The Ontario Securities Commission

OSC Bulletin

December 19, 2008

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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)

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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

DECEMBER 19, 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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Patrick J. LeSage	—	PJL
Carol S. Perry	—	CSP
Suresh Thakrar, FIBC	—	ST
Wendell S. Wigle, Q.C.	—	WSW

SCHEDULED OSC HEARINGS

January 5, 2009	**FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun**
TBA	s. 127
	M. Mackewn in attendance for Staff
	Panel: ST/MCH
January 5-16, 2009	**Xi Biofuels Inc., Biomaxx Systems Inc., Ronald David Crowe and Vernon P. Smith**
10:00 a.m.	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: TBA
January 6, 2009	**Goldpoint Resources Corporation, Lino Novielli, Brian Moloney, Evanna Tomeli, Robert Black, Richard Wylie and Jack Anderson**
3:00 p.m.	
	s. 127(1) and 127(5)
	M. Boswell in attendance for Staff
	Panel: JEAT/MCH
January 12-23, 2009	**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**
10:00 a.m.	
	s. 127
	C. Price in attendance for Staff
	Panel: PJL/KJK

January 19, 2009 10:00 a.m.	**Goldbridge Financial Inc., Wesley Wayne Weber and Shawn C. Lesperance** s. 127 J. Feasby in attendance for Staff Panel: JEAT/PLK
January 20, 2009 3:00 p.m.	**Irwin Boock, Stanton De Freitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjiants, Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd., Cambridge Resources Corporation, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group** s. 127(1) & (5) P. Foy in attendance for Staff Panel: DLK/ST
January 26-30, 2009 10:00 a.m.	**Darren Delage** s. 127 M. Adams 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: JEAT/DLK/PLK
February 10, 2009 10:00 a.m.	**Gold-Quest International, Health and Harmoney, Iain Buchanan and Lisa Buchanan** s.127 H. Craig in attendance for Staff Panel: TBA
February 16, 2009 9:30 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
February 23 - March 13, 2009 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: TBA
February 25-27, 2009 10:00 a.m.	**James Richard Elliott** S. 127 J. Feasby in attendance for Staff Panel: TBA
March 3, 2009 2:30 p.m.	**Brilliante Brasilcan Resources Corp., York Rio Resources Inc., Brian W. Aidelman, Jason Georgiadis, Richard Taylor and Victor York** s. 127 S. Horgan in attendance for Staff Panel: JEAT/PLK
March 3, 2009 3:30 p.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) K. Daniels in attendance for Staff Panel: TBA

March 16, 2009 10:00 a.m.	**Sextant Capital Management Inc., Sextant Capital GP Inc., Sextant Strategic Opportunities Hedge Fund L.P., Otto Spork, Robert Levack and Natalie Spork** s. 127 S. Kushneryk in attendance for Staff Panel: TBA
March 23-April 3, 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
April 6, 2009 10:00 a.m.	**Gregory Galanis** s. 127 P. Foy in attendance for Staff Panel: TBA
April 13-17, 2009 10:00 a.m.	**Matthew Scott Sinclair** s.127 P. Foy in attendance for Staff Panel: TBA
April 20-27, 2009 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 S. Horgan in attendance for Staff Panel: TBA
May 4-29, 2009 10:00 a.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: TBA
May 7-15, 2009 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
May 12, 2009 2:30 p.m.	**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: JEAT/ST

May 25 – June 2, 2009 10:00 a.m.	**Global Partners Capital, Asia Pacific Energy Inc., 1666475 Ontario Inc. operating as "Asian Pacific Energy", Alex Pidgeon, Kit Ching Pan also known as Christine Pan, Hau Wai Cheung, also known as Peter Cheung, Tony Cheung, Mike Davidson, or Peter McDonald, Gurdip Singh Gahunia also known as Michael Gahunia or Shawn Miller, Basis Marcellinius Toussaint also known as Peter Beckford, and Rafique Jiwani also known as Ralph Jay** s.127 M. Boswell in attendance for Staff Panel: TBA
June 1-3, 2009 10:00 a.m.	**Robert Kasner** s. 127 H. Craig in attendance for Staff Panel: TBA
June 4, 2009 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: DLK/CSP/PLK
June 4, 2009 11:00 a.m.	**Abel Da Silva** s.127 M. Boswell in attendance for Staff Panel: TBA
June 10, 2009 10:00 a.m.	**Global Energy Group, Ltd. and New Gold Limited Partnerships** s. 127 H. Craig in attendance for Staff Panel: TBA
August 10, 2009 10:00 a.m.	**New Life Capital Corp., New Life Capital Investments Inc., New Life Capital Advantage Inc., New Life Capital Strategies Inc., 1660690 Ontario Ltd., L. Jeffrey Pogachar, Paola Lombardi and Alan S. Price** s. 127 S. Kushneryk in attendance for Staff Panel: TBA
September 21-25, 2009 10:00 a.m.	**Swift Trade Inc. and Peter Beck** s. 127 S. Horgan in attendance for Staff Panel: TBA
November 16-December 11, 2009 10:00 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 M. Britton in attendance for Staff Panel: TBA
January 11, 2010 10:00 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: TBA
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

TBA **Frank Dunn, Douglas Beatty, Michael Gollogly**

s.127

K. Daniels 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

TBA **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

TBA **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: JEAT/MC/ST

TBA **Roger D. Rowan, Watt Carmichael Inc., Harry J. Carmichael and G. Michael McKenney**

s. 127

J. Superina in attendance for Staff

Panel: PJL/ST/DLK

TBA **Rodney International, Choeun Chhean (also known as Paulette C. Chhean) and Michael A. Gittens (also known as Alexander M. Gittens)**

s. 127

M. Britton in attendance for Staff

Panel: WSW/ST

TBA **Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited**

s. 127

M. Britton in attendance for Staff

Panel: TBA

TBA **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: WSW/DLK/MCH

TBA **Lyndz Pharmaceuticals Inc., Lyndz Pharma Ltd., James Marketing Ltd., Michael Eatch and Rickey McKenzie**

s.127(1) & (5)

J. Feasby in attendance for Staff

Panel: WSW/ST

TBA **Shane Suman and Monie Rahman**

s. 127 & 127(1)

C. Price in attendance for Staff

Panel: JEAT/DLK/MCH

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

1.1.2 Notice of Ministerial Approval – Form 51-102F6 Statement of Executive Compensation (in respect of financial years ending on or after December 31, 2008) and Consequential Amendments

NOTICE OF MINISTERIAL APPROVAL OF

FORM 51-102F6
STATEMENT OF EXECUTIVE COMPENSATION
(in respect of financial years ending on or after December 31, 2008)

AND

CONSEQUENTIAL AMENDMENTS

On November 17, 2008, the Minister of Finance approved, pursuant to section 143.3 of the *Securities Act* (Ontario), the following rules made by the Ontario Securities Commission (the New Form and Consequential Amendments):

- Form 51-102F6 *Statement of Executive Compensation (in respect of financial years ending on or after December 31, 2008)*;
- amendments to National Instrument 51-102 *Continuous Disclosure Obligations*;
- amendments to Form 51-102F5 *Information Circular*; and
- amendments to Form 51-102F6 *Statement of Executive Compensation*, which came into force on March 30, 2004, as amended.

The New Form and Consequential Amendments will come into force on December 31, 2008. The New Form and Consequential Amendments were previously published in the Bulletin on September 19, 2008, and are published in Chapter 5 of this Bulletin.

December 19, 2008

1.1.3 Notice of Addition – CSA Staff Notice 52-315 Certification Compliance Review

On December 15, 2008, the following explanatory note was added to CSA Staff Notice 52-315 *Certification Compliance Review*, at the beginning of the Notice:

> *Note: This Notice concerns an historical compliance review and contains staff guidance and references to requirements under Multilateral Instrument 52-109 Certification of Issuers' Annual and Interim Filings (MI 52-109). MI 52-109 was repealed and replaced by National Instrument 52-109 Certification of Issuers' Annual and Interim Filings effective December 15, 2008. Issuers and certifying officers are advised to refer to National Instrument 52-109 Certification of Issuers' Annual and Interim Filings and related documents for information regarding current certification requirements.*

1.1.4 Joint Notice of Approval – Amendments to MFDA Recognition Order

JOINT NOTICE OF APPROVAL OF CERTAIN RECOGNIZING REGULATORS OF THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA APPLICATION TO AMEND RECOGNITION ORDER

The Mutual Fund Dealers Association of Canada (MFDA) applied to the securities regulatory authority in each of British Columbia, Ontario, Saskatchewan and Nova Scotia (the Applicable Jurisdictions) to amend the order of each of the Applicable Jurisdictions recognizing the MFDA as a self-regulatory organization (Recognition Order). The MFDA requested the amendments in order to extend the suspension period for its Rule 2.4.1, which currently expires on December 31, 2008.

MFDA Rule 2.4.1 requires MFDA Members to pay any remuneration for business conducted by their Approved Persons on the Members' behalf directly to and in the name of the Approved Persons. The MFDA requested the extension to give it time to develop proposed amendments to Rule 2.4.1 to allow Approved Persons to direct such remuneration to a non-registered corporation, subject to conditions (a directed commissions approach).

A. Extension of the Suspension of MFDA Rule 2.4.1

The Applicable Jurisdictions have approved extending the suspension period for MFDA Rule 2.4.1 to March 31, 2010, with a requirement for the MFDA to submit its proposed amendments to Rule 2.4.1 by May 31, 2009. The Applicable Jurisdictions are of the view that a March 31, 2010 expiry date would provide sufficient time for the recognizing regulators to consider the regulatory impact of the proposal and for the MFDA to implement the resulting approved amendments. If the MFDA does not meet the May 31, 2009 deadline to submit a rule proposal, the Applicable Jurisdictions will provide a status update on the suspension of Rule 2.4.1 and will inform the industry which jurisdictions will be bringing Rule 2.4.1 into force on April 1, 2010.

A copy of each Applicable Jurisdiction's Recognition Order of the MFDA can be found on their websites or in their bulletin.

B. Public Comments on the MFDA's Application

On August 29, 2008, the Applicable Jurisdictions published for comment the MFDA's application and related documents. Seven comment letters were received. The MFDA's summary of comments and response is attached.

C. CSA's Response to Public Comments

The majority of the commenters advocate that any rule proposal should allow salespersons to conduct registerable activities on behalf of their dealers through the salespersons' personal corporations, rather than allow a directed commissions approach. They also recommend the establishment of a joint initiative of the CSA, SROs and industry to address the incorporated salesperson issue.

We would like to note that the CSA's objective is to ensure that any proposal the SROs submit allowing for salespersons' corporations addresses our regulatory concerns, primarily the protection of investors.

The CSA has communicated to the Investment Dealers Association of Canada (now the Investment Industry Regulatory Organization of Canada) and the Investment Industry Association of Canada our concerns with any proposal that includes a non-registered corporation performing registerable activities. We think the registration regime is an important component to ensure that investors are protected.

The CSA supports the notion of industry and the SROs working together to collectively propose a solution that would be applicable to all registrants subject to SRO oversight. The CSA expects industry and their SROs to work together and take the lead in developing a solution that does not diminish investor protection. We look forward to considering such a solution and to discussing how industry might obtain government approval for any required legislative changes.

December 19, 2008

MFDA – Summary of Public Comments Respecting Proposed Amendments to the MFDA's Recognition Order to Extend the Suspension of Rule 2.4.1

MUTUAL FUND DEALERS ASSOCIATION OF CANADA'S (MFDA'S)
SUMMARY OF PUBLIC COMMENTS RESPECTING PROPOSED AMENDMENTS TO THE MFDA'S RECOGNITION ORDER TO EXTEND THE SUSPENSION OF RULE 2.4.1

On August 29, 2008, the British Columbia Securities Commission, Nova Scotia Securities Commission, Ontario Securities Commission and Saskatchewan Financial Services Commission (collectively "Applicable Jurisdictions") published Proposed Amendments to the MFDA's Recognition Order to Extend the Suspension of Rule 2.4.1 for a 30-day public comment period that expired on September 29, 2008.

7 submissions were received during the public comment period:

1. Advocis
2. IGM Financial Inc. ("IGM")
3. Independent Financial Brokers of Canada ("IFB")
4. The Investment Funds Institute of Canada ("IFIC")
5. The Investment Industry Association of Canada ("IIAC")
6. Raymond James Ltd. ("RJL")
7. Rogers Group Investment Advisors Ltd. ("RGIA")

Copies of comment submissions may be viewed on the MFDA's website at: www.mfda.ca.

The following is a summary of the comments received, together with the MFDA's responses.

Support for Extension of Suspension

All of the commenters supported an extension of the suspension of Rule 2.4.1.

Recommendation for Permanent Legislative Solution

Advocis, IGM, IFB, IIAC and RGIA expressed support for the MFDA's request to extend the suspension of Rule 2.4.1 as an initial step however recommended that the focus be on creating a structure to allow Approved Persons to provide their services through a personal corporation. IGM, IIAC and RJL commented that such a structure should not mirror the current MFDA model of directed commissions but instead be designed along the lines of the regulations that allow various professionals and other occupations to self-incorporate.

Advocis recommended that a permanent solution involve legislative amendments to provincial securities acts to permit all advisors to carry on securities related activities through incorporated entities.

IGM stated that, although the existing directed commissions approach by the MFDA works, albeit imperfectly, legislation that allows professionals and other occupations to incorporate addresses the issues in a more elegant and effective way by establishing the requirements directly in law as opposed to doing so indirectly through contract and undertakings.

IGM noted that while allowing mutual fund advisors to use non-registered personal corporations to receive compensation from their dealers does raise potential concerns with respect to supervision and liability to clients, these issues are addressed by current MFDA Rules.

IGM and RJL also noted; however, that the directed commission model is not entirely satisfactory, since it is not the best way to implement the financial planning objectives that lead advisors to use a personal corporation. IGM noted that the directed commission model is not the optimum one for addressing the Canada Revenue Agency requirements. RJL expressed concern that the directed commission model does not permit financial advisors to take advantage of the benefits of the incorporation structure.

IIAC noted that current securities legislation across Canada provides that only individuals may engage in registrable activities and, notwithstanding the suspension of MFDA Rule 2.4.1, securities regulators have been clear that the commissions being redirected to the personal corporation are being earned by the Approved Persons conducting all activities requiring registration and not by personal corporations. IIAC expressed the view that the tax implications of the redirection model are unclear and continuation of this model would create both uncertainty for advisors and the possibility that they would not be able to take advantage of all of the benefits associated with the corporation structure.

IFB supported the MFDA's application to have Rule 2.4.1 suspended and develop a revised Rule. IFB noted that the current practice of provincial securities regulators individually approving extensions to the suspension of Rule 2.4.1 has lead to uncertainty and confusion for Approved Persons and dealers. The IFB further noted that not all provinces have suspended the Rule and even in jurisdictions where the Rule has been suspended, some dealers have refused to pay commissions to an Approved Person's personal corporation until the Rule is permanently removed.

Need for CSA/SRO/Industry Committee

All the commenters recommended the establishment of a joint initiative involving the Canadian Securities Administrators ("CSA"), the self-regulatory organizations ("SROs") and industry to address the issue of salesperson incorporation.

IIAC expressed the view that any legislative amendment with respect to the incorporation of salespersons should ultimately require the involvement of the CSA, Investment Industry Regulatory Organization of Canada ("IIROC") and the MFDA in order to be successful. IIAC, RJL and RGIA recommended that a committee be established with representatives from the MFDA, IIROC, IIAC, CSA and the industry to finalize, in a timely manner, a rule that achieves an appropriate regulatory, corporate and tax structure which would permit advisors to incorporate.

IFIC offered to convene a group of industry experts to meet with regulators to explore possibilities for achieving durable change to Rule 2.4.1 that will meet the needs of all stakeholders.

IGM suggested that the MFDA and the CSA work together to develop harmonized rules to apply across Canada using legislation that allows professionals and other occupations to incorporate as a model.

Advocis commented that it is important for the Recognizing Jurisdictions and the other CSA members to be at the table in devising the appropriate solution, noting that if a permanent solution involves a legislative proposal, then the MFDA will likely not present one in any detail as this is beyond its mandate.

IFB expressed disappointment that the CSA chose not to adopt a national solution to the issue of payment of commissions through the registration reform initiative and instead directed the MFDA to consider the merits of extending the suspension deadline and develop wording for a proposed Rule change.

Deadlines for Submission of Proposed Rule Amendment and Expiry of Suspension

IFIC expressed support for the request for an extension of the suspension of Rule 2.4.1 until December 31, 2010 and commented that the approach taken by Ontario, Nova Scotia and Saskatchewan is needlessly constraining in light of the need for extensive further discussion of proposed alternatives.

Advocis expressed concern that possible failure on the part of the MFDA to meet the May 31, 2009 deadline set by the Ontario Securities Commission, Nova Scotia Securities Commission and Saskatchewan Financial Services Commission could have significant and costly consequences for the industry. Advocis noted that a failure to meet the May 31, 2009 deadline could lead to lack of harmonization as some jurisdictions may continue to extend the suspension and others may choose to enforce the existing Rule. Advocis suggested that the May 2009 deadline is reasonable as long as advisor incorporation becomes a priority and the issue is dealt with appropriately by MFDA and CSA members.

Advocis recommended that any variation of the current Order allow the Order to continue until it is either rescinded or a permanent solution is adopted. Advocis also noted that adopting an ongoing interim approach to the suspension until a permanent solution is implemented would provide financial advisors and dealers with a higher level of comfort and lessen the compliance burden in that it would be one less regulatory item to monitor.

IFB commented that while it supports an early resolution of the issue, it would be concerned if the Rule expired in advance of the MFDA amendment being available for public comment.

IIAC and RGIA expressed general support for the MFDA's request for the suspension of Rule 2.4.1 until December 31, 2010 along with the direction of some of the Applicable Jurisdictions to the MFDA to submit its proposed amendments to Rule 2.4.1 by May 31, 2010. IIAC and RGIA also commented that, in order to promote consistency and a level playing field in the Canadian financial services industry, any changes to Rule 2.4.1 should be considered along with proposed changes to IIROC rules with a view to create a model that can operate for both the mutual fund and securities industries in a seamless and effective manner.

Length of Comment Period

IFIC expressed the view that the 30-day comment period provided for this proposed amendment is not sufficient to provide meaningful comments on this complex issue. IFIC suggested that the MFDA allow for up to 120 days of public comment on new

or changed regulations of material impact so that there can be an adequate sounding of the views of industry and the general public.

MFDA Response

MFDA staff acknowledges industry concerns with respect to the lack of regulatory harmonization regarding this matter and agrees with comments expressing the need for a permanent solution that is harmonized across the industry and all jurisdictions. With respect to the approach to be adopted in arriving at such a solution, we acknowledge the comments of the industry that the preferred solution is for an incorporated salespersons model. We further acknowledge comments of IGM that the directed commissions approach, while not the optimum solution, is workable. We agree with the commenters that legislative amendments allowing for incorporated salespersons are beyond the jurisdiction of the MFDA and would need to be adopted and implemented by CSA members.

We recognize and agree with the comments expressing the need for equal and active participation by the CSA, SROs and industry stakeholders in arriving at a timely and appropriate solution. The MFDA is committed to working with the CSA, other regulators and industry stakeholders on any joint CSA/SRO/industry committee established by the CSA to resolve this issue.

MFDA staff also acknowledges industry comments emphasizing the need for an appropriate solution to be developed within the timelines established by the CSA or for the suspension of Rule 2.4.1 to be extended until such time as a permanent solution is reached. As noted, the MFDA is committed to working with the CSA members and other regulators and industry stakeholders towards the development of an appropriate and timely solution. In the interim, the MFDA will continue to consider what amendments to MFDA Rules, if any, are appropriate to address this issue.

With respect to the comment regarding the appropriate length of the comment period, the MFDA will recommend to the CSA that a longer comment period (60 – 120 days) be established for new or amended regulations of material impact going forward.

1.2 Notices of Hearing

1.2.1 Sextant Capital Management Inc. 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
SEXTANT CAPITAL MANAGEMENT INC.,
SEXTANT CAPITAL GP INC.,
SEXTANT STRATEGIC OPPORTUNITIES HEDGE FUND L.P., OTTO SPORK,
ROBERT LEVACK AND NATALIE SPORK

NOTICE OF HEARING
Section 127 and Section 127.1

WHEREAS on the 8th day of December, 2008, the Ontario Securities Commission (the "Commission") ordered:

1. pursuant to clause 1 of section 127(1) and section 127(5) of the Securities Act, Sextant Capital Management Inc.'s ("SCMI") registration as investment counsel, portfolio manager and limited market dealer is subject to the terms and conditions that its advising and dealing activities may be applied exclusively to and in respect of the Sextant Strategic Opportunities Hedge Fund L.P. ("Sextant Fund") and not to or in respect of any other entities;

2. pursuant to clause 2 of section 127(1) and section 127(5) of the Act, trading in securities of and by the Respondents shall cease with the sole exception that SCMI may place sell orders in respect of the securities and futures contracts held on deposit on behalf of the Sextant Fund in accounts at Newedge Canada Inc. ("Newedge"); and

3. pursuant to clause 3 of section 127(1) and section 127(5) of the Act, any exemptions contained in Ontario securities law do not apply to any of the Respondents;

(the "Temporary Order");

AND WHEREAS the Commission further ordered as part of the Temporary Order that, pursuant to subsection 127(6) of the Act, the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by the Commission;

TAKE NOTICE that the Commission will hold a hearing pursuant to sections 127 and 127.1 of the Act at its offices at 20 Queen Street West, 17th Floor Hearing Room on Tuesday, the 16th day of December, 2008 at 10:00 a.m. or as soon thereafter as the hearing can be held;

TO CONSIDER whether, pursuant to sections 127 and 127.1 of the Act, it is in the public interest for the Commission to:

(1) extend the Temporary Order made December 5, 2008 until the conclusion of the hearing in this matter, pursuant to section 127(7) of the Act or until such other time as ordered by the Commission; and

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

BY REASON OF the facts cited in the Temporary Order, the allegations set out in the Statement of Allegations dated December 8, 2008 and such further additional allegations 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 any further notice of the proceeding.

DATED at Toronto this 8th day of December, 2008.

"John Stevenson"
Secretary

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

AND

**IN THE MATTER OF
SEXTANT CAPITAL MANAGEMENT INC.,
SEXTANT CAPITAL GP INC.,
SEXTANT STRATEGIC OPPORTUNITIES
HEDGE FUND L.P., OTTO SPORK,
ROBERT LEVACK AND NATALIE SPORK**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE
ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (the "Commission") make the following allegations:

Corporate Respondents

1. Sextant Capital Management Inc. ("SCMI") is registered under the *Securities Act*, R.S.O. 1990, c. S-5, as an investment counsel, portfolio manager and limited market dealer. SCMI is also registered as a commodity trading manager under the *Commodity Futures Act*, R.S.O. 1990, c. C-20. SCMI manages securities and futures contracts and is the principal distributor of the Sextant Strategic Opportunities Hedge Fund L.P. (the "Sextant Fund").

2. The Sextant Fund is a mutual fund in Ontario with about 240 investors across Canada, made up largely of Ontario residents, which had a net asset value of $53 million at November 28, 2008.

3. Sextant Capital GP Inc. ("Sextant GP") is the fund manager and general partner for the Sextant Fund.

4. SCMI, the Sextant Fund and Sextant GP (together, "Sextant Canadian Entities") are all resident in Canada.

Individual Respondents

5. Otto Spork ("Spork") is the ultimate driving force behind the Sextant Canadian Entities and behind Sextant Iceland, the Sextant Offshore Funds, IGP and IGW, all as described below. Spork is a resident of Iceland, although Toronto was at one time his principal residence and he now spends up to 40 days per year in Ontario.

6. Spork was the president, secretary, Ultimate Responsible Person ("URP") and sole director of SCMI from inception until May 28, 2008. Spork is also the sub-adviser to the Sextant Fund. Spork wholly owns Sextant Iceland and is its managing director and portfolio manager, and has significant interests in IGP and IGW.

7. Robert Levack ("Levack") is an individual living in Toronto and is the chief compliance officer and portfolio manager at SCMI. As portfolio manager for the Sextant Fund, Levack approved the investments in securities of IGP and IGW.

8. Natalie Spork is Spork's daughter. On May 28, 2008, she was appointed president, secretary and URP of SCMI. Natalie Spork is also the sole director for SCMI. She works for SCMI on a full time basis.

9. As URP, Natalie Spork is the individual with ultimate responsibility for discharging SCMI's obligations under Ontario securities law.

Related Entities

10. The Sextant Fund has a sub-adviser, Sextant Capital Management a Islandi ehf ("Sextant Iceland"). Sextant Iceland is resident in Iceland. It is not registered with the Commission or with any regulatory authority in Iceland.

11. Sextant Iceland owns both SCMI and Sextant GP. Sextant Iceland is also manager and investment adviser for two off-shore mutual funds, the Sextant Strategic Hybrid2 Hedge Resource Fund Offshore Ltd. and Sextant Strategic Global Water Fund Offshore Ltd. (together, the "Sextant Offshore Funds").

12. The Sextant Offshore Funds are domiciled in the Cayman Islands and have approximately US$100 million in assets under management. There are no Canadian investors in the Sextant Offshore Funds.

Investment and Fees

13. Units of the Sextant Fund are sold by SCMI and by Investment Industry Regulatory Organization of Canada member firms pursuant to prospectus exemptions, relying primarily on the accredited investor exemption. Investors have contributed in excess of $22 million to the Sextant Fund since its inception.

14. The Sextant Fund pays a monthly advisory fee at a rate of up to 2% of assets under management per year to SCMI. The Sextant Fund also allocates 20% of its profits to Sextant GP. That 20% is paid to Sextant GP monthly in the form of performance fees.

Investment Structure and IGP/IGW

15. At November 28, 2008, approximately 5% of the assets of the Sextant Fund were invested in a portfolio of cash, stocks and futures contracts, including stocks of private companies. The portfolio is held in accounts with Newedge

Canada Inc. ("Newedge"), the custodian and prime broker for the Sextant Fund.

16. The balance of the assets in the Sextant Fund are invested in two private Luxembourg companies: Iceland Glacier Products S.a.r.l. ("IGP") and Iceland Global Water 2 Partners SCA ("IGW").

17. At November 28, 2008, 92% of the assets of the Sextant Fund were invested in IGP and 2.5% of the assets were invested in IGW. These investments are not recorded or valued on Newedge's books and records.

18. IGP and IGW both purportedly own rights to glaciers in Iceland and intend to use those rights for the purpose of developing and selling bottled water. Neither IGP or IGW have earned any revenue and there are no indications that they will do so in the immediate future. Neither is currently operating.

19. Despite having earned no revenue and having no immediate prospect of doing so, IGP's shares have purportedly increased in value from an initial average cost of €0.226 to €2.45, or approximately 984% since initial investment by the Sextant Fund. This has contributed to the increase in value of the Sextant Fund by 730.7% over the less than three years between its inception in February 2006 and November 28, 2008.

20. There are no third party valuation reports that support the monthly, material upward revisions in value of IGP, and therefore there is inadequate support for the claimed rate of return of the Sextant Fund.

21. Significant performance fees, in excess of $3 million dollars have flowed out of the Sextant Fund based entirely on its purported rate of return. Fees for the month of November 2008 alone were assessed at over $1.5 million.

22. IGP and IGW are owned almost entirely by the Sextant Fund, the Sextant Offshore Funds and Spork.

Breach of Ontario Securities Law

23. The Sextant Fund is in breach of section 111 of the Act on the following grounds:

    (a) The Sextant Fund has made advance payments to Sextant GP against anticipated future performance fees. Such payments in actuality constitute a loan to Sextant GP which is an associate of Sextant Iceland, a management company of the Sextant Fund, and are in breach of section 111(1)(a) of the Act.

    (b) The Sextant Fund invested in IGP knowing that, together with the related Sextant Offshore Funds, they would own in excess of 20% of the companies. The Sextant Fund and its related mutual funds thereby invested in a company in which they together constitute a substantial security holder, contrary to section 111(2)(b) of the Act.

    (c) The Sextant Fund invested in IGP and IGW knowing that, from time to time while the fund was making those investments, Spork was an officer and director of SCMI and held a significant interest in both IGP and IGW. Such investments were made contrary to section 111(2)(c)(i) of the Act.

    (d) The Sextant Fund invested in IGP and IGW knowing that Spork has a significant interest in the companies and that Spork is also a substantial security holder of SCMI, the management and distribution company for the fund. Such investments were made contrary to section 111(2)(c)(ii) of the Act.

    (e) The Sextant Fund continues to hold investments made contrary to the provisions of section 111(1) and (2). Continuing to hold such investments is contrary to section 111(3) of the Act.

24. Accordingly, approximately 95% of the assets of the Sextant Fund have been invested illegally and in breach of protections in the Act against self-dealing by mutual funds. Substantial fees have been paid to Sextant GP and SCMI out of the funds contributed by investors to the Sextant Fund, based on its illegal investments.

25. The Sextant Fund has not prepared and delivered audited financial statements for 2007 to its investors, in breach of National Instrument 81-106.

26. Both Spork and Sextant Iceland provide investment advice to the Sextant Fund without being registered to do so and without a valid registration exemption.

Conduct Contrary to Ontario Securities Law and to the Public Interest

27. The conduct described above constitutes conduct contrary to Ontario securities law and/or contrary to the public interest and harmful to the integrity of the Ontario capital markets.

28. Such additional allegations as Staff may advise and the Commission may permit.

Dated at Toronto this 8th day of December, 2008.

1.4 Notices from the Office of the Secretary

1.4.1 David Berry

FOR IMMEDIATE RELEASE
December 11, 2008

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

AND

IN THE MATTER OF
A REQUEST FOR A HEARING AND REVIEW
OF A DECISION OF A HEARING PANEL OF
MARKET REGULATION SERVICES INC.

AND

IN THE MATTER OF
REQUEST BY TSX INC. TO INTERVENE
IN THE HEARING AND REVIEW

AND

IN THE MATTER OF
DAVID BERRY

TORONTO – The Commission issued its Reasons For Decision in the above matter for the hearing held on September 29, 2008.

A copy of the Reasons For Decision dated December 10, 2008 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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& Public Affairs
416-593-8120

Laurie Gillett
Manager, Public Affairs
416-595-8913

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

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

1.4.2 Limelight Entertainment Inc. et al.

FOR IMMEDIATE RELEASE
December 11, 2008

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

AND

IN THE MATTER OF
LIMELIGHT ENTERTAINMENT INC.,
CARLOS A. DA SILVA, DAVID C. CAMPBELL,
JACOB MOORE AND JOSEPH DANIELS

TORONTO – Following a sanctions hearing held on September 11, 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 December 10, 2008 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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1.4.3 Sextant Capital Management Inc. et al.

FOR IMMEDIATE RELEASE
December 10, 2008

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

AND

IN THE MATTER OF
SEXTANT CAPITAL MANAGEMENT INC.,
SEXTANT CAPITAL GP INC.,
SEXTANT STRATEGIC OPPORTUNITIES
HEDGE FUND L.P., OTTO SPORK,
ROBERT LEVACK AND NATALIE SPORK

TORONTO – The Office of the Secretary issued a Notice of Hearing setting the matter down to be heard on Tuesday, the 16th day of December, 2008 at 10:00 a.m. or as soon thereafter as the hearing can be held.

A copy of the Notice of Hearing dated December 8, 2008 and Statement of Allegations of Staff of the Ontario Securities Commission dated December 8, 2008 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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1.4.4 James Richard Elliott

FOR IMMEDIATE RELEASE
December 15, 2008

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

AND

IN THE MATTER OF
JAMES RICHARD ELLIOTT

TORONTO – The Commission issued an Order today which provides that this matter is set down for a hearing on the merits on February 25, 26 and 27, 2009.

A copy of the Order dated December 15, 2008 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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1.4.5 Sextant Capital Management Inc. et al.

FOR IMMEDIATE RELEASE
December 16, 2008

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

AND

IN THE MATTER OF
SEXTANT CAPITAL MANAGEMENT INC.,
SEXTANT CAPITAL GP INC.,
SEXTANT STRATEGIC OPPORTUNITIES HEDGE FUND L.P.,
OTTO SPORK, ROBERT LEVACK AND NATALIE SPORK

TORONTO – The Commission issued an Order today continuing the Temporary Order until March 17, 2009 and adjourning the hearing to March 16, 2009 at 10:00 a.m. in the above matter.

A copy of the Order dated December 16, 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 CI Investments Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions - BNS acquiring 37.5% interest in CI LP - Pooled and public mutual funds managed by fund managers owned by CI LP becoming prohibited from making and holding investments in securities of BNS and in securities in which BNS has significant interest - Affiliates of BNS, who are participating dealers of the public mutual funds, deemed under the Act to have equity interest in CI LP and fund managers.

Relief granted from mutual fund conflict of interest investment restrictions in the Act to permit pooled and public mutual funds managed by the fund managers to make and hold investments in securities of related issuers, subject to IRC approval - Relief granted from restriction in the Act preventing public mutual funds from making portfolio trades through related dealers provided disclosure of contracts with related dealers is made in the next amendment or next renewal prospectus of the public mutual funds - Relief granted from paragraph 8.2(1)(b) of NI 81-105 requiring that the public mutual funds disclose in their prospectus the equity interest that BNS participating dealers have in the fund managers, provided this disclosure is made in the next amendment or next renewal prospectus of the public mutual funds - BNS participating dealers exempted from compliance with the point of sale equity interest disclosure and consent requirements of subsections 8.2(3) and 8.2(4) of NI 81-105 in respect of trades made by existing clients in securities of the public mutual funds after the acquisition, provided existing clients notified of equity interest in next quarterly account statement.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 111(2)(a), 111(2)(c)(ii), 111(3), 113, 115(1), 115(2).
National Instrument 81-105 Mutual Fund Sales Practices, ss. 8.2(1)(b), 8.2(3), 8.2(4), 9.1.

December 11, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO AND NEWFOUNDLAND
AND LABRADOR
(THE JURISDICTIONS)

AND

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

AND

IN THE MATTER OF
CI INVESTMENTS INC.
(THE FILER)

DECISION

Background

The securities regulatory authority or regulator in Ontario (the **Passport Review Decision Maker**) and in each of Ontario and Newfoundland and Labrador (together, the **Coordinated Review Decision Makers**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting:

1. each Public Fund (as defined below) from:

   (a) the investment restriction in the Legislation which prohibits a mutual fund from knowingly making an investment in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company;

   (b) the investment restriction in the Legislation which prohibits a mutual fund from knowingly making an investment in any issuer in which any person or company who is a substantial security holder of the mutual fund, its management company or its distribution company has a significant interest; and

   (c) the investment restriction in the Legislation which prohibits a mutual fund from knowingly holding an investment described in paragraphs (a) or (b) above (this paragraph, together with paragraphs (a) and (b) above, are together referred to in this decision as the **Public Funds Relief**);

2. each Pooled Fund (as defined below) from:

   (a) the investment restriction in the Legislation which prohibits a mutual fund from knowingly making an investment in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company;

   (b) the investment restriction in the Legislation which prohibits a mutual fund from knowingly making an investment in any issuer in which any person or company who is a substantial security holder of the mutual fund, its management company or its distribution company has a significant interest; and

   (c) from the investment restriction in the Legislation which prohibits a mutual fund from knowingly holding an investment described in paragraphs (a) or (b) above (this paragraph, together with paragraphs (a) and (b) above, are together referred to in this decision as the **Pooled Funds Relief**);

3. each Public Fund from the prohibitions in the Legislation which prohibit a mutual fund from making any investment in consequence of which a related person or company of the mutual fund will receive any fee or other compensation except fees paid pursuant to a contract which is disclosed in any preliminary prospectus or prospectus, or any amendment to either of them, that is filed by the mutual fund and is accepted by the applicable securities regulatory authority or regulator (the **Trade Execution Relief**);

4. each Public Fund from the requirement in section 8.2(1)(b) of National Instrument 81-105 *Mutual Fund Sales Practices* (**NI 81-105**) that a mutual fund disclose in its prospectus or simplified prospectus a complete description of any equity interest that a participating dealer and associates of the participating dealer, in aggregate, have in any member of the organization of the mutual fund (the **Prospectus Equity Interest Disclosure Relief**); and

5. each BNS Participating Dealer (as defined below) from:

   (a) the requirement in section 8.2(3) of NI 81-105 (the **POS Equity Interest Disclosure Requirement**) that a participating dealer deliver to the purchaser of securities of a mutual fund a document that discloses the amount of any equity interest that the participating dealer and associates of the participating dealer, in aggregate, have in any member of the organization of the mutual fund (the **POS Equity Interest Disclosure Relief**); and

   (b) the requirement in section 8.2(4) of NI 81-105 (the **POS Equity Interest Consent Requirement**) to obtain the prior written consent of the purchaser before completing a trade to which the POS Equity Interest Disclosure Requirement applies (the **POS Equity Interest Consent Relief**);

(together, the **Relief**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

   (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 by:

      (i) each Public Fund in British Columbia, Alberta, Saskatchewan, Québec, New Brunswick and Nova Scotia in respect of the Public Funds Relief;

(ii) each Pooled Fund in British Columbia, Alberta, Saskatchewan, Québec, New Brunswick and Nova Scotia in respect of the Pooled Funds Relief;

(iii) each Public Fund in British Columbia, Alberta, Saskatchewan, Québec, New Brunswick and Nova Scotia in respect of the Trade Execution Relief;

(iv) each Public Fund in all the provinces and territories of Canada in respect of the Prospectus Equity Interest Disclosure Relief;

(v) each BNS Participating Dealer in all the provinces and territories of Canada in respect of the POS Equity Interest Disclosure Relief; and

(vi) each BNS Participating Dealer in all the provinces and territories of Canada in respect of the POS Equity Interest Consent Relief;

(c) this decision is the decision of the principal regulator; and

(d) this decision evidences the decision of each of the Coordinated Review Decision Makers.

Interpretation

Defined terms in MI 11-102, NI 81-105, National Instrument 81-102 *Mutual Funds*, and National Instrument 14-101 *Definitions* 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:

Facts

1. The head office of the Filer and each Fund (defined below) is located in Ontario. Neither the Filer nor any Fund is in default of the securities legislation of any jurisdiction of Canada.

2. The Filer and affiliates of the Filer (together, the **Managers**) are managers of one or more mutual funds and may, in the future, become managers of additional mutual funds (all such present and future mutual funds being hereinafter referred to as the **Funds**). Some Funds are or will be reporting issuers under the securities legislation of some or all of the jurisdictions of Canada (the **Public Funds**) while other Funds do not or will not have such status (the **Pooled Funds**).

3. Each Manager currently is directly or indirectly wholly-owned by Canadian International LP (**CI LP**), the general partner of which is wholly-owned by CI Financial Income Fund (**CI Financial**). CI Financial also owns all of the Class A voting, participating limited partner units of CI LP, representing 100% of the outstanding voting securities and approximately 47.7% of the total outstanding equity securities of CI LP.

4. Sun Life Financial Inc. (**Sun Life**) currently owns, directly or indirectly, approximately 37.5% of CI LP's total outstanding voting and equity securities (the **CI Securities**). This represents an indirect ownership of more than 20% of the outstanding voting securities of each Manager with the result that Sun Life is a substantial security holder of each Manager.

5. Sun Life has publicly announced its agreement to sell the CI Securities to The Bank of Nova Scotia (**BNS**) (the **Transaction**), as a result of which BNS will become a substantial security holder of each Manager.

6. BNS currently holds, directly or indirectly, more than 10% of the outstanding shares or units of, and therefore has a significant interest in, the following persons or companies: Dundee Corporation, DundeeWealth Inc., Automodular Corporation, Scotiabank Subordinated Notes Trust, Avotus Corporation and High Liner Foods Inc. These persons and companies, together with BNS and any other person or company in which BNS may presently or in the future hold a significant interest, are referred to in this decision as the **Related Issuers**.

7. The Managers and the Funds currently deal at arm's length with the Related Issuers and their subsidiaries. Completion of the Transaction will result in BNS holding indirectly only a minority interest in the Managers. The Filer expects that, following completion of the Transaction, BNS will be a non-controlling investor in CI Financial, the Managers and the Funds will continue to deal at arm's length with the Related Issuers and their subsidiaries, and the

Managers will continue to operate independently from BNS and its subsidiaries. The Filer is not aware of any present intention of BNS to consolidate the operations of the Managers with the operations of any subsidiaries of BNS.

8. Each Fund currently invests, or may invest, in listed and unlisted securities issued by the Related Issuers.

9. Each Public Fund has an independent review committee (an **IRC**) established in accordance with National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**).

10. BNS also currently has significant interests in two full-service investment dealers, namely Scotia Capital Inc. (**Scotia Capital**), which BNS wholly-owns, and Dundee Securities Corporation (**Dundee Securities**), in which BNS indirectly holds a 19.4% equity interest.

11. Each Fund currently executes trades in portfolio securities through Scotia Capital and Dundee Securities (together, the **Related Executing Dealers**). After completion of the Transaction, each Related Executing Dealer will become a related person or company to the Public Funds.

12. Scotia Capital and its affiliates who are registered under Canadian securities legislation as brokers or dealers for trading in securities (together with Scotia Capital, the **BNS Participating Dealers**) may distribute securities of the Public Funds and therefore each is a participating dealer of each Public Fund.

13. Following the completion of the Transaction, the BNS Participating Dealers will, by virtue of being affiliates of BNS, be deemed under the Legislation to beneficially own the CI Securities and therefore hold an equity interest of approximately 37.5% in each Manager.

14. CI Financial has publicly announced its intention to implement a reorganization by which CI Financial will convert from an income trust to a corporate form (the **Reorganization**) on or about December 31, 2008. Following the completion of the Transaction and the Reorganization:

    (a) each Manager will be wholly-owned, directly or indirectly, by the corporate successor to CI Financial;

    (b) BNS will continue to be a substantial security holder of each Manager; and

    (c) each BNS Participating Dealer will continue to be deemed to hold an equity interest in each Manager.

15. Following the completion of the Transaction, clients of each BNS Participating Dealer may wish to purchase securities of the Public Funds. In some cases, the purchases will be made based on new instructions received from such clients (**New Trades**). In other cases, the purchases will be made based on standing instructions received from the client (**Pre-Authorized Trades**). Pre-Authorized Trades will arise in the following circumstances:

    (a) Pre-authorized purchase programs: The Public Funds offer investors the opportunity to enrol in programs pursuant to which investors provide their instructions to purchase a specified dollar amount of securities of one or more Public Funds on a regular basis selected by the investor. Cash to pay for the purchases is debited electronically from the investor's account at a financial institution until the investor changes his or her instructions.

    (b) Systematic transfer program: The Public Funds offer investors the opportunity to enrol in programs pursuant to which investors provide their instructions to transfer a predetermined dollar amount of investment from one Public Fund to another Public Fund with a frequency selected by the investor. These transfers are effected by redeeming securities from one Public Fund and immediately investing the redemption proceeds in securities of the next Public Fund until the investor changes his or her instructions.

    (c) Account rebalancing programs: The Public Funds offer investors the opportunity to enrol in programs pursuant to which investors provide their target allocations among Public Funds in their account, together with the frequency with which they would like the current values of their holdings to be compared to their target allocations, and their range of permitted deviation from the target allocations. If, on the scheduled date selected by the investor, the current value of any individual holding deviates from its target allocation by more than the permitted deviation, redemption and purchase trades are effected to rebalance the investor's holdings to their target allocations. These rebalancing trades continue until the investor changes his or her instructions.

    (d) Distribution/dividend reinvestment programs: Unless investors instruct the Public Fund otherwise, all distributions and dividends paid by the Public Funds are immediately reinvested in additional securities of the Public Fund that paid the distribution or dividend.

16. The BNS Participating Dealers carry on business through more than 1,000 branches across Canada and utilize more than 6,000 registered personnel to sell mutual fund securities. There are currently more than 400,000 accounts of BNS Participating Dealers who may wish to purchase securities of the Public Funds in the future and more than 35,000 accounts of BNS Participating Dealers who are enrolled in a program involving Pre-Authorized Trades in securities of the Public Funds. The compliance regime used by the BNS Participating Dealers to deal with the large number of branches, registered personnel and accounts described above relies upon delivering key information to clients, and obtaining key written consents from clients, using standardized account opening documentation. Changes to this standardized account opening documentation require approximately three months to implement due to, among other factors, printing and coordinating the distribution of materials to a large number of branches and registered personnel and related changes to recordkeeping systems and training.

17. Each Pre-Authorized Trade and New Trade constitutes a distribution of securities of a Public Fund to which NI 81-105 applies. Following the completion of the Transaction, Pre-Authorized Trades by clients of the BNS Participating Dealers for additional securities of the Public Funds will continue unless the Public Funds disregard the standing instructions from such investors for such Pre-Authorized Trades.

18. The Filer expects that each BNS Participating Dealer will update its account opening documentation by March 31, 2009 in order to comply with the POS Equity Interest Disclosure Requirement and the POS Equity Interest Consent Requirement for every person who becomes a client of a BNS Participating Dealer after such date (**New BNS Clients**).

19. The Filer expects that, following the completion of the Transaction:

    (a) each BNS Participating Dealer will have no material relationship with any Manager other than the equity interest that it will be deemed to hold in such Manager;

    (b) each BNS Participating Dealer will be free to choose which mutual funds to recommend to its clients and will consider recommending the Public Funds to its clients in the same manner as it considers recommending mutual funds that are not managed by a Manager;

    (c) each BNS Participating Dealer will comply with its obligations at law to recommend to its clients only those mutual funds that the BNS Participating Dealer believes would be suitable for such clients and in accordance with the investment objectives of such clients; and

    (d) neither the BNS Participating Dealers nor any of their sales representatives will be subject to quotas (whether express or implied) in respect of selling securities of the Public Funds.

20. Following the completion of the Transaction:

    (a) each Manager will provide the BNS Participating Dealers with the compensation described in the prospectuses of the Public Funds in the same manner as the Manager provides compensation for any other participating dealer selling securities of the Public Funds of which it is the manager; and

    (b) neither the Manager nor any other member of the organization of a Public Fund will provide any incentive (whether express or implied) to any sales representative of the BNS Participating Dealers or to the BNS Participating Dealers to encourage those sales representatives or the BNS Participating Dealers to recommend to clients of the BNS Participating Dealers the Public Funds rather than mutual funds managed by persons other than the Managers except as permitted by NI 81-105.

21. In the absence of the Public Funds Relief, the Public Funds will, after completion of the Transaction, be prohibited by the Legislation from making and holding investments in unlisted debt securities issued by the Related Issuers. The continued making and holding of investments by the Public Funds in unlisted debt securities of the Related Issuers after the Transaction is completed has been referred to, and approved by, the IRC of the Public Funds.

22. In the absence of the Pooled Funds Relief, the Pooled Funds will, after completion of the Transaction, be prohibited by the Legislation from making and holding investments in any securities (including listed securities and unlisted debt securities) of the Related Issuers. The Pooled Funds are unable to rely on the related issuer investment exemption codified in section 6.2(2) of NI 81-107 to invest in listed securities of the Related Issuers since NI 81-107 does not apply to the Pooled Funds. Each Pooled Fund will establish an IRC that will be composed in accordance with the requirements of section 3.7 of NI 81-107. The IRC of each Pooled Fund will be expected to comply with the standard of care set out in section 3.9 of NI 81-107 as if each Pooled Fund were subject to that rule. The only conflict of interest matter that will be referred by each Pooled Fund to its IRC will be investments made by the Pooled Fund in securities of Related Issuers.

23. The Filer considers that the Funds should be permitted to invest in unlisted debt securities of the Related Issuers because they provide the Funds with increased opportunities to invest in highly rated corporate debt instruments, achieve greater investment diversification and, in some circumstances, better track certain benchmark indices.

24. The Filer considers that the Pooled Funds should be permitted to invest in listed securities of the Related Issuers because they provide the Pooled Funds with opportunities to broaden their diversification within the financial services sector.

25. In the absence of the Trade Execution Relief, each Public Fund will, after completion of the Transaction, become required by the Legislation to cease executing trades in portfolio securities through the Related Executing Dealers and to cease paying brokerage fees to Related Executing Dealers for such trades until such time as contracts between the Public Fund and the Related Executing Dealers, as contemplated by the Legislation, have been executed and disclosed in the Public Fund's prospectus. An amendment to the prospectus of each Public Fund would have to be filed immediately after the Transaction for purposes of making such disclosure. The continued execution of trades in portfolio securities by the Public Funds through the Related Executing Dealers after the Transaction is completed has been referred to, and approved by, the IRC of the Public Funds.

26. In the absence of the Prospectus Equity Interest Disclosure Relief, each Public Fund will, after completion of the Transaction, be required by paragraph 8.2(1)(b) of NI 81-105 to immediately file an amendment to its prospectus to disclose the equity interest of the BNS Participating Dealers in the Manager of the Public Fund.

27. The aggregate cost of amending the current prospectuses of all the Public Funds to include the disclosure described in paragraphs 25 and 26 above is estimated to be approximately $300,000, the vast majority of which would be comprised of filing fees payable to the Canadian securities administrators.

28. In the absence of the POS Equity Interest Disclosure Relief, each BNS Participating Dealer would be required to disclose to its clients who are not New BNS Clients (**Existing BNS Clients**) the equity interest of such BNS Participating Dealer in each Manager prior to such Existing BNS Clients' next trade (whether a New Trade or a Pre-Authorized Trade) in securities of the Public Funds managed by such Manager.

29. In the absence of the POS Equity Interest Consent Relief, each BNS Participating Dealer would be required after the Transaction is completed to obtain the prior written consent of each Existing BNS Client, as contemplated by subsection 8.2(4) of NI 81-105, prior to such Existing BNS Client completing the next trade (whether a New Trade or Pre-Authorized Trade) in securities of the Public Funds.

30. The Filer believes that it would require considerable printing and mailing costs, staff resources and time for the BNS Participating Dealers to attempt to comply with the POS Equity Interest Disclosure Requirement and the POS Equity Interest Consent Requirement for Existing BNS Clients due to the mailing and follow up that this initiative would require.

31. Existing BNS Clients who are currently enrolled in Pre-Authorized Trade programs made their decision to invest in the Public Funds prior to the BNS Participating Dealers acquiring an equity interest in the Managers. Accordingly, there was no actual or perceived conflict of interest at the time that the BNS Participating Dealer advised its clients with respect to their investments in the Public Funds, including their enrolment in Pre-Authorized Trade programs. Pre-Authorized Trades do not require any further investment advice from the BNS Participating Dealers prior to execution where a conflict of interest may be perceived to exist.

32. The Filer believes that if the BNS Participating Dealers are required to comply with the POS Equity Interest Consent Requirement in respect of trades by Existing BNS Clients in securities of the Public Funds, the procedures associated with such compliance will create a disincentive for many of the Existing BNS Clients and sales representatives of the BNS Participating Dealers from trading in securities of the Public Funds.

33. It is not feasible for each BNS Participating Dealer to obtain the prior written consent of each Existing BNS Client prior to such Existing BNS Client completing his or her next Pre-Authorized Trade. Consequently, if the POS Equity Interest Consent Relief is not granted, each BNS Participating Dealer will be required to seek cancellation of all Pre-Authorized Trade instructions from its clients until it is able to comply with section 8.2(4) of NI 81-105.

34. Each BNS Participating Dealer will provide its Existing BNS Clients with disclosure of its equity interest in the Managers no later than with the account statements mailed to Existing BNS Clients for the quarter ending March 31, 2009.

Decision

Each of the Passport Review Decision Maker and the Coordinated Review Decision Makers is satisfied that the decision meets the test set out in the Legislation for the relevant regulator or securities regulatory authority to make the decision.

The decision of the Passport Review Decision Maker and the Coordinated Review Decision Makers under the Legislation is that the Relief is granted provided that:

1. in respect of the Public Funds Relief and the Pooled Funds Relief:

   (a) each purchase and holding by a Fund of securities of the Related Issuers after completion of the Transaction is consistent with, or is necessary to meet, the investment objective of the Fund;

   (b) each debt security of a Related Issuer purchased by a Fund after completion of the Transaction will be a debt security issued by a Related Issuer that has, at the time of the purchase, an approved credit rating by an approved credit rating organization;

   (c) if the security of the Related Issuer is listed and traded, the purchase is made on an exchange on which the securities are listed and traded;

   (d) each Pooled Fund establishes an IRC that is composed in accordance with the requirements of section 3.7 of NI 81-107 and that is expected to comply with the standard of care set out in section 3.9 of NI 81-107;

   (e) the IRC of the Fund has approved the transaction in the manner contemplated by section 5.2(2) of NI 81-107;

   (f) the Manager of the Fund complies with section 5.1 of NI 81-107 and the Manager and the IRC of the Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;

   (g) the price payable for the security purchased after the completion of the Transaction is not more than the ask price of the security;

   (h) the ask price of the security is determined as follows:

      (i) if the purchase occurs on a marketplace, the price payable is determined in accordance with the requirements of that marketplace; or

      (ii) if the purchase does not occur on a marketplace:

         (A) the Fund pays the price for the security at which an independent arm's length seller is willing to sell the security; or

         (B) if the Fund does not purchase the security from an independent arm's length seller, the Fund pays the price quoted publicly by an independent marketplace or obtains, immediately before the purchase, at least one quote from an independent arm's length purchaser or seller and pays not more than that quote;

   (i) securities of the Related Issuers are purchased in the secondary market;

   (j) the transaction complies with any applicable "market integrity requirements" as defined in NI 81-107;

   (k) no later than the time the Fund files its annual financial statements, the Fund files with the securities regulatory authorities or regulator the particulars of any such investments; and

   (l) the reporting obligation in section 4.5 of NI 81-107 applies to the Pooled Funds Relief granted in this decision and the IRC of the Pooled Funds relying on the Pooled Funds Relief complies with section 4.5 of NI 81-107, as if the Pooled Funds were subject to that rule, in connection with any instance that it becomes aware that the Pooled Funds did not comply with any of the conditions of this decision;

2. in respect of the Trade Execution Relief:

   (a) each Manager uses its reasonable best efforts to enter into a contract with each Related Executing Dealer as contemplated by the Legislation as quickly as possible and, in any event, not later than the lapse date of the current prospectus of the Public Fund or the date it files its next annual information form; and

   (b) after entering into the contract referred to above, the Public Fund discloses such contract in its next prospectus, amendment to its current prospectus, or next annual information form that it files with any Canadian securities administrator, whichever occurs first;

3. in respect of the Prospectus Equity Interest Disclosure Relief:

   (a) the information prescribed by 8.2(1)(b) of NI 81-105 is included in the next amendment to the current prospectus of each Public Fund or in its next renewal prospectus or annual information form, whichever is filed first;

4. in respect of the POS Equity Interest Disclosure Relief:

   (a) the Relief is granted only in respect of trades in securities of the Public Funds made by Existing BNS Clients after the Transaction is completed;

   (b) each BNS Participating Dealer advises its Existing BNS Clients of the BNS Participating Dealer's equity interest in the Managers no later than with the account statements mailed to Existing BNS Clients for the quarter ending March 31, 2009; and

   (c) each BNS Participating Dealer discloses on its website the BNS Participating Dealer's equity interest in the Managers; and

5. in respect of the POS Equity Interest Consent Relief:

   (a) the Relief is granted only in respect of trades in securities of the Public Funds made by Existing BNS Clients after the Transaction is completed.

"James E. A. Turner"
Commissioner
Ontario Securities Commission

"Paul K. Bates"
Vice-Chair
Ontario Securities Commission

2.1.2 Bonterra Energy Income Trust – 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).

December 11, 2008

Borden Ladner Gervais LLP
1000 Canterra Tower
400 - 3 Avenue SW
Calgary, AB T2P 4H2

Attention: Louise K. Lee

Dear Madam:

Re: Bonterra Energy Income Trust (the Applicant) - Application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba and Ontario (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 to be deemed to have ceased to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that:

(a) 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;

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

(c) 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

(d) 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.

"Agnes Lau, CA"
Associate Director, Corporate Finance
Alberta Securities Commission

2.1.3 Border Chemical Company 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).

December 12, 2008

Border Chemical Company Limited
2147 Portage Avenue
Winnipeg, Manitoba R3J 0L4

Dear Sirs/Mesdames:

Re: Border Chemical Company Limited (the Applicant) – Application for a Decision under the Securities Legislation of Manitoba and Ontario (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:

(a) 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;

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

(c) 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 a reporting issuer; and

(d) 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 makes an order declaring that the Applicant has ceased to be a reporting issuer.

"Chris Besko"
Deputy Director
Manitoba Securities Commission

2.1.4 Virtek Vision International Inc. – 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).

December 12, 2008

Goodmans LLP
250 Yonge St, Suite 2400
Toronto, Ontario
M5B 2M6

Attention: Ori Mandowsky

Re: Virtek Vision International Inc. (the "Applicant") – application for a decision under the securities legislation of Ontario, Alberta, Saskatchewan, Manitoba, Québec, 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:

(a) 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;

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

(c) 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

(d) 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 not a reporting issuer.

"Jo-Anne Matear"
Assistant Manager, Corporate Finance
Ontario Securities Commission

2.1.5 Mackenzie Financial Corporation and Counsel Group of Funds Inc.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions - Relief granted to two fund managers, each as a "company providing services to the mutual fund" under section 11.1(1)(b) of NI 81-102 – Each fund manager is not a member of the Mutual Fund Dealers' Association – Representations of the Decision speak to the safeguarding of client assets – Relief is aimed at allowing each fund manager to commingle client cash related to the fund manager's open-ended mutual funds in the same trust account as client cash temporarily received by the fund manager for investment in deposits offered by an affiliate.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 11.1(1)(b), 19.1.

December 3, 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
MACKENZIE FINANCIAL CORPORATION AND
COUNSEL GROUP OF FUNDS INC.
(the "Filers")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers (the "**Application**") for a decision under the securities legislation of the jurisdiction of the principal regulator (the "**Legislation**") under section 19.1 of National Instrument 81-102 – *Mutual Funds* ("**NI 81-102**") for relief (the "**Exemption Sought**") from the requirements of section 11.1(1)(b) of National Instrument 81-102 *Mutual Funds* ("**NI 81-102**") that cash received by a person or company providing services to a mutual fund, for investment in, or on the redemption of, securities of the mutual fund ("**Mutual Fund Trust Monies**" as further defined below) may be commingled only with cash received by the service provider for the sale or on the redemption of other mutual fund securities (the "**Commingling Prohibition**").

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

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

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

Interpretation

Defined terms contained in National Instrument 14-101 – Definitions and in NI 81-102 have the same meaning in this decision document unless they are otherwise defined in this decision.

Representations

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

1. Mackenzie Financial Corporation ("**Mackenzie**") is the manager of various open-end mutual funds (the "**Mackenzie Funds**").

2. Mackenzie is registered in the categories investment counsel and portfolio manager, commodity trading manager and limited market dealer in the Province of Ontario, in the categories investment counsel and portfolio manager in the Province of Alberta, and in the category portfolio manager in Newfoundland and Labrador.

3. Counsel Group of Funds Inc. ("**Counsel**") is the manager of various open-end mutual funds (the "**Counsel Funds**", the Mackenzie Funds and the Counsel Funds are sometimes referred to herein as the "**Funds**").

4. Counsel is registered in the categories of investment counsel and portfolio manager in the Province of Ontario.

5. The Filers do not sell mutual fund securities directly to the public and are not members of the Mutual Fund Dealers Association of Canada.

6. Securities of the Funds are sold through registered dealers (the "**Dealers**").

7. Each of the Filers is not in default of securities legislation in any jurisdiction of Canada.

8. Each Filer maintains clearing accounts on behalf of the Funds managed by it (the "**Trust Accounts**") with major Canadian financial institutions into which all monies ("**Mutual Fund Trust Monies**") invested by securityholders in the

Funds managed by it ("**Investors**") are paid by way of cheque, wire transfer, electronic funds transfer and the FundServ electronic order entry system ("**Industry Standard Settlement Processes**") and from which redemption proceeds or assets to be distributed are paid. The Trust Accounts are interest bearing and all of the interest earned on the cash in the Trust Accounts is paid to the Funds on a pro rata basis in compliance with subsection 11.1(4) of NI 81-102. The Filers ensure compliance with section 11.3 of NI 81-102 in the way in which the Trust Accounts are maintained.

9. Each Trust Account is held on behalf of the Funds. Each Filer, as manager of the Mackenzie Funds or Counsel Funds, as applicable, has access to the applicable Trust Account and has control over which of its employees have access to the applicable Trust Account.

10. M.R.S. Trust Company ("**M.R.S. Trust**") is a federally regulated trust company. M.R.S. Trust is an indirect wholly-owned subsidiary of Mackenzie and is an affiliate of Counsel.

11. M.R.S. Trust intends to accept deposits from Investors via Dealers (such investments the "Deposits") by way of Industry Standard Settlement Processes.

12. The Filers intend to provide the administrative infrastructure necessary to permit M.R.S. Trust to offer the Deposits to Investors via Dealers, specifically including the operational means by which Investors' funds will be moved from the Dealers to M.R.S. Trust.

13. The Deposits offered by M.R.S. Trust are or will be savings accounts eligible for deposit insurance from the Canada Deposit Insurance Corporation ("**CDIC**") subject to maximum coverage limitations. Investors who wish to invest cash in the Deposits may also purchase units of the Funds from their Dealer at the same time.

14. Dealers who accept cash from Investors for investment in the Deposits ("**Non-Mutual Fund Trust Monies**") and for investment in the Funds (as noted above, "Mutual Fund Trust Monies"), will forward such cash to the Filers via Industry Standard Settlement Processes. Once received, the Filers propose to hold both Non-Mutual Fund Trust Monies and Mutual Fund Trust Monies temporarily in the Trust Accounts. Investors' Non-Mutual Fund Trust Monies will then be forwarded by the Filers from their Trust Accounts to M.R.S. Trust, while Investors' Mutual Fund Trust Monies will be forwarded by the Filers from the Trust Accounts to individual Fund accounts in the name of the Funds' custodian. For a brief time then, the Filers anticipate that Non-Mutual Fund Trust Monies and Mutual Fund Trust Monies will be temporarily commingled in the Trust Accounts.

15. As managers of the Funds, the Filers are subject to the statutory standard of care set forth in section 116 of the *Securities Act* (Ontario) and to similar provisions contained in the legislation of the Jurisdictions. As a federally regulated trust company, M.R.S. Trust accepts the Deposits as guaranteed trust money and the Filers, acting as agents of M.R.S. Trust, will comply with the fiduciary standard of care and applicable customer protection legislation and regulations which apply to M.R.S. Trust in respect of the Deposits. Investors' Non Mutual Fund Trust Monies will be eligible for deposit insurance from CDIC subject to maximum coverage limitations.

16. The temporary commingling of Non Mutual Fund Trust Monies with Mutual Fund Trust Monies in the Trust Accounts will permit a seamless method to move funds from Dealers to the Funds and M.R.S. Trust, and in reverse, and will facilitate significant administrative and systems economies that will enable the Filers to enhance their levels of service to their clients.

17. In the absence of the Requested Relief, the commingling of the Mutual Fund Trust Monies with the Non-Mutual Fund Client Trust Monies would contravene the Commingling Prohibition and would require the Filers to establish separate trust accounts for the Funds and the Deposits. This would effectively not permit the offering of CDIC eligible deposits to Investors alongside mutual fund investments within the same client-name accounts, which the Filers believe to be of significant value to investors.

18. Commingled Mutual Fund Trust Monies and Non Mutual Fund Trust Monies will be forwarded to individual Fund accounts in the name of the Funds' custodian and to M.R.S. Trust, as applicable, no less frequently than following overnight processing of Fund purchase and Deposit orders. Commingled Mutual Fund Trust Monies and Non Mutual Fund Trust Monies will be forwarded from the Trust Account to the relevant dealers or dealer trust accounts which redeem Funds or order withdrawals from the Deposits no less frequently than following overnight processing of redemption or withdrawal orders, subject to the time it may take for an Investor to redeem a cheque issued in respect of redeemed Fund units or withdrawn Deposits. Accordingly, all monies held in the Trust Account will be cleared no less frequently than on a daily basis at the beginning of each business day following the previous business day's overnight processing of all purchase and deposit transactions involving the Funds and Deposits and most redemptions from the Funds and withdrawals from the Deposits.

19. The Filers do not believe that the interests of the Investors will be prejudiced in any way by the commingling of Mutual Fund Trust Monies with Non-Mutual Fund Client Trust Monies.

20. Each Filer is a "company providing services to the mutual fund" under the provisions of section 11.1(1)(b) of NI 81-102. Accordingly, the Commingling Prohibition prohibits the Filers from commingling Mutual Fund Trust Monies with Non-Mutual Fund Trust Monies.

21. In providing services, each Filer is able to account for all monies received into and all monies that are to be paid out of its Trust Account in order to meet the policy objectives of sections 11.1 and 11.2 of NI 81-102.

22. The Filers will ensure that proper records with respect to client cash in a commingled account are kept, and will ensure that its respective Trust Account is reconciled, and that Mutual Fund Trust Monies and Non-Mutual Fund Trust Monies are properly accounted for daily.

23. Each Filer will ensure that all transactions in its Trust Account are manually reviewed on a daily basis in order to monitor the Trust Account for discrepancies in the handling of Mutual Fund Trust Monies and Non-Mutual Fund Trust Monies in the Trust Account.

24. Any error in the handling of monies in a Filer's Trust Account as a result of the commingling of funds identified through such daily review process will promptly be corrected by the applicable Filer.

25. Except for the Commingling Prohibition, the Filers will comply with all other requirements prescribed in Part 11 of NI 81-102 with respect to the separate accounting and handling of client cash.

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

2.1.6 TransAlta Utilities Corporation – 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).

December 12, 2008

McCarthy Tétrault
3300, 421 - 7 Avenue SW
Calgary, AB T2P 4K9

Attention: Michael J. Bennett

Dear Sir:

Re: TransAlta Utilities Corporation (the Applicant) - Application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador and Northwest Territories (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 to be deemed to have ceased to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that:

(a) 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;

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

(c) 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

(d) 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.

"Agnes Lau, CA"
Associate Director, Corporate Finance
Alberta Securities Commission

2.1.7 First Calgary Petroleums Ltd. – 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).

December 15, 2008

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Attention: Elise Lenser

Dear Madam:

Re: First Calgary Petroleums Ltd. (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 to be deemed to have ceased to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that:

(a) 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;

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

(c) 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

(d) 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

2.1.8 Solana Resources Limited – 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).

December 12, 2008

Blake, Cassels & Graydon LLP
855 - 2nd Street SW
Suite 3500, Bankers Hall East Tower
Calgary, AB T2P 4J8

Attention: Ryan Clements

Dear Sir:

Re: Solana Resources Limited (the Applicant) - Application for a decision under the securities legislation of Alberta and Ontario (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 to be deemed to have ceased to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that:

(a) 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;

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

(c) 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

(d) 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.

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

2.2 Orders

2.2.1 Agrium Inc. – s. 104(2)(c)

Headnote

Clause 104(2)(c) - Issuer bid - relief from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act - Issuer proposes to purchase, at a discounted purchase price, up to 1,500,000 of its common shares from one shareholder - due to discounted purchase price, proposed purchases cannot be made through TSX trading system - but for the fact that the proposed purchases cannot be made through the TSX trading system, the Issuer could otherwise acquire the subject shares in reliance upon the issuer bid exemption available under section 101.2 of the Act and in accordance with the TSX rules governing normal course issuer bid purchases - no adverse economic impact on or prejudice to issuer or public shareholders - proposed purchases exempt from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act, subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 94 to 94.8, 97 to 98.7, 104(2)(c)

December 9, 2008

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

AND

**IN THE MATTER OF
AGRIUM INC.**

**ORDER
(Section 104(2)(c))**

UPON the application (the **"Application"**) of Agrium Inc. (the **"Issuer"**) to the Ontario Securities Commission (the **"Commission"**) for an order pursuant to clause 104(2)(c) of the Act exempting the Issuer from the requirements of sections 94 to 94.8 and 97 to 98.7 of the Act (the **"Issuer Bid Requirements"**) in connection with the proposed purchases (**"Proposed Purchases"**) by the Issuer of up to 1,500,000 (the **"Subject Shares"**) of its common shares (the **"Shares"**) from The Toronto-Dominion Bank and/or its affiliates (collectively, **"Selling Shareholders"**);

AND UPON considering the Application and the recommendation of staff of the Commission;

AND UPON the Issuer having represented to the Commission that:

1. The Issuer is a corporation governed by the *Canada Business Corporations Act*.

2. The head office of the Issuer is located at Calgary, Alberta.

3. The Issuer is a reporting issuer in each of the provinces and territories of Canada and the Shares of the Issuer are listed for trading on the Toronto Stock Exchange (the **"TSX"**) and the New York Stock Exchange under the symbol "AGU". The Issuer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.

4. The authorized common share capital of the Issuer consists of an unlimited number of Shares, of which 157,582,323 were outstanding as of November 12, 2008.

5. The Selling Shareholders are the direct or indirect beneficial owner of not more than 5% of all issued and outstanding Shares.

6. Pursuant to a Notice of Intention to make a Normal Course Issuer Bid dated and filed with the TSX on October 2, 2008, the Issuer is permitted to make normal course issuer bid purchases for period starting on October 6, 2008 and ending on October 5, 2009 and for a maximum of 7,899,116 Shares (the **"Bid"**). To date, 400,000 Shares have been purchased under the Bid.

