher since 1991 and was receiving an annual pension of approximately $45,000. Investor Five's wife was retired from her position as a bank branch manager since 1990 and was receiving an annual pension of approximately $11,500 per year. Together, they received an annual income of approximately $57,000.

[97] At that time, the major assets and liabilities of Investor Five and his wife comprised a mortgage-free house worth $182,000, financial investments in RRSP accounts totalling approximately $261,000, a vehicle worth $15,000 and an outstanding debt of $9,000. Taken together, their net worth was approximately $450,000.

[98] The investment experience of Investor Five and his wife consisted of the RRSP accounts that they held at Nesbitt Burns. The accounts held bonds and GICs together with other investments that were recommended by their financial advisor.

[99] Investor Five and his wife were hoping that investing through Daubney would reduce the impact of income taxes on withdrawals from their RRSP accounts, and add to their retirement income which would allow them to do some travelling.

[100] In their KYC form, Daubney assessed their risk tolerance as "medium-high." Subsequently, Daubney assessed their risk tolerance as "high". Investor Five testified that he does not recall discussing their risk tolerance with Daubney, and that this risk tolerance would not have been acceptable to them had they known. In fact, Investor Five testified that the KYC form might not have been completed when he signed it.

[101] In recommending an investment program, Investor Five testified that Daubney gave the impression that he had studied the market and had good information to find the appropriate funds. Investor Five stated that Daubney was "quite confident that he could generate 12-percent annual return on the investments of these high-rate mutual funds that he would recommend." On the other hand, Investor Five testified that he did not recall any significant discussions about risk and does not recall discussing the concept of margin calls.

[102] Under Daubney's direction, Investor Five and his wife transferred their existing RRSP accounts to Daubney and converted some of these accounts into RRIFs.

[103] They took out a mortgage for 75 percent of the value of their house, amounting to $135,000. They used $9,000 to pay off their existing loan and provided the remainder to Daubney to invest in mutual funds.

[104] They used these mutual funds as security for a two-for-one loan in the amount of $250,000 from the Bank of Montreal in October 1996. Daubney also arranged for the loan to be increased on three different occasions, and as of March 2000, the amount owed was approximately $416,000. Other than approximately $21,000 taken from the first loan increase to purchase a car and $35,000 from the third loan increase to make a loan to Investor Five's step-son, the remaining proceeds went to Daubney to invest in "high-yield mutual funds of a conservative nature".

[105] Additionally in October 1997, Daubney arranged for another two-for-one loan from National Trust in the amount of $250,000 to be taken out by Investor Five and his wife, the proceeds of which were invested in mutual funds. Investor Five testified that he thought the purpose of this loan was to pay down the loan from the Bank of Montreal and was surprised that these proceeds were used to invest in more mutual funds. He was also surprised that the amount applied for from National Trust was $500,000 instead of the $270,000 he expected.

[106] There is no evidence that Investor Five and his wife signed a risk disclosure form at the time they initially took out loans in 1996 and Investor Five testified that he does not recall signing one. There is evidence however, that Investor Five signed a risk disclosure form in September 1998, but this was well after he took out his initial loan and even after he took out his National Trust loan. Investor Five also did not recall Daubney discussing the document with him at this time.

[107] Investor Five testified that he recalls signing at Daubney's request, between 50 and 100 blank forms authorizing trades in his mutual funds. Investor Five did not recall whether Daubney explained to him what "DSC" meant in relation to the purchase of mutual funds.

[108] The mutual fund investments Daubney selected for Investor Five and his wife included BPI GOF. Daubney advised Investor Five and his wife that it was about to declare a dividend, the proceeds of which they could use to meet their loan obligations. Daubney also told them that the fund was for "sophisticated investors", which flattered them. Investor Five and his wife invested $300,000 in this fund at the end of 1999, and for income splitting purposes purchased this investment in Investor Five's wife's name. By December 1999, this product constituted 100 percent of the assets held in Investor Five's wife's name, and approximately 30 percent of the joint assets of Investor Five and his wife.

[109] In total, on Daubney's advice, Investor Five and his wife borrowed approximately $792,000. After deducting the funds used for other purposes, the amount borrowed by Investor Five and his wife to invest through Daubney approximated $736,000.

[110] Daubney also arranged for Investor Five and his wife to purchase several Universal Life insurance policies with annual premiums totalling $96,000. Investor Five testified that Daubney assured him that the return on his investments would carry the premiums for those policies.

[111] Investor Five testified that in 2006, Investor Five and his wife needed to "downsize" and sold their house and discharged the outstanding amount of their mortgage with the proceeds.

f) Investor Six

[112] Investor Six met Daubney in 1997. She was 67 years old at the time. She was employed as a real estate agent, but was past the usual retirement age and planned to retire within the next year. Her income was approximately $37,000 per year.

[113] At that time, Investor Six's assets and liabilities included a mortgage-free house worth $170,000, two condominiums with net values of $56,000 and $34,000, a vehicle worth $20,000, gold bars worth $1,000, RRSPs with a value of $182,000, mutual funds with a value of $176,000, Canada Savings Bonds with a value of $64,000, treasury bonds worth $6,000, shares in a private investment worth $3,500, cash savings of $27,000, taxes of $20,000 owing to Revenue Canada, and an outstanding car loan in the amount of $28,000. Taken together, her net worth was approximately $692,000.

[114] Investor Six's investment experience primarily consisted of holding RRSP accounts with two financial planners, Regal Capital Planners and Midland Walwyn. She believed her investments were largely placed in mutual funds and relied on her financial planners to make the investment decisions.

[115] Investor Six's goal in investing through Daubney was to retire comfortably, enjoy recreation and travel, and minimize her tax exposure. In her KYC forms, Daubney indicated that her investment knowledge was good and that her risk tolerance was "high" or "medium-high", but Investor Six doesn't recall any discussion about the assessment.

[116] In recommending a leveraged investment approach, Investor Six does not recall Daubney discussing the possibility of potential losses or what would happen if the markets went down, such as the possibility of margin calls. Investor Six testified that Daubney mentioned an annual return rate of 12 percent and always gave her the impression that things were fine and "rosy" even if he did not guarantee a specific rate of return.

[117] The investment program Daubney implemented for Investor Six included transferring her existing investments and portions of her savings to Daubney's firm and converting the RRSP accounts into RRIFs. In March 1998, Daubney arranged for a mortgage to be taken out for 75 percent of the value of Investor Six's house, which amounted to $127,500 and invested the proceeds in mutual funds.

[118] Approximately a month later in April 1998, Daubney arranged for a two-for-one loan from Laurentian Bank in the amount of $250,000.

[119] Two years later in April 2000, Daubney advised that taking out a second loan would be beneficial and arranged for another two-for-one loan in the amount of $250,000 from TD Bank to invest in mutual funds.

[120] There is no evidence that Investor Six signed a risk disclosure form with her first investment loan with Laurentian Bank. She did sign such a document when she secured her second loan with TD Bank, but she does not recall any discussion about it. Investor Six did not recall discussing with Daubney what "DSC" meant in relation to the purchase of mutual funds.

[121] Investor Six invested $150,000 in BPI GOF through Daubney in 1999. She does not recall any discussion with Daubney about the fund, the reasons she was investing in it, or that it required a minimum investment.

[122] In total, Investor Six borrowed approximately $628,000 to invest through Daubney. From the mutual funds, Investor Six withdrew approximately $35,000 to pay her tax liabilities.

[123] In July 2001, Investor Six transferred her investments from Daubney to another financial planner, Money Concepts, and the loans were paid off in 2006.

3. Summary of Amount Leveraged

[124] The following chart summarizes our analysis based on the net worth and net income of each of the Six Investors at the time they initially met with Daubney.

Client, Age	Approximate initial net worth*	Approximate initial net income	Initial Employment status	Approximate total amount borrowed to invest in mutual funds through Daubney	Daubney's assessment of client's risk tolerance	Approximate percentage of total amount borrowed to initial net worth
Investor One, 53 /Investor One's wife, 50	$583,000	$54,000	Employed / Retired	$475,000	Medium-high	81%
Investor Two, 56 /Investor Two's wife, 49	$254,000	$69,000	Employed, facing layoff / Employed	$193,000	Medium	76%
Investor Three, 46	$276,000	$18,000	Employed	$160,000	High	58%
Investor Four, 71	$204,000	$32,000	Retired	$250,000	Medium	123%
Investor Five, 65 /Investor Five's wife, 67	$450,000	$57,000	Retired / Retired	$736,000	Medium-high to High	164%
Investor Six, 67	$692,000	$37,000	Employed	$628,000	Medium-high to High	91%

* the amount of the equity in their homes as a percentage of their initial net worth ranged from 24% to almost 100% for the Six Investors.

4. Littler's Evidence

[125] Litter testified that she got involved in the financial services industry in 1996 when she applied for a job with Neil Mathieson, an accountant in Orangeville. Neil Mathieson introduced her to Daubney, who was then at Investors Group. Investors Group sponsored her for her mutual fund licence. However, she never worked for Investors Group because Daubney left to create Hewmac just as she completed her courses, and she transferred her registration to Hewmac. Littler was registered under the Act as a mutual funds salesperson with Hewmac from March 13, 1997 to July 22, 1999, at which time she followed Daubney to Wealth Map. After Wealth Map closed, Littler's registration was suspended on July 17, 2003 and she allowed it to lapse. She has not sold mutual funds since then.

[126] Daubney was Littler's mentor. She accompanied him to visit clients for the first three or four months, but then she began to develop her own client base.

[127] Littler described her own sales practices and what she observed of Daubney's sales practices. Her evidence with respect to Daubney's investment recommendations was consistent with the evidence of the Six Investors.

[128] She testified that she and Daubney would first have an information-gathering meeting with a new client at the client's home. Then Daubney would develop a financial strategy which would be explained and left with the investor at a later meeting.

[129] According to Littler, leveraging was a "pretty consistent" part of the "package" as she learned it from Daubney:

> The usual pattern was taking equity from the home, purchasing mutual funds with that, leveraging those mutual funds to one of the lenders that John offered a two-for-one loan. So that's pretty standard as far as what package would be presented or the process we would follow. (*Hearing Transcript in the Matter of John Daubney and Cheryl Littler*, dated October 12, 2007 (the "*Oct. 12 Transcript*") at 126:5-10.)

[130] Asked what factors would be considered in determining whether leveraging was suitable, Little stated:

> I can't really even recall a time when it wasn't suitable. Certainly age was a factor. John often said that just because somebody was old, they shouldn't be excluded from the leveraged program. They were just as entitled to be leveraged. I do not recall ever leaving a meeting with a client that there wasn't some form of leverage that would have been suitable. (*Oct. 12 Transcript*, *supra* at 128:2-8.)

[131] Asked further whether she recalled attending any initial presentations with Daubney where leverage was not part of the package, Littler stated: "No, I don't recall one." According to her, leveraging would be offered even if the investor did not own a house or had no income stream.

[132] Littler testified that she could not recall Daubney discussing margin calls or the risks of leveraging with his clients. Indeed, she testified that she did not understand what a margin call was until they started happening and clients began calling the office with their concerns. Littler testified that generally Daubney was not available, and she responded to the calls instead.

[133] If a client expressed concern about leveraging, Daubney would explain that the investor could "run to cash" in the event of a market downturn.

[134] According to Littler, more than half of Daubney's clients were leveraged in 1997, when she began working with him. Littler also recommended leveraging to her clients. She testified that at her peak, 20-25 percent of her 140 clients were leveraged. She also leveraged her own investments and those of her family.

[135] Littler was questioned about the income tax implications of leveraging. She testified that borrowing to invest sometimes offered tax savings. Asked whether there were guidelines for deciding when income tax was a consideration, Littler testified she and Daubney considered tax issues across the board, and not only for higher income clients.

[136] With respect to the expected rate of return of the investments they sold, Littler testified "[i]t was standard practice to use 12 percent." Depending on the fund, other figures and charts might be used, but "as far as a financial strategy as a wealth map, that was always done at 12 percent." However, according to Littler, investors were also told that as long as the rate of return on the investment was the same as the rate of interest on the loan, they would be ahead because of the tax advantages of leveraging.

[137] Littler testified that the first step in the investment program was for the investor to transfer all existing investments to Daubney. Then Daubney would arrange for pre-clearance of a home equity loan through the Bank of Montreal. The documents would be taken to the investor for signature. Littler could not remember whether a risk disclosure form was used at Hewmac, though she remembered one being used at Wealth Map. Once the mortgage or home equity loan was in place and the

mortgage proceeds invested, a two-for-one loan would be arranged at National Trust or M.R.S. Trust and invested in equity mutual funds. She could not recall a discussion of risks apart from the discussions about cashing out in the event of a market downturn and the loss of the DSC. She thought margin calls were not discussed until late 1999 or 2000.

[138] According to Littler, she and Daubney began to ask investors to "pre-sign" blank forms authorizing trades in their mutual funds because changing interest rates and loan payment amounts made the administration of the accounts difficult.

[139] Littler testified that she and Daubney recommended mostly "progressive" equity funds, "the high performers. It was pretty much the flavor of the month whereby they happen to be super performers, and you would be trying to utilize it and get the growth out of them." They had very few balanced funds, and no bonds or GICs. There was no formal fund selection process.

[140] Since the majority of their funds were back-end-loaded, any investor needing to redeem funds because of a margin call would incur a DSC, thereby increasing the investor's losses. Littler could not recall discussing this "in great depth" with Daubney, though she recalled his saying that investors would hold these funds for years. Margin calls were not discussed until "we were kind of hit with it."

[141] Littler also testified about BPI GOF. In 1999, Littler understood that it was a hedge fund. She was aware of the $150,000 minimum investment, but did not, at that time, understand the reason for that requirement. She testified they recommended it for their leveraged investors who were able to meet the minimum investment amount:

> A lot of my clients, what we had done is taken approximately $50,000 of either growth or other mutual funds and pledged those in order to get a two-for-one which now gives us $150,000 and therefore we could go and buy the BPI. (*Oct. 12 Transcript*, *supra* at 149:5-9.)

[142] Littler testified about her disagreement with Daubney concerning the year-end payout from BPI GOF, which she described as a distribution and Daubney described as a dividend. According to Littler, this was a return of the investor's capital, made whether or not the fund gained in value, and it was taxable in the investor's hands. For this reason, Littler's strategy was to move her clients out of the fund before the distribution occurred. According to Littler, Daubney's strategy was to move clients into the fund just prior to the distribution because it put cash in their hands: "To the client, it appears that they'd had a huge bonus just given to them." Littler testified that she discussed this "a number of times" with Daubney. On cross-examination, when it was suggested to her that this was a dividend and that Daubney's strategy, though different from her own, was not obviously inappropriate, Littler stated:

> It is completely backward to industry. In fact, we had a number of people question his theory, inquire whether he really intended to do that: Did he understand the consequences of what he was doing? These were people, meaning reps such as myself and the others. There were wholesalers from the fund companies who would call him and say John, do you realize what you're doing? It's completely backwards from what any other rep would do. (*Oct. 12 Transcript*, *supra* at 167:23-168:6.)

[143] Finally, with respect to mutual funds, Littler testified about the commission structure. The mutual fund companies generally offered commissions of about 5 percent on the amount invested, of which 65 percent went to Littler as the representative (70 or 75 percent to Daubney were he the representative), 20 percent to the dealer, and the remaining 15 percent to John Daubney & Associates. Littler thought trailer fees were 50 basis points (or half a percent), and were allocated and paid on the same basis. Littler also testified that the commission was higher when leveraging was used because more money was being invested. However, she testified that they received no compensation from the lending institutions for arranging the home equity loans or two-for-one loans.

[144] Littler was also a licensed life insurance salesperson. She testified that Universal Life policies became a standard part of "the package" she and Daubney presented to investors. She stated:

> […] in the beginning stages, it was a place to put their growth and stop the taxation on it. So that is how it first started to come about. Later, it sort of switched to we did the leveraging and the UL almost all in one step instead of waiting for that growth to happen, and it was just a structural part of the strategy that John made a little twist to." (*Oct. 12 Transcript*, *supra* at 178:9-16.)

[145] Littler further testified that the Universal Life policies recommended by Daubney to his clients required the payment of very high annual premiums that "would have been almost impossible for them to maintain." As a result, she testified that clients were not able to keep paying the premiums and would reduce the amount of coverage to reduce the premium cost.

[146] Littler testified that the commission payable on the sale of life insurance policies was "much, much higher" than commissions paid on the sale of mutual funds. Interestingly, when Daubney was asked about commissions payable with respect to the sale of Universal Life policies, he testified:

> A. On all insurance policies that are sold, there is an arrangement through the MGA network, which is the managing general agent network, that they receive 140 percent of the annual premiums that go in there for the first year.
>
> Q. So it was 140 percent of that first year?
>
> A. That's correct. […] Now, because I did quite a lot of insurance business, I think I was put at about 120 percent and I forget where Ms. Littler was, I think she was probably 110 or 115 because she was pretty good too at the insurance business. (*Hearing Transcript in the Matter of John Daubney and Cheryl Littler*, dated October 17, 2007 (the "*Oct. 17 Transcript*") at 174:21-175:12.)

5. Daubney's Evidence

[147] Daubney testified that he followed a standard procedure with new clients. Most of his clients were referred to him, and the first meeting was to get to know each other and complete a KYC form. This could take several hours in an evening. The purpose of the meeting was to obtain information about the client's income, assets, liabilities, current investments, as well as their investment knowledge and risk tolerance. The client would then sign the form. In cross-examination, he testified that he asked the investor's age, employment status, retirement plans, liquid and illiquid assets, debts, and prior investment experience.

[148] Also at the first meeting, Daubney would ask clients if they were happy with their current returns on their RSP or locked-in-pension. If the client expressed interest in changing their investments, Daubney would tell them he needed to analyze the situation and come back with a full set of recommendations. To illustrate the market's historical performance, he would give them a copy of a chart showing historical returns of 11.86 percent.

[149] After the first meeting, Daubney testified he would prepare a set of recommendations to present to the client at a second meeting. He would offer three options, an "extremely conservative," "conservative" and "a very, very high risk, very aggressive proposal," along with average rates of return. He would then present these options to the client in a second meeting. He would provide charts "to back up the return rates." He would also explain that these were longer term investments, "more than five years, preferably between five and ten and maybe fifteen to twenty, if we had that time." He recognized that some investors would only have a time horizon of five to seven years, but stated "there has never been a period of five consecutive years where the market has lost money in the whole history of the markets. There have been two years, three years, but then the markets have always gone up." The investor would then choose one of Daubney's options "based on their particular tolerances and knowledge of strategies."

[150] Daubney would then return to his office and prepare forms for the investor to sign, including "if we're doing leverage, different lender's forms, different mutual fund investment forms, disclosure documents, even another know your client form" and review the recommendations again with the investor. The forms would be signed at a third or subsequent meeting. Daubney denied putting a stack of documents in front of an investor for signature. He testified that he explained each document to each investor in detail. He insisted that 'we spent more time on the risk side of it than on the good side of it. Unfortunately, human nature being what it is, people tend to dwell on the good side and not on the bad side, because that's what they want to hear, it's music to their ears. That's why you have to stress the bad side of it and make sure they understand it."

[151] If Daubney's investment recommendations were accepted by a client, he would take the following steps. First, all existing investments would be transferred to mutual funds recommended by Daubney. The second step was to increase an existing home loan or take out a new one (in the form of a mortgage or line of credit) for up to approximately 75 percent of the appraised value of the home. Daubney admitted he "pointed them in the right direction" to arrange the home loan through the Orangeville branch of the Bank of Montreal, with which he had a relationship. Indeed, he admitted it was "more than likely" that he filled out the application forms and would have suggested the amount to be requested. The proceeds of the home loan were used to purchase further mutual funds, which, in turn, were used as security for an investment loan, the proceeds of which were invested in more mutual funds.

[152] With respect to the choice of mutual fund investments, Daubney testified that apart from historical returns and volatility, another consideration was "diversification." He viewed diversification in terms of the underlying securities included in a given equity fund – for example, making sure BPI, CI Asian Fund, Franklin Templeton Resources Fund did not hold the same securities.

[153] With respect to risk, Daubney testified that he would tell investors that the biggest risk is lack of exposure to the market, and explain that T-bills, bonds, mortgages may not be suitable, even for a conservative investor, because:

> all you're doing there is basically standing pat. And the mutual funds offer you a chance to increase the return considerably over those of T-bills, savings accounts, bond funds and mortgage funds. Now, traditionally, when bond funds go up mortgage funds go down, so somebody had the bright idea of combining a mortgage fund and a bond fund and calling that a hedge fund. The problem is

> you don't go anywhere with that either because what you lose on one side you gain on the other. Once again, it's a stand pat type of – the dividend fund is a little different in that it pays regular dividend income to investors and it can be, I suppose, termed as a more risky investment in that there are no guarantees of returns like you get on GICs where there is a guaranteed rate or return or Canada Savings Bond[s] where there is a guaranteed rate of return; albeit it, far, far lower than the prime interest rate. (*Oct. 17 Transcript*, *supra* at 33:18-34:10.)

[154] With respect to BPI GOF specifically, Daubney agreed that he had characterized it as a high yield conservative fund. He described it as a dividend fund and as a hedge fund, which "tends to be conservative by nature." In fact, he understood a hedge fund to be a balanced fund and a conservative investment option:

> It's sort of along the line of a bond versus mortgage type fund, although that's not the investments that they put them in, but the idea is the same. If one section of the market goes up, the other one is going to obviously take a hit. That's a balance fund or a hedge fund, whatever term you want to give it. (*Oct. 17 Transcript*, *supra* at 76:8-14.)

[155] Daubney recommended to three of the Six Investors that they invest in units of BPI GOF shortly before a year-end distribution by BPI GOF in 1999. Daubney disagreed that such a distribution would amount to a return to the unitholders of a portion of the purchase price they had just paid for their units. Daubney described the distributions as a dividend:

> […] because she had the same number of shares prior to taking the dividend out as afterwards, after it had gone out. If that had been a return of her own money, that number of shares would have dropped drastically. (*Oct. 17 Transcript*, *supra* at 146:22-147:1.)

[156] Daubney testified that tax considerations were not his only reason for recommending leveraging, but was an important one. He testified on the factors that would suggest leveraging as appropriate as follows:

> Q. What would be the factors, from your understanding, that would suggest leverage is appropriate? What would be the factors that would suggest it's not appropriate?
>
> A. The big one was saving on income tax. That was always one. The other was if they had not a lot of underlying investment, but wanted to retire comfortably or increase their retirement income, this would be the type of candidate that you would choose for leverage.
>
> Q. Let me come back to those two factors in a moment, the saving of tax and the increased retirement income. What, from your understanding, would be counter factors towards seeking a leveraged investment? What would prevent – you would say you are not an appropriate candidate for leverage?
>
> A. Well, if they were very, very nervous types of investors. If they – and I would put it to them several times during our meetings, but if they showed a sort of general distaste towards the whole idea of borrowing money, then obviously you're not going to put those people into a leveraged investment because, quite frankly, they just couldn't handle the thought of the risk and then possibly losing money and having to pay their payments, even though they've probably got a mortgage on their house and the same thing could happen there. (*Oct. 17 Transcript*, *supra* at 17:5-18:7.)

[157] With respect to leveraging, Daubney also testified in cross-examination that leveraging is not necessarily suitable or unsuitable for older people because he did not "discriminate based of age or sex, colour, race or anything." Similarly, someone who was about to retire was not precluded from leveraging and leveraging was not necessarily ruled out for someone whose only asset was their house. Further, when questioned about his awareness of his clients' formal educational qualifications, Daubney testified that he did not "usually make a habit of inquiring into people's educational backgrounds." Daubney also conceded that he might recommend additional leveraging where someone's investments are declining in value.

[158] Daubney denied that he "guaranteed, promised, or in any way hinted at" any specific rate of return on investments. He testified that he used a 12 percent annual rate "to illustrate a more conservative rate of return than that experienced by the market in general." He also described this as an average rate of return. In cross-examination, he conceded this meant that returns might be lower for two or three years at a time. He admitted, as well, that the investment loans taken out by the Six Investors were variable rate loans. He agreed that for leveraging to benefit the investor, the return on the investment has to be greater than the cost of borrowing. He also admitted that he did not recommend any bond funds because the yield would not cover the cost of borrowing.

[159] In general, Daubney's evidence was that the risks and benefits of leveraged investing were explained to the Six Investors and they chose the investment options they believed were best for them. According to Daubney, their investments did well initially, and the investors had no complaints until the general market downturn in 2000/2001.

[160] For example, Daubney testified that Investor Three decided to go ahead with leveraging after discussing it with Daubney and "on the advice of her daughters, her brother she checked with and the people that had referred me to her." Further, Investor Three's investments initially "grew very rapidly," and she was taking out about $35,000-40,000 a year to enhance her lifestyle. However, in cross-examination, Daubney conceded that he recommended that Investor Three borrow more money when her investments declined in value.

[161] Daubney testified that it was Neil Mathieson who suggested leveraging to Investor Five and his wife and explained the advantages and disadvantages to them, which Daubney reiterated. According to Daubney, the investments of Investor Five and his wife were "extremely successful" initially, and Investor Five redeemed fund units to pay for vacations, a golf club membership, a small line of credit, and to make loan payments on his leveraged investments.

[162] Daubney admitted that he recommended leveraging to Investor Two despite the fact that Investor Two was in his late fifties when they met, worked as a forklift operator, and advised Daubney, at their second meeting, that he was likely to lose his job in about a year. Daubney conceded that leveraging "might not be suitable" for someone who was going to lose their job in the near future. However, he testified that Investor Two told him he should not worry about that because Investor Two, "being a smart man, he had no problem finding a job anywhere." Daubney testified that Investor Two chose the middle of the road option of the three presented by Daubney.

[163] Daubney denied Staff's suggestion that the Six Investors told him they wanted low risk investments. For example, he specifically contradicted Investor Four's evidence that she told him she wanted her investments to be as safe as Canada Savings Bonds. According to Daubney, Investor Four's investments also did "extremely well," initially, and were in a "very positive" position when she transferred them to Neil Mathieson. Daubney testified that any margin calls must have occurred after this transfer.

[164] Daubney insisted that his clients were asked to sign detailed KYC forms before investing. He also insisted that all the investors were given the risk disclosure form before they decided to borrow. For example, he insisted that Investor Four and Investor Six had signed a risk disclosure form, though none was entered in evidence; he testified that Investors Group had the documents. The evidence would indicate however, that both Investor Four and Investor Six met Daubney in 1997, after he had left Investors Group.

[165] Contrary to Littler's evidence, Daubney testified that he returned the calls of all investors who called the office, unless he was incapacitated, in which case Littler returned the call. In fact, he did call Investor Two twice from his hospital bed because Investor Two "had become extremely nervous about the state of the market."

6. Investors Called by Daubney

a) Investor Seven

[166] Investor Seven was 51 years old when he met Daubney in the summer of 1998. He had just retired from teaching elementary school, and wanted advice about how to invest his locked-in teacher's pension, worth about $525,000. His wife did not work and they had four children in high school or university.

[167] Apart from his pension, Investor Seven's assets consisted of the family home, which was then worth about $300,000, and his own and a spousal RRSP with a combined value of approximately $35,000 to $40,000, invested mainly in Canada Savings Bonds. The house was unencumbered and we heard no evidence that Investor Seven had any debts at the time. He had no previous investment experience and did not actively manage his pension investments.

[168] Investor Seven testified that his brother-in-law invested through Daubney and his niece worked for Daubney. However, Investor Seven met with two other people before deciding to invest through Daubney. Investor Seven and his wife met with Daubney several times before engaging him.

[169] Investor Seven was unable to give any details about Daubney's investment advice. He did not recall Daubney referring to any particular rate of return, but "[h]e was very positive about it, as you would expect, because the market was doing so well." Daubney said there would be "a reasonable" or "very reasonable" return, and showed Investor Seven charts reflecting increases in the market.

[170] Investor Seven understood that Daubney would receive a commission, but could not recall a specific figure. Investor Seven also testified that Daubney discussed front-end and back-end load funds, and that he invested in both.

[171] Investor Seven testified that Daubney introduced the idea of leveraging, but did explain there were risks. On cross-examination, he admitted he did not recall Daubney explaining that borrowing money to invest can inflate profits and losses. Investor Seven also testified that he did not know what margin calls were until he received them.

[172] Investor Seven pursued the following investment plan on Daubney's advice. First, he transferred his locked-in pension to Daubney for investment in mutual funds.

[173] Next, Daubney helped him take out a mortgage on his house through the Orangeville branch of the Bank of Montreal. Though Investor Seven was unsure of the amount, he thought it was likely $175,000; he was unable to recall whether the mortgage came to 75 percent of the value of his house. All of this money was transferred to Daubney, who invested it for him.

[174] Finally, the mutual funds bought with the proceeds from the mortgage were used as security to take out a two-for-one loan with M.R.S. Trust. Again, Investor Seven was unsure of the amount, initially saying $270,000-300,000, then stating it was around $200,000. The proceeds from the M.R.S. Trust loan were also invested in mutual funds through Daubney.

[175] As well, Daubney helped Investor Seven arrange a line of credit, secured on his house, to buy a farm. The purchase price of the farm was $230,000, and Investor Seven borrowed $210,000 from his line of credit. Investor Seven and his wife also cashed in their RRSPs for a down payment.

[176] Daubney also sold Investor Seven a Universal Life insurance policy with annual premiums of $40,000 that were to be paid from the returns on his mutual fund investments.

[177] When the market went down in 2000-2001, and his investments lost value, Investor Seven received margin calls from M.R.S. Trust. Though he was unsure of dates, on cross-examination he testified that in the summer of 2002, problems with Daubney were occurring.

[178] Investor Seven left Daubney and transferred to new financial advisors in about January 2003. The new advisor helped him clear the M.R.S. Trust loan by cashing in the investments he had bought with it, leaving about $80,000 of those investments. Investor Seven also transferred his Universal Life policy to a life insurance policy because he could not afford the premiums.

[179] At the time of the hearing, Investor Seven testified that his locked-in pension was worth about $585,000, but was now invested with his new advisor. He still had his house and his farm. He also had significant liabilities: a mortgage of about $140,000 on his house and a debt of about $200,000 on the line of credit relating to the farm.

b) Investor Eight

[180] Investor Eight, who was 59 years old at the time of the hearing, met Daubney in late 1990 or early 1991, when Daubney was with Investors Group. Investor Eight was referred to Daubney by a friend for whom Daubney had provided financial planning advice. Investor Eight had no particular investment experience at the time. Daubney visited Investor Eight and his wife at their home, and on the third visit, Investor Eight made an investment through Daubney.

[181] Investor Eight testified that in the first two meetings, Daubney explained the benefits and the risks of leveraged investing. Asked about Daubney's discussion of anticipated rates of return, Investor Eight testified as follows:

> That particular time, I believe the market average was at – rates of returns of 8 to 10 percent could be expected. In certain circumstances, certain funds had done 10 to 12 percent. Over the short period of time, certain funds have done phenomenal and have got – you even see it now, where a fund will perform better than 15 percent over a short period of time. (*Hearing Transcript in the Matter of John Daubney and Cheryl Littler*, dated October 15, 2007 at 61:11-17.)

[182] According to Investor Eight, Daubney explained that "the value of your portfolio could at times be less than the amount of money that you borrowed to purchase that investment," and that leveraged investing "is a long-term strategy."

[183] Investor Eight testified that he "believed" he and his wife invested $60,000 through Daubney. They used their home equity to leverage the investment, but Investor Eight did not say how much they borrowed. He did not take out a two-for-one loan.

[184] Investor Eight testified that he joined Investors Group in 1995, and at that time, he took over the management of his own investments and Daubney ceased to be involved. He also took over the portfolios of two of Daubney's clients at Investors Group. He admitted that he did not engage in any further leveraged investing after dealing with Daubney and has not done so on behalf of his own clients either. Indeed, he has moved into "lower-risk, more secure funds" because of his age and pending retirement.

c) Investor Nine

[185] Investor Nine and his wife met Daubney in the fall of 1996; they had been referred by a friend. At the time, Investor Nine was a 59 year old union representative, earning about $75,000 per year. His wife, who was 54, was a child counsellor. Investor Nine testified he told Daubney he had "minimal" investment knowledge, but wanted to plan for his retirement at age 65.

[186] Investor Nine's main asset at the time was his house, which was worth about $140,000, with about $5,000 left on the mortgage. He and his wife had investments with Investors' Group worth about $10,000 and a small RSP, worth about $2,000, for which he paid through payroll deductions.

[187] Investor Nine testified that Daubney arranged for him to take out a line of credit through the Orangeville branch of the Bank of Montreal. Investor Nine borrowed about $60,000, secured on his house, and gave it to Daubney to invest.

[188] In 1997, Investor Nine took advantage of an early retirement package offered by his employer. He testified that this "blew a hole in" his investment plan. He received a severance package of one-year's salary, and about $20,000 of it went to Daubney for additional investments.

[189] After Investor Nine retired, Daubney arranged for a new two-for-one loan at the Toronto Dominion Bank for $160,000 or $180,000. The proceeds of this were used to pay off the Bank of Montreal loan and the rest to buy more investments to be managed by Daubney. Investor Nine also transferred his Investors' Group funds and his RSPs to Daubney at this time.

[190] Investor Nine testified that at one time, in 2001 or 2002, his investments were worth three-quarters of a million dollars, but they went down in value. At no time did Investor Nine withdraw money except to make his loan payments. In about August 2006, when his funds had regained some of their lost value, Investor Nine sold them to pay off the TD loan and some other debts. He was left with $60,000.

[191] Investor Nine testified that Daubney explained that the risk of leveraging was that the borrower would have to repay the principal plus interest even if the value of the portfolio dropped. He also explained margin calls and that borrowing money to invest could magnify losses.

[192] In chief, Investor Nine testified that Daubney never said he would receive any particular rate of return: ". . . he would mention what the particular fund was averaging at that point in time, but he always made it very plain that there were no guarantees attached and that figure, whatever it was, the percentage could go up or it could go way down."

[193] Daubney also sold Investor Nine a life insurance policy with a face value of about $1 million. The premiums were over $1,000 a month, and Investor Nine paid them out of his severance payments. However, after no more than three months, he and his wife decided they could not afford the premiums. They considered whether they should keep the policy at all, but ultimately decided to reduce the coverage to $100,000, for which Investor Nine pays about $97 per month.

G. ANALYSIS

[194] We prefer the evidence of the Six Investors where it differed from Daubney's evidence. We find that each of them gave a plausible, coherent, appropriately detailed account of their dealings with Daubney. Their consistent evidence was corroborated by Littler's testimony, and by the documentary evidence.

[195] Indeed, two of the investors called by Daubney (Investor Seven and Investor Nine) gave similar accounts with respect to his approach to leveraging and risk. In any event, the issue before us is whether Daubney met his obligations as a registrant in his dealings with the Six Investors.

[196] Further, we find that Daubney's evidence did not help his cause. Rather, what came through clearly from his testimony was his misplaced confidence in the suitability of the advice he had given, his failure to understand basic investment concepts, and his perfunctory approach to his know-your-client and suitability obligations. We take the testimony of the investors called by Daubney as further indication that he did not know what an assessment of suitability properly entailed. It appears that Daubney called these witnesses to show that he took a consistent approach to explaining investment options and risks and that they appreciated the risks. However, we find that the evidence was unhelpful in determining that Daubney made suitable investment recommendations.

[197] We find that Daubney failed to comply with the know-your-client and suitability obligations under OSC Rule 31-505 and failed to deal fairly, honestly and in good faith with the Six Investors. We are not persuaded however, that Daubney gave undertakings to his clients relating to the future value of the investments he recommended, in breach of section 38(2) of the Act. Our detailed findings are as follows.

1. Know-Your-Client and Suitability

a) Knowing the Product

[198] We find that Daubney's knowledge of investment products and approaches was seriously deficient. In particular, his testimony demonstrated that:

- Daubney presented himself as a financial planner who would help his clients manage their finances for a comfortable retirement. However, his plan for nearly all the investors was to achieve maximum exposure to equity mutual funds through leveraging any leverageable asset. There was never a discussion of appropriate asset allocation and return objectives taking into account each investor's time horizon and risk tolerance.

- Daubney did not understand the risks inherent in the leveraging strategy he proposed. While it is true that markets have trended up over long periods of time, the long term trend is made up of years of positive and negative returns of varying magnitudes. Daubney recommended a strategy (or product if you will) that left his clients with few unencumbered assets (liquid or otherwise) to meet any margin calls in the event of a market downturn. His clients could not remain exposed to the market in the long run. Any significant downturn would immediately produce margin calls which would require mutual fund units to be sold. This would in turn reduce the assets securing the investment loans, which would then require more assets to be sold. If a downturn occurred during the years when a redemption fee was payable, a deferred sales charge would be deducted from the proceeds and the losses would be exacerbated.

- Daubney did not understand the risks inherent in BPI GOF as shown by his testimony on this product that it was a "high-yield conservative fund". BPI GOF was not a conservative fund as the risks were extensive, as outlined in paragraph 44 of these Reasons and Decision.

- We find that Daubney did not understand the effect of the BPI GOF distributions and the adverse tax consequences they could impose on his clients. Year end distributions include undistributed dividends, interest and capital gains earned in the year and can be taken in cash or reinvested in units. When the distribution is made it results in a decrease in the net asset value of the units of the fund (market fluctuations aside) which is offset by the cash distributed or the number of new units received upon such reinvestment. If an investor purchased the units just prior to the distribution and took the distribution in cash, they would effectively be getting back part of the money they had just invested with adverse tax consequences.

b) Knowing the Client

[199] We find that Daubney failed to make appropriate enquiries to assess his clients' investment needs and failed to assess their needs in any reasonable way. For example:

- Daubney testified that a client who was already invested in mutual funds was "a cut above the average in investment knowledge because a lot of people even today don't know what a mutual fund is." In cross-examination, he confirmed this was his view even if someone else had selected the mutual funds for the investor. Though the investment knowledge and experience of the investors who testified varied, none was a sophisticated investor, and all of them had previously invested in conservative products or products managed by others.

- Daubney did not understand the importance of time horizons in assessing an investor's tolerance for risk. His repeated assertions, to investors and before us, that the markets have shown a 12 percent annual rate of return since 1929, betrays a failure to understand that these investors, given their ages and retirement plans, had few earnings years left to them. This meant that (i) they would have little ability to recoup losses by working longer; and (ii) they would likely be depending on their earnings from those investments within only a few years. Each of the Six Investors was assessed by Daubney as having a risk tolerance of medium to high despite circumstances which clearly indicated that this was inappropriate. For example, it is clear that this level of risk would be totally inappropriate for an investor in the circumstances of Investor Two, who was facing a job loss, whose main asset was his house, and expressed concerns of losing his house; or, in the circumstances of Investor Four, who was 71 years old, whose main asset was her house, and felt she was unable to return to work.

- Daubney placed his clients in a position where they owned insufficient unencumbered liquid assets to meet any margin calls.

- His plan failed to consider the Six Investors' expressed desire for safe investments in their retirement years and in particular their concern to ensure their main asset – their home – was secure.

[200] In short, Daubney recommended a standard investment package that took very little account of the financial circumstances and investment needs of these particular investors, and exposed them to risks of severe losses from which they could not recover should the market decline significantly.

[201] We find that these investors were relatively vulnerable because of their lack of investment knowledge. We accept their evidence that they relied on Daubney's advice. We also find that this was or should have been evident to Daubney. While we recognize that clients have responsibilities to understand the potential risks and returns on their investments, this does not relieve Daubney of his duty as a registrant to make certain that they have this understanding and to make appropriate recommendations, especially in circumstances where he is dealing with investors who have relatively little investment experience.

[202] We find that, while Daubney did question his clients in detail about their financial circumstances, including, in particular, their liquid and illiquid assets and ability to earn, he did not do so in order to assess from an objective viewpoint their ability to "ride out" a bad market and recoup market losses. Instead, Daubney focussed on whether they were willing to borrow money to fund their investments and how much they could borrow. He disregarded the central importance of risk tolerance in recommending suitable investments. We agree with the following statement made by the ASC in *Re Lamoureux*, *supra* at 17:

> The suitability of an investment product for any prospective investor will be determined to a large measure by comparison of the risks associated with the investment product with the risk profile of the investor. This comparison is probably the most critical element in the registrant's suitability obligation.

c) Suitability

[203] We find that Daubney failed to recommend suitable investments for the Six Investors. Indeed, the investment approach he recommended was highly risky and fundamentally unsuitable for these investors, by any reasonable standard.

[204] We find that Daubney recommended excessive leveraging that was entirely unsuitable for these investors because: (i) they did not have sufficient income or unencumbered liquid assets to be able to respond to any market reverses; (ii) for many of the investors, their homes were their main assets; (iii) they were retired, about to be unemployed or close to retirement and had few earnings years left in which to make up any losses; and (iv) they told Daubney they wanted conservative investments that did not threaten their financial security.

[205] We also find that Daubney's investment recommendations to the Six Investors were unsuitable in that:

- He focussed almost exclusively on seeking sufficient investment growth to cover the cost of borrowing. He essentially invested 100 percent of the Six Investors' portfolios in equity mutual funds. Though the investors were retired, planning for retirement, or about to be unemployed, Daubney considered only their desire for added retirement income, and failed to consider their limited ability, once retired, to recoup market losses, or their expressed need, as investors, for security in their retirement.

- His decision to sell only back-end-loaded funds meant that an investor who was forced to sell early at a loss in order to satisfy a margin call was faced with an additional cost at the time of redemption.

- Daubney's testimony that he would advise investors to "run to cash" in the event of a market downturn was aimed at calming their concerns of having excessive leverage. In practice, Daubney could not execute this part of the strategy.

[206] We do not believe Daubney's testimony that he clearly explained the risks of the investments he recommended, as well as the benefits. We prefer the evidence of the investors that he focused on high rates of return, and virtually disregarded the potential for disaster in the combination of leveraged investing in high-risk investment products. We find that he disregarded or gave scant regard to relative risks.

[207] Further, Daubney did not seem to understand the risks associated with BPI GOF. Indeed, his decision to recommend this fund to these investors suggests he may not have read or understood the clear language of the OM. Daubney however, placed three of the Six Investors into this fund.

[208] We find that BPI GOF was unsuitable for these investors because: (i) the $150,000 minimum investment was too large a portion of their net worth to allow for appropriate asset allocation; (ii) its high risk nature, which is clearly set out in the OM, made it unsuitable for leveraged investing; (iii) in any event, it was unsuitable considering their personal and financial circumstances; and (iv) it did not offer the tax benefits Daubney believed it did.