7. The Notice of Intention filed with the TSX contemplates that purchases may be made by way of exempt offers.

8. The Issuer and the Selling Shareholders intend to enter into one or more agreements of purchase and sale (the **"Agreement"**) pursuant to which the Issuer will agree to acquire, by one or more trades occurring prior to the date which is 90 days from the date of this Order, the Subject Shares from the Selling Shareholders for a purchase price (the **"Purchase Price"**) that will be negotiated at arm's length between the Issuer and the Selling Shareholders. The Purchase Price will be at a discount to the prevailing market price and below the prevailing bid-ask price for the Shares.

9. The purchase of the Subject Shares by the Issuer pursuant to the Agreement will constitute an "issuer bid" for purposes of the Act, to which the Issuer Bid Requirements would otherwise apply.

10. Because the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Shares at the time of each trade, the Proposed Purchases cannot be made through the TSX trading system and, therefore, will not occur "through the facilities" of the TSX. As a result, the Issuer will be unable to acquire the Subject Shares from the Selling Shareholders in reliance upon the exemption from the Issuer Bid Requirements that is available pursuant to Section 101.2(1) of the Act.

11. But for the fact that the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Shares at the time of the trade, the Issuer could otherwise acquire the Subject Shares as a "block purchase" (a **"Block Purchase"**) in accordance with Section 629(l)7 of Part VI of the TSX Company Manual (the **"TSX Rules"**) and Section 101.2(1) of the Act.

12. Each of the Selling Shareholders is at arm's length to the Issuer and is not an "insider" of the Issuer, an "associate" of an "insider" of the Issuer or an "associate" or "affiliate" of the Issuer, as such terms are defined in the Act. In addition, each Selling Shareholder is an "accredited investor" within the meaning of National Instrument 45-106 *Prospectus and Registration Exemptions* ("NI 45-106").

13. The Issuer will be able to acquire the Subject Shares from the Selling Shareholders in reliance upon the exemption from the dealer registration requirements of the Act that is available as a result of the combined effect of Section 2.16 of NI 45-106 and Section 4.1(a) of Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions*.

14. The Issuer is of the view that the purchase of the Subject Shares at a lower price than the price at which the Issuer would be able to purchase the Shares under the Bid is an appropriate use of the Issuer's funds.

15. The purchase of Subject Shares will not affect control of the Issuer.

16. The Proposed Purchases will be carried out with a minimum of cost to the Issuer.

17. The market for the Shares is a "liquid market" within the meaning of Section 1.2 of Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions. The purchase of Subject Shares is not anticipated to have any effect on the ability of other shareholders of the Issuer to sell their Shares in the market.

18. Other than the Purchase Price, no additional fee or other consideration will be paid in connection with the Proposed Purchases.

19. At the time that the Agreement is entered into by the Issuer and the Selling Shareholders, neither the Issuer nor the Selling Shareholders will be aware of any undisclosed "material change" or any undisclosed "material fact" (each as defined in the Act) in respect of the Issuer.

20. As at the date hereof, to the knowledge of the Issuer after reasonable inquiry, the Selling Shareholders own the Subject Shares and the

Subject Shares were not acquired in anticipation of resale pursuant to the Proposed Purchases.

AND UPON the Commission being satisfied to do so would not be prejudicial to the public interest;

IT IS ORDERED pursuant to clause 104(2)(c) of the Act that the Issuer be exempt from the Issuer Bid Requirements in connection with the Proposed Purchases, provided that:

(a) the Proposed Purchases will be taken into account by the Issuer when calculating the maximum annual aggregate limit for the Bid Purchases in accordance with the TSX Rules;

(b) the Issuer will refrain from conducting a Block Purchase in accordance with the TSX Rules during the calendar week it completes each Proposed Purchase and may not make any further Bid Purchases for the remainder of that calendar day;

(c) the Purchase Price is not higher than the last "independent trade" (as that term is used in paragraph 629(l)1 of the TSX Rules) of a board lot of Shares immediately prior to the execution of each Proposed Purchase;

(d) the Issuer will otherwise acquire any additional Shares pursuant to the Bid and in accordance with the TSX Rules;

(e) immediately following its purchase of the Subject Shares from the Selling Shareholders, the Issuer will report the purchase of the Subject Shares to the TSX;

(f) at the time the Agreement is entered into by the Issuer and the Selling Shareholders, neither the Issuer nor the Selling Shareholders will be aware of any undisclosed "material change" or undisclosed "material fact" (each as defined in the Act) in respect of the Issuer; and

(g) the Issuer will issue a press release in connection with the Proposed Purchases.

“Kevin J. Kelly”
Commissioner
Ontario Securities Commission

“James E.A. Turner”
Vice-Chair
Ontario Securities Commission

2.2.2 MFDA Variation and Restatement of Recognition Order – s. 144

Headnote

Application under section 144 of the Act to vary and restate an order recognizing the Mutual Fund Dealers Association of Canada as a self-regulatory organization.

Applicable Legislative Provision

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 21.1, 144.

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

AND

IN THE MATTER OF
MUTUAL FUND DEALERS ASSOCIATION OF CANADA/
ASSOCIATION CANADIENNE DES COURTIERS DE FONDS MUTUELS
(THE "MFDA")

VARIATION AND RESTATEMENT
OF RECOGNITION ORDER
(Section 144)

WHEREAS the Commission issued an order dated February 6, 2001, as amended on March 30, 2004, November 3, 2006, and October 28, 2008, recognizing the MFDA as a self-regulatory organization for mutual fund dealers pursuant to section 21.1 of the Act ("Previous Order");

AND WHEREAS the MFDA has applied to the Commission to vary and restate the Previous Order to extend the suspension of MFDA Rule 2.4.1 to allow time for the MFDA to develop proposed amendments to Rule 2.4.1 regarding the direction of commissions to non-registered corporations;

AND WHEREAS the Commission has determined that it is not prejudicial to the public interest to issue an order that varies and restates the Previous Order to amend Schedule A to this order to extend the suspension of Rule 2.4.1 until March 31, 2010, to allow time for the MFDA to develop the proposed amendments to Rule 2.4.1;

IT IS ORDERED pursuant to section 144 of the Act that the Previous Order be varied 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
MUTUAL FUND DEALERS ASSOCIATION OF CANADA/
ASSOCIATION CANADIENNE DES COURTIERS DE FONDS MUTUELS
(the "MFDA")

RECOGNITION ORDER
(Section 21.1)

WHEREAS the Commission recognized the MFDA as a self-regulatory organization for mutual fund dealers by an order dated February 6, 2001, as amended on March 30, 2004, November 3, 2006, and October 28, 2008 ("Previous Order"), subject to terms and conditions;

AND WHEREAS the MFDA has requested in an application dated July 17, 2008, that Schedule A to the Previous Order be amended to extend the suspension of MFDA Rule 2.4.1;

AND WHEREAS the MFDA will continue to regulate, in accordance with its by-laws, rules, regulations, policies, forms, and other similar instruments (“Rules”), the operations and the standards of practice and business conduct of its members and their Approved Persons as defined under its Rules;

AND WHEREAS the Commission has considered the application and related submissions of the MFDA for continued recognition as a self-regulatory organization for mutual fund dealers;

AND WHEREAS the Commission is satisfied that continuing to recognize the MFDA would not be prejudicial to the public interest;

THE COMMISSION HEREBY VARIES AND RESTATES the MFDA's recognition as a self-regulatory organization so that the recognition pursuant to section 21.1 of the Act continues, subject to the terms and conditions set out in Schedule A.

Dated February 6, 2001, as amended on March 30, 2004, November 3, 2006, October 28, 2008, and December 12, 2008.

"Wendell S. Wigle"

"Carol S. Perry"

SCHEDULE A

TERMS AND CONDITIONS OF RECOGNITION OF THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA AS A SELF-REGULATORY ORGANIZATION FOR MUTUAL FUND DEALERS

1. DEFINITIONS

For the purposes of this Schedule:

"Approved Person" has the same meaning as that under the MFDA rules, as amended by the MFDA and approved by the Commission from time to time;

"member" means a member of the MFDA;

"rules" means the by-laws, rules, regulations, policies, forms, and other similar instruments of the MFDA; and

"securities legislation" has the same meaning as that defined in National Instrument 14-101.

2. STATUS

The MFDA is and shall remain a not-for-profit corporation.

3. CORPORATE GOVERNANCE

(A) The MFDA's arrangements with respect to the appointment, removal from office and functions of the persons ultimately responsible for making or enforcing the rules of the MFDA, being the Board of Directors (the "Board"), shall secure a proper balance between the interests of the different members of the MFDA in order to ensure diversity of representation on the Board. In recognition that the protection of the public interest is a primary goal of the MFDA, a reasonable number and proportion of directors on the Board and on the committees of the Board shall be and remain during their term of office Public Directors as defined in By-law No. 1 of the MFDA.

(B) The MFDA's governance structure shall provide for:

(i) at least 50% of its directors, other than its President and Chief Executive Officer, shall be Public Directors;

(ii) the President and Chief Executive Officer of the MFDA is deemed to be neither a Public Director nor a non-Public Director;

(iii) appropriate representation of Public Directors on committees and bodies of the Board, in particular:

(a) at least 50% of directors on the governance committee of the Board shall be Public Directors,

(b) a majority of directors on the audit committee of the Board shall be Public Directors,

(c) at least 50% of directors on the executive committee of the Board, if any, shall be Public Directors,

(d) meetings of the Board shall have a quorum requirement of a reasonable number and proportion of Public Directors and non-Public Directors, with at least two Public Directors, and

(e) meetings of any committee or body of the Board shall have a quorum requirement of a reasonable number and proportion of Public Directors and non-Public Directors, provided that if the committee or body has Public Directors then the quorum must require at least one Public Director be present;

(iv) the remaining number of directors serving on the Board and on the above referred to committees and bodies of the Board, shall consist of directors representing the different members of the MFDA to ensure diversity of representation on the Board in accordance with paragraph (A);

(v) appropriate qualification, remuneration, and conflict of interest provisions and provisions with respect to the limitation of liability of and indemnification protection for directors, officers and employees of the MFDA; and

(vi) a chief executive officer and other officers, all of whom, except for the chair of the Board, are independent of any member.

4. FEES

(A) Any and all fees imposed by the MFDA on its members shall be equitably allocated and bear a reasonable relation to the costs of regulating members, carrying out the MFDA's objects and protecting the public interest. Fees shall not have the effect of creating unreasonable barriers to membership and shall be designed to ensure that the MFDA has sufficient revenues to discharge its responsibilities.

(B) The MFDA's process for setting fees shall be fair, transparent, and appropriate.

5. COMPENSATION OR CONTINGENCY TRUST FUNDS

The MFDA shall co-operate with compensation funds or contingency trust funds that are from time to time considered by the Commission under securities legislation to be compensation funds or contingency trust funds for mutual fund dealers and with any such fund that has applied to the Commission to be considered such funds (the "IPPs"). The MFDA shall ensure that its rules give it the power to assess members, and require members to pay such assessments, on account of assessments or levies made by or in respect of an IPP.

6. MEMBERSHIP REQUIREMENTS

(A) The MFDA's rules shall permit all properly registered mutual fund dealers who satisfy the membership criteria to become members thereof and shall provide for the non-transferability of membership.

(B) Without limiting the generality of the foregoing, the MFDA's rules shall provide for:

(i) reasonable financial and operational requirements, including minimum capital and capital adequacy, debt subordination, bonding, insurance, record-keeping, new account, knowledge of clients, suitability of trades, supervisory practices, segregation, protection of clients' funds and securities, operation of accounts, risk management, internal control and compliance (including a written compliance program), client statement, settlement, order taking, order processing, account inquiries, confirmation and back office requirements;

(ii) reasonable proficiency requirements (including training, education and experience) with respect to Approved Persons of members;

(iii) consideration of disciplinary history, including breaches of applicable securities legislation, the rules of other self-regulatory organizations or MFDA rules, prior involvement in criminal, relevant quasi-criminal, administrative or insolvency proceedings or civil proceedings involving business conduct or alleging fraudulent conduct or deceit, and prior business and other conduct generally, of applicants for membership and any partners, directors and officers, in order that membership may, where appropriate, be refused where any of the foregoing have previously engaged in improper conduct, and shall be refused where the past conduct of any of the foregoing affords reasonable grounds for belief that the applicant's business would not be conducted with integrity;

(iv) reasonable consideration of relationships with other members and other business activities to ensure the appropriateness thereof; and

(v) consideration of the ownership of applicants for membership under the criteria established in paragraph 6(E).

(C) The MFDA shall require members to confirm to the MFDA that persons that it wishes to sponsor, employ or associate with as Approved Persons comply with applicable securities legislation and are properly registered.

(D) The MFDA rules shall require a member to give prior notice to the MFDA before any person or company acquires a material registered or beneficial interest in securities or indebtedness of or any other ownership interest in the member, directly or indirectly, or becomes a transferee of any such interests, or before the member engages in any business combination, merger, amalgamation, redemption or repurchase of

securities, dissolution or acquisition of assets. In each case there may be appropriate exceptions in the case of publicly traded securities, de minimis transactions that do not involve changes in de facto or legal control or the acquisitions of material interests or assets, and non-participating indebtedness.

(E) The MFDA rules shall require approval by the MFDA in respect of all persons or companies proposing to acquire an ownership interest in a member in the circumstances outlined in paragraph 6(D) and, except as provided in paragraph 6(F), for approval of all persons or companies that satisfy criteria providing for:

(i) consideration of disciplinary history, including breaches of applicable securities legislation, the rules of other self-regulatory organizations or MFDA rules, involvement in criminal, relevant quasi-criminal, administrative or insolvency proceedings or civil proceedings involving business conduct or alleging fraudulent conduct or deceit, and prior business and other conduct generally; and

(ii) reasonable consideration of relationships with other members and involvement in other business activities to ensure the appropriateness thereof.

(F) The MFDA rules shall give the MFDA the right to refuse approval of all persons or companies that are proposing to acquire an ownership interest in a member in the circumstances outlined in paragraph 6(D) who do not agree to:

(i) submit to the jurisdiction of the MFDA and comply with its rules;

(ii) notify the MFDA of any changes in his, her or its relationship with the member or of any involvement in criminal, relevant quasi-criminal, administrative or insolvency proceedings or in civil proceedings involving business conduct or alleging fraudulent conduct or deceit;

(iii) accept service by mail in addition to any other permitted methods of service;

(iv) authorize the MFDA to co-operate with other regulatory and self-regulatory organizations, including sharing information with these organizations; and

(v) provide the MFDA with such information as it may from time to time request and full access to and copies of any records.

(G) The MFDA shall notify the Commission forthwith of members whose rights and privileges will be suspended or terminated or whose membership will be terminated, and in each case the MFDA shall identify the member, the reasons for the proposed suspension or termination and provide a description of the steps being taken to ensure that the member's clients are being dealt with appropriately.

7. COMPLIANCE BY MEMBERS WITH MFDA RULES

(A) The MFDA shall enforce, as a matter of contract between itself and its members, compliance by its members and their Approved Persons with the rules of the MFDA and the MFDA shall cooperate with the Commission in ensuring compliance with applicable securities legislation relating to the operations, standards of practice and business conduct of members and Approved Persons, without prejudice to any action that may be taken by the Commission under securities legislation.

(B) The MFDA shall conduct periodic reviews of its members and the members' Approved Persons to ensure compliance by its members and the members' Approved Persons with the rules of the MFDA and shall conduct such reviews at a frequency requested by the Commission or its staff. The MFDA shall provide notice to staff of the Commission of any material violations of securities legislation of which it becomes aware in the ordinary course operation of its business. The MFDA shall also cooperate with the Commission in the conduct of reviews of its members and the members' Approved Persons as requested by the Commission or its staff, to ensure compliance by its members and their Approved Persons with applicable securities legislation.

(C) The MFDA shall promptly report to the Commission when:

(i) any member has failed to file on a timely basis any required financial, operational or other report;

(ii) early warning thresholds established by the MFDA that would reasonably be expected to raise concerns about a member's liquidity, risk-adjusted capital or profitability have been triggered by any member; and

(iii) any condition exists with respect to a member which, in the opinion of the MFDA, could give rise to payments being made out of an IPP, including any condition which, alone or together with other conditions, could, if appropriate corrective action is not taken, reasonably be expected to:

(a) inhibit the member from promptly completing securities transactions, promptly segregating clients' securities as required or promptly discharging its responsibilities to clients, other members or creditors,

(b) result in material financial loss, or

(c) result in material misstatement of the member's financial statements.

The MFDA shall, in each case, identify the member, describe the circumstances that gave rise to the reportable event and describe the MFDA's proposed response to ensure the identified circumstances are resolved.

(D) The MFDA shall promptly report to the Commission actual or apparent misconduct by members and their Approved Persons and others where investors, creditors, members, an IPP or the MFDA may reasonably be expected to suffer serious damage as a consequence thereof, including where the solvency of a member is at risk, fraud is present or there exist serious deficiencies in supervision or internal controls or non-compliance with MFDA rules or securities legislation. The MFDA shall, in each case, identify the member, the Approved Persons, or others, and the misconduct or deficiency as well as the MFDA's proposed response to ensure that the identified problem is resolved.

(E) The MFDA shall advise the Commission promptly following the taking of any action by it with respect to any member in financial difficulty.

(F) The MFDA shall promptly advise each other self-regulatory organization and IPP of which a member is a participant or which provides compensatory coverage in respect of the member, of any actual or apparent material breach of the rules thereof of which the MFDA becomes aware.

8. DISCIPLINE OF MEMBERS AND APPROVED PERSONS

(A) The MFDA shall, as a matter of contract, have the right to and shall appropriately discipline its members and their Approved Persons for violations of the rules of the MFDA and shall cooperate with the Commission in the enforcement of applicable securities legislation relating to the operations, standards of practice and business conduct of the members and Approved Persons, without prejudice to any action that may be taken by the Commission under securities legislation.

(B) The MFDA rules shall enable it to prevent the resignation of a member from the MFDA if the MFDA considers that any matter affecting the member or any registered or beneficial holder of a direct or indirect ownership interest in securities, indebtedness or other interests in the member, or in a person or company associated or affiliated with the member or affecting the member's Approved Persons or any of them, should be investigated or that the member or any such person, company or Approved Person should be disciplined.

(C) The MFDA shall require its members and their Approved Persons to be subject to the MFDA's review, enforcement and disciplinary procedures.

(D) The MFDA shall notify

(i) the Commission in writing, and

(ii) the public and the media

(a) of any disciplinary or settlement hearing, as soon as practicable and in any event not less than 14 days prior to the date of the hearing, and

(b) of the disposition of any disciplinary action or settlement, including any discipline imposed, and shall promptly make available any written decision and reasons.

(E) Any notification required under paragraph 8 (D) shall include, in addition to any other information specified in paragraph 8 (D), the names of the member and the relevant Approved Persons together with a summary of circumstances that gave rise to the proceedings.

(F) The MFDA shall maintain a register to be made available to the public, summarizing the information which is required to be disclosed to the Commission under paragraphs 8 (D) and (E).

(G) The information given to the Commission under paragraphs 8 (D) and (E) will be published by the Commission unless the Commission determines otherwise.

(H) The MFDA shall at least annually review all material settlements involving its members or their Approved Persons and their clients with a view to determining whether any action is warranted, and the MFDA shall prohibit members and their Approved Persons from imposing confidentiality restrictions on clients vis-à-vis the MFDA or the Commission, whether as part of a resolution of a dispute or otherwise.

(I) Disciplinary and settlement hearings shall be open to the public and media except where confidentiality is required for the protection of confidential matters. The criteria and any changes thereto for determining these exceptions shall be specified and submitted to the Commission for approval.

9. DUE PROCESS

The MFDA shall ensure that the requirements of the MFDA relating to admission to membership, the imposition of limitations or conditions on membership, denial of membership and termination of membership are fair and reasonable, including in respect of notice, an opportunity to be heard or make representations, the keeping of a record, the giving of reasons and provision for appeals.

10. PURPOSE OF RULES

(A) The MFDA shall, subject to the terms and conditions of its recognition and the jurisdiction and oversight of the Commission in accordance with securities legislation, establish such rules as are necessary or appropriate to govern and regulate all aspects of its business and affairs and shall in so doing:

(i) seek to ensure compliance by members and their Approved Persons with applicable securities legislation relating to the operations, standards of practice and business conduct of the members;

(ii) seek to prevent fraudulent and manipulative acts and practices and to promote the protection of investors, just and equitable principles of trade and high standards of operations, business conduct and ethics;

(iii) seek to promote public confidence in and public understanding of the goals and activities of the MFDA and to improve the competence of members and their Approved Persons;

(iv) seek to standardize industry practices where appropriate for investor protection;

(v) seek to provide for appropriate discipline;

and shall not:

(vi) permit unfair discrimination among investors, mutual funds, members or others; or

(vii) impose any barrier to competition that is not appropriate.

(B) Unless otherwise approved by the Commission, the rules of the MFDA governing the conduct of member business regulated by the MFDA shall afford investors protection at least equivalent to that afforded by securities legislation, provided that higher standards in the public interest shall be permitted and are encouraged.

11. RULES AND RULE-MAKING

(A) No new rules, changes to rules (which shall include any revocation in whole or in part of a rule) or suspension of rules shall be made effective by the MFDA without prior approval of the Commission. Any such rules, changes or suspensions shall be justified by reference to the permitted purposes thereof (having regard to paragraph 10). The approval process shall be subject to a memorandum of understanding between the Commission and the MFDA to be established regarding the review and approval of rules and amendments and suspensions thereto.

(B) Prior to proposing a new rule, changes to a rule (which shall include any revocation in whole or in part of a rule) or a suspension of a rule, the Board shall have determined that the entry into force of such rule or change or the suspension of the rule would be in the public interest and every proposed new rule, change or suspension must be accompanied by a statement to that effect.

(C) All rules, changes to rules and suspensions of rules adopted by the Board must be filed with the Commission.

(D) A copy of all written notices relevant to the rules or to the business and activities of members, their Approved Persons or other employees or agents to assist in the interpretation, application of and compliance with the rules and legislation relevant to such business and activities shall be provided to the Commission.

(E) The MFDA shall, wherever practicable, document its interpretations of its rules and distribute copies of that documentation to its members and the Commission.

12. OPERATIONAL ARRANGEMENTS AND RESOURCES

(A) The MFDA shall have adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules. With the consent of the Commission, the arrangements for monitoring and enforcement may make provision for the following:

(i) one or more parts of those functions to be performed (and without affecting its responsibility) by another body or person that is able and willing to perform it; and

(ii) its members and their Approved Persons to be deemed to be in compliance with its rules by complying with the substantially similar rules of such other body or person.

The Commission's consent may be varied or revoked from time to time and may be subject to terms and conditions.

(B) The MFDA shall respond promptly and effectively to public inquiries and generally shall have effective arrangements for the investigation of complaints (including anonymous complaints) against its members or their Approved Persons. With the consent of the Commission, such arrangements may make provision for one or more parts of that function to be performed on behalf of the MFDA (and without affecting its responsibility) by another body or person that is able and willing to perform it. The Commission's consent may be varied or revoked from time to time and may be subject to terms and conditions. The MFDA and any other body or person performing such function on behalf of the MFDA shall not refrain from investigating complaints due to the anonymity of the complainant where the complaint is otherwise worthy of investigation and sufficiently detailed to permit investigation.

(C) The MFDA shall ensure that it is accessible to the public and shall designate and make available to the public the names and telephone numbers of persons to be contacted for various purposes, including making complaints and enquiries.

(D) The arrangements and resources referred to in paragraphs (A) and (B) above shall consist at a minimum of:

(i) a sufficient complement of qualified staff, including professional and other appropriately trained staff;

(ii) an adequate supervisory structure;

(iii) adequate management information systems;

(iv) a compliance department and an enforcement department with appropriate reporting structures directly to senior management, and with written procedures wherever practicable;

(v) procedures and structures that minimize or eliminate conflicts of interest within the MFDA;

(vi) inquiry and complaint procedures and a public information facility, including with respect to the discipline history of members and their Approved Persons;

(vii) guidelines regarding appropriate disciplinary sanctions; and

(viii) the capacity and expertise to hold disciplinary hearings (including regarding proposed settlements) utilizing public representatives within the meaning of the current section 19.5 of the MFDA's By-law No. 1 together with member representatives.

(E) The MFDA shall cooperate and assist with any reviews, scheduled or unscheduled, of its self-regulatory functions by an IPP or the Commission. In addition, in the event that the Commission is of the view that there has been a serious actual or apparent failure in the MFDA's fulfilment of its self-regulatory functions, the MFDA shall, where requested by the Commission, undergo an independent third party review on terms and by a person or persons satisfactory to or determined by the Commission, which review shall be at the expense of the MFDA.

(F) The MFDA shall cooperate and assist with any reviews, scheduled or unscheduled, of its corporate governance structure by the Commission. In addition, in the event that the Commission is of the view that there has been a serious weakness in the MFDA's corporate governance structure, the MFDA shall upon the request of the Commission undergo an independent third party review on terms and by a person or persons satisfactory to or determined by the Commission, which review shall be at the expense of the MFDA.

(G) The MFDA shall not make material changes to its organizational structure, which would affect its self-regulatory functions, without prior approval of the Commission.

(H) The MFDA shall comply with reporting requirements set out in Appendix A, as amended from time to time by the Commission or its staff. The MFDA shall also provide the Commission with other reports, documents and information as the Commission or its staff may reasonably request.

13. INFORMATION SHARING

The MFDA shall cooperate, by sharing information and otherwise, with IPPs, the Commission and its staff, and other Canadian federal, provincial and territorial recognized self-regulatory organizations and regulatory authorities, including without limitation, those responsible for the supervision or regulation of securities firms, financial institutions, insurance matters and competition matters. The Commission and its staff shall have unrestricted access to the books and records, management, staff and systems of the MFDA.

14. SUSPENSION OF MFDA RULE 2.4.1

MFDA Rule 2.4.1 is suspended and will continue to be suspended until March 31, 2010, in the Provinces of British Columbia, Saskatchewan, Ontario and Nova Scotia, and during such period the MFDA shall comply with the following conditions:

(A) the MFDA shall, as a condition of a member or Approved Person being entitled to rely on the suspension of Rule 2.4.1, require that the member and its Approved Persons agree, and cause any recipient of commissions on behalf of Approved Persons that is itself not registered as a dealer or a salesperson to agree, to provide to the MFDA, the Commission and the applicable member access to its books and records for the purpose of determining compliance with the rules of the MFDA and applicable securities legislation;

(B) the MFDA shall ensure in connection with the suspension of Rule 2.4.1 that members and Approved Persons comply with the remaining rules, with specific reference to Rule 1 Business Structures and Qualifications, Rule 1.2.1(d) Dual Occupations and the requirement noted above in paragraph (A);

(C) the MFDA shall ensure that members applying for membership are made aware of the requirements of Rule 1 by delivering to each applicant a copy of its Notice MR-0002; and

(D) the MFDA shall not accept a member whose relationship with its Approved Persons does not comply with the rules of the MFDA and in particular, Rule 1, unless the MFDA has granted exemptive relief to that applicant under the authority granted to the Board of Directors under section 38 of By-law No. 1.

APPENDIX A

Reporting Requirements

1. Prior Notification

1.1 The MFDA shall advise the Commission in advance of any proposed material changes or reductions in its financial review program or operational and sales compliance review programs, including as to procedures or scope, or any proposed changes in its external audit instructions and of any proposed material changes or reductions in the operation of its investigation or enforcement programs.

2. Immediate Notification

2.1 The MFDA shall give the Commission notice of new directors, officers and committee chairpersons, including a 5 year employment history and information as to the involvement in criminal, relevant quasi-criminal, administrative or insolvency proceedings and civil proceedings involving business conduct or alleging fraudulent conduct or deceit in respect of each such person.

3. Annual Reporting

The MFDA shall within 120 days of its fiscal year end file the following information and reports to the Commission:

3.1 The MFDA's self-regulatory staff complement, by function, and of any material changes or reductions in self-regulatory staff, by function;

3.2 Copy or summary of self-assessment by management of the MFDA's performance of its self-regulatory responsibilities and any proposed actions arising therefrom. The self-assessment shall, for each of the MFDA's member regulatory functions, set performance measurements against which performance can be compared, and identify major successes, significant problem areas, plans to resolve these problems, recruitment and training plans, and other information as reasonably requested by the Commission or its staff; and

3.3 The MFDA's budget and audited financial statements.

2.2.3 Varied and Restated Recognition Order of the MFDA dated December 12, 2008 blacklined to the previous version that was approved by the Commission

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

AND

IN THE MATTER OF
MUTUAL FUND DEALERS ASSOCIATION OF CANADA/
ASSOCIATION CANADIENNE DES COURTIERS DE FONDS MUTUELS
(THE "MFDA")

VARIATION AND RESTATEMENT
OF RECOGNITION ORDER
(Section 144)

WHEREAS the Commission issued an order dated February 6, 2001, as amended on March 30, 2004~~ and,~~ November 3, 2006, and October 28, 2008, recognizing the MFDA as a self-regulatory organization for mutual fund dealers pursuant to section 21.1 of the Act ("Previous Order");

AND WHEREAS the MFDA has applied to the Commission to vary and restate the Previous Order to ~~delete~~extend the ~~definition~~suspension of ~~"Public Director" from~~MFDA Rule 2.4.1 to allow time for the ~~terms and conditions~~MFDA to develop proposed amendments to Rule 2.4.1 regarding the direction of ~~recognition~~commissions to non-registered corporations;

AND WHEREAS the Commission has determined that it is not prejudicial to the public interest to issue an order that varies and restates the Previous Order to ~~delete the definition~~amend Schedule A to this order to extend the suspension of ~~"Public Director"~~Rule 2.4.1 until March 31, 2010, to allow time for the MFDA to develop the proposed amendments to Rule 2.4.1;

IT IS ORDERED pursuant to section 144 of the Act that the Previous Order be varied 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
MUTUAL FUND DEALERS ASSOCIATION OF CANADA/
ASSOCIATION CANADIENNE DES COURTIERS DE FONDS MUTUELS
(the "MFDA")

RECOGNITION ORDER
(Section 21.1)

WHEREAS the Commission recognized the MFDA as a self-regulatory organization for mutual fund dealers by an order dated February 6, 2001, as amended on March 30, 2004~~ and~~, November 3, 2006, and October 28, 2008 ("Previous Order"), subject to terms and conditions;

AND WHEREAS the MFDA has requested in an application dated ~~March 18~~July 17, 2008, that ~~changes be made~~Schedule A to the Previous Order be amended to ~~remove~~extend the ~~definition~~suspension of ~~public director~~MFDA Rule 2.4.1;

AND WHEREAS the MFDA will continue to regulate, in accordance with its by-laws, rules, regulations, policies, forms, and other similar instruments ("Rules"), the operations and the standards of practice and business conduct of its members and their Approved Persons as defined under its Rules;

AND WHEREAS the Commission has considered the application and related submissions of the MFDA for continued recognition as a self-regulatory organization for mutual fund dealers;

AND WHEREAS the Commission is satisfied that continuing to recognize the MFDA would not be prejudicial to the public interest;

THE COMMISSION HEREBY VARIES AND RESTATES the MFDA's recognition as a self-regulatory organization so that the recognition pursuant to section 21.1 of the Act continues, subject to the terms and conditions set out in Schedule A.

Dated February 6, 2001, as amended on March 30, 2004, November 3, 2006, ~~and~~ October 28, 2008, and December 12, 2008.

~~"James E. A. Turner"~~

~~"L. E. Ritchie"~~

"Wendell S. Wigle"

"Carol S. Perry"

SCHEDULE A

TERMS AND CONDITIONS OF RECOGNITION OF THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA AS A SELF-REGULATORY ORGANIZATION FOR MUTUAL FUND DEALERS

1. DEFINITIONS

For the purposes of this Schedule:

"Approved Person" has the same meaning as that under the MFDA rules, as amended by the MFDA and approved by the Commission from time to time;

"member" means a member of the MFDA;

"rules" means the by-laws, rules, regulations, policies, forms, and other similar instruments of the MFDA; and

"securities legislation" has the same meaning as that defined in National Instrument 14-101.

2. STATUS

The MFDA is and shall remain a not-for-profit corporation.

3. CORPORATE GOVERNANCE

(A) The MFDA's arrangements with respect to the appointment, removal from office and functions of the persons ultimately responsible for making or enforcing the rules of the MFDA, being the Board of Directors (the "Board"), shall secure a proper balance between the interests of the different members of the MFDA in order to ensure diversity of representation on the Board. In recognition that the protection of the public interest is a primary goal of the MFDA, a reasonable number and proportion of directors on the Board and on the committees of the Board shall be and remain during their term of office Public Directors as defined in By-law No. 1 of the MFDA.

(B) The MFDA's governance structure shall provide for:

(i) at least 50% of its directors, other than its President and Chief Executive Officer, shall be Public Directors;

(ii) the President and Chief Executive Officer of the MFDA is deemed to be neither a Public Director nor a non-Public Director;

(iii) appropriate representation of Public Directors on committees and bodies of the Board, in particular:

(a) at least 50% of directors on the governance committee of the Board shall be Public Directors,

(b) a majority of directors on the audit committee of the Board shall be Public Directors,

(c) at least 50% of directors on the executive committee of the Board, if any, shall be Public Directors,

(d) meetings of the Board shall have a quorum requirement of a reasonable number and proportion of Public Directors and non-Public Directors, with at least two Public Directors, and

(e) meetings of any committee or body of the Board shall have a quorum requirement of a reasonable number and proportion of Public Directors and non-Public Directors, provided that if the committee or body has Public Directors then the quorum must require at least one Public Director be present;

(iv) the remaining number of directors serving on the Board and on the above referred to committees and bodies of the Board, shall consist of directors representing the different members of the MFDA to ensure diversity of representation on the Board in accordance with paragraph (A);

(v) appropriate qualification, remuneration, and conflict of interest provisions and provisions with respect to the limitation of liability of and indemnification protection for directors, officers and employees of the MFDA; and

(vi) a chief executive officer and other officers, all of whom, except for the chair of the Board, are independent of any member.

4. FEES

(A) Any and all fees imposed by the MFDA on its members shall be equitably allocated and bear a reasonable relation to the costs of regulating members, carrying out the MFDA's objects and protecting the public interest. Fees shall not have the effect of creating unreasonable barriers to membership and shall be designed to ensure that the MFDA has sufficient revenues to discharge its responsibilities.

(B) The MFDA's process for setting fees shall be fair, transparent, and appropriate.

5. COMPENSATION OR CONTINGENCY TRUST FUNDS

The MFDA shall co-operate with compensation funds or contingency trust funds that are from time to time considered by the Commission under securities legislation to be compensation funds or contingency trust funds for mutual fund dealers and with any such fund that has applied to the Commission to be considered such funds (the "IPPs"). The MFDA shall ensure that its rules give it the power to assess members, and require members to pay such assessments, on account of assessments or levies made by or in respect of an IPP.

6. MEMBERSHIP REQUIREMENTS

(A) The MFDA's rules shall permit all properly registered mutual fund dealers who satisfy the membership criteria to become members thereof and shall provide for the non-transferability of membership.

(B) Without limiting the generality of the foregoing, the MFDA's rules shall provide for:

(i) reasonable financial and operational requirements, including minimum capital and capital adequacy, debt subordination, bonding, insurance, record-keeping, new account, knowledge of clients, suitability of trades, supervisory practices, segregation, protection of clients' funds and securities, operation of accounts, risk management, internal control and compliance (including a written compliance program), client statement, settlement, order taking, order processing, account inquiries, confirmation and back office requirements;

(ii) reasonable proficiency requirements (including training, education and experience) with respect to Approved Persons of members;

(iii) consideration of disciplinary history, including breaches of applicable securities legislation, the rules of other self-regulatory organizations or MFDA rules, prior involvement in criminal, relevant quasi-criminal, administrative or insolvency proceedings or civil proceedings involving business conduct or alleging fraudulent conduct or deceit, and prior business and other conduct generally, of applicants for membership and any partners, directors and officers, in order that membership may, where appropriate, be refused where any of the foregoing have previously engaged in improper conduct, and shall be refused where the past conduct of any of the foregoing affords reasonable grounds for belief that the applicant's business would not be conducted with integrity;

(iv) reasonable consideration of relationships with other members and other business activities to ensure the appropriateness thereof; and

(v) consideration of the ownership of applicants for membership under the criteria established in paragraph 6(E).

(C) The MFDA shall require members to confirm to the MFDA that persons that it wishes to sponsor, employ or associate with as Approved Persons comply with applicable securities legislation and are properly registered.

(D) The MFDA rules shall require a member to give prior notice to the MFDA before any person or company acquires a material registered or beneficial interest in securities or indebtedness of or any other ownership interest in the member, directly or indirectly, or becomes a transferee of any such interests, or before the member engages in any business combination, merger, amalgamation, redemption or repurchase of

securities, dissolution or acquisition of assets. In each case there may be appropriate exceptions in the case of publicly traded securities, de minimis transactions that do not involve changes in de facto or legal control or the acquisitions of material interests or assets, and non-participating indebtedness.

(E) The MFDA rules shall require approval by the MFDA in respect of all persons or companies proposing to acquire an ownership interest in a member in the circumstances outlined in paragraph 6(D) and, except as provided in paragraph 6(F), for approval of all persons or companies that satisfy criteria providing for:

(i) consideration of disciplinary history, including breaches of applicable securities legislation, the rules of other self-regulatory organizations or MFDA rules, involvement in criminal, relevant quasi-criminal, administrative or insolvency proceedings or civil proceedings involving business conduct or alleging fraudulent conduct or deceit, and prior business and other conduct generally; and

(ii) reasonable consideration of relationships with other members and involvement in other business activities to ensure the appropriateness thereof.

(F) The MFDA rules shall give the MFDA the right to refuse approval of all persons or companies that are proposing to acquire an ownership interest in a member in the circumstances outlined in paragraph 6(D) who do not agree to:

(i) submit to the jurisdiction of the MFDA and comply with its rules;

(ii) notify the MFDA of any changes in his, her or its relationship with the member or of any involvement in criminal, relevant quasi-criminal, administrative or insolvency proceedings or in civil proceedings involving business conduct or alleging fraudulent conduct or deceit;

(iii) accept service by mail in addition to any other permitted methods of service;

(iv) authorize the MFDA to co-operate with other regulatory and self-regulatory organizations, including sharing information with these organizations; and

(v) provide the MFDA with such information as it may from time to time request and full access to and copies of any records.

(G) The MFDA shall notify the Commission forthwith of members whose rights and privileges will be suspended or terminated or whose membership will be terminated, and in each case the MFDA shall identify the member, the reasons for the proposed suspension or termination and provide a description of the steps being taken to ensure that the member's clients are being dealt with appropriately.

7. COMPLIANCE BY MEMBERS WITH MFDA RULES

(A) The MFDA shall enforce, as a matter of contract between itself and its members, compliance by its members and their Approved Persons with the rules of the MFDA and the MFDA shall cooperate with the Commission in ensuring compliance with applicable securities legislation relating to the operations, standards of practice and business conduct of members and Approved Persons, without prejudice to any action that may be taken by the Commission under securities legislation.

(B) The MFDA shall conduct periodic reviews of its members and the members' Approved Persons to ensure compliance by its members and the members' Approved Persons with the rules of the MFDA and shall conduct such reviews at a frequency requested by the Commission or its staff. The MFDA shall provide notice to staff of the Commission of any material violations of securities legislation of which it becomes aware in the ordinary course operation of its business. The MFDA shall also cooperate with the Commission in the conduct of reviews of its members and the members' Approved Persons as requested by the Commission or its staff, to ensure compliance by its members and their Approved Persons with applicable securities legislation.

(C) The MFDA shall promptly report to the Commission when:

(i) any member has failed to file on a timely basis any required financial, operational or other report;

(ii) early warning thresholds established by the MFDA that would reasonably be expected to raise concerns about a member's liquidity, risk-adjusted capital or profitability have been triggered by any member; and

(iii) any condition exists with respect to a member which, in the opinion of the MFDA, could give rise to payments being made out of an IPP, including any condition which, alone or together with other conditions, could, if appropriate corrective action is not taken, reasonably be expected to:

(a) inhibit the member from promptly completing securities transactions, promptly segregating clients' securities as required or promptly discharging its responsibilities to clients, other members or creditors,

(b) result in material financial loss, or

(c) result in material misstatement of the member's financial statements.

The MFDA shall, in each case, identify the member, describe the circumstances that gave rise to the reportable event and describe the MFDA's proposed response to ensure the identified circumstances are resolved.

(D) The MFDA shall promptly report to the Commission actual or apparent misconduct by members and their Approved Persons and others where investors, creditors, members, an IPP or the MFDA may reasonably be expected to suffer serious damage as a consequence thereof, including where the solvency of a member is at risk, fraud is present or there exist serious deficiencies in supervision or internal controls or non-compliance with MFDA rules or securities legislation. The MFDA shall, in each case, identify the member, the Approved Persons, or others, and the misconduct or deficiency as well as the MFDA's proposed response to ensure that the identified problem is resolved.

(E) The MFDA shall advise the Commission promptly following the taking of any action by it with respect to any member in financial difficulty.

(F) The MFDA shall promptly advise each other self-regulatory organization and IPP of which a member is a participant or which provides compensatory coverage in respect of the member, of any actual or apparent material breach of the rules thereof of which the MFDA becomes aware.

8. DISCIPLINE OF MEMBERS AND APPROVED PERSONS

(A) The MFDA shall, as a matter of contract, have the right to and shall appropriately discipline its members and their Approved Persons for violations of the rules of the MFDA and shall cooperate with the Commission in the enforcement of applicable securities legislation relating to the operations, standards of practice and business conduct of the members and Approved Persons, without prejudice to any action that may be taken by the Commission under securities legislation.

(B) The MFDA rules shall enable it to prevent the resignation of a member from the MFDA if the MFDA considers that any matter affecting the member or any registered or beneficial holder of a direct or indirect ownership interest in securities, indebtedness or other interests in the member, or in a person or company associated or affiliated with the member or affecting the member's Approved Persons or any of them, should be investigated or that the member or any such person, company or Approved Person should be disciplined.

(C) The MFDA shall require its members and their Approved Persons to be subject to the MFDA's review, enforcement and disciplinary procedures.

(D) The MFDA shall notify

(i) the Commission in writing, and

(ii) the public and the media

(a) of any disciplinary or settlement hearing, as soon as practicable and in any event not less than 14 days prior to the date of the hearing, and

(b) of the disposition of any disciplinary action or settlement, including any discipline imposed, and shall promptly make available any written decision and reasons.

(E) Any notification required under paragraph 8 (D) shall include, in addition to any other information specified in paragraph 8 (D), the names of the member and the relevant Approved Persons together with a summary of circumstances that gave rise to the proceedings.

(F) The MFDA shall maintain a register to be made available to the public, summarizing the information which is required to be disclosed to the Commission under paragraphs 8 (D) and (E).

(G) The information given to the Commission under paragraphs 8 (D) and (E) will be published by the Commission unless the Commission determines otherwise.

(H) The MFDA shall at least annually review all material settlements involving its members or their Approved Persons and their clients with a view to determining whether any action is warranted, and the MFDA shall prohibit members and their Approved Persons from imposing confidentiality restrictions on clients vis-à-vis the MFDA or the Commission, whether as part of a resolution of a dispute or otherwise.

(I) Disciplinary and settlement hearings shall be open to the public and media except where confidentiality is required for the protection of confidential matters. The criteria and any changes thereto for determining these exceptions shall be specified and submitted to the Commission for approval.

9. DUE PROCESS

The MFDA shall ensure that the requirements of the MFDA relating to admission to membership, the imposition of limitations or conditions on membership, denial of membership and termination of membership are fair and reasonable, including in respect of notice, an opportunity to be heard or make representations, the keeping of a record, the giving of reasons and provision for appeals.

10. PURPOSE OF RULES

(A) The MFDA shall, subject to the terms and conditions of its recognition and the jurisdiction and oversight of the Commission in accordance with securities legislation, establish such rules as are necessary or appropriate to govern and regulate all aspects of its business and affairs and shall in so doing:

(i) seek to ensure compliance by members and their Approved Persons with applicable securities legislation relating to the operations, standards of practice and business conduct of the members;

(ii) seek to prevent fraudulent and manipulative acts and practices and to promote the protection of investors, just and equitable principles of trade and high standards of operations, business conduct and ethics;

(iii) seek to promote public confidence in and public understanding of the goals and activities of the MFDA and to improve the competence of members and their Approved Persons;

(iv) seek to standardize industry practices where appropriate for investor protection;

(v) seek to provide for appropriate discipline;

and shall not:

(vi) permit unfair discrimination among investors, mutual funds, members or others; or

(vii) impose any barrier to competition that is not appropriate.

(B) Unless otherwise approved by the Commission, the rules of the MFDA governing the conduct of member business regulated by the MFDA shall afford investors protection at least equivalent to that afforded by securities legislation, provided that higher standards in the public interest shall be permitted and are encouraged.

11. RULES AND RULE-MAKING

(A) No new rules, changes to rules (which shall include any revocation in whole or in part of a rule) or suspension of rules shall be made effective by the MFDA without prior approval of the Commission. Any such rules, changes or suspensions shall be justified by reference to the permitted purposes thereof (having regard to paragraph 10). The approval process shall be subject to a memorandum of understanding between the Commission and the MFDA to be established regarding the review and approval of rules and amendments and suspensions thereto.

(B) Prior to proposing a new rule, changes to a rule (which shall include any revocation in whole or in part of a rule) or a suspension of a rule, the Board shall have determined that the entry into force of such rule or change or the suspension of the rule would be in the public interest and every proposed new rule, change or suspension must be accompanied by a statement to that effect.

(C) All rules, changes to rules and suspensions of rules adopted by the Board must be filed with the Commission.

(D) A copy of all written notices relevant to the rules or to the business and activities of members, their Approved Persons or other employees or agents to assist in the interpretation, application of and compliance with the rules and legislation relevant to such business and activities shall be provided to the Commission.

(E) The MFDA shall, wherever practicable, document its interpretations of its rules and distribute copies of that documentation to its members and the Commission.

12. OPERATIONAL ARRANGEMENTS AND RESOURCES

(A) The MFDA shall have adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules. With the consent of the Commission, the arrangements for monitoring and enforcement may make provision for the following:

(i) one or more parts of those functions to be performed (and without affecting its responsibility) by another body or person that is able and willing to perform it; and

(ii) its members and their Approved Persons to be deemed to be in compliance with its rules by complying with the substantially similar rules of such other body or person.

The Commission's consent may be varied or revoked from time to time and may be subject to terms and conditions.

(B) The MFDA shall respond promptly and effectively to public inquiries and generally shall have effective arrangements for the investigation of complaints (including anonymous complaints) against its members or their Approved Persons. With the consent of the Commission, such arrangements may make provision for one or more parts of that function to be performed on behalf of the MFDA (and without affecting its responsibility) by another body or person that is able and willing to perform it. The Commission's consent may be varied or revoked from time to time and may be subject to terms and conditions. The MFDA and any other body or person performing such function on behalf of the MFDA shall not refrain from investigating complaints due to the anonymity of the complainant where the complaint is otherwise worthy of investigation and sufficiently detailed to permit investigation.

(C) The MFDA shall ensure that it is accessible to the public and shall designate and make available to the public the names and telephone numbers of persons to be contacted for various purposes, including making complaints and enquiries.

(D) The arrangements and resources referred to in paragraphs (A) and (B) above shall consist at a minimum of:

(i) a sufficient complement of qualified staff, including professional and other appropriately trained staff;

(ii) an adequate supervisory structure;

(iii) adequate management information systems;

(iv) a compliance department and an enforcement department with appropriate reporting structures directly to senior management, and with written procedures wherever practicable;

(v) procedures and structures that minimize or eliminate conflicts of interest within the MFDA;

(vi) inquiry and complaint procedures and a public information facility, including with respect to the discipline history of members and their Approved Persons;

(vii) guidelines regarding appropriate disciplinary sanctions; and

(viii) the capacity and expertise to hold disciplinary hearings (including regarding proposed settlements) utilizing public representatives within the meaning of the current section 19.5 of the MFDA's By-law No. 1 together with member representatives.

(E) The MFDA shall cooperate and assist with any reviews, scheduled or unscheduled, of its self-regulatory functions by an IPP or the Commission. In addition, in the event that the Commission is of the view that there has been a serious actual or apparent failure in the MFDA's fulfilment of its self-regulatory functions, the MFDA shall, where requested by the Commission, undergo an independent third party review on terms and by a person or persons satisfactory to or determined by the Commission, which review shall be at the expense of the MFDA.

(F) The MFDA shall cooperate and assist with any reviews, scheduled or unscheduled, of its corporate governance structure by the Commission. In addition, in the event that the Commission is of the view that there has been a serious weakness in the MFDA's corporate governance structure, the MFDA shall upon the request of the Commission undergo an independent third party review on terms and by a person or persons satisfactory to or determined by the Commission, which review shall be at the expense of the MFDA.

(G) The MFDA shall not make material changes to its organizational structure, which would affect its self-regulatory functions, without prior approval of the Commission.

(H) The MFDA shall comply with reporting requirements set out in Appendix A, as amended from time to time by the Commission or its staff. The MFDA shall also provide the Commission with other reports, documents and information as the Commission or its staff may reasonably request.

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The MFDA shall cooperate, by sharing information and otherwise, with IPPs, the Commission and its staff, and other Canadian federal, provincial and territorial recognized self-regulatory organizations and regulatory authorities, including without limitation, those responsible for the supervision or regulation of securities firms, financial institutions, insurance matters and competition matters. The Commission and its staff shall have unrestricted access to the books and records, management, staff and systems of the MFDA.

14. SUSPENSION OF MFDA RULE 2.4.1

MFDA Rule 2.4.1 is suspended and will continue to be suspended until ~~December~~March 31, ~~2008~~2010, in the Provinces of British Columbia, Saskatchewan, Ontario and Nova Scotia, and during such period the MFDA shall comply with the following conditions:

(A) ~~the MFDA shall co-operate with the Commission and its staff, including participating on any joint industry and regulatory committee struck by the Commission and its staff, in their efforts to develop amendments to applicable securities legislation that would, among other things, allow an Approved Person to carry on securities related business (within the meaning of the MFDA rules) through a corporation, while preserving that Approved Person's and the member's liability to clients for the Approved Person's actions;~~

~~(B)~~ the MFDA shall, as a condition of a member or Approved Person being entitled to rely on the suspension of Rule 2.4.1, require that the member and its Approved Persons agree, and cause any recipient of commissions on behalf of Approved Persons that is itself not registered as a dealer or a salesperson to agree, to provide to the MFDA, the Commission and the applicable member access to its books and records for the purpose of determining compliance with the rules of the MFDA and applicable securities legislation;

~~(C)~~ (B) the MFDA shall ensure in connection with the suspension of Rule 2.4.1 that members and Approved Persons comply with the remaining rules, with specific reference to Rule 1 Business Structures and Qualifications, Rule 1.2.1(d) Dual Occupations and the requirement noted above in paragraph (~~B~~A);

~~(D)~~ (C) the MFDA shall ensure that members applying for membership are made aware of the requirements of Rule 1 by delivering to each applicant a copy of its Notice MR-0002; and

~~(E)~~ (D) the MFDA shall not accept a member whose relationship with its Approved Persons does not comply with the rules of the MFDA and in particular, Rule 1, unless the MFDA has granted exemptive relief to that applicant under the authority granted to the Board of Directors under section 38 of By-law No. 1.

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1. Prior Notification

1.1 The MFDA shall advise the Commission in advance of any proposed material changes or reductions in its financial review program or operational and sales compliance review programs, including as to procedures or scope, or any proposed changes in its external audit instructions and of any proposed material changes or reductions in the operation of its investigation or enforcement programs.

2. Immediate Notification

2.1 The MFDA shall give the Commission notice of new directors, officers and committee chairpersons, including a 5 year employment history and information as to the involvement in criminal, relevant quasi-criminal, administrative or insolvency proceedings and civil proceedings involving business conduct or alleging fraudulent conduct or deceit in respect of each such person.

3. Annual Reporting

The MFDA shall within 120 days of its fiscal year end file the following information and reports to the Commission:

3.1 The MFDA's self-regulatory staff complement, by function, and of any material changes or reductions in self-regulatory staff, by function;

3.2 Copy or summary of self-assessment by management of the MFDA's performance of its self-regulatory responsibilities and any proposed actions arising therefrom. The self-assessment shall, for each of the MFDA's member regulatory functions, set performance measurements against which performance can be compared, and identify major successes, significant problem areas, plans to resolve these problems, recruitment and training plans, and other information as reasonably requested by the Commission or its staff; and

3.3 The MFDA's budget and audited financial statements.

2.2.4 Sunorca Development Corp. – s. 144

Headnote

Section 144 – full revocation of cease trade order upon remedying of defaults.

Statutes Cited

Securities Act, R.S.O., c. S.5, as am., ss. 127, 144.

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

AND

IN THE MATTER OF
SUNORCA DEVELOPMENT CORP.

ORDER
(Section 144)

WHEREAS a Director of the Ontario Securities Commission (the "Commission") issued a temporary cease trade order dated November 7, 2008 pursuant to paragraphs 2 and 2.1 of subsection 127(1) and subsection 127(5) of the *Securities Act* (Ontario) (the "Act"), as extended by an order dated November 21, 2008 pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act (collectively, the "Ontario Cease Trade Order") which provided that all trading of the securities of Sunorca Development Corp. (the "Applicant") shall cease until further order by the Director;

AND WHEREAS the Applicant has applied to the Commission pursuant to section 144 of the Act for an order revoking the Ontario Cease Trade Order (the "Application");

AND UPON the Applicant having represented to the Commission that:

1. The Applicant was incorporated under the *Company Act* (British Columbia) on May 18, 1983.

2. The Applicant is a reporting issuer in British Columbia, Alberta and Ontario.

3. The Applicant is authorized to issue an unlimited number of common shares without par or nominal value of which 13,006,770 common shares are issued and outstanding (as of September 30, 2008).

4. The common shares of the Applicant were listed and posted for trading on the Canadian National Stock Exchange (CNSX).

5. The Ontario Cease Trade Order was issued due to the failure by the Applicant to file with the Commission audited financial statements and the management's discussion and analysis for the year ended June 30, 2008 (the "Continuous Disclosure Documents") as required by the Act.

6. The British Columbia Securities Commission (the "BCSC") also issued a cease trade order dated November 6, 2008 (the "BC CTO").

7. On December 1, 2008 the Applicant filed the audited annual financial statements for the year ended June 30, 2008, and the management's discussion and analysis relating to the audited annual financial statements for year ended June 30, 2008 on SEDAR.

8. On December 3, 2008 the BCSC issued a full revocation of the BC CTO.

9. The Applicant is up to date in its continuous disclosure obligations, has paid all outstanding fees, and except for the Ontario Cease Trade Order, is no longer in default of the requirements of the Act or any of the rules or regulations made.

10. Upon issuance of this revocation order, the Applicant will issue and file a news release and a material change report on SEDAR.

AND UPON considering the Application and the recommendation of the staff of the Commission;

AND UPON the Director being satisfied that to do so would not be prejudicial to the public interest to revoke the Ontario Cease Trade Order;

IT IS ORDERED, pursuant to section 144 of the Act that the Cease Trade Order be and is hereby revoked.

DATED this 12th day of December, 2008.

"Jo-Anne Matear"
Assistant Manager, Corporate Finance Branch
Ontario Securities Commission

2.2.5 James Richard Elliott – ss. 127(1), 127(2)

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

AND

IN THE MATTER OF
JAMES RICHARD ELLIOTT

ORDER
(Subsections 127(1) & 127(2))

WHEREAS on November 24, 2008 the Ontario Securities Commission (the "Commission") issued a Statement of Allegations and a Notice of Hearing in this matter setting a hearing for December 15, 2008;

AND WHEREAS the Respondent James Richard Elliott did not appear at the hearing on December 15, 2008, though served with the Notice of Hearing;

AND WHEREAS Staff of the Ontario Securities Commission appeared and made submissions at the hearing;

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

IT IS ORDERED that this matter be set down for a hearing on the merits on February 25, 26 and 27, 2009.

Dated at Toronto this 15th day of December, 2008.

"James E. A. Turner"

2.2.6 BMO Capital Markets Corp. – s. 147 of the Act and s. 6.1 of OSCRule 13-502 Fees

Headnote

Relief from section 6.5 of OSC Rule 45-501 Ontario Prospectus Exemptions - Relief granted to applicant dealer from s. 6.5 for forward-looking information in offering memoranda provided to accredited investors in connection with private placements by foreign issuer - such private placements are generally small part of larger distributions of securities by foreign issuers outside Canada pursuant to foreign offering documents - relief subject to conditions - Relief also granted from section 4.1 of OSC Rule 13-502 Fees.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5., as am., s. 147.
OSC Rule 13-502 Fees, s. 4.1.
OSC Rule 45-501 Ontario Prospectus Exemptions, s. 6.5.

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

AND

IN THE MATTER OF
BMO CAPITAL MARKETS CORP.

ORDER
(Section 147 of the Act
and
Section 6.1 of Rule 13-502 Fees)

WHEREAS effective December 31, 2007 Ontario Securities Commission Rule 45-501 – *Ontario Prospectus Exemptions* ("**Rule 45-501**") was amended to, among other things, require that an offering memorandum used in Ontario which contains forward-looking information comply with certain new provisions of National Instrument 51-102 – *Continuous Disclosure Obligations* ("**NI 51-102**");

AND UPON the application (the "**Application**") of BMO Capital Markets Corp. (the "**Applicant**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to Section 147 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") to provide that Section 6.5 of Rule 45-501 shall not be applicable to an offering memorandum of a non-Canadian issuer that is not a reporting issuer in Ontario (each, a "**Foreign Issuer**") provided to a prospective purchaser in Ontario by the Applicant;

AND UPON the Application of the Applicant to the Director for an exemption pursuant to Section 6.1 of OSC Rule 13-502 – *Fees* ("**Rule 13-502**") to provide that Section 4.1 of Rule 13-502 shall not be applicable to the Application;

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is incorporated or otherwise organized under the laws of Delaware.

2. The Applicant is registered with the OSC as an international dealer.

3. The Applicant offers and sells securities of Foreign Issuers on a private placement basis to purchasers in Ontario relying on the "accredited investor" prospectus exemption under Section 2.3 of National Instrument 45-106 – *Prospectus and Registration Exemptions*.

4. The offerings by private placement of securities of a Foreign Issuer (each, a "**Foreign Issuer Private Placement**") in Ontario are part of a distribution of securities of a Foreign Issuer offered primarily outside of Canada pursuant to a prospectus, offering memorandum or other offering document (each, a "**Foreign Offering Document**") prepared in accordance with the requirements of the United States or other non-Canadian jurisdictions.

5. In a Foreign Issuer Private Placement, a Foreign Offering Document is generally accompanied by a "wrapper" or is otherwise supplemented with disclosure prescribed by Ontario securities law and with disclosure of certain additional information for the benefit of Ontario investors and provided by the Applicant to Ontario prospective purchasers as a Foreign Issuer's offering memorandum within the meaning of Section 1(1) of the Act.

6. In a Foreign Issuer Private Placement, a Foreign Issuer that intends to rely on the civil liability safe harbour with respect to forward-looking statements provided by Section 21E of the U.S. Securities Exchange Act of 1934, as amended (the "Exchange Act") or Section 27A of the U.S. Securities Act of 1933, as amended (the "**U.S. Securities Act**"), will generally include in its Foreign Offering Document disclosure with respect to "forward-looking statements" within the meaning of Section 21E of the Exchange Act and Section 27A of the U.S. Securities Act to enable the Foreign Issuer to rely on the civil liability safe harbour provided with respect to forward-looking statements.

7. Other Foreign Issuers conducting a Foreign Issuer Private Placement that include forward-looking information in their Foreign Offering Document will generally include disclosure of related material risk factors potentially affecting the forward-looking information.

8. The disclosure with respect to forward-looking information contained in a Foreign Offering Document used in a Foreign Issuer Private Placement in Ontario will not necessarily include all of the disclosure prescribed for offering memoranda by section 6.5 of Rule 45-501.

AND UPON considering the Application and the recommendation of the staff of the Commission;

AND UPON the Commission being satisfied that it would not be prejudicial to the public interest to make this Order;

IT IS ORDERED, pursuant to section 147 of the Act, that offering memoranda delivered by or on behalf of the Applicant to prospective purchasers that are accredited investors in connection with Foreign Issuer Private Placements shall not be subject to Section 6.5 of Rule 45-501, provided that a Foreign Offering Document contains or is accompanied by either:

(a) the disclosure required in order for an issuer to rely on the safe harbour provided by Section 21E of the Exchange Act or by Section 27A of the U.S. Securities Act with respect to forward-looking information, whether or not such safe harbour is applicable; or

(b) a statement that "This offering is being made by a non-Canadian issuer using disclosure documents prepared in accordance with non-Canadian securities laws. Prospective purchasers should be aware that these requirements may differ significantly from those of Ontario. The forward-looking information included or incorporated by reference herein may not be accompanied by the disclosure and explanations that would be required of a Canadian issuer under Ontario securities law."

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

"Paulette Kennedy"
Commissioner
Ontario Securities Commission

"James Turner"
Commissioner
Ontario Securities Commission

AND IT IS ORDERED, pursuant to Section 6.1 of Rule 13-502, that the Application shall not be subject to Section 4.1 of Rule 13-502.

DATED at Toronto, this 3rd day of December, 2008.

"Erez Blumberger"
Manager, Corporate Finance
Ontario Securities Commission

2.2.7 Sextant Capital Management Inc. – s. 127

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

AND

IN THE MATTER OF
SEXTANT CAPITAL MANAGEMENT INC.,
SEXTANT CAPITAL GP INC.,
SEXTANT STRATEGIC OPPORTUNITIES HEDGE FUND L.P.,
OTTO SPORK, ROBERT LEVACK AND NATALIE SPORK

ORDER
(Section 127)

WHEREAS the Ontario Securities Commission (the "Commission") issued a temporary order on December 8, 2008 (the "Temporary Order") against Sextant Capital Management Inc. ("SCMI"), Sextant Capital GP Inc., Sextant Strategic Opportunities Hedge Fund L.P. (the "Sextant Fund"), Otto Spork, Robert Levack and Natalie Spork (together, the "Respondents");

AND WHEREAS the Temporary Order ordered that: (1) pursuant to clause 1 of section 127(1) and section 127(5) of the Act, SCMI's registration as investment counsel, portfolio manager and limited market dealer is subject to the terms and conditions that its advising and dealing activities may be applied exclusively to and in respect of the Sextant Fund and not to or in respect of any other entities; (2) pursuant to clause 2 of section 127(1) and section 127(5) of the Act, trading in securities of and by the Respondents shall cease with the sole exception that SCMI may place sell orders in respect of the securities and futures contracts held on deposit on behalf of the Sextant Fund in accounts at Newedge Canada Inc.; and (3) pursuant to clause 3 of section 127(1) and section 127(5) of the Act, any exemptions contained in Ontario securities law do not apply to any of the Respondents.

AND WHEREAS the Commission further ordered that the Temporary Order is continued until the 15th day after its making unless extended by the Commission;

AND WHEREAS the Respondents are represented by counsel and have been served with the Temporary Order, the Notice of Hearing dated December 8, 2008, the Statement of Allegations dated December 8, 2008 and the Affidavit of Trevor Walz sworn December 10, 2008 (the "Walz Affidavit");

AND WHEREAS Staff have filed the Walz Affidavit in support of Staff's request to extend the Temporary Order;

AND WHEREAS Staff and the Respondents have requested an adjournment to permit Staff to continue their investigation and to permit the Respondents to respond to the Statement of Allegations dated December 8, 2008;

AND WHEREAS on December 16, 2008, Staff and counsel for Otto Spork, Robert Levack and Natalie Spork (the "Individual Respondents") appeared before the Commission, counsel for Sextant Capital Management Inc., Sextant Capital GP Inc. and Sextant Strategic Opportunities Hedge Fund L.P. (the "Corporate Respondents") having advised of the Corporate Respondents' position in writing;

AND WHEREAS Staff and the Corporate Respondents consent to an extension of the Temporary Order until March 17, 2009 and the Individual Respondents do not object to an extension of the Temporary Order until March 17, 2009;

IT IS ORDERED that the Temporary Order is continued until March 17, 2009 or further order of the Commission and the hearing is adjourned to March 16, 2009 at 10:00 a.m., or such other date as is agreed by Staff and the Respondents and is determined by the Office of the Secretary.

DATED at Toronto this 16th day of December, 2008.

"Wendell S. Wigle"

"Suresh Thakrar"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 David Berry – s. 21.7

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

AND

IN THE MATTER OF
A REQUEST FOR A HEARING AND REVIEW OF A DECISION OF
A HEARING PANEL OF MARKET REGULATION SERVICES INC.

AND

IN THE MATTER OF
REQUEST BY TSX INC. TO INTERVENE IN THE HEARING AND REVIEW

AND

IN THE MATTER OF
DAVID BERRY

HEARING HELD PURSUANT TO SECTION 21.7 OF THE ACT

HEARING:	September 29, 2008		
REASONS:	December 10, 2008		
PANEL:	Lawrence E. Ritchie	-	Vice Chair and Chair of the Panel
	Patrick J. LeSage	-	Commissioner
APPEARANCES:	Johanna Superina Susan Kushneryk	-	for Staff of the Ontario Securities Commission
	Daniel Bernstein	-	for TSX Inc.
	Brian Gover Charles Corlett	-	for Market Regulation Services Inc.
	Linda Fuerst Usman Sheikh Rebecca Studin (Student-at-law)	-	for David Berry

REASONS FOR DECISION

Background

[1] This matter relates to a request by the TSX Inc. (the "TSX") to intervene in the Hearing and Review of a decision of Market Regulation Services Inc. ("RS") in the matter of David Berry, ("Berry"), which is scheduled to be heard by the Ontario Securities Commission (the "Commission") on October 29, 2008.

[2] On September 29, 2008 we convened a hearing in this matter to address a request of the TSX to intervene in the Hearing and Review. We heard submissions from the TSX, Staff of the Commission ("Staff"), RS and Berry.

[3] At the end of the hearing, we granted limited intervenor status to the TSX and gave oral reasons. The following text has been prepared based on our oral reasons for the purpose of providing a public record of the decision.

Chronology of Events

[4] Berry is a respondent in a disciplinary proceeding commenced by RS, now the Investment Industry Regulatory Organization of Canada ("IIROC"). In the RS disciplinary proceeding, it is alleged that Berry is responsible pursuant to subrule 10.3(4) of the Universal Market Integrity Rules ("UMIR") for violations of UMIR 6.4 and 7.7, which govern the conduct of trading activities on the TSX. On December 10, 2007, Berry moved before the RS Panel to permanently stay the RS proceeding on the basis that, *inter alia*, UMIR are invalid. In support of this motion Berry argued that:

1. UMIR were never validly adopted by the board of directors of the TSX; and,

2. even if that were not so, UMIR would be invalid because the TSX did not comply with the terms of the Memorandum of Understanding entered into between the TSX and the Commission on October 23, 1997, pertaining to the filing of rules with, and the approval of the rules by, the Commission.

[5] On February 29, 2008, the RS Panel released its decision dismissing Berry's motion. The RS Panel concluded that, *inter alia*, (1) UMIR were validly adopted by the TSX's board of directors and, (2) any potential breach of the Memorandum of Understanding was irrelevant, as the Commission approved UMIR and recognized RS, and approved the transfer of the market regulation function from the TSX to RS pursuant to its powers under sections 21(5)(e) and 21.1(4) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, (the "Act") to make any decision with respect to:

"any by-law, rule, regulation, policy, procedure, interpretation or practice"

of a recognized stock exchange and a self-regulatory organization respectively.

[6] Berry alleges that the RS Panel erred in reaching these conclusions and filed a Notice of Request for a Hearing and Review. It is this request, which is scheduled to be heard on October 29, 2008, that gave rise to the proceeding before us. In the particular matter before us, the TSX seeks standing to intervene in the Hearing and Review.

Position of the Parties

[7] The TSX claims that it has a direct and substantial interest in the outcome of the issues raised in the Hearing and Review. It is a recognized stock exchange which delegated authority to RS to investigate and discipline certain persons through the administration and enforcement of UMIR. The TSX takes the position that the entire UMIR structure and the TSX's market regulation and enforcement regime is at issue at the Hearing and Review. Berry, in contrast, states that he does not seek declaratory relief and no relief of any kind against the TSX. Rather, he seeks an order for a permanent stay and an order, in the alternative, prohibiting RS from enforcing UMIR against Berry.

[8] The TSX seeks intervenor status to participate in the October 29, 2008 hearing, although it states it does not seek to file evidence. It claims that Berry's challenge of both UMIR and the TSX's delegation to RS is "nothing less than a challenge to the validity of the TSX's market regulation and enforcement regime" and that its participation would be of assistance to the Commission.

[9] Counsel for RS and Staff, already parties to the proceeding, agree with the position of the TSX and support its request for intervenor status.

[10] Berry opposes the intervention, essentially questioning what the TSX can add that RS, as its appointed agent under the UMIR regime, cannot otherwise assert at the Hearing and Review. In addition, Berry's counsel points to additional costs and likely delay, which would occasion the TSX's involvement, particularly at this late stage of the proceeding. Berry's counsel emphasizes that their notice was filed many months ago and that the TSX has only brought its request for intervenor status at the "eleventh hour". As counsel for Berry pointed out, citing *Halpern v. Toronto (City) Clerk*, [2000] O.J. No. 4514 (S.C.J.) at para. 6, as moving party, the onus is on the TSX to establish that it has met the test for intervenor status and that the discretion of the Commission should be exercised to permit it to intervene.