[209] Though Daubney's role in selling insurance products is not an issue before us, we note that he took the same reckless approach in recommending the purchase of Universal Life insurance policies to some of the Six Investors as part of their investment package. It should have been clear to him that they would not be able to carry the very high premiums these insurance policies required in conjunction with the debt service obligations on their investment loans.

d) The Role of the Clients and the Registrant

[210] We take particular exception to any suggestion that Daubney's clients are responsible for their unsuitable investments. While investors are well advised to be cautious in choosing investments, the Act places the duty of care on the registrant, who is better placed to understand the risks and benefits of any particular investment product. That duty cannot be transferred to the client. This has been made clear in previous Commission decisions. For example, in *Re Marchment & MacKay Ltd. et al.* (1999), 22 O.S.C.B. 4705 ("*Re Marchment*") at 4735, the Commission said:

> The obligation to determine suitability clearly rests with the registrant. Although the co-operation of the customer is necessary to enable the registrant to discharge his or her obligation, a registrant cannot transfer this obligation to the customer by expecting the customer to highlight discrepancies between the assessments recorded by the junior salesmen on a new client application form and the customer's own risk tolerance.

[211] In any event, there was no evidence that Daubney's clients received suitable investment advice from him which they disregarded. Instead, we heard consistent evidence from the investors that they depended on Daubney for his recommendations. We accept the investors' evidence. Also, we find that these investors told Daubney everything he needed to know to assess their risk tolerances and yet his recommended investment approach was entirely unsuitable for them.

[212] In *Re Marchment*, *supra* at 4708, the Commission stated:

> The duty to know the client's investment objectives, financial means and personal circumstances, and to recommend only those investments which are suitable for the client is fundamental to the obligation of every dealer and registered representative dealing with the public.

[213] A registrant's failure to meet those obligations is amongst the most serious of allegations. As stated by the Commission, the know-your-client and suitability requirements "are an essential component of the consumer protection scheme of the Act and a basic obligation of a registrant, and a course of conduct by a registrant involving a failure to comply with them is an extremely serious matter" (*Re E.A. Manning Ltd. et al.*, *supra* at 5339).

2. Representations as to the Future Value of Securities

[214] Staff alleged that by presenting overly optimistic forecasts of investment returns, Daubney contravened subsection 38(2) of the Act. In the alternative, Staff alleged that by failing to make balanced representations concerning the future value of their investments, Daubney failed to deal fairly, honestly and in good faith with the Six Investors and contravened section 2.1(2) of OSC Rule 31-505.

[215] Daubney denies guaranteeing any particular rate of return to his clients. He submitted that none of the Six Investors testified that he guaranteed a specific rate of return. Rather, their testimony was consistent with his evidence that he provided examples of potential returns based on historical trends in the market.

[216] Subsection 38(2) of the Act states:

> No person or company, with the intention of effecting a trade in a security, shall give any undertaking, written or oral, relating to the future value or price of such security.

[217] As stated above, we find that Daubney gave insufficient consideration to risks in making investment recommendations for the Six Investors. However, while the evidence indicates that Daubney frequently discussed the performance of the stock market over the given period and, in this regard, often referred to a longer term return of 10 to 12 percent per annum or even higher, we do not find that these discussions amounted to an undertaking relating to the future value or price of a security under subsection 38(2) of the Act.

[218] We however, do find that Daubney failed to deal fairly, honestly and in good faith with his clients, based on his failure to describe the negative as well as the positive aspects of his proposed leverage investment program.

H. CONCLUSION

[219] Accordingly, we find that Daubney violated the "know-your-client" and suitability requirements of OSC Rule 31-505 by making unsuitable investment recommendations to the Six Investors who form the subject of Staff's allegations and by failing to deal fairly, honestly and in good faith with the investors. We find that Daubney utterly failed to fulfill his obligations as a registrant under the Act, and his conduct caused great harm to the investors who relied on him.

[220] Indeed, this is an egregious case of a registrant's reckless disregard of his obligations under the Act. We find that Daubney has acted contrary to the public interest.

[221] The parties shall contact the Office of the Secretary within 10 days of this decision to set a date for a sanctions hearing, failing which a date will be fixed by the Office of the Secretary.

DATED in Toronto this 30th day of April, 2008.

"Robert L. Shirriff"

"Carol S. Perry"

"Margot C. Howard"

3.1.2 John Alexander Cornwall et al. - ss. 127, 127.1

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
JOHN ALEXANDER CORNWALL, KATHRYN A. COOK,
DAVID SIMPSON, JEROME STANISLAUS XAVIER,
CGC FINANCIAL SERVICES INC. AND FIRST FINANCIAL SERVICES

REASONS AND DECISION ON SANCTIONS AND COSTS
(Sections 127 and 127.1 of the Securities Act)

Hearing:	February 27, 2008		
Decision:	May 5, 2008		
Panel:	Robert L. Shirriff, Q.C.	-	Commissioner and Chair of the Panel
	David L. Knight, FCA	-	Commissioner
	Margot C. Howard, CFA	-	Commissioner
Counsel:	Melanie Adams	-	For the Ontario Securities Commission
	Alistair Crawley Anna Markiewicz	-	For Jerome Stanislaus Xavier
	Ian Smith	-	For Kathryn A. Cook
	John Alexander Cornwall	-	For himself and CGC Financial Services Inc.
	David Simpson	-	For himself and First Financial Services

REASONS AND DECISION ON SANCTIONS AND COSTS

I. Background

[1] This was a bifurcated hearing before the Ontario Securities Commission (the "Commission") pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make an order with respect to sanctions and costs against John Alexander Cornwall ("Cornwall"), Kathryn A. Cook ("Cook"), David Simpson ("Simpson"), Jerome Stanislaus Xavier ("Xavier"), CGC Financial Services Inc. ("CGC Financial") and First Financial Services ("First Financial") (collectively, the "Respondents").

[2] The hearing on the merits was held on February 21-23, 2007, April 23-25, 2007 and May 23-24, 2007, and a decision was rendered on November 30, 2007.

[3] Following the release of the decision on the merits, we held a separate hearing on February 27, 2008, to consider additional evidence and submissions from Staff and the Respondents regarding sanctions and costs (the "Sanctions and Costs Hearing").

[4] As at the hearing on the merits in this matter, Cornwall/CGC Financial and Simpson/First Financial were not represented by counsel; however they consented to proceed without the assistance of counsel.

[5] The Sanctions and Costs Hearing was attended by Staff of the Commission ("Staff"), Simpson, counsel for Xavier, and counsel for Cook.

[6] Cornwall did not attend the Sanctions and Costs Hearing; however, he consented to have the hearing proceed in his absence.

[7] Simpson arrived late at the Sanctions and Costs Hearing; however, he gave his consent for us to begin the hearing in his absence.

[8] These are our reasons and decision as to the appropriate sanctions and costs to order against the Respondents.

II. Reasons and Decision Dated November 30, 2007

[9] The Commission found that the Respondents were involved in a scheme that induced 87 vulnerable individuals to transfer $1,957,200 in aggregate, from their locked-in retirement savings plans ("RSPs") into new trust accounts for the purpose of investing in shares of one of four private companies, Themis Hospitality Inc. ("Themis"), Stramore Inc. ("Stramore"), Faelen Concepts ("Faelen") and Camcys Inc. ("Camcys") (collectively, the "Private Companies").

[10] The shares of the Private Companies were then used as collateral security for loans to the investors for approximately 65% to 75% of their original investment.

[11] The Private Companies were held out to be Canadian Controlled Private Corporations ("CCPCs"), shares of which can constitute a qualified investment under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) and its Regulations for a locked-in RSP. However, the Private Companies did not qualify as CCPCs. As a result, the funds transferred out of the investors' locked-in RSPs were taxable as income, resulting in significant adverse tax consequences. The shares themselves had little or no value compared to their purchase price.

[12] The Commission found that this scheme, and the Respondents who designed and executed it, violated Ontario securities law. Specifically, the following findings were made:

(i) Cornwall, Simpson and Xavier participated in an illegal distribution of securities contrary to section 53(1) of the Act by trading in the securities of the Private Companies for which there was no exemption from the registration and prospectus requirements of the Act;

(ii) Xavier acted contrary to section 1.5 of Ontario Securities Commission Rule 31-505 by failing to ascertain the general investment needs and objectives of the investors who purchased shares of the Private Companies and the suitability of such purchases for these investors;

(iii) Xavier acted contrary to section 25(1) of the Act by failing to process trades through Keybase Investments Inc. ("Keybase"); and

(iv) Cornwall/CGC Financial, Simpson/First Financial, Xavier and Cook engaged in conduct contrary to the public interest.

(*Re Cornwall* (2007), 30 O.S.C.B. 10063 at para. 206)

[13] In addition, the Commission found that Cornwall, CGC Financial, Simpson, First Financial and Xavier took unfair advantage of people in need of immediate financial assistance (Re Cornwall, supra at paras. 192 and 196).

[14] It is this conduct that we must consider when determining the appropriate sanctions and costs to order in this matter.

III. Additional Evidence Adduced at the Sanctions and Costs Hearing

[15] In addition to the evidence led at the hearing on the merits, Staff provided evidence relating to costs of the investigation and the hearing.

[16] We were provided with a schedule listing the date, number of hours worked, and information as to the type of work that was done by each Staff member involved in this matter. The Respondents did not contest this evidence.

[17] None of the Respondents adduced additional evidence at the Sanctions and Costs Hearing.

IV. Submissions

1. Staff

i. Sanctions Requested

[18] In their written submissions, Staff requested that the following order be made against the Respondents:

(i) that the registration of Xavier be terminated;

(ii) that the Respondents cease trading in any securities permanently;

(iii) that any exemptions contained in Ontario securities laws not apply to the Respondents permanently;

(iv) that Cornwall, Simpson, Xavier and Cook resign from any positions they hold as an officer or director of any issuer;

(v) that Cornwall, Simpson, Xavier and Cook be prohibited from becoming or acting as a director of any issuer permanently;

(vi) that the Respondents be reprimanded;

(vii) that the Respondents disgorge to the Commission the following amounts: CGC Financial/ Cornwall - $367,000; Simpson/First Financial - $130,000; Xavier $45,700; Cook - $13,900; and

(viii) that the Respondents jointly pay the costs of Staff's preparation and conduct of the hearing in the amount of $108,599.25.

[19] According to Staff, the aforementioned sanctions are appropriate in this case because the proven allegations in relation to illegal distributions, unregistered trading, breaches of OSC Rule 31-505 and conduct contrary to the public interest are extremely serious and have had a significant impact on the investing public. The scheme in this case involved 87 Canadian investors and raised over $1.9 million.

[20] Given the nature of the conduct in this matter, it is the position of Staff that the sanctions sought are appropriate.

[21] To justify the sanctions sought Staff referred us to Commission cases that dealt with conduct similar to the present case. First, Staff relied on *Re Ochnik* (2006), 29 O.S.C.B. 3929. This case involved a scheme whereby investors (most of whom were experiencing financial hardship) were advised to collapse their locked-in RSPs or pensions in order to purchase shares in a private company in exchange for a non-repayable loan for between 40% and 60% of the original investment. The Commission found that this scheme was contrary to the public interest. The respondents had traded without being registered under the Act, and the trades were not exempt from the prospectus requirements of the Act. The Commission ordered that the respondents cease trading permanently and also ordered a removal of exemptions permanently. Further, Ochnik was permanently prohibited from acting as a director or officer of any issuer.

[22] Another case referred to by Staff was *Re Verbeek* (2005), 29 O.S.C.B. 69 and (2005), 28 O.S.C.B. 7106. In this case investors transferred their locked-in RSP funds into new trust accounts for the purpose of purchasing shares in CCPCs that were used as collateral security for loans representing between 60% and 80% of the original investment. The Commission found that Verbeek had participated in at least 670 transactions involving funds in excess of $17 million, and the sanctions imposed were: (1) termination of registration; (2) a reprimand; (3) a permanent cease trade order; (4) resignation and prohibition from acting as an officer or director of an issuer; and (5) costs in the amount of $94,618.75.

ii. Aggravating Factors

[23] In Staff's view, there are a number of aggravating factors which justify making an order to remove the Respondents permanently from participating in the Ontario capital markets. In particular, Staff referred us to the following aggravating factors:

(i) the Respondents made representations to investors that were misleading, inaccurate and untrue;

(ii) the materials provided to investors by the Respondents were fraudulent and fictitious;

(iii) most investors never underwent a meaningful assessment of their investment objectives;

(iv) documents with forged signatures were submitted to trust companies;

(v) investments were made without proper, or any, instructions from clients;

(vi) three of the four Private Companies were shell companies that never engaged in any legitimate business enterprise;

(vii) investors were subjected to significant administrative fees;

(viii) the shares of the Private Companies had little or no value;

(ix) investors were urged to repay their loans;

(x) investors had to pay tax on the entire value of the locked-in RSP that had been collapsed, which resulted in further victimization by the Respondents; and

(xi) the Respondents took unfair advantage of people in need of immediate financial assistance.

[24] Further, with respect to Xavier, Staff submitted that it is an aggravating factor that Xavier failed to meet the high standard of conduct expected of a registrant. According to Staff, Xavier acted in a careless and cavalier manner with the investing public, abdicating his responsibilities and role as a registrant.

iii. Costs

[25] Staff submitted that pursuant to section 127.1 of the Act, the Respondents should be ordered jointly to pay costs in the amount of $108,599.25 to indemnify the Commission for expenses and to recover a portion of the costs incurred during the hearing.

[26] According to Staff, the costs claimed in this case are reasonable and conservative because they are only for the lead litigator and investigator. No costs were sought for other investigators, counsel, clerks or assistants. Further, Staff explained that costs were only being sought for the preparation for and attendance at the hearing of this matter on the merits. No costs were sought for any time related to the investigation of this matter, or for the sanctions portion of this proceeding.

[27] To support their claim for costs, Staff provided information specifying the hours worked by Staff employees in this matter.

2. Xavier

[28] Counsel for Xavier made oral submissions at the Sanctions and Costs Hearing.

[29] Counsel for Xavier acknowledged at the outset that there were serious findings against Xavier in that he breached his duties to his clients and breached provisions of the Act. In particular, Xavier acknowledged that he breached his role as a registrant and gatekeeper and, in the words of his counsel, “his lack of appreciation of his role in those capacities has resulted in this finding. And he is now well aware of it.”

[30] Notwithstanding this acknowledgement, counsel for Xavier submitted that the sanctions sought by Staff are greatly excessive and disproportionate.

[31] Counsel for Xavier pointed out that Xavier was not the mastermind, nor the architect of the scheme. He did not create the Private Companies, he did not solicit investors, he did not provide documents connected with the Private Companies and he did not place any newspaper advertisements. Xavier only got involved with investors after they had decided to invest in these companies.

[32] Further, counsel for Xavier submitted that the fees earned by Xavier ($45,700) were significantly less than those earned by Cornwall ($367,000) and Simpson ($130,000).

[33] Counsel for Xavier also explained that Xavier’s conduct in this matter was the result of a number of misconceptions. First, Xavier was under the misconception that by opening the accounts for these transactions, he was not in fact acting in his capacity as a registered representative, which explains his lack of attention to the “know your client” forms he completed or received. Secondly, he was not aware of any impropriety as he had reviewed the proposal with his superiors at Keybase, and he believed that they did not have any concerns. In addition, based on the opinion letters from Cook, Xavier believed that investing in the Private Companies would not trigger adverse tax consequences.

[34] Moreover, Counsel for Xavier pointed out that with the exception of Xavier’s involvement with Cornwall and Simpson, Xavier has never had any problems with any regulator. Specifically, counsel for Xavier referred to the fact that it has been four years since the Statement of Allegations was issued in this matter and seven years since the matters at issue took place and during this time period Xavier has not been involved in any problems with securities commissions and has not received any client complaints. According to counsel for Xavier, this demonstrates that Xavier does not pose a threat to the capital markets.

[35] As a mitigating factor, counsel for Xavier submitted that Xavier cooperated with the investigation in this matter from the beginning.

[36] Counsel for Xavier also submitted that Xavier's situation can be distinguished from *Re Verbeek* on a number of grounds:

(i) Verbeek was registered not only as a mutual funds salesperson, but also as a salesperson for equities and securities, and as a result, had greater experience in the market place than Xavier;

(ii) Verbeek was a branch manager, whereas Xavier was a salesperson;

(iii) Verbeek admitted to intimate involvement with the promotion and sale of shares of a private company and, in the case before us, this role was undertaken by Cornwall and Simpson not Xavier;

(iv) Verbeek solicited investors by placing advertisements in newspapers, responding to calls from investors and meeting with investors who responded to newspaper advertisements. Conversely, Xavier did not solicit investors; they had already made the decision to invest by the time they came into contact with Xavier;

(v) Verbeek processed approximately 670 transactions with a value in excess of $17 million, whereas the present case involved 87 transactions with a value of less than $2 million;

(vi) Verbeek completed loan documents and explained the loans to numerous investors, whereas in the present case, the evidence at the hearing on the merits revealed that only one investor discussed the loans with Xavier;

(vii) the Commission brought to Verbeek's attention its reservations with respect to members of the public investing in locked-in RSPs and investing those funds in small companies. Conversely, Xavier was not alerted to this issue; and

(viii) Verbeek denied receiving any compensation from processing the loan transactions, whereas Xavier admitted from the beginning that he received fees for helping investors to open their accounts, and these fees were reported in Xavier's income tax returns.

[37] With respect to the termination of Xavier's registration, counsel for Xavier submitted that there had to be some specificity in terms of the time period of such termination so that upon its expiration, Xavier could reapply for registration.

[38] As an alternative to termination, suspension of registration was suggested. Further, it was submitted that the time period in question should be proportionate to the circumstances and not punitive. In determining an appropriate time period for the suspension of registration, counsel for Xavier submitted that Xavier's ability to earn a livelihood should be considered and that a range of 6 months to 12 months would be appropriate and sufficient to provide personal and general deterrence.

[39] Counsel for Xavier also submitted that any sanction imposed on Xavier should be related to the allegations brought against Xavier. For instance, Xavier was not involved as an officer or director with any of the Private Companies; thus, a prohibition from acting as an officer and director should not be imposed on him. In addition, counsel for Xavier argued that, should a cease trade order be issued against him, he should have the benefit of a carve-out to permit him to manage his personal finances.

[40] As for costs, it was submitted that costs should not be paid jointly by the Respondents. Instead costs should be apportioned to each individual respondent. As such, the circumstances of each respondent to pay costs should be considered. Counsel for Xavier submitted that Xavier's ability to pay should be taken into account in the assessment of costs.

3. Cornwall and CGC Financial

[41] Although Cornwall did not appear at the Sanctions and Costs Hearing, he did provide the Panel with written submissions on behalf of himself and CGC Financial.

[42] Cornwall submitted that he and CGC Financial were not solely responsible for all of the conduct that took place. Cook, the chartered accountant, and Xavier, the registrant, were integral to the scheme, and without the participation of both of these professionals, the investment scheme would not have taken place.

[43] Cornwall also submitted that investors were cautioned that: (i) there might be negative implications with the Canada Revenue Agency; (ii) this was a high-risk investment; thus, it was possible that investors might lose all or part of their investment; and (iii) investors were advised to seek legal advice before signing. Staff pointed out that we were not provided with any supporting evidence in connection with this submission.

[44] Further, Cornwall admitted in his written submissions that in hindsight, he was irresponsible for not obtaining legal advice. He also pointed out that during the course of this proceeding, he cooperated with Staff, and that we should consider this to be a mitigating factor in his favour.

[45] With respect to the quantum relating to the profits made by Cornwall, it is Cornwall's position that there is insufficient evidence connecting him to the profits. Specifically, Cornwall's written submissions state:

> I submit that I did not receive $367,000.00; this as given in evidence is a guesstimate of Mr. Boyle. When Mr. Boyle gave his evidence in chief he was not sure of how much money was transferred and who received what. On cross-examination by Ms Anna Markiewicz as to how much money was received Mr. Boyle shrugged his shoulders and stated he did not know.
>
> […] I submit that this amount of $367,000.00 be given little or no credit.

[46] As for the issue of costs, Cornwall takes the position that costs should not be payable jointly by the Respondents but that they "be separated amongst each respondent and Corporation". He also submitted that in other Commission cases, such as Re Verbeek, a lower quantum of costs was ordered.

[47] Cornwall submitted that delay in the proceeding was not due to the Respondents, but instead to Staff. However, Cornwall did not provide any evidence on this point. Cornwall also referred to Charter arguments on the issue of delay of proceedings.

[48] Cornwall also submitted that his conduct was different from Re Verbeek, one of the authorities that Staff relied on to support their position. He stated in his written submissions that:

> In the Brian Verbeek case Mr. Verbeek processed 670 files processing over $17,000,000.00 and had over 100 waiting to be transferred. He was levied cost of $94,618.74. In my case with 87 transactions and $1,900,200.00 the investigation costs should have been 80% less. I therefore respectfully submit that a large portion of the time billed to this case is overlapped on the Verbeek hearings. It should also be noted, and I respectfully submit that Mr. Verbeek continues to sell shares in small business properties after the January 2001 period. Myself and the other respondents has stopped in December 2000, before Mr. Boyle had made a visit to my office in 2001.

[49] Cornwall submitted that during the investigation of this case, witnesses were "open to be influenced by investigators that feed misinformation, or very suggestive information to the witness." However, we note that no evidence of this type of conduct was put before us.