Decision

[11] We conclude it is appropriate to grant the TSX limited intervenor status in this matter. We have canvassed the case law put forward by the parties on this issue, citing *Re Hollinger Inc.* (2006), 29 O.S.C.B. 7071 ("*Re Hollinger*") and *Torstar Corp. v. Southam Inc.* (1985), 8 O.S.C.B. 5068. As stated by Chief Justice Dubin in *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada* (1990), 74 O.R. (2d) 164 (Ont. C.A.) at para. 10, "… the matters to be considered are the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to the resolution of the

[matter] without causing injustice to the immediate parties". Subsequent decisions of this Commission in *Re Albino* (1991), 14 O.S.C.B. 365 and *Re Hollinger* have largely followed these factors. All parties agree that the factors set out in *Re Hollinger*, *supra* at paras. 44-45 are appropriate for the Commission to take into consideration:

1. the nature of the proceeding;

2. whether the proposed intervenor will make a useful contribution to the proceeding;

3. whether the proposed intervention would unfairly prejudice the interests of the existing parties; and

4. the effect, if any, of the proceeding's potential outcomes on the economic interests of the proposed intervenor.

[12] Given the allegations made and the potential implications of the October 29, 2008 Hearing and Review, regardless of whether relief is sought as a declaration or otherwise, we are of the view that the TSX is affected by the proceeding and that its limited participation in these proceedings would make a useful contribution.

[13] As the RS Panel observed, the issues raised are complex. Counsel for Berry submits that the TSX's involvement would amount to unfair piling on and would duplicate the prosecution of this matter. As such, she states that the intervention would unfairly prejudice the interests of Berry in the proceeding. We do not agree, but in any event, think that any potential unfairness can be overcome by limiting the role that the TSX can play. Given that the allegations made are about the TSX's actions or inaction and the relief sought will have implications on its enforcement regime, its limited participation would be fair and appropriate in the circumstances and would be useful to the Commission.

[14] For the record, our order issued September 30, 2008 states the following:

IT IS HEREBY ORDERED that the TSX be given limited intervenor status to participate at the hearing and review on October 29, 2008, on the following terms:

i. The TSX shall deliver its factum to the parties by the end of the day Friday, October 3, 2008;

ii. The TSX factum shall be limited to 15 pages and be confined to matters at issue in this proceedings that directly affect or concern the TSX and shall not duplicate materials and submissions of RS;

iii. That TSX shall abide by the timetable agreed to by the existing parties to this proceeding; and

iv. The extent of oral participation of the TSX shall be determined by the Hearing Panel if the parties cannot otherwise agree.

Approved by the Panel on December 10, 2008.

"Lawrence E. Ritchie"

"Patrick J. LeSage"

3.1.2 Limelight Entertainment Inc. et al.

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

AND

IN THE MATTER OF
LIMELIGHT ENTERTAINMENT INC.,
CARLOS A. DA SILVA, DAVID C. CAMPBELL,
JACOB MOORE, AND JOSEPH DANIELS

REASONS AND DECISION ON SANCTIONS AND COSTS

Hearing:	September 11, 2008		
Decision:	December 10, 2008		
Panel:	James E. A. Turner	-	Vice-Chair and Chair of the Panel
	Suresh Thakrar	-	Commissioner
Counsel:	Derek Ferris	-	For the Ontario Securities Commission
	Larry Masci		

No one appeared for Limelight Entertainment Inc., Carlos A. Da Silva, David C. Campbell or Joseph Daniels.

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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 (the "Sanctions and Costs Hearing") against Limelight Entertainment Inc. ("Limelight"), Carlos A. Da Silva ("Da Silva"), David C. Campbell ("Campbell") and Joseph Daniels ("Daniels").

[2] On April 13, 2006, the Commission issued a temporary cease trade order (the "First Temporary Order") pursuant to subsections 127(1) and 127(5) of the Act against Limelight, Da Silva, Campbell and Jacob Moore ("Moore"). The terms of the First Temporary Order were that all trading in the securities of Limelight cease; that Limelight, Da Silva, Campbell and Moore cease trading in all securities; and that the exemptions contained in Ontario securities law do not apply to Limelight, Da Silva, Campbell and Moore.

[3] On April 25, 2006, an Amended Notice of Hearing and Amended Statement of Allegations were issued adding Daniels as a respondent.

[4] On April 26, 2006, the First Temporary Order was extended and its terms were amended to include Daniels (the "Amended Temporary Order"). The terms of the Amended Temporary Order were that Daniels cease trading in all securities and that the exemptions contained in Ontario securities law do not apply to him. The Amended Temporary Order also required Limelight to provide the Notice of Hearing in this proceeding to its shareholders. The Amended Temporary Order was extended on May 11, 2006, September 12, 2006 and October 30, 2006 and is still in effect.

[5] Staff and Moore entered into a settlement agreement that was approved by order of the Commission on August 2, 2007 (*Re Limelight* (2007), 30 O.S.C.B. 8368). Limelight, Da Silva, Campbell and Daniels are the remaining respondents in this proceeding. In these reasons, Limelight, Da Silva, Campbell and Daniels are referred to collectively as the "Respondents".

[6] On September 28, 2007, Staff and Da Silva entered into an Agreed Statement of Facts (the "Agreed Statement") in which Da Silva admitted breaches of the Act but did not agree to sanctions.

[7] The hearing on the merits was held on October 1, 2007 and a decision was rendered on February 12, 2008 (*Re Limelight et al.* (2008), 31 O.S.C.B. 1727) (the "Merits Decision"). None of Limelight, Campbell or Daniels attended the hearing on the merits. The Commission was satisfied that Limelight and Campbell received proper notice of the hearing and that reasonable attempts to locate and give notice to Daniels were made by Staff. Da Silva was present and represented at the commencement of the hearing, but left the hearing room and did not participate after the Agreed Statement was entered into evidence.

[8] The Sanctions and Costs Hearing was held on September 11, 2008. None of the Respondents appeared before the Commission or made submissions. Staff made oral and written submissions to the Commission on sanctions and costs.

[9] While none of the Respondents attended the Sanctions and Costs Hearing, the Commission was satisfied that it was entitled to proceed to hear the submissions of Staff as to sanctions and costs as permitted under section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "SPPA"). Section 7 of the SPPA provides as follows:

> Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

[10] These are our reasons and decision as to the appropriate sanctions and costs against the Respondents.

II. THE DECISION ON THE MERITS

[11] Staff's Statement of Allegations dated April 7, 2006, and the Amended Statement of Allegations dated April 25, 2006, raised the following issues:

(a) Did Limelight, Da Silva, Campbell and Daniels breach the registration and prospectus requirements of the Act by trading in Limelight shares contrary to subsections 25(1) and 53(1) of the Act in circumstances where the "accredited investor" exemption was not available under OSC Rule 45-501, *Prospectus and Registration Exemptions* (now NI 45-106) ("Rule 45-501")?

(b) Did Limelight, Da Silva and Campbell give undertakings regarding the future value of Limelight shares, with the intention of effecting sales of Limelight shares, contrary to subsection 38(2) of the Act?

(c) Did Limelight, Da Silva, Campbell and Daniels make representations regarding the future listing of Limelight shares with the intention of effecting sales of Limelight shares, contrary to subsection 38(3) of the Act?

(d) Did Da Silva mislead Staff, contrary to clause 122(1)(a) of the Act, when he advised Staff that (i) Limelight shareholders were accredited investors, (ii) Limelight salespersons always enquired to confirm that sales of Limelight shares were made only to accredited investors, (iii) no scripts were used by Limelight salespersons, (iv) Limelight salespersons also acted as project managers of Limelight's business, and (v) he did not know whether Limelight shares were sold to Ontario investors in 2005?

(e) Did Limelight and Da Silva file misleading or untrue reports of exempt distributions with the Commission contrary to clause 122(1)(b) of the Act?

(f) Did Limelight, Da Silva, Campbell and Daniels breach the First Temporary Order or the Amended Temporary Order?

(g) Was the conduct of Limelight, Da Silva, Campbell and Daniels contrary to the public interest?

[12] The Commission found in the Merits Decision that:

(a) Limelight, Da Silva, Campbell and Daniels contravened subsection 25(1) of the Act by trading in Limelight shares without registration where no exemption was available (Merits Decision, *supra* at paras. 144, 146, 149, 152, 155, 158 and 215);

(b) Limelight employed several employees, including Ove Simonsen, Moore and Daniels, who were involved solely in selling Limelight shares to investors. Limelight and its salespersons were acting as market intermediaries in the circumstances, without registration, in breach of subsection 25(1) of the Act (Merits Decision, *supra* at para. 146);

(c) Limelight, Da Silva, Campbell and Daniels contravened subsection 53(1) of the Act by distributing previously unissued Limelight shares where no prospectus was filed and no exemption was available (Merits Decision, *supra* at paras. 140 and 216);

(d) it was not satisfied that Limelight, Da Silva and Campbell gave undertakings regarding the future value of Limelight shares contrary to subsection 38(2) of the Act, but the Commission did find that those Respondents made representations and used high pressure sales tactics that were improper, unacceptable and contrary to the public interest (Merits Decision, *supra* at para. 217);

(e) Limelight, Da Silva and Campbell made representations regarding the future listing of Limelight shares on an exchange with the intention of effecting sales of Limelight shares contrary to subsection 38(3) of the Act, but the Commission was not satisfied that Staff proved that Daniels did so (Merits Decision, *supra* at paras. 183-185, 210 and 218);

(f) Da Silva lied to and misled Staff contrary to clause 122(1)(a) of the Act (Merits Decision, *supra* at para. 219). Specifically, Da Silva admitted and acknowledged that he misled Staff during the investigation in two ways: (1) by advising Staff initially that Limelight shares were sold only to accredited investors, and (2) by claiming that no scripts were used by Limelight salespersons (Merits Decision, *supra* at paras. 187 and 188);

(g) Limelight and Da Silva filed misleading and untrue reports of exempt distributions with the Commission contrary to clause 122(1)(b) of the Act (Merits Decision, *supra* at para. 220). Specifically, the Commission found that Limelight filed documents containing inaccurate dates and misrepresented that the accredited investor exemption was properly relied upon for distributions of Limelight shares. Similarly, the Limelight filings failed to disclose payment of commissions and other fees as required by the Act. Da Silva, or someone on his behalf, signed and certified all of the documents containing these misleading statements (Merits Decision, *supra* at para. 196);

(h) Limelight, Da Silva and Campbell breached the First Temporary Order, and Limelight and Campbell breached the Amended Temporary Order, contrary to clause 122(1)(c) of the Act (Merits Decision, *supra* at para. 221). The Commission also held that depositing investor cheques into a Limelight bank account held by Limelight constituted acts in furtherance of trades and that, depending on their date, such deposits violated the conditions of the First Temporary Order or the Amended Temporary Order (Merits Decision, *supra* at para. 203). In addition, the Commission found that, even after the issue of the Amended Temporary Order, several hundred telephone calls were made, and information was sent by courier, to potential investors and cheques from investors were received (Merits Decision, *supra* at paras. 204 and 205).

(i) it was not satisfied that Staff proved that Daniels breached either the First Temporary Order or the Amended Temporary Order (Merits Decision, *supra* at para. 221);

(j) Limelight, Da Silva, Campbell and Daniels acted contrary to the public interest by breaching important provisions of the Act intended to protect investors (Merits Decision, *supra* at para. 222). The Commission found that the Respondents were acting with the common purpose of selling Limelight securities. While doing so, "they preyed on investors with limited resources and financial experience" (Merits Decision, *supra* at para. 208). The Commission concluded that:

> … the Respondents breached a number of key provisions of the Act intended to protect investors. Their conduct was egregious. It caused great harm to investors and to the integrity of Ontario's capital markets, and was clearly contrary to the public interest (Merits Decision, *supra* at para. 213);

(k) Limelight, Da Silva and Campbell made "prohibited representations with respect to the future listing of Limelight shares on a stock exchange and used high pressure sales tactics that included improper and unacceptable representations as to the future value of Limelight shares" (Merits Decision, *supra* at para. 210);

(l) the purported use of the accredited investor exemption by Limelight, Da Silva, Campbell and Daniels "was little more than a smoke screen for their blatant disregard of Ontario securities law" (Merits Decision, *supra* at para. 209).

[13] The Commission also concluded that Da Silva and Campbell were the directing minds of Limelight and they were aware of and authorized, permitted or acquiesced in Limelight's breaches of the Act (Merits Decision, *supra* at paras. 116 and 118). Limelight, Da Silva and Campbell raised approximately $2.75 million from 611 investors located in all ten provinces of Canada and from investors outside of Canada (Merits Decision, *supra* at para. 25). This included 71 investors who were Ontario residents (Merits Decision, *supra* at para. 26). The Commission noted in the Merits Decision that it appears that the investors in Limelight have lost all of their investment (Merits Decision, *supra* at para. 208).

III. SANCTIONS REQUESTED BY STAFF

[14] In their written and oral submissions, Staff requested that the following orders be made against the Respondents:

(a) that Limelight, Da Silva and Campbell cease trading in securities permanently, with the exception that Da Silva and Campbell be permitted to trade securities for the account of their registered retirement savings plans (as defined in the *Income Tax Act* (Canada) (the "Tax Act"));

(b) that any exemptions contained in Ontario securities law not apply to Limelight, Da Silva and Campbell permanently, except for the exemptions needed to trade in securities in the manner permitted by paragraph (a) above;

(c) that Daniels cease trading in securities for 10 years, with the exception that Daniels be permitted to trade securities for the account of his registered retirement savings plans (as defined in the Tax Act);

(d) that any exemptions contained in Ontario securities law not apply to Daniels for 10 years, except for the exemptions needed to trade in securities in the manner permitted by paragraph (c) above;

(e) that Da Silva and Campbell be prohibited permanently from becoming or acting as a director or officer of any issuer;

(f) that Limelight, Da Silva, Campbell and Daniels be permanently prohibited from telephoning residences within or outside Ontario for the purpose of trading in securities;

(g) that Limelight, Da Silva and Campbell each pay an administrative penalty of $200,000 for failing to comply with Ontario securities law;

(h) that Daniels pay an administrative penalty of $50,000 for failing to comply with Ontario securities law;

(i) that Limelight, Da Silva and Campbell jointly disgorge to the Commission $2,747,089.45;

(j) in the alternative to (i), that Limelight disgorge $2,747,089.45 and each of Da Silva and Campbell disgorge the amounts they received from Limelight; and

(k) that Limelight, Da Silva, Campbell and Daniels jointly and severally pay the costs of Staff's investigation and this proceeding in the amount of $154,979.79 plus $5,637.29 in disbursements.

[15] In Staff's submission, the sanctions requested are appropriate in light of the Respondents' serious breaches of the Act and conduct contrary to the public interest.

IV. THE LAW ON SANCTIONS

[16] The Commission's mandate is 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 (section 1.1 of the Act).

[17] In exercising its public interest jurisdiction, the Commission must act in a protective and preventative manner, as stated by the Commission in *Re Mithras Management Ltd*.:

> …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 (*Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at pp. 1610-1611).

[18] The Supreme Court of Canada has described the Commission's public interest jurisdiction as follows:

> The purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the [Commission] under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets (*Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43).

[19] In addition, the Commission should consider general deterrence as an important factor when determining appropriate sanctions. In *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60, the Supreme Court of Canada stated that "… it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative".

[20] In determining the appropriate sanctions in this matter, we must ensure that the sanctions imposed are proportionate to the conduct involved (*Re M.C.J.C. Holdings Inc. and Michael Cowpland*, (2002), 25 O.S.C.B. 1133 ("*Re M.C.J.C. Holdings*") at para. 26).

[21] The Commission has previously identified the following as some of the factors that the Commission should consider when imposing sanctions:

(a) the seriousness of the conduct and the breaches of the Act;

(b) the respondent's experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been recognition by a respondent of the seriousness of the improprieties;

(e) whether or not the sanctions imposed may serve to deter not only those involved in the matter being considered, but any like-minded people, from engaging in similar abuses of the capital markets;

(f) the size of any profit obtained or loss avoided from the illegal conduct;

(g) the size of any financial sanction or voluntary payment;

(h) the effect any sanctions may have on the ability of a respondent to participate without check in the capital markets;

(i) the reputation and prestige of the respondent;

(j) the remorse of the respondent; and

(k) any mitigating factors.

(See *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at page 7746; and *Re M.C.J.C. Holdings Inc.*, *supra* at para. 26)

V. ANALYSIS

A. Appropriate Sanctions in this Case

1. The Seriousness of the Allegations Proven

(i) Staff's Submissions

[22] In Staff's view, the conduct of the Respondents is of the most serious nature, and as a result, Limelight, Da Silva and Campbell should be permanently banned from trading securities in Ontario, while Daniels should be subject to a 10 year trading ban. Staff has proposed an RRSP exception to such trading bans.

[23] To justify the trading bans sought, Staff referred us to Commission decisions that have dealt with conduct similar to that before us.

[24] First, Staff relied on the decision in *Re E. A. Manning* (1995), 18 O.S.C.B. 5317 ("*Manning*"). In *Manning* members of the public were solicited to invest by cold-calls from a boiler room. If a member of the public showed any interest, high pressure sales tactics were then used to sell penny stocks to those individuals. Subsequent calls were made to sell more securities or to convince the investors not to sell the securities they had already purchased. The Commission found that the respondents were engaged in a "boiler room" operation and that such activity was inherently contrary to the public interest. The Commission ordered that the principals of E. A. Manning Limited ("E. A. Manning") be permanently banned from Ontario capital markets and ordered 10 and 5 year trading bans against E. A. Manning salespersons.

[25] Staff also referred us to the decision in *Re Marchment & Mackay Ltd.* (1999), 22 O.S.C.B. 6446 and (1999), 22 O.S.C.B. 4705 ("*Marchment*"). The operations of Marchment & Mackay Ltd. ("Marchment Ltd.") were similar to those of E. A. Manning. Cold-callers made the initial contact with the public. Junior salespersons then attempted to make initial sales. Later senior salespersons attempted to sell larger numbers of securities to potential investors. The Commission found that Marchment Ltd.'s core business was the sale of low cost, high risk penny stocks from its own inventory to members of the public. The Commission also found that allowing that business to continue would result in serious risk to the integrity of the capital markets. The Commission ordered that Marchment Ltd. and its principal be permanently banned from Ontario capital markets and ordered 10, 7 and 5 year trading bans against individual Marchment Ltd. salespersons.

[26] Staff also referred to the findings and sanctions ordered against the Respondents by the New Brunswick Securities Commission ("NBSC") in *Limelight Entertainment Inc.*, Decision, Reasons for Decision and Order, dated August 17, 2007 (unreported) (the "NBSC Limelight Decision") and by the Alberta Securities Commission ("ASC") in *Limelight Entertainment Inc.*, 2007 ABASC 914, dated December 12, 2007 (the "ASC Limelight Decision"). Those orders related to some of the same conduct and transactions that were referred to in evidence before us. The NBSC ordered a permanent trading ban against Limelight, Da Silva and Campbell. The NBSC also imposed administrative penalties of $100,000 against Limelight and Da Silva, and $150,000 against Campbell. The ASC imposed an administrative penalty of $100,000, a 10 year trading ban and a 10 year director and officer ban against Da Silva. The ASC ordered an administrative penalty of $75,000, an 8 year trading ban and an 8 year director and officer ban against Campbell.

(ii) Analysis

[27] The Commission found in the Merits Decision that the Respondents' conduct in this matter was egregious and showed a blatant disregard of Ontario securities law (Merits Decision, *supra* at paras. 209 & 213). Vulnerable investors were severely harmed and cumulatively lost more than two million dollars.

[28] The Respondents' actions "breached a number of key provisions of the Act intended to protect investors" (Merits Decision, *supra* at para. 213) and those breaches "caused great harm to investors and to the integrity of Ontario's capital markets, and [were] clearly contrary to the public interest" (Merits Decision, *supra* at para. 213). Two victim impact statements were tendered in evidence as examples of the serious harm caused to investors.

[29] We agree with Staff's submission that boiler rooms that use unregistered sales persons and high pressure sales tactics to sell securities to unsophisticated and vulnerable investors are simply unacceptable and such conduct must be dealt with severely.

[30] As stated in *Manning*, "Boiler Room activity consists essentially of offering to customers securities of certain issuers in large volume by means of an intensive selling campaign through numerous salesmen by telephone or direct mail, without regard to the suitability to the needs of the customer, in such a manner as to induce a hasty decision to buy the security being offered without disclosure of the material facts about the issuer" (Manning, *supra* at para. 88). Similarly in *Re First Global et al.* (2008), 31 O.S.C.B. 10869 at para. 49, the Commission emphasized that high pressure sales techniques, selective solicitation of vulnerable investors, solicitations made without regard to the investor's needs and without regard to the requirements of the Act, damage the integrity of the capital markets and is activity contrary to the public interest.

[31] That is the same type of boiler room activity that took place in this matter. The Merits Decision found that the Respondents "used high pressure sales tactics that included improper and unacceptable representations as to the future value of Limelight shares" and that this activity was contrary to the public interest (Merits Decision, *supra* at para. 210). We would add that the securities of Limelight sold to investors appear to have been of dubious or no value.

[32] In both *Manning* and *Marchment*, the corporate respondents were registrants, while in the case before us, Limelight is not a registrant. Staff referred us to the decision in *Re Koonar* (2002), 25 O.S.C.B. 2691 in support of the principle that the same sanctioning considerations that apply to registrants may also apply to non-registrants. In that case, the Commission found that "in reviewing the appropriateness of sanctions based on past cases we do not think it appropriate to distinguish between cases where the respondents were registrants and those cases where the respondents were not registrants but were selling securities without registration or through fraudulent, manipulative or unfair means" (*Re Koonar*, *supra* at p. 2691). We agree with the application of that principle in the circumstances before us. While Limelight and the other Respondents were not registrants, they engaged in very serious misconduct that harmed investors. Reduced sanctions should not be imposed simply because Limelight and the other Respondents are not registrants. We note that, in any event, Da Silva was formerly registered with the Commission as a securities salesperson with Marchment Ltd. during the period that Marchment Ltd. engaged in the actions that the Commission has previously found to be contrary to the public interest. Da Silva was aware of the registration and prospectus requirements of the Act and ought to have been fully aware that his actions constituted serious breaches of Ontario securities law.

[33] In considering the factors referred to in paragraph 21 above, we take into account particularly the following:

(a) Limelight securities were sold to the public, raising approximately $2.75 million from investors (Merits Decision, *supra* at para. 25). Staff estimated that 611 investors were affected in total, of whom 71 were Ontario residents;

(b) the conduct of the Respondents was egregious. They breached a number of key provisions of the Act intended to protect investors. This caused great harm to investors and to the integrity of Ontario's capital markets and is contrary to the public interest (Merits Decision, *supra* at para. 213).

(c) it appears that investors have lost the full amount of their investment (Merits Decision, *supra* at paras. 208 and 213). That has had a devastating effect on the investors from whom we heard evidence;

(d) Limelight, Da Silva and Campbell made illegal representations to investors "with respect to the future listing of Limelight shares on a stock exchange and used high pressure sales tactics that included improper and unacceptable representations as to the future value of Limelight shares" (Merits Decision, *supra* at para. 210). "Salespersons at Limelight made repeated representations as to the future listing of Limelight shares on a stock exchange. The scripts provided to salespersons by Campbell, as well as the 'rebuttal sheets', mention both future listing and future share price" (Merits Decision, *supra* at para. 192);

(e) Da Silva lied to and made a number of misleading statements to Staff (Merits Decision, *supra* at paras. 189, 193 and 220);

(f) Limelight, Da Silva and Campbell knowingly breached the First Temporary Order and/or the Amended Temporary Order. Specifically, the Merits Decision found that: "Limelight breached the First Temporary Order by continuing to trade after the First Temporary Order was issued, that Da Silva breached the First Temporary Order by depositing cheques in Limelight's bank account on April 13 and April 20, and that Campbell breached the Amended Temporary Order by depositing cheques in Limelight's bank account on April 26 and thereafter. We also find that Da Silva and Campbell authorized, permitted or acquiesced in Limelight's breach of the First Temporary Order and the Amended Temporary Order" (Merits Decision, *supra* at para. 207); and

(g) none of the Respondents have expressed any remorse.

[34] In considering sanctions, we recognize that Da Silva and Campbell were the directing minds of Limelight. They committed illegal acts both personally and through their control or direction over Limelight and its salespersons. Campbell ran the Limelight office and trained and supervised the salespersons. Accordingly, in our view, Da Silva and Campbell are legally responsible for all of the actions of Limelight.

[35] The evidence indicates that Daniels was much less involved in the sale of securities to investors than Limelight, Da Silva and Campbell. Daniels traded in securities in breach of the Act, but he was not a directing mind of Limelight, he had less responsibility for the breaches of the Act by Limelight and the evidence did not disclose that he was significantly involved in selling Limelight securities to investors.

[36] We recognize that in imposing sanctions, we must do so (a) based only on the findings in the Merits Decision, on the Agreed Statement and on the other evidence presented at the merits hearing and the sanctions hearing (see for example, *Re First Global et al.*, *supra* at para. 65); (b) in respect of trades and acts in furtherance of trades that occurred in Ontario; and (c) with the objective of protecting Ontario investors and Ontario capital markets.

[37] Overall, the sanctions imposed must protect investors and Ontario capital markets by barring or restricting the Respondents from participating in those markets in the future and by sending a clear message to the Respondents and to others participating in our capital markets that these types of illegal activities and abusive sales practices will simply not be tolerated.

2. Barring Participation in Ontario Capital Markets

(i) Staff's Submissions

[38] Staff has requested the Commission to make the following orders against Limelight, Da Silva and Campbell:

(a) a permanent cease trade order (subject to an RRSP carve out);

(b) a permanent removal of exemptions order (subject to the RRSP carve out);

(c) a permanent ban from being or acting as a director or officer of any issuer; and

(d) a permanent ban from telephoning residences within or outside Ontario for the purpose of trading in securities.

[39] Staff has also requested the Commission to make the following orders against Daniels:

(a) a 10 year cease trade order (subject to an RRSP carve out);

(b) a 10 year removal of exemptions order (subject to the RRSP carve out); and

(c) a permanent ban from telephoning residences within or outside Ontario for the purpose of trading in securities.

[40] Staff submits that such orders are necessary in the public interest to protect investors and the Ontario capital markets from future misconduct by the Respondents. Staff submits that such orders are appropriate given the specific conduct of the Respondents in this case and the serious breaches by them of key provisions of the Act.

(ii) Conclusions as to Trading and Other Sanctions

[41] The activities of the Respondents in this matter involved illegally selling securities to investors through "cold calls" made to their residences in which illegal or misleading representations were made and high pressure sales tactics were used. Da Silva and Campbell used Limelight as a vehicle to conduct those illegal activities. The provisions of the Act that were breached by the Respondents are intended to protect investors from just such conduct. We will not repeat here the seriousness with which we view the Respondents' conduct and their breaches of the Act. It is important that our order protect investors in Ontario by restraining future market participation and conduct by the Respondents. Limelight, Da Silva and Campbell have demonstrated by their conduct that they should not be permitted to participate on an on-going basis in Ontario capital markets. Accordingly, we have concluded that it is in the public interest to make the following orders against Limelight, Da Silva and Campbell (as requested by Staff):

(a) a permanent cease trade order (subject to an RRSP carve out);

(b) a permanent removal of exemptions order (subject to the RRSP carve out);

(c) a permanent ban from being or acting as a director or officer of any issuer; and

(d) a permanent ban from telephoning residences within or outside Ontario for the purpose of trading in securities.

[42] We have also concluded that it is in the public interest to make the following orders against Daniels (as requested by Staff):

(a) a 10 year cease trade order (subject to an RRSP carve out);

(b) a 10 year removal of exemptions order (subject to the RRSP carve out); and

(c) a permanent ban from telephoning residences within or outside Ontario for the purpose of trading in securities.

3. Disgorgement

(i) Staff's Submissions Regarding Disgorgement

[43] Staff submits that Limelight, Da Silva and Campbell should be ordered to jointly disgorge to the Commission $2,747,089.45, the aggregate amount that Limelight obtained from investors.

[44] In the alternative, Staff requests an order that Limelight disgorge $2,747,089.45 and each of Da Silva and Campbell disgorge the amounts they personally received from Limelight.

[45] In support of its disgorgement request, Staff referred us to *Re Allen* (2006), 29 O.S.C.B. 3944 ("*Allen*") and *Re Momentas Corp.* (2007), 30 O.S.C.B. 6475 ("*Momentas*"). Allen involved high pressure sales to investors and the Commission ordered a permanent trading ban against Joseph Edward Allen ("J. E. Allen") and disgorgement of substantially all fees received by him, whom it found to be the directing mind behind the investment scheme. In *Momentas*, the Commission found that Momentas Corp.'s core business involved the selling of convertible debentures in breach of the registration requirements of the Act. The Commission ordered that all the respondents permanently cease trading and ordered that two of the individual respondents (the principals of Momentas Corp.) disgorge the proceeds personally received by them as a result of the illegal sales.

[46] Staff also made submissions relating to the purpose of the disgorgement remedy and what factors the Commission should consider when deciding whether to order disgorgement.

(ii) Applying the Disgorgement Remedy

[47] As background, the disgorgement remedy was added to the Act based on recommendations contained in the final report of the Five Year Review Committee, *Reviewing The Securities Act of Ontario* (the "Five Year Review Report"). That report stated that the objective of the disgorgement remedy is to deprive a wrongdoer of ill-gotten gains, reflecting the view that it would be inappropriate for those who contravene Ontario securities law to be able to retain any illegally obtained profits. (*Five Year Review Committee*, *"Reviewing the Securities Act (Ontario)"* Final Report (2003), at p. 218, online at www.osc.gov.on.ca/Regulation/FiveYearReview/fyr_20030529_5yr-final -report.pdf).

[48] The Five Year Review Report referred to the United States Securities and Exchange Commission ("SEC") disgorgement powers and noted that the following principles have been established in SEC decisions:

(a) the SEC has ruled that disgorgement is "an equitable remedy designed to deprive [respondents] of all gains flowing from their wrong, rather than to compensate the victims of the fraud" (*In the Matter of Guy P. Riordan*, Initial Decision, 2008 SEC LEXIS 1754 at p. 68.);

(b) the SEC has ruled that "any risk of uncertainty [in calculating disgorgement] should fall on the wrongdoer whose illegal conduct created that uncertainty" (*In the Matter of Pritchard Capital Partners, LLC et al.*, Initial Decision, 2008 SEC LEXIS 1593 at p. 51); and

(c) the SEC has ruled that once the SEC has established a disgorgement figure, the burden shifts to the respondent to disprove the reasonableness of that number (*In the Matter of Thomas C. Bridge et al.*, Initial Decision, 2008 SEC LEXIS 533 at p. 99).

Although we are not bound by SEC decisions, we agree with these general principles, subject to the comments below.

[49] We note that paragraph 10 of subsection 127(1) of the Act provides that disgorgement can be ordered with respect to "any amounts obtained" as a result of non-compliance with the Act. Thus, the legal question is not whether a respondent "profited" from the illegal activity but whether the respondent "obtained amounts" as a result of that activity. In our view, this distinction is made in the Act to make clear that all money illegally obtained from investors can be ordered to be disgorged, not

just the "profit" made as a result of the activity. This approach also avoids the Commission having to determine how "profit" should be calculated in any particular circumstance. Establishing how much a respondent obtained as a result of his or her misconduct is a much more straightforward test. In our view, where there is a breach of Ontario securities law that involves the widespread and illegal distribution of securities to members of the public, it is appropriate that a respondent disgorge all the funds that were obtained from investors as a result of that illegal activity. In our view, such a disgorgement order is authorized under paragraph 10 of subsection 127(1) of the Act.

[50] In *Allen*, the respondent submitted that he did not make the full amount attributed to him in profits because of the very substantial costs of the offering and the 20% commissions paid to salespersons. It appeared to be the respondent's submission that any order to disgorge amounts obtained should have regard only to "net" amounts obtained as opposed to "gross" amounts. On this issue, the Commission stated:

> It is Staff's submission that the wording of the legislation permits the panel to order disgorgement of the gross amount obtained. Further, Staff submitted that the legislation should not be read so as to restrict any disgorgement order to the net amount obtained as to do so would reduce the deterrent effect of the disgorgement sanction. (*Allen*, *supra* at para. 36)

The Commission concluded by stating that "we agree with Staff's submission on the interpretation of subsection 127(1) clause 10 of the Act" (*Allen*, *supra* at para. 37).

[51] That analysis and conclusion in *Allen* is consistent with the approach we have discussed above.

[52] In our view, the Commission should consider the following issues and factors when contemplating a disgorgement order in circumstances such as these:

(a) whether an amount was obtained by a respondent as a result of non-compliance with the Act;

(b) the seriousness of the misconduct and the breaches of the Act and whether investors were seriously harmed;

(c) whether the amount that a respondent obtained as a result of non-compliance with the Act is reasonably ascertainable;

(d) whether the individuals who suffered losses are likely to be able to obtain redress; and

(e) the deterrent effect of a disgorgement order on the respondents and other market participants.

These factors are not exhaustive; other factors to consider include those referred to in paragraph 21.

[53] Staff has the onus to prove on a balance of probabilities the amount obtained by a respondent as a result of his or her non-compliance with the Act. Subject to that onus, we agree that any risk of uncertainty in calculating disgorgement should fall on the wrongdoer whose non-compliance with the Act gave rise to the uncertainty.

[54] In our view, no one should profit from his or her breach of the Act.

(iii) Conclusion as to Disgorgement

[55] The Commission has found in the Merits Decision that Limelight, Da Silva, Campbell and Daniels contravened Ontario securities law (Merits Decision, *supra* at paras. 214-223). The Commission concluded that from April 2004 to May 2006, Limelight sold approximately 1.6 million Limelight shares to investors. As a result of these sales, Limelight received approximately $2.75 million from investors. The Commission found that in doing so Limelight, Da Silva, Campbell and Daniels illegally traded without registration and engaged in illegal distributions of shares of Limelight. (Merits Decision, *supra* at paras. 208 -209)

[56] In the Merits Decision, the Commission held that Limelight and its salespersons were acting as market intermediaries without registration in breach of subsection 25(1) of the Act. Accordingly, all of the trading by the Respondents breached the registration provisions of the Act and all of the amounts obtained by the Respondents from investors were obtained as a result of non-compliance with the Act. The Merits Decision also referred to the Agreed Statement which stated that "the vast majority of Limelight investors are not accredited investors" (Merits Decision, *supra* at para. 144). The Merits Decision concluded that "the Respondents have not satisfied the onus on them to demonstrate that the accredited investor exemption or any other registration or prospectus exemption was available to them in connection with the trading in and distribution of Limelight sales" (Merits Decision, *supra* at para. 144).

[57] We note that none of the Respondents are registered under the Act.

[58] Da Silva was president of Limelight from April 5, 2004 until he resigned on April 17, 2006 and was a director of Limelight for all the periods in question (Merits Decision, *supra* at para. 14). In the Agreed Statement, Da Silva admits to Limelight having raised $2.75 million from investors as a result of trades that amounted to a breach of Ontario securities law. (Merits Decision, *supra* at para. 25)

[59] Da Silva and Campbell were the directing minds of Limelight; they were directly involved in breaches of the Act by Limelight and its salespersons (Merits Decision, *supra* at paras. 116 and 118) and they were aware of and authorized, permitted or acquiesced in all such breaches. Da Silva and Campbell were also the principal shareholders of Limelight. In our view, individuals should not be protected or sheltered from administrative sanctions by the fact that the illegal actions they orchestrated were carried out through a corporation which they directed and controlled. In this case, Limelight, Da Silva and Campbell acted in concert with a common purpose in breaching key provisions of the Act.

[60] We note that the misconduct by Limelight, Da Silva and Campbell involved obtaining very substantial amounts of money from vulnerable investors to whom misrepresentations were made. From the investors' perspective, they have likely lost all of their investment. In our view, a disgorgement order is particularly appropriate in such circumstances and is a powerful tool to deter others from similar misconduct. It is appropriate that a disgorgement order in these circumstances relate to the full amount obtained by Limelight, Da Silva and Campbell from investors.

[61] In our view, Limelight, Da Silva and Campbell should not be permitted to profit from their contraventions of Ontario securities law. It is in the public interest that they disgorge the full amount invested by investors in Limelight as a result of the contraventions of the Act by Limelight, Da Silva and Campbell.

[62] We therefore order that Limelight, Da Silva, and Campbell jointly disgorge $2,747,089.45 to the Commission pursuant to paragraph 10 of subsection 127(1) of the Act for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act.

[63] In making that order, we understand that no other Canadian securities regulator or court has ordered disgorgement from Limelight, Da Silva or Campbell as a result of the circumstances before us. If they had, we would have taken such an order or orders into account in making our disgorgement order. We recognize that it would be unfair and inconsistent with the principles underlying the disgorgement remedy for the aggregate amount ordered to be disgorged by Canadian securities regulators or courts to exceed the amounts obtained by Limelight, Da Silva and Campbell from investors.

4. Administrative Penalty

(i) Staff's Submissions

[64] Staff requested the following administrative penalties be imposed on the Respondents as a result of their breaches of the Act:

(a) that Limelight, Da Silva, and Campbell each pay an administrative penalty of $200,000 for failing to comply with Ontario securities law; and

(b) that Daniels pay an administrative penalty of $50,000 for failing to comply with Ontario securities law.

Staff indicated that the lower administrative penalty requested in respect of Daniels reflected his more limited role as a salesperson of Limelight.

[65] Staff referred us to the administrative penalties ordered in the NBSC Limelight Decision and the ASC Limelight Decision, which resulted from some of the same conduct of the Respondents that is before us. The NBSC imposed administrative penalties of $100,000 against each of Da Silva and Limelight and $150,000 against Campbell. The ASC imposed administrative penalties of $100,000 and $75,000 against Da Silva and Campbell, respectively.

[66] Staff submitted that the fact that administrative penalties were ordered by the NBSC and the ASC should not reduce the administrative penalties that should be imposed by the Commission. Staff submitted that the Respondents were aware of the multi-jurisdictional nature of securities regulation in Canada and thus ought to have known that each jurisdiction would separately exercise their protective and preventative mandates.

(ii) Purpose of Administrative Penalties

[67] The purpose of an administrative penalty is to deter the particular respondents from engaging in the same or similar conduct in the future and to send a clear deterrent message to other market participants that the conduct in question will not be tolerated in Ontario capital markets.

(iii) Applying the Administrative Penalty Provision

[68] The Commission's findings against the Respondents in the Merits Decision are summarized in paragraph 12.

[69] In the Merits Decision, the Commission concluded as follows:

> From April 2004 to May 2006, Limelight, Da Silva and Campbell sold approximately 1.6 million Limelight shares to investors. As a result of these sales, Limelight raised approximately $2.75 million from investors in all ten provinces of Canada and outside Canada. It is clear that the Respondents were acting in concert with a common purpose in making these sales of Limelight shares to investors. In carrying out that common purpose, they preyed on investors with limited resources and financial experience and breached key provisions of the Act intended to protect those investors. The investors appear to have lost their entire investments. (Merits Decision, *supra* at para. 208)

[70] We note that paragraph 9 of subsection 127(1) of the Act provides for a maximum administrative penalty for each contravention of the Act of $1 million.

[71] The misconduct by each of the Respondents in this matter involved numerous serious breaches of the Act over a period of approximately two years. As noted above, we are legally entitled to impose an administrative penalty of up to $1 million in connection with each breach of the Act. In our view, as a matter of principle, a respondent that commits multiple breaches of the Act should know that continuing and multiple breaches of the Act will have consequences in terms of the sanctions ultimately imposed. At the same time, however, in imposing an administrative penalty, the Commission must consider the level of administrative penalties imposed in other similar cases.

[72] The administrative penalty we impose in this case relates to breaches of the Act by the Respondents in Ontario. The Respondents are at risk of administrative sanctions in any jurisdiction in which they contravene relevant securities laws. In this case, the Respondents operated from Ontario and illegally distributed securities to Ontario investors as well as to investors in other provinces. Acts in furtherance of such trading occurred in Ontario even when shares were ultimately sold to investors outside Ontario. In addition to protecting Ontario investors and maintaining the integrity of the Ontario capital markets, we have a public interest in ensuring that participants in Ontario capital markets do not illegally distribute securities to investors in other provinces or to investors outside Canada. The administrative penalties we impose in this matter relate to trading and acts in furtherance of trading that occurred in Ontario.

[73] In our view, the fact that administrative penalties were imposed in other jurisdictions for breach of the securities laws of those jurisdictions should not limit our discretion in this case to impose appropriate administrative penalties under the Act.

[74] In imposing administrative penalties on the Respondents, we also consider it essential that market participants know that if they make misrepresentations to Staff of the Commission in their investigation or breach a Commission cease trade or other order, they do so at their peril.

(iv) Conclusion as to Administrative Penalties

[75] We order that a $200,000 administrative penalty be imposed upon each of Limelight and Da Silva. We determined that amount by reflecting the following allocation:

(a) $75,000 for breaching subsections 25(1) and 53(1) of the Act;

(b) $50,000 for making illegal and misleading representations to investors;

(c) $50,000 for breaching the Commission's cease trade orders; and

(d) $25,000 for making misrepresentations to and misleading the Staff of the Commission and for filing misleading forms with the Commission.

[76] We order that a $175,000 administrative penalty be imposed upon Campbell. We have determined that amount by reflecting the allocation in clauses (a) to (c) of paragraph 75.

[77] In our view, in the circumstances, administrative penalties in the aggregate amounts referred to paragraphs 75 and 76 are appropriate and in accordance with the public interest. Those amounts have been determined in part by reference to other decisions in similar circumstances.

[78] But for our decision to order disgorgement in this matter, we would have considered an administrative penalty of $175,000 to $200,000 to be inadequate in light of the serious nature of the misconduct that occurred here and the serious harm done to investors. In our view, previous decisions with respect to the amount of the administrative penalties imposed for conduct such as that before us are not adequate, particularly where repeated violations of key provisions of the Act occur or where large amounts of money are raised from investors. Where multiple violations of the Act occur, in our view, substantial administrative penalties should be ordered with respect to more than one or two of such contraventions, as permitted by paragraph 9 of subsection 127(1) of the Act. An administrative penalty imposed must be more than a mere "cost of doing business" for those intent on breaching the provisions of the Act. In our view, the disgorgement order and the orders with respect to administrative penalties that we make in this matter are appropriate in the circumstances.

[79] We also order that a $50,000 administrative penalty be imposed upon Daniels for his breaches of the Act. We conclude that administrative penalty is appropriate in the circumstances and in accordance with the public interest.

B. Costs

[80] Staff submitted that the Respondents should be ordered pursuant to section 127.1 of the Act to jointly and severally pay costs in the amount of $154,979.79 plus $5,637.29 in disbursements to indemnify the Commission for its investigation and hearing costs in this matter.

[81] According to Staff, the costs claimed in this case are reasonable and conservative and relate only to the time of the lead litigator and investigator. No costs were sought in respect of the time of other investigators, legal counsel, clerks or assistants. Further, Staff indicated that costs are being sought only for expenses incurred up to October 2007. No award is being sought for costs incurred to prepare for and attend at the sanctions hearing.

[82] To support its claim for costs, Staff provided information specifying the hours worked by Staff employees on this matter.

[83] We have concluded that it is appropriate to impose costs in this matter because it was the illegal conduct of Limelight, Da Silva, Campbell and Daniels that gave rise to this proceeding.

[84] Based on the submissions and information presented by Staff, we assess the total costs payable by Limelight and Campbell at $114,979.79 plus $5,637.29 in disbursements. We order that they are jointly and severally responsible for the costs and disbursements payable.

[85] The Agreed Statement entered into by Da Silva saved substantial hearing time and substantially assisted in proving Staff's case against all of the Respondents. Accordingly, we order Da Silva to pay a lower amount of costs of $15,000 and no disbursements.

[86] We also order that Daniels pay costs of $25,000 and no disbursements. We have ordered reduced costs against Daniels because, while he breached the Act, he appears to have had a more limited involvement in illegally selling securities to investors.

VI. ORDER

[87] For the reasons discussed above, we have concluded that the sanctions and costs imposed by us are in the public interest and are proportionate to the circumstances of this matter. Accordingly, we order that:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, Limelight, Da Silva and Campbell shall cease trading in securities permanently, with the exception that each of Da Silva and Campbell are permitted to trade securities for the account of his registered retirement savings plans (as defined in the Tax Act) in which he and/or his spouse have sole legal and beneficial ownership, provided that:

(i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund which is a reporting issuer;

(ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question; and

(iii) he carries out any permitted trading through a registered dealer and through accounts opened in his name only and he must close any accounts that are not in his name only;

(b) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Limelight, Da Silva and Campbell permanently, except for any exemptions necessary to allow the trading in securities permitted in paragraph (a) above;

(c) pursuant to paragraph 2 of subsection 127(1) of the Act, Daniels shall cease trading in securities for 10 years, with the exception that Daniels is permitted to trade securities for the account of his registered retirement savings plans (as defined in the Tax Act) in which he and/or his spouse have sole legal and beneficial ownership, provided that:

(i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund which is a reporting issuer;

(ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question; and

(iii) he carries out any permitted trading through a registered dealer and through accounts opened in his name only and he must close any accounts that are not in his name only;

(d) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Daniels for 10 years, except for any exemptions necessary to allow the trading in securities in the manner permitted in paragraph (c) above;

(e) pursuant to paragraph 8 of subsection 127(1) of the Act, Da Silva and Campbell are prohibited permanently from becoming or acting as a director or officer of any issuer;

(f) pursuant to subsection 37(1) of the Act, Limelight, Da Silva, Campbell and Daniels are permanently prohibited from telephoning residences within or outside Ontario for the purpose of trading in securities;

(g) pursuant to paragraph 10 of subsection 127(1) of the Act, Limelight, Da Silva and Campbell shall jointly disgorge to the Commission $2,747,089.45 to be allocated by the Commission to or for the benefit of third parties in accordance with subsection 3.4(2) of the Act;

(h) pursuant to paragraph 9 of subsection 127(1) of the Act, each of Limelight and Da Silva shall pay an administrative penalty of $200,000, to be allocated by the Commission to or for the benefit of third parties in accordance with subsection 3.4(2) of the Act;

(i) pursuant to paragraph 9 of subsection 127(1) of the Act, Campbell shall pay an administrative penalty of $175,000 to be allocated by the Commission to or for the benefit of third parties in accordance with subsection 3.4(2) of the Act;

(j) pursuant to paragraph 9 of subsection 127(1) of the Act, Daniels shall pay an administrative penalty of $50,000 to be allocated by the Commission to or for the benefit of third parties in accordance with subsection 3.4(2) of the Act; and

(k) pursuant to subsection 127.1 of the Act,

(i) Limelight and Campbell shall jointly and severally pay the costs of Staff's investigation and this proceeding in the amount of $114,979.79 plus $5,637.29 in disbursements; and

(ii) Da Silva shall pay the costs of Staff's investigation and this proceeding in the amount of $15,000; and

(iii) Daniels shall pay the costs of Staff's investigation and this proceeding in the amount of $25,000.

Dated this 10th day of December, 2008

"James E. A. Turner"

"Suresh Thakrar"

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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/Revoked
Equitech Corporation	16 Dec 08	29 Dec 08		
Sunorca Development Corp.	07 Nov 08	21 Nov 08	21 Nov 08	12 Dec 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
High River Gold Mines Ltd.	02 Dec 08	16 Dec 08	16 Dec 08		
Rutter Inc.	02 Dec 08	16 Dec 08	16 Dec 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 Temporary Order
CoolBrands International Inc.	30 Nov 06	13 Dec 06	13 Dec 06		
Hip Interactive Corp.	04 July 05	15 July 05	15 July 05		
Toxin Alert Inc.	30 Oct 08	12 Nov 08	12 Nov 08		
Argenta Oil & Gas Inc.	05 Nov 08	18 Nov 08	18 Nov 08		
Cybersurf Corp.	11 Nov 08	24 Nov 08	25 Nov 08		
High River Gold Mines Ltd.	19 Nov 08	03 Dec 08	03 Dec 08		
Constellation Copper Corporation	20 Nov 08	04 Dec 08	04 Dec 08		
High River Gold Mines Ltd.	02 Dec 08	16 Dec 08	16 Dec 08		
Rutter Inc.	02 Dec 08	16 Dec 08	16 Dec 08		

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Chapter 5

Rules and Policies

5.1.1 Form 51-102F6 Statement of Executive Compensation (in respect of financial years ending on or after December 31, 2008) and Consequential Amendments

FORM 51-102F6
STATEMENT OF EXECUTIVE COMPENSATION
(in respect of financial years ending on or after December 31, 2008)

Table of Contents

FORM 51-102F6
STATEMENT OF EXECUTIVE COMPENSATION
(in respect of financial years ending on or after December 31, 2008)

ITEM 1 – GENERAL PROVISIONS

1.1 Objective

All direct and indirect compensation provided to certain executive officers and directors for, or in connection with, services they have provided to the company or a subsidiary of the company must be disclosed in this form.

The objective of this disclosure is to communicate the compensation the board of directors intended the company to pay, make payable, award, grant, give or otherwise provide to each NEO and director for the financial year. This disclosure will provide insight into executive compensation as a key aspect of the overall stewardship and governance of the company and will help investors understand how decisions about executive compensation are made.

A company's executive compensation disclosure under this form must satisfy this objective.

1.2 Definitions

If a term is used in this form but is not defined in this section, refer to subsection 1.1(1) of the Instrument or to National Instrument 14-101 *Definitions*.

In this form,

"CEO" means an individual who acted as chief executive officer of the company, or acted in a similar capacity, for any part of the most recently completed financial year;

"CFO" means an individual who acted as chief financial officer of the company, or acted in a similar capacity, for any part of the most recently completed financial year;

"closing market price" means the price at which the company's security was last sold, on the applicable date,

(a) in the security's principal marketplace in Canada, or

(b) if the security is not listed or quoted on a marketplace in Canada, in the security's principal marketplace;

"company" includes other types of business organizations such as partnerships, trusts and other unincorporated business entities;

"equity incentive plan" means an incentive plan, or portion of an incentive plan, under which awards are granted and that falls within the scope of Section 3870 of the Handbook;

"external management company" includes a subsidiary, affiliate or associate of the external management company;

"grant date" means a date determined for financial statement reporting purposes under Section 3870 of the Handbook;

"incentive plan" means any plan providing compensation that depends on achieving certain performance goals or similar conditions within a specified period;

"incentive plan award" means compensation awarded, earned, paid, or payable under an incentive plan;

"NEO" or **"named executive officer"** means each of the following individuals:

(a) a CEO;

(b) a CFO;

(c) each of the three most highly compensated executive officers, or the three most highly compensated individuals acting in a similar capacity, other than the CEO and CFO, at the end of the most recently completed financial year whose total compensation was, individually, more than $150,000, as determined in accordance with subsection 1.3(6), for that financial year; and

(d) each individual who would be an NEO under paragraph (c) but for the fact that the individual was neither an executive officer of the company, nor acting in a similar capacity, at the end of that financial year;

"NI 52-107" means National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;

"non-equity incentive plan" means an incentive plan or portion of an incentive plan that is not an equity incentive plan;

"**option-based award**" means an award under an equity incentive plan of options, including, for greater certainty, share options, share appreciation rights, and similar instruments that have option-like features;

"plan" includes any plan, contract, authorization, or arrangement, whether or not set out in any formal document, where cash, securities, similar instruments or any other property may be received, whether for one or more persons;

"replacement grant" means an option that a reasonable person would consider to be granted in relation to a prior or potential cancellation of an option;

"repricing" means, in relation to an option, adjusting or amending the exercise or base price of the option, but excludes any adjustment or amendment that equally affects all holders of the class of securities underlying the option and occurs through the operation of a formula or mechanism in, or applicable to, the option;

"share-based award" means an award under an equity incentive plan of equity-based instruments that do not have option-like features, including, for greater certainty, common shares, restricted shares, restricted share units, deferred share units, phantom shares, phantom share units, common share equivalent units, and stock.

1.3 Preparing the form

(1) All compensation to be included

(a) When completing this form, the company must disclose all compensation paid, payable, awarded, granted, given, or otherwise provided, directly or indirectly, by the company, or a subsidiary of the company, to each NEO and director, in any capacity, including, for greater certainty, all plan and non-plan compensation, direct and indirect pay, remuneration, economic or financial award, reward, benefit, gift or perquisite paid, payable, awarded, granted, given, or otherwise provided to the NEO or director for services provided, directly or indirectly, to the company or a subsidiary of the company.

(b) Despite paragraph (a), in respect of the Canada Pension Plan, similar government plans, and group life, health, hospitalization, medical reimbursement and relocation plans that do not discriminate in scope, terms or operation and are generally available to all salaried employees, the company is not required to disclose as compensation

(i) any contributions or premiums paid or payable by the company on behalf of an NEO, or of a director, under these plans, and

(ii) any cash, securities, similar instruments or any other property received by an NEO, or by a director, under these plans.

(c) For greater certainty, the plans described in paragraph (b) include plans that provide for such benefits after retirement.

(d) If an item of compensation is not specifically mentioned or described in this form, it is to be disclosed in column (h) ("All other compensation") of the summary compensation table in section 3.1.

(2) Departures from format

Although the required disclosure must be made in accordance with this form, the disclosure may

(a) omit a table, column of a table, or other prescribed information, if it does not apply, and

(b) add tables, columns, and other information, if necessary to satisfy the objective in section 1.1.

(3) Information for full financial year

If an NEO acted in that capacity for the company during part of the financial year for which disclosure is required in the summary compensation table, provide details of all of the compensation that the NEO received from the company for that financial year. This includes compensation the NEO earned in any other position with the company during the financial year.

Do not annualize compensation in a table for any part of a year when an NEO was not in the service of the company. Annualized compensation may be disclosed in a footnote.

(4) External management companies

(a) If one or more individuals acting as an NEO of the company are not employees of the company, disclose the names of those individuals.

(b) If an external management company employs or retains one or more individuals acting as NEOs or directors of the company and the company has entered into an understanding, arrangement or agreement with the external management company to provide executive management services to the company directly or indirectly, disclose any compensation that:

(i) the company paid directly to an individual employed, or retained by the external management company, who is acting as an NEO or director of the company; and

(ii) the external management company paid to the individual that is attributable to the services they provided to the company directly or indirectly.

(c) If an external management company provides the company's executive management services and provides executive management services to another company, disclose:

(i) the portion of the compensation paid to the individual acting as an NEO or director that the external management company attributes to services the external management company provided to the company; or

(ii) the entire compensation the external management company paid to the individual acting as an NEO or director. If the management company allocates the compensation paid to an NEO or director, disclose the basis or methodology used to allocate this compensation.

Commentary

An NEO may be employed by an external management company and provide services to the company under an understanding, arrangement or agreement. In this case, references in this form to the CEO or CFO are references to the individuals who performed similar functions to that of the CEO or CFO. They are generally the same individuals who signed and filed annual and interim certificates to comply with Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings.

(5) Director and NEO compensation

Disclose any compensation awarded to, earned by, paid to, or payable to each director and NEO, in any capacity with respect to the company. Compensation to directors and NEOs must include all compensation from the company and its subsidiaries.

Disclose any compensation awarded to, earned by, paid to, or payable to, an NEO, or director, in any capacity with respect to the company, by another person or company.

(6) Determining if an individual is an NEO

For the purpose of calculating total compensation awarded to, earned by, paid to, or payable to an individual under paragraph (c) of the definition of NEO,

(a) use the total compensation that would be reported under column (i) of the summary compensation table required by section 3.1 for each executive officer, as if that executive officer were an NEO for the company's most recently completed financial year, and

(b) exclude from the calculation,

(i) any compensation that would be reported under column (g) of the summary compensation table required by section 3.1,

(ii) any incremental payments, payables, and benefits to an executive officer that are triggered by, or result from, a scenario listed in section 6.1 that occurred during the most recently completed financial year, and

(iii) any cash compensation that relates to foreign assignments that is specifically intended to offset the impact of a higher cost of living in the foreign location, and is not otherwise related to the duties the executive officer performs for the company.

Commentary

The $150,000 threshold in paragraph (c) of the definition of NEO only applies when determining who is an NEO in a company's most recently completed financial year. If an individual is an NEO in the most recently completed financial year, disclosure of compensation in prior years must be provided if otherwise required by this form even if total compensation in a prior year is less than $150,000 in that year.

(7) Compensation to associates

Disclose any awards, earnings, payments, or payables to an associate of an NEO, or of a director, as a result of compensation awarded to, earned by, paid to, or payable to the NEO or the director, in any capacity with respect to the company.

(8) New reporting issuers

(a) Subject to paragraph (b) and subsection 3.1(1), disclose information in the summary compensation table for the three most recently completed financial years since the company became a reporting issuer.

(b) Do not provide information for a completed financial year if the company was not a reporting issuer for any part of that financial year, unless the company became a reporting issuer as a result of a restructuring transaction.

(c) If the company was not a reporting issuer at any time during the most recently completed financial year and the company is completing the form because it is preparing a prospectus, discuss all significant elements of the compensation to be awarded to, earned by, paid to, or payable to NEOs of the company once it becomes a reporting issuer, to the extent this compensation has been determined.

Commentary

1. Unless otherwise specified, information required to be disclosed under this form may be prepared in accordance with the accounting principles the company uses to prepare its financial statements, as permitted by NI 52-107, or the Handbook.

2. The definition of "director" under securities legislation includes an individual who acts in a capacity similar to that of a director.

ITEM 2 – COMPENSATION DISCUSSION AND ANALYSIS

2.1 Compensation discussion and analysis

(1) Describe and explain all significant elements of compensation awarded to, earned by, paid to, or payable to NEOs for the most recently completed financial year. Include the following:

(a) the objectives of any compensation program or strategy;

(b) what the compensation program is designed to reward;

(c) each element of compensation;

(d) why the company chooses to pay each element;

(e) how the company determines the amount (and, where applicable, the formula) for each element; and

(f) how each element of compensation and the company's decisions about that element fit into the company's overall compensation objectives and affect decisions about other elements.

(2) If applicable, describe any new actions, decisions or policies that were made after the end of the most recently completed financial year that could affect a reasonable person's understanding of an NEO's compensation for the most recently completed financial year.

(3) If applicable, clearly state the benchmark and explain its components, including the companies included in the benchmark group and the selection criteria.

(4) If applicable, disclose performance goals or similar conditions that are based on objective, identifiable measures, such as the company's share price or earnings per share. If performance goals or similar conditions are subjective, the company may describe the performance goal or similar condition without providing specific measures.

The company is not required to disclose performance goals or similar conditions in respect of specific quantitative or qualitative performance-related factors if a reasonable person would consider that disclosing them would seriously prejudice the company's interests. Companies do not qualify for this exemption if they have publicly disclosed the performance goals or similar conditions.

If the company does not disclose specific performance goals or similar conditions, state what percentage of the NEO's total compensation relates to this undisclosed information and how difficult it could be for the NEO, or how likely it will be for the company, to achieve the undisclosed performance goal or similar condition.

If the company discloses performance goals or similar conditions that are non-GAAP financial measures, explain how the company calculates these performance goals or similar conditions from its financial statements.

Commentary

1. The information disclosed under section 2.1 will depend on the facts. Provide enough analysis to allow a reasonable person, applying reasonable effort, to understand the disclosure elsewhere in this form. Describe the significant principles underlying policies and explain the decisions relating to compensation provided to an NEO. Disclosure that merely describes the process for determining compensation or compensation already awarded, earned, paid, or payable is not adequate. The information contained in this section should give readers a sense of how compensation is tied to the NEO's performance. Avoid boilerplate language.

2. If the company's process for determining executive compensation is very simple, for example, the company relies solely on board discussion without any formal objectives, criteria and analysis, then make this clear in the discussion.

3. The following are examples of items that will usually be significant elements of disclosure concerning compensation:

- *contractual or non-contractual arrangements, plans, process changes or any other matters that might cause the amounts disclosed for the most recently completed financial year to be misleading if used as an indicator of expected compensation levels in future periods;*
- *the process for determining perquisites and personal benefits;*
- *policies and decisions about the adjustment or recovery of awards, earnings, payments, or payables if the performance goal or similar condition on which they are based are restated or adjusted to reduce the award, earning, payment, or payable;*
- *the basis for selecting events that trigger payment for any arrangement that provides for payment at, following or in connection with any termination or change of control;*
- *whether the company used any benchmarking in determining compensation or any element of compensation;*
- *any waiver or change to any specified performance goal or similar condition to payout for any amount, including whether the waiver or change applied to one or more specified NEOs or to all compensation subject to the performance goal or similar condition;*

- *the role of executive officers in determining executive compensation; and*
- *performance goals or similar conditions in respect of specific quantitative or qualitative performance-related factors for NEOs.*

2.2 Performance graph

(a) This section does not apply to

(i) venture issuers,

(ii) companies that have distributed only debt securities or non-convertible, non-participating preferred securities to the public, and

(iii) companies that were not reporting issuers in any jurisdiction in Canada for at least 12 calendar months before the end of their most recently completed financial year, other than companies that became new reporting issuers as a result of a restructuring transaction.

(b) Provide a line graph showing the company's cumulative total shareholder return over the five most recently completed financial years. Assume that $100 was invested on the first day of the five-year period. If the company has been a reporting issuer for less than five years, use the period that the company has been a reporting issuer.

Compare this to the cumulative total return of at least one broad equity market index that, to a reasonable person, would be an appropriate reference point for the company's return. If the company is included in the S&P/TSX Composite Total Return Index, use that index. In all cases, assume that dividends are reinvested.

Discuss how the trend shown by this graph compares to the trend in the company's compensation to executive officers reported under this form over the same period.

Commentary

For section 2.2, companies may also include other relevant performance goals or similar conditions.

2.3 Option-based awards

Describe the process the company uses to grant option-based awards to executive officers. Include the role of the compensation committee and executive officers in setting or amending any equity incentive plan under which an option-based award is granted. State whether previous grants of option-based awards are taken into account when considering new grants.

ITEM 3 – SUMMARY COMPENSATION TABLE

3.1 Summary compensation table

(1) For each NEO in the most recently completed financial year, complete this table for each of the company's three most recently completed financial years that end on or after December 31, 2008.

Name and principal position (a)	Year (b)	Salary ($) (c)	Share-based awards ($) (d)	Option-based awards ($) (e)	Non-equity incentive plan compensation ($) (f)		Pension value ($) (g)	All other compensation ($) (h)	Total compensation ($) (i)
					Annual incentive plans (f1)	Long-term incentive plans (f2)			
CEO	____ ____								
CFO	____ ____								
A	____ ____								
B	____ ____								
C	____ ____								

Commentary

Under subsection (1), a company is not required to disclose comparative period disclosure in accordance with the requirements of either Form 51-102F6 Statement of Executive Compensation, which came into force on March 30, 2004, as amended, or this form, in respect of a financial year ending before December 31, 2008.

(2) In column (c), include the dollar value of cash and non-cash base salary an NEO earned during a financial year covered in the table (a covered financial year). If the company cannot calculate the amount of salary earned in a financial year, disclose this in a footnote, along with the reason why it cannot be determined. Restate the salary figure the next time the company prepares this form, and explain what portion of the restated figure represents an amount that the company could not previously calculate.

(3) In column (d), disclose the dollar amount based on the grant date fair value of the award for a covered financial year.

(4) In column (e), disclose the dollar amount based on the grant date fair value of the award for a covered financial year. Include option-based awards both with or without tandem share appreciation rights.

(5) For an award disclosed in column (d) or (e), in a footnote to the table or in a narrative after the table,

(a) if the grant date fair value is different from the fair value determined in accordance with Section 3870 of the Handbook (accounting fair value), state the amount of the difference and explain the difference, and

(b) describe the methodology used to calculate the grant date fair value, disclose the key assumptions and estimates used for each calculation, and explain why the company chose that methodology.

Commentary

1. This commentary applies to subsections (3), (4) and (5).

2. The value disclosed in columns (d) and (e) of the summary compensation table should reflect what the board of directors intended to award or pay as compensation (grant date fair value) as set out in comment 3, below.

3. While compensation practices vary, there are generally two approaches that boards of directors use when setting compensation. A board of directors may decide the value in securities of the company it intends to award or pay as compensation. Alternatively, a board of directors may decide the portion of the potential ownership of the company it intends to transfer as compensation. A fair value ascribed to the award will normally result from these approaches.

A company may calculate this value either in accordance with a valuation methodology identified in Section 3870 of the Handbook or in accordance with another methodology set out in comment 5 below.

4. In some cases, the grant date fair value disclosed in columns (d) and (e) may differ from the accounting fair value. For financial statement purposes, the accounting fair value amount is amortized over the service period to obtain an accounting cost (accounting compensation expense), adjusted at year end as required.

5. While the most commonly used methodologies for calculating the value of most types of awards are the Black-Scholes-Merton model and the binomial lattice model, companies may choose to use another valuation methodology if it produces a more meaningful and reasonable estimate of fair value.

6. The summary compensation table requires disclosure of an amount even if the accounting compensation expense is zero. The amount disclosed in the table should reflect the grant date fair value following the principles described under comments 2 and 3, above.

7. Column (d) includes common shares, restricted shares, restricted share units, deferred share units, phantom shares, phantom share units, common share equivalent units, stock, and similar instruments that do not have option-like features.

(6) In column (e), include the incremental fair value if, at any time during the covered financial year, the company has adjusted, amended, cancelled, replaced or significantly modified the exercise price of options previously awarded to, earned by, paid to, or payable to, an NEO. The repricing or modification date must be determined in accordance with section 3870 of the Handbook. The methodology used to calculate the incremental fair value must be the same methodology used to calculate the initial grant.

This requirement does not apply to any repricing that equally affects all holders of the class of securities underlying the options and that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction.

(7) Include a footnote to the table quantifying the incremental fair value of any adjusted, amended, cancelled, replaced or significantly modified options that are included in the table.

(8) In column (f), include the dollar value of all amounts earned for services performed during the covered financial year that are related to awards under non-equity incentive plans and all earnings on any such outstanding awards.

(a) If the relevant performance goal or similar condition was satisfied during a covered financial year (including for a single year in a plan with a multi-year performance goal or similar condition), report the amounts earned for that financial year, even if they are payable at a later date. The company is not required to report these amounts again in the summary compensation table when they are actually paid to an NEO.

(b) Include a footnote describing and quantifying all amounts earned on non-equity incentive plan compensation, whether they were paid during the financial year, were payable but deferred at the election of an NEO, or are payable by their terms at a later date.

(c) Include any discretionary cash awards, earnings, payments, or payables that were not based on pre-determined performance goals or similar conditions that were communicated to an NEO. Report any

performance-based plan awards that include pre-determined performance goals or similar conditions in column (f).

(d) In column (f1), include annual non-equity incentive plan compensation, such as bonuses and discretionary amounts. For column (f1), annual non-equity incentive plan compensation relates only to a single financial year. In column (f2), include all non-equity incentive plan compensation related to a period longer than one year.

(9) In column (g), include all compensation relating to defined benefit or defined contribution plans. These include service costs and other compensatory items such as plan changes and earnings that are different from the estimated earnings for defined benefit plans and above-market earnings for defined contribution plans.

This disclosure relates to all plans that provide for the payment of pension plan benefits. Use the same amounts included in column (e) of the defined benefit plan table required by Item 5 for the covered financial year and the amounts included in column (c) of the defined contribution plan table as required by Item 5 for the covered financial year.

(10) In column (h), include all other compensation not reported in any other column of this table. Column (h) must include, but is not limited to:

(a) perquisites, including property or other personal benefits provided to an NEO that are not generally available to all employees, and that in aggregate are worth $50,000 or more, or are worth 10% or more of an NEO's total salary for the financial year. Value these items on the basis of the aggregate incremental cost to the company and its subsidiaries. Describe in a footnote the methodology used for computing the aggregate incremental cost to the company.

State the type and amount of each perquisite the value of which exceeds 25% of the total value of perquisites reported for an NEO in a footnote to the table. Provide the footnote information for the most recently completed financial year only;

(b) other post-retirement benefits such as health insurance or life insurance after retirement;

(c) all "gross-ups" or other amounts reimbursed during the covered financial year for the payment of taxes;

(d) the incremental payments, payables, and benefits to an NEO that are triggered by, or result from, a scenario listed in section 6.1 that occurred before the end of the covered financial year;

(e) the dollar value of any insurance premiums paid or payable by, or on behalf of, the company during the covered financial year for personal insurance for an NEO if the estate of the NEO is the beneficiary;

(f) the dollar value of any dividends or other earnings paid or payable on share-based or option-based awards that were not factored into the grant date fair value required to be reported in columns (d) and (e);

(g) any compensation cost for any security that the NEO bought from the company or its subsidiaries at a discount from the market price of the security (through deferral of salary, bonus or otherwise). Calculate this cost at the date of purchase and in accordance with Section 3870 of the Handbook; and

(h) above-market or preferential earnings on compensation that is deferred on a basis that is not tax exempt other than for defined contribution plans covered in the defined contribution plan table in Item 5. Above-market or preferential applies to non-registered plans and means a rate greater than the rate ordinarily paid by the company or its subsidiary on securities or other obligations having the same or similar features issued to third parties.

Commentary

1. Generally, there will be no incremental payments, payables, and benefits that are triggered by, or result from, a scenario described in section 6.1 that occurred before the end of a covered financial year for compensation that has been reported in the summary compensation table for the most recently completed financial year or for a financial year before the most recently completed financial year.

If the vesting or payout of the previously reported compensation is accelerated, or a performance goal or similar condition in respect of the previously reported compensation is waived, as a result of a scenario

described in section 6.1, the incremental payments, payables, and benefits should include the value of the accelerated benefit or of the waiver of the performance goal or similar condition.

2. *Generally, an item is not a perquisite if it is integrally and directly related to the performance of an executive officer's duties. If something is necessary for a person to do his or her job, it is integrally and directly related to the job and is not a perquisite, even if it also provides some amount of personal benefit.*

   If the company concludes that an item is not integrally and directly related to performing the job, it may still be a perquisite if the item provides an NEO with any direct or indirect personal benefit. If it does provide a personal benefit, the item is a perquisite, whether or not it is provided for a business reason or for the company's convenience, unless it is generally available on a non-discriminatory basis to all employees.

   Companies must conduct their own analysis of whether a particular item is a perquisite. The following are examples of things that are often considered perquisites or personal benefits. This list is not exhaustive:

   - *Cars, car lease and car allowance;*
   - *Corporate aircraft or personal travel financed by the company;*
   - *Jewellery;*
   - *Clothing;*
   - *Artwork;*
   - *Housekeeping services;*
   - *Club membership;*
   - *Theatre tickets;*
   - *Financial assistance to provide education to children of executive officers;*
   - *Parking;*
   - *Personal financial or tax advice;*
   - *Security at personal residence or during personal travel; and*
   - *Reimbursements of taxes owed with respect to perquisites or other personal benefit.*

(11) In column (i), include the dollar value of total compensation for the covered financial year. For each NEO, this is the sum of the amounts reported in columns (c) through (h).

(12) Any deferred amounts must be included in the appropriate column for the covered financial year in which they are earned.

(13) If an NEO elected to exchange any compensation awarded to, earned by, paid to, or payable to the NEO in a covered financial year under a program that allows the NEO to receive awards, earnings, payments, or payables in another form, the compensation the NEO elected to exchange must be reported as compensation in the column appropriate for the form of compensation exchanged: Do not report it in the form in which it was or will be received by the NEO. State in a footnote the form of awards, earnings, payments, or payables substituted for the compensation the NEO elected to exchange.

3.2 Narrative discussion

Describe and explain any significant factors necessary to understand the information disclosed in the summary compensation table required by section 3.1.

Commentary

The significant factors described in section 3.2 will vary depending on the circumstances of each award but may include:

- *the significant terms of each NEO's employment agreement or arrangement;*
- *any repricing or other significant changes to the terms of any share-based or option-based award program during the most recently completed financial year; and*
- *the significant terms of any award reported in the summary compensation table, including a general description of the formula or criterion to be applied in determining the amounts payable and the vesting schedule. For example, if dividends will be paid on shares, state this, the applicable dividend rate and whether that rate is preferential.*

3.3 Currencies

Report amounts in this form using the same currency that the company uses in its financial statements. If compensation awarded to, earned by, paid to, or payable to an NEO was in a currency other than the reporting currency, state in a footnote the currency in which compensation was awarded, earned, paid, or payable, disclose the translation rate and describe the methodology used to translate the compensation into the reporting currency.

3.4 Officers who also act as directors

If an NEO is also a director who receives compensation for services as a director, include that compensation in the summary compensation table and include a footnote explaining which amounts relate to the director role. Do not provide disclosure for that NEO under Item 7.

ITEM 4 – INCENTIVE PLAN AWARDS

4.1 Outstanding share-based awards and option-based awards

(1) Complete this table for each NEO for all awards outstanding at the end of the most recently completed financial year. This includes awards granted before the most recently completed financial year. For all awards in this table, disclose the awards that have been transferred at other than fair market value.

	Option-based Awards				**Share-based Awards**	
Name	**Number of securities underlying unexercised options (#)**	**Option exercise price ($)**	**Option expiration date**	**Value of unexercised in-the-money options ($)**	**Number of shares or units of shares that have not vested (#)**	**Market or payout value of share-based awards that have not vested ($)**
(a)	**(b)**	**(c)**	**(d)**	**(e)**	**(f)**	**(g)**
CEO						
CFO						
A						
B						
C						

(2) In column (b), for each award, disclose the number of securities underlying unexercised options.

(3) In column (c), disclose the exercise or base price for each option under each award reported in column (b).

(4) In column (d), disclose the expiration date for each option under each award reported in column (b).

(5) In column (e), disclose the aggregate dollar amount of in-the-money unexercised options held at the end of the year. Calculate this amount based on the difference between the market value of the securities underlying the instruments at the end of the year, and the exercise or base price of the option.

(6) In column (f), disclose the total number of shares or units that have not vested.

(7) In column (g), disclose the aggregate market value or payout value of share-based awards that have not vested.

If the share-based award provides only for a single payout on vesting, calculate this value based on that payout.

If the share-based award provides for different payouts depending on the achievement of different performance goals or similar conditions, calculate this value based on the minimum payout. However, if the NEO achieved a performance goal or similar condition in a financial year covered by the share-based award that on vesting could provide for a payout greater than the minimum payout, calculate this value based on the payout expected as a result of the NEO achieving this performance goal or similar condition.

4.2 Incentive plan awards – value vested or earned during the year

(1) Complete this table for each NEO for the most recently completed financial year.

Name (a)	Option-based awards – Value vested during the year ($) (b)	Share-based awards – Value vested during the year ($) (c)	Non-equity incentive plan compensation – Value earned during the year ($) (d)
CEO			
CFO			
A			
B			
C			

(2) In column (b), disclose the aggregate dollar value that would have been realized if the options under the option-based award had been exercised on the vesting date. Compute the dollar value that would have been realized by determining the difference between the market price of the underlying securities at exercise and the exercise or base price of the options under the option-based award on the vesting date. Do not include the value of any related payment or other consideration provided (or to be provided) by the company to or on behalf of an NEO.

(3) In column (c), disclose the aggregate dollar value realized upon vesting of share-based awards. Compute the dollar value realized by multiplying the number of shares or units by the market value of the underlying shares on the vesting date. For any amount realized upon vesting for which receipt has been deferred, include a footnote that states the amount and the terms of the deferral.

4.3 Narrative discussion

Describe and explain the significant terms of all plan-based awards, including non-equity incentive plan awards, issued or vested, or under which options have been exercised, during the year, or outstanding at the year end, to the extent not already discussed under sections 2.1, 2.3 and 3.2. The company may aggregate information for different awards, if separate disclosure of each award is not necessary to communicate their significant terms.

Commentary

The items included in the narrative required by section 4.3 will vary depending on the terms of each plan, but may include:

- *the number of securities underlying each award or received on vesting or exercise;*
- *general descriptions of formulae or criteria that are used to determine amounts payable;*
- *exercise prices and expiry dates;*
- *dividend rates on share-based awards;*
- *whether awards are vested or unvested;*
- *performance goals or similar conditions, or other significant conditions;*
- *information on estimated future payouts for non-equity incentive plan awards (performance goals or similar conditions and maximum amounts); and*

- *the closing market price on the grant date, if the exercise or base price is less than the closing market price of the underlying security on the grant date.*

ITEM 5 – PENSION PLAN BENEFITS

5.1 Defined benefit plans table

(1) Complete this table for all pension plans that provide for payments or benefits at, following, or in connection with retirement, excluding defined contribution plans. For all disclosure in this table, use the same assumptions and methods used for financial statement reporting purposes under the accounting principles used to prepare the company's financial statements, as permitted by NI 52-107.

Name (a)	Number of years credited service (#) (b)	Annual benefits payable ($) (c)		Accrued obligation at start of year ($) (d)	Compensatory change ($) (e)	Non-compensatory change ($) (f)	Accrued obligation at year end ($) (g)
		At year end (c1)	At age 65 (c2)				
CEO							
CFO							
A							
B							
C							

(2) In columns (b) and (c), the disclosure must be as of the end of the company's most recently completed financial year. In columns (d) through (g), the disclosure must be as of the plan measurement date used in the company's audited financial statements for the most recently completed financial year.

(3) In column (b), disclose the number of years of service credited to an NEO under the plan. If the number of years of credited service in any plan is different from the NEO's number of actual years of service with the company, include a footnote that states the amount of the difference and any resulting benefit augmentation, such as the number of additional years the NEO received.

(4) In column (c), disclose

(a) the annual lifetime benefit payable at the end of the most recently completed financial year in column (c1) based on years of credited service reported in column (b) and actual pensionable earnings as at the end of the most recently completed financial year, and

(b) the annual lifetime benefit payable at age 65 in column (c2) based on years of credited service as of age 65 and actual pensionable earnings through the end of the most recently completed financial year, as per column (c1).

(5) In column (d), disclose the accrued obligation at the start of the most recently completed financial year.

(6) In column (e), disclose the compensatory change in the accrued obligation for the most recently completed financial year. This includes service cost net of employee contributions plus plan changes and differences between actual and estimated earnings, and any additional changes that have retroactive impact, including, for greater certainty, a change in valuation assumptions as a consequence of an amendment to benefit terms.

Disclose the valuation method and all significant assumptions the company applied in quantifying the accrued obligation at the end of the most recently completed financial year. The company may satisfy all or part of this disclosure by referring to the disclosure of assumptions in its financial statements, footnotes to the financial statements or discussion in its management's discussion and analysis.

(7) In column (f), disclose the non-compensatory changes in the accrued obligation for the company's most recently completed financial year. Include all items that are not compensatory, such as changes in assumptions other than those already included in column (e) because they were made as a consequence of an amendment to benefit terms, employee contributions and interest on the accrued obligation at the start of the year.

(8) In column (g), disclose the accrued obligation at the end of the most recently completed financial year.

5.2 Defined contribution plans table

(1) Complete this table for all pension plans that provide for payments or benefits at, following or in connection with retirement, excluding defined benefit plans. For all disclosure in this table, use the same assumptions and methods used for financial statement reporting purposes under the accounting principles used to prepare the company's financial statements, as permitted by NI 52-107.

Name (a)	Accumulated value at start of year ($) (b)	Compensatory ($) (c)	Non-compensatory ($) (d)	Accumulated value at year end ($) (e)
CEO				
CFO				
A				
B				
C				

(2) In column (c), disclose the employer contribution and above-market or preferential earnings credited on employer and employee contributions. Above-market or preferential earnings applies to non-registered plans and means a rate greater than the rate ordinarily paid by the company or its subsidiary on securities or other obligations having the same or similar features issued to third parties.

(3) In column (d), disclose the non-compensatory amount, including employee contributions and regular investment earnings on employer and employee contributions. Regular investment earnings means all investment earnings in registered defined contribution plans and earnings that are not above market or preferential in other defined contribution plans.

(4) In column (e), disclose the accumulated value at the end of the most recently completed financial year.

Commentary

For pension plans that provide the maximum of: (i) the value of a defined benefit pension; and (ii) the accumulated value of a defined contribution pension, companies should disclose the global value of the pension plan in the defined benefit plans table under section 5.1.

For pension plans that provide the sum of a defined benefit component and a defined contribution component, companies should disclose the respective components of the pension plan. The defined benefit component should be disclosed in the defined benefit plans table under section 5.1 and the defined contribution component should be disclosed in the defined contribution plans table under section 5.2.

5.3 Narrative discussion

Describe and explain for each retirement plan in which an NEO participates, any significant factors necessary to understand the information disclosed in the defined benefit plan table in section 5.1 and the defined contribution plan table in section 5.2.

Commentary

Significant factors described in the narrative required by section 5.3 will vary, but may include:

- *the significant terms and conditions of payments and benefits available under the plan, including the plan's normal and early retirement payment, benefit formula, contribution formula, calculation of interest credited under the defined contribution plan and eligibility standards;*

- *provisions for early retirement, if applicable, including the name of the NEO and the plan, the early retirement payment and benefit formula and eligibility standards. Early retirement means retirement before the normal retirement age as defined in the plan or otherwise available under the plan;*

- *the specific elements of compensation (e.g., salary, bonus) included in applying the payment and benefit formula. If a company provides this information, identify each element separately; and*

- *company policies on topics such as granting extra years of credited service, including an explanation of who these arrangements relate to and why they are considered appropriate.*

5.4 Deferred compensation plans

Describe the significant terms of any deferred compensation plan relating to each NEO, including:

(a) the types of compensation that can be deferred and any limitations on the extent to which deferral is permitted (by percentage of compensation or otherwise);

(b) significant terms of payouts, withdrawals and other distributions; and

(c) measures for calculating interest or other earnings, how and when these measures may be changed, and whether an NEO or the company chose these measures. Quantify these measures wherever possible.

ITEM 6 – TERMINATION AND CHANGE OF CONTROL BENEFITS

6.1 Termination and change of control benefits

(1) For each contract, agreement, plan or arrangement that provides for payments to an NEO at, following or in connection with any termination (whether voluntary, involuntary or constructive), resignation, retirement, a change in control of the company or a change in an NEO's responsibilities, describe, explain, and where appropriate, quantify the following items:

(a) the circumstances that trigger payments or the provision of other benefits, including perquisites and pension plan benefits;

(b) the estimated incremental payments, payables, and benefits that are triggered by, or result from, each circumstance, including timing, duration and who provides the payments and benefits;

(c) how the payment and benefit levels are determined under the various circumstances that trigger payments or provision of benefits;

(d) any significant conditions or obligations that apply to receiving payments or benefits. This includes but is not limited to, non-compete, non-solicitation, non-disparagement or confidentiality agreements. Include the term of these agreements and provisions for waiver or breach; and

(e) any other significant factors for each written contract, agreement, plan or arrangement.

(2) Disclose the estimated incremental payments, payables, and benefits even if it is uncertain what amounts might be paid in given circumstances under the various plans and arrangements, assuming that the triggering event took place on the last business day of the company's most recently completed financial year. For valuing share-based awards or option-based awards, use the closing market price of the company's securities on that date.

If the company is unsure about the provision or amount of payments or benefits, make a reasonable estimate (or a reasonable estimate of the range of amounts) and disclose the significant assumptions underlying these estimates.

(3) Despite subsection (1), the company is not required to disclose the following:

(a) Perquisites and other personal benefits if the aggregate of this compensation is less than $50,000. State the individual perquisites and personal benefits as required by paragraph 3.1(10)(a).

(b) Information about possible termination scenarios for an NEO whose employment terminated in the past year. The company must only disclose the consequences of the actual termination.

(c) Information in respect of a scenario described in subsection (1) if there will be no incremental payments, payables, and benefits that are triggered by, or result from, that scenario.

Commentary

1. Subsection (1) does not require the company to disclose notice of termination without cause, or compensation in lieu thereof, which are implied as a term of an employment contract under common law or civil law.

2. Item 6 applies to changes of control regardless of whether the change of control results in termination of employment.

3. Generally, there will be no incremental payments, payables, and benefits that are triggered by, or result from, a scenario described in subsection (1) for compensation that has been reported in the summary compensation table for the most recently completed financial year or for a financial year before the most recently completed financial year.

If the vesting or payout of the previously reported compensation is accelerated, or a performance goal or similar condition in respect of the previously reported compensation is waived, as a result of a scenario described in subsection (1), the incremental payments, payables, and benefits should include the value of the accelerated benefit or of the waiver of the performance goal or similar condition.

ITEM 7 – DIRECTOR COMPENSATION

7.1 Director compensation table

(1) Complete this table for all amounts of compensation provided to the directors for the company's most recently completed financial year.

Name (a)	Fees earned ($) (b)	Share-based awards ($) (c)	Option-based awards ($) (d)	Non-equity incentive plan compensation ($) (e)	Pension value ($) (f)	All other compensation ($) (g)	Total ($) (h)
A							
B							
C							
D							
E							

(2) All forms of compensation must be included in this table.

(3) Complete each column in the manner required for the corresponding column in the summary compensation table in section 3.1, in accordance with the requirements of Item 3, as supplemented by the commentary to Item 3, except as follows:

(a) In column (a), do not include a director who is also an NEO if his or her compensation for service as a director is fully reflected in the summary compensation table and elsewhere in this form. If an NEO is also a director who receives compensation for his or her services as a director, reflect the director compensation in the summary compensation table required by section 3.1 and provide a footnote to this table indicating that the relevant disclosure has been provided under section 3.4.

(b) In column (b), include all fees awarded, earned, paid, or payable in cash for services as a director, including annual retainer fees, committee, chair, and meeting fees.

(c) In column (g), include all compensation paid, payable, awarded, granted, given, or otherwise provided, directly or indirectly, by the company, or a subsidiary of the company, to a director in any capacity, under any other arrangement. This includes, for greater certainty, all plan and non-plan compensation, direct and indirect pay, remuneration, economic or financial award, reward, benefit, gift or perquisite paid, payable, awarded, granted, given, or otherwise provided to the director for services provided, directly or indirectly, to the company or a subsidiary of the company. In a footnote to the table, disclose these amounts and describe the nature of the services provided by the director that are associated with these amounts.

(d) In column (g), include programs where the company agrees to make donations to one or more charitable institutions in a director's name, payable currently or upon a designated event such as the retirement or death of the director. Include a footnote to the table disclosing the total dollar amount payable under the program.

7.2 Narrative discussion

Describe and explain any factors necessary to understand the director compensation disclosed in section 7.1.

Commentary

Significant factors described in the narrative required by section 7.2 will vary, but may include:

- *disclosure for each director who served in that capacity for any part of the most recently completed financial year;*
- *standard compensation arrangements, such as fees for retainer, committee service, service as chair of the board or a committee, and meeting attendance;*
- *any compensation arrangements for a director that are different from the standard arrangements, including the name of the director and a description of the terms of the arrangement; and*
- *any matters discussed in the compensation discussion and analysis that do not apply to directors in the same way that they apply to NEOs such as practices for granting option-based awards.*

7.3 Share-based awards, option-based awards and non-equity incentive plan compensation

Provide the same disclosure for directors that is required under Item 4 for NEOs.

ITEM 8 – COMPANIES REPORTING IN THE UNITED STATES

8.1 Companies reporting in the United States

(1) Except as provided in subsection (2), SEC issuers may satisfy the requirements of this form by providing the information required by Item 402 "Executive compensation" of Regulation S-K under the 1934 Act.

(2) Subsection (1) does not apply to a company that, as a foreign private issuer, satisfies Item 402 of Regulation S-K by providing the information required by Items 6.B "Compensation" and 6.E.2 "Share Ownership" of Form 20-F under the 1934 Act.

ITEM 9 – EFFECTIVE DATE AND TRANSITION

9.1 Effective date

(1) This form comes into force on December 31, 2008.

(2) This form applies to a company in respect of a financial year ending on or after December 31, 2008.

9.2 Transition

(1) The form entitled Form 51-102F6 *Statement of Executive Compensation*, which came into force on March 30, 2004, as amended,

(a) does not apply to a company in respect of a financial year ending on or after December 31, 2008, and

(b) for greater certainty, applies to a company that is required to prepare and file executive compensation disclosure because

(i) the company is sending an information circular to a securityholder under paragraph 9.1(2)(a) of National Instrument 51-102 *Continuous Disclosure Obligations*, the information circular includes the disclosure required by Item 8 of Form 51-102F5, and the information circular is in respect of a financial year ending before December 31, 2008, or

(ii) the company is filing an AIF that includes the disclosure required by Item 8 of Form 51-102F5, in accordance with Item 18 of Form 51-102F2, and the AIF is in respect of a financial year ending before December 31, 2008.

(2) A company that is required to prepare and file executive compensation disclosure for a reason set out in paragraph (1)(b) may satisfy that requirement by preparing and filing the disclosure required by this form.

Schedule 1

AMENDMENT INSTRUMENT FOR
NATIONAL INSTRUMENT 51-102
CONTINUOUS DISCLOSURE OBLIGATIONS

1. National Instrument 51-102 *Continuous Disclosure Obligations* is amended by this Instrument.

2. Part 9 is amended by adding the following section after section 9.3:

"9.3.1 Content of Information Circular

(1) Subject to Item 8 of Form 51-102F5, if a reporting issuer sends an information circular to a securityholder under paragraph 9.1(2)(a), the issuer must

(a) disclose all compensation paid, payable, awarded, granted, given, or otherwise provided, directly or indirectly, by the issuer, or a subsidiary of the issuer, to each NEO and director, in any capacity, including, for greater certainty, all plan and non-plan compensation, direct and indirect pay, remuneration, economic or financial award, reward, benefit, gift or perquisite paid, payable, awarded, granted, given, or otherwise provided to the NEO or director for services provided, directly or indirectly, to the issuer or a subsidiary of the issuer, and

(b) include detail and discussion of the compensation, and the decision-making process relating to compensation, presented in such a way that it provides a reasonable person, applying reasonable effort, an understanding of

(i) how decisions about NEO and director compensation are made,

(ii) the compensation the board of directors intended the issuer to pay, make payable, award, grant, give or otherwise provide to each NEO and director, and

(iii) how specific NEO and director compensation relates to the overall stewardship and governance of the reporting issuer.

(2) The disclosure required under subsection (1) must be provided for the periods set out in, in accordance with, and subject to any exemptions set out in, Form 51-102F6 *Statement of Executive Compensation*, which came into force on December 31, 2008.

(3) For the purposes of this section, "NEO" and "plan" have the meaning ascribed to those terms in Form 51-102F6 *Statement of Executive Compensation*, which came into force on December 31, 2008**.**

(4) This section does not apply to an issuer in respect of a financial year ending before December 31, 2008."

3. Part 11 is amended by adding the following section after section 11.5:

"11.6 Executive Compensation Disclosure for Certain Reporting Issuers

(1) A reporting issuer that does not send to its securityholders an information circular that includes the disclosure required by Item 8 of Form 51-102F5 and that does not file an AIF that includes the executive compensation disclosure required by Item 18 of Form 51-102F2 must

(a) disclose all compensation paid, payable, awarded, granted, given, or otherwise provided, directly or indirectly, by the issuer, or a subsidiary of the issuer, to each NEO and director, in any capacity, including, for greater certainty, all plan and non-plan compensation, direct and indirect pay, remuneration, economic or financial award, reward, benefit, gift or perquisite paid, payable, awarded, granted, given, or

otherwise provided to the NEO or director for services provided, directly or indirectly, to the issuer or a subsidiary of the issuer, and

(b) include detail and discussion of the compensation, and the decision-making process relating to compensation, presented in such a way that it provides a reasonable person, applying reasonable effort, an understanding of

(i) how decisions about NEO and director compensation are made,

(ii) the compensation the board of directors intended the issuer to pay, make payable, award, grant, give or otherwise provide to each NEO and director, and

(iii) how specific NEO and director compensation relates to the overall stewardship and governance of the reporting issuer.

(2) The disclosure required under subsection (1) must be provided for the periods set out in, and in accordance with, Form 51-102F6 *Statement of Executive Compensation*, which came into force on December 31, 2008.

(3) The disclosure required under subsection (1) must be filed not later than 140 days after the end of the reporting issuer's most recently completed financial year.

(4) For the purposes of this section, "NEO" and "plan" have the meaning ascribed to those terms in Form 51-102F6 *Statement of Executive Compensation*, which came into force on December 31, 2008**.**

(5) This section does not apply to an issuer that satisfies securities legislation requirements relating to information circulars, proxies and proxy solicitation under section 4.6 or 5.7 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

(6) This section does not apply to an issuer in respect of a financial year ending before December 31, 2008."

4. This Instrument comes into force on December 31, 2008.

Schedule 2

AMENDMENT INSTRUMENT FOR
FORM 51-102F5 *INFORMATION CIRCULAR* OF
NATIONAL INSTRUMENT 51-102
CONTINUOUS DISCLOSURE OBLIGATIONS

1. Form 51-102F5 *Information Circular* is amended by this Instrument.

2. Subpart 1(c) is amended by adding the following after "securityholder of the company.":

"However, you may not incorporate information required to be included in Form 51-102F6 *Statement of Executive Compensation* by reference into your information circular."

3. This Instrument comes into force on December 31, 2008.

Schedule 3

AMENDMENT INSTRUMENT FOR
FORM 51-102F6 *STATEMENT OF EXECUTIVE COMPENSATION*,
WHICH CAME INTO FORCE ON MARCH 30, 2004, AS AMENDED,
OF NATIONAL INSTRUMENT 51-102
CONTINUOUS DISCLOSURE OBLIGATIONS

1. Form 51-102F6 *Statement of Executive Compensation, which came into force on March 30, 2004, as amended,* is amended by this Instrument.

2. The title is amended by adding "(in respect of financial years ending before December 31, 2008)" after "*Statement of Executive Compensation*".

3. The following Item is added after Item 14:

"**Item 15 – Repeal**

15.1 This form is repealed on March 31, 2010."

4. This Instrument comes into force on December 19, 2008.

5.2.1 CSA Notice of NP 11-204 Process for Registration in Multiple Jurisdictions and Amendments to MI 11-102 Passport System, Companion Policy 11-102CP Passport System, NP 11-202 Process for Prospectus Reviews in Multiple Jurisdictions, and NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions

NOTICE OF
NATIONAL POLICY 11-204 *PROCESS FOR REGISTRATION IN MULTIPLE JURISDICTIONS*
AND
AMENDMENTS TO
MULTILATERAL INSTRUMENT 11-102 *PASSPORT SYSTEM*,
COMPANION POLICY 11-102CP *PASSPORT SYSTEM*,
NATIONAL POLICY 11-202 *PROCESS FOR PROSPECTUS REVIEWS IN MULTIPLE JURISDICTIONS*, AND
NATIONAL POLICY 11-203 *PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE JURISDICTIONS*

Introduction — Passport/Interface System

Members of the Canadian Securities Administrators (CSA or we), other than the Ontario Securities Commission (OSC), (passport regulators) will implement the next phase of the passport system for registrants and amend phase II of passport for issuers effective when National Instrument 31-103 *Registration Requirements* (proposed NI 31-103) is implemented. Phase II of passport for issuers covers continuous disclosure, prospectuses and discretionary exemption applications. The amendments deal with issues that have arisen since implementation in March 2008.

All CSA members, including the OSC, will implement a new national policy setting out the processes for registration in multiple jurisdictions (NP 11-204) and amend the national policies for the filing and review of prospectuses (NP 11-202) and exemptive relief applications (NP 11-203). CSA members will also repeal National Instrument 31-101 *National Registration System* (NI 31-101) and its related policy and forms.

Passport system

The amendments to Multilateral Instrument 11-102 *Passport System* (MI 11-102) and Companion Policy 11-102CP *Passport System* (CP 11-102) are initiatives of the passport regulators.

Each of the passport regulators will make the amendments to MI 11-102 as a rule or regulation and will adopt the amendments to CP 11-102. The text of the amendments to MI 11-102 is set out in Schedule A. Appendix D to MI 11-102 as amended is in Schedule B and CP 11-102 as amended is in Schedule C.

MI 11-102 and CP 11-102 implement, in the main areas of securities regulation, a system that gives a market participant access to the capital markets in multiple jurisdictions by dealing only with its principal regulator and meeting the requirements of one set of harmonized laws. The amendments to MI 11-102 and CP 11-102 implement the next phase of the passport system for registrants and deal with issues that have arisen since the implementation of phase II of passport for issuers.

Although the OSC is not adopting MI 11-102 or the amendments to MI 11-102, it can be a principal regulator under the instrument, thereby giving market participants in Ontario access to the capital markets in passport jurisdictions by dealing only with the OSC.

National policy on the process for registration in multiple jurisdictions

NP 11-204 is an initiative of the CSA. Each member of the CSA will adopt NP 11-204. The text of NP 11-204 is in Schedule D.

NP 11-204 and the amendments to MI 11-102 replace NI 31-101 and its related policy and forms. Each CSA member will repeal:

- NI 31-101,
- Form 31-101F1 *Election to use NRS and Determination of Principal Regulator*, and
- Form 31-101F2 *Notice of Change*,

and will rescind

- National Policy 31-201 *National Registration System*

(collectively, NRS)

An instrument repealing NI 31-101 is attached as Schedule E.

NP 11-204 sets out the procedures for a firm or individual to register in more than one jurisdiction. It includes an interface similar to NRS for registrants in passport jurisdictions to gain access to the Ontario market. Ontario registrants get direct access to passport jurisdictions under the amendments to MI 11-102.

Under MI 11-102 and NP 11-204, the principal regulator for a firm will usually be the regulator of the jurisdiction where the firm's head office is located and for an individual will be the regulator of the jurisdiction where the individual's working office is located.

Consequential amendments

All CSA members will also adopt consequential amendments to the following policies:

- NP 11-202
- NP 11-203

The text of the consequential amendments to NP 11-202 is in Schedules F and NP 11-203 as amended is in Schedule G.

In addition, consequential amendments related to passport will be included in proposed NI 31-103 and its companion policy and in the related amendments to National Instrument 31-102 National Registration Database (NI 31-102) and National Instrument 33-109 Registration Information (NI 33-109).

Local non-harmonized requirements

Most regulatory requirements for registrants will be harmonized through proposed NI 31-103. However, registrants will be subject to a few additional local requirements that continue to exist in some jurisdictions. CP 11-102 includes a description of these requirements.

In addition, proposed NI 31-103 provides transition periods for certain fit and proper requirements (solvency and proficiency). The transition provisions allow registrants to carry on their activities on the basis of the current fit and proper requirements that apply in the principal jurisdiction under NRS. After the transition period, registrants must comply with the new requirements in proposed NI 31-103. Please refer to proposed NI 31-103 for further details.

Effective date and transition

A key foundation for the passport system is a set of nationally harmonized regulatory requirements consistently interpreted and applied throughout Canada. Implementation of passport for registrants depends on the adoption of proposed NI 31-103. CSA members expect to implement consequential amendments to national and local rules when we adopt proposed NI 31-103. In addition, governments in some jurisdictions will need to proclaim act amendments to harmonize registration requirements. We will implement the changes described in this notice when we adopt proposed NI 31-103.

The timing of adoption of proposed NI 31-103 is currently uncertain. Please refer to CSA Notice 31-309 for more information.

We will republish the documents if we need to revise them to reflect the final versions of NI 31-103, NI 31-102 or NI 33-109.

The amendments to MI 11-102 apply to an individual or firm seeking registration on or after the effective date of proposed NI 31-103. In addition, the amendments apply to an individual or firm that is registered on that date unless the individual or firm requests and obtains an exemption under section 6.9(2) of MI 11-102.

The amendments to passport for issuers apply to prospectuses filed under National Instrument 71-101 *The Multijurisdictional Disclosure System* on or after the effective date of proposed NI 31-103.

The amendments to MI 11-102 and CP 11-102 refer to rules (e.g., proposed NI 31-103) and Act provisions that CSA expects to be in force on the effective date.

Background

CSA published the proposal to streamline the process for registration on July 18, 2008. All CSA members published NP 11-204 and the amendments to NP 11-202 and NP 11-203 and the repeal of NRS. In the same publication, the passport regulators published the amendments to MI 11-102 and CP 11-102.

Summary of Written Comments

CSA received 5 comment letters in response to the request for comments published in July 2008. All the comment letters are posted on the Alberta Securities Commission website at www.albertasecurities.com. We thank commenters for their submissions.

CSA considered the comments and is publishing a summary of comments and responses as Schedule H to this notice. The summary includes the names of the commenters, a summary of their comments, and the CSA responses to comments.

Summary of Changes

MI 11-102

Passport regulators revised the amendments to MI 11-102 to delete the requirement that an NPR acknowledge receipt of a submission as a condition for a firm to become registered in a non-principal jurisdiction. Instead, the firm's registration will take effect when it submits a completed form to the PR when registering in an additional jurisdiction. The PR will notify the firm of the legal date of registration in the non-principal jurisdiction and will explain why this date may be earlier than the 'effective date' shown on NRD.

Passport regulators also added a condition that a firm or individual is a member of a self-regulatory organization (SRO) if required in the local jurisdiction. This ensures that necessary SRO memberships are obtained prior to registration under passport.

CP 11-102

Passport regulators made changes to CP 11-102 to reflect the revisions noted above and to add a description of local registration requirements that exist in Québec and British Columbia.

NP 11-204

CSA made changes to NP 11-204 to reflect the revisions noted above.

Questions

Please refer your questions to any of:

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December 19, 2008

SCHEDULE D

NATIONAL POLICY 11-204
PROCESS FOR REGISTRATION IN MULTIPLE JURISDICTIONS

NATIONAL POLICY 11-204
PROCESS FOR REGISTRATION IN MULTIPLE JURISDICTIONS

PART 1 APPLICATION

1.1 Application

This policy describes procedures for a firm or individual to register in more than one Canadian jurisdiction.

PART 2 DEFINITIONS

2.1 Definitions

In this policy,

"IIROC" means the Investment Industry Regulatory Organization of Canada;

"interface registration" means a registration described in section 3.3 of this policy;

"MI 11-102" means Multilateral Instrument 11-102 *Passport System*;

"NI 31-102" means National Instrument 31-102 *National Registration Database*;

"NRD" has the same meaning as in NI 31-102;

"NRD submission" has the same meaning as in NI 31-102;

"OSC" means the regulator in Ontario;

"passport jurisdiction" means the jurisdiction of a passport regulator;

"passport registration" means a registration described in section 3.2 of this policy;

"passport regulator" means a regulator that has adopted MI 11-102;

"permitted individual" has the same meaning as in NI 33-109;

"regulator" means a securities regulatory authority or regulator; and

"SRO" means self-regulatory organization.

2.2 Further definitions

Terms used in this policy and that are defined in National Instrument 14-101 *Definitions*, MI 11-102 or Companion Policy 11-102CP *Passport System* have the same meanings as in those instruments and policy.

2.3 Interpretation

Unless the context indicates otherwise, a reference in this policy to a 'regulator', 'principal regulator', or the OSC is a reference to the SRO to whom the regulator, principal regulator, or OSC has delegated, assigned or authorized the performance of all or part of its registration function or to the relevant office of that SRO for the jurisdiction of the regulator or principal regulator.

PART 3 OVERVIEW AND PRINCIPAL REGULATOR

3.1 Overview

This policy deals with a firm's or individual's registration in multiple jurisdictions in the following circumstances:

(i) The firm or individual is seeking registration or is registered in the firm's or individual's principal jurisdiction (including Ontario) and the firm or individual seeks registration in another jurisdiction (excluding Ontario). This is a "passport registration."

(ii) The firm or individual is seeking registration or is registered in the firm's or individual's principal jurisdiction, the principal regulator is a passport regulator, and the firm or individual seeks registration in Ontario. This is an "interface registration."

3.2 Passport registration

Under MI 11-102, if a firm or individual seeks registration or is registered in the firm's or individual's principal jurisdiction (including Ontario) and seeks registration in another jurisdiction (excluding Ontario), the firm or individual makes a submission to register in the other jurisdiction. Only the principal regulator reviews the firm's or individual's submission and the firm or individual's sponsoring firm deals only with the firm's or individual's principal regulator. The principal regulator reviews the firm's or individual's submission to register in the other jurisdiction only to ensure that it is complete. The other regulator does not conduct a review of the firm or individual.

3.3 Interface registration

If a firm or individual seeks registration or is registered in the firm's or individual's principal jurisdiction, the principal regulator is a passport regulator, and the firm or individual seeks registration in Ontario, the firm or individual submits an application to register in Ontario. The principal regulator will review the firm's or individual's application to register in Ontario and the OSC will decide whether to opt in or opt out of the principal regulator's determination. The firm or the individual's sponsoring firm will generally deal only with the firm's or the individual's principal regulator.

3.4 Registration in passport jurisdictions and Ontario

If a firm or individual whose principal regulator is a passport regulator seeks registration in a non-principal passport jurisdiction and in Ontario, the firm or individual should refer to the processes for

- a passport registration, to register in the non-principal passport jurisdiction, and
- an interface registration, to register in Ontario.

3.5 Registration by SRO

In some jurisdictions, the regulator has delegated, assigned or authorized an SRO to perform all or part of its registration function. The SRO continues to perform these functions in the relevant jurisdictions for a passport registration or an interface registration under this policy. At the date of this policy, the following arrangements apply to registration of IIROC member firms and their representatives.

(a) If Alberta, Saskatchewan, British Columbia or Newfoundland and Labrador is the principal jurisdiction of a firm or individual, the firm or the individual's sponsoring firm should deal with the office of IIROC, instead of the regulator, in or for that jurisdiction.

(b) If Ontario or Québec is the principal jurisdiction of an individual, the individual's sponsoring firm should deal with the office of IIROC, instead of the regulator, in or for that jurisdiction in respect of the individual.

3.6 Principal regulator

(1) For purposes of a passport registration and an interface registration under this policy, the principal regulator of a firm or individual is identified in the same manner as in section 6.1 of MI 11-102. This section summarizes section 6.1 of MI 11-102 and provides guidance for identifying a firm's or individual's principal regulator. The regulator of any jurisdiction can be a principal regulator for registration under this policy.

If a firm or individual makes an application for exemptive relief from a requirement in Part 4 of NI 31-103 or Part 2 of NI 33-109 in connection with an application for registration in the principal jurisdiction, the principal regulator for the application for exemptive relief is identified in the same manner as in section 4.4.1of MI 11-102. If a firm or individual makes any other application for exemptive relief from a registration requirement, the principal regulator is identified in the same manner as in sections 4.1 to 4.4 of MI 11-102. If a firm or individual is not seeking the relief, or is seeking more than one item of relief and not all of the items of relief, in its principal jurisdiction, the principal regulator is identified in the same manner as in section 4.5 of MI 11-102. A firm or individual should refer to section 3.6 of NP 11-203 for further guidance on how to identify the principal regulator for exemptive relief application purposes.

(2) Subject to subsection (5) of this section and section 3.7 of this policy, the principal regulator of a firm is the regulator in the jurisdiction where the firm has its head office, unless the firm's head office is outside Canada. A domestic firm identifies its head office in item A *Contact Information* of Form 33-109F6 and this information is reflected on NRD.

(3) For greater certainty, a firm is a domestic firm if it is a legal entity and has a head office in Canada. For example, a US subsidiary of a foreign firm is a domestic firm. A Canadian branch office of a foreign firm is not.

(4) Subject to subsection (7) of this section and section 3.7 of this policy, the principal regulator of an individual is the regulator in the jurisdiction where the individual has his or her working office, unless the individual's working office is outside Canada. The working office of a domestic individual is the office of the sponsoring firm where the individual does most of his or her business. A domestic individual identifies his or her working office in item 9 Location of Employment of Form 33-109F4 and this information is reflected on NRD.

(5) Subject to section 3.7 of this policy, if the head office of a firm is outside Canada, the principal regulator for the foreign firm is the regulator in the jurisdiction of Canada the firm identified as its principal jurisdiction in its most recently filed Form 33-109F5 or Form 33-109F6. These forms require a foreign firm to identify its principal jurisdiction in Canada, which is the jurisdiction with which the foreign firm has the most significant connection.

(6) The factors a foreign firm should consider in identifying the principal regulator based on its most significant connection are, in order of influential weight, the jurisdiction in which the firm has or expects to have

- its principal Canadian office, and
- the highest number of clients as of the end of the firm's most recently completed or first financial year.

(7) Subject to section 3.7 of this policy, if the working office of an individual is outside Canada, the principal regulator of the foreign individual is the principal regulator of the individual's sponsoring firm.

(8) A firm should notify the regulator by providing the information about its head office or principal jurisdiction in Form 33-109F6 in accordance with NI 33-109 if

- in the case of a domestic firm, the firm changes the jurisdiction of its head office,
- in the case of a foreign firm,
    - the firm changes the jurisdiction of its principal Canadian office, or
    - the jurisdiction where the firm has the highest number of clients as of the end of its most recently completed financial year changes.

CP 33-109 provides that the firm may make this submission to a non-principal regulator by giving it only to its principal regulator. The submission should be made in a format other than NRD format (i.e., by e-mail, fax or sending the submission to the regulator's address). A firm should refer to Appendix B of CP 33-109 for guidance on how to make this submission in non-NRD format.

(9) In the event of a change in a domestic individual's working office, the individual should make the NRD Submission for a *Location of Employment Change* in accordance with NI 33-109.

(10) Under MI 11-102, a foreign firm registered in a non-principal passport jurisdiction before [insert effective date of Part 6 of MI 11-102] must submit on or before [insert date that is 30 days after effective date of Part 6 of MI 11-102] the information about its principal jurisdiction in Form 33-109F6 in accordance with NI 33-109 to identify its principal regulator. A foreign firm may make its submission to a non-principal passport regulator by giving it only to its principal regulator. The submission should be made in a format other than NRD format. Foreign firms should refer to Appendix B of CP 33-109 for guidance on how to make this submission in non-NRD format.

(11) Under MI 11-102, the principal regulator for a foreign individual is the same as the principal regulator for the individual's sponsoring firm. For that reason, the foreign individual is not required to make a submission to identify the individual's principal regulator.

3.7 Discretionary change of principal regulator

(1) If a regulator thinks that the principal regulator identified under section 3.6 of this policy is inappropriate, the regulator will give the firm or individual written notice of the appropriate principal regulator for the firm or individual and the reasons for the change. The regulator specified in the notice will be the firm or individual's principal regulator as of the later of the date the firm or individual receives the notice and the effective date specified in the notice, if any. To streamline the process, the regulators will give the written notice relating to the principal regulator of an individual to the individual's sponsoring firm.

(2) Regulators do not generally expect changing the principal regulator for a domestic firm or domestic individual. Regulators anticipate changing the principal regulator for a foreign firm only in exceptional circumstances. Regulators may change the principal regulator for a foreign individual if the foreign individual is not registered in his or her sponsoring firm's principal jurisdiction or if the individual's principal regulator under this policy does not correspond to his or her principal regulator as shown on NRD. Regulators will give written notice of a change in principal regulator.

PART 4 GENERAL GUIDANCE FOR FIRMS AND INDIVIDUALS

4.1 Effect of submission

(1) If an individual makes an NRD submission for the individual in relation to a passport registration or an interface registration in a non-principal jurisdiction, this has the effect of submitting the individual's entire Form 33-109F4 in the jurisdiction.

(2) Because firms do not file or submit their Form 33-109F6 on NRD, the form requires instead that the firm make a solemn declaration or affirmation that, among other things,

- the information provided on the form is true and contains all facts necessary to prevent the information from being false or misleading in the circumstances, and
- with respect to a submission made in respect of a non-principal jurisdiction, at the date of the submission,
    - the firm has filed or submitted all the information required to be filed or submitted in relation to the firm's registration in its principal jurisdiction,
    - the information is true and contains all facts necessary to prevent the information from being false or misleading in the circumstances.

In addition, the form requires the firm to authorize its principal regulator to give each non-principal regulator access to any information the firm has filed or submitted to the principal regulator under securities legislation of the principal jurisdiction in relation to the firm's registration in that jurisdiction.

Should a regulator discover that a firm made a false declaration or affirmation, the regulator may take appropriate enforcement action against the firm.

4.2 Fees

(1) A firm or an individual must submit any required fees for the firm or the individual under applicable securities legislation in the principal jurisdiction and the non-principal passport jurisdiction when making the relevant submission. A submission is not considered complete unless the required fees are submitted under applicable securities legislation in relevant jurisdictions.

(2) A firm may pay the fee related to a submission by sending a cheque to the relevant regulator or submitting payment to each relevant regulator directly on NRD. A domestic individual must pay the fee related to a submission to each relevant regulator by submitting it on NRD. A foreign individual must pay the fee related a submission by sending a cheque to the relevant regulator or submitting payment to each relevant regulator directly on NRD.

4.3 Firm submissions

A firm should make a submission under section 5.2(1) to (3) or section 6.2(1) or (2) of this policy in a format other than NRD format. Firms should refer to Appendix B of CP 33-109 for guidance on how to make a submission in non-NRD format.

PART 5 PASSPORT REGISTRATION

5.1 Application

(1) This part applies to a firm or individual seeking registration in any category (other than a firm seeking registration as a restricted dealer) in a non-principal passport jurisdiction. To register in a non-principal jurisdiction, a restricted dealer must apply directly to the non-principal passport regulator. This part applies to an individual seeking registration in a non-principal passport jurisdiction to act on behalf of a restricted dealer if the restricted dealer is registered as such in that jurisdiction and its principal jurisdiction.

(2) A firm seeking registration as a restricted dealer must complete the entire Form 33-109F6 and submit it, along with all supporting materials, in each jurisdiction where it seeks registration as such.

5.2 Filing of materials

For a firm

(1) Under MI 11-102, a firm that seeks registration in a non-principal passport jurisdiction in a category for which the firm is registered or is concurrently seeking registration in its principal jurisdiction (including Ontario) should complete the entire Form 33-109F6 or the items of Form 33-109F6 specified in the General Instructions to the form for the firm's particular situation. The firm should submit the F6 or relevant items together with all supporting materials. Making the submission to the principal regulator satisfies the firm's obligation under MI 11-102 to make the submission to the regulator in the non-principal passport jurisdiction.

For an individual

(2) Under MI 11-102, an individual who seeks registration in a non-principal passport jurisdiction in a category for which the individual is registered or is concurrently seeking registration in his or her principal jurisdiction (including Ontario) should submit a completed Form 33-109F4, or in some cases a completed Form 33-109F2, for the individual in accordance with NI 33-109.

(3) NI 33-109 requires a completed Form 33-109F4 or completed Form 33-109F2 to be submitted on NRD. NRD automatically submits the relevant form to the appropriate regulators. In some circumstances, it is not necessary to complete the entire form. For example, it is not necessary to complete the entire form for an individual to seek registration in the same category in an additional jurisdiction, to add or remove a category of registration, or to register in a category with an additional or a new sponsoring firm. In those circumstances, the relevant NRD submission indicates which items of the form to complete.

(4) Making an NRD submission under subsection (6) satisfies the individual's obligation under MI 11-102 to submit a completed Form 33-109F4.

Fees in non-principal jurisdiction

(5) Fees required for a firm or individual to register automatically in a non-principal passport jurisdiction under MI 11-102 are annual registration fees. If the principal regulator refuses to register the firm or individual, the regulator in any non-principal passport jurisdiction in respect of which a submission was made will return the fees submitted in relation to the submission.

5.3 Registration

(1) NRD will record a firm's or an individual's category of registration in the principal jurisdiction, any T&C imposed by the principal regulator, and any exemption from Part 4 of NI 31-103 or Part 2 of NI 33-109 granted by the principal regulator.

(2) Under MI 11-102, a firm or individual that is registered in a category in the firm's or individual's principal jurisdiction is automatically registered in a non-principal passport jurisdiction in the same category as in the firm's or the individual's principal jurisdiction if the firm or individual submitted the relevant completed NI 33-109 form and is a member of an SRO if that is required for that category of registration.

For a mutual fund dealer based in Québec, the SRO condition means that the firm must be a member of the Mutual Fund Dealers Association of Canada (MFDA) before it can register in another jurisdiction. However, this condition does not apply if the firm has an exemption in the local jurisdiction from the requirement to be a member of the MFDA.

For a representative of a mutual fund dealer or scholarship plan dealer whose working office is outside Québec, the SRO condition means that he or she must be a member of the Chambre de la sécurité financière before he or she can become registered in Québec. This condition does not apply if the individual has an exemption in Québec from the requirement to be a member of the Chambre.

If a firm or individual is registered in the same category in the principal jurisdiction and in the non-principal passport jurisdiction, MI 11-102 provides that a T&C imposed on the registration in the principal jurisdiction applies as if it were imposed in the non-principal passport jurisdiction. The T&C applies until the earlier of the date that the regulator that imposed it cancels or revokes it, or the T&C expires.

(3) NRD will record for each non-principal passport jurisdiction in respect of which the firm or individual made the relevant submission

- the firm's or the individual's automatic registration in the same category as in the principal jurisdiction,

- any T&C imposed by the principal regulator that applies automatically to the firm or individual in the non-principal jurisdiction, and

- any exemption from Part 4 of NI 31-103 or Part 2 of NI 33-109 granted by the principal regulator that applies automatically in the non-principal jurisdiction.

If a firm or individual made the relevant submission to register concurrently in the principal jurisdiction and one or more non-principal passport jurisdictions, NRD will show the same registration date in the principal jurisdiction and the non-principal passport jurisdiction(s) for an individual. For a firm, NRD may show a different registration date in the principal jurisdiction and the non-principal passport jurisdiction(s). If that is the case, the registration date in the non-principal passport jurisdiction(s) is the same as the registration date in the principal jurisdiction. The principal regulator will confirm the firm's registration date in each non-principal passport jurisdiction outside NRD.

If a firm or individual is already registered in the principal jurisdiction when the firm or individual makes the relevant submission in respect of a non-principal jurisdiction, NRD will show the date the submission is made in respect of the non-principal passport jurisdiction as the registration date in the non-principal passport jurisdiction for an individual. For a firm, NRD may show a different registration date in the non-principal passport jurisdiction. If that is the case, the registration date in the non-principal passport jurisdiction is the date on which the relevant submission was made in respect of the non-principal passport jurisdiction. The principal regulator will confirm the firm's registration date in the non-principal passport jurisdiction outside NRD.

(4) The principal regulator may grant or have granted a discretionary exemption application from a requirement of Part 4 of NI 31-103 or Part 2 of NI 33-109 in connection with an application to register in the principal jurisdiction. In that case, the exemption applies automatically in the non-principal passport jurisdiction in which the firm or individual is registered automatically under MI 11-102 if certain conditions are met. The conditions are set out section 4.7 of MI 11-102. Among other things, section 4.7(1)(c) of MI 11-102 requires the applicant to give notice of intention to rely on the exemption in the non-principal jurisdiction.

PART 6 INTERFACE REGISTRATION

6.1 Application

(1) This part applies to a firm or an individual seeking registration in any category (other than a firm seeking registration as a restricted dealer) in Ontario when Ontario is a non-principal jurisdiction. To register in Ontario, a restricted dealer must apply directly to the OSC. This part applies to an individual seeking registration in Ontario to act on behalf of a restricted dealer if the restricted dealer is registered as such in Ontario and its principal jurisdiction.

(2) A firm seeking registration as a restricted dealer in Ontario must complete the entire Form 33-109F6 and submit it, along with all supporting materials, directly to the OSC whether Ontario is the firm's principal jurisdiction or non-principal jurisdiction.

6.2 Filing materials

For a firm

(1) If a firm seeks registration in Ontario in a category for which it is concurrently seeking registration in its principal jurisdiction, the firm should complete the entire Form 33-109F6 and submit it to its principal regulator and the OSC. Supporting materials that are required under Form 33-109F6 may be submitted to the OSC by giving them to the principal regulator.

(2) If a firm is registered in a category in its principal jurisdiction and subsequently seeks registration in the same category in Ontario, the firm should complete the items of Form 33-109F6 specified in the General Instructions to the form and submit the form to the principal regulator and the OSC.

Supporting materials that are required under Form 33-109F6 may be submitted to the OSC by giving them to the principal regulator.

(3) If a firm seeks to add a category in its principal jurisdiction and in Ontario, the firm must complete the items of Form 33-109F6 specified in the General Instructions to the form and submit the form to its principal regulator and the OSC.

Supporting materials that are required under Form 33-109F6 may be submitted to the OSC by giving them to the principal regulator.

For an individual

(4) Under NI 33-109, an individual who seeks registration is required to submit a completed Form 33-109F4, or in some cases a completed Form 33-109F2, through NRD. NRD automatically submits the relevant form to the appropriate regulators. In some circumstances, it is not necessary to complete the entire form. For example, it is not necessary to complete the entire form for an individual to seek registration in the same category in an additional jurisdiction, to add or remove a category of registration, or to register in a category with an additional or a new sponsoring firm. In those circumstances, the relevant NRD submission indicates which items of the form to complete.

(5) Making an NRD submission under subsection (4) satisfies the individual's obligation to submit a completed Form 33-109F4.

6.3 Decision-making process

(1) If a firm or individual seeks registration in the principal jurisdiction and in Ontario, the firm or the individual's sponsoring firm will generally deal only with the principal regulator.

(2) The principal regulator will submit to the OSC (or the Ontario office of IIROC, for an individual seeking registration as a representative of an investment dealer) an interface document containing its proposed determination. The OSC will advise the principal regulator whether it opts in to, or opts out of, the principal regulator's proposed determination generally within one business day from receiving the interface document. The Ontario office of IIROC will generally do this within one business day from receiving the interface document.

(3) The OSC may impose a local T&C on a firm's or an individual's registration without opting out.

(4) If the OSC opts out, it will give the principal regulator written reasons for its decision and the principal regulator will forward the reasons to the firm or the individual's sponsoring firm and use its best efforts to resolve the opt-out issues with the firm or the sponsoring firm of the individual and the OSC.

(5) If the principal regulator is able to resolve the OSC's opt-out issues with the firm or the individual's sponsoring firm before NRD shows the firm or individual as being registered in the principal jurisdiction, the OSC may opt back into the interface registration. In that case, the OSC will notify the principal regulator and the firm or the individual's sponsoring firm that it has opted back in. If the principal regulator is unable to resolve the OSC's opt-out issues, the firm or individual's sponsoring firm should deal with the OSC directly to resolve them.

6.4 Decision

(1) NRD will record a firm or individual's category of registration in the principal jurisdiction, any T&C that applies in the principal jurisdiction, and any exemption from Part 4 of NI 31-103 or Part 2 of NI 33-109 granted by the principal regulator. If the OSC opts in, NRD will also record that the firm or individual is registered in the same category in Ontario, including the date when the registration takes effect, and that the OSC has adopted the same T&C and granted the same exemption from Part 4 of NI 31-103 or Part 2 of NI 33-109 as the principal regulator.

(2) If the OSC imposes a local T&C on a firm's or an individual's registration, NRD will also record any T&C applicable in Ontario only.

6.5 Opportunity to be heard

(1) If the principal regulator of a firm or an individual that seeks registration in the principal jurisdiction and, concurrently, in Ontario is not prepared to grant registration or is prepared to grant registration with a T&C, the principal regulator will

- send the firm or the individual's sponsoring firm a copy of the principal regulator's proposed T&C, if applicable, and
- notify the firm or the individual's sponsoring firm that it has the right to request an opportunity to be heard from the principal regulator.

If the OSC opts in to the determination of the principal regulator to refuse registration or impose a T&C, the principal regulator will forward to the firm or the individual's sponsoring firm the OSC's notification that the firm or individual has the right to request an opportunity to the heard from the OSC.

(2) If a firm or individual exercises the right to request an opportunity to be heard from the principal regulator or from the principal regulator and the OSC, the principal regulator will notify the OSC.

(3) If the firm or the individual's sponsoring firm also requests an opportunity to be heard in Ontario, the principal regulator and the OSC will decide whether to provide an opportunity to be heard separately, jointly or concurrently. After the firm or individual had an opportunity to be heard and the principal regulator makes a decision, the principal regulator will send to the OSC a new interface document setting out its proposed determination, if applicable.

(4) If a firm or individual is registered in the principal jurisdiction and, subsequently, applies to register in Ontario, and the OSC decides to refuse registration or impose a local T&C, the OSC will send the principal regulator for the firm or the individual

- a copy of the T&C, if applicable, and
- the OSC's notification that the firm or individual has the right to request an opportunity to be heard in Ontario.

The principal regulator will forward these documents to the firm or individual's sponsoring firm. Thereafter, the firm or individual will deal directly with the OSC.

SCHEDULE E

REPEAL OF NATIONAL INSTRUMENT 31-101 *NATIONAL REGISTRATION SYSTEM*

1. This Instrument repeals National Instrument 31-101 National Registration System.

2. This Instrument comes into force on ●.

SCHEDULE F

AMENDMENTS
TO
NATIONAL POLICY 11-202 *PROCESS FOR PROSPECTUS REVIEWS IN MULTIPLE JURISDICTIONS*

1 ***This Instrument amends National Policy 11-202 Process for Prospectus Reviews in Multiple Jurisdictions.***

2 ***Section 4.1 is amended by striking out "***under this policy***" and substituting "***under this policy and MI 11-102***".***

3 ***Section 7.1(1) is amended by striking out the last sentence and substituting "***To assist filers, the principal regulator will list in its receipt the passport jurisdictions where the prospectus has been filed under MI 11-102 and indicate that a receipt is deemed to be issued in each of those jurisdictions, if the conditions of MI 11-102 have been satisfied.***".***

4 ***Section 7.1 is amended by adding the following:***

(3) If a pro forma prospectus or an amended and restated preliminary prospectus is filed in the principal jurisdiction and a preliminary prospectus is filed in a non-principal jurisdiction, the principal regulator will issue a document that evidences that the regulator in the non-principal jurisdiction issued a receipt for the preliminary prospectus.

5 ***These amendments come into effect on *.***

SCHEDULE G

NATIONAL POLICY 11-203
PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE JURISDICTIONS

Annex A
Form of decision for passport application
Annex B
Form of decision for a dual application
Annex C
Form of decision for coordinated review application
Annex D
Form of decision for hybrid application

NATIONAL POLICY 11-203
PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE JURISDICTIONS

PART 1 APPLICATION

1.1 Application – This policy describes the process for the filing and review of an application for exemptive relief in more than one Canadian jurisdiction.

PART 2 DEFINITIONS

2.1 Definitions – In this policy

"AMF" means the regulator in Québec;

"application" means a request for exemptive relief other than a pre-filing or waiver application as those terms are defined in NP 11-202;

"coordinated review" means the review under this policy of a coordinated review application;

"coordinated review application" means an application described in section 3.4 of this policy;

~~"coordinated review" means the review under this policy of a coordinated review application;~~

"CP 11-102" means Companion Policy 11-102CP *Passport System* to MI 11-102;

"dual application" means an application described in section 3.3 of this policy;

"dual review" means the review under this policy of a dual application;

"exemption" means any discretionary exemption to which Part 4 of MI 11-102 applies;

"exemptive relief" means any approval, decision, declaration, designation, determination, exemption, extension, order, ruling, permission, recognition, revocation, waiver or other relief sought under securities legislation or securities directions;

"filer" means

(a) a person or company filing an application, or

(b) an agent of a person or company referred to in paragraph (a);

"hybrid application" means an application comprised of both

(a) a passport application or dual application, and

(b) a coordinated review application;

"MI 11-102" means Multilateral Instrument 11-102 *Passport System;*

"notified passport jurisdiction" means a passport jurisdiction for which a filer gave the notice referred to in section 4.7(1)(c) of MI 11-102

"NP 11-202" means National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*;

"NP 11-204" means National Policy 11-204 *Process for Registration in Multiple Jurisdictions*;

"OSC" means the regulator in Ontario;

"passport application" means an application described in section 3.2 of this policy;

"passport jurisdiction" means the jurisdiction of a passport regulator;

"passport regulator" means a regulator that has adopted MI 11-102;

"pre-filing" means a consultation with the principal regulator for an application, initiated before the filing of the application, regarding the interpretation of securities legislation or securities directions or their application to a particular transaction or matter or proposed transaction or matter; and

"regulator" means a securities regulatory authority or regulator.

2.2 Further definitions – Terms used in this policy that are defined in MI 11-102 or National Instrument 14-101 *Definitions* have the same meanings as in those instruments.

PART 3 OVERVIEW, PRINCIPAL REGULATOR AND GENERAL GUIDELINES

3.1 Overview

This policy applies to any application for exemptive relief in multiple jurisdictions. These are the possible types of applications:

(a) The principal regulator is a passport regulator and the filer does not seek an exemption in Ontario. This is a "passport application."

(b) The principal regulator is the OSC and the filer also seeks an exemption in a passport jurisdiction. This is also a "passport application."

(c) The principal regulator is a passport regulator and the filer also seeks an exemption in Ontario. This is a "dual application."

(d) An application for any type of exemptive relief not covered by Part 4 of MI 11-102. This is a "coordinated review application."

3.2 Passport application

(1) If the principal regulator is a passport regulator and the filer does not seek an exemption in Ontario, the filer files the application only with, and pays fees only to, the principal regulator. Only the principal regulator reviews the application. The principal regulator's decision to grant an exemption automatically results in an equivalent exemption in the notified passport jurisdictions.

(2) If the principal regulator is the OSC and the filer also seeks an equivalent exemption in a passport jurisdiction, the filer files the application only with, and pays fees only to, the OSC. Only the OSC reviews the application. The OSC's decision to grant the exemption automatically results in an equivalent exemption in the notified passport jurisdictions.

3.3 Dual application – If the principal regulator is a passport regulator and the filer also seeks an exemption in Ontario, the filer files the application with, and pays fees to, both the principal regulator and the OSC. The principal regulator reviews the application and the OSC, as a non-principal regulator, coordinates its review with the principal regulator. The principal regulator's decision to grant the exemption automatically results in an equivalent exemption in the notified passport jurisdictions and, if the OSC has made the same decision as the principal regulator, evidences the decision of the OSC.

3.4 Coordinated review application – If the application is outside the scope of MI 11-102 (see section 4.1 of CP 11-102 for details on the types of applications that fall outside the scope of MI 11-102), the filer files the application and pays fees in each jurisdiction where the exemptive relief is required. The principal regulator reviews the application, and each non-principal regulator coordinates its review with the principal regulator. The decision of the principal regulator to grant exemptive relief evidences the decision of each non-principal regulator that has made the same decision as the principal regulator.

3.5 Hybrid applications – The processes and outcomes applicable to a passport application, dual application or a coordinated review application under this policy also apply to a hybrid application. For a hybrid application, the filer should follow the processes for both a coordinated review application and either a passport application or dual application, as appropriate.

3.6 Principal regulator

(1) For any application under this policy, the principal regulator is identified in the same manner as in sections 4.1 to 4.5 of MI 11-102. This section summarizes sections 4.1 to 4.5 of MI 11-102 and provides guidance on identifying the principal regulator for an application under this policy.

(2) For the purpose of this section, a specified jurisdiction is one of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick or Nova Scotia.

(3) Except as provided in subsections (4) to (~~8~~9) of this section and in section 3.7 of this policy, the principal regulator for an exemptive relief application is

(a) for an application made for an investment fund, the regulator of the jurisdiction in which the investment fund manager's head office is located; or

(b) for an application made for a person or company other than an investment fund, the regulator of the jurisdiction in which the person or company's head office is located.

(4) ~~For~~Except as provided in subsection (6) to (9) of this section and in section 3.7 of this policy, the principal regulator for an application for exemptive relief from a provision of securities legislation related to insider reporting~~, the principal regulator~~ is the regulator in the jurisdiction in which the head office of the reporting issuer, not the insider, is located.

(5) ~~For~~Except as provided in subsection (6) to (9) of this section and in section 3.7 of this policy, the principal regulator for an application for exemptive relief from a provision of securities legislation related to take-over bids~~, the principal regulator~~ is the regulator in the jurisdiction in which the head office of the issuer whose securities are subject to the take-over bid, not the person or company that is making the take-over bid, is located.

(6) ~~If~~Except as provided in subsections (7), (8) and (9) of this section and section 3.7 of this policy, if the jurisdiction identified under subsection (3), (4) or (5) is not a specified jurisdiction, the principal regulator for the application is the regulator of the specified jurisdiction with which

(a) in the case of an application for exemptive relief from a provision of securities legislation related to insider reporting, the reporting issuer has the most significant connection,

(b) in the case of an application for exemptive relief from a provision of securities legislation related to take-over bids, the issuer whose securities are subject to the take-over bid has the most significant connection, or

(c) in any other case, the person or company or, in the case of an investment fund, the investment fund manager, has the most significant connection.

(7) Except as provided in subsections (8) and (9) of this section and section 3.7 of this policy, if a firm or individual makes an application for exemptive relief from a requirement in Part 4 of NI 31-103 or Part 2 of NI 33-109 in connection with an application for registration in the principal jurisdiction, the principal regulator for the exemptive relief application is the principal regulator as determined under section 3.6 of NP 11-204. Under section 3.6 of NP 11-204 the securities regulatory authority or regulator of any jurisdiction can be a principal regulator.

(8) Except as provided in subsection (~~8~~)9) of this section~~,~~ and section 3.7 of this policy, if a person or company is not seeking exemptive relief in the jurisdiction of the principal regulator, as determined under subsections (3), (4), (5), (6) or (~~6~~7), the principal regulator for the application is the regulator in the specified jurisdiction

(a) in which the person or company is seeking exemptive relief, and

(b) with which

(i) in the case of an application for exemptive relief from a provision of securities legislation related to insider reporting, the reporting issuer has the most significant connection,

(ii) in the case of an application for exemptive relief from a provision of securities legislation related to take-over bids, the issuer whose securities are subject to the take-over bid has the most significant connection, or

(iii) in any other case, the person or company or, in the case of an investment fund, the investment fund manager, has the most significant connection.

(~~8) If~~9) Except as provided in section 3.7 of this policy, if at any one time a person or company is seeking more than one item of exemptive relief and not all of the exemptive relief is needed in the jurisdiction of the principal regulator, as determined under subsection (3), (4), (5), (6), (7) or (~~6~~8), the person or company may make an application to the regulator in the specified jurisdiction

(a) in which the person or company is seeking all of the exemptive relief, and

(b) with which

(i) in the case of an application for exemptive relief from a provision of securities legislation related to insider reporting, the reporting issuer has the most significant connection,

(ii) in the case of an application for exemptive relief from a provision of securities legislation related to take-over bids, the issuer whose securities are subject to the take-over bid has the most significant connection, or

(iii) in any other case, the person or company or, in the case of an investment fund, the investment fund manager, has the most significant connection.

That regulator will be the principal regulator for the application.

(~~9~~10) The factors a filer should consider in identifying the principal regulator for the application based on the most significant connection test are, in order of influential weight:

(a) location of reporting issuer status or registration status,

(b) location of management,

(c) location of assets and operations,

(d) location of majority of security holders or clients, and

(e) location of trading market or quotation system in Canada.

3.7 Discretionary change in principal regulator

(1) If the principal regulator identified under section 3.6 of this policy thinks it is not the appropriate principal regulator, it will first consult with the filer and the appropriate regulator and then give the filer a written notice of the new principal regulator and the reasons for the change.

(2) A filer may request a discretionary change of principal regulator for an application if

(a) the filer believes the principal regulator identified under section 3.6 of this policy is not the appropriate principal regulator,

(b) the location of the head office changes over the course of the application,

(c) the most significant connection to a specified jurisdiction changes over the course of the application, or

(d) the filer withdraws its application in the principal jurisdiction because no exemptive relief is required in that jurisdiction.

(3) Regulators do not anticipate changing a principal regulator except in exceptional circumstances.

(4) A filer should submit a written request for a change in principal regulator to its current principal regulator and include the reasons for requesting the change.

3.8 General guidelines

(1) A filer should identify the exemptive relief that is appropriate and necessary in the principal jurisdiction and each non-principal jurisdiction to which the filer applies or for which it gives notice under section 4.7(1)(c) of MI 11-102.

(2) The terms, conditions, restrictions and requirements of a decision will reflect the securities legislation and securities directions of the principal jurisdiction.

(3) A decision will generally provide exemptive relief for the entire transaction or matter that is the subject of the application to ensure the transaction or matter gets uniform treatment in all jurisdictions. This means that, if the transaction or matter is comprised of a series of trades, the decision will generally exempt all the trades in the series and the filer will not rely on statutory exemptions for some trades and on the decision for others.

(4) The regulators are not prepared to extend the availability of a non-harmonized exemption set out in National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) to a non-principal jurisdiction where the non-harmonized exemption is not available under that rule. If a filer makes a passport application or a dual application that would have that effect, the principal regulator will request that the filer provide a representation that no person or company will rely on the exemption in that non-principal jurisdiction. For example, jurisdictions have adopted two types of offering memorandum exemptions under NI 45-106. A principal regulator would not grant an exemption that would have the effect of allowing the use of a type of offering memorandum exemption that is not available under NI 45-106 in a non-principal jurisdiction, unless the filer gave a representation that no person or company would offer the securities relying on that type of offering memorandum exemption in the non-principal jurisdiction.

(5) Regulators will generally send communications to filers by e-mail or facsimile.

PART 4 PRE-FILINGS

4.1 General

(1) A filer should submit a pre-filing sufficiently in advance of an application to avoid any delays in the issuance of a decision on the application.

(2) The principal regulator will treat the pre-filing as confidential except that it:

(a) may provide copies or a description of the pre-filing to other regulators for discussion purposes if the pre-filing involves a novel and substantive issue or raises a novel policy concern, and

(b) may have to release the pre-filing under freedom of information and protection of privacy legislation.

4.2 Procedure for passport application pre-filing – A filer should submit a pre-filing for a passport application by letter to the principal regulator and should

(a) identify in the pre-filing the principal regulator for the application and each passport jurisdiction for which the filer intends to give the notice referred to in section 4.7(1)(c) of MI 11-102, and

(b) submit the pre-filing to the principal regulator only.

4.3 Procedure for dual application pre-filing

(1) A filer submitting a pre-filing for a dual application should identify in the pre-filing the principal regulator, each passport jurisdiction for which the filer intends to give the notice referred to in section 4.7(1)(c) of MI 11-102, and Ontario.

(2) The filer should submit the pre-filing only to the principal regulator. If the pre-filing is routine, the filer will deal only with the principal regulator to resolve the pre-filing.

(3) If the principal regulator determines that a pre-filing submitted as a routine pre-filing involves a novel and substantive issue or raises a novel policy concern, it will advise the filer and direct the filer to submit the pre-filing to the OSC.