[50] Cornwall also referred to the following mitigating factors in his written submissions: (1) since the charges were laid, he and his family have suffered for seven years; (2) he has a serious health problem for which he had surgery in October 2007; (3) he has remorse for the grief caused to his family and "remorse for the grief to some of the annuitants that want to redo the process"; and (4) many past clients have thanked him and some wanted to testify on his behalf. With respect to the fourth point, Cornwall did not provide any evidence regarding his clients' attitudes or perceptions.

[51] Finally, Cornwall submitted that the following sanctions would be appropriate in his case: (1) not to trade in securities save and except for an RSP limited to himself; (2) not to sit on any board of a publicly traded company for 25 years; (3) not to own any corporation that is an issuer; and (4) the costs assessed against him and CGC Financial Services be $15,000.00.

4. Simpson and First Financial

[52] Simpson provided oral and written submissions on behalf of himself and First Financial. It is his position that the sanctions sought by Staff are excessive.

[53] With respect to his conduct in this matter, Simpson submitted that he was not a mastermind behind the structure of the scheme. According to Simpson's written submissions, Simpson was only involved in approximately 30 transactions totalling approximately $700,000.00.

[54] Further, he pointed out that his involvement was limited to two of the Private Companies, Themis and Stramore. Themis repurchased its shares from investors, and Stramore repurchased some of its shares from investors. Simpson also pointed out that Stramore is still an active and viable company.

[55] Simpson takes the position in his written submissions that he and First Financial met all their obligations to the RSP holders and that numerous other companies were offering similar investment opportunities.

[56] Simpson submitted that any sanctions imposed should be limited to public issuers and not all issuers. Simpson's argument was that he is self-employed and in order for him to make a living the sanctions imposed should not restrict him from being involved with any private companies.

[57] With regard to costs, Simpson submitted that the amount sought by Staff is excessive and that he cooperated with investigators and Staff in this matter. Simpson also informed us that he personally has incurred $30,000 in legal fees and related costs in this matter.

[58] In addition, Simpson also asked that an RSP carve-out for personal accounts be made available to him to permit him to manage his personal finances.

5. Cook

[59] Counsel for Cook provided oral and written submissions. In particular counsel for Cook emphasized that throughout this proceeding Cook admitted her involvement, took responsibility for her actions and showed remorse, and as a result, Cook should be given credit for this in terms of the sanctions imposed on her. In addition, Cook was disciplined by the Institute of Chartered Accountants of Ontario at a hearing in this matter where she pleaded guilty and acknowledged her conduct.

[60] With respect to imposing a permanent trading ban, counsel for Cook submitted that this sanction is excessive. It was submitted that none of Cook's conduct in this matter related to trading. She did not own or transfer any securities and did not solicit investors. Accordingly, it was submitted that Cook does not represent a danger to the investing public and that there is no need for specific deterrence in her case. As a result, a trading ban is not appropriate. In the alternative, it was submitted that if a trading ban were imposed, Cook's conduct does not merit a lengthy ban, and she should be provided with an RSP carve out.

[61] Counsel for Cook also submitted that Cook should not be permanently banned from acting as an officer or director because a permanent ban would be disproportionate to the gravity of her conduct in this case.

[62] Further, counsel for Cook submitted that a reprimand would be unnecessary because Cook was already reprimanded by the Institute of Chartered Accountants of Ontario.

[63] Counsel for Cook also pointed out a number of mitigating factors that should be considered when imposing sanctions, particularly, Cook's ability to pay. She is a single mother with three university aged children and she has experienced financial difficulties. With the exception of being disciplined by the Institute of Charted Accountants of Ontario in this matter, Cook has no other disciplinary or regulatory history.

[64] With respect to costs, counsel for Cook emphasized that from the outset of this proceeding, Cook cooperated with the Commission and this minimized costs attributable to her. As such, counsel for Cook submitted that costs in the amount of $3,000.00 or less would be appropriate.

V. Analysis

1. Relevant Considerations for Imposing Sanctions

[65] Pursuant to section 1.1 of the Act, the Commission has the mandate to: (i) provide protection to investors from unfair, improper or fraudulent practices; and (ii) foster fair and efficient capital markets and confidence in capital markets.

[66] Protection of investors is an important aspect of the Commission's public interest jurisdiction, and this was articulated by the Commission in *Re Mithras Management Inc.*:

> […] the role of this Commission is to protect the public interest by removing from the capital markets -- wholly or partially, permanently or temporarily, as the circumstances may warrant -- those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all. (*Mithras*, *supra* at 1610 and 1611)

[67] As stated by the Supreme Court of Canada in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132, the Commission's public interest jurisdiction is neither remedial nor punitive; instead, it is protective and preventative, and it is intended to prevent future harm to Ontario's capital markets (at para. 42).

[68] In determining the appropriate sanctions to order in this matter, we must consider the specific circumstances in this case and ensure that the sanctions are proportionate (*Re M.C.J.C. Holdings*, (2002), 25 O.S.C.B. 1133 at para. 26).

[69] *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 provides at page 7746 a list of non-exhaustive factors to consider when imposing sanctions:

(i) the seriousness of the allegations;

(ii) the respondent's experience in the marketplace;

(iii) the level of a respondent's activity in the marketplace;

(iv) whether or not there has been a recognition of the seriousness of the improprieties;

(v) whether or not the sanctions imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets; and

(vi) any mitigating factors.

[70] Additional factors to consider were also set out in *Re M.C.J.C. Holdings Inc.*:

(i) the size of any profit or loss avoided from the illegal conduct;

(ii) the size of any financial sanctions or voluntary payment when considering other factors;

(iii) the effect any sanction might have on the ability of a respondent to participate without check in the capital markets;

(iv) the reputation and prestige of the respondent; and

(v) the shame or financial pain that any sanction would reasonably cause to the respondent and the remorse of that respondent.

(*Re M.C.J.C. Holdings Inc.*, *supra* at para. 26)

[71] In addition, general deterrence is another important factor that the Commission should consider when determining appropriate sanctions. In *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672, the Supreme Court of Canada at paragraph 60 established that "[…] it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative".

2. Appropriate Sanctions

i. Disgorgement

[72] First, we find that in the circumstances it is inappropriate for us to order disgorgement in this case. We recognize that as pointed out in Cornwall's written submissions, the numbers relating to amounts obtained by some of the Respondents as a result of non-compliance with the Act are estimates. This is also evident from our Reasons and Decision on the merits, where we acknowledged that Staff provided estimates and approximations of these amounts. For example, we state in our Reasons and Decision on the hearing on the merits that:

> Boyle estimated – based on a figure of 65% of the total amount invested being returned to investors – that Cornwall/CGC Financial received gross proceeds of approximately $367,000. Although this amount is an estimate and is imprecise we do find that Cornwall/CGC Financial received a substantial amount. (*Re Cornwall*, *supra* at para. 102)

[73] Further, at paragraphs 109 and 131 of our Reasons and Decision on the merits, we note that the numbers relating to the bulk of the amounts improperly obtained are estimates or approximations.

[74] Also, there is a lack of concrete and coherent evidence linking these estimates or approximations to individual Respondents. In this case, where there is such imprecision and inaccuracies with respect to amounts improperly obtained and by whom, we do not consider it appropriate to order disgorgement.

[75] The parties made submissions on the Commission's jurisdiction to order disgorgement; however, as we do not consider it to be an appropriate case to order disgorgement, it is unnecessary for us to address these jurisdictional submissions.

ii. Charter Arguments

[76] One of the Respondents took the position that the delay in this matter coming before the Commission was an infringement of his Charter rights "to be tried within a reasonable time" pursuant to section 11(b) of the Charter.

[77] Staff took the position that section 11 of the Charter does not apply to this proceeding because it is an administrative proceeding and the sanctions sought are not penal in nature. We accept Staff's position in this case and rely on the position of the Supreme Court of Canada on this issue:

> Proceedings of an administrative nature instituted for the protection of the public in accordance with the policy of a statute are also not the sort of "offence" proceedings to which s. 11 is applicable. But all prosecutions for criminal offences under the Criminal Code and for quasi-criminal offences under provincial legislation are automatically subject to s. 11. They are the kind of offences to which s. 11 was intended to apply. (*R v. Wigglesworth*, [1987] 2 S.C.R. 541 at para. 23)

iii. Xavier

[78] Xavier has been registered under the Act since September 1999 as a mutual funds salesperson with Keybase. At the hearing on the merits in this matter, it was found that Xavier abdicated his responsibilities and failed to live up to the high standard of conduct required by registrants (*Re Cornwall*, *supra* at paras. 154-172). Xavier's experience as a registrant and participant in the capital markets is important to our determination of appropriate sanctions. Registration is a privilege, not a right, and the Commission has the power to restrict registration of individuals who, as registrants, do not fulfill their duties and/or abuse the capital markets and investors.

[79] Specifically, Xavier provided blank trust company client application forms, blank Keybase application forms and blank Revenue Canada forms, for Cornwall to complete when he met with investors. This action was integral to the functioning of the general investment scheme. Xavier processed the completed forms in order to collapse the original RSP, transfer the funds thereby obtained into the new accounts and complete the purchases of the shares in the Private Companies for the investors. Many of these forms were processed by Xavier without his having spoken to or having met with the investors even though his name appeared as the registered representative and/or investment advisor on the accounts of the investors (*Re Cornwall*, *supra* at paras. 12 and 134). In addition, some of these forms contained inaccurate information and forged signatures.

[80] By participating in this scheme, Xavier earned approximately $46,000.

[81] Counsel for Xavier argued that Xavier's conduct can be distinguished from Cornwall and Simpson and the conduct described in *Re Verbeek*. While we do recognize that Xavier was not the architect of the scheme, we find that his participation was integral to the successful functioning of the scheme. Without Xavier's participation, the scheme would not have worked.

iv. Cornwall and CGC Financial

[82] At the hearing on the merits in this matter, we found that Cornwall was one of the architects of the investment scheme in this matter. He helped to create two of the four Private Companies, solicited investors by placing advertisements in various newspapers and met with those who responded. He also had the investors sign the documentation necessary to permit the realization and transfer of their RSP funds, arranged for the purchase of the shares of the Private Companies and had the investors sign loan agreements, including a fee agreement (*Re Cornwall*, *supra* at paras. 8, 71, 187-190). These are important factors to consider when determining the appropriate sanctions to impose in this matter.

[83] This scheme also targeted vulnerable investors who were experiencing financial hardship. In our view, this deliberate conduct justifies restricting Cornwall's and CGC Financial's participation in the capital markets. Such a sanction would provide specific and general deterrence.

[84] Another relevant factor we considered was Cornwall's experience in the market place. Cornwall was registered under the Act from April 11, 2000 to October 5, 2001 as a scholarship plan dealer. As a registrant, Cornwall should have been aware of his obligations to investors and the high standard of conduct that is required from a registrant.

[85] We also find that Cornwall did not recognize the seriousness of his improprieties, which is also an important sanctioning factor to consider. Instead, in his written submissions, Cornwall attempted to justify the scheme he orchestrated by explaining that investors were advised that the investments were high risk, that they could lose all or part of the investment and that investors were advised to seek legal counsel. Further, Cornwall did not show remorse vis-à-vis all the adversely affected

investors, he only exhibited remorse regarding his personal and family situation, and "the annuitants that want to redo the process".

v. Simpson and First Financial

[86] Simpson was the sole director of First Financial, and he was involved with two of the Private Companies. Along with Cornwall, he was an architect of the scheme at issue. By his own admission, Simpson introduced Cornwall to the scheme and together they finalized its details prior to its implementation. In particular, Simpson:

(1) paid for newspaper advertisements offering people the opportunity to gain access to funds in their locked-in RSPs;

(2) together with Cornwall sought out investors and arranged for the issuance to them of shares in two of the Private Companies (Themis and Stramore);

(3) caused Themis and/or Stramore to transfer a substantial portion of the proceeds received from the investors on the purchase of their shares to First Financial;

(4) met with investors with respect to the loans made to them after the purchase by the investors of shares in Themis and/or Stramore; and

(5) arranged for the investors to sign loan agreements with First Financial, including a fee agreement.

(*Re Cornwall*, *supra* at paras. 188-190)

[87] Simpson and First Financial received significant proceeds from this scheme. While Simpson did receive fewer proceeds than Cornwall, his involvement and the amounts obtained were significant.

[88] In addition, while Simpson was not registered under the Act, he did have experience as an unregistered mortgage dealer, and did have knowledge of financial matters.

[89] We also note that Simpson did not recognize the seriousness of his improprieties. For example, in his written submissions, Simpson stated that he and First Financial met all their obligations to the RSP holders. He also attempted to justify his conduct by stating in his written submissions that numerous other companies were offering similar investment opportunities.

vi. Cook

[90] Cook played an integral role in this scheme. She provided opinion letters that shares of the Private Companies were qualified investments under the *Income Tax Act*. These letters were necessary; otherwise, the trust companies would not have purchased the Private Companies' shares for the investors' RSPs. Therefore, Cook's essential role in the scheme is an important factor to consider when determining sanctions.

[91] Cook's experience is also a relevant factor. Cook is a chartered accountant, and when she participated in this scheme, she did not have any experience interpreting or applying the relevant sections of the *Income Tax Act*. She admitted that she failed to perform her professional services with integrity and due care. We also accept Staff's submission that when Cook signed the qualification letters, she did so without conducting the requisite due diligence regarding the Private Companies and the possible tax implications of the transactions for the investors.

[92] Cook admitted to receiving total fees of $13,900 in connection with this matter.

[93] While Cook has been sanctioned by the Institute of Chartered Accountants of Ontario, it is still appropriate for the Commission to sanction her for her conduct in this matter because the Commission has a distinct public interest mandate to protect the investing public. We note that Cook's participation in this scheme made it possible to raise $1.9 million from 87 investors.

[94] A lthough Cook was a necessary part of the scheme, she was not the architect of it. We also recognize that Cook has admitted her wrongdoing and has recognized the seriousness of her actions. She was not an architect of the scheme and she was not intimately involved with the investors. We consider these to be mitigating factors with respect to the payment of costs.

vii. Costs

[95] Based on the submissions and information presented by Staff we assess the total costs payable by the Respondents at $108,000.00. With respect to the quantum of costs payable by each of the Respondents in this matter, we have apportioned these costs against the Respondents in some cases severally and in some cases jointly and severally based on our assessment of the degree of responsibility of each Respondent.

[96] We find that the architects of the scheme should bear the bulk of the costs incurred. As such, we have allocated 70% of the costs to the architects of the scheme. Cornwall and CGC Financial are jointly and severally responsible for 35% of the costs. Simpson and First Financial are jointly and severally responsible for 35% of the costs.

[97] While Xavier was not an architect of the scheme, as a registrant he had a great deal of interaction with investors and his participation in the scheme was necessary to make it function, and we find that Xavier is responsible for 25% of the costs.

[98] Lastly, we find that Cook is responsible for 5% of the costs. The lower percentage of costs attributed to Cook is a result of the mitigating factors in her favour.

VI. Decision on Sanctions

[99] We consider that it is important in this case to: (1) impose sanctions that reflect the seriousness of the securities law violations that occurred in this matter; and (2) impose sanctions that not only deter the Respondents but also like-minded people from engaging in future conduct that violates securities law.

[100] For the reasons stated above, we are of the opinion that it is in the public interest to make the following order with respect to sanctions against the Respondents.

[101] With respect to the respondent Xavier, it is ordered that:

(A) the registration of Xavier is terminated and he is not eligible to reapply for registration for a period of twelve months;

(B) trading, directly or indirectly, in any securities by Xavier, for his own account or for the account of others shall cease until the earlier of registration under the Act or the date which is 5 years from the date of this Order with the exception that:

(1) Xavier is permitted to trade in securities for his own account or for the account of a registered retirement savings plan, a registered education savings plan or registered retirement income fund (as defined in the *Income Tax Act* (Canada)) in which he or his immediate family members have sole legal and beneficial ownership and interest, directly or indirectly, provided that:

(a) the securities are listed and posted for trading on the Toronto Stock Exchange, the TSX Venture Exchange, the New York Stock Exchange, the National Association of Securities Dealers Automated Quotation System or the London Stock Exchange (or their successor exchanges) or are issued by a mutual fund which is a reporting issuer;

(b) Xavier, or any such immediate family member, does not own alone or jointly, legally or beneficially, directly or indirectly, more than one per cent of the outstanding securities of the class or series of the class in question; and

(c) Xavier must carry out permitted trading through a registered dealer and through accounts opened, only in:

(i) his name;

(ii) his immediate family members' names; or

(iii) the name of an issuer where all of the securities are held by Xavier, Xavier's immediate family members or an individual who beneficially owns, directly or indirectly, financial assets, as defined in National Instrument 45-106 *Prospectus and Registration Exemptions*, having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $5 million or its equivalent in another currency as certified by the individual ("Permitted Investor");

(d) Xavier must close any accounts which he has opened, and in which he or his immediate family members, or a Permitted Investor, have any legal or beneficial ownership, direct or indirect, which are not in compliance with the provisions of item (c) of paragraph 101(B)(1) of this Order.

(2) Xavier is permitted to trade in the securities issued by an issuer where all of the securities issued by the issuer are held by Xavier, Xavier's immediate family members or a Permitted Investor and where after any trade such securities will continue to be held by Xavier, Xavier's immediate family members or a Permitted Investor.

(C) any exemptions contained in Ontario securities law do not apply to Xavier until the earlier of registration under the Act or the date which is 5 years from the date of this Order, except for those exemptions necessary to enable Xavier to trade in securities as permitted by paragraph 101(B) of this Order;

(D) Xavier shall resign any positions he holds as an officer or director of any issuer with the exception that Xavier may continue as an officer or director of an issuer, referred to in paragraph 101(B)(2) of this Order;

(E) Xavier is prohibited from becoming or acting as an officer or director of any issuer until the earlier of his registration under the Act or the date which is 5 years from the date of this Order, with the exception that Xavier may become or act as an officer or director of an issuer referred to in paragraph 101(B)(2) of this Order;

(F) Xavier is hereby reprimanded; and

(G) Xavier shall pay costs of $27,000.

[102] With respect to the respondent Cornwall, it is ordered that:

(A) trading, directly or indirectly, in any securities by Cornwall, for his own account or for the account of others shall cease permanently, with the exception that:

(1) Cornwall is permitted to trade in securities for his own account or for the account of a registered retirement savings plan, a registered education savings plan or registered retirement income fund (as defined in the *Income Tax Act* (Canada)) in which he or his immediate family members have sole legal and beneficial ownership and interest, directly or indirectly, provided that:

(a) the securities are listed and posted for trading on the Toronto Stock Exchange, the TSX Venture Exchange, the New York Stock Exchange, the National Association of Securities Dealers Automated Quotation System or the London Stock Exchange (or their successor exchanges) or are issued by a mutual fund which is a reporting issuer;

(b) Cornwall, or any such immediate family member, does not own alone or jointly, legally or beneficially, directly or indirectly, more than one per cent of the outstanding securities of the class or series of the class in question; and

(c) Cornwall must carry out permitted trading through a registered dealer and through accounts opened, only in:

(i) his n0. of an issuer where all of the securities are held by Cornwall, Cornwall's immediate family members or a Permitted Investor;

(d) Cornwall must close any accounts which he has opened, and in which he or his immediate family members, or a Permitted Investor, have any legal or beneficial ownership, direct or indirect, which are not in compliance with the provisions of item (c) of paragraph 102(A)(1) of this Order.

(2) Cornwall is permitted to trade in the securities issued by an issuer where all of the securities issued by the issuer are held by Cornwall, Cornwall's immediate family members or a Permitted Investor and where after any trade such securities will continue to be held by Cornwall, Cornwall's immediate family members or a Permitted Investor.

(B) any exemptions contained in Ontario securities law do not apply to Cornwall permanently, except for those exemptions necessary to enable Cornwall to trade in securities as permitted by paragraph 102(A) of this Order;

(C) Cornwall shall resign any positions he holds as an officer or director of any issuer with the exception that Cornwall may continue as an officer or director of an issuer referred to in paragraph 102(A)(2) of this Order;

(D) Cornwall is prohibited from becoming or acting as an officer or director of any issuer, with the exception that Cornwall may become or act as an officer or director of an issuer referred to in paragraph 102(A)(2) of this Order; and

(E) Cornwall is hereby reprimanded.

[103] With respect to the respondent CGC Financial, it is ordered that:

(A) trading, directly or indirectly, in any securities by CGC Financial, for CGC Financial's own account or for the account of others shall cease permanently, with the exception that CGC Financial is permitted to dispose of those securities held for its own account as of the date of this Order;

(B) any exemptions contained in Ontario securities law do not apply to CGC Financial permanently, except for those exemptions necessary to permit CGC Financial to dispose of those securities held for its own account as of the date of this Order as permitted by paragraph 103(A) of this Order; and

(C) CGC Financial is hereby reprimanded.

[104] With respect to the respondents Cornwall and CGC Financial, it is ordered that:

(A) Cornwall and CGC Financial shall pay, jointly and severally, costs of $38,000.

[105] With respect to the respondent Simpson, it is ordered that:

(A) trading, directly or indirectly, in any securities by Simpson, for his own account or for the account of others shall cease permanently, with the exception that:

(1) Simpson is permitted to trade in securities for his own account or for the account of a registered retirement savings plan, a registered education savings plan or registered retirement income fund (as defined in the *Income Tax Act* (Canada)) in which he or his immediate family members have sole legal and beneficial ownership and interest, directly or indirectly, provided that:

(a) the securities are listed and posted for trading on the Toronto Stock Exchange, the TSX Venture Exchange, the New York Stock Exchange, the National Association of Securities Dealers Automated Quotation System or the London Stock Exchange (or their successor exchanges) or are issued by a mutual fund which is a reporting issuer;

(b) Simpson, or any such immediate family member, does not own alone or jointly, legally or beneficially, directly or indirectly, more than one per cent of the outstanding securities of the class or series of the class in question; and

(c) Simpson must carry out permitted trading through a registered dealer and through accounts opened, only in:

(i) his name;

(ii) his immediate family members' names; or

(iii) the name of an issuer where all of the securities are held by Simpson, Simpson's immediate family members or a Permitted Investor;

(d) Simpson must close any accounts which he has opened, and in which he or his immediate family members, or a Permitted Investor, have any legal or beneficial ownership, direct or indirect, which are not in compliance with the provisions of item (c) of paragraph 105(A)(1) of this Order;

(2) Simpson is permitted to trade in the securities issued by an issuer where all of the securities issued by the issuer are held by Simpson, Simpson's immediate family members or a Permitted Investor and where after any trade, such securities will continue to be held by Simpson, Simpson's immediate family members or a Permitted Investor.

(B) any exemptions contained in Ontario securities law do not apply to Simpson permanently, except for those exemptions necessary to enable Simpson to trade in securities as permitted by paragraph 105(A) of this Order;

(C) Simpson shall resign any positions he holds as an officer or director of any issuer with the exception that Simpson may continue as an officer or director of an issuer referred to in paragraph 105(A)(2) of this Order;

(D) Simpson is prohibited from becoming or acting as an officer or director of any issuer, with the exception that Simpson may become or act as an officer or director of an issuer referred to in paragraph 105(A)(2) of this Order; and

(E) Simpson is hereby reprimanded.

[106] With respect to the respondent First Financial, it is ordered that:

(A) trading, directly or indirectly, in any securities by First Financial, for First Financial's own account or for the account of others shall cease permanently, with the exception that First Financial is permitted to dispose of those securities held for its own account as of the date of this Order;

(B) any exemptions contained in Ontario securities law do not apply to First Financial permanently, except for those exemptions necessary to permit First Financial to dispose of those securities held for its own account as of the date of this Order as permitted by paragraph 106(A) of this Order; and

(C) First Financial is hereby reprimanded.

[107] With respect to the respondents Simpson and First Financial:

(A) Simpson and First Financial shall pay, jointly and severally, costs of $38,000.

[108] With respect to the respondent Cook, it is ordered that:

(A) Cook is hereby reprimanded; and

(B) Cook shall pay costs of $5,000.

Dated at Toronto, this 5th day of May, 2008.

"Robert L. Shirriff"
Robert L. Shirriff, Q.C.

"David L. Knight"
David L. Knight, FCA

"Margot C. Howard"
Margot C. Howard, CFA

Relevant Excerpt of National Instrument 45-106
Prospectus and Registration Exemptions

1.1 Definitions – In this Instrument

[…]

"financial assets" means

(a) cash,

(b) securities, or

(c) a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation.

3.1.3 Norman John Frank Collins - s. 26(3)

IN THE MATTER OF
THE REGISTRATION OF
NORMAN JOHN FRANK COLLINS

OPPORTUNITY TO BE HEARD BY THE DIRECTOR
SECTION 26(3) OF THE SECURITIES ACT

Date: May 2, 2008

Director: David M. Gilkes
Manager, Registrant Regulation
Ontario Securities Commission

Submissions: Jessica Di Renzo
For the staff of the Commission

Norman John Frank Collins
For the Registrant

Background

1. Mr. Collins (the **Registrant**) has been registered with the Ontario Securities Commission (**OSC**) since July 8, 1992. Since April 16, 2002, he has been registered as a mutual fund dealer salesperson and limited market dealer salesperson sponsored by Dundee Private Investors Inc. (**DPII)**.

2. On February 8, 2008, DPII submitted a financial disclosure change notice to the OSC indicating that a Requirement to Pay had been issued by the Canadian Revenue Agency against the Registrant.

3. On February 22, 2008, OSC staff sent a letter to the Registrant and DPII proposing that terms and conditions for monthly close supervision reporting, be imposed on the registration of Norman John Frank Collins.

4. The Director may restrict a registration by imposing terms and conditions under subsection 26 of the *Securities Act* but must provide the registrant with the opportunity to be heard by the Director. The Registrant requested an opportunity to be heard on March 3, 2008.

5. The Registrant requested to be heard through a written submission, which was received on March 12, 2008.

Submissions

6. The Registrant asked that his registration be allowed to continue without terms and conditions. Mr. Collins noted that the debt had been incurred from a period of low production following a family crisis. During this period all his income was required for basic necessities and maintenance of his practice. Mr. Collins continued to file his tax returns and entered into a dialogue with the Canada Revenue Agency (**CRA**). His tax arrears are not due from failure to file tax returns or understating his income.

7. Mr. Collins has arranged a repayment schedule with CRA to reduce his tax arrears and pay his current taxes.

8. Mr. Collins noted that he has always placed his clients' interests at the forefront of his business activities. He believed that the imposition of the terms and conditions on his registration would impugn his integrity.

Suitability for Registration

9. The fit and proper standard for registration is both an initial and an ongoing requirement for registrants. The fit and proper standard is based on three well established criteria that have been identified by the OSC:

> The [Registrant Regulation] section administers a registration system which is intended to ensure that all Applicants under the Securities Act and the Commodity Futures Act meet appropriate standards of integrity, competence and financial soundness …
>
> (Ontario Securities Commission, Annual Report 1991, Page 16)

When analyzing these criteria staff consider:

- **integrity** – honesty and good faith, particularly in dealings with clients, and compliance with Ontario securities law;
- **competence** – prescribed proficiency and knowledge of the requirements of Ontario securities law; and
- **financial soundness** – an indicator of a firm's capacity to fulfill its obligations and can be an indicator of the risk that an individual will engage in self-interested activities at the expense of clients.

10. In this case neither the Registrant's integrity nor his competence are in question. However, the Requirement to Pay raises concern regarding the financial soundness of the Registrant. To mitigate the potential risk concerning self-interested activities by the Registrant, staff recommended that terms and conditions for monthly close supervision reporting be imposed on the registration of Norman John Frank Collins. The fact that the Registrant has been paying down the debt owed is not a significant factor in staff's recommendation to impose terms and conditions.

Decision

11. It is OSC staff practice to impose terms and conditions for monthly close supervision reporting on an individual's registration should that person file for bankruptcy, receive a garnishment, receive a Requirement to Pay taxes, or file for a consumer proposal. The terms and conditions are removed when the financial obligations resulting from the event have been satisfied. This practice is consistent with the investor protection mandate of the OSC.

12. I find that the Requirement to Pay does have a negative impact on the registrant's financial soundness. Therefore, I impose the terms and conditions as set out in Exhibit A on the registration of Norman John Frank Collins.

May 2, 2008

"David M. Gilkes"
Manager, Registrant Regulation
Ontario Securities Commission

Exhibit A

Terms and Conditions of Registration
for
Norman John Frank Collins

Monthly Close Supervision Reports are to be completed on the registrant's sales activities and dealings with clients. The supervision reports are to be retained with the sponsoring firm and must be made available for review upon request. These terms and conditions are to continue until the obligation has been satisfied and acceptable evidence has been provided to the OSC. These terms and conditions will be removed unless the Director has reason to believe that the registrant is not suitable for unconditional renewal of registration at that time.

_____	_____
Officer for Dundee Private Investors Inc.	Norman John Frank Collins
_____	_____
Print Name of Officer	Date

Monthly Close Supervision Report*

I hereby certify that supervision has been conducted for the month ending [**date**] of the trading activities of [**nam**e], by the undersigned. I further certify the following:

1. All orders from the salesperson were reviewed and approved by a compliance officer or branch manager of Investors Group Financial Services Inc.

2. There were no client complaints received during the preceding month. If there were complaints, a description of the complaint and follow-up action initiated by the company is attached.

3. All payments for the purchase of the investments were made payable to the dealer. There were no cash payments accepted.

4. The transactions of the salesperson were reviewed during the preceding month to ensure compliance with the policies and procedures of the dealer, including the suitability of investments for clients. If there were any violations, a description of the violation and follow-up action is attached.

_____
Signature
Compliance Officer/Branch Manager
Dundee Private Investors Inc.

_____ _____
Print Name Date

* In the case of violations or client complaints, the regulator must be notified within five business days.

3.1.4 Teresa Elzbieta Najda - s. 26(3)

IN THE MATTER OF
THE REGISTRATION OF
TERESA ELZBIETA NAJDA

OPPORTUNITY TO BE HEARD BY THE DIRECTOR
SECTION 26(3) OF THE SECURITIES ACT

Date: May 6, 2008

Director: David M. Gilkes
Manager, Registrant Regulation
Ontario Securities Commission

Submissions: Rebecca Stefanec
For the staff of the Commission

Teresa Elzbieta Najda
For the Registrant

Background

1. Ms. Najda (the **Registrant**) has been registered with the Ontario Securities Commission (**OSC**) as a mutual fund salesperson for PFSL Investments Canada Ltd. (**PFSL**) since April 1994. On February 8, 2008, PFSL submitted a financial disclosure change notice to the OSC that indicated that Ms. Najda had filed for bankruptcy.

2. On February 13, 2008, OSC staff sent a letter to the Registrant and to PFSL proposing terms and conditions for monthly close supervision reporting, be imposed on the registration of Teresa Elzbieta Najda.

3. The Director may restrict a registration by imposing terms and conditions under subsection 26 of the *Securities Act* but must provide the registrant with the opportunity to be heard by the Director. The Registrant requested an opportunity to be heard through a written submission. The submission was received on February 25, 2008.

Submissions

4. The Registrant asked that her registration be allowed to continue without terms and conditions. Ms. Najda noted that the debt had been incurred as a result of taking care of her sick parents who were living in Poland.

5. Ms. Najda noted that the decision to file for bankruptcy was difficult and without her mutual fund registration, it would be difficult to regain financial solvency.

6. Ms. Najda noted that she has always placed her clients' interests at the forefront of her business activities. She said in 15 years at Primerica, she has never received any complaints from clients.

Suitability for Registration

7. The fit and proper standard for registration is both an initial and an ongoing requirement for registrants. The fit and proper standard is based on three well established criteria that have been identified by the OSC:

> The [Registrant Regulation] section administers a registration system which is intended to ensure that all Applicants under the Securities Act and the Commodity Futures Act meet appropriate standards of integrity, competence and financial soundness …
>
> (Ontario Securities Commission, Annual Report 1991, Page 16)

When analyzing these criteria staff consider:

- **integrity** – honesty and good faith, particularly in dealings with clients, and compliance with Ontario securities law;
- **competence** – prescribed proficiency and knowledge of the requirements of Ontario securities law; and

- **financial soundness** – an indicator of a firm's capacity to fulfill its obligations and can be an indicator of the risk that an individual will engage in self-interested activities at the expense of clients.

8. In this case neither the Registrant's integrity nor her competence are in question. However, filing for bankruptcy raises concern regarding the financial soundness of the Registrant. To mitigate the potential risk concerning self-interested activities by the Registrant, staff recommended that terms and conditions for monthly close supervision reporting be imposed on the registration of Teresa Elzbieta Najda.

Decision

9. It is OSC staff practice to impose terms and conditions for monthly close supervision reporting on an individual's registration should that person file for bankruptcy, receive a garnishment, receive a requirement to pay overdue taxes, or file for a consumer proposal. The terms and conditions are removed when the financial obligations resulting from the event have been satisfied. This practice is consistent with the investor protection mandate of the OSC.

10. I find that the bankruptcy does have a negative impact on the registrant's financial soundness. Therefore, I impose the terms and conditions as set out in Exhibit A on the registration of Teresa Elzbieta Najda.

May 6, 2008

"David M. Gilkes"
Manager, Registrant Regulation
Ontario Securities Commission

Exhibit A

Terms and Conditions of Registration
for
Teresa Elzbieta Najda

Monthly Close Supervision Reports are to be completed on the registrant's sales activities and dealings with clients. The supervision reports are to be retained with the sponsoring firm and must be made available for review upon request. These terms and conditions are to continue until the obligation has been satisfied and acceptable evidence has been provided to the OSC.

_____	_____
Approved Officer for PFSL Investments Canada Ltd.	Teresa Elzbieta Najda
_____	_____
Print Name of Approved Officer	Date

Monthly Close Supervision Report*

I hereby certify that supervision has been conducted for the month ending _____ of the trading activities of (***name***), by the undersigned. I further certify the following:

1. All orders from the salesperson were reviewed and approved by a compliance officer or branch manager of PFSL Investments Canada Ltd.

2. There were no client complaints received during the preceding month. If there were complaints, a description of the complaint and follow-up action initiated by the company is attached.

3. All payments for the purchase of the investments were made payable to the dealer. There were no cash payments accepted.

4. The transactions of the salesperson were reviewed during the preceding month to ensure compliance with the policies and procedures of the dealer, including the suitability of investments for clients. If there were any violations, a description of the violation and follow-up action is attached.

_____
Signature
Compliance Officer/Branch Manager
PFSL Investments Canada Ltd.

_____ _____
Print Name Date

* In the case of violations or client complaints, the regulator must be notified within five business days.

Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
World Wide Minerals Ltd.	01 May 08	13 May 08		
Divcom Lighting Inc.	01 May 08	13 May 08		
Icefloe Technologies Inc.	05 May 08	16 May 08		
Thistle Mining Inc.	06 May 08	16 May 08		
Kermode Exploration Ltd.	06 May 08	16 May 08		

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Atlantis Systems Corp.	01 Apr 08	14 Apr 08	14 Apr 08		
Petrolympic Ltd.	02 May 08	15 May 08			
Warwick Communications Inc.	02 May 08	15 May 08			
Dynamic Fuel Systems Inc.	05 May 08	16 May 08			
McVicar Resources Inc.	05 May 08	16 May 08			
Onepak, Inc.	05 May 08	16 May 08			
PharmEng International Inc.	07 May 08	20 May 08			
Prime City One Capital Corp.	07 May 08	20 May 08			

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer CeaseTrade Order
Argus Corporation Limited	25 May 04	03 Jun 04	03 Jun 04		
CoolBrands International Inc.	30 Nov 06	13 Dec 06	13 Dec 06		
Fareport Capital Inc.	13 Jul 07	26 Jul 07	26 Jul 07		
Hip Interactive Corp.	04 Jul 05	15 Jul 05	15 Jul 05		
SunOpta Inc.	20 Feb 08	04 Mar 08	04 Mar 08		

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer CeaseTrade Order
HMZ Metals Inc.	09 Apr 08	22 Apr 08	22 Apr 08		
Atlantis Systems Corp.	01 Apr 08	14 Apr 08	14 Apr 08		
Petrolympic Ltd.	02 May 08	15 May 08			
Warwick Communications Inc.	02 May 08	15 May 08			
Dynamic Fuel Systems Inc.	05 May 08	16 May 08			
McVicar Resources Inc.	05 May 08	16 May 08			
Onepak, Inc.	05 May 08	16 May 08			
PharmEng International Inc.	07 May 08	20 May 08			
Prime City One Capital Corp.	07 May 08	20 May 08			

Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesScource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
04/25/2008	401	1263343 Alberta Inc. - Receipts	13,896,000.00	13,896,000.00
04/28/2008	55	151 William Realty LLC - Membership Interests	0.00	49.00
04/16/2008	22	AgStream Inc. - Common Shares	765,000.00	765,000.00
04/03/2007 to 03/27/2008	1	AIM Canadian Balanced Fund - Units	3,992,745.40	250,257.11
04/05/2007 to 03/31/2008	2	AIM Canadian First Class - Common Shares	3,158,062.42	159,199.13
04/09/2007 to 03/31/2008	1	AIM Canadian Premier Class - Common Shares	7,199,753.09	333,310.74
05/23/2007 to 03/13/2008	1	AIM Canadian Premier Fund - Units	384,686.00	17,333,605.00
04/03/2007 to 12/18/2007	1	AIM Global Technology Fund - Units	45,552.00	16,874.03
04/05/2007 to 03/31/2008	1	AIM International Growth Class - Common Shares	949,284.42	58,721.39
04/22/2008	15	AMADOR GOLD CORP. - Flow-Through Shares	1,215,780.00	4,359,926.00
04/22/2008	3	AMADOR GOLD CORP. - Non Flow-Through Shares	35,000.00	140,000.00
04/23/2008	21	Angels Gate Winery Limited - Common Shares	4,675,833.76	0.00
04/16/2008	1	Arsenal Energy Inc. - Common Shares	31,500.00	150,000.00
04/16/2008	12	Arsenal Energy Inc. - Flow-Through Shares	813,855.60	1,042,855.00
04/16/2008	1	Axentra Corporation - Notes	1,002,500.00	1,000,000.00
04/16/2008	1	Axentra Corporation - Warrants	1,002,500.00	500,000.00
04/29/2008	70	C & C Energy Canada Ltd. - Common Shares	14,000,000.00	4,000,000.00
04/24/2008 to 04/28/2008	25	CareVest Blended Mortgage Investment Corporation - Preferred Shares	675,706.00	675,706.00
04/24/2008 to 04/28/2008	14	CareVest First Mortgage Investment Corporation - Preferred Shares	228,929.00	228,929.00
04/24/2008 to 04/28/2008	8	CareVest First Mortgage Investment Corporation - Preferred Shares	381,300.00	381,300.00
04/24/2008 to 04/28/2008	8	CareVest Second Mortgage Investment Corporation - Preferred Shares	169,660.00	169,660.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
04/24/2008	4	CiRBA Inc. - Common Shares	8,931,891.16	7,961,308.00
04/19/2008 to 04/25/2008	1	CMC Markets Canada Inc. - Contracts for Differences	8,000.00	1.00
04/21/2008	78	Colonial Coal Corporation - Common Shares	7,827,250.00	15,654,500.00
04/24/2008	14	Darnley Bay Resources Limited - Units	330,000.00	825,000.00
04/30/2008	2	Davis-Rea Ltd. - Units	98,427.57	98,427.57
04/17/2008	8	Delavaco Energy Inc. - Common Shares	1,313,000.00	1,313,000.00
04/18/2008	165	Dorato Resources Inc. - Common Shares	10,200,000.00	17,000,000.00
04/22/2008	4	Eaton Corporation - Common Shares	25,705,400.00	305,000.00
04/17/2008	4	Egypt Oil Holdings Ltd. - Common Shares	450,000.00	9,000,000.00
04/23/2008	18	Element Energy Canada Ltd. - Common Shares	840,500.00	3,201,667.00
04/02/2007	3	Empire Communities (Rose Hill), L.P. - Limited Partnership Units	4,800,000.00	960.00
05/25/2006	3	Empire (Beyond the Sea), L.P. - Limited Partnership Units	2,100,000.00	210.00
04/24/2008	50	Enseco Energy Services Corp. - Common Shares	5,004,000.00	11,120,000.00
04/25/2008	1	Eurasian Minerals Inc. - Common Shares	3,502,000.00	1,700,000.00
04/25/2008	1	Eurasian Minerals Inc. - Warrants	3,502,000.00	1,275,000.00
04/25/2008	2	Explore Resources inc. - Common Shares	10,500.00	50,000.00
03/03/2008 to 03/04/2008	5	Finavera Renew Ables Inc. - Units	1,250,500.00	6,252,500.00
04/25/2008	1	First Leaside Elite Limited Partnership - Limited Partnership Interest	99,402.90	97,799.00
04/23/2008	1	First Leaside Fund - Trust Units	28,000.00	28,000.00
04/24/2008	1	First Leaside Fund - Trust Units	50,000.00	50,000.00
04/18/2008 to 04/23/2008	2	First Leaside Wealth Management Inc. - Notes	75,000.00	75,000.00
04/23/2008 to 04/29/2008	3	First Leaside Wealth Management Inc. - Notes	290,925.00	290,925.00
04/15/2008	24	Galore Resources Inc. - Units	229,123.00	763,737.00
04/22/2008	36	Gastem Inc. - Common Shares	10,158,750.00	4,725,000.00
04/22/2008	36	Gastem Inc. - Warrants	10,158,750.00	2,362,500.00
04/14/2008 to 04/18/2008	29	General Motors Acceptance Corporation of Canada, Limited - Notes	8,433,773.64	8,433,773.64
04/18/2008 to 04/21/2008	46	Genesis Genomics Inc. - Common Shares	2,137,163.00	2,137,163.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
04/23/2008	4	Grandcru Resources Corporation - Common Shares	10,000.00	40,000.00
04/17/2008	43	Hawthorne Gold Corp. - Flow-Through Shares	5,715,216.80	2,930,884.00
04/25/2008	4	Hawthorne Gold Corp. - Flow-Through Shares	574,493.40	294,612.00
04/17/2008	42	Hawthorne Gold Corp. - Units	6,025,265.00	3,443,009.00
04/15/2008 to 04/24/2008	8	HMZ Metals Inc. - Debentures	110,000.00	1,100.00
04/15/2008 to 04/24/2008	8	HMZ Metals Inc. - Units	110,000.00	2,200,000.00
04/24/2008 to 04/30/2008	81	IGW Real Estate Investment Trust - Investment Trust Interests	3,576,556.00	3,352,404.00
04/21/2008 to 04/23/2008	52	IGW Real Estate Investment Trust - Trust Units	1,696,540.00	1,590,002.00
04/22/2008	79	International Barytex Resources Ltd. - Units	5,250,000.00	7,000,000.00
04/21/2008	12	Katana Properties Limited Partnership - Units	360,000.00	360.00
04/22/2008	1	Kinbauri Gold Corp. - Units	1,000,000.00	1,250,000.00
04/15/2008	1	Kingwest U.S. Equity Portfolio - Units	5,573.94	459.23
04/22/2008	142	Kinwest 2008 Energy Inc. - Common Shares	17,052,600.00	19,695,500.00
10/17/2007	5	Lake Victoria Mining Company, Inc. - Common Shares	8,113.30	79,000.00
04/16/2008	174	Liberty International Mineral Corporation - Units	2,552,226.00	5,104,452.00
04/29/2008	20	LP RRSP Limited Partnership #2 - Limited Partnership Units	556,200.00	803,000.00
04/16/2008	23	Lund Gold Ltd. - Flow-Through Units	1,898,408.40	6,328,028.00
04/16/2008	14	Lund Gold Ltd. - Units	635,442.24	2,647,676.00
04/10/2008 to 04/14/2008	0	Major Gold Ltd. - Common Shares	0.00	513,333.00
04/10/2008 to 04/14/2008	0	Major Gold Ltd. - Flow-Through Shares	0.00	430,000.00
06/01/2007 to 03/07/2008	13	MGI Canadian Equity Fund - Units	45,472,634.10	3,998,561.60
09/04/2007 to 03/26/2008	6	MGI Fixed Income Fund - Units	30,574,788.00	3,137,201.75
05/07/2007 to 03/27/2008	14	MGI International Equity Fund - Units	54,275,773.17	5,473,298.14
04/04/2007 to 03/26/2008	10	MGI Long Bond Fund - Units	103,572,860.05	10,431,459.09
09/27/2007 to 03/07/2008	12	MGI Money Market Fund - Units	5,493,529.00	549,352.90