(4) If it is apparent to the filer that a pre-filing involves a novel and substantive issue or raises a novel policy concern, the filer may accelerate this process by submitting the pre-filing to both the principal regulator and the OSC.

(5) If a pre-filing involves a novel and substantive issue or raises a novel policy concern, the principal regulator will arrange with the OSC to discuss it within seven business days, or as soon as practicable after the OSC receives the pre-filing.

4.4 Procedure for coordinated review application pre-filing

(1) A filer submitting a pre-filing for a coordinated review application should identify in the pre-filing the principal regulator and all non-principal jurisdictions where the filer intends to file the application.

(2) The filer should submit the pre-filing only to the principal regulator. If the pre-filing is routine, the filer will deal only with the principal regulator to resolve the pre-filing.

(3) If the principal regulator determines that a pre-filing submitted as a routine pre-filing involves a novel and substantive issue or raises a novel policy concern, it will advise the filer and direct the filer to submit the pre-filing to each non-principal regulator.

(4) If it is apparent to the filer that a pre-filing involves a novel and substantive issue or raises a novel policy concern, the filer may accelerate this process by submitting the pre-filing to the principal regulator and each non-principal regulator with whom the filer intends to file the application.

(5) If a pre-filing involves a novel and substantive issue or raises a novel policy concern, the principal regulator will arrange with the non-principal regulators to discuss the pre-filing within seven business days, or as soon as practicable after all non-principal regulators receive the pre-filing.

4.5 Disclosure in related application – The filer should include in the application that follows a pre-filing,

(a) a description of the subject matter of the pre-filing and the approach taken by the principal regulator, and

(b) any alternative approach proposed by a non-principal regulator that was involved in discussions and that disagreed with the principal regulator.

PART 5 FILING MATERIALS

5.1 Election to file under this policy and identification of principal regulator – In its application, the filer should indicate whether it is filing a passport application, dual application, coordinated review application or hybrid application under this policy and identify the principal regulator for the application. If submitting a hybrid application, the filer should indicate whether it includes a passport application or a dual application.

5.2 Materials to be filed with application

(1) For a passport application, the filer should remit to the principal regulator the fees payable under the securities legislation of the principal regulator, and file the following materials with the principal regulator only:

(a) a written application drafted in accordance with the procedures of the principal regulator as to format and content in which the filer:

(i) states the basis for identifying the principal regulator under section 3.6 of this policy,

(ii) identifies whether another application in connection with the same transaction or matter has been filed in one or more jurisdictions, the reasons for that application, and the principal regulator for that application,

(iii) sets out, for any related pre-filing, the information referred to in section 4.5 of this policy,

(iv) sets out, under separate headings, each provision of securities legislation listed in Appendix D of MI 11-102 below the name of the principal jurisdiction from which the filer and other relevant party seek an exemption,

(v) gives notice of the non-principal passport jurisdictions for which section 4.7(1) of MI 11-102 is intended to be relied upon for each equivalent provision of the local jurisdiction,

(vi) sets out any request for confidentiality,

(vii) sets out references to previous decisions of the principal regulator or other regulators that would support granting the exemption, or indicates that the exemption sought is novel and has not been previously granted;

(viii) includes a verification statement that authorizes the filing of the application and confirms the truth of the facts in the application; and

(ix) states that the filer and other relevant party is not in default of securities legislation in any jurisdiction or, if the filer is in default, the nature of the default;

(b) supporting materials; and

(c) a draft form of decision with terms, conditions, restrictions or requirements, including

(i) a representation stating that the filer and other relevant party are not in default of securities legislation in any jurisdiction or, if the filer or other relevant party is in default, the nature of the default; and

(ii) resale restrictions, if applicable, based on the securities legislation and securities directions of the principal jurisdiction.

(2) For a dual application, the filer should remit the fees payable under the securities legislation of the principal regulator and the OSC to each of them, as appropriate, and file the following materials with both the principal regulator and the OSC:

(a) a written application drafted in accordance with the procedures of the principal regulator as to format and content in which the filer:

(i) states the basis for identifying the principal regulator under section 3.6 of this policy,

(ii) identifies whether another application in connection with the same transaction or matter has been filed in one or more jurisdictions, the reasons for the application, and the principal regulator for that application,

(iii) sets out, for any related pre-filing, the information referred to in section 4.5 of this policy,

(iv) sets out, under separate headings, each provision of securities legislation listed in Appendix D of MI 11-102 below the name of the principal jurisdiction from which the filer and other relevant party seek an exemption, the relevant provisions of securities legislation in Ontario and an analysis of any differences between the applicable provisions in the principal jurisdiction and Ontario,

(v) gives notice of the non-principal passport jurisdictions for which section 4.7(1) of MI 11-102 is intended to be relied upon for each equivalent provision of the local jurisdiction,

(vi) sets out any request for confidentiality,

(vii) sets out any request to shorten the review period (see section 6.2(3) of this policy) or the opt-out period (see section 7.2(4) of this policy) and provides supporting reasons,

(viii) sets out references to previous decisions of the principal regulator or other regulators that would support granting the exemption, or indicates that the exemption sought is novel and has not been previously granted;

(ix) includes a verification statement that authorizes the filing of the application and confirms the truth of the facts in the application; and

(x) states that the filer and any relevant party are not in default of securities legislation in any jurisdiction or, if the filer or other relevant party is in default, the nature of the default;

(b) supporting materials; and

(c) a draft form of decision with terms, conditions, restrictions or requirements, including

(i) a representation stating that the filer and other relevant party are not in default of securities legislation in any jurisdiction or if the filer or relevant party is in default, the nature of the default; and

(ii) resale restrictions, if applicable, based on the securities legislation and securities directions of the principal jurisdiction.

(3) For a coordinated review application, the filer should remit the fees payable under the securities legislation of the principal regulator and each non-principal regulator from whom the filer or other relevant parties seek exemptive relief to each of them, as appropriate, and file the following materials with the principal regulator and each of the non-principal regulators:

(a) a written application drafted in accordance with the procedures of the principal regulator as to format and content in which the filer:

(i) states the basis for identifying the principal regulator section 3.6 of this policy,

(ii) identifies whether another application in connection with the same transaction or matter has been filed in one or more jurisdictions, the reasons for the application, and the principal regulator for that application,

(iii) sets out, for any related pre-filing, the information referred to in section 4.5 of this policy,

(iv) sets out, under separate headings, each provision of securities legislation in the principal jurisdiction from which the filer and other relevant party are seeking exemptive relief, the relevant provisions of securities legislation in each non-principal jurisdiction, and an analysis of any differences between the applicable provisions in the principal jurisdiction and each non-principal jurisdiction,

(v) sets out any request for confidentiality,

(vi) sets out any request to shorten the review period (see section 6.2(3) of this policy) or the opt-out period (see section 7.2(4) of this policy) and provides supporting reasons,

(vii) sets out references to previous decisions of the principal regulator or other regulators that would support granting the exemptive relief, or indicates that the exemptive relief sought is novel and has not been previously granted;

(viii) includes a verification statement that authorizes the filing of the application and confirms the truth of the facts in the application; and

(ix) states that the filer and any other relevant party are not in default of securities legislation in any jurisdiction or if the filer or other relevant party is in default, the nature of the default;

(b) supporting materials; and

(c) a draft form of decision with terms, conditions, restrictions or requirements, including

(i) a representation stating that the filer and any other relevant party are not in default of securities legislation in any jurisdiction or if the filer or other relevant party is in default, the nature of the default; and

(ii) resale restrictions, if applicable, based on the securities legislation and securities directions of the principal jurisdiction.

(4) For a hybrid application, the filer should pay the fees, file the application with each regulator and, for each type of application, set out the exemption or exemptive relief sought and submit the relevant information and materials, all as described in this section.

(5) A filer should file an application sufficiently in advance of any deadline to ensure that staff have a reasonable opportunity to complete the review and make recommendations for a decision.

(6) A filer making a passport application or a dual application should identify in the application all the exemptions required and give the required notice for all the passport jurisdictions for which section 4.7(1) of MI 11-102 is intended to be relied upon. The notice given under subsection (1)(a)(v) or (2)(a)(v) above satisfies the notice requirement of section 4.7(1)(c) of MI 11-102.

(7) A filer seeking exemptive relief in Québec should file a French language version of the draft decision when the AMF is acting as principal regulator.

5.3 Materials to be filed to make an exemption available in an additional passport jurisdiction under sections 4.7 and 4.8 of MI 11-102

(1) Under section 4.7(1) of MI 11-102, an exemption from a provision of securities legislation listed in Appendix D of that Instrument granted by the principal regulator under a passport application or dual application can become available in a non-principal passport jurisdiction for which the filer did not give the notice referred to in section 5.2(1)(a)(v) or 5.2(2)(a)(v) of this policy in the initial application if certain conditions are met. One of the conditions is that the filer give the notice under section 4.7(1)(c) of MI 11-102 for the additional non-principal passport jurisdiction.

(2) Under section 4.8(1) of MI 11-102, an exemption from a provision of securities legislation that is now listed in Appendix D of that Instrument and that was granted before March 17, 2008 by the regulator in a specified jurisdiction, as defined in that section, can also become available in a non-principal passport jurisdiction if certain conditions are met. One of the conditions is that the filer gives the notice under section 4.8(1)(c) of MI 11-102 for the non-principal passport jurisdiction. Under section 4.8(3), the filer is not required to give this notice if the exemption relates to a CD requirement, as defined in Multilateral Instrument 11-101 *Principal Regulator System*, that is now listed in Appendix D of MI 11-102 and other conditions are met. For more guidance on section 4.8(1) of MI 11-102, refer to section 9.3 of this policy and section 4.5 of CP 11-102.

(3) For greater certainty, a filer may not rely on section 4.7 or 4.8 of MI 11-102 to obtain an automatic exemption from a provision of Ontario's securities legislation listed in Appendix D of MI 11-102. A filer may rely on section 4.7 and 4.8 of MI 11-102 only in a passport jurisdiction.

(4) The filer should give the notice referred to in subsection (1) to the principal regulator for the initial application and the notice referred to in subsection (2) to the regulator that would be the principal regulator under Part 4 of MI 11-102 if an application were to be made under that Part at the time the notice is given. The notice should

(a) list each relevant non-principal passport jurisdiction for which notice is given that section 4.7(1) or 4.8(1) of MI 11-102 is intended to be relied upon,

(b) include the date of the decision of

(i) the principal regulator for the initial application, if the notice is given under section 4.7(1)(c) of MI 11-102, or

(ii) the regulator of the specified jurisdiction that granted the application, if the notice is given under section 4.8(1)(c) of MI 11-102,

(c) include the citation for the regulator's decision,

(d) describe the exemption the regulator granted, and

(e) confirm that the exemption is still in effect.

(5) If an exemption sought in a passport application or a dual application is required in a non-principal jurisdiction at the time the filer files the application, but the filer does not give the notice required under section 4.7(1)(c) of MI 11-102 for that jurisdiction until after the principal regulator grants the exemption, the regulator of the non-principal passport jurisdiction will take appropriate action. This could include removing the exemption, in which case the filer would have an opportunity to be heard in that jurisdiction in appropriate circumstances.

(6) The regulator that receives the notice referred to in subsection (1) or (2) will send a copy of the notice and its decision to the regulator in the relevant non-principal passport jurisdiction.

5.4 Request for confidentiality

(1) A filer requesting that the regulators hold an application and supporting materials in confidence during the application review process should provide a substantive reason for the request in its application.

(2) If a filer is requesting that the regulators hold the application, supporting materials, or decision in confidence after the effective date of the decision, the filer should describe the request for confidentiality separately in its application, and pay any required fee:

(a) in the principal jurisdiction, if the filer is making a passport application,

(b) in the principal jurisdiction and in Ontario, if the filer is making a dual application, or

(c) in each jurisdiction, if the filer is making a coordinated review application.

(3) Any request for confidentiality should explain why the request is reasonable in the circumstances and not prejudicial to the public interest and when any decision granting confidentiality could expire.

(4) Communications on requests for confidentiality will normally take place by e-mail. If a filer is concerned with this practice, the filer may request in the application that all communications take place by facsimile or telephone.

5.5 Filing – A filer should send the application materials in paper together with the fees to

(a) the principal regulator, in the case of a passport application,

(b) the principal regulator and the OSC, in the case of a dual application, or

(c) each regulator from which the filer seeks exemptive relief, in the case of a coordinated review application.

The filer should also provide an electronic copy of the application materials, including the draft decision document, by e-mail or on CD ROM. Filing the application concurrently in all required jurisdictions will make it easier for the principal regulator and non-principal regulators, if applicable, to process the application expeditiously. In British Columbia, an electronic filing system is available for filing and tracking exemptive relief applications. Filers should file an application in British Columbia using that system instead of e-mail. Filers should file applications related to National Instrument 81-102 *Mutual Funds* on SEDAR.

Filers should send pre-filing and application materials by e-mail using the relevant address or addresses listed below:

British Columbia	www.bcsc.bc.ca (click on BCSC e-services and follow the steps)
Alberta	legalapplications@seccom.ab.ca
Saskatchewan	exemptions@gov.sk.ca ~~exemptions@sfsc.gov.sk.ca~~
Manitoba	exemptions.msc@gov.mb.ca
Ontario	applications@osc.gov.on.ca
Québec	Dispenses-Passeport@lautorite.qc.ca
New Brunswick	Passport-passeport@nbsc-cvmnb.ca
Nova Scotia	nsscexemptions@gov.ns.ca
Prince Edward Island	CCIS@gov.pe.ca
Newfoundland and Labrador	securitiesexemptions@gov.nl.ca
Yukon	Corporateaffairs@gov.yk.ca
Northwest Territories	SecuritiesRegistry@gov.nt.ca
Nunavut	legal.registries@gov.nu.ca ~~legalregistries@gov.nu.ca~~

5.6 Incomplete or deficient material – If the filer's materials are deficient or incomplete, the principal regulator may ask the filer to file an amended application. This will likely delay the review of the application.

5.7 Acknowledgment of receipt of filing

(1) After the principal regulator receives a complete and adequate application, the principal regulator will send the filer an acknowledgment of receipt of the application. The principal regulator will send a copy of the acknowledgement to any other regulator with whom the filer has filed the application. The acknowledgement will identify the name, phone number, fax number and e-mail address of the individual reviewing the application.

(2) For a dual application, coordinated review application or hybrid application, the principal regulator will tell the filer, in the acknowledgement, the end date of the review period identified in section 6.2(3) of this policy.

5.8 Withdrawal or abandonment of application

(1) If a filer withdraws an application at any time during the process, the filer is responsible for notifying the principal regulator and any non-principal regulator with whom the filer filed the application and for providing an explanation of the withdrawal.

(2) If at any time during the review process, the principal regulator determines that a filer has abandoned an application, the principal regulator will notify the filer that it will mark the application as "abandoned". In that case, the principal regulator will close the file without further notice to the filer unless the filer provides acceptable reasons not to close the file in writing within 10 business days. If the filer does not, the principal regulator will notify the filer and any non-principal regulator with whom the filer filed the application that the principal regulator has closed the file.

PART 6 REVIEW OF MATERIALS

6.1 Review of passport application

(1) The principal regulator will review any passport application in accordance with its securities legislation and securities directions and based on its review procedures, analysis and considering previous decisions.

(2) The filer will deal only with the principal regulator, who will provide comments to and receive responses from the filer.

6.2 Review and processing of dual application or coordinated review application

(1) The principal regulator will review any dual application or coordinated review application in accordance with its securities legislation and securities directions, based on its review procedures, analysis and considering previous decisions. The principal regulator will consider any comments from a non-principal regulator with whom the filer filed the application. Please

refer to section 5.2(2) of this policy for guidance on the non-principal regulator with whom a filer should file a dual application, and to section 5.2(3) for similar guidance for a coordinated review application.

(2) The filer will generally deal only with the principal regulator, who will be responsible for providing comments to the filer once it has considered the comments from the non-principal regulators and completed its own review. However, in exceptional circumstances, the principal regulator may refer the filer to a non-principal regulator with whom the filer has filed the application.

(3) A non-principal regulator with whom the filer has filed the application will have seven business days from receiving the acknowledgement referred to in section 5.7(1) of this policy to review the application. In exceptional circumstances, if the filer filed the dual application or coordinated review application concurrently in the non-principal jurisdictions and shows that it is necessary and reasonable in the circumstances for the application to receive immediate attention, the principal regulator may abridge the review period. A non-principal regulator that disagrees with abridging the review period may notify the filer and the principal regulator and request the filer to withdraw the application in that jurisdiction. In that case, the application will proceed as a local application without the need to file a new application and pay any additional related fees.

(4) Exceptional circumstances when the principal regulator may abridge the review period include:

(a) where exemptive relief is sought for a contested take-over bid and delay would prejudice the filer's position, and

(b) other situations in which the filer is responding to a critical event beyond its control and could not have applied for the exemptive relief earlier.

(5) Unless the filer provides compelling reasons as to why it did not start the application process sooner, the principal regulator will not consider the following circumstances as exceptional:

(a) the mailing of a management information circular for a scheduled meeting of security holders to consider a transaction,

(b) the filing of a prospectus where the receipt for the prospectus cannot evidence the exemptive relief,

(c) the closing of a transaction,

(d) the filing of a continuous disclosure document shortly before the date on which its filing is required, or

(e) other situations in which the deadline was known before filing the application and the filer could have filed the application earlier.

While staff will attempt to accommodate transaction timing where possible, filers planning time-sensitive transactions should build sufficient regulatory approval time into their transaction schedules.

The fact that a filer may consider an application as routine is not a compelling argument for requesting an abridgement.

(6) Filers should provide sufficient information in an application to enable staff to assess how quickly they should handle the application. For example, if the filer has committed to take certain steps by a specific date and needs to have staff's view or a decision by that date, the filer should explain why staff's view or the exemptive relief is required by the specific date and identify these time constraints in its application.

(7) A non-principal regulator with whom the filer has filed the dual application or coordinated review application will advise the principal regulator, before the expiration of the review period, of any substantive issues that, if left unresolved, would cause staff to recommend that the non-principal regulator opt out of the review. The principal regulator may assume that a non-principal regulator does not have comments on the application if the principal regulator does not receive them within the review period.

(8) A non-principal regulator with whom the filer has filed the dual application or coordinated review application will notify the filer and the principal regulator and request that the filer withdraw the application if staff of the non-principal regulator think that no exemptive relief is required under its securities legislation.

PART 7 DECISION-MAKING PROCESS

7.1 Passport application

(1) After completing the review process and after considering the recommendation of its staff, the principal regulator will determine whether to grant or deny the exemption a filer sought in a passport application.

(2) If the principal regulator is not prepared to grant the exemption a filer sought in its passport application based on the information before it, it will notify the filer accordingly.

(3) If a filer receives a notice under subsection (2) and this process is available in the principal jurisdiction, the filer may request the opportunity to appear before, and make submissions to, the principal regulator.

7.2 Dual application or coordinated review application

(1) After completing the review process and after considering the recommendation of its staff, the principal regulator will determine whether to grant or deny the exemption a filer sought in a dual application or the exemptive relief the filer sought in a coordinated review application and immediately circulate its decision to the non-principal regulators with whom the filer filed the application.

(2) Each non-principal regulator with whom the filer filed the dual application or coordinated review application will have five business days from receipt of the principal regulator's decision to confirm whether it has made the same decision and is opting in or is opting out of the dual review or coordinated review.

(3) If the non-principal regulator is silent, the principal regulator will consider that the non-principal regulator has opted out.

(4) If the filer shows that it is necessary and reasonable in the circumstances, the principal regulator may request, but cannot require, the non-principal regulators to abridge the opt-out period. In some circumstances, abridging the opt-out period may not be feasible. For example, in many jurisdictions, only a panel of the regulator that convenes according to a schedule can make some types of decisions.

(5) The principal regulator will not send the filer a decision for a dual application or coordinated review application before the earlier of

(a) the expiry of the opt-out period, or

(b) receipt from a non-principal regulator with whom the filer filed the application of the confirmation referred to in subsection (2).

(6) If the principal regulator is not prepared to grant the exemption a filer sought in its dual application or the exemptive relief the filer sought in its coordinated review application based on the information before it, it will notify the filer and all non-principal regulators with whom the filer filed the application.

(7) If a filer receives a notice under subsection (6) and this process is available in the principal jurisdiction, the filer may request the opportunity to appear before, and make submissions to, the principal regulator. The principal regulator may hold a hearing on its own, or jointly or concurrently with the non-principal regulators with whom the filer filed the application. After the hearing, the principal regulator will send a copy of the decision to the filer and all non-principal regulators with whom the filer filed the application.

(8) A non-principal regulator electing to opt out will notify the filer, the principal regulator and any other non-principal regulator with whom the filer filed the application and give its reasons for opting out. The filer may deal directly with the non-principal regulator to resolve outstanding issues and obtain a decision without having to file a new application or pay any additional related fees. If the filer and non-principal regulator resolve all outstanding issues, the non-principal regulator may opt back into the dual review or coordinated review by notifying the principal regulator and the other non-principal regulators with whom the filer filed the application within the opt-out period referred to in subsection (2).

PART 8 DECISION

8.1 Effect of decision made under passport application

(1) The decision of the principal regulator under a passport application to grant an exemption from a provision of securities legislation listed below the name of the principal jurisdiction in Appendix D of MI 11-102 is the decision of the principal regulator.

Under MI 11-102, a filer is automatically exempt from the equivalent provision of each notified passport jurisdiction as a result of the principal regulator for the application granting the exemption.

(2) Except in the circumstances described in section 5.3(1) or (2) of this policy, the exemption is effective in each notified passport jurisdiction on the date of the principal regulator's decision (even if the regulator in the notified passport jurisdiction is closed on that date). In the circumstances described in section 5.3(1) of this policy, the exemption is effective in the relevant non-principal passport jurisdiction on the date the filer gives the notice under section 4.7(1)(c) or 4.8(1)(c) of MI 11-102 for that jurisdiction (even if the regulator in that jurisdiction is closed on that date).

8.2 Effect of decision made under dual application

(1) The decision of the principal regulator under a dual application to grant an exemption from a provision of securities legislation listed below the name of the principal jurisdiction in Appendix D of MI 11-102 is the decision of the principal regulator. Under MI 11-102, a filer is automatically exempt from an equivalent provision of each notified passport jurisdiction as a result of the principal regulator for the application granting the exemption. The decision of the principal regulator under a dual application also evidences the OSC's decision, if the OSC has confirmed that it has made the same decision as the principal regulator.

(2) The principal regulator will not issue the decision until the earlier of

(a) the date that the OSC confirms that it has made the same decision as the principal regulator, or

(b) the date the opt-out period referred to in section 7.2(2) of this policy has expired.

8.3 Effect of decision made under coordinated review application

(1) The decision of the principal regulator under a coordinated review application to grant exemptive relief from a provision of securities legislation in the principal jurisdiction is the decision of the principal regulator and evidences the decision of each non-principal regulator that has confirmed that it has made the same decision as the principal regulator.

(2) The principal regulator will not issue the decision until the earlier of

(a) the date that the principal regulator has received confirmation from each non-principal regulator that it has made the same decision as the principal regulator, or

(b) the date the opt-out period referred to in section 7.2(2) of this policy has expired.

8.4 Listing non-principal jurisdictions

(1) For convenience, the decision of the principal regulator on a passport application or a dual application will refer to the notified passport jurisdictions, but it is the filer's responsibility to ensure that it gives the required notice for each jurisdiction for which section 4.7(1) of MI 11-102 is intended to be relied upon.

(2) The decision of the principal regulator on a dual application or a coordinated review application will contain wording that makes it clear that the decision evidences and sets out the decision of each non-principal regulator that has made the same decision as the principal regulator.

(3) For a coordinated review application for which Québec is not the principal jurisdiction, the AMF will issue a local decision concurrently with and in addition to the principal regulator's decision. The AMF decision will contain the same terms and conditions as the principal regulator's decision. No other local regulator will issue a local decision.

8.5 Form of decision

(1) Except as described in subsection (2), the decision will be in the form set out in:

(a) Annex A, for a passport application,

(b) Annex B, for a dual application,

(c) Annex C, for a coordinated review application, or

(d) Annex D, for a hybrid application.

(2) A principal regulator may issue a less formal decision where it is appropriate.

(3) If the decision is to deny the exemptive relief, the decision will set out reasons.

8.6 Issuance of decision – The principal regulator will send the decision to the filer and to all non-principal regulators.

PART 9 EFFECTIVE DATE AND TRANSITION

9.1 Effective date

This policy comes into effect on March 17, 2008.

9.2 Exemptive relief applications filed before March 17, 2008

The process set out in National Policy 12-201 *Mutual Reliance Review System for Exemptive Relief Applications* (MRRS) will continue to apply to an exemptive relief application and any related pre-filing filed in multiple jurisdictions before March 17, 2008.

9.3 Availability of passport for exemptions applied for before March 17, 2008

(1) Section 4.8(1) of MI 11-102 provides that an exemption from the equivalent provision is automatically available in the local jurisdiction if

(a) an application was made in a specified jurisdiction before March 17, 2008 for an exemption from a provision of securities legislation that is now listed in Appendix D of MI 11-102,

(b) the regulator in the specified jurisdiction granted the exemption before, on or after March 17, 2008, and

(c) certain other conditions are met, including giving the required notice for the additional non-principal passport jurisdiction; refer to section 5.3 of this policy for information on where to give the required notice and what information the notice should contain.

(2) A specified jurisdiction for purposes of section 4.8 of MI 11-102 is a principal jurisdiction under Multilateral Instrument 11-101 *Principal Regulator System*. Therefore, section 4.8(1) applies to an exemption from a CD requirement, as defined in Multilateral Instrument 11-101 *Principal Regulator System*, which the principal regulator under that Instrument granted to a reporting issuer before March 17, 2008 if the exemption relates to a CD requirement that is now listed in Appendix D of MI 11-102. In this case, however, section 4.8(3) exempts a reporting issuer from having to give the notice required in section 4.8(1)(c). Refer to section 4.5 of the CP 11-102 for guidance on the effect of section 4.8 of MI 11-102.

(3) For greater certainty, a filer may not rely on section 4.8 of MI 11-102 to obtain an automatic exemption from a provision of Ontario's securities legislation listed in Appendix D of MI 11-102. A filer may rely on section 4.8 of MI 11-102 only in a passport jurisdiction.

9.4 Revocation or variation of MRRS decisions made before March 17, 2008

(1) A filer that wants the regulators to revoke an MRRS decision made before March 17, 2008 should make a coordinated review application.

(2) A filer that wants the regulators to vary an MRRS decision made before March 17, 2008 should make a coordinated review application. However, in the case of an MRRS decision that gave exemptive relief from a provision set out in Appendix D of MI 11-102, the filer should instead request new relief by making a passport application or dual application and referencing the MRRS decision in the new application and the proposed decision document.

(3) If a filer makes a passport application or a dual application under subsection (2), the filer must give the notice required under section 4.7(1)(c) of MI 11-102 and meet the other conditions of that section for the principal regulator's decision to have effect automatically in a non-principal passport jurisdiction. A filer may give the notice in the application it files with the principal regulator.

Annex A

Form of decision for passport application

[Citation:[**neutral citation**] [**Date of decision**]]

In the Matter of
the Securities Legislation of
[name of principal jurisdiction] (the Jurisdiction)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
[name(s) of filer(s) and other relevant parties, including definitions as required] (the Filer(s))

Decision

Background

The principal regulator in the Jurisdiction has received an application from the Filer(s) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) for [**describe the exemption sought (the Exemption Sought) by referring to the relevant requirement(s) or provision(s) listed in the first column of Appendix D to MI 11-102.]**

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

(a) the **[name of the principal regulator]** is the principal regulator for this application, and

(b) the Filer(s) has(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 **[names of non-principal passport 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. [**Add additional definitions here.**]

Representations

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

[Insert material representations necessary to explain why the principal regulator came to this decision. Include the location of the Filer's head office and, if appropriate, the connecting factor the filer used to identify the principal regulator for the application. State that the filer and any other relevant party is not in default of securities legislation in any jurisdiction or, if the filer or other relevant party is in default, set out the nature of the default.]

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:

[Insert numbered terms, conditions, restrictions or requirements. These should include references to the relevant requirement(s) or provision(s) listed in the first column of Appendix D to MI 11-102.]

[If any exemption has an effective date after the date of the decision, state here.]

_____**(Name of signatory for the principal regulator)**

_____**(Title)**

_____**(Name of principal regulator)**
(*justify signature block*)

Annex B

Form of decision for a dual application

[Citation:[**neutral citation**] [**Date of decision**]]

In the Matter of
the Securities Legislation of
[name of principal jurisdiction] and Ontario (the Jurisdictions)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
[name(s) of filer(s) and other relevant parties, including definitions as required] (the Filer(s))

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer(s) for a decision under the securities legislation of the Jurisdictions (the Legislation) for [**describe the exemption sought (the Exemption Sought) by referring to the relevant requirement(s) or provision(s) listed in the first column of Appendix D to MI 11-102.]**

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

(a) the **[name of the principal regulator]** is the principal regulator for this application,

(b) the Filer(s) has(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 **[names of non-principal passport jurisdictions]**, and

(c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in 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. [**Add additional definitions here.**]

Representations

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

[Insert material representations necessary to explain why the Decision Makers came to this decision. Include the location of the Filer's head office and, if appropriate, the connecting factor the filer used to identify the principal regulator for the application. State that the filer and any other relevant party is not in default of securities legislation in any jurisdiction or, if the filer or other relevant party is in default, set out the nature of the default.]

Decision

Each of the Decision Makers is satisfied that the decision 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 Exemption Sought is granted provided that:

[Insert numbered terms, conditions, restrictions or requirements. These should include references to the relevant requirement(s) or provision(s) listed in the first column of Appendix D to MI 11-102.]

[If any exemption has an effective date after the date of the decision, state here.]

_____(Name of signatory for the principal regulator)

_____(Title)

_____(Name of principal regulator)
(*justify signature block*)

Annex C

Form of decision for coordinated review application

[Citation:[**neutral citation**] [**Date of decision**]]

In the Matter of
the Securities Legislation of
[name of jurisdictions participating in decision] (the Jurisdictions)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
[name(s) of filer(s) and other relevant parties, including definitions as required] (the Filer(s))

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer(s) for a decision under the securities legislation of the Jurisdictions (the Legislation) for [**describe the exemptive relief sought (the Exemptive Relief Sought) in words (e.g., that the filer is not a reporting issuer). Do not use statutory references. Include defined terms as necessary.]**

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

(a) the **[name of the principal regulator]** 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 National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined. [**Add additional definitions here.**]

Representations

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

[Insert material representations necessary to explain why the Decision Makers came to this decision. Include the location of the Filer's head office and, if appropriate, the connecting factor the filer used to identify the principal regulator for the application. State that the filer and any other relevant party is not in default of securities legislation in any jurisdiction or, if the filer or other relevant party is in default, set out the nature of the default. Do not use statutory references.]

Decision

Each of the Decision Makers is satisfied that the decision 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 provided that:

[Insert numbered terms, conditions, restrictions or requirements. These should be generic and without statutory references to the Legislation of the Jurisdictions.]

[If any exemptive relief has an effective date after the date of the decision, state here.]

_____**(Name of signatory for the principal regulator)**

_____**(Title)**

_____**(Name of principal regulator)**
(*justify signature block*)

Annex D

Form of decision for hybrid application

[Citation:[**neutral citation**] [**Date of decision**]]

In the Matter of
the Securities Legislation of
[name of principal jurisdiction (for a passport application), or of principal jurisdiction and Ontario (for a dual application), and name of each jurisdiction participating in coordinated review application decision]

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
[name(s) of filer(s) and other relevant parties, including definitions as required,] (the Filer(s))

Decision

Background
[If you are making a passport application, insert:]

The securities regulatory authority or regulator in _____ has received an application from the Filer(s) for a decision under the securities legislation of the jurisdiction of the principal regulator (the Legislation) for [**describe the exemption sought (the Passport Exemption) by referring to the relevant requirement(s) or provision(s) listed in the first column of Appendix D to MI 11-102.]**

OR

[If you are making a dual application, insert:]

The securities regulatory authority or regulator in _____and Ontario (Dual Exemption Decision Makers) have received an application from the Filer(s) for a decision under the securities legislation of those jurisdictions (the Legislation) for [**describe the exemption sought (the Dual Exemption) by referring to the relevant requirement(s) or provision(s) listed in the first column of Appendix D to MI 11-102.]**

AND

[For your coordinated review application, insert:]

The securities regulatory authority or regulator in each of _____ (the Jurisdictions) (Coordinated Exemptive Relief Decision Makers) has received an application from the Filer(s) for a decision under the securities legislation of the Jurisdictions (the Legislation) for [**describe the exemptive relief sought (the Coordinated Exemptive Relief) in words (e.g., that the filer is not a reporting issuer). Do not use statutory references. Include defined terms as necessary.]**

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

(a) the **[name of the principal regulator]** is the principal regulator for this application,

(b) the Filer(s) has(ve) provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in **[names of non-principal passport jurisdictions]**,

(c) the decision is the decision of the principal regulator, **[if you are making a dual application, insert: "**and the decision evidences the decision of the securities regulatory authority or regulator in Ontario,**"]** and

(d) the decision evidences the decision of each Coordinated Exemptive Relief Decision Maker.

Interpretation

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

Representations

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

[Insert material representations necessary to explain why the Decision Makers came to this decision. Include the location of the Filer's head office and, if appropriate, the connecting factor the filer used to identify the principal regulator for the application. State that the filer and any other relevant party is not in default of securities legislation in any jurisdiction or, if the filer or other relevant party is in default, set out the nature of the default. Do not use statutory references.]

Decision

Each of the principal regulator **[if you are making a dual application, insert: "**, the securities regulatory authority or regulator in Ontario,**"]** and the Coordinated Exemptive Relief Decision Makers is satisfied that the decision meets the test set out in the Legislation for the relevant regulator or securities regulatory authority to make the decision.

[If you are making a passport application, insert:]

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

[Insert numbered terms, conditions, restrictions or requirements. These should include references to the relevant requirement(s) or provision(s) listed in the first column of Appendix D to MI 11-102.]

OR

[If you are making a dual application, insert:]

The decision of the Dual Exemption Decision Makers under the Legislation is that the Dual Exemption is granted provided that:

[Insert numbered terms, conditions, restrictions or requirements. These should include references to the relevant requirement(s) or provision(s) listed in the first column of Appendix D to MI 11-102.]

AND

[For your coordinated application, insert:]

The decision of the Coordinated Review Decision Makers under the Legislation is that the Coordinated Exemptive Relief is granted provided that:

[Insert numbered terms, conditions, restrictions or requirements. These should be generic and without statutory references to the Legislation of the Jurisdictions.]

[If any exemption or exemptive relief has an effective date after the date of the decision, state here.]

_____**(Name of signatory for the principal regulator)**

_____**(Title)**

_____**(Name of principal regulator)**
(*justify signature block*)

SCHEDULE H

MI 11-102 *PASSPORT SYSTEM*

LIST OF COMMENTERS

1. ITG Canada Corp.
2. Investment Industry Association of Canada
3. Baillie Gifford Overseas Ltd.
4. Investment Fund Institute of Canada
5. Financial Executives International Canada

SUMMARY OF COMMENTS AND RESPONSES
ON THE AMENDMENTS TO MI 11-102 *PASSPORT SYSTEM*
(MI 11-102)

Passport regulators adopted MI 11-102 on March 17, 2008 to establish the passport system for issuers - covering continuous disclosure, prospectuses and discretionary exemptions. When MI 11-102 was first published for comment on March 28, 2007, it also included provisions to provide a passport for registrants. We published the passport for registrants for comment for a second time on July 18, 2008. The following summarizes and responds to the comments on the second publication of the passport system for registrants.[1]

#	Themes	Comments	Responses
1.	**General**	CSA received five comment letters on the second publication for comment of the proposed passport for registrants.	
		All commenters supported the CSA's efforts to harmonize, simplify and streamline the registration regime and thought that passport is an important step forward to more effective and efficient regulation in Canada. However, three commenters also said that passport does not go far enough. They encouraged CSA to work toward a further evolution of the Canadian regulatory structure. Two of them specifically called for a single national regulator and a single set of laws.	The amendments to MI 11-102 implement the second phase of the passport system for registrants (passport for registrants) contemplated in the Provincial/Territorial Memorandum of Understanding regarding Securities Regulation (MOU). The objective of the MOU is to set up a system that gives a single window of access to market participants in areas where securities laws are already highly harmonized or could be harmonized quickly. The structural changes two commenters suggested are not within the powers of securities regulators to consider.
		One commenter said that harmonization, simplification and streamlining of the registration regime would help international firms operating in Canada by simplifying the regulatory environment.	CSA continues to work on harmonizing, simplifying and streamlining regulatory requirements. Phase 2 of passport and the concurrent harmonization of registration requirements will simplify regulation for foreign firms registered in Canada.
2.	**Inconsistencies create complexity**	Four commenters raised issues related to consistency:	
		▪ The remaining inconsistencies in proposed National Instrument 31-103 *Registration Requirements* (NI 31-103) seriously detract from the effectiveness of the proposed passport for registrants. It is difficult to understand why local requirements cannot be harmonized for registrants that carry on business in more than one jurisdiction given the size of the Canadian market and the lack of any truly unique regional characteristics.	▪ Through NI 31-103 and related Act amendments coming into effect at the same time as passport for registrants, CSA has harmonized and streamlined most of the registration requirements across jurisdictions. Most of the few remaining differences are readily identifiable in NI 31-103. Some of these relate to structural differences in the regulatory framework in some jurisdictions (e.g. the regulation of mutual fund dealers in Québec, or the regulation of 'exchange contracts' under the securities legislation of British Columbia, Alberta, Saskatchewan and New Brunswick) or result from initiatives driven by specific provincial legislation (e.g., labour sponsored funds). Others are technical in

[1] The comment letters are available on the Alberta Securities Commission website at www.albertasecurities.com.

#	Themes	Comments	Responses
			nature and designed either o to harmonize substantive requirements across jurisdictions (e.g., the regulation of referral arrangements) or work with passport for registrants (e.g., the British Columbia and Manitoba approach to exempt market dealer registration), or o to have no substantive/practical impact on passport for registrants (e.g., the British Columbia, Manitoba and New Brunswick approach to the business trigger). Very few reflect true differences in policy across jurisdictions.
		▪ The lack of uniformity in NI 31-103 will obstruct the goals of National Policy 11-204 *Process for Registration in Multiple Jurisdictions* (NP 11-204) to allow firms to meet the requirements of one set of harmonized laws. It appears that a firm would need only comply with the requirements in its principal jurisdiction, but it is unclear what requirements apply when the firm is operating in a non-principal jurisdiction that may have implemented slightly different requirements.	▪ Under passport for registrants, a firm or individual that registers in more than one jurisdiction is subject to the law of each jurisdiction where the firm or individual is registered. NI 31-103 consolidates, harmonizes and streamlines in one instrument most of the requirements that apply to registrants in all Canadian jurisdictions. The few differences in these requirements are readily identifiable in the instrument.
		▪ The proposed passport for registrants does not exempt registrants from all non-harmonized requirements.	▪ CSA has eliminated or harmonized all non-harmonized local registration requirements that the passport regulators were prepared to exempt from under the passport system for registrants. The regulators intend that any remaining local non-harmonized requirements continue to apply in the relevant jurisdictions. In many instances, the remaining non-harmonized local requirements apply to registrants that operate only in the local jurisdiction and do not affect firms or individuals registered in multiple jurisdictions. Only a few non-harmonized local requirements apply to registrants operating in multiple jurisdictions
		▪ It creates three different methods for ascertaining the principal regulator based on the type of exemptive relief sought.	▪ The principal regulator for passport for registrants is the regulator in the jurisdiction where the head office of the firm or the working office of the individual is located. This deals with most circumstances where a firm or individual seeks registration under passport. To expedite the registration process, MI 11-102 provides that the same principal regulator will also handle an application for exemption from the fit and proper

#	Themes	Comments	Responses
			requirements of NI 31-103 or the registration filing requirements under National Instrument 33-109 *Registration Information* made at the same time as the application for registration in the principal jurisdiction. If a firm or individual applies for another type of relief or for relief after registration in the principal jurisdiction, then the principal regulator is determined in the same way as for any other application for exemption under MI 11-102. A firm or individual would have different principal regulators in these circumstances only if the head office or working office is in one of the five smallest jurisdictions or if relief is sought from a requirement that does not apply in the principal jurisdiction.
		▪ Ontario's decision not to participate in passport adds to the complexity. Allowing the Ontario Securities Commission (OSC) to act as a principal regulator under passport simplifies the process for registrants whose principal jurisdiction is Ontario. But the fact that Ontario is not willing to accept that another jurisdiction act as principal jurisdiction for non-Ontario registrants creates significant inefficiencies.	▪ CSA members in passport jurisdictions would welcome a decision by Ontario to join passport. Meanwhile, CSA is implementing the passport system and interfaces to make the securities regulatory system as efficient and effective as possible in the circumstances for all market participants who want to gain access to the capital markets in both passport jurisdictions and Ontario. The OSC has participated in developing the interfaces between the passport jurisdictions and Ontario.
		▪ The fact that some jurisdictions have delegated their registration functions to the Investment Industry Regulatory Organization of Canada (IIROC), and others have not, is at odds with the objectives of the passport system. CSA should adopt a uniform policy on the delegation of registration functions to IIROC and the Mutual Fund Dealers Association to further streamline the registration regime across Canada and potentially generate additional administrative and cost efficiencies.	▪ Delegation of registration functions to SROs is outside the scope of the passport project. However, we have designed the passport and interface system to work efficiently with different delegation arrangements among jurisdictions.
		▪ There are discrepancies in the scope of delegation to IIROC among delegating jurisdictions that would require a firm or individual to deal with two regulators and IIROC depending on the principal jurisdiction and the type of registration and the non-principal jurisdictions where registration is sought.	▪ A firm or individual wishing to register in a non-principal passport jurisdiction under MI 11-102 deals only with its principal regulator. If the principal regulator has delegated registration to IIROC, IIROC makes the registration decision instead of the principal regulator. The system for registering an IIROC member firm or representative works with different delegation arrangements as follows.

#	Themes	Comments	Responses
			o No delegation to IIROC: a firm would make its submission to, and deal only with, the principal regulator, except if the firm is seeking registration in Ontario and Ontario is a non-principal jurisdiction. The principal regulator will deal directly with IIROC to ensure the firm is a member of IIROC before granting registration. Once the principal regulator grants registration, the firm is automatically registered in the non-principal passport jurisdictions in which it is seeking registration. If the firm is seeking registration in Ontario, the firm makes its submission to the OSC and the principal regulator coordinates its decision with the OSC. o Delegation to IIROC: the process is the same except that the firm deals with the relevant office of IIROC for the principal regulator's jurisdiction. o Individuals make their submissions on NRD and identify the jurisdictions where they seek registration. NRD automatically directs the submission to the appropriate entity in each jurisdiction, i.e., the securities regulator or the relevant office of IIROC in the jurisdiction.
3.	**Ontario registration Act amendments and harmonization**	One commenter reiterated its view that the Ontario government's proposal to move a substantial number of NI 31-103 provisions into the Ontario *Securities Act* undermines the CSA's commitment to a harmonized approach to securities regulation across Canada.	CSA is committed to harmonizing, simplifying and streamlining regulatory requirements and will continue to work with all governments towards this goal.
4.	**Acknowledgement for automatic firm registration** (section 6.3(1)(b) of MI 11-102)	One commenter urged CSA to add a time limit for the non-principal regulator to make the acknowledgement on NRD, for example within one business day of receiving the submission.	We have revised MI 11-102 to eliminate the need for an acknowledgement. The registration of a firm in a non-principal passport jurisdiction will be automatic upon filing. The passport regulator will manually record the legal date of registration of a firm in the non-principal jurisdiction and notify the firm. The notification will explain why this date may be earlier than the 'effective date' shown on NRD.
5.	**Interface registration** (section 6.2(2) of NP 11-204	One commenter recommended that the Ontario office of IIROC advise the principal regulator of its decision relating to an interface registration within the same time-frame as the OSC for individuals not registering as representatives of an investment dealer, i.e. one business day of receiving the interface document.	IIROC agreed to use the same timeframe for making decisions as the OSC.

#	Themes	Comments	Responses
6.	**Fees**	Two commenters suggested eliminating or reducing fees in non-principal jurisdictions under passport. One commenter urged CSA, at a minimum, to advise how CSA will assess the effectiveness and efficiency of the passport system in the absence of fee reductions.	Fees for prospectus filings and registration are mainly 'participation fees,' through which market participants who access the capital markets in a jurisdiction contribute to the cost of maintaining the regulatory system that oversees those markets. Although passport will reduce costs for market participants, the cost of operating the regulatory system will not decrease significantly because of passport. At the request of the Council of Ministers, the passport regulators are conducting a review of their fee structures and have provided a preliminary report to the Council of Ministers. CSA does not expect any fee changes implemented following the fee review to eliminate the requirement to pay prospectus filing and registration fees in non-principal passport jurisdictions. CSA is also considering how to assess the effectiveness and efficiency of the passport system more generally.
7.	**Mobility exemption**	One commenter thought that the decision to retain limits on broker mobility in the mobility exemption in proposed NI 31-103 is inconsistent with the principles of passport.	The mobility exemption provides flexibility to dealers for the mobility of their clients, by letting a firm or individual not registered in a jurisdiction deal with a few clients who move there. If more clients move to the jurisdiction, or the firm or individual wishes to solicit clients there, MI 11-102 allows the firm or individual to register automatically in the non-principal passport jurisdiction to obtain full access to the market in that jurisdiction.
8.	**Proficiency requirements for foreign registrants**	One commenter requested that, if a foreign registrant is subject to the competency requirements of an equivalent regulatory regime, CSA recognize those regulatory requirements instead of imposing additional proficiency requirements on foreign registrants, e.g., their chief compliance officer.	Under passport, a foreign registrant can apply to the principal regulator to accept equivalent proficiency requirements. If the principal regulator grants relief from the proficiency requirements of NI 31-103, the exemption will apply automatically in non-principal passport jurisdictions. CSA will review on an on-going basis equivalent proficiency requirements to determine whether amendments to NI 31-103, or other action, is necessary.
9.	**Novel exemptive relief applications under National Policy 11-203** ***Process for Exemptive Relief Applications in Multiple Jurisdictions*** **(NP 11-203)**	One commenter said that it is not always clear who the ultimate decision-maker is when an exemptive relief application involves a novel issue. The experience of some of its members is that the principal regulator acts more like a spokesperson to facilitate building consensus among regulators on the outcome of novel applications. This can result in a lack of transparency (not knowing the source of a comment) and significant delays in the decision-making process. The commenter urged CSA to clarify and streamline the review and decision-making process for novel exemptive relief applications.	CSA has put mechanisms in place to ensure consistency in decision-making across jurisdictions under passport. Some of these processes involve the principal regulator consulting with one or more non-principal regulators on a novel exemptive relief application. Although this consultation may take place, only the principal regulator makes the decision and that decision has automatic effect in the relevant non-principal passport jurisdictions.

#	Themes	Comments	Responses
10.	**Revocation or variation of mutual reliance review system (MRRS) decision made before March 17, 2008** (section 9.4 of NP 11-203)	One commenter thought that having made an MRRS decision before March 17, 2008 is not a good reason to go back to the MRRS process to revoke or vary that decision. The commenter recommended that CSA permit the filing of a revocation or variance application for a pre-March 17, 2008 MRRS decision as a passport application or dual application to the extent that the filer could make that type of application under NP 11-203.	Under MRRS, each jurisdiction made a decision on the application for exemptive relief and the decision document issued by the principal regulator was 'evidence' of the principal regulator's and each non-principal regulator's decision. Therefore, to revoke or vary an MRRS decision, each regulator that made the MRRS decision must revoke or vary it. This is not possible under a passport application because a non-principal regulator does not make a decision. Instead, the decision of the principal regulator has automatic effect in the non-principal jurisdiction.

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Chapter 6

Request for Comments

6.1.1 CSA Notice and Request for Comment – Proposed NI 55-104 Insider Reporting Requirements and Exemptions, Companion Policy 55-104CP Insider Reporting Requirements and Exemptions and Related Consequential Amendments

NOTICE AND REQUEST FOR COMMENT

PROPOSED NATIONAL INSTRUMENT 55-104
INSIDER REPORTING REQUIREMENTS AND EXEMPTIONS,
COMPANION POLICY 55-104CP
INSIDER REPORTING REQUIREMENTS AND EXEMPTIONS
AND RELATED CONSEQUENTIAL AMENDMENTS

1. Purpose of notice

The Canadian Securities Administrators (the CSA or we) are publishing for a 90-day comment period the following proposed materials:

- National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (the Proposed Instrument);
- Companion Policy 55-104CP *Insider Reporting Requirements and Exemptions* (the Proposed Policy);
- Consequential amendments to Multilateral Instrument 11-102 *Passport System*;
- Consequential amendments to National Instrument 14-101 *Definitions*;
- Consequential amendments to Form 51-102F5 *Information Circular* of National Instrument 51-102 *Continuous Disclosure Obligations*; and
- Consequential amendments to National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues.*

The Proposed Instrument, the Proposed Policy and the related consequential amendments are collectively referred to as the Proposed Materials.

The Proposed Materials would replace the following instruments (the Current Materials) currently in effect:

- National Instrument 55-101 *Insider Reporting Exemptions* (NI 55-101);
- Companion Policy 55-101CP *Insider Reporting Exemptions*;
- Multilateral Instrument 55-103 *Insider Reporting of Certain Derivative Transactions (Equity Monetization)* (MI 55-103);
- Companion Policy 55-103CP *Insider Reporting of Certain Derivative Transactions (Equity Monetization)*; and
- British Columbia Instrument 55-506 *Exemption from insider reporting requirements for certain derivative transactions*.

We are publishing with this Notice the Proposed Materials and the repeal instruments for the Current Materials. You can also find the Proposed Materials and repeal instruments on the websites of many CSA members.

Certain jurisdictions may include additional local information in Appendix L.

2. Substance and purpose of the Proposed Instrument and the Proposed Policy

The Proposed Instrument will set out the main insider reporting requirements and exemptions for insiders of reporting issuers. The exception is Ontario, where the main insider reporting requirements will remain in the *Securities Act* (Ontario). Despite this difference, the substance of the requirements for insider reporting will be the same across the CSA jurisdictions.

The Proposed Policy provides guidance as to how we would interpret or apply certain provisions of the Proposed Instrument.

3. Summary of the Proposed Instrument

We are publishing the Proposed Materials for comment as part of an initiative to modernize, harmonize and streamline insider reporting in Canada. The insider reporting requirements and exemptions are currently set out in a variety of statutes, rules and regulations in each jurisdiction. We are proposing to consolidate the main insider reporting requirements and exemptions in a single national instrument to make it easier for issuers and insiders to understand their obligations and to help promote timely and effective compliance.

We are also proposing changes to the insider reporting regime that we think will improve its effectiveness. Specifically, we are proposing to

- significantly reduce the number of persons required to file insider reports;
- accelerate the filing deadline for insider reports from 10 calendar days to five calendar days;
- simplify and make more consistent the reporting requirements for stock-based compensation arrangements;
- facilitate insider reporting of stock-based compensation arrangements by allowing issuers to file an "issuer grant report" similar to the current "issuer event report"; and
- require an issuer to disclose in its information circular any late filings by its insiders.

4. Prior request for comment

We have previously requested comment about some of the proposals reflected in the Proposed Materials. In October 2006, we published a Notice and Request for Comment relating to amendments to NI 55-101. As part of that Notice, we outlined at a high level proposals for future amendments to Canadian insider reporting requirements, including amendments that would consolidate the insider reporting requirements and exemptions in a single instrument, refocus the insider reporting requirements on a smaller group of insiders and accelerate the filing deadlines. These proposals were referred to as the "Phase 2 amendments".

As described in the summary of comments and responses included with the Notice of Amendments to NI 55-101, published in June 2007, we generally received positive comments about our proposals for the Phase 2 amendments. These proposals are now reflected in the Proposed Materials.

5. Why are we proposing changes to the current insider reporting regime?

The insider reporting requirements serve a number of functions, including deterring improper insider trading based on material undisclosed information and increasing market efficiency by providing investors with information concerning the trading activities of insiders of an issuer, and, by inference, the insiders' views of their issuer's prospects.

In connection with our proposals for the Phase 2 amendments, we conducted research that compares our current insider reporting requirements with those in other countries.

Based on the results of our research, we have reached the following conclusions:

1. Canadian insider reporting requirements are not fully harmonized. In addition, the main requirements and exemptions are situated in various Acts, regulations and rules across the CSA. This can be confusing for issuers and insiders, who may find it difficult to understand and comply with their obligations, and other market participants, who may find it difficult to analyze the information that is reported. We think it would be helpful to market participants to consolidate the main insider reporting requirements and exemptions in a single instrument.

2. The Canadian insider reporting regime requires an unduly broad class of persons to file insider reports. This is particularly apparent in the case of larger issuers with many subsidiaries and affiliates. In contrast, the insider reporting requirements of the U.S. and the U.K. generally impose an insider reporting requirement on a much narrower class of

persons. We propose to narrow the focus of the insider reporting requirement to a core group of insiders with the greatest access to material undisclosed information and the greatest influence over the reporting issuer. We propose to achieve this by introducing a new concept of a "reporting insider" and by amending the definition of "major subsidiary".

3. The period allowed for filing insider reports (generally 10 days from the date of the transaction) is too long. In contrast, the insider reporting filing deadlines in the U.S. (generally two-business days from the date of the transaction) and the U.K. (generally within five business days from the date of the transaction) require substantially faster reporting. We are proposing to accelerate the filing deadline from 10 calendar days to five calendar days to make this important information available to the market sooner.

4. The insider reporting requirements relating to different types of stock-based compensation arrangements, such as stock options, phantom stock, stock appreciation rights (SARs), restricted share units (RSUs), deferred share units (DSUs), and similar instruments, are inconsistent and confusing. In contrast, the insider reporting requirements in the U.S. for reporting these instruments are relatively clear. We think we should simplify the insider reporting requirements for such instruments and make them more consistent. In addition, the inconsistent regulatory treatment of stock-based compensation arrangements has been highlighted by the recent controversy involving stock option back-dating.

5. Some insiders have experienced difficulties in filing insider reports by the required deadline about transactions that originate at the issuer level, such as a grant of stock options by the issuer to insiders, since the issuer may not have provided the insiders with the necessary information in a timely manner. We propose to introduce an exemption that would permit an issuer to file on SEDAR an "issuer grant report". If the issuer files an issuer grant report, the insider recipients of this grant would then be exempt from the requirement to file an insider report about the grant by the ordinary filing deadline and could instead file an alternative report on an annual basis.

6. Our approach to dealing with late filing of insider reports is not harmonized. For example, Alberta and Quebec publish a list of late filers, whereas other jurisdictions do not. Our proposals to respond to these concerns include an issuer disclosure requirement, similar to current U.S. requirements, that would require an issuer to disclose in its circular whether any of its insiders have made late filings in the previous year. The effective date proposed for the issuer disclosure requirement is December 31, 2010, allowing for a transition period.

6. Outcomes-based response to these concerns

The Proposed Instrument reflects an outcomes-based approach to insider reporting and ties the requirement to file insider reports to the fundamental policy rationales for the insider reporting requirement. The Proposed Instrument responds to the following questions:

- Who should file insider reports?
- What insider transactions should be reported?
- When should insider transactions be reported?

a) The "reporting insider" concept

Although securities legislation generally imposes an insider reporting requirement on all persons who are "insiders", we have provided a variety of exemptions for insiders who are not significant shareholders, do not exercise an executive officer or director function and do not routinely have access to material undisclosed information about the reporting issuer prior to general disclosure. These exemptions are situated in various rules and regulations adopted in each jurisdiction in Canada.

The insider reporting regime prescribed by the Proposed Instrument replaces this broad "catch and release" approach with a more principled approach that focuses the reporting requirement on a narrower, core group of insiders. The core group includes significant shareholders of the issuer and other insiders who satisfy both of the following criteria:

(i) the insider in the ordinary course has access to material undisclosed information concerning the reporting issuer prior to general disclosure; and

(ii) the insider, directly or indirectly, exercises, or has the ability to exercise, significant power or influence over the business, operations, capital or development of the reporting issuer.

This approach is reflected in the new definition of "reporting insider". The reporting insider definition comprises:

(i) a list of persons or companies that includes significant shareholders plus other insiders we think generally satisfy both of the criteria, and

(ii) a "basket" provision that explicitly cites these two criteria.

The insider reporting regime currently includes exemptions that relieve from the reporting requirement persons who do not meet the first of these criteria, that is, persons who do not have routine access to material undisclosed information. Based on our review, we have concluded that we should further narrow the focus of the insider reporting regime to persons who satisfy both this criterion and the criterion of having significant influence over the reporting issuer. We think that narrowing the focus of the insider reporting regime to a core group of senior insiders who have the greatest access to material undisclosed information, together with accelerated reporting, would have an enhanced deterrent effect on the most senior insiders and would result in faster dissemination of the most important information to the market.

In addition, the Proposed Instrument will also address the concern that certain persons who satisfy these two criteria may not currently be required to file insider reports because they may not technically be insiders. For example, as explained in section 6.4 of National Policy 41-201 *Income Trusts and Other Indirect Offerings*, we are concerned that certain persons who would be insiders of an operating entity underlying an income trust if the operating entity were a reporting issuer may not, for technical reasons, be insiders of the income trust. This concern would apply to, for example, directors and officers of a management company that provides management services to the operating entity. Although we think that such persons will generally come within the definition of "insider" based on the definition of "officer" (which includes persons who perform a similar function to an officer), we generally obtain undertakings from an income trust to address this concern.

The Proposed Instrument addresses these concerns by expressly designating certain classes of persons who satisfy these two criteria to be "insiders" and including them within the definition of "reporting insider".

Insiders who are not reporting insiders are still subject to the provisions in Canadian securities legislation prohibiting improper insider trading.

b) Reportable transactions

Under Part 3 of the Proposed Instrument, reporting insiders are generally required to file insider reports disclosing the reporting insider's

(i) beneficial ownership of, or control or direction over, directly or indirectly, securities of the reporting issuer, and

(ii) interest in, or right or obligation associated with, a related financial instrument involving a security of the reporting issuer.

These are the primary insider reporting requirements.

Part 4 of the Proposed Instrument contains a supplemental insider reporting requirement relating to certain agreements, arrangements or understandings that may not technically trigger the above tests for reporting under Part 3 but that otherwise satisfy the policy rationale for insider reporting.

The supplemental insider reporting requirement is consistent with the insider reporting requirement for derivatives that previously existed under MI 55-103. However, because Part 3 of the Proposed Instrument requires insiders, as part of the primary insider reporting requirement, to file insider reports about transactions involving "related financial instruments", most transactions that were previously subject to a reporting requirement under MI 55-103 will be subject to the insider reporting requirement under Part 3 of the Proposed Instrument.

c) Deadline for filing

We are proposing to accelerate the deadline for filing insider reports from 10 calendar days to five calendar days after a trade because we think the market would benefit from more timely dissemination of information relating to insider transactions. Accelerating the reporting deadline should also address concerns about improper activities involving stock options and similar equity-based instruments, including stock option backdating, option repricing, and the opportunistic timing of option grants. More timely disclosure of option grants and public scrutiny of such disclosure would generally limit opportunities for insiders to engage in improper dating practices.

We propose to retain the current ten day timeline for filing initial reports to accommodate new filers and the time associated with creating new insider profiles on the System for Electronic Disclosure by Insiders (SEDI).

7. Anticipated Impact on Stakeholders

Although reporting insiders will become subject to an accelerated filing deadline, many other insiders will benefit as they will no longer have to file insider reports. Reporting issuers that currently file insider reports on behalf of their insiders will benefit through reduced compliance costs due to the smaller class of reporting insiders. Investors and other market participants who use the insider reporting system will benefit from a simpler, more focused, and more timely insider reporting system.

The insider reporting requirement will focus on a more senior, core group of insiders. This should result in an enhanced deterrent and signalling effect (the key reasons for insider reporting) on the core group of senior insiders who have the greatest access to material undisclosed information and who will continue to report. The information from this core group of insiders will not be obscured, as at present, by a large volume of insider reports filed by persons who, although statutory insiders with some access to material undisclosed information, are outside this core group.

8. Impact on SEDI

The Proposed Materials focus on the substantive legal insider reporting requirements rather than the procedural requirements relating to the electronic filing of insider reports. We are not proposing any amendments to National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)* (NI 55-102) as part of this initiative.

However, we anticipate that several of the proposed substantive changes to our insider reporting regime would help address concerns raised by issuers and insiders in relation to SEDI.

For example, reducing the number of persons required to file insider reports would eliminate the reporting burden for those insiders who are no longer required to report. Similarly, we understand that some insiders have experienced difficulties reporting on time transactions that originate at the issuer level, such as a grant of stock options by the issuer to insiders, because of delays in the issuer providing the necessary information. Under the Proposed Instrument, if the issuer files an issuer grant report, the insider recipients of the option grant would be permitted to file an alternative report on an annual basis.

Finally, reducing the number of insiders required to report and introducing a requirement that issuers disclose late insider filings in their circulars will create additional incentives for issuers to assist their insiders with complying with their insider reporting requirements.

9. Consequential amendments to NI 14-101 and NI 62-103

We are proposing an amendment to the definition of "insider reporting requirement" in National Instrument 14-101 *Definitions* to harmonize this definition with the corresponding definition in NI 55-104 and to update the definition so that it also refers to the insider reporting requirements applicable to derivative transactions and the requirement to file an insider profile under NI 55-102.

As a result of this amendment to the definition of "insider reporting requirement" in NI 14-101, certain consequential amendments to National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (NI 62-103) are necessary. Under Part 9 of NI 62-103, an eligible institutional investor is exempt from the insider reporting requirement for a reporting issuer if the eligible institutional investor complies with the alternative monthly reporting requirements under Part 4 of NI 62-103 and complies with the other conditions in Part 9 of NI 62-103. As a result of the current definition of "insider reporting requirement" in NI 14-101, the exemption from the insider reporting requirements in Part 9 of NI 62-103 is currently an exemption only from the requirement to file insider reports relating to the insider's beneficial ownership of, or control or direction over, securities of the reporting issuer. The exemption does not exempt the eligible institutional investor from the requirement to file insider reports about derivative transactions that may affect the investor's publicly disclosed holdings. This is appropriate since a failure to disclose a monetization transaction or a similar derivative transaction may result in the investor's publicly disclosed holdings being misleading.

However, as a result of the amendment to the definition of "insider reporting requirement" in NI 14-101, in the absence of a corresponding amendment to NI 62-103, eligible institutional investors would be exempt from the requirement to file insider reports about derivative transactions under Part 4 of the Proposed Instrument. Accordingly, we are amending Part 9 of NI 62-103 to make it clear that that the insider reporting requirement applicable to derivative transactions in Part 4 of the Proposed Instrument continues to apply to eligible institutional investors.

10. Future Initiatives

a) Late filing fees

As a related initiative, we are also considering ways to harmonize the late filing fees and other consequences of late insider filings. Only some jurisdictions impose late fees and their rates are different. By administrative practice, jurisdictions do not duplicate late fees but the result is that different late fees apply to insiders depending on the location of the issuer's head office.

We are assessing introducing a uniform administrative late fee for late filings regardless of head office jurisdiction. Finally, we are considering whether the list of late filers maintained by certain jurisdictions should become a CSA list. However, we are not proposing any changes relating to late fees or a CSA list of late filers at this time.

b) Issues relating to "hidden ownership" and "empty voting"

We are presently reviewing issues relating to the potential use of derivatives to avoid early warning requirements, insider reporting requirements and similar securities law disclosure requirements that are based on the concepts of beneficial ownership and control or direction.

According to recent studies,[1] a sophisticated investor may be able, through the use of equity swaps or similar derivative arrangements, to accumulate a substantial economic interest in an issuer without public disclosure and then quickly convert this interest into voting securities in time to exercise a vote. (This is referred to as "hidden (morphable) ownership".) The studies also suggest that an investor can, through derivatives or securities borrowing arrangements, acquire voting rights while having no economic stake in the issuer, or even having an economic interest contrary to the issuer's, and seek to influence the outcome of a shareholder vote. (This strategy is referred to as "empty voting"). These studies further suggest that issuers and insiders may be able to employ these strategies to "park" securities with friendly parties to influence how the securities are voted.

The authors of these studies note that these strategies can undermine securities regulatory requirements that are based on the concept of beneficial ownership of voting securities and that a number of jurisdictions, including the United Kingdom, Australia and Switzerland, have recently introduced important disclosure-based reforms in an attempt to deal with the hidden ownership aspect of this problem.

For example, the Financial Services Authority (the FSA) in the UK published a consultation paper in November 2007 relating to proposals to require disclosure of substantial economic interests in a public company held through "contracts for difference" or similar derivative instruments.[2] In July 2008, the FSA announced that it had decided that "a general disclosure regime for long CfD positions (i.e., derivative positions that provide the holder with an economic interest in shares of an issuer) will be implemented as the most effective means of addressing concerns in relation to voting rights and corporate influence. Existing share and CfD holdings, in the same company, should be aggregated for disclosure purposes".[3] The FSA issued a Feedback and Policy Statement in October 2008 and announced that final rules would be made in February 2009 to come into force on September 1, 2009.

We are reviewing the recent reform proposals in other jurisdictions and are considering developing similar proposals for Canada. We are also separately reviewing issues relating to empty voting. We would welcome comment from market participants in Canada on the proposals other jurisdictions are making and on issues relating to empty voting generally.

Appendices

We have set out in Appendix A a set of specific questions for which we are seeking comment.

The full text of the Proposed Instrument and the Proposed Policy are set out in Appendices B and C to this Notice. The text of the various consequential amendments and proposed repeals is set out in Appendices D to K. Certain jurisdictions may include additional information in Appendix L.

Request for Comments

We welcome your general comments on the Proposed Materials.

We also invite comments on specific aspects of the Proposed Instrument. The request for specific comments is located in Appendix A to this Notice.

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1 See, for example, Henry T.C. Hu & Bernard Black, *Equity and Debt Decoupling and Empty Voting: Importance and Extensions*, University of Pennsylvania Law Review, vol 156, no. 3, January 2008 at 625 and various earlier papers cited therein. In the U.S., the question of whether an investor may be considered to have "beneficial ownership" of securities held by a counterparty to an equity swap was recently considered in the decision of the United States District Court for the Southern District of New York in the case *CSX Corporation v. The Children's Investment Fund Management (UK) LLP, et al.*, dated June 11, 2008. In Canada, the Ontario Securities Commission recently had the opportunity to consider similar issues in the Sears Canada decision; see *In the Matter of Sears Canada Inc., Sears Holding Corporation, and SHLD Acquisition Corp. v. Hawkeye Capital Management, LLC, Knott Partners Management, LLC, and Pershing Square Capital Management, L.P.* dated August 8, 2006.

2 See the Financial Services Authority, Disclosure of Contracts for Difference – Consultation and draft Handbook text, available at www.fsa.gov.uk.

3 See the FSA, Contracts for Difference Policy Update, available at www.fsa.gov.uk.

Please submit your comments in writing on or before March 19, 2009. If you are not sending your comments by email, please include a CD ROM containing the submissions (in Windows format, Word).

Address your submission to the following CSA member commissions:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

Please deliver your comments **only** to the addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

Noreen Bent
Manager and Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission
PO Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia
V7Y 1L2
Fax: (604) 899-6741 or 800 373-6393 (toll free in BC and Alberta)
E-mail: nbent@bcsc.bc.ca

M^{e} Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^{e} étage
C.P. 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3
Fax : (514) 864-8381
E-mail: consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. Comments will be posted to the OSC web-site at www.osc.gov.on.ca.

Questions

Please refer your questions to any of:

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Corporate Finance
British Columbia Securities Commission
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nbent@bcsc.bc.ca

Alison Dempsey
Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission
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Agnes Lau
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The text of the Proposed Materials follows in Appendices B to G or can be found elsewhere on a CSA member website.

December 18, 2008

APPENDIX A

SPECIFIC REQUESTS FOR COMMENT

In addition to your general comments on the Proposed Materials, we also invite comments on specific aspects of the Proposed Instrument.

Specific aspects of the Proposed Instrument

1. **Definition of "reporting insider"** – We are proposing to limit the reporting requirement to persons who are "reporting insiders". The definition of reporting insider comprises i) a list of persons or companies that we think generally satisfy the criteria of having routine access to material undisclosed information and significant influence over the reporting issuer; and ii) a "basket" provision that explicitly cites these two criteria.

   We invite comments on the following questions:

   a. Do you agree that the reporting requirement should be limited to insiders who satisfy the criteria of routine access to material undisclosed information and significant influence over the reporting issuer? If not, why not? What other criteria should we use in determining who should have to file insider reports?

   b. Do you think the persons or companies enumerated in the definition of "reporting insider" are appropriate? If you think any persons or companies should be added or removed, please explain.

   c. We think that the proposal to limit the reporting requirement to reporting insiders (as currently defined) will significantly reduce the number of insiders who have to file insider reports, particularly for larger issuers with many subsidiaries and affiliates. Do you agree? If possible, please describe the anticipated impact of this change on your organization.