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
06/19/2007 to 02/21/2008	3	MGI Real Return Bond Fund - Units	24,013,680.06	2,351,537.05
06/01/2007 to 03/26/2008	11	MGI US Equity Fund - Units	51,957,740.21	5,475,389.07
01/04/2007 to 01/11/2008	1	MGI US Equity Trust - Units	5,474,444.15	556,088.65
04/22/2008	3	Nakina Systems Inc. - Notes	1,200,000.00	1,200,000.00
04/16/2008 to 04/25/2008	19	Nelson Financial Group Ltd. - Notes	1,961,246.57	0.00
04/01/2008	1	Nemi Northern Energy & Mining Inc. - Debentures	1,725,000.00	1,725,000.00
04/18/2008	1	New Solutions Financial (II) Corporation - Debenture	10,647.02	1.00
04/22/2008	1	Newport Canadian Equity Fund - Units	18,000.00	120.92
04/22/2008	28	Newport Diversified Hedge Fund - Units	1,251,409.91	9,667,467.00
04/17/2008	1	Newport Fixed Income Fund - Units	50,000.00	493,318.00
04/17/2008	1	Newport Global Equity Fund - Units	3,000.00	38.92
04/30/2008	67	Newport Strategic Yield Fund Limited Partnership - Units	2,043,336.24	187,817.00
04/16/2008 to 04/17/2008	2	Newport Yield Fund - Units	15,973.26	131.40
04/22/2008	99	Next Millennium Commercial Corp. - Units	6,000,000.00	12,000,000.00
04/22/2008	10	NP Direct-Exshaw LP - Units	714,680.64	597.00
04/25/2008 to 05/01/2008	10	Obsidian Strategics Inc. - Common Shares	109,750.50	73,167.00
03/27/2008	2	Panorama Capital, L.P. - Limited Partnership Interest	25,000,000.00	25,000,000.00
04/21/2008	1	Paradigm Environmental Technologies Inc. - Common Shares	150,000.00	40,000.00
04/21/2008	1	Paradigm Environmental Technologies Inc. - Warrants	150,000.00	56,000.00
04/14/2008	1	Patricia Mining Corp. - Debentures	500,000.00	500,000.00
04/16/2008	1	Petaquilla Minerals Ltd - Common Shares	261,000.00	100,000.00
04/23/2008	26	PFC2018 Pacific Financial Corp. - Bonds	1,500,000.00	163.00
04/28/2008	1	Platinex Inc. - Common Shares	11,250.00	50,000.00
04/23/2008 to 04/30/2008	12	Platinum 5 Acres and a Mule Limited Partnership - Limited Partnership Units	1,250,000.00	50.00
04/17/2008	11	Quaterra Resources Inc. - Common Shares	11,144,000.00	3,482,500.00
04/23/2008	1	Ranchlands I Limited Partnership - Loans	25,000.00	25,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
04/28/2008	2	Range Metals Inc. - Flow-Through Shares	150,000.00	600,000.00
04/14/2008	2	ReddWerks Corporation - Notes	1,276,000.00	1,250,000.00
04/14/2008	2	ReddWerks Corporation - Warrants	1,276,000.00	437,500.00
04/22/2008	4	River Run Vistas Corporation - Units	523,000.00	523.00
04/23/2008	4	Rocor Resources Inc. - Non Flow-Through Shares	5,852,000.00	1,828,750.00
03/01/2008	1	Sellers Capital Offshore Fund, Ltd. - Common Shares	25,000,000.00	25,329.28
04/21/2008	27	Semcan Inc. - Units	4,177,672.50	4,397,550.00
04/18/2008	14	Sextant Strategic Opportunities Hedge Fund LP - Units	746,900.00	8,450.70
04/22/2008 to 04/24/2008	3	Simberi Mining Corporation - Common Shares	65,000.00	1,300,000.00
04/16/2008	7	Sola Resource Corp. - Units	1,000,000.00	3,333,333.00
03/07/2008 to 04/09/2008	13	Southern Oregon Gold Corp. - Units	281,518.00	1,407,590.00
04/15/2005 to 02/01/2008	19	StockReality Capital Partners LP Fund - Limited Partnership Interest	1,800,000.00	1,800,000.00
04/18/2008	2	Student Transportation of America Ltd. - Common Shares	49,999,999.70	8,266,779.00
04/25/2008	1	The Colonial BancGroup, Inc. - Common Shares	2,032,800.00	250,000.00
04/21/2008	1	Theralase Technologies Inc. - Common Shares	140,370.40	350,926.00
04/22/2008	14	TIO Networks Corp. - Common Shares	3,802,500.00	5,110,000.00
04/22/2008	14	TIO Networks Corp. - Warrants	3,802,500.00	2,555,000.00
04/17/2008	18	TNR Gold Corp. - Units	3,325,000.00	9,500,000.00
04/24/2008	5	TORR Canada Inc. - Units	1,125,000.00	5,090,000.00
04/15/2008	13	Tricon X Funding Limited Partnership - Limited Partnership Units	4,150,000.00	83.00
04/15/2008	6	Tricon X Funding Limited Partnership - Limited Partnership Units	83,312,500.00	1,666.25
04/05/2007 to 03/19/2008	1	Trimark Balanced Pool - Units	5,630,000.00	470,533.49
04/04/2007 to 03/19/2008	2	Trimark Canadian Equity Pool - Units	1,330,524.61	942.95
04/03/2007 to 03/28/2008	4	Trimark Global Equity Pool - Units	11,983,880.14	1,027,367.80
08/13/2007	1	Trimark International Equity Pool - Units	114,000.00	9,359,606.00
08/13/2007	1	Trimark U.S. Equity Pool - Units	114,000.00	11,294.96

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
04/18/2008 to 04/22/2008	2	UBS AG Cash Settled Kick-In Goal on Worst of Indices - Units	300,206.51	300,000.00
04/01/2008	1	Universa Power Law Offshore Fund Ltd. - Common Shares	57,650,000.00	50,000.00
04/29/2008	1	U.S. CARL Trust 2008-A - Note	1,334,816,438.61	1.00
04/22/2008	5	VFM Interactive Inc. - Preferred Shares	13,753,916.64	13,708,678.00
04/24/2008	17	Walton AZ Picacho View 2 Investment Corporation - Common Shares	371,850.00	37,185.00
04/23/2008	37	Walton AZ Picacho View 3 Investment Corporation - Common Shares	731,060.00	73,106.00
04/24/2008	16	Walton AZ Sunland View Investment Corporation - Common Shares	299,270.00	29,920.00
04/24/2008	4	Walton AZ Sunland View Limited Partnership - Limited Partnership Units	527,319.25	52,009.00
04/25/2008	11	Walton Brant County Land 3 Investment Corporation - Common Shares	335,500.00	33,550.00
04/29/2008	2	Western Warrior Resources Inc. - Units	42,550.00	185,000.00
04/23/2008	8	Wood Composite Technologies Inc. - Common Shares	861,377.40	5,742,515.00
04/23/2008	1	Wood Composite Technologies Inc. - Common Shares	750,000.00	5,555,555.00
04/24/2008	53	WSR Gold Inc. - Units	8,999,998.60	5,833,331.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
AAER Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated April 30, 2008
NP 11-202 Receipt dated April 30, 2008
Offering Price and Description:
$7,500,000.00 - 6,250,000 Common Shares Price $1.20 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
National Bank Financial Inc.
Promoter(s):
-
Project #1258012

Issuer Name:
Active Growth Capital Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated April 30, 2008
NP 11-202 Receipt dated May 2, 2008
Offering Price and Description:
$400,000.00 - Minimum 2,000,000 Common Shares;
$800,000.00 - Maximum 4,000,000 Common Shares
Price $0.20 per Common Share
Underwriter(s) or Distributor(s):
Maison Placements Canada
Promoter(s):
-
Project #1258639

Issuer Name:
Canfe Ventures Ltd.
Principal Regulator – British Columbia
Type and Date:
Preliminary CPC Prospectus dated April 28, 2008
NP 11-202 Receipt dated April 29, 2008
Offering Price and Description:
$300,000.00 (3,000,000 Common Shares) Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Promoter(s):
-
Project #1254550

Issuer Name:
All Energy Look-Back Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated April 30, 2008
NP 11-202 Receipt dated April 30, 2008
Offering Price and Description:
Maximum $ * (* Units) $10.00 per Unit ($5.00 on closing, $5.00 on January 9, 2009)
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
TD Securities Inc.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Canaccord Capital Corporation
Dundee Securities Corporation
Blackmont Capital Inc.
GMP Securities L.P.
Wellington West Capital Inc.
Berkshire Securities Inc.
Desjardins Securities Inc.
Research Capital Corporation
Richardson Partners Financial Limited
Promoter(s):
First Asset Investment Management Inc.
Project #1257987

Issuer Name:
AltaLink, L.P.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Base Shelf Prospectus dated May 1, 2008
NP 11-202 Receipt dated May 2, 2008
Offering Price and Description:
$800,000,000.00 - Medium Term Notes
Underwriter(s) or Distributor(s):
Scotia Capital Inc
TD Securities Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Casgrain & Company Limited
Promoter(s):
-
Project #1259217

Issuer Name:
Aviance Dividend Income Accumulation Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated April 29, 2008
NP 11-202 Receipt dated April 30, 2008
Offering Price and Description:
Series A, F, T6 and S6 Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
First Defined Portfolio Management Co.
Project #1256528

Issuer Name:
AXEA Capital Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary CPC Prospectus dated May 1, 2008
NP 11-202 Receipt dated May 2, 2008
Offering Price and Description:
$200,000.00 - 2,000,000 Common Shares Price $0.10 per Common Share
Underwriter(s) or Distributor(s):
Blackmont Capital Inc.
Promoter(s):
Gilbert G. Schneider
Project #1259507

Issuer Name:
Digital Caddies Inc.
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Prospectus dated April 30, 2008
Mutual Reliance Review System Receipt dated May 1, 2008
Offering Price and Description:
CDN $2,000,000.00 - 4,000,000 Units Price CAD $0.50 per Unit
Underwriter(s) or Distributor(s):
Bolder Investment Partners, Ltd.
Promoter(s):
Carl Clift
Allan Thompson
Jeffrey J. Lowe
Theodore Konyi
Brad Nightingale
Project #1211565

Issuer Name:
Disenco Energy PLC
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated May 2, 2008
NP 11-202 Receipt dated May 5, 2008
Offering Price and Description:
$5,010,000.00 - 16,700,000 Units, Comprised of One C Ordinary Share and One Warrant Price: $0.30 per Unit
Underwriter(s) or Distributor(s):
Blackmont Capital Inc.
Promoter(s):
John Gunn
Brian Longpre
Gunnar Bretvin
Project #1260440

Issuer Name:
Fluid Music, Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated May 2, 2008
NP 11-202 Receipt dated May 5, 2008
Offering Price and Description:
$ * . * Price $ * Common Share
Underwriter(s) or Distributor(s):
Blackmont Capital Inc.
CIBC World Markets Inc.
GMP Securities L.P.
Loewen, Ondaatje, Mccutcheion Limited
Wellington West Capital Markets Inc.
Promoter(s):
VIZX Corporation
Project #1260260

Issuer Name:
Hillcrest Resources Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Prospectus dated April 29, 2008
NP 11-202 Receipt dated April 30, 2008
Offering Price and Description:
$1,500,000.00 - Minimum 5,000,000 Common Shares;
$3,000,000.00 - Maximum 10,000,000 Common Shares
Price $0.30 per Common Share
Underwriter(s) or Distributor(s):
Union Securities Ltd.
Promoter(s):
Donald Gee
Project #1256559

Issuer Name:
Karel Capital Corporation
Principal Regulator - Alberta
Type and Date:
Preliminary CPC Prospectus dated April 30, 2008
NP 11-202 Receipt dated April 30, 2008
Offering Price and Description:
$800,000.00 - 8,000,000 Common Shares Price $0.10 Per Common Share
Underwriter(s) or Distributor(s):
PI Financial Corp.
Promoter(s):
Cameron Schuler
Project #1258606

Issuer Name:
Kingsmill Capital Ventures Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated April 30, 2008
NP 11-202 Receipt dated May 2, 2008
Offering Price and Description:
$2,100,000.00 - 7,000,000 Common Shares Price $0.30 Per Common Share
Underwriter(s) or Distributor(s):
Jones, Gable & Company Limited
Promoter(s):
David Mitchell
Project #1259139

Issuer Name:
Mavrix Québec 2008 Flow Through LP
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated April 30, 2008
NP 11-202 Receipt dated May 2, 2008
Offering Price and Description:
Offering of Limited Partnership Units
Maximum - $25,000,000.00 (2,500,000 Units); Minimum - $5,000,000.00 (500,000 Units)
Minimum Subscription - 500 Units Subscription Price - $10.00 per Unit
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
CIBC World Markets Inc.
Desjardins Securities Inc.
Dundee Securities Corporation
Laurention Bank Securities Inc.
Industrial Alliance Securities Inc.
Wellington West Capital Inc.
Promoter(s):
Mavrix Quebec 2008 Ltd.
Mavrix Fund Management Inc.
Project #1259702

Issuer Name:
Metropolitan Mining Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated April 29, 2008
NP 11-202 Receipt dated May 1, 2008
Offering Price and Description:
$900,000 - 3,000,000 Common Shares and 450,000 Agent's Warrants @ $0.30 Per Common Share
Underwriter(s) or Distributor(s):
FIRST CANADA CAPITAL PARTNERS INC.
Promoter(s):
Michael Thomson
Project #1258417

Issuer Name:
MKM Resouces Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary CPC Prospectus dated May 2, 2008
NP 11-202 Receipt dated May 5, 2008
Offering Price and Description:
$200,000.00 - 2,000,000 Common Shares Price $0.10 Per Common Share
Underwriter(s) or Distributor(s):
Woodstone Capital Inc.
Promoter(s):
-
Project #1260043

Issuer Name:
O'Leary Global Equity Income Fund
Principal Regulator - Quebec
Type and Date:
Preliminary Prospectus dated May 1, 2008
NP 11-202 Receipt dated May 2, 2008
Offering Price and Description:
$ * (* Units) Maximum $12 per Unit (Each Unit consisting of a Trust and a one half Warrant)
Minimum Purchase - 100 Units
Underwriter(s) or Distributor(s):
CIBC World Markets
Scotia Capital Inc.
National Bank Financial Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Wellington West Capital Inc.
Berkshire Securities Inc.
Blackmont Capital Inc.
GMP Securities L.P.
Promoter(s):
Gencap Funds LP
Gencap Funds Inc.
Project #1258995

Issuer Name:
Rattlesnake Ventures Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated April 29, 2008
NP 11-202 Receipt dated May 2, 2008
Offering Price and Description:
$200,000.00 - 2,000,000 Common Shares Price $0.10 Per Common Share
Underwriter(s) or Distributor(s):
Blackmont Capital Inc.
Promoter(s):
Scott White
Project #1259011

Issuer Name:
Rodinia Oil Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Prospectus dated May 5, 2008
NP 11-202 Receipt dated May 5, 2008
Offering Price and Description:
* Common Shares $ *.* Per Common Share
Underwriter(s) or Distributor(s):
Tristone Capital Inc.
Blackmont Capital Inc.
Firstenergy Capital Corp.
Haywood Securities Inc.
Promoter(s):
Peter A. Philipchuk
Mathew P. Philipchuck
Project #1260567

Issuer Name:
Sunstone U.S. Opportunity Realty Trust
Sunstone U.S. (2008) L.P.
Principal Regulator - British Columbia
Type and Date:
Preliminary Prospectus dated May 2, 2008
NP 11-202 Receipt dated May 2, 2008
Offering Price and Description:
Minimum US $5,000,000.00 - 4,000 Trust Units Maximum US $50,000,000.00 - 40,000 Trust Units Price US $1,250 Per Trust Unit
Underwriter(s) or Distributor(s):
Dundee Securities Corporation
Raymond James Ltd.
Canaccord Capital Corporation
Sora Group Wealth Advisors Inc.
Bieber Securities Inc.
Blackmont Capital Inc.
HSBC Securities Inc.
Laurentian Bank Securities Inc.
MGI Securities Inc.
Promoter(s):
Sunstone Realty Advisors Inc.
Project #1259965/1259975

Issuer Name:
XTM eXchange Split Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated April 30, 2008
NP 11-202 Receipt dated May 2, 2008
Offering Price and Description:
$ * (Maximum) * Priority Equity Shares and * Class A. Shares Price - $10.00 per Priority Equity and Class A share
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
TD Securities Inc.
Desjardins Securities Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Blackmont Capital Inc.
Wellington West Capital Inc.
Promoter(s):
Quadravest Capital Management Inc.
Project #1259638

Issuer Name:
Centenario Copper Corporation
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated May 5, 2008
NP 11-202 Receipt dated May 6, 2008
Offering Price and Description:
CDN $58,000,000.00 - 10,000,000 Common Shares Issuable upon Conversion of 10,000,000 Special Warrants
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
BMO Nesbitt Burns Inc.
Toll Cross Securities Inc.
Raymond James Ltd.
Macquarie Capital Markets Canada Ltd.
Promoter(s):
-
Project #1251947

Issuer Name:
CryoCath Technologies Inc.
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated April 30, 2008
NP 11-202 Receipt dated April 30, 2008
Offering Price and Description:
$17,388,500.00 - 4,190,000 Common Shares Price: $4.15 per Common Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Blackmont Capital Inc.
Macquarie Capital Markets Canada Ltd.
Promoter(s):
-
Project #1251702

Issuer Name:
EFI Canadian Stock Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated April 28, 2008
NP 11-202 Receipt dated May 2, 2008
Offering Price and Description:
Mutual fund trust units at net asset value
Underwriter(s) or Distributor(s):
Credential Asset Management Inc.
Promoter(s):
-
Project #1232507

Issuer Name:
Exemplar Canadian Focus Portfolio
Exemplar Global Opportunities Portfolio
Principal Regulator - Ontario
Type and Date:
Final Prospectuses dated April 25, 2008
NP 11-202 Receipt dated April 30, 2008
Offering Price and Description:
Redeemable Mutual Fund Shares @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Blumont Capital Corporation
Project #1233984

Issuer Name:
Exeter Resource Corporation
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated May 6, 2008
NP 11-202 Receipt dated May 6, 2008
Offering Price and Description:
$35,010,000.00 - 7,780,000 Common Shares to be issued upon exercise of 7,780,000 previously issued Special Warrants PRICE: $4.50 PER SPECIAL WARRANT
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Dundee Securities Corporation
Haywood Securities Inc.
Promoter(s):
-
Project #1249307

Issuer Name:
Finning International Inc.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Base Shelf Prospectus dated May 5, 2008
NP 11-202 Receipt dated May 6, 2008
Offering Price and Description:
$750,000,000.00 - Medium Term Notes (unsecured)
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
TD Securities Inc.
Promoter(s):
-
Project #1247198

Issuer Name:
Fort Chicago Energy Partners L.P.
Principal Regulator - Alberta
Type and Date:
Final Short Form Base Shelf Prospectus dated May 2, 2008
NP 11-202 Receipt dated May 2, 2008
Offering Price and Description:
$1,500,000,000:
Class A Units
Class B Units
Debt Securities
Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1248692

Issuer Name:
Frontiers U.S. Equity Pool
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated May 1, 2008 to the Simplified Prospectus and Annual Information Form dated December 20, 2007
NP 11-202 Receipt dated May 6, 2008
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
CIBC Asset Management Inc.
Project #1174063

Issuer Name:
Golconda Capital Corp.
Principal Regulator - British Columbia
Type and Date:
Final CPC Prospectus dated April 30, 2008
NP 11-202 Receipt dated May 1, 2008
Offering Price and Description:
$300,000.00 - 1,200,000 COMMON SHARES: Price: $0.25 per Common Share
Underwriter(s) or Distributor(s):
Leede Financial Markets Inc.
Promoter(s):
Ionic Capital Corp.
Project #1247615

Issuer Name:
Harmony Americas Small Cap Equity Pool
Harmony Canadian Equity Pool
Harmony Overseas Equity Pool
Harmony U.S. Equity Pool
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated April 21, 2008 to the Simplified Prospectuses and Annual Information Forms dated January 31, 2008
NP 11-202 Receipt dated April 30, 2008
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
AGF Funds Inc.
Promoter(s):
AGF Funds Inc.
Project #1201199

Issuer Name:
Inca Pacific Resources Inc.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated May 2, 2008
NP 11-202 Receipt dated May 2, 2008
Offering Price and Description:
$25,640,000.00 -16,025,000 Common Shares Price: $1.60 per Share
Underwriter(s) or Distributor(s):
Raymond James Ltd.
Haywood Securities Inc.
Wellington West Capital Markets Inc.
Promoter(s):
-
Project #1251305

Issuer Name:
Series A, F and I Units of:
Jov Talisman Fund
Jov Diversified Monthly Income Fund
Jov Leon Frazer Balanced Fund
Jov North American Momentum Fund
Jov Leon Frazer Dividend Fund
Jov BetaPro Short-Term Income Fund
Jov Winslow Global Green Growth Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated April 25, 2008
NP 11-202 Receipt dated May 1, 2008
Offering Price and Description:
Series A, F and I Units @ Net Asset Value
Underwriter(s) or Distributor(s):
MGI Securities Inc.
Promoter(s):
JovFunds Management Inc.
Project #1231719

Issuer Name:
Series A, I and O Securities of :
Keystone AGF Equity Fund
Keystone AIM Trimark Global Equity Fund
Keystone Beutel Goodman Bond Fund
Keystone Bissett Canadian Equity Fund
Keystone Manulife High Income Fund
(formerly Keystone Elliott & Page High Income Fund)
Keystone Manulife U.S. Value Fund
(formerly Keystone Dreman U .S. Value Fund)
Series A, F, I and O Securities of :
Keystone Saxon Smaller Companies Fund
Series A, F, G, I, P, T6 and T8 Securities of:
Keystone Diversified Income Portfolio Fund
Keystone Conservative Portfolio Fund
Keystone Balanced Portfolio Fund
Keystone Balanced Growth Portfolio Fund
Series A, F, G and I Securities of :
Keystone Growth Portfolio Fund
Keystone Maximum Growth Portfolio Fund
Principal Regulator - Ontario
Type and Date:
Amendment #5 dated April 24, 2008 to Simplified Prospectuses and Annual Information Forms dated May 30, 2007
NP 11-202 Receipt dated April 30, 2008
Offering Price and Description:
Series A, I, O, F, G, I, P, T6 and T8 @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Mackenzie Financial Corporation
Project #1087975

Issuer Name:
Mackenzie Cundill Canadian Security Fund (Offering Series C, F, G, I, O, P, T6 and T8 securities)
Mackenzie Focus Canada Fund (Offering Series A, F, I, M and O securities)
Mackenzie Growth Fund (Offering Series A, F, G, I and O securities)
Mackenzie Ivy Canadian Fund (Offering Series A, F, G, I, O, P, T6 and T8 securities) (Hedged Class & Unhedged Class)
Mackenzie Maxxum Canadian Value Fund (Offering Series A, F, I and O securities)
Mackenzie Maxxum Dividend Growth Fund (Offering Series A, F, G, I and O securities)
Mackenzie Universal Canadian Growth Fund (Offering Series A, F, G, I and O securities)
Mackenzie Universal American Growth Class (Offering Series A, F, G, M, I and O securities of Mackenzie Financial Capital Corporation) (Hedged Class & Unhedged Class)
Mackenzie Universal U .S. Dividend Income Fund (Offering Series A, F, I and O securities) (Hedged Class and Unhedged Class)
Mackenzie Ivy Enterprise Fund (Offering Series A, F, G, I, M and O securities)
Mackenzie Cundill Global Dividend Fund (Offering Series A, F, I, O, P, T6 and T8 securities)
Mackenzie Cundill Recovery Fund (Offering Series O securities only)
Mackenzie Cundill Value Fund (Offering Series C, F, G, I, O, P, T6 and T8 securities)
Mackenzie Focus Fund (Offering Series A, F, G, I and O securities)
Mackenzie Founders Fund (Offering Series A, F, I, O, P, T6 and T8 securities)
Mackenzie Ivy European Class (Offering Series A, F, I, M and O securities of Mackenzie Financial Capital Corporation)
Mackenzie Ivy Foreign Equity Fund (Offering Series A, F, G, I, O, P, T6 and T8 securities)
Mackenzie Universal European Opportunities Fund (Offering Series A, F, I and O securities)
Mackenzie Universal International Stock Fund (Offering Series A, F, I and O securities)
Mackenzie Universal Canadian Resource Fund (Offering Series A, F, G, I and O securities)
Mackenzie Universal Global Infrastructure Fund (Offering Series A, F, I, O, P, T6 and T8 securities)
Mackenzie Universal Global Property Income Fund (Offering Series A, F, I, O, P, T6 and T8 securities)
Mackenzie Universal Precious Metals Fund (Offering Series A, F, I and O securities)
Mackenzie GPS Allocation Fund (Offering Series A securities only)
Mackenzie Sentinel Bond Fund (Offering Series A, F, G, I, M and O securities)
Mackenzie Sentinel Cash Management Fund (Offering Series A and O securities only)
Mackenzie Sentinel Corporate Bond Fund (Offering Series A, F, G, I and O securities)
Mackenzie Sentinel Global Bond Fund (Offering Series A, F, I and O securities)

Mackenzie Sentinel Income Trust Fund (Offering Series A, F, I and O securities)
Mackenzie Sentinel Managed Return Class (Offering Series A, F, I and O securities of Mackenzie Financial Capital Corporation)
Mackenzie Sentinel Money Market Fund (Offering Series A, B, G and I securities only)
Mackenzie Sentinel Short -Term Income Fund (Offering Series A, F, G, I, M and O securities)
Mackenzie Balanced Fund (Offering Series A, F, I, O, P, T6 and T8 securities)
Mackenzie Cundill Canadian Balanced Fund (Offering Series C, F, G, I, O, P, T6 and T8 securities)
Mackenzie Cundill Global Balanced Fund (Offering Series C, F, G, I, O, P, T6 and T8 securities)
Mackenzie Founders Income & Growth Fund (Offering Series A, F, I, O, P, T6 and T8 securities)
Mackenzie Ivy Global Balanced Fund (Offering Series A, F, G, I, O, P, T6 and T8 securities)
Mackenzie Ivy Growth and Income Fund (Offering Series A, F, G, I, O, P, T6 and T8 securities)
Mackenzie Maxxum Monthly Income Fund (Offering Series A, F, G, I, O, P, T6 and T8 securities)
Mackenzie Sentinel Income Fund (Offering A, B, C, F, G, I and O securities)
Mackenzie Universal Canadian Balanced Fund (Offering Series A, F, G, I, O, P, T6 and T8 securities)
Principal Regulator - Ontario

Type and Date:
Amendment #3 dated April 24, 2008 to the Simplified Prospectuses and Annual Information Forms dated November 14, 2007
NP 11-202 Receipt dated May 1, 2008

Offering Price and Description:
Series C, F, G, I, M, O, P, T6 and T8 Securities @ Net Asset Value

Underwriter(s) or Distributor(s):
-
Quadrus Investment Services Ltd.

Promoter(s):
Mackenzie Financial Corporation

Project #1166245

Issuer Name:
Series A, F, I, O, P, T6, T8 and W Shares of:
Symmetry Equity Class
Symmetry Managed Return Class
of
Mackenzie Financial Capital Corporation
Series A, F, I, O and W Units of:
Symmetry Registered Fixed Income Pool
Series A Units of:
Symmetry Allocation Pool
Principal Regulator - Ontario

Type and Date:
Amendment #2 dated April 24, 2008 to the Simplified Prospectuses and Annual Information Forms dated December 7, 2007
NP 11-202 Receipt dated April 30, 2008

Offering Price and Description:
Series A, F, I, O, P, T6, T8 and W Shares @ Net Asset Value

Underwriter(s) or Distributor(s):
-

Promoter(s):
Mackenzie Financial Corporation

Project #1175042

Issuer Name:
Mackenzie Fixed Income Fund
Principal Regulator - Ontario

Type and Date:
Amendment #1 dated April 24, 2008 to the Simplified Prospectus and Annual Information Form dated December 12, 2007
NP 11-202 Receipt dated April 30, 2008

Offering Price and Description:
Series O Securities @ Net Asset Value

Underwriter(s) or Distributor(s):
-

Promoter(s):
Mackenzie Financial Corporation

Project #1181036

Issuer Name:
PC Gold Inc.
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated April 30, 2008
NP 11-202 Receipt dated April 30, 2008
Offering Price and Description:
Minimum: $7,500,000.00; Maximum: $10,000,000.00 - Minimum: 7,500,000 Common Shares Maximum: 10,000,000 Common Shares Price: $1.00 per Common Share, Over-allotment option: 1,500,000 common shares at $1 per common share, compensation options 805,000 common shares at $1 per common share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Research Capital Corporation
Promoter(s):
Kevin M. Keough
Project #1232671

Issuer Name:
RBC Premium $U.S. Money Market Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated May 1, 2008 to the Simplified Prospectus and Annual Information Form dated October 26, 2007
NP 11-202 Receipt dated May 6, 2008
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Royal Mutual Funds Inc.
Promoter(s):
RBC Asset Management Inc.
Project #1165240

Issuer Name:
RBC Premium Money Market Fund
Principal Regulator - Ontario
Type and Date:
Amendment #3 dated May 1, 2008 to the Simplified Prospectus and Annual Information Form dated July 3, 2007
NP 11-202 Receipt dated May 6, 2008
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Royal Mutual Funds Inc.
RBC Direct Investing Inc.
Royal Mutual Funds Inc.
RBC Asset Management Inc.
RBC Dominion Securities Inc.
Royal Mutual Funds Inc./RBD Direct Investing Inc.
Promoter(s):
RBC Asset Management Inc.
Project #1108387

Issuer Name:
Renaissance Canadian Balanced Value Fund
Renaissance U.S. Equity Growth Fund
Principal Regulator - Ontario
Type and Date:
Amendment #3 dated May 1, 2008 to the Simplified Prospectuses and Annual Information Forms dated August 20, 2007
NP 11-202 Receipt dated May 6, 2008
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
CIBC Asset Management Inc.
Promoter(s):
CIBC Asset Management Inc.
Project #1121201

Issuer Name:
Sprott Canadian Equity Fund
Sprott Energy Fund
Sprott Global Equity Fund
Sprott Gold and Precious Minerals Fund
Sprott Growth Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated April 28, 2008
NP 11-202 Receipt dated April 30, 2008
Offering Price and Description:
Series A, F and I Units
Underwriter(s) or Distributor(s):
Sprott Asset Management Inc.
Promoter(s):
Sprott Asset Management Inc.
Project #1235158

Issuer Name:
Stone & Co. Europlus Dividend Growth Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated May 2, 2008
NP 11-202 Receipt dated May 5, 2008
Offering Price and Description:
Investment fund trust units at net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Stone & Co. Limited
Project #1243960

Issuer Name:
Strategic Resource Acquisition Corporation
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated May 1, 2008
NP 11-202 Receipt dated May 1, 2008
Offering Price and Description:
$13,000,000.00 - 6,500,000 Units $2.00 per Unit
Underwriter(s) or Distributor(s):
Blackmont Capital Inc.
Haywood Securities Inc.
Promoter(s):
-
Project #1249570

Issuer Name:
UBS (Canada) Global Allocation Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated May 2, 2008
NP 11-202 Receipt dated May 6, 2008
Offering Price and Description:
Investment trust units at net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1243852

Issuer Name:
Viterra Inc.
Principal Regulator - Saskatchewan
Type and Date:
Final Short Form Prospectus dated May 2, 2008
NP 11-202 Receipt dated May 2, 2008
Offering Price and Description:
$400,400,000.00 - 28,600,000 COMMON SHARES Price $14.00 per Common Share
Underwriter(s) or Distributor(s):
TD Securities Inc.
Genuity Capital Markets
National Bank Financial Inc.
Scotia Capital Inc.
UBS Securities Canada Inc.
BMO Nesbitt Burns Inc.
HSBC Securities (Canada) Inc.
RBC Dominion Securities Inc.
Promoter(s):
-
Project #1252885

Issuer Name:
Western Potash Corp.
Principal Regulator - British Columbia
Type and Date:
Final Prospectus dated April 29, 2008
Mutual Reliance Review System Receipt dated April 30, 2008
Offering Price and Description:
$20,003,500.00 - 18,185,000 Common Shares $1.10 PER COMMON SHARE
Underwriter(s) or Distributor(s):
Wellington West Capital Markets Inc.
Canaccord Capital Corporation
Genuity Capital Markets
Promoter(s):
-
Project #1229013

Issuer Name:
Yorbeau Resources Inc.
Type and Date:
Rights Offering Circular dated April 21, 2008
Accepted on April 23, 2008
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1227551

Issuer Name:
Global Biotech Corp
Type and Date:
Preliminary Prospectus dated December 3, 2007
Closed on May 6, 2008
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1185728

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Consent to Suspension (Rule 33-501 - Surrender of Registration)	Clay Finlay Inc.	International Adviser (Investment Counsel & Portfolio Manager)	April 30, 2008
New Registration	Clay Finlay LLC	International Adviser (Investment Counsel & Portfolio Manager)	April 30, 2008
Reinstatement of Registration	Gartmore Investment Limited	International Adviser (Investment Counsel & Portfolio Manager)	April 30, 2008
Change of Name	From: Ariel Capital Management, LLC To: Ariel Investments, LLC	Non-Canadian Adviser (Investment Counsel & Portfolio Manager)	April 30, 2008
Voluntary Surrender of Registration	Everest Securities Inc./Valeurs Mobilieres Everest Inc.	Investment Dealer	May 2, 2008
New Registration	Kingmann Investments Inc.	Limited Market Dealer	May 5, 2008
New Registration	Orgin Point Capital Partners Corp.	Limited Market Dealer	May 6, 2008
New Registration	ODL Securities (Canada) Ltd.	Limited Market Dealer	May 6, 2008

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 RS Notice – Commission Approval of RS Proposal – Allocation of Costs – First Group

May 9, 2008 No. 2008-005

MARKET REGULATION SERVICES INC.

NOTICE OF COMMISSION APPROVAL OF RS PROPOSAL

ALLOCATION OF COSTS – FIRST GROUP

Summary

This RS Notice provides notice of the approval by the applicable securities regulatory authorities effective April 15, 2008 of an allocation model for a series of direct charges to marketplaces to recover operational and capital costs caused by the introduction of new marketplaces.

RS will implement the proposed allocation of these charges immediately.

Questions / Further Information

For further information or questions concerning this notice contact:

Doug Harris
Director of Policy, Research and Strategy
Telephone: 416.646.7275 / Fax: 416.646.7265
e-mail: doug.harris@rs.ca

APPROVAL OF ALLOCATION OF COSTS – FIRST GROUP

Summary

This RS Notice provides notice of the approval by the applicable securities regulatory authorities (the "Recognizing Regulators") effective April 15, 2008 of an allocation model (the **"Allocation Model"**) for a series of direct charges to marketplaces (the **"Marketplace Charges"**) to recover operational and capital costs caused by the introduction of new marketplaces.

This model relates to the first group of a number of pending charges and proposals relating to RS costs and fees.

The Marketplace Charges relate to the following:

1. RS's internal administrative start-up costs associated with the launch of each new marketplace (**"Start-Up Costs"**);

2. the cost of the work performed by RS's technology provider to allow RS's systems to receive each new marketplace's data through the existing firewall and to validate connectivity (**"Connection Costs"**);

3. the cost of the work performed by RS's technology provider as a result of unique features of each new marketplace (if applicable) that require additional changes to RS's systems (**"Marketplace-Specific Costs"**); and

4. the cost of modifying RS's existing systems to receive data from all of those marketplaces for which RS cannot currently perform automated monitoring (**"Phase 1 Costs"**).

Based upon the public comments received and comments from the Recognizing Regulators, RS has modified the original allocation proposal (published for comment by RS in RS Notice 2006-007 – *Proposed Allocation of Costs – First Group* (November 17, 2006)) relating to Start-Up Costs and Phase 1 Costs as follows:

- **Start-Up Costs**: RS originally proposed to recover from each marketplace the greater of $50,000 and RS's actual costs, based on time tracking by RS staff, associated with the launch of that marketplace. RS has modified this proposal so that RS will now recover from each marketplace RS's actual costs, whether greater than or less than $50,000.

- **Phase 1 Costs**: RS originally proposed to recover Phase 1 Costs from the marketplaces for which RS is providing dedicated surveillance but cannot currently perform automated monitoring (i.e., all marketplaces other than Bloomberg Tradebook, the TSX and TSXV), with each contributing marketplace sharing the Phase 1 Costs equally. RS has modified this proposal so that RS will now recover the Phase 1 Costs from all marketplaces for which RS is the regulation services provider that are in operation on the date of approval, including Bloomberg Tradebook, the TSX and TSXV.

There are no other changes to the proposal as published in RS Notice 2006-007.

A summary of the comments received and RS's responses is available on the RS website.

The approved model for Start-Up Costs will be implemented for all new marketplaces that had not yet paid the fixed start-up fee on the date of RS Board approval of the modified proposal. RS will issue invoices to the relevant marketplaces for Connection Costs, Marketplace-Specific Costs and Phase 1 Costs incurred to date as soon as possible following approval. As was noted in RS Notice 2006-007, RS has already paid its technology provider for the Connection Costs and Marketplace-Specific Costs for certain marketplaces and Phase 1 Costs, and will be invoiced for the remaining Connection Costs and Marketplace-Specific Costs as they are incurred, and so needs to recover these amounts as soon as possible to minimize the interest and other carrying costs that will otherwise have to be recovered through UMIR regulation fees.

RS published a proposed UMIR regulation fee model for public comment in RS Notice 2007-001 – *Proposed UMIR Regulation Fee Model* (January 12, 2007). The Recognizing Regulators are continuing their review of that proposal.

RS will be developing further proposals in relation to the costs to consolidate marketplace data and develop displays and tools to provide effective cross-market monitoring. Such proposals are still subject to RS Board review and approval, as well as regulatory approval, and so will be published separately.

Background to the Allocation Model

Current RS Fee Model

RS currently recovers its operating and capital costs of providing UMIR regulation services through fees charged to marketplaces (in some cases, RS bills a marketplace's participating organizations or members directly), with the sole exception of Start-Up Costs, which RS collects directly from each marketplace.

In connection with the actual and anticipated introduction of new marketplaces, RS has incurred and will continue to incur one-time extraordinary costs to modify its technology systems to support RS's provision of regulation services to all marketplaces. In connection with approving these costs, the RS Board also considered the most appropriate allocation of these costs among the marketplaces for which RS provides regulation services, and appropriate payment arrangements.

Section 2 of Schedule A to RS's recognition order requires RS to charge fees on a cost recovery basis, to have a fair, transparent and appropriate process for setting fees, and to allocate those fees on an equitable basis among marketplaces and marketplace participants. The recognition order also provides that RS's fees will balance the need for RS Inc. to satisfy its responsibilities without creating barriers to access. The RS Board has observed each of these directives in approving the Allocation Model.

RS Review of Fee Model and Costs Associated with New Marketplaces

Beginning in April of 2006, the RS Board and Finance and Audit Committee undertook a detailed review of RS's fee model, as it relates to ongoing UMIR regulation fees and to one-time capital expenditures like those required in connection with the introduction of new marketplaces.

To assist with this review, RS engaged consultants from PricewaterhouseCoopers LLP, who performed a detailed analysis of RS's existing fee model and cost structure, and provided analysis and recommendations for a new fee structure that would best allow RS to charge fees on a cost recovery basis in accordance with its recognition order and other requirements set out in RS's regulation services agreements.

The Board and Finance and Audit Committee engaged in extensive analysis of the issues associated with ongoing UMIR regulation costs and capital expenditures, bringing to bear the expertise of their members as well as of PricewaterhouseCoopers

LLP and RS management and staff. The development of a fee model unavoidably requires trade-offs and compromises. RS believes that the Allocation Model represents the best possible balancing of the competing interests of RS's many stakeholder groups. It is the result of a comprehensive process of analysis and deliberation by RS's Directors.

RS also considered the allocation models used in other regulated industries (including telecommunications and electricity), which provide support for the principle that new entrants to a market must bear an equitable share of the costs of their entry.

RS also considered the U.S. experience with technology and cost-sharing relating to cross-market monitoring; Appendix "A" provides an overview of how similar issues were addressed in the U.S., and demonstrates that inter-market surveillance is conducted through coordination arrangements among multiple self-regulatory organizations. There are conflicting views as to the efficacy of these coordination arrangements, compared to the potential benefits of consolidated monitoring. Because monitoring activity is conducted separately by the NASD and NYSE, U.S. regulators have not had to address the allocation issues that RS has considered. The costs of coordinating monitoring activity (e.g., through the Intermarket Surveillance Group) in the U.S. are shared among the participating U.S. self-regulatory organizations.