2. **Definition of "major subsidiary"** – We are proposing to amend the percentage thresholds in the definition of "major subsidiary" (currently found in NI 55-101) from 20% of consolidated assets or revenues to 30% in the Proposed Instrument. This would reduce the number of insiders who will be reporting insiders since the definition of reporting insider includes various persons or companies at the major subsidiary level. For example, if we make this change, a director of a subsidiary the assets or revenues of which comprise 25% of the reporting issuer's consolidated assets or revenues on a consolidated basis will no longer be required to file insider reports, since the subsidiary will no longer be a major subsidiary. Do you agree with this change? If not, what should the thresholds be?

3. **Reporting deadline** – We propose to retain the current ten day timeline for filing initial reports to accommodate new filers and the time associated with creating new insider profiles on the System for Electronic Disclosure by Insiders (SEDI). However, we propose to accelerate the reporting deadline from 10 days to five calendar days for subsequent insider reports. Do you agree with this proposal? If not, please explain. Do you think that we should also accelerate the reporting deadline for filing initial reports to 5 calendar days? If not, please explain.

4. **Definition of "significant shareholder"** – We have included in the Proposed Materials a new term – significant shareholder – to refer to a person or company who is an "insider" under securities legislation because the person has beneficial ownership of or control or direction over, or a combination of beneficial ownership of and control or direction over, whether direct or indirect, securities of an issuer carrying more than 10 percent of the voting rights attached to all of the issuer's outstanding voting securities. The definition of "significant shareholder" has the same meaning as the corresponding language in the definition of "insider" in securities legislation and has been included in the Proposed Materials to facilitate readability.

   The definition of "significant shareholder" (and the corresponding language in the definition of "insider" in securities legislation) currently refers to "… securities of an issuer carrying more than 10 percent of the voting rights attached to *all* of the issuer's outstanding voting securities". Accordingly, this language does not make a distinction between different classes of voting securities that may have different voting entitlements.

   The current definition may result in situations, particularly in the case of issuers with two-tier (multiple-voting) share structures, where a shareholder may hold a significant proportion of voting securities of a particular class but not be a significant shareholder (or an insider) because of the effect of a separate class of voting securities.

The early warning regime[1] in securities legislation contains a similar disclosure threshold based on beneficial ownership of, or control or direction over voting securities. However, this disclosure threshold refers to "voting … securities of any class of a reporting issuer". Similarly, the principal stockholder concept in section 16(a) of the U.S. *Securities and Exchange Act of 1934* Act refers to "any class of equity security".

We are considering amending the definition of significant shareholder, and seeking legislative amendment of the corresponding provisions in the definition of insider, to replace the language "all of the issuer's outstanding voting securities" with "any class of the issuer's outstanding voting securities". We are not proposing to extend the significant shareholder concept to holders of non-voting equity securities.

We invite comments on the following specific questions:

a. Do you think a significant shareholder should be determined by the shareholder's holdings of a particular class of voting securities, or is the current basis for determining whether a person is a significant shareholder (based on holdings of all of the issuer's outstanding voting securities) appropriate? Please explain.

b. Should different considerations apply to the disclosure thresholds for the purposes of the early warning requirements and the insider reporting requirements?

5. Concept of "post-conversion beneficial ownership" – We have introduced in the Proposed Materials the concept of "significant shareholder based on post-conversion beneficial ownership". This concept, which is based on a similar concept which exists in the early warning regime,[2] is intended to ensure that a person cannot avoid crossing a disclosure threshold (either the early warning disclosure threshold or disclosure obligations associated with insider status) by holding a convertible security rather than the underlying security directly. For example, we think that a person who holds 9.9% of an issuer's common shares together with special warrants convertible into an additional 10% of the issuer's common shares, should have the same reporting requirements as a person who holds 19.9% of the issuer's common shares directly. We invite comments on the following specific questions:

a. Do you agree with harmonizing the insider reporting regime with the early warning regime to address securities convertible within 60 days (60-day convertibles)? If not, why not? Should different considerations apply to the disclosure thresholds for the purposes of the early warning requirements and the insider reporting requirements?

b. Are you aware of any practical difficulties in applying the disclosure test for 60-day convertibles in the early warning system? If yes, please explain.

c. Should we exempt any types of securities or securityholders from this calculation for the purposes of determining insider status? For example, should we exempt convertible securities (such as options) that are significantly "out of the money"? Should we exempt "eligible institutional investors" (as defined in National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues) from this definition for insider reporting purposes?

6. Issuer grant report – As explained in the Notice, we are proposing to introduce a new exemption that would permit an issuer, if it so chose, to file on SEDAR an "issuer grant report" to assist its insiders in their reporting of option grants. If the issuer files an issuer grant report, the insider recipients of this grant would then be exempt from the requirement to file an insider report about the grant by the ordinary filing deadline and could instead file an alternative report on an annual basis.

a. Do you agree with this proposal? Do you think issuers and insiders will find this exemption useful?

b. We are proposing that the issuer grant report be filed on SEDAR, pending necessary changes being made to SEDI. Do you think the information in an issuer grant report is better disclosed through SEDAR or SEDI?

c. The issuer grant report exemption contemplates that reporting insiders who rely on this exemption will make an annual filing, similar to the manner in which reporting insiders currently report acquisitions under an automatic securities purchase plan. Do you agree with this approach? Do you think annual reporting is sufficiently timely?

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1 See section 5.2 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* and section 102.1 of the *Securities Act* (Ontario).

2 See section 1.8 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* and subsection 90(1) of the *Securities Act* (Ontario).

d. We have proposed that the deadline for filing the annual report under Part 5 and Part 6 should be 90 days from the end of the calendar year. Is this appropriate? Should we accelerate this deadline for filing these annual reports to, for example, 30 days from the end of the calendar year?

7. Report by certain designated insiders for certain historical transactions – Subsections 1.2(2) and (3) of the Proposed Instrument provide that directors and officers of an issuer may, in certain circumstances, be designated or determined to be insiders of a second issuer. Subsection 3.6(1) of the Proposed Instrument requires these individuals to file, within 10 days of being designated or determined to be an insider of the second issuer, insider reports for transactions involving securities of the second issuer for a historical period of up to six months. These provisions are based on the "deemed insider look-back provisions" in securities legislation of some jurisdictions. The purpose of these provisions is to address concerns over directors and officers of a company proposing to acquire a significant interest in another company by "frontrunning" the acquisition through personal purchases of shares of the second company.

We have included these deemed insider look-back provisions in the Proposed Instrument in the interests of harmonizing these provisions. We anticipate that the current deemed insider look-back provisions in securities legislation will be repealed effective on the coming into force of the Proposed Instrument.

Currently, insiders who are required to file insider reports in accordance with the deemed insider look-back provisions must file these reports on SEDI. Under the Proposed Instrument, these individuals will be required to file insider reports in respect of these historical transactions in paper format on SEDAR. We have proposed this change because we understand some insiders have experienced difficulties in filing reports about these historical transactions on SEDI and have inadvertently triggered late fees. In addition, because these filings will commonly arise in a takeover bid context, we think it may be helpful for market participants to view these filings in conjunction with other filings relating to the take-over bid. However, we acknowledge that this may raise a concern about fragmenting an insider's disclosure so that historical transactions are disclosed on SEDAR but that current and future transactions are disclosed on SEDI.

Do you agree with the proposal to require these filings to be made on SEDAR rather than SEDI? Alternatively, do you think these filings should continue to be made on SEDI? Please explain.

8. Disclosure in shareholder meeting information circulars – We are proposing an amendment to Form 51-102F5 *Information Circular* of National Instrument 51-102 *Continuous Disclosure Obligations* that would require an issuer to disclose in its information circular whether any of its insiders have been subject to late filings fees. Do you agree with the proposal to require issuers to disclose whether any of its insiders have been subject to late filings fees? Do you think the disclosure requirement should apply only to insiders who repeatedly incur late filing fees? Please explain.

APPENDIX B

NATIONAL INSTRUMENT 55-104
INSIDER REPORTING REQUIREMENTS AND EXEMPTIONS

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions and interpretation

(1) In this Instrument

"acceptable summary form" means, in relation to the alternative form of insider report described in sections 5.4 and 6.4, an insider report that discloses as a single transaction, with December 31 of the relevant year as the date of the transaction, and providing an average unit price of the securities,

(a) the total number of securities of the same type acquired under an automatic securities purchase plan or compensation arrangement, or under all such plans or arrangements, for the calendar year; and

(b) the total number of securities of the same type disposed of under all specified dispositions of securities under an automatic securities purchase plan, or under all such plans, for the calendar year;

"automatic securities purchase plan" means a dividend or interest reinvestment plan, a stock dividend plan, or any other plan established by an issuer or by a subsidiary of an issuer to facilitate the acquisition of securities of the issuer if the timing of acquisitions of securities, the number of securities which may be acquired under the plan by a director or officer of the issuer or of the subsidiary of the issuer, and the price payable for the securities are established in advance by written formula or criteria set out in a plan document and not subject to a subsequent exercise of discretion;

"cash payment option" means a provision in a dividend or interest reinvestment plan under which a participant is permitted to make cash payments to purchase from the issuer, or from an administrator of the plan, securities of the issuer's own issue;

"compensation arrangement" includes, but is not limited to, an arrangement, whether or not set out in any formal document and whether or not applicable to only one individual, under which cash, securities or related financial instruments, including, for greater certainty, options, stock appreciation rights, phantom shares, restricted shares or restricted share units, deferred share units, performance units or performance shares, stock, stock dividends, warrants, convertible securities, or similar instruments, may be received or purchased as compensation for services rendered, or otherwise in connection with holding an office or employment with a reporting issuer or a subsidiary of a reporting issuer;

"convertible security" means a security of an issuer that is convertible into, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of the same issuer;

"credit derivative" means a derivative in respect of which the underlying security, interest, benchmark or formula is, or is related to or derived from, in whole or in part, a debt or other financial obligation of an issuer;

"derivative"

(a) means an instrument, agreement, security or exchange contract, the market price, value or payment obligations of which is derived from, referenced to, or based on an underlying security, interest, benchmark or formula;

(b) despite paragraph (a), in Ontario and New Brunswick, has the same meaning as in securities legislation and, in the case of Québec, *The Derivatives Act*;

"dividend or interest reinvestment plan" means an arrangement under which a holder of securities of an issuer is permitted to direct that the dividends, interest or distributions paid on the securities be applied to the purchase, from the issuer or an administrator of the issuer, of securities of the issuer's own issue;

"economic exposure" in relation to an issuer

(a) means the extent to which the economic or financial interests of a person or company are aligned with the trading price of securities of the issuer or the economic or financial interests of the issuer;

(b) despite paragraph (a), in Ontario, has the same meaning as in securities legislation;

"economic interest" in a security or an exchange contract means

(a) a right to receive or the opportunity to participate in a reward, benefit or return from a security or an exchange contract, or

(b) exposure to a risk of a financial loss in respect of a security or an exchange contract;

(c) despite paragraphs (a) and (b), in British Columbia, Saskatchewan, Ontario, Quebec and New Brunswick, has the same meaning as in securities legislation;

"exchange contract"

(a) means a futures contract or an option that meets both of the following requirements:

(i) its performance is guaranteed by a clearing agency; and

(ii) it is traded on an exchange pursuant to standardized terms and conditions set out in that exchange's by-laws, rules or regulatory instruments, at a price agreed on when the futures contract or option is entered into on the exchange;

(b) despite paragraph (a), in British Columbia, Alberta, Saskatchewan and New Brunswick, has the same meaning as in securities legislation;

"exchangeable security" means a security of an issuer that is exchangeable for, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of another issuer;

"income trust" means a trust or an entity, including corporate and non-corporate entities, the securities of which entitle the holder to net cash flows generated by an underlying business or income-producing properties owned through the trust or by the entity;

"insider report" means a report to be filed by an insider under securities legislation;

"insider reporting requirement" means

(a) a requirement to file insider reports under Parts 3 and 4;

(b) a requirement to file insider reports under any provisions of Canadian securities legislation substantially similar to Parts 3 and 4; and

(c) a requirement to file an insider profile under NI 55-102, if applicable;

"investment issuer" means, in relation to an issuer, another issuer in respect of which the issuer is an insider;

"issuer event" means a stock dividend, stock split, consolidation, amalgamation, reorganization, merger or other similar event that affects all holdings of a class of securities of an issuer in the same manner, on a per share basis;

"lump-sum provision" means a provision of an automatic securities purchase plan that allows a director or officer to acquire securities in consideration of an additional lump-sum payment, and includes a cash payment option;

"major subsidiary" means a subsidiary of an issuer if

(a) the assets of the subsidiary, as included in the issuer's most recent annual audited or interim balance sheet, are 30 percent or more of the consolidated assets of the issuer reported on that balance sheet [*or after January 1, 2011, a statement of financial position*], or

(b) the revenues of the subsidiary, as included in the issuer's most recent annual audited or interim income statement, are 30 percent or more of the consolidated revenues of the issuer reported on that statement;

"management company" means a person or company established or contracted to provide significant management or administrative services to an issuer or a subsidiary of the issuer;

"NI 55-102" means National Instrument 55-102 *System for Electronic Disclosure by Insiders*;

"normal course issuer bid" means

(a) an issuer bid that is made in reliance on the exemption contained in securities legislation from requirements relating to issuer bids that is available if the number of securities acquired by the issuer within a period of twelve months does not exceed 5 percent of the securities of that class issued and outstanding at the commencement of the period, or

(b) a normal course issuer bid as defined in the rules or policies of the Toronto Stock Exchange (TSX), the TSX Venture Exchange or an exchange that is a recognized exchange, as defined in National Instrument 21-101 *Marketplace Operation*, and that is conducted in accordance with the rules or policies of that exchange;

"operating entity" means a person or company with an underlying business or with assets owned in whole or in part by an income trust for the purposes of generating cash flow;

"post-conversion beneficial ownership" has the meaning ascribed to that term in subsection (4);

"principal operating entity" means an operating entity that is a major subsidiary of an income trust;

"related financial instrument"

(a) means

(i) an instrument, agreement, security or exchange contract the value, market price or payment obligations of which are derived from, referenced to or based on the value, market price or payment obligations of a security, or,

(ii) any other instrument, agreement, or understanding that affects, directly or indirectly, a person or company's economic interest in a security or an exchange contract;

(b) despite paragraph (a), in British Columbia, Saskatchewan, Ontario, Quebec and New Brunswick, has the same meaning as in securities legislation;

"reporting insider" has the meaning ascribed to that term in section 3.2;

"significant shareholder" means a person or company that has beneficial ownership of, or control or direction over, whether direct or indirect, or a combination of beneficial ownership of, and control or direction over, whether direct or indirect, securities of an issuer carrying more than 10 percent of the voting rights attached to all the issuer's outstanding voting securities, excluding, for the purpose of the calculation of the percentage held, any securities held by the person or company as underwriter in the course of a distribution;

"significant shareholder based on post-conversion beneficial ownership" has the meaning ascribed to that term in subsection (5);

"specified disposition of securities" means a disposition or transfer of securities referred to in subsection 5.1(3);

"stock dividend plan" means an arrangement under which securities of an issuer are issued by the issuer to holders of securities of the issuer as a stock dividend or other distribution out of earnings, retained earnings or capital; and

"underlying security" means a security issued or transferred, or to be issued or transferred, in accordance with the terms of a convertible security, an exchangeable security or a multiple convertible security.

(2) **Affiliate** – In this Instrument, an issuer is an affiliate of another issuer if

(a) one of them is the subsidiary of the other, or

(b) each of them is controlled by the same person or company.

(3) **Control** – In this Instrument, a person or company (first person or company) is considered to control another person or company (second person or company) if

(a) the first person or company, beneficially owns or exercises control or direction over, whether direct or indirect, securities of the second person or company carrying votes which, if exercised, would entitle the first person or company to elect a majority of the directors of the second person or company, unless that first person or company holds the voting securities only to secure an obligation,

(b) the second person or company is a partnership, other than a limited partnership, and the first person or company holds more than 50 percent of the interests of the partnership, or

(c) the second person or company is a limited partnership and the general partner of the limited partnership is the first person or company.

(4) **Post-conversion beneficial ownership** – In this Instrument, a person or company is considered to have as of a given date post-conversion beneficial ownership of a security, including an unissued security, if the person or company is the beneficial owner of a security convertible into the security within 60 days following that date or has a right or obligation permitting or requiring the person or company, whether or not on conditions, to acquire beneficial ownership of the security within 60 days, by a single transaction or a series of linked transactions.

(5) **Significant shareholder based on post-conversion beneficial ownership** – A person or company is a significant shareholder based on post-conversion beneficial ownership if the person or company is not a significant shareholder but the person or company has beneficial ownership of, post-conversion beneficial ownership of, control or direction over, or any combination of beneficial ownership of, post-conversion beneficial ownership of, or control or direction over, whether direct or indirect, securities of an issuer carrying more than 10 percent of the voting rights attached to all the issuer's outstanding voting securities, calculated in accordance with subsection (6), excluding, for the purpose of the calculation of the percentage held, any securities held by the person or company as underwriter in the course of a distribution.

(6) For the purposes of the calculation in subsection (5), an issuer's outstanding voting securities include securities in respect of which a person or company has post-conversion beneficial ownership.

1.2 **Persons and companies designated or determined to be insiders for the purposes of this Instrument**

(1) The following persons and companies are designated or determined to be insiders of an issuer:

(a) a significant shareholder based on post-conversion beneficial ownership of the issuer's securities;

(b) a management company that provides significant management or administrative services to the issuer or a major subsidiary of the issuer, and every director, officer and significant shareholder of the management company; and

(c) in the case of an issuer that is an income trust, every director, officer and significant shareholder of a principal operating entity.

(2) **Issuer as insider of reporting issuer** – If an issuer (the first issuer) becomes an insider of a reporting issuer (the second issuer), every director or officer of the first issuer is designated or determined to be an insider of the second issuer and must file insider reports in accordance with section 3.6 in respect of transactions relating to the second issuer that occurred in the previous six months or for such shorter period that the person or company was a director or officer of the first issuer.

(3) **Reporting issuer as insider of other issuer** – If a reporting issuer (the first issuer) becomes an insider of another issuer (the second issuer), every director or officer of the second issuer is designated or determined to be an insider of the first issuer and must file insider reports in accordance with section 3.6 in respect of transactions relating to the first issuer that occurred in the previous six months or for such shorter period that the person or company was a director or officer of the second issuer.

PART 2 APPLICATION

2.1 **Insider reporting requirements (insiders of Ontario reporting issuers)** – In Ontario, the insider reporting requirements in sections 3.3 and 3.4 of Part 3 do not apply to an insider of a reporting issuer under the *Securities Act* (Ontario).

Note: In Ontario, requirements similar to the insider reporting requirements in sections 3.3 and 3.4 of this Instrument are contained in section 107 of the *Securities Act* (Ontario).

2.2 **Reporting deadline** – In Ontario, for the purposes of subsection 107(2) of the *Securities Act* (Ontario), the prescribed period is within 5 calendar days of any change in the direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer or any interest in, or right or obligation associated with, a related financial instrument.

PART 3 PRIMARY INSIDER REPORTING REQUIREMENT

3.1 **Reporting requirement** – An insider must file insider reports under this Part and Part 4 in respect of a reporting issuer if the insider is a reporting insider in respect of the reporting issuer.

3.2 **Reporting insider**

(1) An insider is a reporting insider in respect of a reporting issuer if the insider is

(a) the chief executive officer, the chief operating officer or the chief financial officer of the reporting issuer, of a significant shareholder of the reporting issuer or of a major subsidiary of the reporting issuer;

(b) a director of the reporting issuer, of a significant shareholder of the reporting issuer or of a major subsidiary of the reporting issuer;

(c) a person or company responsible for a principal business unit, division or function of the reporting issuer or of a major subsidiary of the reporting issuer;

(d) a significant shareholder of the reporting issuer;

(e) a management company that provides significant management or administrative services to the reporting issuer or a major subsidiary of the reporting issuer, and every director, officer and significant shareholder of the management company;

(f) an individual performing functions similar to the functions performed by any of the positions described in paragraphs (a) to (e);

(g) the reporting issuer itself, if it has purchased, redeemed or otherwise acquired a security of its own issue, for so long as it continues to hold that security;

(h) a person or company designated or determined to be an insider under subsection 1.2(1);

(i) any other insider that

(i) in the ordinary course receives or has access to information as to material facts or material changes concerning the reporting issuer or a major subsidiary of the reporting issuer before the material facts or material changes are generally disclosed; and

(ii) directly or indirectly, exercises, or has the ability to exercise, significant power or influence over the business, operations, capital or development of the reporting issuer or of a major subsidiary of the reporting issuer.

(2) In this section, a reference to “significant shareholder” includes a “significant shareholder based on post-conversion beneficial ownership”.

3.3 **Initial report** – A reporting insider must file an insider report within 10 days of becoming a reporting insider disclosing the reporting insider’s

(a) direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer, and

(b) interest in, or right or obligation associated with, a related financial instrument involving a security of the reporting issuer.

3.4 **Subsequent report** – A reporting insider must within five days of any of the following changes file an insider report disclosing a change in the reporting insider’s

(a) direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer, or

(b) interest in, or right or obligation associated with, a related financial instrument involving a security of the reporting issuer.

3.5 **Reporting requirements in connection with convertible or exchangeable securities** – For greater certainty, a reporting insider who exercises an option, warrant or other convertible or exchangeable security must file within five days of the change separate insider reports in accordance with section 3.4 disclosing the change in the reporting insider's direct or indirect beneficial ownership of, or control or direction over, each of

(a) the option, warrant or other convertible or exchangeable security, and

(b) the common shares or underlying securities.

3.6 **Report by certain designated insiders for certain historical transactions**

(1) A director or officer of an issuer (the first issuer) who is designated or determined to be an insider of another issuer (the second issuer) under subsections 1.2(2) or 1.2(3) must file, within 10 days of being designated or determined to be an insider of the second issuer, the insider reports that a reporting insider would have been required to file under Part 3 and Part 4 for all transactions involving securities of or related financial instruments involving securities of the second issuer that occurred in the previous six months or for such shorter period that the individual was a director or officer of the first issuer.

(2) A person or company who is required to file insider reports under subsection (1) must file the insider reports in paper format in accordance with Part 3 of NI 55-102 and file or cause to be filed the insider reports on the System for Electronic Document Analysis and Retrieval (SEDAR).

PART 4 SUPPLEMENTAL INSIDER REPORTING REQUIREMENT

4.1 **Other agreements, arrangements or understandings**

(1) If a reporting insider enters into, materially amends, or terminates an agreement, arrangement or understanding described in subsection (2), the reporting insider must, within five days of this event, file an insider report in accordance with section 4.3.

(2) An agreement, arrangement or understanding must be reported under subsection (1) if

(a) the agreement, arrangement or understanding has the effect of altering, directly or indirectly, the reporting insider's economic exposure to the reporting insider's reporting issuer;

(b) the agreement, arrangement or understanding involves, directly or indirectly, a security of the reporting issuer or a related financial instrument involving a security of the reporting issuer; and

(c) the reporting insider is not otherwise required to file an insider report in respect of this event under Part 3 or any corresponding provision of Canadian securities legislation.

4.2 **Report of prior agreements, arrangements or understandings** – A reporting insider must, within ten days of becoming a reporting insider in respect of a reporting issuer, file an insider report in accordance with section 4.3 if

(a) the reporting insider, prior to the date the reporting insider most recently became a reporting insider, entered into an agreement, arrangement or understanding in respect of which the reporting insider would have been required to file an insider report under section 4.1 if the agreement, arrangement or understanding had been entered into on or after the date the reporting insider most recently became a reporting insider, and

(b) the agreement, arrangement or understanding remains in effect on or after the date the reporting insider most recently became a reporting insider.

4.3 **Contents of report** – An insider report required to be filed under section 4.1 or 4.2 must disclose the existence and material terms of the agreement, arrangement or understanding.

PART 5 EXEMPTION FOR AUTOMATIC SECURITIES PURCHASE PLANS

5.1 **Interpretation**

(1) In this Part, a reference to a director or officer means a director or officer who is

(a) a director or officer of a reporting issuer and a reporting insider in respect of the reporting issuer, or

(b) a director or officer of a subsidiary of a reporting issuer and a reporting insider of the reporting issuer.

(2) In this Part, a reference to a security of a reporting issuer includes a related financial instrument involving a security of the reporting issuer.

(3) In this Part, a disposition or transfer of securities acquired under an automatic securities purchase plan is a specified disposition of securities if

(a) the disposition or transfer is incidental to the operation of the automatic securities purchase plan and does not involve a discrete investment decision by the director or officer; or

(b) the disposition or transfer is made to satisfy a tax withholding obligation arising from the distribution of securities under the automatic securities purchase plan and either

(i) the director or officer has elected that the tax withholding obligation will be satisfied through a disposition of securities, has communicated this election to the reporting issuer or the plan administrator not less than 30 days prior to the disposition and this election is irrevocable as of the 30th day before the disposition; or

(ii) the director or officer has not communicated an election to the reporting issuer or the plan administrator and, in accordance with the terms of the plan, the reporting issuer or the plan administrator is required to sell securities automatically to satisfy the tax withholding obligation.

5.2 **Reporting exemption**

(1) The insider reporting requirement does not apply to a director or officer for an acquisition or disposition of securities described in subsection (2) if the director or officer complies with the alternative reporting requirement in section 5.4.

(2) The exemption in subsection (1) applies to

(a) an acquisition of securities of the reporting issuer under an automatic securities purchase plan, other than an acquisition of securities under a lump-sum provision of the plan; or

(b) a specified disposition of securities of the reporting issuer under an automatic securities purchase plan.

5.3 **Acquisition of options or similar securities** – The exemption in section 5.2 does not apply to an acquisition of options or similar securities granted to a director or officer.

5.4 **Alternative reporting requirement**

(1) A director or officer is exempt under section 5.2 from the insider reporting requirement if the insider files an insider report within the time period described in subsection (2) disclosing, on a transaction-by-transaction basis or in acceptable summary form, each acquisition of securities under an automatic securities purchase plan not previously disclosed by or on behalf of the director or officer, and each specified disposition of securities under the automatic securities purchase plan not previously disclosed by or on behalf of the director or officer.

(2) The deadline for filing the insider report under subsection (1) is

(a) in the case of any securities acquired under the automatic securities purchase plan that have been disposed of or transferred, other than securities that have been disposed of or transferred as part of a specified disposition of securities, within five days of the disposition or transfer; and

(b) in the case of any securities acquired under the automatic securities purchase plan during a calendar year that have not been disposed of or transferred, and any securities that have been disposed of or transferred as part of a specified disposition of securities, within 90 days of the end of the calendar year.

(3) Subsection (1) does not apply to a director or officer if, at the time the insider report described in subsection (1) is due,

(a) the director or officer is not a reporting insider; or

(b) the director or officer is exempt from the insider reporting requirement.

PART 6 EXEMPTION FOR CERTAIN ISSUER GRANTS

6.1 **Interpretation**

(1) In this Part, a reference to a director or officer means a director or officer who is

(a) a director or officer of a reporting issuer and a reporting insider in respect of the reporting issuer, or

(b) a director or officer of a subsidiary of a reporting issuer and a reporting insider of the reporting issuer.

(2) In this Part, a reference to a security of a reporting issuer includes a related financial instrument involving a security of the reporting issuer.

6.2 **Reporting exemption** – The insider reporting requirement does not apply to a director or officer for the acquisition of securities of the reporting issuer under a compensation arrangement established by the reporting issuer or by a subsidiary of the reporting issuer, if

(a) the reporting issuer has previously disclosed the existence and material terms of the compensation arrangement in an information circular or other public document filed on SEDAR;

(b) the reporting issuer has previously filed in respect of the acquisition an issuer grant report on SEDAR in accordance with section 6.3; and

(c) the director or officer complies with the alternative reporting requirement in section 6.4.

6.3 **Issuer grant report** – An issuer grant report filed under this Part in respect of a compensation arrangement must include

(a) the date the options or other securities were issued or granted;

(b) the number of options or other securities issued or granted to each director or officer;

(c) the price at which the options or other securities were issued or granted and the exercise price;

(d) the number and type of securities issuable on the exercise of the options or other securities; and

(e) any other material terms that have not been previously disclosed or filed in a public filing on SEDAR.

6.4 **Alternative reporting requirement**

(1) A director or officer is exempt under section 6.2 from the insider reporting requirement if the insider files an insider report within the time period described in subsection (2) disclosing, on a transaction-by-transaction basis or in acceptable summary form, each acquisition of securities under the compensation arrangement not previously disclosed by or on behalf of the director or officer, and each specified disposition of securities under the compensation arrangement not previously disclosed by or on behalf of the director or officer.

(2) The deadline for filing the insider report under subsection (1) is

(a) in the case of any securities acquired under the compensation arrangement that have been disposed of or transferred, within five days of the disposition or transfer; and

(b) in the case of any securities acquired under the compensation arrangement during a calendar year that have not been disposed of or transferred, within 90 days of the end of the calendar year.

(3) Subsection (1) does not apply to a director or officer if, at the time the insider report described in subsection (1) is due,

(a) the director or officer is not a reporting insider; or

(b) the director or officer is exempt from the insider reporting requirement.

PART 7 EXEMPTIONS FOR NORMAL COURSE ISSUER BIDS AND PUBLICLY DISCLOSED TRANSACTIONS

7.1 **Reporting exemption for NCIBs** – The insider reporting requirement does not apply to an issuer for an acquisition of securities of its own issue by the issuer under a normal course issuer bid.

7.2 **Reporting requirement** – An issuer who relies on the exemption in section 7.1 must file an insider report disclosing each acquisition of securities by it under a normal course issuer bid within 10 days of the end of the month in which the acquisition occurred.

7.3 **General exemption for other transactions that have been otherwise disclosed** – The insider reporting requirement does not apply to an issuer in connection with a transaction, other than a normal course issuer bid, involving securities of its own issue if the existence and material terms of the transaction have been generally disclosed in a public filing on SEDAR.

PART 8 EXEMPTION FOR CERTAIN ISSUER EVENTS

8.1 **Reporting exemption** – The insider reporting requirement does not apply to a reporting insider whose direct or indirect beneficial ownership of, or control or direction over, securities of the reporting insider's reporting issuer changes as a result of an issuer event of the reporting issuer.

8.2 **Reporting requirement** – A reporting insider who relies on the exemption in section 8.1 must file an insider report, disclosing all changes in beneficial ownership of, or control or direction, whether direct or indirect, over securities of the reporting issuer as a result of an issuer event that have not previously been reported by or on behalf of the insider, within the time required by securities legislation for the insider to report any other subsequent change in beneficial ownership of, or control or direction over, whether direct or indirect, securities of the reporting issuer.

PART 9 GENERAL EXEMPTIONS

9.1 **Reporting exemption (mutual funds)** – The insider reporting requirement does not apply to an insider of an issuer that is a mutual fund.

9.2 **Reporting exemption (non-reporting insiders)** – The insider reporting requirement does not apply to an insider of an issuer if the insider is not a reporting insider in respect of that issuer.

9.3 **Reporting exemption (certain insiders of investment issuers)** – The insider reporting requirement does not apply to a director or officer of a significant shareholder, or a director or officer of a subsidiary of a significant shareholder, in respect of securities of an investment issuer or a related financial instrument involving a security of the investment issuer if the director or officer

(a) does not in the ordinary course receive or have access to information as to material facts or material changes concerning the investment issuer before the material facts or material changes are generally disclosed; and

(b) is not a reporting insider in relation to the investment issuer in any capacity other than as a director or officer of the significant shareholder or a subsidiary of the significant shareholder.

9.4 **Reporting exemption (nil report)** – The insider reporting requirement does not apply to a reporting insider if the reporting insider

(a) does not have any beneficial ownership of, or control or direction over, whether direct or indirect, securities of the issuer;

(b) does not have any interest in, or right or obligation associated with, a related financial instrument involving a security of the issuer; and

(c) has not entered into any agreement, arrangement or understanding as described in section 4.1.

9.5 **Reporting exemption (corporate group)** – The insider reporting requirement does not apply to a reporting insider if

(a) the reporting insider is a subsidiary or other affiliate of another reporting insider (the affiliated reporting insider); and

(b) the affiliated reporting insider has filed an insider report that discloses substantially the same information as would be contained in an insider report filed by the reporting insider, including details of the reporting insider's

(i) direct or indirect beneficial ownership of, or control or direction over, securities of the reporting insider's reporting issuer; and

(ii) interest in, or right or obligation associated with, a related financial instrument involving a security of the reporting issuer.

9.6 **Reporting exemption (executor and co-executor)** – The insider reporting requirement does not apply to a reporting insider in respect of securities of an issuer beneficially owned or controlled, directly or indirectly, by an estate if

(a) the reporting insider is an executor, administrator or other person or company who is a representative of the estate (referred to in this section as an executor of the estate), or a director or officer of an executor of the estate;

(b) the reporting insider is subject to the insider reporting requirement solely because of the reporting insider being an executor or a director or officer of an executor of the estate; and

(c) another executor or director or officer of an executor of the estate has filed an insider report that discloses substantially the same information as would be contained in an insider report filed by the reporting insider in respect of securities of an issuer beneficially owned or controlled, directly or indirectly, by the estate.

9.7 **Exempt persons and transactions** – The insider reporting requirement does not apply to

(a) a transfer, pledge or encumbrance of securities by a reporting insider for the purpose of giving collateral for a debt made in good faith so long as there is no limitation on the recourse available against the insider for any amount payable under such debt;

(b) the receipt by a reporting insider of a transfer, pledge or encumbrance of securities of an issuer if the securities are transferred, pledged or encumbered as collateral for a debt under a written agreement and in the ordinary course of business of the insider;

(c) a reporting insider, other than a reporting insider that is an individual, that enters into, materially amends or terminates an agreement, arrangement or understanding which is in the nature of a credit derivative;

(d) a reporting insider who did not know and, in the exercise of reasonable diligence, could not have known of the alteration to economic exposure described in section 4.1;

(e) the acquisition or disposition of a security, or an interest in a security, of an investment fund, provided that securities of the reporting issuer do not form a material component of the investment fund's market value; or

(f) the acquisition or disposition of a security, or an interest in a security, of an issuer that holds directly or indirectly securities of the reporting issuer, if:

(i) the reporting insider is not a control person of the issuer; and

(ii) the reporting insider does not have or share investment control over the securities of the reporting issuer.

PART 10 – DISCRETIONARY EXEMPTIONS

10.1 **Exemptions from this Instrument**

(1) The regulator or securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 11 – EFFECTIVE DATE

11.1 **Effective Date** – This Instrument comes into force on ●.

APPENDIX C

COMPANION POLICY 55-104CP
INSIDER REPORTING REQUIREMENTS AND EXEMPTIONS

PART 1 INTRODUCTION AND DEFINITIONS

1.1 Introduction and Purpose

(1) National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (the Instrument) sets out the principal insider reporting requirements and exemptions for insiders of issuers that are reporting issuers.[1]

(2) The purpose of this Policy is to help you understand how the Canadian Securities Administrators (the CSA or we) interpret or apply certain provisions of the Instrument.

1.2 Background to the Instrument

(1) The Instrument centralizes the principal insider reporting requirements and most exemptions in one location to make it easier for issuers and insiders to understand their obligations and to help promote timely and effective compliance.

(2) The focus of the Instrument is on the substantive legal insider reporting requirements rather than the procedural requirements relating to the electronic filing of insider reports. Issuers and insiders should review National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)* (NI 55-102 SEDI) in order to determine their obligations for the electronic filing of insider reports.

(3) Although the Instrument sets out the principal insider reporting requirements and exemptions for issuers and insiders in Canada, a number of other instruments also contain exemptions from the insider reporting requirements, including

(a) National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102);

(b) National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (NI 62-103);

(c) National Instrument 71-101 *The Multijurisdictional Disclosure System* (NI 71-101); and

(d) National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (NI 71-102).

We have not included the insider reporting exemptions from these instruments in the Instrument as we think these exemptions are better situated within the context of these other instruments. However, issuers and insiders may wish to review these instruments in determining whether any additional exemptions from the insider reporting requirements are available.

1.3 Policy Rationale for Insider Reporting in Canada

(1) The insider reporting requirements serve a number of functions, including deterring improper insider trading based on material undisclosed information and increasing market efficiency by providing investors with information concerning the trading activities of insiders of an issuer, and, by inference, the insiders' views of their issuer's prospects.

(2) Insider reporting also helps prevent illegal or otherwise improper activities involving stock options and similar equity-based instruments, including stock option backdating, option repricing, and the opportunistic timing of option grants (spring-loading or bullet-dodging), since the requirement for timely disclosure of option grants and public scrutiny of such disclosure will generally limit opportunities for insiders to engage in improper dating practices.

(3) Insiders should interpret the insider reporting requirements in the Instrument with these policy rationales in mind and in a manner that gives priority to substance over form.

[1] In Ontario, the principal insider reporting requirements are set out in Part XXI of the *Securities Act* (Ontario) (the Ontario Act). See Part 2 of this Policy.

1.4 Definitions used in the Instrument

(1) **General** – Many of the terms for which the Instrument provides definitions are defined in the securities legislation of certain jurisdictions but not others. A term used in the Instrument and defined in the securities statute of a local jurisdiction has the meaning given to it in the statute unless: (a) the definition in that statute is restricted to a specific portion of the statute that does not govern insider reporting; or (b) the context otherwise requires.

Accordingly, the definition of these terms in the Instrument uses the phrase "despite paragraph (a), in [*certain enumerated jurisdictions*], this term has the same meaning as in securities legislation". This means that, in the case of the jurisdictions specifically identified in the definition, the definition in the securities statute applies. However, in the case of the jurisdictions not specifically identified in the definition, the definition in the Instrument applies.

The provincial and territorial regulatory authorities consider the meanings given to these terms in securities legislation to be substantially similar to the definitions set out in the Instrument.

(2) **Directors and Officers** – Where the Instrument uses the term "directors" or "officers", insiders of an issuer that is not a corporation must refer to the definitions in securities legislation of "director" and "officer". The definitions of "director" and "officer" typically include persons acting in capacities similar to those of a director or an officer of a company or individuals who perform similar functions. Corporate and non-corporate issuers and their insiders must determine, in light of the particular circumstances, which individuals or persons are acting in such capacities for the purposes of complying with the Instrument.

Similarly, the terms "chief executive officer" and "chief financial officer" include the individuals that have the responsibilities normally associated with these positions or act in a similar capacity. This determination is to be made irrespective of an individual's corporate title or whether that individual is employed directly or acts pursuant to an agreement or understanding.

(3) **Economic Interest** – The term "economic interest" in a security is a core component of the definition of "related financial instrument" which is part of the primary insider reporting requirement in Part 3 of the Instrument. We intend the term to have broad application and to refer to the economic attributes ordinarily associated in common law with beneficial ownership of a security, including

- the potential for gain in the nature of interest, dividends or other forms of distributions of income on the security;
- the potential for gain in the nature of a capital gain realized on a disposition of the security, to the extent that the proceeds of disposition exceed the tax cost (that is, gains associated with an appreciation in the security's value); and
- the potential for loss in the nature of a capital loss on a disposition of the security, to the extent that the proceeds of disposition are less than the tax cost (that is, losses associated with a fall in the security's value).

For example, a reporting insider who owns securities of his or her reporting issuer could reduce or eliminate the risk associated with a fall in the value of the securities while retaining ownership of the securities by entering into a derivative transaction such as an equity swap. The equity swap would represent a "related financial instrument" since, among other things, the agreement would affect the reporting insider's economic interest in a security of the reporting issuer.

(4) **Economic Exposure** – The term "economic exposure" is used in Part 4 of the Instrument and is part of the supplemental insider reporting requirement. The term generally refers to the link between a person's economic or financial interests and the economic or financial interests of the reporting issuer in which the person is an insider.

For example, an insider with a substantial proportion of his or her personal wealth invested in securities of his or her reporting issuer will be highly exposed to changes in the fortunes of the reporting issuer. Conversely, an insider who holds no securities of a reporting issuer (and does not participate in a compensation arrangement involving securities of the reporting issuer) will generally have exposure limited to their salary and any other compensation arrangements that do not involve securities of the reporting issuer.

All other things being equal, if an insider changes his or her ownership interest in a reporting issuer (either directly, through a purchase or sale of securities of the reporting issuer, or indirectly, through a derivative transaction involving securities of the reporting issuer), the insider will generally be changing his or her economic exposure to the reporting issuer. Similarly, if an insider enters into a hedging transaction that has the effect of reducing the sensitivity of the

insider to changes in the reporting issuer's share price or performance, the insider will generally be changing his or her economic exposure to the reporting issuer.

(5) **Major Subsidiary** – The definition of "major subsidiary" is a key element of the definition of "reporting insider". The determination of whether a subsidiary is a major subsidiary will generally require a backward-looking determination based on the issuer's most recent annual audited or interim financial statements.

If an issuer acquires a subsidiary or undertakes a reorganization, with the result that a subsidiary will come within the definition of major subsidiary once the issuer next files its annual audited or interim financial statements, the subsidiary will not be a major subsidiary until such filing, and directors and officers of the subsidiary will not be reporting insiders until such filing.

Although not required to do so, insiders may choose to file insider reports upon completion of the acquisition or reorganization rather than wait for the issuer to file its next set of financial statements. Similarly, if a subsidiary ceases to be a major subsidiary because of an acquisition or other reorganization by the parent issuer, but the subsidiary continues to be a major subsidiary based on information contained within the issuer's most recently filed financial statements, the issuer or reporting insiders may wish to consider applying for an exemption from the insider reporting requirement.

(6) **Related Financial Instrument** – Historically, there has been some uncertainty as to whether, as a matter of law, certain derivative instruments involving securities are themselves securities. This uncertainty has resulted in questions as to whether a reporting obligation existed or how insiders should report the instrument. The Instrument resolves this uncertainty through the definition of "related financial instrument". Under the Instrument, it is generally not necessary to determine whether a particular instrument is a security or a related financial instrument since the insider reporting requirement in Part 3 of the Instrument applies to both securities and related financial instruments.

To the extent the following instruments do not, as a matter of law, constitute securities, they will generally constitute related financial instruments:

- a forward contract, futures contract, stock purchase contract or similar contract involving securities of the insider's reporting issuer;
- options issued by an issuer other than the insider's reporting issuer;
- stock-based compensation instruments, including phantom stock units, deferred share units (DSUs), restricted share awards (RSAs), performance share units (PSUs), stock appreciation rights (SARs) and similar instruments;
- a debt instrument or evidence of deposit issued by a bank or other financial institution for which part or all of the amount payable is determined by reference to the price, value or level of a security of the insider's reporting issuer (a linked note); and
- most other agreements, arrangements or understandings that were previously subject to an insider reporting requirement under former Multilateral Instrument 55-103 *Insider Reporting of Certain Derivative Transactions (Equity Monetization)* (MI 55-103).

PART 2 APPLICATION

2.1 Application in Ontario – In Ontario, the insider reporting requirements are set out in Part XXI of the Ontario Act. For this reason, sections 3.3 and 3.4 of the Instrument do not apply in Ontario. However, the insider reporting requirements set out in the Instrument and in Part XXI of the Ontario Act are substantially harmonized. Accordingly, in this Policy, we omit separate references to the requirements of the Ontario Act except where it is necessary to highlight a difference between the requirements of the Instrument and the Ontario Act.

PART 3 PRIMARY INSIDER REPORTING REQUIREMENT

3.1 Meaning of beneficial ownership

(1) **General** – The term "beneficial ownership" is not defined in securities legislation. Accordingly, beneficial ownership must be determined in accordance with the ordinary principles of property and trust law of a local jurisdiction. In Québec, due to the fact that the concept of beneficial ownership does not exist in civil law, the meaning of beneficial ownership has the meaning ascribed to it in section 1.4 of Regulation 14-501Q. The concept of beneficial ownership in

Québec legislation is often used in conjunction with the concept of control and direction, which allows for a similar interpretation of the concept of common law beneficial ownership in most jurisdictions.

(2) **Deemed beneficial ownership** – Although securities legislation does not define beneficial ownership, securities legislation in certain jurisdictions may deem a person to beneficially own securities in certain circumstances. For example, in some jurisdictions, a person is deemed to beneficially own securities that are beneficially owned by a company controlled by that person or by an affiliate of such company.

(3) **Post-conversion beneficial ownership** – Under the Instrument, a person has "post-conversion beneficial ownership" of a security, including an unissued security, if the person is the beneficial owner of a security convertible into the security within 60 days. For example, a person who owns special warrants convertible at any time and without payment of additional consideration into common shares will be considered to have post-conversion beneficial ownership of the underlying common shares. Under the Instrument, a person who has post-conversion beneficial ownership of securities may in certain circumstances be designated or determined to be an insider and may be a reporting insider. For example, if a person owns 9.9% of an issuer's common shares and then acquires special warrants convertible into an additional 5% of the issuer's common shares, the person will be designated or determined to be an insider under section 1.2 of the Instrument. The person will be a reporting insider because the person will be a "significant shareholder based on post-conversion beneficial ownership" under section 3.2 of the Instrument.

The concept of post-conversion beneficial ownership of the underlying securities into which securities are convertible within 60 days is consistent with similar provisions for determining beneficial ownership of securities for the purposes of the early warning requirements in section 1.8 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* and in Ontario, subsection 90(1) of the Ontario Act.

(4) **Beneficial ownership of securities held in a trust** – Under common law trust law, beneficial ownership is commonly distinguished from legal ownership. Under the civil law, a trust is governed by the Quebec Civil Code. Under the common law, a trustee is generally considered to be the legal owner of the trust property; the beneficiary, the beneficial owner. A reporting insider who has a beneficial interest in securities held in a trust may have or share beneficial ownership of the securities for insider reporting purposes, depending on the particular facts of the arrangement and upon the governing law of the trust, whether common law or civil law. We will generally consider a person to have or share beneficial ownership of securities held in a trust if the person has or shares

(a) a beneficial interest in the securities held in the trust and has or shares voting or investment power over the securities held in the trust; or

(b) legal ownership of the securities held in the trust and has or shares voting or investment power over the securities held in the trust.

(5) **Disclaimers of beneficial ownership** – The CSA generally will not regard a purported disclaimer of a beneficial interest in or beneficial ownership of securities as being effective for the purposes of determining beneficial ownership under securities legislation unless such disclaimer is irrevocable and has been generally disclosed to the public.

3.2 Meaning of control or direction – The term "control or direction" is not defined in Canadian securities legislation except in Québec, where the *Securities Act* (Québec), in sections 90, 91 and 92, define the concept of control and deems situations where a person has control over securities. A person will generally have control or direction over securities if the person, directly or indirectly, through any contract, arrangement, understanding or relationship or otherwise has or shares

(a) voting power, which includes the power to vote, or to direct the voting of, such securities and/or

(b) investment power, which includes the power to acquire or dispose, or to direct the acquisition or disposition of such securities.

This would include having control or direction over the securities through a power of attorney, a grant of limited trading authority, or management agreement. This would also include a situation where a reporting insider acts as a trustee for an estate (or in Québec as a liquidator) or other trust in which securities of the reporting insider's issuer are included within the assets of the trust. This may also be the case if a spouse (or any other person related to the reporting insider) owns the securities or acts as trustee, but the reporting insider has or shares control or direction over the securities held in trust.

PART 4 SUPPLEMENTAL INSIDER REPORTING REQUIREMENT

4.1 Supplemental insider reporting requirement

(1) Part 4 of the Instrument contains the supplemental insider reporting requirement. The supplemental insider reporting requirement is consistent with the former insider reporting requirement for derivatives that previously existed in some jurisdictions under former MI 55-103. However, because Part 3 of the Instrument requires insiders, as part of the primary insider reporting requirement, to file insider reports about transactions involving "related financial instruments", most transactions that were previously subject to a reporting requirement under former MI 55-103 will be subject to the primary insider reporting requirement under Part 3 of the Instrument.

(2) If a reporting insider enters into an equity monetization transaction or other derivative-based transaction that falls outside of the primary insider reporting requirement in Part 3 of the Instrument, the reporting insider must report the transaction under Part 4. For example, certain types of monetization transactions may be found to alter an insider's "economic exposure" towards the insider's issuer but not alter the insider's "economic interest in a security". If a reporting insider enters into this type of transaction, the insider must report the transaction under Part 4.

4.2 Insider reporting of equity monetization transactions

(1) **What are equity monetization transactions?** There are a variety of sophisticated derivative-based strategies that permit investors to dispose, in economic terms, of an equity position in a public company without attracting certain tax and non-tax consequences associated with a conventional disposition of such position. These strategies, which are sometimes referred to as "equity monetization" strategies, allow an investor to receive a cash amount similar to proceeds of disposition, and transfer part or all of the economic risk and/or return associated with securities of an issuer, without actually transferring ownership of or control over such securities. (The term "monetization" generally refers to the conversion of an asset (such as securities) into cash.)

(2) **What are the concerns with equity monetization transactions?** Where a reporting insider enters into a monetization transaction, and does not disclose the existence or material terms of that transaction, there is potential for harm to investors and the integrity of the insider reporting regime because:

- an insider in possession of material undisclosed information, although prohibited from trading in securities of the issuer, may be able to profit improperly from such information by entering into derivative-based transactions that mimic trades in securities of the reporting issuer;
- market efficiency will be impaired since the market is deprived of important information relating to the market activities of the insider; and
- since the insider's publicly reported holdings no longer reflect the insider's true economic position in the issuer, the public reporting of such holdings (e.g., in an insider report or a proxy circular) may in fact materially mislead investors.

If a reporting insider enters into a transaction which satisfies one or more of the policy rationale for insider reporting, but for technical reasons it may be argued that the transaction falls outside of the primary insider reporting requirement in Part 3 of the Instrument, the insider will be required to file an insider report under Part 4 unless an exemption is available to the insider. In this way, the market can make its own determination as to the significance, if any, of the transaction in question.

PART 5 AUTOMATIC SECURITIES PURCHASE PLANS

5.1 Automatic Securities Purchase Plans

(1) Section 5.1 of the Instrument contains an interpretation provision that applies to Part 5. Because of this provision, directors and officers of a reporting issuer and of a major subsidiary of a reporting issuer can use the exemption in this Part for both acquisitions and specified dispositions of securities and related financial instruments under an automatic securities purchase plan (ASPP).

(2) The exemption does not apply to securities acquired under a cash payment option of a dividend or interest reinvestment plan or a lump-sum provision of a share purchase plan.

(3) The exemption does not apply to an "automatic securities disposition plan" (sometimes referred to as a "pre-arranged structured sales plan") (an ASDP) established between a reporting insider and a broker since an ASDP is designed to facilitate dispositions not acquisitions. However, if a reporting insider can demonstrate that an ASDP is genuinely an

automatic plan and that the insider cannot make discrete investment decisions through the plan, we may consider granting exemptive relief on an application basis to permit the insider to file reports on an annual basis.

(4) The exemption is not available for a grant of options or similar securities to reporting insiders, since, in many cases, the reporting insider will be able to make an investment decision in respect of the grant. If an insider is an executive officer or a director of the reporting issuer or a major subsidiary, the insider may be participating in the decision to grant the options or other securities. Even if the insider does not participate in the decision, we think information about options or similar securities granted to this group of insiders is important to the market and the insider should disclose this information in a timely manner.

5.2 Specified Dispositions of Securities

(1) Subsection 5.1(3)(a) of the Instrument provides that a disposition or transfer of securities is a specified disposition if, among other things, it does not involve a "discrete investment decision" by the director or officer. The term "discrete investment decision" generally refers to the exercise of discretion involved in a specific decision to purchase, hold or sell a security. The purchase of a security as a result of the application of a pre-determined, mechanical formula does not generally represent a discrete investment decision (other than the initial decision to enter into the plan). For example, for an individual who holds stock options in a reporting issuer, the decision to exercise the stock options will generally represent a discrete investment decision. If the individual is a reporting insider, we think the individual should report this information in a timely fashion, since this decision may convey information that other market participants may consider relevant to their own investing decisions.

(2) The definition of "specified disposition of securities" contemplates, among other things, a disposition made to satisfy a tax withholding obligation arising from the acquisition of securities under an ASPP in certain circumstances. Under some types of ASPPs, an issuer or plan administrator may sell, on behalf of a plan participant, a portion of the securities that would otherwise be distributed to the plan participant in order to satisfy a tax withholding obligation. In such plans, the participant typically may elect either to provide the issuer or the plan administrator with a cheque to cover this liability or to direct the issuer or plan administrator to sell a sufficient number of the securities that would otherwise be distributed to cover this liability. In many cases, for reasons of convenience, a plan participant will simply direct the issuer or the plan administrator to sell a portion of the securities.

Although we think that the election as to how a tax withholding obligation will be funded contains an element of a discrete investment decision, we are satisfied that, where the election occurs sufficiently in advance of the actual distribution of securities, it is acceptable for a report of a disposition made to satisfy a tax withholding obligation to be made on an annual basis. Accordingly, a disposition made to satisfy a tax withholding obligation will be a specified disposition of securities if it meets the criteria contained in clause 5.1(3)(b) of the Instrument.

5.3 Alternative Reporting Requirements – If securities acquired under an ASPP are disposed of or transferred, other than through a specified disposition of securities, and the insider has not previously disclosed the acquisition of these securities, the insider report should disclose, for each acquisition of securities which the insider is now disposing of or transferring, information about the date of acquisition of the securities, the number of securities acquired and the acquisition price of such securities. The report should also disclose, for each disposition or transfer, information about each disposition or transfer of securities.

5.4 Exemption from the Alternative Reporting Requirement – The rationale underlying the alternative reporting requirement is to ensure that reporting insiders periodically update their publicly disclosed holdings to ensure that their publicly disclosed holdings convey an accurate picture of their holdings. If an individual has ceased to be subject to the insider reporting requirements at the time the alternative report becomes due, the market generally would not benefit from the information in the alternative report. Accordingly, we provided an exemption in subsection 5.4(3) of the Instrument in these circumstances.

5.5 Design and Administration of Plans

(1) Part 5 of the Instrument provides a limited exemption from the insider reporting requirement only in circumstances in which an insider, by virtue of participation in an ASPP, is not making discrete investment decisions for acquisitions under such plan. Accordingly, if it is intended that insiders of an issuer rely on this exemption for a particular plan of an issuer, the issuer should design and administer the plan in a manner that is consistent with this limitation.

(2) To fit within the definition of an ASPP, the plan must set out a written formula or criteria for establishing the timing of the acquisitions, the number of securities that the insider can acquire and the price payable. If a plan participant is able to exercise discretion in relation to these terms either in the capacity of a recipient of the securities or through participating in the decision-making process of the issuer making the grant, he or she may be able to make a discrete

investment decision in respect of the grant or acquisition. We think a reporting insider in these circumstances should disclose information about the grant in accordance within the normal timeframe and not on a deferred basis.

PART 6 ISSUER GRANT REPORTS

6.1 Overview

(1) Section 6.1 of the Instrument contains an interpretation provision that applies to Part 6. Because of this provision, directors and officers of a reporting issuer and of a major subsidiary of a reporting issuer can use the exemption in this Part for grants of securities and related financial instruments.

(2) A reporting insider who intends to rely on the exemption in Part 6 for a grant of stock options or similar securities must first confirm that the issuer has made the public disclosure required by section 6.3 of the Instrument. If the issuer has not made the required disclosure, the reporting insider must report the grant in accordance with the normal reporting requirements under Part 3 of the Instrument.

6.2 Policy rationale for the issuer grant report exemption

(1) The issuer grant report exemption reduces the regulatory burden associated with insider reporting of stock options and similar instruments since it allows an issuer to make a single filing on SEDAR. Since the market will have timely information about the existence and material terms of the grant, it is not necessary for each of the reporting insiders to file insider reports about the grant within the ordinary time periods.

(2) The concept of an issuer grant report is generally similar to the concept of an issuer event report in that the decision to make the grant originates with the issuer. Accordingly, at the time of the grant, the issuer will generally be in a better position than the reporting insiders who are the recipients of the grant to communicate information about the grant to the market in a timely manner.

(3) There is no obligation for an issuer to file an issuer grant report for a grant of stock options or similar instruments. An issuer may choose to assist its reporting insiders with their reporting obligations and also to communicate material information about its compensation practices to the market in a timely manner.

(4) If an issuer chooses not to file an issuer grant report, the issuer should take all reasonable steps to notify reporting insiders of their grants in a timely manner to allow reporting insiders to comply with their reporting obligations.

(5) The concept of an issuer grant report is different from the issuer event report that an issuer is required to make under Part 2 of NI 55-102 in that

(a) An issuer is not required to file an issuer grant report; and

(b) If an issuer chooses to file an issuer grant report, the issuer is required to file the report on SEDAR rather than on SEDI.

6.3 Form of an issuer grant report – There is no required form for an issuer grant report. An issuer may file a report in spreadsheet format or any other format that discloses the information required by section 6.3 of the Instrument.

PART 7 EXEMPTIONS FOR NORMAL COURSE ISSUER BIDS AND PUBLICLY DISCLOSED TRANSACTIONS

7.1 Introduction – Under securities legislation, a reporting issuer may become an insider of itself in certain circumstances and therefore subject to an insider reporting requirement in relation to transactions involving its own securities. Under the definition of “insider” in securities legislation, a reporting issuer becomes an insider of itself if it “has purchased, redeemed or otherwise acquired a security of its own issue, for so long as it continues to hold that security”. In certain jurisdictions, a reporting issuer may also become an insider of itself if it acquires and holds securities of its own issue through an affiliate, because in certain jurisdictions a person is deemed to beneficially own securities beneficially owned by affiliates. Where a reporting issuer is an insider of itself, the reporting issuer will also be a reporting insider under the Instrument.

7.2 General exemption for transactions that have been generally disclosed – Section 7.3 of the Instrument provides that the insider reporting requirement does not apply to an issuer in connection with a transaction, other than a normal course issuer bid, involving securities of its own issue if the existence and material terms of the transaction have been generally disclosed in a public filing made on SEDAR. Because of this exemption and the exemption for normal course issuer bids in section 7.1 of the Instrument, a reporting issuer that is an insider of itself will not generally need to file insider reports under Part 3 or Part 4.

PART 8 EXEMPTION FOR CERTAIN ISSUER EVENTS

8.1 [Intentionally left blank]

PART 9 EXEMPTIONS

9.1 **Scope of exemptions** – The exemptions under the Instrument are only exemptions from the insider reporting requirements contained in the Instrument and are not exemptions from the provisions in Canadian securities legislation imposing liability for improper insider trading.

9.2 **Reporting Exemption** – The definition of "reporting insider" includes certain enumerated persons or companies that generally satisfy the criteria contained in subsection (i) of the definition of reporting insider, namely, access to material undisclosed information and significant power or influence over the reporting issuer. Although there is no general exemption for holders of the enumerated persons or companies based on lack of access to material undisclosed information or lack of power or influence, we will consider applications for exemptive relief where the issuer or reporting insider can demonstrate that the reporting insider does not satisfy these criteria. This might include, for example, a situation where a foreign subsidiary may appoint a locally resident individual as a director to meet residency requirements under applicable corporate legislation, but remove the individual's powers and liabilities through a unanimous shareholder declaration.

9.3 **Reporting Exemption (certain directors and officers of insider issuers)** – The reference to "material facts or material changes concerning the investment issuer" in section 9.3 of the Instrument is intended to include information that originates at the insider issuer level but which concerns or is otherwise relevant to the investment issuer. For example, in the case of an issuer that has a subsidiary investment issuer, a decision at the parent issuer level that the subsidiary investment issuer will commence or discontinue a line of business would generally represent a "material fact or material change concerning the investment issuer". Similarly, a decision at the parent issuer level that the parent issuer will seek to sell its holding in the subsidiary investment issuer would also generally represent a "material fact or material change concerning the investment issuer." Accordingly, a director or officer of the parent issuer who routinely had access to such information concerning the investment issuer would not be entitled to rely on the exemption for trades in securities of the investment issuer.

9.4 **Exemption for a pledge where there is no limitation on recourse** – The exemption in section 9.7(a) of the Instrument is limited to pledges of securities in which there is no limitation of recourse since a limitation on recourse may effectively allow the borrower to "put" the securities to the lender to satisfy the debt. The limitation on recourse may effectively represent a transfer of the risk that the securities may fall in value from the insider to the lender. In these circumstances, the transaction should be transparent to the market.

A loan secured by a pledge of securities may contain a term limiting recourse against the borrower to the pledged securities (a legal limitation on recourse). Similarly, a loan secured by a pledge of securities may be structured as a limited recourse loan if the loan is made to a limited liability entity (such as a holding corporation) owned or controlled by the insider (a structural limitation on recourse). If there is a limitation on recourse as against the insider either legally or structurally, the exemption would not be available.

9.5. **Exemption for certain investment funds** – The exemption in section 9.7(e) of the Instrument is limited to situations where securities of the reporting insider's reporting issuer do not form a material component of the investment fund's market value. In determining materiality, similar considerations to those involved in the concepts of material fact and material change would apply.

PART 10 CONTRAVENTION OF INSIDER REPORTING REQUIREMENTS

10.1 Contravention of insider reporting requirements

(1) It is an offence to fail to file an insider report in accordance with the filing deadlines prescribed by the Instrument or to submit information in an insider report that, in a material respect and at the time and in the light of the circumstances in which it is submitted, is misleading or untrue.

(2) A failure to file an insider report in a timely manner or the filing of an insider report that contains information that is materially misleading may result in one or more of the following:

- the imposition of a late filing fee;
- the reporting insider being identified as a late filer on a public database of late filers maintained by certain securities regulators;

- in the case of financial years ending on or after December 31, 2010, the reporting insider being identified as a late filer in the reporting insider's annual information circular;

- the issuance of a cease trade order that prohibits the reporting insider from trading in securities of the applicable reporting issuer, whether direct or indirect, until the failure to file is corrected; or

- in appropriate circumstances, enforcement proceedings.

(3) A reporting issuer that files an information circular on or after ● must describe any late filing fees relating to the late filing of insider reports imposed by a securities regulatory authority against any director or executive officer of the issuer during the most recently completed financial year. This requirement is located in Item 17 of Form 51-102F5 *Information Circular*. Information relating to non-compliance by directors and executive officers with their insider reporting requirements may be relevant to an investor's voting decision and should be disclosed. This requirement may also create additional incentives for issuers to assist their directors and executive officers in complying with their insider reporting obligations.

PART 11 INSIDER TRADING

11.1 Non-reporting insiders – Insiders who are not reporting insiders are still subject to the provisions in Canadian securities legislation prohibiting improper insider trading.

11.2 Written disclosure policies – National Policy 51-201 *Disclosure Standards* outlines detailed best practices for issuers for disclosure and information containment and provides interpretative guidance of insider trading laws. Issuers should adopt written disclosure policies to assist directors, officers, employees and other representatives in discharging timely disclosure obligations. Written disclosure policies also should provide guidance on how to maintain the confidentiality of corporate information and to prevent improper trading on inside information. Adopting the CSA best practices may assist issuers to take all reasonable steps to contain inside information.

11.3 Insider Lists – Reporting issuers may also wish to consider preparing and periodically updating a list of the persons working for them or their affiliates who have access to material facts or material changes concerning the reporting issuer before those facts or changes are generally disclosed. This type of list may allow reporting issuers to control the flow of undisclosed information. The CSA may request additional information from time to time, including asking the reporting issuer to prepare and provide a list of insiders, in the context of an insider reporting review.

APPENDIX D

PROPOSED AMENDMENT INSTRUMENT FOR
MULTILATERAL INSTRUMENT 11-102
PASSPORT SYSTEM

1. This Instrument amends Multilateral Instrument 11-102 *Passport System*.

2. Appendix D of Multilateral Instrument 11-102 *Passport System* is amended by:

a) repealing all of the provisions in Appendix D that refer to MI 55-103 *Insider Reporting for Certain Derivative Transactions (Equity Monetization)* and corresponding provisions in British Columbia;

b) inserting the following two new rows (see below) directly under the provision in Appendix D referring to the System for electronic disclosure by insiders (SEDI); and

Provision	BC	AB	SK	MB	Que	NS	NB	PEI	NL	YK	NWT	Nun	ON
Insider reporting requirements	NI 55-104 (except as noted below)												NI 55-104 (except as noted below)
Primary insider reporting requirement	Part 3 of NI 55-104												s.107

c) repealing all of the rows under the subheading “Insider Reporting” and substituting the following new row (see below) directly under the subheading “Insider Reporting” and directly above the subheading “Take-Over Bids and Issuer Bids”.

Provision	BC	AB	SK	MB	Que	NS	NB	PEI	NL	YK	NWT	Nun	ON
Insider Reporting													
Insider reporting require-ments	s. 87	s. 182	s. 116	s. 109	s. 89.3	s. 113	s.135	s. 1 of Local Rule 55-501	s. 108	s. 1 of Local Rule 55-501	s. 2 of Local Rule 55-501	s.1 of Local Rule 55-501	s. 107
Take-Over Bids and Issuer Bids													

3. This amendment comes into force on •.

APPENDIX E

PROPOSED AMENDMENT INSTRUMENT FOR NATIONAL INSTRUMENT 14-101 *DEFINITIONS*

1. This Instrument amends National Instrument 14-101 *Definitions*.

2. National Instrument 14-101 *Definitions* is amended by repealing the current definition of "insider reporting requirement" and substituting it with the following:

"insider reporting requirement" means

a) a requirement to file insider reports under Parts 3 and 4 of National Instrument 55-104 *Insider Reporting Requirements and Exemptions*;

b) a requirement to file insider reports under any provisions of Canadian securities legislation substantially similar to Parts 3 and 4 of National Instrument 55-104 *Insider Reporting Requirements and Exemptions*; and

c) a requirement to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*, if applicable.

3. This amendment comes into force on ●.

APPENDIX F

PROPOSED AMENDMENT INSTRUMENT FOR
NATIONAL INSTRUMENT 62-103
THE EARLY WARNING SYSTEM AND RELATED TAKE-OVER BID
AND INSIDER REPORTING ISSUES

1. This Instrument amends National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*.

2. National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* is amended as follows:

a) in section 1.1, the following is added after the definition of "news release":

"NI 55-104" means National Instrument 55-104 *Insider Reporting Requirements and Exemptions***";**

b) in subsection 9.1(1), the following is added after the phrase "is exempt from the insider reporting requirement for a reporting issuer":

"other than the requirement to file insider reports under Part 4 of NI 55-104**";**

c) in subsection 9.1(5), the following is added after the phrase "is exempt from the insider reporting requirement for a reporting issuer":

"other than the requirement to file insider reports under Part 4 of NI 55-104**";**

3. This amendment comes into force on ●.

APPENDIX G

**PROPOSED AMENDMENT INSTRUMENT FOR
FORM 51-102F5 *INFORMATION CIRCULAR*
OF NATIONAL INSTRUMENT 51-102
*CONTINUOUS DISCLOSURE OBLIGATIONS***

1. This Instrument amends Form 51-102F5 *Information Circular*

2. Form 51-102F5 is amended by adding the following new item after "Item 16 Additional Information":

"Item 17 Insider Reporting Late Filings

(1) Describe any late filing fees relating to the late filing of insider reports imposed by a securities regulatory authority against any director or executive officer of your company during the most recently completed financial year, and include with this description the following information:

(a) the name of the director or executive officer against whom the late filing fees were imposed;

(b) the amount of the late filing fees and whether the late filing fees have been or will be paid by the director or executive officer or by the company (including any reimbursement by the company of fees paid by the director or executive officer); and

(c) a brief description of the reason the late filing fees were imposed.

(2) Despite subsection (1), no disclosure of any late filing fee is required if the securities regulatory authority that imposed the late filing fee subsequently provides written confirmation that the late filing fee was imposed due to error."

3. This amendment comes into force on ●.

[Note: Expected to be December 31, 2010, allowing for a transition period.]

APPENDIX H

REPEAL OF NATIONAL INSTRUMENT 55-101
INSIDER REPORTING EXEMPTIONS

1. This Instrument repeals National Instrument 55-101 *Insider Reporting Exemptions*.

2. This Instrument comes into force on ●.

APPENDIX I

RESCISSION OF COMPANION POLICY 55-101CP *INSIDER REPORTING EXEMPTIONS* TO NATIONAL INSTRUMENT 55-101 *INSIDER REPORTING EXEMPTIONS*

1. This Instrument repeals Companion Policy 55-101CP to National Instrument 55-101 *Insider Reporting Exemptions*.

2. This Instrument comes into force on ●.

APPENDIX J

REPEAL OF MULTILATERAL INSTRUMENT 55-103
INSIDER REPORTING OF CERTAIN DERIVATIVE TRANSACTIONS (EQUITY MONETIZATION)

1. **This Instrument repeals Multilateral Instrument 55-103 *Insider Reporting of Certain Derivative Transactions (Equity Monetization)*.**

2. **This Instrument comes into force on ●.**

APPENDIX K

RESCISSION OF COMPANION POLICY 55-103CP
INSIDER REPORTING OF CERTAIN DERIVATIVE TRANSACTIONS (EQUITY MONETIZATION)
TO MULTILATERAL INSTRUMENT 55-103
INSIDER REPORTING OF CERTAIN DERIVATIVE TRANSACTIONS (EQUITY MONETIZATION)

1. **This Instrument repeals Companion Policy 55-103CP to Multilateral Instrument 55-103 *Insider Reporting of Certain Derivative Transactions (Equity Monetization)*.**

2. **This Instrument comes into force on ●.**

APPENDIX L

ADDITIONAL NOTICE REQUIREMENTS IN ONTARIO

Authority for the Proposed Instrument

In those jurisdictions in which the Proposed Instrument is to be adopted as a rule or regulation, the securities legislation in each of those jurisdictions provides the securities regulatory authority with rule-making or regulation-making authority in respect of the subject matter of the Proposed Instrument. The Proposed Instrument is being proposed for implementation in Ontario as a rule. In Ontario, the following provisions of the *Securities Act* (Ontario) (the Ontario Act) provide the Ontario Securities Commission (the Ontario Commission) with authority to adopt the Proposed Instrument as a rule:

- Paragraph 143(1)10 of the Ontario Act authorizes the Ontario Commission to prescribe requirements in respect of the books, records and other documents required by subsection 19(1) of the Ontario Act to be kept by market participants.

- Paragraph 143(1)11 of the Ontario Act authorizes the Ontario Commission to make rules regulating the listing or trading of publicly traded securities including requiring reporting of trades and quotations.

- Paragraph 143(1)30 of the Ontario Act authorizes the Ontario Commission to prescribe time periods under section 107 of the Ontario Act or to vary or make rules that provide for exemptions from any requirement of the insider trading provisions contained in Part XXI of the Ontario Act.

- Paragraph 143(1)30.1 of the Ontario Act authorizes the Ontario Commission to regulate the disclosure or furnishing of information to the public or the Ontario Commission by insiders, including,

  (i) prescribing filing requirements for the reporting by insiders of their respective direct or indirect beneficial ownership of, or control or direction over, securities of a reporting issuer or changes in ownership, control or direction,

  (ii) prescribing requirements respecting the reporting by insiders of any interest in or right or obligation associated with a related financial instrument or changes in such interests, rights or obligations, and

  (iii) prescribing requirements respecting the reporting by insiders of any agreement, arrangement or understanding that alters, directly or indirectly, an insider's economic interest in a security or an insider's economic exposure to a reporting issuer or changes in such agreements, arrangements or understandings.

- Paragraph 143(1)30.2 of the Ontario Act authorizes the Ontario Commission to prescribe requirements in respect of a reporting issuer to facilitate compliance by insiders of the reporting issuer with the Ontario Act and with the rules made under paragraph 143(1)30.1 of the Ontario Act.

- Paragraph 143(1)30.3 of the Ontario Act authorizes the Ontario Commission to require that reports under paragraph 143(1)30.1 shall also provide information for the period of up to six months before a person or company became an insider.

- Paragraph 143(1)(37) of the Ontario Act authorizes the Commission to make rules regulating labour sponsored investment fund corporations and prescribing insider reporting requirements for or in respect of such corporations.

- Paragraph 143(4) of the Ontario Act authorizes the Commission to designate classes of persons or companies not to be insiders for the purpose of the definition of "insider", and designate classes of persons or companies for the purpose of clause (f) of the definition of "insider" in subsection 1(1) of the Ontario Act, if the persons or companies would reasonably be expected to have, in the ordinary course, access to material information about the business, operations, assets or revenue of the issuer, to be insiders.

- Paragraph 143(1)39 of the Ontario Act authorizes the Commission to make rules, among other things, respecting the media, format, preparation, form, content, execution and certification of documents required under the Ontario Act.

Repealed Instruments

The Proposed Materials would replace the following instruments currently in effect:

- National Instrument 55-101 *Insider Reporting Exemptions* (NI 55-101);
- Companion Policy 55-101CP *Insider Reporting Exemptions* (55-101CP);
- Multilateral Instrument 55-103 *Insider Reporting of Certain Derivative Transactions (Equity Monetization)* (MI 55-103); and
- Companion Policy 55-103CP *Insider Reporting of Certain Derivative Transactions (Equity Monetization)* (55-103CP).

For the purposes of this notice, the use of the term "repealed" in the Proposed Materials, in the case of NI 55-101 and MI 55-103, means "revoked" as is contemplated in s.143.2(12) of the Ontario Act. Correspondingly, the term "repealed", in the case of 55-101CP and 55-103CP, means "rescinded", as is contemplated in s.143.8(12) of the Ontario Act.

Related Instruments

The Proposed Instrument and the Proposed Policy are related to each other as they deal with the same subject matter. In Ontario, the proposed Companion Policy is related to sections 106 to 109 of the Ontario Act and Part VIII of the Regulation to the Ontario Act.

Proposed Revocation of Certain Regulations

Subject to the approval of the Minister, in view of the fact that the Proposed Instrument will contain certain exemptions similar to exemptions currently contained in Ontario Regulation 1015 of the Ontario Act, we propose to recommend that the following regulations be revoked:

Description of Reporting Requirement	Ont. Reg. 1015	New Provision in Proposed Instrument
Exemption based on no holdings	s. 166	s. 9.4
Report of transfer by insider	s. 167	n/a
Reporting exemption (corporate group)	s. 170	s. 9.5
Executor exemption	s. 171	s. 9.6

Alternatives Considered

We believe the Proposed Instrument will contribute towards achieving our objectives to modernize, harmonize and streamline insider reporting in Canada. Historically, the insider reporting requirements and exemptions have been set out in a variety of statutes, rules and regulations in each jurisdiction. We are proposing to centralize the main insider reporting requirements[1] and exemptions in a single national instrument to make it easier for issuers and insiders to understand their obligations and to help promote timely and effective compliance. We have not considered alternatives to this approach.

Unpublished Materials

In proposing the Proposed Instrument and the Proposed Policy, the CSA have not relied on any significant unpublished study, report or decision.

Anticipated Costs and Benefits

Although certain insiders will become subject to an accelerated filing deadline, many other insiders will benefit as they will no longer have to file insider reports. Reporting issuers will benefit through reduced compliance costs. Investors and other market participants who use the insider reporting system will benefit since these amendments will improve the effectiveness of the insider reporting system. Because of the acceleration of the filing deadline, the market will receive information about insider transactions more quickly.

[1] In Ontario, the principal insider reporting requirements are set out in Part XXI of the Ontario Act.

In addition, the insider reporting requirement will focus on a more senior, core group of insiders. This should result in an enhanced deterrent and signalling effect (the key reasons for insider reporting) on the core group of senior insiders who have the greatest access to material undisclosed information and who will continue to report. The information from this core group of insiders will not be drowned out by insider reports filed by persons who, although statutory insiders with some access to material undisclosed information, are outside this core group.

The Canadian securities regulatory authorities are of the view that the benefits of the Proposed Instrument outweigh the costs.

6.2.1 Request for Comment – Proposed Repeal and Replacement of NP 58-201 *Corporate Governance Guidelines*, NI 58-101 *Disclosure of Corporate Governance Practices*, and NI 52-110 *Audit Committees* and Companion Policy 52-110CP *Audit Committees*

REQUEST FOR COMMENT

PROPOSED REPEAL AND REPLACEMENT OF

NATIONAL POLICY 58-201
***CORPORATE GOVERNANCE GUIDELINES*,**

NATIONAL INSTRUMENT 58-101
***DISCLOSURE OF CORPORATE GOVERNANCE PRACTICES*, AND**

NATIONAL INSTRUMENT 52-110 *AUDIT COMMITTEES*
AND COMPANION POLICY 52-110CP *AUDIT COMMITTEES*

1. REQUEST FOR PUBLIC COMMENT

We, the Canadian Securities Administrators (CSA), are publishing for a 120-day comment period the following documents:

- National Policy 58-201 *Corporate Governance Principles* (the Proposed Governance Policy);
- National Instrument 58-101 *Disclosure of Corporate Governance Practices* (the Proposed Governance Instrument and, together with the Proposed Governance Policy, the Proposed Governance Materials);
- National Instrument 52-110 *Audit Committees* (the Proposed Audit Committee Instrument);
- Companion Policy 52-110CP (the Proposed Audit Committee Policy and, together with the Proposed Audit Committee Instrument, the Proposed Audit Committee Materials)

(together, the Proposed Materials).

The Proposed Materials would replace the following documents currently in effect:

- National Policy 58-201 *Corporate Governance Guidelines* (the Current Governance Policy);
- National Instrument 58-101 *Disclosure of Corporate Governance Practices* (the Current Governance Instrument and, together with the Current Governance Policy, the Current Governance Materials);
- National Instrument 52-110 *Audit Committees* (the Current Audit Committee Instrument);
- Companion Policy 52-110CP

(together, the Current Materials).

We invite comment on the Proposed Materials generally. In addition, we have raised a number of questions for your specific consideration. The Proposed Materials are set out in Appendix B.

2. BACKGROUND AND PURPOSE

When we published the Current Governance Materials in final form in April 2005, we indicated in the accompanying notice that we recognized that corporate governance is in a constant state of evolution. We stated that we intended to review the Current Governance Materials periodically following their implementation to ensure that the guidelines and disclosure requirements continue to be appropriate for issuers in the Canadian market.

We stated in the Current Governance Policy that we understand that some market participants have concerns about how the Current Governance Materials affect controlled issuers and that we intended to carefully consider these concerns.

On September 28, 2007, we published CSA Staff Notice 58-304 *Review of NI 58-101 Disclosure of Corporate Governance Practices and NP 58-201 Corporate Governance Guidelines* (CSA Notice 58-304), to communicate our plans to undertake a broad review of the Current Governance Materials and to publish our findings together with any proposed amendments for comment in 2008.

In conducting this broad review, we examined corporate governance regimes in other jurisdictions. We also considered the realities of the large number of small issuers and controlled issuers in the Canadian market.

Consistent with CSA Notice 58-304, this Notice and the Proposed Materials reflect the results of our review.

The Proposed Materials are intended to enhance the standard of governance and confidence in the Canadian capital markets. They introduce changes in three main areas of our current corporate governance regime.

First, we propose to replace the Current Governance Policy with a more principles-based policy that is broader in scope. The Current Governance Policy contains a list of specific corporate governance guidelines. The Proposed Governance Policy contains nine broad corporate governance principles and commentary explaining those principles. In addition, it includes examples of corporate governance practices that can be used to achieve the objectives of the principles.

Second, we propose to replace the existing disclosure requirements set out in the Current Governance Instrument with a new set of disclosure requirements. The new set of disclosure requirements are more general in nature (rather than based on a model of "comply-or-explain") and apply to both venture and non-venture issuers.

Third, we propose to replace the current prescriptive approach to independence in the Current Audit Committee Instrument with a more principles-based approach. Specifically, we propose to include a principles-based definition of independence in the Proposed Audit Committee Instrument with guidance in the Proposed Audit Committee Policy regarding the types of relationships that could affect a director's independence. This guidance would replace the bright-line tests in sections 1.4 and 1.5 of the Current Audit Committee Instrument.

The purpose of the Proposed Materials is consistent with that of the Current Materials. The purpose of the Proposed Governance Policy is to provide guidance on corporate governance practices. The purpose of the Proposed Governance Instrument is to provide greater transparency for the marketplace regarding issuers' corporate governance practices. The purpose of the Proposed Audit Committee Instrument is to provide a framework for establishing and maintaining strong, effective and independent audit committees. The purpose of the Proposed Audit Committee Policy is to provide interpretative guidance for the application of the Proposed Audit Committee Instrument.

Although the Alberta Securities Commission (the ASC) supports the objectives of the Proposed Materials, the ASC is concerned that the Proposed Materials may not substantially improve upon the Current Materials and that the anticipated potential benefits associated with implementing the Proposed Materials may be outweighed by the costs associated with adjusting to, and complying with, the Proposed Materials. Some of the ASC's concerns and specific requests for comment are set out in Appendix A, while other issues are raised in the specific requests for comment in this Notice.

3. SUMMARY OF PROPOSED MATERIALS

Proposed Governance Policy

The Current Governance Policy sets out corporate governance guidelines, grouped under nine main topics. These guidelines are not mandatory. However, because they are coupled with the "comply or explain" disclosure regime in the Current Governance Instrument, some market participants perceived them as prescriptive.

The Proposed Governance Policy establishes nine core corporate governance principles that apply to all issuers. Each principle is accompanied by commentary that provides relevant background and explanation, along with examples of practices that could achieve its objectives. These examples do not create obligatory practices or minimum requirements. The Proposed Governance Policy explicitly recognizes that corporate governance practices of issuers may differ from these examples but be equally good practices provided they achieve the objectives of the articulated principles. The Proposed Governance Policy does not purport to establish minimum standards or "best practices". It establishes nine principles that a board should consider and in respect of which disclosure is required.

The nine core corporate governance principles are:

- Principle 1 - Create a framework for oversight and accountability
  An issuer should establish the respective roles and responsibilities of the board and executive officers.

- Principle 2 - Structure the board to add value
  The board should be comprised of directors that will contribute to its effectiveness.

- Principle 3 - Attract and retain effective directors
  A board should have processes to examine its membership to ensure that directors, individually and collectively, have the necessary competencies and other attributes.

- Principle 4 - Continuously strive to improve the board's performance
  A board should have processes to improve its performance and that of its committees, if any, and individual directors.

- Principle 5 - Promote integrity
  An issuer should actively promote ethical and responsible behavior and decision-making.

- Principle 6 - Recognize and manage conflicts of interest
  An issuer should establish a sound system of oversight and management of actual and potential conflicts of interest.

- Principle 7 - Recognize and manage risk
  A*n issuer should establish a sound framework of risk oversight and management.*

- Principle 8 - Compensate appropriately
  An issuer should ensure that compensation policies align with the best interests of the issuer.

- Principle 9 - Engage effectively with shareholders
  The board should endeavor to stay informed of shareholders' views through the shareholder meeting process as well as through ongoing dialogue.

The Proposed Governance Policy is broader in scope since the Current Governance Policy does not expressly address the subject matter of Principles 6, 7 and 9.

Principle 6 encourages issuers to establish a sound system of oversight and management of actual and potential conflicts of interest. We think that independence from management of the issuer is required to ensure the adequate supervision of management. We recognize, however, that conflicts of interest may arise in various situations, including if there is a significant divergence of interests among shareholders or their interests are not completely aligned. For example, conflicts of interest could arise in related party transactions to which a control person or significant shareholder is a party. The proposed Principle 6 encourages oversight and management of these conflicts in a manner that does not disqualify a control person or significant shareholder from being considered independent.

Principle 7 encourages issuers to establish a sound framework of risk oversight and management in order to effectively identify and manage significant risks. We think that risk oversight and management are an important component of corporate governance.

Principle 9 encourages the board to stay informed of shareholders' views, in order to facilitate board accountability to shareholders. This principle is intended to foster a productive relationship between shareholders and their elected representatives, the board of directors. We think that the examples of practices set out in this principle can assist the board of directors in keeping abreast of shareholder concerns.

Specific requests for comment

1. Do you think Principles 6, 7 and 9 provide useful and appropriate guidance? Does this guidance appropriately supplement other corporate law and securities law (including legislation and decisions of Canadian courts) relating to these areas?

2. Does the level of detail in the commentary and examples of practices successfully provide guidance to issuers and assistance to investors without appearing to establish "best practices"?

Proposed Governance Instrument

Required disclosure

A reporting issuer other than an investment fund is required to include in its information circular, annual information form or annual MD&A disclosure regarding its corporate governance practices.

We have significantly revised the disclosure requirements in Form 58-101F1. An issuer is required to disclose the practices it uses to achieve the objectives of each principle set out in the Proposed Governance Policy. An issuer is also required to disclose certain factual information, such as the board's composition and information about any of its standing committees. This disclosure is intended to help investors understand those practices.

The disclosure requirements are no longer based on a model of "comply or explain" against governance guidelines. That is one reason why the Proposed Governance Instrument does not provide an alternative disclosure regime for venture issuers.

Filing of code of business conduct and ethics

We no longer require an issuer to file a copy of its code of business conduct and ethics or an amendment to the code through SEDAR. However, an issuer must provide a summary of any standards of ethical and responsible behavior and decision-making or code adopted by the issuer and describe how to obtain a copy of its code, if any.

Application

We have clarified the application section as it applies to subsidiary entities.

Specific requests for comment

3. In your view, what are the relative merits of a principles-based approach for disclosure, compared to a "comply or explain" model?

4. Is the level of disclosure required under each of the principles appropriate both from an issuer's and an investor's point of view? Specifically, do you think the disclosure in respect of Principles 6, 7 and 9 provides useful information to investors?

5. Should venture issuers be subject to the same disclosure requirements concerning their corporate governance practices as non-venture issuers?

Proposed approach to independence (found in the Proposed Audit Committee Materials)

Definition of independence

The definition of independence in the Current Audit Committee Instrument is:

(1) An audit committee member is independent if he or she has no direct or indirect material relationship with the issuer.

(2) For the purposes of subsection (1), a "material relationship" is a relationship which could, in the view of the issuer's board of directors, be reasonably expected to interfere with the exercise of a member's independent judgment.

The definition of independence in the Proposed Audit Committee Instrument is:

A director is independent if he or she

(a) is not an employee or executive officer of the issuer; and

(b) does not have, or has not had, any relationship with the issuer, or an executive officer of the issuer, which could, in the view of the issuer's board of directors having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgment.

We propose to define independence to mean independence from the issuer and its management as a board of directors has an obligation to supervise the management of the business and affairs of an issuer. Under this definition, employees and executive officers of the issuer can never be considered independent.

While a control person or significant shareholder is not disqualified from being independent, when making independence assessments, boards should consider the control person's or significant shareholder's involvement with the management of the issuer and, depending on the nature and degree of involvement, this relationship may be reasonably perceived to interfere with the exercise of independent judgment.

In addition, the proposed definition captures relationships that are reasonably perceived to interfere with the exercise of independent judgment. In contrast, the current definition captures relationships that are reasonably expected to interfere with the exercise of independent judgment. We think the concept of perception is broader than that of expectation and is appropriate to include in the definition of independence since we are removing the "bright line" tests.

Removal of "bright line" tests

We have removed the "bright line" tests in section 1.4 of the Current Audit Committee Instrument. Instead, we have included guidance in the Proposed Audit Committee Policy for assessing independence. Specifically, we have included in section 3.1 a non-exhaustive list of relationships that could affect an individual's independence. Ultimately determining independence is left to the reasonable judgment of the board of directors.

Application

The new definition of independence will apply to all board members, including audit committee members. Consequently, we have removed the additional requirements for audit committee member independence in section 1.5 of the Current Audit Committee Instrument.

Related disclosure requirements

Under the Proposed Governance Instrument, an issuer is required to disclose information regarding director independence. Specifically, an issuer must disclose:

- the names of the directors considered by the board to be independent, with the following information for each of those directors, if any:
  - (i) a description of any relationship with the issuer or any of its executive officers that the board considered in determining the director's independence; and
  - (ii) if the director has a relationship referred to in sub-paragraph (i), a discussion of why the board considers the director to be independent;
- the names of the directors considered by the board to be not independent and the basis for that determination; and
- if a director has a business or other relationship with another director on the issuer's board, other than common membership on the issuer's board, information about that relationship.

Specific requests for comment

6. In your view, what are the relative merits of the proposed approach to independence compared to the current approach. In particular:
   - (a) basing the determination of independence on perception rather than expectation; and
   - (b) guiding the board through indicia rather than imposing bright line tests?
7. Is it sufficiently clear that the phrase "reasonably perceived" applies a reasonable person standard?
8. Is the guidance in the Proposed Audit Committee Policy sufficient to assist the board in making appropriate determinations of independence?
9. The proposed definition provides that independence is independence from the issuer and its management, and not from a control person or significant shareholder. Given this definition:
   - (a) should a relationship with a control person or significant shareholder be specified in section 3.1 of the Proposed Audit Committee Policy as a relationship that could affect independence?
   - (b) should such a relationship be solely addressed through Principle 6 – *Recognize and manage conflicts of interest* as proposed?
   - (c) is it appropriate to include as an example of a corporate governance practice that an appropriate number of independent directors on a board of directors and audit committee be unrelated to a control person or significant shareholder?
10. Does the required disclosure on director independence provide useful and appropriate information to investors?

Proposed Audit Committee Instrument

In addition to the changes to the definition of independence discussed above, the most significant changes to the Current Audit Committee Instrument are summarized below:

Exemptions

We have introduced two new provisions that provide transitional relief from the requirement that all audit committee members must be independent. The first provision applies when a venture issuer becomes a non-venture issuer. The second provision applies in the context of a reverse takeover when the acquirer is either a venture issuer or a non-reporting issuer. In addition, we have removed exemptions for controlled issuers in light of the new approach to independence. We have clarified the scope of the exemption for U.S. listed issuers in section 6.1 of the Proposed Audit Committee Instrument.

We have amended the temporary exemption from the requirement that all audit committee members be independent for limited and exceptional circumstances provided in section 3.8 of the Proposed Audit Committee Instrument. We have removed the condition that the board of directors determine, in its reasonable judgement, that the audit committee member relying on this exemption is able to exercise the impartial judgement necessary to fulfill his or her responsibilities. Instead, the exemption does not apply to an audit committee member unless the issuer's board of directors has determined that the reliance on the exemption will not significantly adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of the Proposed Audit Committee Instrument.

Responsibilities

We have clarified that the issuer or any of its subsidiary entities must not obtain a non-audit service from its external auditor unless the service has been approved by the issuer's audit committee. We have also clarified that the issuer must not publicly disclose information contained in or derived from its financial statements, MD&A or annual or interim earnings news releases, unless the document has been reviewed by its audit committee. Previously, these responsibilities rested with the audit committee.

Application

We have clarified the application section as it applies to subsidiary entities.

Proposed effective date

We recognize that issuers will need a reasonable amount of time to familiarize themselves with the new corporate governance and audit committee regimes, including the new definition of independence. We intend to provide at least six months advance notice of the implementation of the new regimes.

Specific requests for comment

11. Do you think our proposal regarding the effective date adequately addresses the needs of both venture and non-venture issuers?

4. ALTERNATIVES CONSIDERED

We considered maintaining the status quo. However, both issuers and investors have raised concerns about the current governance regime. In addition, since the implementation of the Current Governance Materials, corporate governance has evolved both domestically and internationally.

We think that the Proposed Materials appropriately address these concerns and developments. We expect that the Proposed Materials will:

- provide greater flexibility, or perceived flexibility, to issuers and their boards of directors;
- improve the quality of disclosure of corporate governance practices provided to investors; and
- better align with international standards while taking into account the realities of Canada's capital markets.

We considered the corporate governance regimes in other jurisdictions, including Australia, the United Kingdom and the United States of America. However, while elements of the Proposed Materials are similar to those regimes, we do not believe that it would be helpful to adopt those regimes in their entirety given the unique characteristics of the Canadian market.

We considered no other alternatives.

5. RELATED INSTRUMENTS

The Proposed Materials cover a broad range of subjects, some of which are addressed in the following Instruments or are related to them:

- National Instrument 51-102 *Continuous Disclosure Obligations*;
- National Policy 51-201 *Disclosure Standards*;
- National Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings*; and
- National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

6. ANTICIPATED COSTS AND BENEFITS

There are two primary sets of stakeholders that will be affected by the Proposed Materials.

Issuers

The Current Governance Policy sets out non-prescriptive guidelines. However, these guidelines, when coupled with the "comply or explain" disclosure model, have been perceived by some issuers and other market participants as creating mandatory obligations. We think that the Proposed Governance Materials clarify that the examples of corporate governance practices included in the Proposed Governance Policy are not mandatory. In our view, issuers will benefit from this change.

One consequence of the Proposed Governance Materials is that issuers will have to re-consider the independence of their directors and audit committee members under the new definition of independence. However, we think that they will benefit from the additional flexibility under the new approach to independence, without compromising investor protection.

Another consequence is that issuers will be subject to different corporate governance disclosure requirements than they are currently. In particular, venture issuers will be subject to more extensive disclosure requirements. This may result in higher compliance costs, primarily in the first year of implementation. We do not expect the increase in compliance costs to be significant. Further, even in the absence of any change to our disclosure requirements, issuers may choose to provide more comprehensive disclosure regarding their governance practices in order to address investor concerns.

Issuers will remain subject to the same audit committee requirements as in the Current Audit Committee Instrument, although they will have to re-confirm the independence of their audit committee members under the new definition of independence.

Investors

We think investors will receive more comprehensive and meaningful information on which to base their investment decisions under the Proposed Governance Instrument. In particular, investors in venture issuers will receive more extensive disclosure than is currently the case.

The results of our corporate governance disclosure compliance review, set out in CSA Staff Notice 58-303 published on June 29, 2007, revealed that current corporate governance disclosure by issuers is often inadequate and does not provide clear or complete accounts of governance practices. In these instances, market participants have expressed concerns that the disclosure being provided is not sufficiently informative or meaningful to acquire an understanding of the issuer's governance practices to inform an investment decision. We think the requirements of the Proposed Governance Instrument respond to these concerns.

The proposed disclosure requirements will cover the same general topics as are currently set out in the Current Governance Instrument, plus three additional topics (conflicts of interest, risk management and shareholder communication). The addition of these topics is largely consistent with the disclosure requirements in other jurisdictions.

Disclosure provided to investors regarding audit committees will generally remain the same, except an issuer will be required to provide more comprehensive information about the independence of its audit committee members under the Proposed Governance Instrument.

We anticipate the benefits of greater transparency and flexibility will exceed the cost for issuers to reassess the independence of their directors and provide the disclosure required under the Proposed Materials.

7. RELIANCE ON UNPUBLISHED MATERIALS

In developing the Proposed Materials, we did not rely upon any significant unpublished study, report or other written materials.

8. CONSEQUENTIAL AMENDMENTS

We are also publishing for a 120-day comment period, amendments to the following:

- National Policy 12-202 *Revocation of a Compliance-related Cease Trade Order*;
- National Policy 41-201 *Income Trusts and Other Indirect Offerings*;
- Form 51-102F2 *Annual Information Form*;
- Form 51-102F5 *Information Circular*; and
- Companion Policy 71-102CP to National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

The proposed amendment instruments are set out in Appendix C .

9. WITHDRAWAL OF NOTICE

We are withdrawing CSA Staff Notice 58-304 in all Canadian jurisdictions in which it was published as it is no longer required.

10. PUBLISHING JURISDICTIONS

The Proposed Materials are initiatives of the securities regulatory authorities in all Canadian jurisdictions. If adopted, the Proposed Governance Instrument and the Proposed Audit Committee Instrument are expected to be adopted as rules in all Canadian jurisdictions except Saskatchewan and Québec. They will be adopted as Commission regulations in Saskatchewan and as regulations in Québec.

We expect that the Proposed Governance Policy and the Proposed Audit Committee Policy, if adopted, will be adopted as policies in all Canadian jurisdictions.

10A. AUTHORITY FOR AMENDMENTS – ONTARIO

The following provisions of the *Securities Act* (Ontario) (the Act) provide the Ontario Securities Commission (the OSC) with the authority to adopt the Proposed Materials.

- Paragraph 143(1)22 of the Act authorizes the OSC to make rules prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under the Act, including requirements in respect of, (i) an annual report, (ii) an annual information form, and (iii) supplemental analysis of financial statements.

- Paragraph 143(1)39 of the Act authorizes the OSC to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents, including, (i) applications for registration and other purposes, (ii) preliminary prospectuses and prospectuses, (iii) interim financial statements and financial statements, (iv) proxies and information circulars, and (v) take-over bid circulars, issuer bid circulars and directors' circulars.

- Paragraph 143(1)44 of the Act authorizes the OSC to make rules varying the Act to permit or require the use of an electronic or computer-based system for the filing, delivery or deposit of, (i) documents or information required under or

governed by the Act, the regulations or rules, and (ii) documents determined by the regulations or rules to be ancillary to documents required under or governed by the Act, the regulations or rules.

- Paragraph 143(1)57 of the Act authorizes the OSC to make rules requiring reporting issuers to appoint audit committees and prescribing requirements relating to the functioning and responsibilities of audit committees, including requirements in respect of, (i) the standard of review to be applied by audit committees in their review of documents filed under Ontario securities law, (ii) the certification or other evidence of review by audit committees, (iii) the scope and content of an audit committee's review, and (iv) the composition of audit committees and the qualifications of audit committee members, including independence requirements.

11. COMMENTS

We invite interested parties to make written submissions on the Proposed Materials. We will consider submissions received by April 20, 2009. **Due to timing concerns, we will not consider comments received after this deadline.**

Please address your submissions to the following securities regulatory authorities:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Nova Scotia Securities Commission
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

Please send your comments to the addresses below. Your comments will be distributed to the other participating CSA members.

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If you do not submit your comments by e-mail, provide a diskette containing the submissions in MS Word format.

Please note that all comments received during the comment period will be made publicly available. We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period be published. We will post all comments received during the comment period to the Ontario Securities Commission website at www.osc.gov.on.ca to improve the transparency of the policy-making process.

12. QUESTIONS

Please refer your questions to any of:

Autorité des marchés financiers

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December 19, 2008

APPENDIX A

The ASC has concerns about certain aspects of the Proposed Materials, some of which are reflected in the specific requests for comment in the CSA Request for Comment. The remaining concerns are outlined herein with additional requests for comment.

Proposed approach to independence (found in the Proposed Audit Committee Materials)

Definition of independence

As stated in the CSA Request for Comment, the proposed definition of independence in the Proposed Audit Committee Instrument is:

> A director is independent if he or she
>
> (a) is not an employee or executive officer of the issuer; and
>
> (b) does not have, or has not had, any relationship with the issuer, or an executive officer of the issuer, which could, in the view of the issuer's board of directors having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgment.

The ASC is concerned that clause (b) of the proposed definition of independence may remove the discretion of the board to determine whether or not a director who is not an employee or executive officer is independent. Under the proposed definition of independence, such a director cannot be labeled independent if a relationship exists which a "reasonable person" could perceive would interfere with the exercise of that director's independent judgment. This would be the case notwithstanding that a board, with its collective experience and specific knowledge of the director in question, may subjectively and reasonably come to a different conclusion. The ASC is concerned that under the proposed definition of independence, a reasonable but less informed and less experienced person's perception is the determining factor. Ultimately, the concern is that the best available directors may not become members of boards because of the application of this particular definition of independence.

Related disclosure requirements

The ASC is concerned that the disclosure requirements imposed by the Proposed Governance Instrument may ultimately have a detrimental effect on issuers' ability to attract and retain the best available directors. The Proposed Governance Instrument requires issuers to explain why a director has been found to be independent if a relationship enumerated in section 3.1 of the Proposed Audit Committee Policy exists. Such a requirement could result in market participants improperly assuming that such a relationship usually impedes the exercise of independent judgment unless the board is able to provide an explanation that proves otherwise. In addition, the requirement that the issuer identify the remaining directors as "not independent" implies that those directors are not capable of exercising independent judgment. The concern is that such a label will dissuade valuable directors from acting as members of boards.

Specific requests for comment

1. Instead of the "reasonable person" test, do you think the definition of independence should:
   (a) allow the board to subjectively determine whether or not a director is independent; and
   (b) require that the board's subjective decision be reasonable (i.e., there is a line of analysis that could reasonably lead the board from the factors it considered to the conclusion it reached, even if it is one with which others may disagree)?
2. Concerns have been expressed with respect to the effect the Current Materials have on controlled issuers. Is it appropriate to include being actively involved in the management of the issuer, which may include a control person or a significant shareholder, as one of the relationships that could affect independence enumerated in section 3.1 of the Proposed Audit Committee Policy?
3. Given that it is in all market participants' interests for issuers to have the best directors available:
   (a) is it appropriate to require that the board explain why a director was found to be independent?
   (b) could requiring such an explanation create a presumption that each relationship enumerated in section 3.1 of the Proposed Audit Committee Policy affects the exercise of independent judgment unless the contrary is proven?

(c) if so, do you think it is preferable that the disclosure requirements oblige an issuer to disclose the referenced relationships with respect to any director whom the board determines is independent without requiring an explanation for why that director is independent?

(d) do you think the requirement that the issuer identify the remaining directors as “not independent” might result in the perception that such an individual cannot exercise independent judgment and, as such, affect that individual’s willingness to serve as a director?

APPENDIX B

NATIONAL POLICY 58-201
CORPORATE GOVERNANCE PRINCIPLES

Table of Contents

NATIONAL POLICY 58-201
CORPORATE GOVERNANCE PRINCIPLES

PART 1 INTRODUCTION AND APPLICATION

1.1 What is corporate governance?

Corporate governance is the set of rules, relationships, systems and processes that directs and controls the actions of issuers. It covers relationships between an issuer's executive officers, its board of directors (the board), its shareholders and other stakeholders, and the mechanisms for holding issuers and the board and executive officers accountable.

Corporate governance influences how an issuer establishes and achieves its objectives, monitors and assesses risk, and optimizes its performance. However, corporate governance on its own cannot prevent issuers from making poor decisions or from business failure.

1.2 Purpose of this Policy

This Policy sets out high level corporate governance principles and provides guidance to issuers on their corporate governance structures and practices. We recognize that there is no single model of good corporate governance and that the structures and practices that are most appropriate will vary among issuers. We have taken a flexible, principles-based approach that is designed to:

(a) provide protection to investors and foster fair and efficient capital markets and confidence in those markets;

(b) reflect the realities of the large number of small issuers and controlled issuers in the Canadian market; and

(c) take into account corporate governance developments around the world.

1.3 Structure of this Policy

This Policy articulates nine core principles to address corporate governance subjects not comprehensively covered in other requirements or guidelines. Each principle is accompanied by commentary that provides relevant background and explanation, along with examples of practices that could achieve its objectives.

The commentary and examples of practices are designed to assist issuers in crafting their own corporate governance regime that is appropriate in the circumstances. They are not meant to create obligatory practices or minimum requirements. The corporate governance practices of issuers may differ from the examples of practices identified but be equally good practices provided they achieve the objectives of the principles.

While we encourage issuers to consider the commentary and examples when developing their own corporate governance practices, we recognize that:

(a) other corporate governance practices could achieve the same objectives;

(b) corporate governance evolves as an issuer's circumstances change; and

(c) each issuer should have the flexibility to determine the appropriate corporate governance practices for its circumstances.

1.4 Application to non-corporate entities

National Instrument 58-101 *Disclosure of Corporate Governance Practices* (NI 58-101) applies to both corporate and non-corporate entities. Reference to a particular corporate characteristic, such as a board or shareholders, includes any equivalent characteristic of a non-corporate entity.

Income trust issuers should, in applying this Policy, recognize that certain functions of a corporate issuer, its board and its management may be performed by any or all of the trustees, the board or management of a subsidiary entity of the trust, or the board, management or employees of a management company. For this purpose, references to "the issuer" refer to both the trust and any underlying entities, including the operating entity.

1.5 Related disclosure requirements

Under NI 58-101 issuers are required to disclose and explain their corporate governance practices in relation to each principle to help investors understand those practices.

1.6 Other requirements and guidelines regarding corporate governance

Corporate governance covers a broad range of subjects, some of which are addressed in various other instruments including:

(a) National Instrument 51-102 *Continuous Disclosure Obligations*;

(b) National Policy 51-201 *Disclosure Standards*;

(c) National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*; and

(d) National Instrument 52-110 *Audit Committees* (NI 52-110).

PART 2 INTERPRETATION

2.1 Meaning of independence

For the purposes of this Policy, a director is independent if he or she is independent under section 1.4 of NI 52-110.

2.2 Meaning of subsidiary entity

For the purposes of this Policy, "subsidiary entity" has the same meaning as in Part 1 of NI 52-110.

2.3 Definitions

Terms defined in NI 58-101 have the same meaning if used in this Policy, unless otherwise defined.

PART 3 PRINCIPLES

Principle 1 – Create a framework for oversight and accountability
An issuer should establish the respective roles and responsibilities of the board and executive officers.

Commentary

The responsibilities of the board and executive officers should be clearly defined to, among other matters, promote accountability to the issuer and its shareholders and an appropriate allocation of authority.

In general, the board is responsible for setting the overall vision and long-term direction of the issuer, including risk and return expectations and non-financial goals. The primary role of executive officers is to develop and implement an appropriate strategy that meets the board's vision and direction.

The division of responsibilities between the board and executive officers will depend on the size, complexity and ownership structure of the issuer. It may also be influenced by the competencies and other attributes of directors and executive officers. The division of responsibilities may differ from issuer to issuer and may change as the issuer's business evolves.

Usual responsibilities of the board

The board is usually responsible for:

(a) developing the issuer's approach to corporate governance, including a set of corporate governance practices that are specific to the issuer;

(b) recruiting and appointing the CEO and evaluating his or her performance based on clear objectives;

(c) satisfying itself that the executive officers have integrity;

(d) empowering the CEO, and other executive officers to create a culture of integrity throughout the organization and satisfying itself they have done so;

(e) adopting a strategic planning process and approving, at least annually, a strategic plan, including any amendments, that takes into account the opportunities and risks of the business, among other things;

(f) identifying the principal risks of the issuer's business and ensuring that appropriate systems are in place to manage these risks;

(g) ensuring that a system for succession planning is in place, including appointing, training and monitoring executive officers;

(h) adopting a communications policy for the issuer; and

(i) adopting measures for receiving feedback from stakeholders.

Examples of practices

The objective of this principle can be achieved in a number of ways, including by:

(a) adopting a written mandate or formal board charter that details the board's roles and responsibilities and the roles and responsibilities of each standing committee of the board, if any;

(b) having the board develop clear position descriptions for the chair of the board and the chair of each board committee;

(c) having the board together with the CEO, develop a clear position description for the CEO, which may include delineating management's responsibilities; and

(d) providing directors with the terms and conditions of their appointment.

Principle 2 – Structure the board to add value
The board should be comprised of directors that will contribute to its effectiveness.

Commentary

The board's role is to provide strategic leadership to the issuer and to supervise the performance of executive officers.

An effective board is structured in a way that allows directors to:

(a) fully and effectively carry out their fiduciary duties; and

(b) add value to the issuer with a view to its best interests.

The composition and size of the board may change as the circumstances of the issuer and its directors change.

Board composition

Each director should have skills that will contribute to the effective functioning of the board.

Competencies

Directors should have competencies appropriate to the issuer's business and circumstances.

Integrity

Directors should demonstrate integrity and high ethical standards.

Independent judgment

Directors should exercise independent judgment when making decisions and carrying out their other duties. This includes reviewing and challenging how executive officers discharge their duties and achieve their goals, where appropriate. The board's composition, structure and practices should facilitate the exercise of independent judgment.

Commitment

Directors should be able to provide sufficient time and commitment to their role.

Board interaction

The directors collectively should be able to interact and communicate in a manner that facilitates effective decision-making. No individual or small group should dominate the board's decision-making.

Board size

The size of a board should be appropriate for the issuer's business.

Examples of practices

The objective of this principle can be achieved in a number of ways, including by:

General practices

(a) having the board or a committee of the board regularly review its size and composition, and the commitment of its directors; and

(b) encouraging directors to limit other commitments, including to other corporate or non-profit boards, so as not to affect their ability to fulfil their duties on the board.

Practices related to composition of the board

(a) having a majority of independent directors on the board;

(b) having an independent director chair the board or act as a lead director;

(c) having an appropriate number of independent directors who are unrelated to any control person or significant shareholder;

(d) separating the roles of chair and CEO;

(e) creating committees with an appropriate number of independent directors for specific purposes;

(f) giving independent directors an opportunity, both at the board and committee level, to hold regularly scheduled meetings at which other directors and executive officers are not present; and

(g) giving the board the authority to engage and compensate any internal and external advisor that it determines necessary to carry out its duties, including advice from outside advisors at the expense of the issuer in appropriate circumstances.

Principle 3 – Attract and retain effective directors
A board should have processes to examine its membership to ensure that directors, individually and collectively, have the necessary competencies and other attributes.

Commentary

While the shareholders elect directors, the board plays an important role in selecting candidates for shareholder consideration.

The board should be satisfied that appropriate procedures are in place for selecting candidates so that it can maintain a balance of competencies and other attributes. Transparency of these procedures is a key aspect in promoting investor understanding and confidence.

A board nomination committee could facilitate procedures for selecting and appointing directors. The responsibility for these practices, however, rests with the full board. Smaller boards might not need a formal committee to accomplish the same objectives.

The board should consider each director's tenure as part of its succession planning.

Examples of practices

General practices

The objective of this principle can be achieved in a number of ways, including by:

(a) having procedures for:

(i) evaluating the necessary and desirable competencies and other attributes of directors;

(ii) identifying any gaps that exist on the board;

(iii) nominating directors to fulfil the needs of the board; and

(iv) developing and reviewing board succession plans;

(b) keeping an up-to-date list of potential candidates so that planned or unplanned vacancies on the board can be filled with candidates who have the necessary competencies and other attributes; and

(c) establishing a nomination committee to carry out, or make recommendations with respect to, some or all of these procedures.

Practices related to nomination committee

Where an issuer has established a nomination committee, design that committee to:

(a) have a majority of independent directors;

(b) have directors with the necessary competencies and other attributes to fulfil the committee's mandate;

(c) be chaired by an independent director;

(d) adopt a charter that sets out its roles and responsibilities, composition, structure and membership requirements; and

(e) have the authority to engage and compensate any internal and external advisor that it determines to be necessary to permit it to carry out its duties.

Principle 4 – Continuously strive to improve the board's performance
A board should have processes to improve its performance and that of its committees, if any, and individual directors.

Commentary

A board's performance is dependent upon directors having the requisite knowledge, information and abilities to fulfil their obligations.

Orientation and continuing education

The board should provide its new directors with a comprehensive orientation. In addition, the board should provide continuing education opportunities for all directors.

Comprehensive orientation and continuing education should include areas such as:

(a) the issuer and its business, including its financial condition, strategy, operations and risk management practices, the industry within which the issuer operates and its competitive position; and

(b) the roles and responsibilities of the board, any board committees, individual directors and executive officers.

Access to information

To effectively make decisions and carry out their duties, directors need access to sufficient and relevant information in a timely manner.

Assessments

A board can improve its performance by addressing areas for potential improvement identified through regular assessments of the board, its committees (if any) and individual directors.

Examples of practices

The objective of this principle can be achieved in a number of ways, including by:

(a) having appropriate orientation procedures in place for new directors;

(b) ensuring that all directors are provided with continuing education opportunities relevant to their duties on the board;

(c) having procedures in place regarding the timely provision of relevant information to the board by executive officers;

(d) allowing directors to request additional information or independent advice at the issuer's expense, if the directors consider it necessary to fulfill their duties;

(e) creating opportunities for directors to interact with executive officers; and

(f) assessing the board, any board committees and each individual director on a regular basis regarding his, her or its contribution against established criteria and acting upon the results.

Principle 5 – Promote integrity
An issuer should actively promote ethical and responsible behaviour and decision-making.

Commentary

The board has a responsibility to set the ethical standards applicable to the issuer's directors, executive officers and employees. Investor confidence can be enhanced if the board clearly articulates ethical practices which are acceptable to the issuer.

The board should consider and assess the ethical standards that are appropriate in the issuer's circumstances. Executive officers have a responsibility to implement and enforce those standards for behaviour and decision-making.

Examples of practices

General practices

The objective of this principle can be achieved in a number of ways, including by:

(a) outlining the standards of ethical behaviour required of directors, executive officers and all employees;

(b) supporting the issuer's standards of ethical behaviour with appropriate training, monitoring, reporting, investigating and addressing unethical behaviour;

(c) adopting a code of conduct; and

(d) if the issuer has adopted standards of ethical behaviour or a code of conduct, assessing whether a departure from the standards or code would be a material change.

Practices related to code of conduct

A code of conduct usually addresses the following:

(a) conflicts of interest, including transactions and agreements where a director or executive officer has a significant interest;

(b) protection and proper use of corporate assets and opportunities;

(c) confidentiality of corporate information;

(d) the issuer's responsibilities to security holders, employees, those with whom it has a contractual relationship and the broader community;

(e) compliance with laws, rules and regulations;

(f) reporting of any illegal or unethical behaviour; and

(g) monitoring and ensuring compliance with the code.

Principle 6 – Recognize and manage conflicts of interest
An issuer should establish a sound system of oversight and management of actual and potential conflicts of interest.

Commentary

Conflicts of interest may arise in various situations, for example, when:

(a) there is a significant divergence of interests among shareholders or their interests are not completely aligned;

(b) one or more directors cannot be considered impartial in connection with a proposed decision to be made by the board;

(c) a contract, arrangement or transaction is entered into between an issuer and a control person or significant shareholder; or

(d) an issuer makes a decision or enters into a contract, arrangement or transaction that will benefit one or more of its officers or directors.

An issuer should have practices in place to identify, assess and resolve actual and potential significant conflicts of interest. Those practices should allow issuers to assess all the circumstances necessary to determine if directors, officers and employees have acted honestly and in good faith, and in the best interests of the issuer.

Examples of practices

General practices

The objective of this principle can be achieved in a number of ways, including by:

(a) having practices for:

(i) identifying situations, decisions, contracts, arrangements or transactions where an actual or potential significant conflict of interest could arise;

(ii) reviewing and assessing situations, decisions, contracts, arrangements or transactions that could put directors or executive officers in an actual or potential conflict of interest;

(iii) submitting to the board the prior declaration by directors of their interest in any situations, decisions, contracts, arrangements or transactions;

(iv) keeping records of any situations, decisions, contracts, arrangements or transactions where an actual or potential conflict of interest arises; and

(b) establishing an ad hoc or standing board committee to carry-out these practices, such committee to consist of directors that are not directly or indirectly interested in the matters being discussed or considered; and

(c) obtaining independent advice on the situation, decision, contract, arrangement or transaction.

Practices related to ad hoc or standing board committee

Where an issuer has established an ad hoc or standing board committee, design that committee to:

(a) be composed of directors who are not interested in any matter being discussed or considered;

(b) have terms of reference that clearly sets out its roles and responsibilities; and

(c) have the authority to engage and compensate any internal and external advisor that it determines to be necessary to permit it to carry out its duties.

Principle 7 – Recognize and manage risk
An issuer should establish a sound framework of risk oversight and management.

Commentary

Risk oversight and management include the culture, processes and structures that are directed towards taking advantage of potential opportunities while managing potential adverse effects. It usually is designed to identify, assess, monitor and manage risk, and identify significant changes to an issuer's risk profile.

Risk oversight and management is most effective if it is embedded into the issuer's practices and business processes rather than if it is viewed or practiced as a separate activity.

Risk oversight and management should focus on identifying the most significant areas of uncertainty or exposure that could have an adverse impact on the achievement of the issuer's goals and objectives (principal risks).

As stated in Principle 1, the board is usually responsible for identifying the principal risks of the issuer's business and ensuring that appropriate systems are in place to manage these risks. A board committee could facilitate meeting this responsibility. The responsibility for risk oversight and management, however, rests with the full board.

Examples of practices

The objective of this principle can be achieved in a number of ways, including by:

(a) developing, approving and implementing policies and procedures for the oversight and management of principal risks that:

(i) reflect the issuer's risk profile;

(ii) clearly describe significant elements of its risk management;

(iii) take into account its legal obligations; and

(iv) clearly describe the roles and accountabilities of the board, audit committee, or other appropriate board committee, management and any internal audit function.

(b) regularly reviewing and evaluating the effectiveness of these policies and procedures; and

(c) requiring the CEO and other executive officers to regularly report to the board on the effectiveness of the issuer's policies for the oversight and management of principal risks.

Principle 8 – Compensate appropriately
An issuer should ensure that compensation policies align with the best interests of the issuer.

Commentary

The board should be satisfied that appropriate compensation policies and practices are in place for executive officers and directors. Compensation should be set and structured to attract and retain executive officers and directors and motivate them to act in the best interests of the issuer. This includes a balanced pursuit of the issuer's short-term and long-term objectives.

A board compensation committee could develop and recommend appropriate compensation policies and practices. The responsibility for these policies and practices, however, rests with the full board. Smaller boards might not need a formal committee to achieve the same objectives.

Transparency of compensation can promote investor understanding and confidence in the process.

Examples of practices

General practices

The objective of this principle can be achieved in a number of ways, including by:

(a) having procedures for:

(i) establishing and maintaining goals related to executive officers' compensation;

(ii) regularly evaluating executive officers' performance in light of those goals;

(iii) determining the compensation of executive officers;

(iv) determining the compensation of directors; and

(v) having the board review executive compensation disclosure before the issuer publicly discloses it; and

(b) establishing a compensation committee to carry out, or make recommendations with respect to, some or all of these procedures.

Practices related to compensation committee

Where an issuer has established a compensation committee, design that committee to:

(a) have all independent directors;

(b) have directors with the requisite competencies and other attributes to fulfil the mandate of the committee;

(c) have a charter that clearly sets out its roles and responsibilities, composition, structure and membership requirements;

(d) have the authority to engage and compensate any internal and external advisor that it determines to be necessary to permit it to carry out its duties; and

(e) have procedures to ensure that no individual is directly involved in deciding his or her own compensation.

Principle 9 – Engage effectively with shareholders
The board should endeavour to stay informed of shareholders' views through the shareholder meeting process as well as through ongoing dialogue.

Commentary

An issuer's relationship with its shareholders is an important aspect of corporate governance. One of the most significant ways that shareholders can express their approval or disapproval of matters relating to the issuer is through exercising their right to vote at shareholder meetings, including the election of board members. Within the parameters of applicable corporate and securities law, the board should promote a voting process that:

(a) is understandable, transparent and robust; and

(b) facilitates the board obtaining meaningful information on shareholder views.

Examples of practices

The objective of this principle can be achieved in a number of ways, including by:

(a) posting on the issuer's website a clear description of the voting process for registered and beneficial shareholders;

(b) giving shareholders the option of voting electronically, for example, through telephone or internet voting; and

(c) giving shareholders or proxy holders the option of attending meetings through electronic means.

NATIONAL INSTRUMENT 58-101
DISCLOSURE OF CORPORATE GOVERNANCE PRACTICES

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NATIONAL INSTRUMENT 58-101
DISCLOSURE OF CORPORATE GOVERNANCE PRACTICES

PART 1 DEFINITIONS AND APPLICATION

1.1 Definitions

In this Instrument,

"AIF" has the same meaning as in Part 1 of NI 51-102;

"asset-backed security" has the same meaning as in Part 1 of NI 51-102;

"CEO" means each chief executive officer of an issuer, or in the case of an issuer that does not have a chief executive officer, each individual performing similar functions to those of a chief executive officer;

"credit support issuer" has the same meaning as in section 13.4 of NI 51-102;

"designated foreign issuer" has the same meaning as in Part 1 of NI 71-102;

"exchangeable security issuer" has the same meaning as in section 13.3 of NI 51-102;

"executive officer" has the same meaning as in Part 1 of NI 51-102;

"information circular" has the same meaning as in Part 1 of NI 51-102;

"investment fund" has the same meaning as in provincial and territorial securities legislation;

"marketplace" has the same meaning as in Part 1 of National Instrument 21-101 *Marketplace Operation*;

"MD&A" has the same meaning as in Part 1 of NI 51-102;

"NI 51-102" means National Instrument 51-102 *Continuous Disclosure Obligations*;

"NI 52-110" means National Instrument 52-110 *Audit Committees*;

"NI 71-102" means National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;

"SEC foreign issuer" has the same meaning as in Part 1 of NI 71-102;

"subsidiary entity" has the same meaning as in Part 1 of NI 52-110.

1.2 Meaning of independence

For the purposes of this Instrument, a director is independent if he or she is independent under section 1.4 of NI 52-110.

1.3 Application

This Instrument applies to a reporting issuer, other than

(a) an investment fund;

(b) an issuer of asset-backed securities;

(c) a designated foreign issuer;

(d) an SEC foreign issuer;

(e) an exchangeable security issuer or credit support issuer that is exempt under section 13.3 or 13.4 of NI 51-102, as applicable; and

(f) an issuer that is a subsidiary entity if

(i) the subsidiary entity does not have equity securities trading on a marketplace, other than non-convertible, non-participating preferred securities; and

(ii) the parent of the subsidiary entity is

(A) in compliance with the requirements of this Instrument; or

(B) an issuer that

(I) has equity securities listed or quoted on the New York Stock Exchange or Nasdaq Stock Market;

(II) is not on the list of issuers that are non-compliant with continued listing standards of that exchange; and

(III) has publicly disclosed its corporate governance practices in a document filed with or furnished to the SEC or that exchange.

PART 2 DISCLOSURE REQUIREMENTS

2.1 Required disclosure

(1) If management of an issuer solicits a proxy from a security holder of the issuer for the purpose of electing directors to the issuer's board of directors, the issuer must include in its information circular the disclosure required by Form 58-101F1.

(2) An issuer that does not send an information circular to its security holders must include the disclosure required by Form 58-101F1 in its AIF.

(3) An issuer that does not send an information circular to its security holders or file an AIF must include the disclosure required by Form 58-101F1 in its annual MD&A.

PART 3 EXEMPTION

3.1 Exemption

(1) The regulator or securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 4 EFFECTIVE DATE AND REPEAL

4.1 Effective date

This Instrument comes into force on ●.

4.2 Repeal

National Instrument 58-101 *Disclosure of Corporate Governance Practices* which came into force on the date set out below, is repealed:

(a) June 30, 2005, in all jurisdictions other than the Northwest Territories, Nunavut, Prince-Edward Island and Yukon;

(b) September 19, 2005, in Nunavut;

(c) March 17, 2008, in Prince-Edward Island and Yukon; and

(d) October 26, 2008, in the Northwest Territories.

FORM 58-101F1
CORPORATE GOVERNANCE STATEMENT

Principle 1 – Create a framework for oversight and accountability

(a) Describe the practices the issuer uses to establish the roles and responsibilities of the board of directors (the board) and executive officers of the issuer.

(b) State the names of the chair, any lead director, all other directors and the CEO.

(c) Describe the roles and responsibilities of the board and the terms of any written mandate or formal board charter.

(d) For each standing committee of the board:

(i) state the names of its chair and all other members;

(ii) describe the roles and responsibilities and the terms of any written mandate or formal charter;

(iii) describe the qualifications of its members;

(iv) describe the process for appointing and removing members; and

(v) describe the process for reporting to the board.

(e) Describe any directors' authority and responsibilities that have been delegated to an executive officer or officers of the issuer, if any.

Principle 2 – Structure the board to add value

(a) Describe any practices the board uses to address its composition and size and the commitment of its directors.

(b) Describe the competencies and other attributes the board determines are necessary to fulfill its functions.

(c) Describe the relevant competencies and other attributes that each director brings to the board.

(d) State the names of the directors considered by the board to be independent, with the following information for each of those directors, if any:

(i) a description of any relationship with the issuer or any of its executive officers that the board considered in determining the director's independence; and

(ii) if the director has a relationship referred to in sub-paragraph (i), a discussion of why the board considers the director to be independent.

(e) State the names of the directors considered by the board to be not independent and the basis for that determination.

(f) If a director has a business or other relationship with another director on the issuer's board, other than common membership on the issuer's board, provide information about that relationship.

(g) If a director is a director of any other issuer that is a reporting issuer in any jurisdiction of Canada or the equivalent in any foreign jurisdiction, state the names of both the director and the other issuer.

(h) Provide the attendance record of each director for all board meetings, and any board committee meetings, held since the beginning of the issuer's most recently completed financial year. For the purposes of this disclosure, "attendance" is limited to those means permitted under the issuer's constating documents.

Principle 3 – Attract and retain effective directors

(a) Describe any practices the issuer uses to select and nominate, and attract and retain, effective directors.

(b) If a consultant or advisor has assisted the board or the nomination committee since the beginning of the issuer's most recently completed financial year:

(i) state the name of the consultant or advisor and a summary of the mandate it has been given;

(ii) disclose when the consultant or advisor was originally retained; and

(iii) if the consultant or advisor has performed any other work for the issuer, state this fact and briefly describe the nature of the work.

Principle 4 – Continuously strive to improve the board's performance

(a) Describe any practices the board uses that are intended to improve the performance of the board, any board committee or individual directors, including:

(i) orientation of new directors;

(ii) continuing education for directors; and

(iii) the assessment process and outcomes, if a performance assessment of the board, any board committee or individual directors was conducted during the most recently completed financial year.

Principle 5 – Promote integrity

(a) Describe any practices the issuer uses to promote ethical and responsible behaviour and decision-making.

(b) Provide a summary of any standards of ethical and responsible behaviour and decision-making or code of business conduct and ethics adopted by the issuer.

(c) Describe how a person or company may obtain a copy of the issuer's code of business conduct and ethics, if any.

Principle 6 – Recognize and manage conflicts of interest

(a) Describe any practices the issuer uses to identify, assess and resolve significant conflicts of interest.

(b) If the board has appointed an ad hoc committee to address a significant conflict of interest:

(i) state the names of the chair and its members; and

(ii) describe the purpose of its appointment and its roles and responsibilities.

(c) If a consultant or advisor has assisted the board or a committee in carrying out their responsibilities in relation to a significant conflict of interest since the beginning of the issuer's most recently completed financial year:

(i) state the name of the consultant or advisor and a summary of the mandate it has been given;

(ii) disclose when the consultant or advisor was originally retained; and

(iii) if the consultant or advisor has performed any other work for the issuer, state this fact and briefly describe the nature of the work.

Principle 7 – Recognize and manage risk

(a) Disclose a summary of any policies on risk oversight and management adopted by the issuer.

Principle 8 – Compensate appropriately

(a) Describe any practices the issuer uses to establish and maintain appropriate compensation policies for executive officers and directors.

(b) If a compensation consultant or advisor has assisted the board or the compensation committee since the beginning of the issuer's most recently completed financial year:

(i) state the name of the consultant or advisor and a summary of the mandate it has been given;

(ii) disclose when the consultant or advisor was originally retained;

(iii) if the consultant or advisor has performed any other work for the issuer, state this fact and briefly describe the nature of the work; and

(iv) disclose the aggregate fees billed by the consultant or advisor in each of the last two financial years for:

(A) professional services relating to executive compensation; and

(B) professional services other than those relating to executive compensation. Include a description of the nature of the services comprising the fees disclosed under this category.

Principle 9 – Engage effectively with shareholders

(a) Describe any practices or policies of the issuer that are related to the shareholder voting process or that promote a voting process that:

(i) is understandable, transparent and robust; and

(ii) facilitates the board obtaining meaningful information on shareholder views.

(b) Describe how directors of the issuer are elected, including if the issuer has adopted a majority or plurality voting standard.

NATIONAL INSTRUMENT 52-110
AUDIT COMMITTEES

Table of Contents

NATIONAL INSTRUMENT 52-110
AUDIT COMMITTEES

PART 1 DEFINITIONS AND APPLICATION

1.1 Definitions

In this Instrument,

"accounting principles" has the same meaning as in Part 1 of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;

"AIF" has the same meaning as in Part 1 of NI 51-102;

"asset-backed security" has the same meaning as in Part 1 of NI 51-102;

"audit committee" means a committee, or an equivalent body, established by and among the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer, and, if no such committee exists, the entire board of directors of the issuer;

"audit services" means the professional services provided by the issuer's external auditor for the audit and review of the issuer's financial statements or services that are normally provided by the external auditor in connection with engagements related to statutory and regulatory filings;

"credit support issuer" has the same meaning as in section 13.4 of NI 51-102;

"designated foreign issuer" has the same meaning as in Part 1 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;

"exchangeable security issuer" has the same meaning as in section 13.3 of NI 51-102;

"executive officer" has the same meaning as in Part 1 of NI 51-102;

"foreign private issuer" means an issuer that is a foreign private issuer within the meaning of Rule 405 under the 1934 Act;

"information circular" has the same meaning as in Part 1 of NI 51-102;

"marketplace" has the same meaning as in Part 1 of National Instrument 21-101 *Marketplace Operation*;

"MD&A" has the same meaning as in Part 1 of NI 51-102;

"NI 51-102" means National Instrument 51-102 *Continuous Disclosure Obligations*;

"non-audit services" means services provided by the issuer's external auditor other than audit services;

"non-venture issuer" means a reporting issuer that is not a venture issuer;

"reverse takeover" has the same meaning as in Part 1 of NI 51-102;

"reverse takeover acquiree" has the same meaning as in Part 1 of NI 51-102;

"reverse takeover acquirer" has the same meaning as in Part 1 of NI 51-102;

"SEC foreign issuer" has the same meaning as in Part 1 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;

"venture issuer" has the same meaning as in Part 1 of NI 51-102.

1.2 Application

This Instrument applies to a reporting issuer other than

(a) an investment fund;

(b) an issuer of asset-backed securities;

(c) a designated foreign issuer;

(d) an SEC foreign issuer;

(e) an exchangeable security issuer or credit support issuer that is exempt under section 13.3 or 13.4 of NI 51-102, as applicable; and

(f) an issuer that is a subsidiary entity if

(i) the subsidiary entity does not have equity securities trading on a marketplace, other than non-convertible, non-participating preferred securities; and

(ii) the parent of the subsidiary entity is

(A) in compliance with the requirements of this Instrument; or

(B) an issuer that

(I) has equity securities listed or quoted on the New York Stock Exchange or Nasdaq Stock Market; and

(II) has not contravened the requirements of that exchange applicable to issuers, other than foreign private issuers, regarding the role and composition of audit committees.

1.3 Subsidiary entity and control

(1) For the purpose of this Instrument, a person or company is a "subsidiary entity" of another person or company if

(a) it is controlled by

(i) that other,

(ii) that other and one or more persons or companies each of which is controlled by that other, or

(iii) two or more persons or companies, each of which is controlled by that other; or

(b) it is a subsidiary entity of a person or company that is the other's subsidiary entity.

(2) For the purpose of this Instrument, "control" means the direct or indirect power to direct or cause the direction of the management and policies of a person or company, whether through ownership of voting securities or otherwise.

(3) For the purpose of this Instrument, an individual is not considered to control an issuer if the individual

(a) beneficially owns or controls, directly or indirectly, 10% or less of any class of voting securities of the issuer; and

(b) is not an executive officer of the issuer.

1.4 Independence

For the purpose of this Instrument, a director is independent if he or she

(a) is not an employee or executive officer of the issuer, and

(b) does not have, or has not had, any relationship with the issuer, or an executive officer of the issuer, which could, in the view of the issuer's board of directors having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgment.

1.5 Financial literacy

For the purpose of this Instrument, a director is financially literate if he or she has the ability to read and understand a set of financial statements that present a breadth and level of complexity of accounting issues that are reasonably comparable to the breadth and complexity of the issues that can reasonably be expected to be raised by the issuer's financial statements.

PART 2 AUDIT COMMITTEE REQUIREMENTS

2.1 Audit committee

An issuer must have an audit committee that complies with the requirements of this Instrument.

2.2 Relationship with external auditors

An issuer must, under the terms of its audit engagement agreement, require its external auditor to report directly to the audit committee.

2.3 Responsibilities

(1) An audit committee must have a written charter that sets out its mandate and responsibilities.

(2) An audit committee must recommend to the board of directors

(a) the external auditor to be nominated for the purpose of preparing or issuing an auditor's report or performing other audit, review or attest services for the issuer; and

(b) the compensation of the external auditor.

(3) An audit committee must oversee the work of the external auditor engaged for the purpose of preparing or issuing an auditor's report or performing other audit, review or attest services for the issuer, including the resolution of disagreements between management and the external auditor regarding financial reporting.

(4) An issuer or any of its subsidiary entities must not obtain a non-audit service from its external auditor unless the service has been approved by the issuer's audit committee.

(5) An issuer must not publicly disclose information contained in or derived from its financial statements, MD&A or annual or interim earnings news releases, unless the document has been reviewed by its audit committee.

(6) An audit committee must be satisfied that adequate procedures are in place for the review of the issuer's public disclosure of financial information extracted or derived from the issuer's financial statements, other than the public disclosure referred to in subsection (5), and must, on a reasonably frequent basis, assess the adequacy of those procedures.

(7) An audit committee must establish procedures for

(a) the receipt and retention of and reasonable attempts to resolve complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters; and

(b) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.

(8) An audit committee must review and approve the issuer's hiring policies regarding partners, employees and former partners or employees of the present or former external auditor of the issuer.

2.4 Exemption for minimal non-audit services

An issuer does not contravene subsection 2.3(4) if

(a) the aggregate fees paid for all the non-audit services that are not approved is reasonably expected to constitute no more than five per cent of the aggregate fees paid by the issuer and its subsidiary entities to the issuer's external auditor during the financial year in which the services are provided;

(b) the issuer or the subsidiary entity of the issuer, as the case may be, did not recognize the services as non-audit services at the time of the engagement; and

(c) once recognized as non-audit services, the services are promptly brought to the attention of the audit committee of the issuer and approved, prior to the completion of the audit, by the audit committee.

2.5 Delegation of approval function

(1) An audit committee may delegate to one or more independent members its authority to approve non-audit services under subsection 2.3(4) or paragraph 2.4 (c).

(2) The approval of non-audit services by any member to whom authority has been delegated pursuant to subsection (1) must be presented to the audit committee at its first scheduled meeting following such approval.

2.6 Approval policies and procedures

An issuer satisfies the approval requirement in subsection 2.3(4) if it adopts policies and procedures for the engagement of the non-audit services and

(a) the approval policies and procedures are detailed as to the particular service; and

(b) the audit committee is informed of each non-audit service.

PART 3 COMPOSITION OF THE AUDIT COMMITTEE

3.1 Application

This Part applies only to a non-venture issuer.

3.2 Composition

(1) An audit committee must be composed of a minimum of three members.

(2) Every audit committee member must be a director of the issuer.

(3) Subject to sections 3.3 to 3.8, every audit committee member must be independent.

(4) Subject to sections 3.5 and 3.9, every audit committee member must be financially literate.

3.3 Initial public offerings

(1) Subject to section 3.10, if an issuer has filed a prospectus to qualify the distribution of securities that constitutes its initial public offering, subsection 3.2(3) does not apply to the issuer for a period of 90 days commencing on the date of the receipt for the prospectus, provided that at least one member of the audit committee is independent.

(2) Subject to section 3.10, if an issuer has filed a prospectus to qualify the distribution of securities that constitutes its initial public offering, subsection 3.2(3) does not apply to the issuer for a period of one year commencing on the date of the receipt for the prospectus, provided that a majority of the audit committee members are independent.

3.4 Events outside control of member

Subject to section 3.10, if an audit committee member ceases to be independent for reasons outside the member's reasonable control, subsection 3.2(3) does not apply to the issuer, with respect to that member, for the period ending on the later of

(a) the next annual meeting of the issuer; and

(b) the date that is six months from the occurrence of the event which caused the member to not be independent.

3.5 Death, disability or resignation of member

Subject to section 3.10, if the death, disability or resignation of an audit committee member has resulted in a vacancy on the audit committee that would cause the issuer to contravene subsection 3.2 (1), subsections 3.2(3) and 3.2(4) do not apply to the issuer with respect to an audit committee member appointed to fill the vacancy for the period ending on the later of

(a) the next annual meeting of the issuer; and

(b) the date that is six months from the day the vacancy was created.

3.6 Becoming a non-venture issuer

(1) Subject to section 3.10, if a venture issuer becomes a non-venture issuer, subsection 3.2(3) does not apply for a period of 90 days commencing on the date the venture issuer becomes a non-venture issuer, provided that at least one member of the audit committee is independent.

(2) Subject to section 3.10, if a venture issuer becomes a non-venture issuer, subsection 3.2(3) does not apply for a period of one year commencing on the date the venture issuer becomes a non-venture issuer, provided that a majority of the audit committee members are independent.

3.7 Certain reverse takeovers

(1) Subject to section 3.10, if an issuer participates in a reverse takeover, subsection 3.2(3) does not apply for a period of 90 days commencing on the date of completion of the reverse takeover if

(a) the issuer is the reverse takeover acquiree;

(b) immediately before the reverse takeover, the reverse takeover acquirer was

(i) a venture issuer, or

(ii) not a reporting issuer; and

(c) at least one member of the audit committee is independent.

(2) Subject to section 3.10, if an issuer participates in a reverse takeover, subsection 3.2(3) does not apply for a period of one year commencing on the date of completion of the reverse takeover if

(a) the issuer is the reverse takeover acquiree;

(b) immediately before the reverse takeover, the reverse takeover acquirer was

(i) a venture issuer, or

(ii) not a reporting issuer; and

(c) a majority of the audit committee members are independent.

3.8 Temporary exemption for limited and exceptional circumstances

Subject to section 3.10, subsection 3.2(3) does not apply to an issuer in respect of a member of the audit committee if

(a) the member is not an employee or executive officer of the issuer;

(b) the board of directors, under limited and exceptional circumstances, determines that the appointment of the member is required in the best interests of the issuer;

(c) the member does not act as chair of the audit committee;

(d) the member does not rely upon this exemption for a period of more than two years; and

(e) a majority of the audit committee members are independent.

3.9 Acquisition of financial literacy

Subject to section 3.10, an audit committee member who is not financially literate may be appointed to the audit committee provided that the member becomes financially literate within a reasonable period of time following his or her appointment.

3.10 Restriction on use of certain exemptions

Sections 3.3, 3.4, 3.5, 3.6, 3.7, 3.8 and 3.9 do not apply to a member unless the issuer's board of directors has determined that the reliance on the exemption will not significantly adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of this Instrument.

PART 4 AUTHORITY OF THE AUDIT COMMITTEE

4.1 Authority

The board of directors of an issuer must give the audit committee the authority

(a) to engage independent counsel, or other advisors, as it determines necessary to carry out its duties;

(b) to set and direct the payment of the compensation for any independent counsel or other advisor engaged by the audit committee; and

(c) to communicate directly with the internal and external auditors.

PART 5 REPORTING OBLIGATIONS

5.1 Non-venture issuers

(1) If management of a non-venture issuer solicits a proxy from a security holder of the issuer for the purpose of electing directors to the issuer's board of directors, the issuer must include in its information circular the disclosure required under Form 52-110F1.

(2) A non-venture issuer that does not send an information circular to its security holders must include the disclosure required under Form 52-110F1 in its AIF.