Details of and Rationale for Allocation Model

Start-Up Costs

Start-Up Costs reflect RS's costs for the internal legal and operational work required in connection with the launch of a new marketplace, including:

- preparation of regulation services agreement;
- review of trading model and consultation on UMIR issues;
- development of procedural manuals; and
- training.

To date, RS has charged a fixed fee of $25,000 to each marketplace to recover these costs. RS engaged in detailed tracking of the actual hours spent by RS staff in connection with recent marketplace launches. Based on charge rates for RS staff time, the average cost of start-up activities exceeds $25,000.

It is therefore clear that the current fixed charge does not accurately reflect RS's costs associated with the launch of a new marketplace, and therefore creates a subsidy from existing marketplaces to each new marketplace to the extent that RS's costs in excess of the fixed amount are recovered through UMIR regulation fees.

RS originally proposed to recover from each marketplace the greater of $50,000 and RS's actual costs, based on time tracking by RS staff, associated with the launch of that marketplace. RS has modified this proposal so that RS will now recover from each marketplace RS's actual costs, whether greater than or less than $50,000.

RS believes that it is appropriate for each new marketplace to bear its Start-Up Costs directly, since these costs are directly caused by the introduction of the new marketplace and should therefore be recovered directly from that marketplace. RS also believes that this direct charge to the marketplace that allows RS to fully recover its internal costs creates a more appropriate incentive for the marketplace to participate in an efficient and timely process to finalize the regulation services agreement and other arrangements associated with the marketplace's launch. If these costs were shared by all marketplaces (as they would be if recovered through UMIR regulation fees), there would be no incentive for a new marketplace to work towards a timely and efficient resolution of issues associated with its launch.

Connection Costs

For each new marketplace for which RS performs automated monitoring, RS's technology provider (TSX Inc., under the current Corporate Services Agreement between RS and TSX Inc.) must perform approximately twenty person days of work to connect, configure and test RS's systems to receive the individual marketplace's data through RS's existing firewall and other security systems. There are no economies of scale applicable to this work; it must be performed for each new marketplace.

Again, RS believes that it is appropriate for each new marketplace to bear its Connection Costs directly, since these costs are directly caused by the introduction of the new marketplace and should therefore be recovered directly from that marketplace.

Connection Costs currently are $26,393 plus GST for each new marketplace. This amount represents the actual charge to RS from its technology provider (billed to RS on a "cost plus 15%" basis). If the charge to RS changes in the future, marketplaces paying Connection Costs at that time will pay the new amount.

Each marketplace will be invoiced for its Connection Costs at the time that RS is invoiced by its technology provider.

Marketplace-Specific Costs

In addition to Connection Costs, a new marketplace may have unique features that require RS's technology provider to perform additional work to make additional changes to RS's systems. For example, Marketplace-Specific Costs would arise where a marketplace had unique markers, or a unique trading session that required modifications to RS's systems to accommodate, or forecast a level or type of trading activity that would require RS to expand its technology infrastructure.

To date, only one marketplace has incurred Marketplace-Specific Costs. Additional Marketplace-Specific Costs will likely be identified in the course of the work to consolidate marketplace data and develop displays and tools to provide effective cross-market monitoring.

RS believes that it is appropriate for each new marketplace to bear its Marketplace-Specific Costs directly, since these costs are directly caused by the unique features of the new marketplace and should therefore be recovered directly from that marketplace.

The amount of Marketplace-Specific Costs for each marketplace will represent the actual charge to RS from its technology provider (billed to RS on a "cost plus" basis). Each marketplace will be invoiced for its Marketplace-Specific Costs at the time that RS is invoiced by its technology provider.

Phase 1 Costs

In order to effectively monitor all marketplaces that RS regulates on an automated, real-time basis, RS must:

- receive data feeds from each of the marketplaces, using common feed standards; and
- consolidate marketplace data and develop displays and tools to provide effective cross-market monitoring.

RS refers to the first stage as "Phase 1" and the second stage as "Phase 2".

The need for RS to receive automated real-time feeds from different marketplaces, and to consolidate those feeds to enable cross-market monitoring, did not arise when RS was created in 2002 because the only marketplaces to be regulated were TSX and TSXV, and RS could monitor trading on these marketplaces using existing tools acquired from those marketplaces. Recent developments have created the need for RS to address these issues:

- With respect to automated monitoring, Shorcan ATS launched in August 2006 (but has since ceased operations), CNQ's Pure Trading facility launched in October 2006, MATCH Now (TriAct Canada) launched in July 2007, and Omega ATS launched in December 2007. Other marketplaces, including Chi-X Canada and Alpha Trading System, have announced plans to launch.
- With respect to cross-market monitoring, in 2005 BlockBook began trading TSX-listed securities, and securities were interlisted between TSXV and CNQ. In addition, MATCH Now, Pure Trading and Omega ATS trade TSX-listed securities.

Phase 1 delivers the various marketplaces' data to RS and stores that data in RS's systems. This will enable RS to review and access information on a post-trade basis without having to rely on a marketplace itself. Some of RS's current real-time alerts will work but, since the data from the various marketplaces will not be consolidated, RS will not have cross-market monitoring available. Additionally, it is possible that some alerts may actually need to be turned off for specific marketplaces as they will generate false positives.

The IT assets created by Phase 1 and Phase 2 will be "common" assets in the sense that they will allow RS to use its tools to monitor any marketplace that provides a data feed conforming to the RS feed standard. To the extent that a marketplace requires RS to have marketplace-specific "dedicated" IT assets necessary to monitor trading specifically on that marketplace, the marketplace will pay the entire cost for RS to develop those assets as Marketplace-Specific Costs.

RS's technology provider completed Phase 1 in July 2006. The cost to RS of Phase 1 was, by mutual agreement between RS and its technology provider, capped at $300,000, comprising $40,000 for requirements gathering and $260,000 for development.

RS management and the RS Board engaged in detailed and extensive deliberations regarding the appropriate allocation of Phase 1 Costs among the marketplaces. Considerations included:

- the marketplaces that would receive a benefit from Phase 1;

- the extent to which the chosen allocation of Phase 1 Costs represents an equitable allocation among marketplaces;
- the extent to which a particular allocation was neutral among marketplaces;
- the extent to which imposing Phase 1 Costs on new marketplaces could represent a barrier to entry (which RS interpreted as imposing costs on a marketplace that exceed the cost of available alternatives); and
- the extent to which an inappropriate allocation of Phase 1 Costs could create the risk of "inefficient entry" (i.e., in which the costs of entry are held artificially low by a subsidy from other marketplaces).

RS originally proposed to recover Phase 1 Costs from the marketplaces for which RS is providing dedicated surveillance but cannot currently perform automated monitoring (i.e., all marketplaces other than Bloomberg Tradebook, the TSX and TSXV), with each contributing marketplace sharing the Phase 1 Costs equally. RS has modified this proposal so that RS will now recover the Phase 1 Costs from all marketplaces for which RS is the regulation services provider that are in operation on the date of approval, including Bloomberg Tradebook, the TSX and TSXV.

RS believes that equal sharing of Phase 1 Costs is appropriate, as opposed to sharing according to a formula based on trading activity or some other indicator, because the Phase 1 Costs are independent of expected trading volumes on any particular marketplace and the combined trading volumes of the marketplaces that will benefit from Phase 1.

RS also believes that the marketplaces that will pay the Phase 1 Costs should all pay an equal share, even though some of those marketplaces will not be monitored using the new technology until Phase 2 is completed. While Phase 1 has been completed, RS still cannot receive data feeds from certain marketplaces until Phase 2 is completed, because those marketplaces have unique features that must be addressed in Phase 2. Nevertheless, RS believes that these marketplaces should share in the Phase 1 Costs now, because Phase 1 is a necessary precondition to completing Phase 2.

Also, even though Phase 1 results in RS being able to receive a data feed from a marketplace that is required for automated monitoring, RS has the option to continue to perform manual monitoring of marketplaces where activity levels are low or RS otherwise considers it advisable. RS intends to continue to elect to perform manual monitoring of several marketplaces that could be monitored on an automated basis even though Phase 1 has been completed. (These marketplaces will not have to pay the Connection Costs until RS begins automated monitoring.) Nevertheless, RS believes that these marketplaces should also share in the Phase 1 Costs now, also because Phase 1 is a necessary precondition to completing Phase 2, and RS will require all marketplaces to move to automated monitoring once Phase 2 is completed so that RS can perform effective automated cross-market monitoring.

The total Phase 1 Costs of $300,000 will be divided evenly among the number of marketplaces that will pay the Phase 1 Costs. These marketplaces will be the marketplaces in operation on the date that the Recognizing Regulators approve the Allocation Model. Ten marketplaces will therefore share the Phase 1 Costs, resulting in a cost-per-marketplace of $30,000.[1] Each marketplace sharing in Phase 1 Costs will be invoiced immediately after RS receives regulatory approval for the Allocation Model as it relates to Phase 1 Costs.

If a new marketplace, not included in the original paying group, launches prior to the third anniversary of the date of Recognizing Regulator approval, the total Phase 1 Costs of $300,000 would be re-divided among the new number of marketplaces and the new marketplace would pay its share in the manner described above. RS would divide the payment it receives from the new marketplace evenly among the existing marketplaces paying Phase 1 Costs and issue a refund to those marketplaces. For example, if nine marketplaces share the Phase 1 Costs and pay $33,333 each, and a new marketplace launches within three years, the new marketplace will pay $30,000 (equal to $300,000 divided by ten), and each of the nine marketplaces that contributed to Phase 1 Costs will receive a refund of $3,333. RS may also require a new marketplace that launches after the third anniversary of Recognizing Regulator approval to bear an equitable portion of the Phase 1 Costs.

Aggregate Impact on Marketplaces

Appendix "B" sets out the total payments to be made by each of the marketplaces currently in operation under the Allocation Model. The amounts in Appendix "B" do not include any amounts that the marketplaces may have to pay as their share of Phase 2 Costs (see "Further Proposals re Fee Model", below).

RS believes that the total amounts to be paid by individual marketplaces do not represent a barrier to entry and are reasonable since they are significantly lower than the costs that these marketplaces would incur – each individually or together – to duplicate the existing technology in place at RS and that RS will use to monitor trading on those marketplaces. The new

[1] That is, $300,000 divided ten ways among TSX, TSXV, CNQ, Pure Trading, Bloomberg Tradebook, BlockBook, Liquidnet, MATCH Now, Omega ATS and Chi-X Canada.

marketplaces that are sharing in the Phase 1 Costs are benefiting from the considerable economies of scale and scope provided by RS's existing technology infrastructure. As noted below, RS may propose that these marketplaces share in Phase 2 Costs if those costs are approved by the RS Board and depending on the allocation model approved by the Board. RS has considered the impact of the aggregate cost, including potential Phase 2 Costs, and believes that the total costs to each marketplace would not represent a barrier to entry.

Further Proposals re Fee Model

RS published a proposed UMIR regulation fee model for public comment in RS Notice 2007-001 – *Proposed UMIR Regulation Fee Model* (January 12, 2007). The Recognizing Regulators are continuing their review of that proposal.

RS will be developing a further proposal in relation to the costs to consolidate marketplace data and develop displays and tools to provide effective cross-market monitoring (referred to above as "Phase 2"). The approved allocation of Phase 1 Costs is in no way determinative of the allocation of Phase 2 Costs. The allocation of Phase 2 Costs is subject to RS Board review and approval, as well as regulatory approval, and so will be published separately. Note that RS may propose that the marketplaces listed in Appendix "B" share in Phase 2 Costs, which will be in addition to those costs set out in Appendix "B".

RS believes that the Allocation Model is consistent with the goal of a fair and transparent fee structure for the self-regulatory organization to be formed by the merger of RS and the IDA, and intends to carry this model forward into the new organization.

Status and Timetable

The approved model for Start-Up Costs will be implemented for all new marketplaces that had not yet paid the fixed start-up fee on the date of RS Board approval of the modified proposal. RS will issue invoices to the relevant marketplaces for Connection Costs, Marketplace-Specific Costs and Phase 1 Costs incurred to date as soon as possible following approval. As was noted in RS Notice 2006-007, RS has already paid its technology provider for the Connection Costs and Marketplace-Specific Costs for certain marketplaces and Phase 1 Costs, and will be invoiced for the remaining Connection Costs and Marketplace-Specific Costs as they are incurred, and so needs to recover these amounts as soon as possible to minimize the interest and other carrying costs that will otherwise have to be recovered through UMIR regulation fees.

Questions / Further Information

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Appendix A
Cross-Market Monitoring in the United States

Intermarket Monitoring Arrangements in the U.S.

Overview

Each SRO (i.e., NASD, Nasdaq, NYSE and the other national securities exchanges in the U.S.) is required to have rules designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to refrain from imposing any unnecessary or inappropriate burdens on competition. For example, an SRO must maintain procedures to surveil against rule violations, including insider trading and market manipulation. While different market structures may imply different procedures for accomplishing this task, SROs are required to expend sufficient resources, in terms of both staff and technology, to support their surveillance functions. This includes having officers with expertise in monitoring for compliance with federal securities laws and SRO rules, and an understanding of the role of a registered exchange or association as an SRO. An SRO must deploy adequate examination and surveillance systems and maintain an audit trail of the transactions in its system. SROs' regulatory programs are periodically inspected by the SEC.

The NASD and the NYSE maintain central audit trail systems for trading in Nasdaq and NYSE securities, respectively. The NASD system is called OATS (Order Audit Trail System) and the NYSE system is called OTS (Order Tracking System). NASD and NYSE members are required to provide order data to the regulator through these systems. These systems are then used in the market surveillance conducted by the NASD and NYSE for their respective securities.

Nasdaq and NYSE securities are traded on numerous other U.S. markets through unlisted trading privileges. The U.S. markets created the Intermarket Surveillance Group (ISG) to coordinate their monitoring of trading across markets. ISG has established information sharing arrangements that provide for the exchange of market data surveillance information among the SROs through various means. Generally, information is shared between the members on an as-needed basis and only upon request.

The U.S. members of ISG share trading information, including audit trail information, on a formalized basis electronically via the facilities of the Securities Industry Automation Corporation (SIAC). For example, the ISG makes its Consolidated Equity Audit Trail available through the SIAC. The ISG also has a Consolidated Options Audit Trail System. These systems are intended to supplement the surveillance systems of individual markets.

ISG has developed and implemented investigative practices for coordinated investigations. ISG's general meetings held three times each year, as well as frequent meetings of the Surveillance Practices, Surveillance Investigative Practices, Technology, and Option sub-groups, are intended to develop uniform definitions of intermarket abuses and provide a forum for coordinating joint surveillance efforts.

Recent Developments

In 2003, Nasdaq filed a petition with the SEC that contained numerous complaints about these arrangements, including the following claims:

- investors are potentially harmed by the lack of uniform trading rules and from unequal surveillance and enforcement of rules by the various SROS;
- no other market currently executing trades in Nasdaq-listed securities has rules requiring its members to report order audit trail information or operates a Commission-approved order audit trail;
- for transactions reported away from Nasdaq, the ISG/SIAC audit trail has the following deficiencies:
    - it only provides trade information at the clearing firm level, as opposed to both the clearing firm and the executing firm levels;
    - the time fields in the data are not generated by clocks subject to uniform synchronization protocols, as is the case with OATS data;
    - ISG/SIAC data is not provided in a format that is conducive to integration into NASD's automated surveillance systems – as a result, manually processing this information can be time-intensive;
    - ISG/SIAC data is not received until two days after the trade date; Nasdaq claimed that such a delay can significantly hinder NASD's ability to investigate unlawful trading activity on a real-time basis and can prevent NASD from obtaining non-stale regulatory information in an ongoing investigation;

- consolidated regulation protects investors better than the coordinated regulation that ISG/SIAC facilitates;

- consolidated regulation should be crafted by the entities that will be governed, whereas ISG is a voluntary organization whose membership includes SROs (only some of which trade Nasdaq-listed securities) and certain foreign entities that are not regulated as SROs by the SEC; and

- in the absence of a framework for adopting uniform order audit trails and uniform enforcement of marketplace rules, Nasdaq is forced to subsidize other markets' regulatory costs; Nasdaq funds NASD's OATS to collect trading information from all NASD members, whether or not the trades are reported to Nasdaq.

These issues have not been resolved. In the *Concept Release Concerning Self-Regulation* issued in November 2004, the SEC again solicited comment on intermarket monitoring arrangements among the various SROs. The SEC summarized the comments received on Nasdaq's 2003 petition as follows:

- some commenters argued that existing audit trail systems were well-designed, even though they did not interact with Nasdaq's;

- many commenters were concerned that complying with multiple SROs' different order audit trail systems would be burdensome and expensive to implement and administer;

- other commenters argued that Nasdaq had understated the effectiveness of ISG and that the organization should be allowed to continue in its role as the facilitator of regulatory data sharing among markets;

- the ISG stated that

    - the SROs are able to view trading activity in the context of all markets' clearing level quote and trade data;

    - its Equity Audit Trail system provides a consolidated view across all markets of quotes and trades, including clearing information;

    - no other market had raised the issues that Nasdaq raised in its petition; and

    - neither the time delays in receiving information through ISG nor the lack of a uniform synchronization protocol had proven to be problematic;

- the NYSE generally supported the traditional role of the ISG, and raised the possibility of the SEC requiring that each individual market establish an order audit trail system similar to the NYSE's and the NASD's and mandating that the data from these separate order audit trails be integrated into the ISG's consolidated order audit trail; and

- the NASD argued that the current model of coordinated regulation results in regulatory gaps and that potential misconduct can occur across markets undetected by regulators, and that the less detailed regulatory information collected by the ISG/SIAC lacks certain critical pieces of information to effectively assist SROs in regulating intermarket trading activity.

In the SRO Concept Release, the SEC asked for responses to the following questions:

- To what extent does our market model of multiple competing SROs create gaps in intermarket trading surveillance? What types of illicit trading activity in particular can be hidden from regulators by dispersing trading across multiple markets?

- How effectively does the ISG serve as a facilitator of regulatory data sharing and surveillance coordination among SROs? Is the ISG's order audit trail effective as a regulatory tool? How feasible would it be to require all markets to adopt order audit trails similar to those of the NYSE and the NASD and ultimately to integrate all markets' order audit trails into the ISG's consolidated order audit trail?

- How similar are the order audit trail systems of the NYSE and the NASD? Could they be merged into one consolidated system and what would be the benefits of such a consolidated system? Should NASD's OATS or NYSE's OTS requirements be extended to all equity markets to enhance the ability of SROs to surveil intermarket activity? If so, could all markets' individual order audit trails be successfully integrated into the ISG's consolidated order audit trail or another consolidated system? How useful a regulatory tool would the

ISG's consolidated order audit trail system be if all markets were required to adopt their own order audit trail systems and their data was required to be integrated into the ISG's?

- To what extent is there a need for an order audit trail to provide crossover surveillance between the equities and options markets? To what extent would such crossover surveillance detect specific types of illicit trading activity?

There has been no further SEC communication following the issuance of the SRO Concept Release that contained these questions.

It therefore appears clear that the interaction of SRO monitoring of separate markets is a work in progress in the U.S. and that there are significant outstanding issues relating to the effectiveness of inter-market surveillance.

Allocation of Costs of Intermarket Monitoring in the U.S.

The NASD agreed to create OATS in response to an SEC order issued in 1996 following the discovery of collusion among market makers and other misconduct on Nasdaq. The NASD also agreed to increase its staffing in the areas of examinations, surveillance, enforcement, and internal audit in response to that order. The offer of settlement from the NASD to SEC stated that the NASD had authorized US$25 million and committed to expend an additional US$75 million over the following five years to enhance its systems for market surveillance, including the development and implementation of OATS. Nasdaq funded the creation of the OATS system and, as Nasdaq's 2003 petition noted, funds the continued operation of OATS.

The NYSE implemented OTS in response to a separate SEC finding that the NYSE had failed to provide adequate supervision, in its case of independent floor brokers. We have not found any information indicating that the NYSE did not fund the development of OTS itself, or the cost of the system.

The costs involved with the development and maintenance of ISG surveillance tools and the operation of ISG with respect to U.S. intermarket monitoring are funded by the U.S. ISG members by mutual agreement.

Appendix B
Impact on Marketplaces of Allocation Model

Marketplace	Start-Up Costs[1]	Connection Costs[2]	Marketplace-Specific Costs[3]	Phase 1 Costs[4]	Total
Group A (1 marketplace)	$25,000	$26,393	$12,500	$30,000	**$93,893**
Group B (3 marketplaces)	$25,000	$26,393	-	$30,000	**$81,393**
Group C (6 marketplaces)	$25,000	-	-	$30,000	**$55,000**

1 This amount will increase to RS's actual Start-Up Costs.
2 The amounts set out in the table reflect current Connection Costs. Actual Connection Costs may change in the future. Also, a marketplace will not be invoiced for Connection Costs until RS decides to commence automated monitoring of that marketplace.
3 To date, only one marketplace has incurred Marketplace-Specific Costs. Additional Marketplace-Specific Costs will likely be identified in the course of Phase 2.
4 Each marketplace's share of Phase 1 Costs will decrease if additional new marketplaces begin operations and contribute to Phase 1 Costs.

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