5.2 Venture issuers

(1) If management of a venture issuer solicits a proxy from a security holder of the venture issuer for the purpose of electing directors to the issuer's board of directors, the venture issuer must include in its information circular the disclosure required under Form 52-110F2.

(2) A venture issuer that does not send an information circular to its security holders must include the disclosure required under Form 52-110F2 in its AIF.

(3) A venture issuer that does not send an information circular to its security holders or file a AIF must include the disclosure required under Form 52-110F2 in its annual MD&A.

PART 6 U.S. LISTED ISSUERS

6.1 U.S. listed issuers

Parts 2, 3, 4, and 5 do not apply to an issuer that has securities listed or quoted on the New York Stock Exchange or Nasdaq Stock Market if

(a) the issuer has not contravened the requirements of that exchange applicable to issuers, other than foreign private issuers, regarding the role and composition of audit committees, and

(b) if the issuer is incorporated, continued or otherwise organized in a jurisdiction in Canada, the issuer includes in its information circular or, if none, in its AIF or, if neither, in its annual MD&A, the disclosure, if any, required under paragraph 7 of Form 52-110F1 or paragraph 4 of Form 52-110F2.

PART 7 EXEMPTIONS

7.1 Exemptions

(1) The securities regulatory authority or regulator may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 8 EFFECTIVE DATE AND REPEAL

8.1 Effective date

This Instrument comes into force on ●.

8.2 Repeal

National Instrument 52-110 *Audit Committees*, which came into force on the date set out below, is repealed:

(a) March 30, 2004, in all jurisdictions other than British Columbia and Québec;

(b) June 30, 2005, in Québec;

(c) March 17, 2008, in British Columbia.

FORM 52-110F1
AUDIT COMMITTEE DISCLOSURE BY NON-VENTURE ISSUERS

1. An audit committee's charter

State the text of the audit committee's charter.

2. Composition of the audit committee

State the name of each audit committee member and state whether or not the member is considered by the board of directors to be

(a) independent, and

(b) financially literate.

3. Relevant education and experience

Describe the education and experience of each audit committee member that is relevant to the performance of his or her responsibilities as an audit committee member and, in particular, describe any education or experience that would provide the member with

(a) an understanding of the accounting principles used by the issuer to prepare its financial statements;

(b) the ability to assess the general application of such accounting principles in connection with the accounting for estimates, accruals and provisions;

(c) experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are reasonably comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the issuer's financial statements, or experience actively supervising one or more individuals engaged in such activities; and

(d) an understanding of internal controls and procedures for financial reporting.

4. Reliance on certain provisions or exemptions

If, at any time since the commencement of the issuer's most recently completed financial year, the issuer has relied on a provision or exemption set out below, state that fact:

(a) section 2.4 (Exemption for minimal non-audit services),

(b) section 3.3 (Initial public offerings),

(c) section 3.4 (Events outside control of member),

(d) section 3.5 (Death, disability or resignation of member),

(e) section 3.6 (Becoming a non-venture issuer),

(f) section 3.7 (Certain reverse takeovers), or

(g) an exemption from the Instrument, in whole or in part, referred to in Part 7 (Exemptions).

5. Reliance on section 3.8

If, at any time since the commencement of the issuer's most recently completed financial year, the issuer has relied on section 3.8 (Temporary exemption for limited and exceptional circumstances), state that fact and state

(a) the name of the member, and

(b) the rationale for appointing the member to the audit committee.

6. Reliance on section 3.9

If, at any time since the commencement of the issuer's most recently completed financial year, the issuer has relied on section 3.9 (Acquisition of financial literacy), state that fact and state

(a) the name of the member,

(b) that the member is not financially literate, and

(c) the date by which the member expects to become financially literate.

7. Audit committee oversight

If, at any time since the commencement of the issuer's most recently completed financial year, a recommendation of the audit committee to nominate or compensate an external auditor was not adopted by the board of directors, state that fact and describe why.

8. Approval policies and procedures

If the issuer has adopted policies and procedures for the engagement of non-audit services, describe those policies and procedures.

9. External auditor service fees (by category)

(a) State, under the caption "Audit fees", the aggregate fees billed by the issuer's external auditor in each of the last two financial years for audit services.

(b) State, under the caption "Audit-related fees", the aggregate fees billed in each of the last two financial years for assurance and related services by the issuer's external auditor that are reasonably related to the performance of the audit or review of the issuer's financial statements and are not reported under paragraph (a). Include a description of the nature of the services comprising the fees stated under this category.

(c) State, under the caption "Tax fees", the aggregate fees billed in each of the last two financial years for professional services rendered by the issuer's external auditor for tax compliance, tax advice, and tax planning. Include a description of the nature of the services comprising the fees stated under this category.

(d) State, under the caption "All other fees", the aggregate fees billed in each of the last two financial years for products and services provided by the issuer's external auditor, other than the services reported under paragraphs (a), (b) and (c). Include a description of the nature of the services comprising the fees stated under this category.

FORM 52-110F2
AUDIT COMMITTEE DISCLOSURE BY VENTURE ISSUERS

1. An audit committee's charter

State the text of the audit committee's charter.

2. Composition of the audit committee

State the name of each audit committee member and state whether or not the member is considered by the board of directors to be

(a) independent, and

(b) financially literate.

3. Relevant education and experience

Describe the education and experience of each audit committee member that is relevant to the performance of his or her responsibilities as an audit committee member and, in particular, describe any education or experience that would provide the member with

(a) an understanding of the accounting principles used by the issuer to prepare its financial statements;

(b) the ability to assess the general application of such accounting principles in connection with the accounting for estimates, accruals and provisions;

(c) experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the issuer's financial statements, or experience actively supervising one or more individuals engaged in such activities; and

(d) an understanding of internal controls and procedures for financial reporting.

4. Audit committee oversight

If, at any time since the commencement of the issuer's most recently completed financial year, a recommendation of the audit committee to nominate or compensate an external auditor was not adopted by the board of directors, state that fact and describe why.

5. Reliance on certain provisions or exemptions

If, at any time since the commencement of the issuer's most recently completed financial year, the issuer has relied on a provision or exemption set out below, state that fact:

(a) section 2.4 (Exemption for minimal non-audit services), or

(b) an exemption from the Instrument, in whole or in part, referred to in Part 7 (Exemptions).

6. Approval policies and procedures

If the issuer has adopted policies and procedures for the engagement of non-audit services, describe those policies and procedures.

7. External auditor service fees (by category)

(a) State, under the caption "Audit fees", the aggregate fees billed by the issuer's external auditor in each of the last two financial years for audit services.

(b) State, under the caption "Audit-related fees", the aggregate fees billed in each of the last two financial years for assurance and related services by the issuer's external auditor that are reasonably related to the performance of the audit or review of the issuer's financial statements and are not reported under paragraph (a). Include a description of the nature of the services comprising the fees stated under this category.

(c) State, under the caption “Tax fees”, the aggregate fees billed in each of the last two financial years for professional services rendered by the issuer’s external auditor for tax compliance, tax advice, and tax planning. Include a description of the nature of the services comprising the fees stated under this category.

(d) State, under the caption “All other fees”, the aggregate fees billed in each of the last two financial years for products and services provided by the issuer’s external auditor, other than the services reported under paragraphs (a), (b) and (c). Include a description of the nature of the services comprising the fees stated under this category.

COMPANION POLICY 52-110CP TO NATIONAL INSTRUMENT 52-110
AUDIT COMMITTEES

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COMPANION POLICY 52-110CP TO NATIONAL INSTRUMENT 52-110
AUDIT COMMITTEES

PART 1 GENERAL

1.1 Purpose

We, the Canadian Securities Administrators (the CSA), adopt National Instrument 52-110 *Audit Committees* (the Instrument) to encourage reporting issuers to establish and maintain strong, effective and independent audit committees. We think that such audit committees enhance the quality of financial disclosure made by reporting issuers, and ultimately foster increased investor confidence in Canada's capital markets.

This companion policy (the Policy) provides information regarding the interpretation and application of the Instrument.

1.2 Application to non-corporate entities

The Instrument applies to both corporate and non-corporate entities. Where the Instrument or this Policy refers to a particular corporate characteristic, such as a board of directors, the reference should be read to also include any equivalent characteristic of a non-corporate entity. For example, in the case of a limited partnership, the directors of the general partner who are independent of the limited partnership (including the general partner) should form an audit committee which fulfils these responsibilities.

Income trust issuers should, in applying the Instrument, recognize that certain functions of a corporate issuer, its board of directors and its management may be performed by any or all of the trustees, the board of directors or management of a subsidiary entity of the trust, or the board of directors, management or employees of a management company. For this purpose, references to "the issuer" refer to both the trust and any underlying entities, including the operating entity.

If the structure of an issuer will not permit it to comply with the Instrument, the issuer should seek exemptive relief.

1.3 Management companies

The definition of "executive officer" includes any individual who performs a policy-making function in respect of the entity in question. We consider this aspect of the definition to include an individual who, although not employed by the entity in question, nevertheless performs a policy-making function in respect of that entity, whether through another person or company or otherwise.

1.4 Audit committee procedures

The Instrument establishes requirements for the responsibilities, composition and authority of audit committees. Nothing in the Instrument is intended to restrict the ability of the board of directors or the audit committee to establish the committee's quorum or procedures, or to restrict the committee's ability to invite additional parties to attend audit committee meetings.

PART 2 THE ROLE AND COMPOSITION OF THE AUDIT COMMITTEE

2.1 The role of the audit committee

An audit committee is a committee of a board of directors to which the board of directors delegates its responsibility for oversight of the financial reporting process. Traditionally, the audit committee has performed a number of roles, including

(a) helping directors meet their responsibilities,

(b) providing better communication between directors and the external auditor,

(c) enhancing the independence of the external auditor,

(d) increasing the credibility and objectivity of financial reports, and

(e) strengthening the role of the directors by facilitating in-depth discussions among directors, management and the external auditor.

The Instrument requires that the audit committee also be responsible for managing, on behalf of the shareholders, the relationship between the issuer and the external auditor. In particular, it provides that an audit committee must have responsibility for

(a) overseeing the work of the external auditor engaged for the purpose of preparing or issuing an auditor's report or related work; and

(b) recommending to the board of directors the nomination and compensation of the external auditor.

Although under corporate law an issuer's external auditor is responsible to the shareholders, in practice, shareholders have often been too dispersed to effectively exercise meaningful oversight of the external auditor. As a result, management has typically assumed this oversight role. However, the auditing process may be compromised if the external auditor views its main responsibility as serving management rather than the shareholders. By assigning these responsibilities to an independent audit committee, the Instrument helps to ensure that the external audit will be conducted independently of the issuer's management.

2.2 Relationship between the external auditor and shareholders

Subsection 2.3(3) of the Instrument provides that an audit committee must be directly responsible for overseeing the work of the external auditor engaged for the purpose of preparing or issuing an auditor's report or performing other audit, review or attest services for the issuer, including the resolution of disagreements between management and the external auditor regarding financial reporting. Notwithstanding this responsibility, the external auditor is retained by, and is ultimately accountable to, the shareholders. As a result, subsection 2.3(3) does not detract from the external auditor's right and responsibility to also provide its views directly to the shareholders if they disagree with an approach being taken by the audit committee.

2.3 Public disclosure of financial information

Issuers are reminded that, in our view, the extraction of information from financial statements that have not previously been reviewed by the audit committee and the release of that information into the marketplace is inconsistent with the issuer's obligation to have its audit committee review the financial statements. See also National Policy 51-201 *Disclosure Standards*.

2.4 Composition of the audit committee

An audit committee should be composed of an appropriate number of independent directors who are unrelated to any control person or significant shareholder.

PART 3 INDEPENDENCE

3.1 Guidance for assessing independence

When assessing independence, the board of directors should review closely the director's business and other relationships with the issuer or its executive officers. The board of directors should apply in its analysis of such business and other relationships materiality thresholds that are appropriate for the issuer and the directors.

A director's independence could be affected if he or she

(a) has been employed by the issuer;

(b) is, or has been, employed by an affiliate of the issuer;

(c) has a close association with an executive officer of the issuer or is actively involved in the day to day management of the issuer;

(d) has family ties with an executive officer of the issuer;

(e) has, or had, a significant contractual or other business relationship with the issuer or an affiliate of the issuer, other than as a director, or is a partner, shareholder, director, executive officer or employee of an entity that has such a relationship;

(f) is, or was, a significant professional advisor or consultant to the issuer or an affiliate of the issuer, an executive officer or director of such advisor or consultant, or an employee of such advisor or consultant significantly associated with the service provided; and

(g) receives, or has received, significant compensation from the issuer, other than compensation for acting as a member of the board of directors or of any board committee or fixed amounts of compensation under a retirement plan.

PART 4 FINANCIAL LITERACY, FINANCIAL EDUCATION AND EXPERIENCE

4.1 Financial literacy

For the purpose of the Instrument, a director is financially literate if he or she has the ability to read and understand a set of financial statements that present a breadth and level of complexity of accounting issues that are reasonably comparable to the breadth and complexity of the issues that can reasonably be expected to be raised by the issuer's financial statements. In our view, it is not necessary for a member to have a comprehensive knowledge of GAAP and GAAS to be considered financially literate.

4.2 Relevant education and experience

Item 3 of Forms 52-110F1 and 52-110F2 requires an issuer to describe any education or experience of an audit committee member that would provide the member with, among other things, an understanding of the accounting principles used by the issuer to prepare its financial statements. The level of understanding that is requisite is influenced by the complexity of the business being carried on. For example, if the issuer is a complex financial institution, a greater degree of education and experience is necessary than would be the case for an audit committee member of an issuer with a more simple business.

Item 3 of Forms 52-110F1 and 52-110F2 also requires an issuer to describe any experience that the member has, among other things, actively supervising persons engaged in preparing, auditing, analyzing or evaluating certain types of financial statements. The phrase active supervision means more than the mere existence of a traditional hierarchical reporting relationship between supervisor and those being supervised. An individual engaged in active supervision participates in, and contributes to, the process of addressing (albeit at a supervisory level) the same general types of issues regarding preparation, auditing, analysis or evaluation of financial statements as those addressed by the individual or individuals being supervised. The supervisor should also have experience that has contributed to the general expertise necessary to prepare, audit, analyze or evaluate financial statements that is at least comparable to the general expertise of those being supervised. An executive officer should not be presumed to qualify. An executive officer with considerable operations involvement, but little financial or accounting involvement, likely would not be exercising the necessary active supervision. Active participation in, and contribution to, the process, albeit at a supervisory level, of addressing financial and accounting issues that demonstrate a general expertise in the area would be necessary.

PART 5 NON-AUDIT SERVICES

5.1 Approval of non-audit services

Section 2.6 of the Instrument allows an issuer to satisfy, in certain circumstances, the approval requirements in subsection 2.3(4) by adopting policies and procedures for the engagement of non-audit services. The following guidance should be noted in the development and application of such policies and procedures:

(a) Monetary limits should not be the only basis for the approval policies and procedures. The establishment of monetary limits will not, alone, constitute policies that are detailed as to the particular services to be provided and will not, alone, ensure that the audit committee will be informed about each service.

(b) The use of broad, categorical approvals (e.g. tax compliance services) will not meet the requirement that the policies must be detailed as to the particular services to be provided.

(c) The appropriate level of detail for the approval policies will differ depending on the facts and circumstances of the issuer. The approval policies must be designed to ensure that the audit committee knows precisely what services it is being asked to approve so that it can make a well-reasoned assessment of the impact of the service on the auditor's independence. Furthermore, because the Instrument does not permit the audit committee to delegate its responsibility to management, the approval policies must be sufficiently detailed as to particular services so that a member of management will not be called upon to determine whether a proposed service fits within the policy.

PART 6 DISCLOSURE OBLIGATIONS

6.1 Incorporation by reference

NI 51-102 permits disclosure required to be included in an issuer's information circular or AIF to be incorporated by reference, provided that the referenced document has already been filed with the applicable securities regulatory authorities. Any disclosure required by the Instrument to be included in an issuer's information circular or AIF, as the case may be, may also be incorporated by reference, provided that the procedures set out in NI 51-102 are followed.

APPENDIX C

CONSEQUENTIAL AMENDMENTS

AMENDMENT INSTRUMENT
FOR
NATIONAL POLICY 12-202 *REVOCATION OF A COMPLIANCE-RELATED CEASE TRADE ORDER*

1. National Policy 12-202 *Revocation of a Compliance-related Cease Trade Order* is amended by this Instrument.

2. Paragraph 3.1 (1) (f) is repealed and the following is substituted:

"(f) National Instrument 52-110 *Audit Committees*; and**".**

3. This Instrument comes into force on ●.

AMENDMENT INSTRUMENT
FOR
NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS* AND
FORM 41-101F1 *INFORMATION REQUIRED IN A PROSPECTUS*

1. National Instrument 41-101 *General Prospectus Requirements* (NI 41-101) and Form 41-101F1 *Information Required in a Prospectus* (Form 41-101F1) are amended by this Instrument.

2. Section 1.1 of NI 41-101 is amended

(a) by repealing the definition of "Form 52-110F1" and substituting the following:

" "Form 52-110F1" means Form 52-110F1 *Audit Committee Disclosure by Non-Venture Issuers* of NI 52-110;**";**

(b) by repealing the definition of "Form 52-110F2" and substituting the following:

" "Form 52-110F2" means Form 52-110F2 *Audit Committee Disclosure by Venture Issuers* of NI 52-110;**";**

(c) by repealing the definition of "Form 58-101F1" and substituting the following:

" "Form 58-101F1" means Form 58-101F1 *Corporate Governance Statement* of NI 58-101;**";**

(d) by repealing the definition of "Form 58-101F2";

(e) by repealing the definition of "MI 52-110"; and

(f) by adding the following after the definition of "NI 52-107":

"NI 52-110" means National Instrument 52-110 *Audit Committees*;**".**

3. Section 19.2 of Form 41-101F1 is amended

(a) by repealing subsection (1) and substituting the following:

"Include in the prospectus the disclosure in accordance with Form 58-101F1.**", and**

(b) by repealing subsection (2).

4. This Instrument comes into force on ●.

AMENDMENT INSTRUMENT
FOR
NATIONAL POLICY 41-201 *INCOME TRUSTS AND OTHER INDIRECT OFFERINGS*

1. National Policy 41-201 *Income Trusts and Other Indirect Offerings* is amended by this Instrument.

2. Section 7.1 is amended

(a) by striking out "Multilateral Instrument 52-110 *Audit Committees*" **and substituting "**National Instrument 52-110 *Audit Committees*" **wherever it occurs;**

(b) in paragraph 1 (b), by striking out "or BCI 52-509 *Audit Committees*, as applicable**"; and**

(c) in paragraph 3 (c), by striking out "Guidelines**" and substituting "**Principles**".**

3. This Instrument comes into force on ●.

AMENDMENT INSTRUMENT
FOR
FORM 51-102F2 *ANNUAL INFORMATION FORM*

1. Form 51-102F2 *Annual Information Form* is amended by this Instrument.

2. Form 51-102F2 is amended by, in the Instruction after Item17.1, striking out "Form 52-110F1 *Audit Committee Information Required in an AIF*" **and substituting "**Form 58-101F1 *Corporate Governance Statement* and Form 52-110F1 *Audit Committee Disclosure by Non-Venture Issuers* or Form 52-110F2 *Audit Committee Disclosure by Venture Issuers*, as applicable**".**

3. This Instrument comes into force on ●.

AMENDMENT INSTRUMENT
FOR
FORM 51-102F5 *INFORMATION CIRCULAR*

1. Form 51-102F5 *Information Circular* is amended by this Instrument.

2. Form 51-102F5 is amended by adding the following, after Item 16.1:

"*INSTRUCTION*

*Your company may also be required to provide additional information in its information circular as set out in Form 58-101F1 Corporate Governance Statement and Form 52-110F1 Audit Committee Disclosure by Non-Venture Issuers or Form 52-110F2 Audit Committee Disclosure by Venture Issuers, as applicable.***"**

3. This Instrument comes into force on ●.

AMENDMENT INSTRUMENT
FOR
COMPANION POLICY 71-102CP TO NATIONAL INSTRUMENT 71-102
CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS

1. **Companion Policy 71-102CP to National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* is amended by this Instrument.**

2. **Subsection 6.4 (c) is amended by striking out "**Multilateral Instrument 52-110 *Audit Committees* or BC Instrument 52-509 *Audit Committees*" **and substituting "**National Instrument 52-110 *Audit Committees*"**.**

3. **This Instrument comes into force on ●.**

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
11/27/2008	127	Acasti Pharma Inc. - Common Shares	3,144.72	3,144,715.00
12/04/2008	41	Alberta Clipper Energy Inc. - Flow-Through Shares	7,500,000.00	9,375,000.00
11/25/2008	1	Asian Coast Development (Canada) Ltd. - Common Shares	250,000.00	6,250.00
10/14/2008 to 10/31/2008	83	Barclays Global Fund Advisors - Common Shares	203,113,366.92	3,645,420.00
12/01/2008	2	Bedlam Games Inc. - Common Shares	1,000,001.00	3,000,000.00
03/05/2008	1	Britannica Resources Corp. - Common Shares	200,000.00	666,667.00
12/05/2008	15	Canadian Superior Energy Inc. - Common Shares	16,000,000.55	10,322,581.00
12/04/2008	12	CareVest Blended Mortgage Investment Corporation - Preferred Shares	269,859.00	269,859.00
12/04/2008	1	CareVest Second Mortgage Investment Corporation - Preferred Shares	5,000.00	5,000.00
10/20/2008 to 10/28/2008	3	DB Commodity Services LLC - Common Shares	628,411.94	21,000.00
12/02/2008	12	Embotics Corporation - Preferred Shares	4,028,680.00	350,320.00
11/14/2008	10	Encanto Potash Corp. - Flow-Through Shares	2,379,390.00	7,931,300.00
11/14/2008	14	Encanto Potash Corp. - Units	237,500.00	950,000.00
12/05/2008 to 12/10/2008	4	First Leaside Elite Limited Partnership - Limited Partnership Interest	636,377.40	493,937.00
12/03/2008	1	First Leaside Fund - Trust Units	9,431.00	9,431.00
12/08/2008 to 12/10/2008	2	First Leaside Fund - Trust Units	132,313.00	132,313.00
12/04/2008 to 12/08/2008	2	First Leaside Fund - Trust Units	43,527.83	34,628.00
12/04/2008 to 12/10/2008	9	First Leaside Investors Limited Partnership - Limited Partnership Interest	861,955.00	861,955.00
12/10/2008	2	First Leaside Wealth Management Inc. - Preferred Shares	117,313.00	117,313.00
10/31/2008 to 11/12/2008	3	Gateway Mortgage Investment Corp. - Common Shares	140,010.00	140,010.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
12/04/2008	9	Greenwich Registered Capital Ltd. - Bonds	237,500.00	2,375.00
12/04/2008	9	Greenwich Registered Investments Ltd. - Common Shares	237.50	2,375.00
12/04/2008	1	Greenwich Registered Investments Ltd. - Note	237,500.00	1.00
10/14/2008	4	Hang Seng Investment Management Ltd. - Common Shares	2,651,384.32	198,652.00
12/05/2008	11	HSBC Bank Canada - Notes	2,946,864.00	2,320.00
12/01/2008	29	Humber Capital Corporation - Common Shares	1,750,000.15	5,555,556.00
12/04/2008 to 12/05/2008	3	Intertainment Media Inc. - Units	525,000.00	10,500,000.00
10/02/2008 to 10/31/2008	15	ishares c/o Barclays Global Investors Cn Ltd. - Common Shares	5,963,799.72	364,234.00
12/04/2008	4	Kalahari Resources Inc. - Flow-Through Units	544,289.00	27,214,450.00
11/30/2008	1	Kingwest Avenue Portfolio - Units	355,000.00	16,257.63
01/01/2006 to 11/01/2008	3	Magnetar Capital Fund, Ltd. - Common Shares	42,073,150.00	42,073,150.00
11/28/2008 to 12/02/2008	12	Newport Canadian Equity Fund - Units	121,000.00	1,180.59
11/28/2008 to 12/02/2008	9	Newport Fixed Income Fund - Units	166,200.00	1,645.25
11/28/2008 to 12/01/2008	5	Newport Global Equity Fund - Units	57,000.00	1,047.12
11/28/2008 to 12/02/2008	16	Newport Yield Fund - Units	258,600.00	2,617.23
11/28/2008	17	Noront Resources Ltd. - Common Shares	9,705,000.00	12,131,250.00
12/01/2008	1	OCP Senior Credit Fund International, Ltd. - Common Shares	1,248,300.00	1,000.00
10/02/2008 to 10/30/2008	53	PDR Services LLC c/o American Stock Exchange - Common Shares	169,242,434.78	1,492,860.00
11/03/2008	22	Petrostar Petroleum Corporation - Units	436,500.00	2,182,500.00
10/13/2008 to 10/27/2008	10	PowerShares XTF - Common Shares	35,614,370.70	965,990.00
11/28/2008	1	Proam Explorations Corporation - Common Shares	7,500.00	25,000.00
10/03/2008 to 10/13/2008	12	ProShares Trust - Common Shares	5,457,775.29	118,600.00
12/09/2008	29	PSP Capital Inc. - Notes	600,000,000.00	NA
12/11/2008	6	Reliable Energy Ltd - Common Shares	46,700.00	66,716.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
12/11/2008	19	Reliable Energy Ltd - Common Shares	4,585,100.00	5,798,091.00
12/03/2008	1	Special Notes Limited Partnership - Limited Liability Interest	50,001.00	50,001.00
12/01/2008	3	Stacey Muirhead Limited Partnership - Limited Partnership Units	1,020,000.00	32,670.95
10/06/2008 to 10/28/2008	32	State Street Bank and Trust Company - Common Shares	53,470,112.57	2,186,976.00
12/01/2008	4	Storage Appliance Corporation - Common Shares	529,872.00	151,392.00
10/10/2008 to 10/30/2008	3	Streettracks Gold Trust - Common Shares	962,328.88	9,660.00
10/14/2008 to 10/30/2008	5	The Vanguard Group Instl Investor Information - Common Shares	1,975,946.15	64,790.00
12/04/2008	1	TimberRock Energy Corp. - Units	7,000,000.00	7,000,000.00
11/18/2008	1	TPG Biotechnology Partners III, L.P. - Limited Partnership Interest	18,358,500.00	1.00
12/09/2008	5	Trigence Corp. - Debenture	2,000,001.00	1.00
12/02/2008 to 12/11/2008	11	UC Resources Ltd. - Units	1,350,000.00	10,000,000.00
11/28/2008	3	Ungava Mines Inc. - Units	30,750.00	205,000.00
11/30/2008	1	Value Partners Investments Inc. - Common Shares	10,000.00	2,598.00
10/10/2008 to 10/17/2008	6	Victoria Bay Asset Management LLC - Common Shares	10,135,328.66	134,500.00
12/12/2008	1	Virginia Mines Inc. - Common Shares	4,750,000.00	1,666,666.00
11/28/2008	2	VoIPShield Systems Inc. - Notes	300,000.00	2.00
11/28/2008	59	Walton GA Arcade Meadows 1 Investment Corporation - Common Shares	1,385,980.00	138,598.00
12/03/2008	30	Yalian Steel Corporation - Special Warrants	36,637,500.00	45,866,000.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Bank of Nova Scotia, The
Scotiabank Tier 1 Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectuses dated December 10, 2008
NP 11-202 Receipt dated December 11, 2008
Offering Price and Description:
$ * - * % Scotiabank Tier 1 Securities - Series 200* -1 Due * , 210 * (Scotia BaTS III Series 200*-1)
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
Promoter(s):
-
Project #1356336/1356327

Issuer Name:
BluMont Canadian Fund (formerly Halcyon Hirsch Opportunistic Canadian Fund)
BluMont North American Fund (formerly Halcyon Hirsch Opportunistic Tactical Allocation Fund)
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated December 11, 2008
NP 11-202 Receipt dated December 15, 2008
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
BluMont Capital Corporation
Promoter(s):
-
Project #1356166

Issuer Name:
Central GoldTrust
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated December 10, 2008
NP 11-202 Receipt dated December 11, 2008
Offering Price and Description:
U.S. $250,000,000.00 - * Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1356393

Issuer Name:
DFA Investment Grade Fixed Income Fund
Principal Regulator - British Columbia
Type and Date:
Preliminary Simplified Prospectus dated December 11, 2008
NP 11-202 Receipt dated December 12, 2008
Offering Price and Description:
Class A, F and I Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Dimensional Fund Advisors Canada Inc.
Project #1357078

Issuer Name:
Dynamic Aurion Canadian Equity Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated December 9, 2008
NP 11-202 Receipt dated December 10, 2008
Offering Price and Description:
Series A, F, I, O and T Shares
Underwriter(s) or Distributor(s):
Goodman & Company, Investment Counsel Ltd.
Promoter(s):
Goodman & Company, Investment Counsel Ltd.
Project #1355878

Issuer Name:
Dynamic Aurion Tactical Balanced Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated December 9, 2008
NP 11-202 Receipt dated December 10, 2008
Offering Price and Description:
Series A, F, I, O and T Shares
Underwriter(s) or Distributor(s):
Goodman & Company, Investment Counsel Ltd.
Promoter(s):
Goodman & Company, Investment Counsel Ltd.
Project #1355880

Issuer Name:
Great-West Lifeco Inc.
Principal Regulator - Manitoba
Type and Date:
Preliminary Short Form Prospectus dated December 11, 2008
NP 11-202 Receipt dated December 11, 2008
Offering Price and Description:
$1,000,150,000.00 - 48,200,000 Common Shares Price - $20.75 per Common Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc,
Scotia Capital Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
National Bank Financial Inc.
Desjardins Securities Inc.
Genuity Capital Markets
GMP Securities L.P.
Merrill Lynch Canada Inc.
Morgan Stanley Canada Limited
Credit Suisse (Canada), Inc.
HSBC Securities (Canada) Inc.
Promoter(s):
-
Project #1356833

Issuer Name:
Leprechaun Resources Ltd.
Principal Regulator - Alberta
Type and Date:
Amended and Restated Preliminary Prospectus dated December 11, 2008
NP 11-202 Receipt dated December 12, 2008
Offering Price and Description:
Minimum - * Flow-Through Shares ($3,000,000.00);
Maximum - * Flow-Through Shares ($10,000,000.00)
Price - $ * per Flow-Through Share
Underwriter(s) or Distributor(s):
Acumen Capital Finance Partners Limited
Beacon Securities Limited
Promoter(s):
-
Project #1340909

Issuer Name:
Manulife Dollar-Cost Averaging Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated December 12, 2008
NP 11-202 Receipt dated December 12, 2008
Offering Price and Description:
Advisor Class Units
Underwriter(s) or Distributor(s):
Elliott & Page Limited
Promoter(s):
Elliott & Page Limited
Project #1356990

Issuer Name:
NCE Diversified Flow-Through (09) Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated December 10, 2008
NP 11-202 Receipt dated December 12, 2008
Offering Price and Description:
$100,000,000.00 - Maximum Offering; $5,000,000.00 - Minimum Offering A maximum of 4,000,000 and a minimum of 200,000 Limited Partnership Units Subscription Price - $25 per Unit Minimum Subscription - 200 Units
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
TD Securities Inc.
Scotia Capital Inc.
Canaccord Capital Corporation
HSBC Securities Corporation
Raymond James Ltd.
Dundee Securities Corporation
Blackmont Capital Inc.
Manulife Securities Incorporated
Wellington West Capital Markets Inc.
Burgeonvest Securities Limited
Desjardins Securities Inc.
GMP Securities L.P.
Industrial Alliance Securities Inc.
Jory Capital Inc.
Laurentian Bank Services Inc.
M Partners Inc.
Research Capital Corporation
Promoter(s):
Petro Assets Inc.
Project #1357031

Issuer Name:
Royal Bank of Canada
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated December 9, 2008
NP 11-202 Receipt dated December 10, 2008
Offering Price and Description:
$2,000,437,500.00 - 56,750,000 Common Shares Price - $35.25 per Common Share
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
TD Securities Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
UBS Securities Canada Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Dundee Securities Corporation
Cormark Securities Inc.
GMP Securities L.P.
Laurentian Bank Securities Inc.
Wellington West Capital Markets Inc.
Blackmont Capital Inc.
Brookfield Financial Corp.
Genuity Capital Markets
Manulfie Securities Incorporated
Raymond James Ltd.
Promoter(s):
-
Project #1356046

Issuer Name:
Saxon Balanced Fund
Saxon Global Small Cap Fund
Saxon High Income Fund
Saxon International Equity Fund
Saxon Microcap Fund
Saxon Small Cap
Saxon Stock Fund
Saxon U.S. Equity Fund
Saxon U.S. Small Cap Fund
Saxon World Growth
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated December 8, 2008
NP 11-202 Receipt dated December 10, 2008
Offering Price and Description:
Series A, T6 and T8 Units
Underwriter(s) or Distributor(s):
MD Management Limited
Promoter(s):
Mackenzie Financial Corporation
Project #1355994

Issuer Name:
SEMAFO INC.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated December 12, 2008
NP 11-202 Receipt dated December 12, 2008
Offering Price and Description:
$20,040,000.00 - 16,700,000 Common Shares Price - $1.20 per Common Share
Underwriter(s) or Distributor(s):
Thomas Weisel Partners Canada Inc.
BMO Nesbitt Burns Inc.
Clarus Securities Inc.
Haywood Securities Inc.
Jennings Capital Inc.
Promoter(s):
-
Project #1357009

Issuer Name:
TimberWest Forest Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated December 13, 2008
NP 11-202 Receipt dated December 15, 2008
Offering Price and Description:
$50,000,000.00 - Offering of Rights to Subscribe for 9% Extendible Convertible Debentures
Price - $100 per Debenture
Underwriter(s) or Distributor(s):
Genuity Capital Markets
BMO Nesbitt Burns Inc.
Raymond James Ltd.
Promoter(s):
-
Project #1357536

Issuer Name:
WesternOne Equity Income Fund
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated December 10, 2008
NP 11-202 Receipt dated December 10, 2008
Offering Price and Description:
$4,025,000.00 - 1,150,000 Units Price - $3.50 per Unit
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Dundee Securities Corporation
Blackmont Capital Inc.
Raymond James Ltd.
HSBC Securities (Canada) Inc.
Sora Group Wealth Advisors Inc.
Leede Financial Markets Inc.
Promoter(s):
-
Project #1355855

Issuer Name:
Yamana Gold Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated December 15, 2008
NP 11-202 Receipt dated December 15, 2008
Offering Price and Description:
$135,000,000.00 - 22,500,000 Common Shares Price: $6.00 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Scotia Capital Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
GMP Securities L.P.
Genuity Capital Markets G.P.
Raymond James Ltd.
Blackmont Capital Inc.
Cormark Securities Inc.
MacQuarie Capital Markets Canada Ltd.
Merrill Lynch Canada Inc.
Morgan Stanley Canada Limited
Paradigm Capital Inc.
UBS Securities Canada Inc.
Wellington West Capital Markets Inc.
Promoter(s):
-
Project #1357812

Issuer Name:
AAER Inc.
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated December 12, 2008
NP 11-202 Receipt dated December 12, 2008
Offering Price and Description:
Minimum Offering: $4,000,000.00 (the “Minimum Offering”) Maximum Offering: $6,000,000.00 (the “Maximum Offering”) A maximum of 40,000,000 A Units A maximum of 6,000 B Units
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Industrial Alliance Securities Inc.
Promoter(s):
-
Project #1337813

Issuer Name:
Ark NorthRoad Global Fund (formerly frontierAlt Opportunistic Global Fund)
(Series A Units, Series F Units and Series I Units)
Ark Catapult Energy Class Fund of Ark Resource Corp.
(Series A Shares, Series F Shares and Series I Shares)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated December 10, 2008
NP 11-202 Receipt dated December 12, 2008
Offering Price and Description:
Mutual fund securities at net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Ark Fund Management Ltd.
Project #1337431

Issuer Name:
Bank of Montreal
BMO Capital Trust II
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated December 12, 2008
NP 11-202 Receipt dated December 15, 2008
Offering Price and Description:
$450,000,000.00 - 10.221% BMO Tier 1 Notes— Series A Due December 31, 2107 (BMO Tier 1 Notes— Series A)
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
Promoter(s):
-
Project #1327890/1327885

Issuer Name:
Canadian Diversified Resource Investment Listed Liquidity Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated December 11, 2008
NP 11-202 Receipt dated December 12, 2008
Offering Price and Description:
Each unit consists of one transferable trust unit and one Trust Unit purchase Warrant
Price per unit: $10 Maximum Offering: $200,000,000.00 (20,000,000 Units) Minimum Offering: $20,000,000.00 (2,000,000 Units) Minimum Purchase: 100 Units
Underwriter(s) or Distributor(s):
Research Capital Corporation
Canaccord Capital Corporation
Blackmont Capital Inc.
Desjardins Securities Inc.
GMP Securities L.P.
Raymond James Ltd.
Wellington West Capital Markets Inc.
Haywood Securities Inc.
MGI Securities Inc.
Promoter(s):
Folio Asset Management Limited
Project #1346302

Issuer Name:
Canadian Mining Diversified Asset Strategy Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated December 11, 2008
NP 11-202 Receipt dated December 12, 2008
Offering Price and Description:
Each unit consists of one transferable trust unit and one Trust Unit purchase Warrant
Price per unit: $10 Maximum Offering: $200,000,000 (20,000,000 Units) Minimum Offering: $20,000,000 (2,000,000 Units) Minimum Purchase: 100 Units
Underwriter(s) or Distributor(s):
Research Capital Corporation
Canaccord Capital Corporation
Blackmont Capital Inc.
Desjardins Securities Inc.
GMP Securities L.P.
Raymond James Ltd.
Wellington West Capital Markets Inc.
Haywood Securities Inc.
MGI Securities Inc.
Promoter(s):
Folio Asset Management Limited
Project #1346263

Issuer Name:
Capital International - Canadian Core Plus Fixed Income
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated December 12, 2008 to the Annual Information Form dated June 11, 2008
NP 11-202 Receipt dated December 15, 2008
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
CAPITAL INTERNATIONAL ASSET MANAGEMENT (CANADA), INC.
Project #1265307

Issuer Name:
Counsel Managed Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated December 9, 2008 to the Simplified Prospectuses and Annual Information Forms dated January 9, 2008
NP 11-202 Receipt dated December 12, 2008
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Counsel Group of Funds Inc.
Project #1193550

Issuer Name:
(Class A, Class B, Class D, Class F, Class I, Class L, Class M, Class O, Class P and Class Q Units) of:
Criterion International Equity Fund
Criterion Global Dividend Fund
Criterion Water Infrastructure Fund
(Class H, Class F, Class I, Class U, Class P, Class Q, Class X, Class Y and Class Z Units) of:
Criterion U.S. Buyback Fund
(Class H, Class F, Class I, Class U, Class P and Class Q Units) of:
Criterion Global Clean Energy Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated December 10, 2008 to the Simplified Prospectuses and Annual Information Forms dated June 6, 2008
NP 11-202 Receipt dated December 15, 2008
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Criterion Investments Limited
Project #1258527

Issuer Name:
Daylight Resources Trust
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated December 11, 2008
NP 11-202 Receipt dated December 11, 2008
Offering Price and Description:
$75,000,000.00 - 10% Convertible Unsecured Subordinated Debentures
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
GMP Securities L.P.
Canaccord Capital Corporation
Dundee Securities Corporation
Promoter(s):
-
Project #1355163

Issuer Name:
Fortis Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated December 12, 2008
NP 11-202 Receipt dated December 12, 2008
Offering Price and Description:
$300,105,000.00 - 11,700,000 COMMON SHARES Price: $25.65 per Common Share
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
HSBC Securities (Canada) Inc.
National Bank Financial Inc.
Beacon Securities Limited
Canaccord Capital Corporation
Promoter(s):
-
Project #1355077

Issuer Name:
FortisAlberta Inc.
Principal Regulator - Alberta
Type and Date:
Final Base Shelf Prospectus dated December 15, 2008
NP 11-202 Receipt dated December 15, 2008
Offering Price and Description:
$350,000,000.00 - Medium Term Note Debentures (unsecured)
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
Casgrain & Company Limited
Promoter(s):
-
Project #1355537

Issuer Name:
Global X Development Corp.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated December 8, 2008
NP 11-202 Receipt dated December 15, 2008
Offering Price and Description:
$200,000.00 (Minimum); $300,000.00 (Maximum); Minimum Offering: 2,000,000 Common Shares Maximum Offering: 3,000,000 Common Shares Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
PI Financial Corp.
Promoter(s):
Marvin Bedward
Project #1322897

Issuer Name:
A and F Class Units of:
imaxx Money Market Fund
imaxx US Equity Growth Fund
imaxx Canadian Bond Fund
imaxx US Equity Value Fund
imaxx Canadian Fixed Pay Fund
imaxx Global Equity Value Fund
imaxx Canadian Equity Growth Fund
imaxx Global Equity Growth Fund
imaxx Canadian Equity Value Fund
imaxx Canadian Dividend Fund
imaxx Canadian Balanced Fund
imaxx Canadian Small Cap Fund
A Class Units of:
imaxx TOP Conservative Portfolio
imaxx TOP Growth Portfolio
imaxx TOP Income Portfolio
imaxx TOP Aggressive Growth Portfolio
imaxx TOP Balanced Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment No. 1 dated December 11, 2009 to the Simplified Prospectus of imaxx US Equity Value Fund dated May 28, 2008 and to the Annual Information Forms dated May 28, 2008.
NP 11-202 Receipt dated December 12, 2008
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1249001

Issuer Name:
ING DIRECT Streetwise Balanced Fund
ING DIRECT Streetwise Balanced Growth Fund
ING Direct Streetwise Balanced Income Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated December 11, 2008
NP 11-202 Receipt dated December 11, 2008
Offering Price and Description:
Mutual Fund Units @ Net Asset Value
Underwriter(s) or Distributor(s):
ING Direct Funds Limited
Promoter(s):
ING Direct Asset Management Limited
Project #1332975

Issuer Name:
RBC Dominion Securities U.S. Focus List Portfolio
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated December 5, 2008
NP 11-202 Receipt dated December 11, 2008
Offering Price and Description:
Series A and Series F Shares @ Net Asset Value
Underwriter(s) or Distributor(s):
First Defined Portfolio Management Co.
Promoter(s):
-
Project #1334379

Issuer Name:
Royal Bank of Canada
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated December 12, 2008
NP 11-202 Receipt dated December 12, 2008
Offering Price and Description:
$2,000,437,500.00 - 56,750,000 Common Shares Price: $35.25 per Common Share
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
TD Securities Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
UBS Securities Canada Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Dundee Securities Corporation
Cormark Securities Inc.
GMP Securities L.P.
Laurentian Bank Securities Inc.
Wellington West Capital Markets Inc.
Blackmont Capital Inc.
Brookfield Financial Corp.
Genuity Capital Markets
Manulfie Securities Incorporated
Raymond James Ltd.
Promoter(s):
-
Project #1356046

Issuer Name:
Skylon Big Three STAR LP
Type and Date:
Final Long Form Prospectus dated December 10, 2008
Receipted on December 12, 2008
Offering Price and Description:
Limited Partnership Units
Price per Unit: $10
Maximum Offering: $15,000,000.00 (1,500,000 Units);
Minimum Offering: $3,000,000.00 (300,000 Units)
Minimum Subscription: $1,000.00
Underwriter(s) or Distributor(s):
Blackmont Capital Inc.
Canaccord Capital Corporation
Promoter(s):
Skylon Big Three Star General Partner Inc.
CI Investments Inc.
Project #1320994

Issuer Name:
Tectonic Captial Corp.
Principal Regulator - British Columbia
Type and Date:
Final CPC Prospectus dated December 11, 2008
NP 11-202 Receipt dated December 12, 2008
Offering Price and Description:
$200,000.00 - 2,000,000 COMMON SHARES Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Promoter(s):
Shawn Perger
Project #1346047

Issuer Name:
Toronto Hydro Corporation
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated December 12, 2008
NP 11-202 Receipt dated December 12, 2008
Offering Price and Description:
$1,000,000,000.00 DEBENTURES (unsecured)
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1355101

Issuer Name:
Western Forest Products Inc.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated December 10, 2008
NP 11-202 Receipt dated December 10, 2008
Offering Price and Description:
$50,000,000.00 - 204,413,565 Rights to Subscribe for Common Shares at a Price of $0.19 per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1354082

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Name Change	From: Thinkpanmure, LLC To: Thinkequity, LLC	International Dealer	November 1, 2008
Consent to Suspension (Rule 33-501 – Surrender of Registration)	Tremont Capital Management, Corp.	Limited Market Dealer	December 10, 2008
Consent to Suspension (Rule 33-501 – Surrender of Registration)	Paul van Eeden Inc.	Securities Adviser	December 11, 2008
Name Change	From:Thomas Capital Group, LLC To: Thomas Capital Group Inc.	International Dealer	January 1, 2009
New Registration	Optimize Asset Management Incorporated	Investment Counsel and Portfolio Manager Limited Market Dealer	December 16, 2008

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 MFDA Hearing Panel Makes Findings Against Farm Mutual Financial Services Inc.

NEWS RELEASE
For immediate release

December 10, 2008 (Toronto, Ontario) – A disciplinary hearing in the matter of Farm Mutual Financial Services Inc. was held today before a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA"). The Hearing Panel found that the allegations set out by MFDA staff in the Notice of Hearing dated June 2, 2008 had been established.

The Hearing Panel advised that it would issue written reasons and its decision on appropriate sanction in due course.

A copy of the Notice of Hearing is available on the MFDA web site at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers. The MFDA regulates the operations, standards of practice and business conduct of its 154 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Shaun Devlin
Vice-President, Enforcement
416-943-4672 or sdevlin@mfda.ca
MFDA Hearing Panel Makes Findings Against Farm Mutual Financial Services Inc.

13.1.2 MFDA Issues Notice of Settlement Hearing Regarding Manulife Securities Investment Services Inc.

NEWS RELEASE
For immediate release

MFDA ISSUES NOTICE OF
SETTLEMENT HEARING REGARDING
MANULIFE SECURITIES INVESTMENT SERVICES INC.

December 12, 2008 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") today announced that it has issued a Notice of Settlement Hearing regarding the presentation, review and consideration of a proposed settlement agreement by a Hearing Panel of the MFDA's Central Regional Council.

The settlement agreement will be between staff of the MFDA and Manulife Securities Investment Services Inc. ("Manulife") and involves matters for which Manulife may be disciplined by the Regional Council pursuant to MFDA By-laws.

The subject matter of the proposed settlement agreement concerns allegations that Manulife had a referral arrangement with Portus Alternative Asset Management Inc. and did not disclose to its clients a component of the compensation that it received under this referral arrangement, contrary to MFDA Rule 2.4.2.

The settlement hearing is scheduled to commence at 10:00 a.m. (Eastern) on Monday, December 22, 2008 in the Hearing Room located at 121 King Street West, Suite 1000, Toronto, Ontario. The hearing is open to the public except as may be required for the protection of confidential matters. A copy of the Notice of Settlement Hearing is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers. The MFDA regulates the operations, standards of practice and business conduct of its 154 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Shaun Devlin
Vice-President, Enforcement
416-943-4672 or sdevlin@mfda.ca

13.1.3 TSX – Notice of Approval – Amendments to the TSX Company Manual to add Part X – Special Purpose Acquisition Corporations

TORONTO STOCK EXCHANGE

NOTICE OF APPROVAL

AMENDMENTS TO THE
TORONTO STOCK EXCHANGE ("TSX") COMPANY MANUAL
TO ADD PART X – SPECIAL PURPOSE ACQUISITION CORPORATIONS

Introduction

In accordance with the Protocol for Commission Oversight of Toronto Stock Exchange Rule Proposals (the "Protocol") between the Ontario Securities Commission (the "OSC") and Toronto Stock Exchange ("TSX"), TSX has adopted and the OSC has approved amendments (the "Amendments") to add Part X – Special Purpose Acquisition Corporations to the TSX Company Manual (the "Manual") and to make ancillary amendments to Parts I and III and to Appendix C Escrow Policy Statement. The addition of Part X is a public interest amendment to the Manual, while the ancillary amendments are non-public interest. The Amendments were published for public comment in a request for comments on August 15, 2008 ("Request for Comments").

Reasons for the Amendments

Currently, TSX only approves for listing issuers with an operating business which meet certain financial requirements, as provided in Part III of the Manual. However, TSX has recently observed, in the United States, a growing number of issuers going public with the intention to later complete a qualifying acquisition by merging with or acquiring an operating company with the proceeds of such offering. Such financial vehicles are generally known as special purpose acquisition corporations or "SPACs", and such transactions are similar to reverse mergers or reverse takeovers. However, unlike reverse takeovers, SPACs generally offer: i) a clean public company shell; ii) more experienced management teams; iii) greater certainty of financing; and iv) a readily available retail and institutional securityholder base.

Recent SPAC offerings have included a wide range of investor protections that mitigate TSX's previous concerns about listing SPACs. SPACs bear some similarity to capital pool companies ("CPCs") in that both involve the creation of publicly-traded shell companies which later acquire an operating business using the initial proceeds raised. However, SPACs are much larger than CPCs and therefore involve more stringent investor protections. Part X takes into account SPAC rules recently adopted by the New York Stock Exchange and by NASDAQ, while also incorporating best commercial practices observed in the SPAC market in the United States.

As a result of the growing market acceptance of SPACs in the United States, and building on the CPC concept, TSX is adopting Part X to provide a framework for the listing of SPACs on TSX.

Summary of the Amendments

TSX received twelve comment letters in response to the Request for Comments. A summary of the comments submitted, together with TSX's responses, is attached as **Appendix B**. TSX has made non-material changes to Part X and the ancillary amendments since the Request for Comments, based on both the public comments and the OSC's comments. A blacklined version of the Amendments showing the changes since the publication of the Request for Comments is available at tsx.com/issuer resources.

Part X – Special Purpose Acquisition Corporations

Section 1002 – Exercise of Discretion

TSX has amended Section 1002 to clarify that discretion may be exercised in favour of granting or denying a SPAC application. However TSX must be satisfied in exercising its discretion that the fundamental investor protections provided in Part X are met, and in some cases must first have discussions with, and the concurrence of, the OSC.

Subsection 1002(c) and Section 1004 – Exercise of Discretion and Founding Securityholders' Interest

TSX has amended Sections 1002(c) and 1004 to provide guidance as to the appropriate level of the founding securityholders' equity interest in the SPAC rather than as a specific requirement. The founders' equity interest in the SPAC cannot properly be reviewed without reference to the price paid for the founding securities, as both are intrinsically linked. The founders' level of interest in the SPAC should be reflective of the quality of the founders as well as their financial contribution to the SPAC. TSX therefore agrees that there should be more flexibility with respect to considering the adequacy of the founding securityholders'

interest. TSX expects that founders' interest will be in the range of 10% to 20% of the outstanding equity of the SPAC. However, lower or higher levels may be acceptable depending on the financial and other contributions by the founders.

Comments received on the appropriate level of founding securityholder interest in a SPAC and the rules in connection therewith were varied. Please see Questions 2 and 3 in Appendix B for details.

Section 1006 – No Operating Business

Comments were received expressing concern with the prohibition against having entered into a "non-binding agreement with respect to a potential qualifying acquisition". Comments noted that SPACs could enter into confidentiality agreements or other non-binding expressions of interest which have numerous contingencies, consistent with a SPAC not having identified a qualifying acquisition, but perhaps being in the process of reviewing potential qualifying acquisitions.

The prohibition against having identified a qualifying acquisition target is to ensure that the IPO process is not subverted. TSX agrees that allowing a SPAC to enter into non-binding agreements, including confidentiality agreements and non-binding letters of intent, does not contravene this principle. TSX has amended Section 1006 accordingly. Please see comments to Question 4 in Appendix B.

Section 1014 – Use of SPAC proceeds and interest from permitted investments

TSX has added a reference to the use of SPAC IPO proceeds not required to be placed in escrow and the interest earned on permitted investments in payment of general working capital expenses. Comments were received requesting clarification about the permitted use of such funds. Please see comments to Question 10 in Appendix B.

Section 1016 – Pricing

TSX has revised the minimum price per security to $2.00 in order to afford more flexibility for the SPAC's capital structure while preserving an orderly market for such securities. Comments were received concerning the minimum price, primarily because TSX does not have a minimum price in its other original listing requirements. However, given the unique nature of SPACs, TSX supports setting a minimum price because an issuer without an operating business may be prone to more price volatility or price manipulation with an excessively low security price. However, TSX agrees that the minimum price need not be as high as $5.00 in order to achieve this objective and has amended the requirement accordingly. Please see comments to Question 25 in Appendix B.

Section 1024 – Securityholder and other approvals

Section 1024 has been amended to include a requirement that the qualifying acquisition must be approved by a majority of the SPAC's directors who are unrelated to the qualifying acquisition. TSX has added this requirement to ensure that directors related to the qualifying acquisition are not permitted to vote to approve the acquisition regardless of the jurisdiction of incorporation or the corporate form of the SPAC.

Sections 1027 and 1031– Payments for conversion rights and liquidation distributions

The time period for the payment to securityholders on exercise of conversion rights has been added to Section 1027, as well as clarification that such converted securities are to be cancelled. The time period for payment is 30 days after completion of the qualifying acquisition, which is consistent with the time period for payment on a liquidation distribution. We have further added provision for the potential impact of other applicable laws on the payment timeline for both conversion rights and liquidation distributions in Sections 1027 and 1031 respectively. Comments were received concerning the timeline for payments and the potential interaction with bankruptcy and insolvency laws that could impact the timing of such payments. Please see comments to Questions 16 and 23 in Appendix B.

Section 1032 – Liquidation distribution

TSX has revised Section 1032 to clarify that the proceeds from the founding securityholders' founding securities will not be part of the escrowed funds. Typically such proceeds are not part of the SPAC IPO proceeds and the proceeds, unlike the securities, are not governed by SPAC rules. This is consistent with the SPAC rules in the US. Part X does not prohibit an agreement with the founding securityholders to place proceeds from the founding securities into escrow. While Section 1032 referred to the escrowed funds required to be placed in escrow pursuant to Section 1010, Section 1032 was not consistent with Section 1010. The amendment corrects that inconsistency. Please see this comment under the "General" heading in Appendix B.

General

TSX has revised references to trust arrangements for the SPAC IPO proceeds and other applicable funds to refer instead to escrow. Comments were received on the trust terminology and the risk of confusion with trusts that are separate legal entities, with which TSX agrees. Please see these comments under the "General" heading in Appendix B.

TSX has made other minor technical amendments in the drafting of Part X.

Interpretation – Part I "permitted investments"

The definition has been revised to refer to the definitions of approved credit ratings and approved credit rating organizations in securities legislation in order to be consistent with securities legislation and the use of credit ratings thereunder. Please see this comment to Question 9 in Appendix B.

TSX Escrow Policy Statement

The TSX Escrow Policy Statement has been revised. Where escrow is applicable to an issuer listing on TSX by completing a qualifying acquisition with a SPAC, 10% (rather than 25%) of the founding securities will be released at the date of closing of the qualifying acquisition. The remainder of the founding securities will be released over the following 18 months. Securities other than the founding securities will be subject to the regular escrow requirements and release schedule, where applicable.

Comments were received suggesting an escrow requirement for founding securities to further align the interests of founding securityholders with SPAC securityholders upon completion of a qualifying acquisition. Please see Question 2 in Appendix B for details.

Other Matters

There are a number of requirements in Part X that impact prospectus disclosure. TSX intends to publish a Staff Notice summarizing the key disclosure requirements and other operational issues that may arise for SPACs. In addition to those set forth in the final version of Part X at Appendix A, TSX advises applicants of the following disclosure expectations:

1. In the SPAC IPO prospectus, issuers should disclose the valuation methods they intend to use in valuing the qualifying acquisition, particularly if the IPO prospectus discloses that a qualifying acquisition will be in a certain sector such that the method of valuation may be known in advance.

2. In the prospectus assuming completion of a qualifying acquisition, issuers should disclose whether there was a valuation. If there was, disclose whether it was independent and the method used to value the qualifying acquisition. If there was no valuation, disclose how the consideration paid for the qualifying acquisition was determined.

In addition, TSX advises applicants that it expects that information circulars prepared for qualifying acquisitions will wrap around the prospectus assuming completion of the qualifying acquisition, thus reducing duplicative or unnecessary work by issuers and their advisers, and ensuring the quality and consistency of the disclosure in the information circular.

"Know Your Client" and Suitability Obligations

Comments were received regarding investment product suitability. Please see Question 25 in Appendix B for details. At the request of the OSC, dealers are therefore reminded of their "know your client" and suitability obligations in connection with the sale of investment products including SPACs, and the dealers' obligation to identify risks and to communicate those risks when recommending investments to clients. Dealers are also referred to the draft Guidance Notice on Best Practices for Product Due Diligence issued for comment in October 2008 as part of the study by the Investment Industry Regulatory Organization of Canada (IIROC) on the manufacture and distribution by IIROC member firms of third party asset backed commercial paper in Canada (as may be updated and finalized), which is available at iiroc.ca.

Text of the Amendments

The Amendments are attached as **Appendix A**.

Effective Date

The Amendments will become effective on December 19, 2008.

APPENDIX A

PART X
SPECIAL PURPOSE ACQUISITION CORPORATIONS (SPACS)

Scope of Policy

Listing a SPAC on the Exchange is a two-stage process. The first stage involves the filing and clearing of an IPO prospectus, the completion of the IPO and the listing of the SPAC's securities on the Exchange. The second stage involves the identification and completion of a qualifying acquisition.

The main headings in this Part X are:

A. General Listing Matters

B. Original Listing Requirements

C. Continued Listing Requirements Prior to Completion of a Qualifying Acquisition

D. Completion of a Qualifying Acquisition

E. Liquidation Distribution and Delisting Upon Failure to Meet Timelines for a Qualifying Acquisition

F. Continued Listing Requirements Following Completion of a Qualifying Acquisition

A. General Listing Matters

Securities to be Listed

Sec. 1001. To secure a listing of its securities on the Exchange, a SPAC must complete a listing application which, together with supporting documentation and information, must demonstrate that it is able to meet the Exchange's original listing requirements for SPACs, as detailed in Sections 1003 to 1018. The listing application, preliminary prospectus, draft escrow agreement governing the IPO proceeds and personal information forms for all insiders of the SPAC should be filed with the Exchange concurrently with the filing of the preliminary prospectus with the applicable Canadian securities regulatory authorities.

Exercise of Discretion

Sec. 1002. The Exchange may, in its discretion, take into account any factors it considers relevant in assessing the merits of a listing application and may grant or deny an application notwithstanding the prescribed original listing requirements. In exercising its discretion, the Exchange must be satisfied that the fundamental investor protections in this Part X are met. In addition, the Exchange will consider:

(a) The experience and track record of the officers and directors of the SPAC;

(b) The nature and extent of officers' and directors' compensation;

(c) The extent of the founding securityholders' equity ownership in the SPAC, which is generally expected to be an aggregate equity interest of: (i) not less than 10% of the SPAC immediately following closing of the IPO; and (ii) not more than 20% of the SPAC immediately following closing of the IPO, taking into account the price at which the founding securities are purchased and the resulting economic dilution;

(d) The amount of time permitted for completion of the qualifying acquisition prior to the liquidation distribution; and

(e) The gross proceeds publicly raised under the IPO prospectus.

B. Original listing Requirements

IPO

Sec. 1003. A SPAC must, concurrently with listing on the Exchange, raise a minimum of $30,000,000 through an IPO of shares or units; if units are issued, each unit may consist of one share and no more than two share purchase warrants.

Sec. 1004. Prior to listing on the Exchange, the founding securityholders must subscribe for units, shares or warrants of the SPAC. The terms of the initial investment must be disclosed in the IPO prospectus. The founding securityholders must agree not to transfer any of their founding securities prior to the completion of a qualifying acquisition. In the event of liquidation and delisting, the founding securityholders must agree that their founding securities shall not participate in a liquidation distribution.

Sec. 1005. The shares, warrants and/or units to be listed on the Exchange must be qualified by a prospectus receipted by the issuer's principal regulator.

No Operating Business

Sec. 1006. A SPAC seeking listing on the Exchange must not carry on an operating business. A SPAC may be in the process of reviewing a potential qualifying acquisition, but may not have entered into a written or oral binding acquisition agreement with respect to a potential qualifying acquisition. Every SPAC seeking a listing on the Exchange must include a statement in its IPO prospectus that as of the date of filing, the SPAC has not entered into a written or oral binding acquisition agreement with respect to a potential qualifying acquisition. A SPAC may have identified a target business sector or geographic area in which to make a qualifying acquisition, provided that it discloses this information in its IPO prospectus.

Jurisdiction of Incorporation

Sec. 1007. The Exchange will consider the jurisdiction of incorporation of a SPAC as part of the listing application process. The Exchange recommends that SPACs seeking listing on the Exchange be incorporated under Canadian federal or provincial corporate laws. Where a SPAC is incorporated under laws outside of Canada and wishes to list on the Exchange, the Exchange recommends that it obtain a preliminary opinion as to whether the jurisdiction of incorporation is acceptable to the Exchange.

Capital Structure

Sec. 1008. A SPAC seeking listing on the Exchange must satisfy all of the criteria below:

(a) the security provisions must contain:

(i) a conversion feature, pursuant to which securityholders (other than founding securityholders) who voted against a proposed qualifying acquisition at a duly called meeting of securityholders may, in the event such qualifying acquisition is completed within the time frame set out in Section 1022, elect that each security held be converted into an amount at least equal to: (1) the aggregate amount then on deposit in the escrow account (net of any applicable taxes and direct expenses related to the exercise of the conversion right), divided by (2) the aggregate number of securities then outstanding; and

(ii) a liquidation distribution feature, pursuant to which securityholders (other than the founding securityholders in respect of their founding securities) must, if the qualifying acquisition is not completed within the permitted time set out in Section 1022, be entitled to receive, for each security held, an amount at least equal to: (1) the aggregate amount then on deposit in the escrow account (net of any applicable taxes and direct expenses related to the liquidation distribution), divided by (2) the aggregate number of securities then outstanding less the founding securities;

Exchange discretion with respect to the requirements of this Subsection may only be exercised after discussions with, and the concurrence of, the OSC.

(b) in addition to Section 1008(a) where units are issued in the IPO:

(i) the share purchase warrants must not be exerciseable prior to the completion of the qualifying acquisition;

(ii) the share purchase warrants must expire on the earlier of: (x) a fixed date specified in the IPO prospectus, and (y) the date on which the SPAC fails to complete a qualifying acquisition within the permitted time set out in Section 1022; and

(iii) share purchase warrants may not have an entitlement to the escrowed funds upon liquidation of the SPAC.

Prohibition of Debt Financing

Sec. 1009. The SPAC shall not be permitted to obtain any form of debt financing (excluding ordinary course short term trade or accounts payables) other than contemporaneous with, or after, completion of its qualifying acquisition. A credit facility may be entered into prior to completion of a qualifying acquisition, but may only be drawn down contemporaneous with, or after, completion of a qualifying acquisition. Every SPAC seeking a listing on the Exchange must include a statement in its IPO prospectus that it will not obtain any form of debt financing other than in accordance with this Section 1009.

Use of Proceeds Raised in the IPO and Escrow Requirements

Sec. 1010. Immediately upon listing on the Exchange, a SPAC must place at least 90% of the gross proceeds raised in its IPO; and the underwriter's deferred commissions (in accordance with Section 1013), in escrow with an escrow agent unrelated to the transaction and acceptable to the Exchange. The following entities, if Canadian, are examples of the types of escrow agents that are acceptable to the Exchange: trust companies, financial institutions and law firms.

Sec. 1011. The escrow agent must invest the escrowed funds in permitted investments. The SPAC must disclose the proposed nature of this investment in its IPO prospectus, as well as any intended use of the interest earned on the escrowed funds from the permitted investments.

Sec. 1012. The escrow agreement governing the escrowed funds must provide for:

(a) the termination of the escrow and release of the escrowed funds on a pro rata basis to securityholders who exercise their conversion rights in accordance with Section 1008(a)(i) and the remaining escrowed funds to the SPAC if the SPAC completes a qualifying acquisition within the permitted time set out in Section 1022; and

(b) the termination of the escrow and the distribution of the escrowed funds to securityholders in accordance with the terms of Sections 1031 to 1033 if the SPAC fails to complete a qualifying acquisition within the permitted time set out in Section 1022.

In accordance with Section 1001, a draft of the escrow agreement must be submitted to the Exchange for pre-clearance.

Sec. 1013. The underwriters must agree to defer and deposit a minimum of 50% of their commissions from the IPO as part of the escrowed funds. The deferred commissions will only be released to the underwriters upon completion of a qualifying acquisition within the permitted time set out in Section 1022. If the SPAC fails to complete a qualifying acquisition within the permitted time set out in Section 1022, the deferred commissions placed in escrow will be distributed to the holders of the securities as part of the liquidation distribution. Securityholders exercising their conversion rights will be entitled to their pro rata portion of the escrowed funds including any deferred commissions.

Sec. 1014. The proceeds from the IPO that are not placed in escrow and interest earned on the escrowed funds from permitted investments may be applied as payment for administrative expenses incurred by the SPAC in connection with the IPO, for general working capital expenses and for the identification and completion of a qualifying acquisition.

Public Distribution

Sec. 1015. A SPAC seeking listing on the Exchange must satisfy all of the criteria below:

(a) at least 1,000,000 freely tradeable securities are held by public holders;

(b) the aggregate market value of the securities held by public holders is at least $30,000,000; and

(c) at least 300 public holders of securities, holding at least one board lot each.

Pricing

Sec. 1016. A SPAC seeking listing on the Exchange must issue securities pursuant to the IPO for a minimum price of $2.00 per share or unit.

Other Requirements

Sec. 1017. In connection with its original listing, a SPAC will be subject to the following Sections of this Manual:

(a) Section 325 – Management

(b) Section 327 – Escrow Requirements

(c) Section 328 – Restricted Shares

(d) Sections 338-351 – The Listing Application Procedure

(e) Sections 352-356 – Approval of Listing and Posting Securities

(f) Sections 358-359 – Public Availability of Documents

(g) Section 360 – Provincial Securities Laws

Sec. 1018. A SPAC seeking a listing on the Exchange will not be permitted to adopt a security based compensation arrangement prior to the completion of a qualifying acquisition.

C. Continued Listing Requirements Prior to Completion of a Qualifying Acquisition

Additional Funds by way of Rights Offering Only

Sec. 1019. Prior to completion of a qualifying acquisition, the Exchange will permit a listed SPAC to raise additional funds pursuant to the issuance of securities from treasury provided that: (i) the issuance is by way of rights offering in accordance with the requirements in Part VI of this Manual and (ii) at least 90% of the funds raised are placed in escrow in accordance with the provisions of Sections 1010 to 1014. Contemporaneous with or following completion of a qualifying acquisition, a listed SPAC may raise additional funds in accordance with Part VI of this Manual.

Sec. 1020. The Exchange will only permit additional funds to be raised by a listed SPAC pursuant to Section 1019 to fund a qualifying acquisition and/or administrative expenses of the SPAC.

Other Requirements

Sec. 1021. Prior to completion of its qualifying acquisition, in addition to this Part X, a listed SPAC will be subject to the following Parts of this Manual:

(a) Parts IV and V;

(b) Part VI, provided that, until completion of a qualifying acquisition, a listed SPAC may only issue and make securities issuable in accordance with Sections 1019 to 1020. Security based compensation arrangements may not be adopted until completion of a qualifying acquisition, for which securityholder approval will be required in accordance with Section 613;

(c) Part VII with the exception of Subsections 710(a)(ii) and 710(a)(iii);

(d) Part IX; and

(e) Applicable listing fees and forms.

D. Completion of a Qualifying Acquisition

Permitted Time for Completion of a Qualifying Acquisition

Sec. 1022. A SPAC must complete a qualifying acquisition within 36 months of the date of closing of the distribution under its IPO prospectus. Where the qualifying acquisition is comprised of more than one acquisition, the SPAC must complete each of the acquisitions comprising the qualifying acquisition within 36 months of the date of closing of the distribution under its IPO prospectus, in addition to meeting the requirements of Section 1023.

Fair Market Value of a Qualifying Acquisition

Sec. 1023. The businesses or assets forming the qualifying acquisition must have an aggregate fair market value equal to at least 80% of the aggregate amount then on deposit in the escrow account, excluding deferred underwriting commissions held in escrow and any taxes payable on the income earned on the escrowed funds. Where the qualifying acquisition is comprised of more than one acquisition, and the multiple acquisitions are required to satisfy the aggregate fair market value of a qualifying acquisition, these acquisitions must close concurrently and within the time frame in Section 1022.

Securityholder and Other Approvals

Sec. 1024. The qualifying acquisition must be approved by: (i) a majority of directors unrelated to the qualifying acquisition, and (ii) a majority of the votes cast by securityholders of the SPAC at a meeting duly called for that purpose. Where the qualifying acquisition is comprised of more than one acquisition, each acquisition must be approved. The founding securityholders shall not be entitled to vote any of their securities with respect to the approval of the qualifying acquisition.

Sec. 1025. The SPAC may impose additional conditions on the approval of a qualifying acquisition, provided that the conditions are described in the information circular describing the qualifying acquisition. For example, the SPAC may impose a condition not to proceed with a proposed qualifying acquisition if more than a pre-determined percentage of public holders of securities vote against the proposed qualifying acquisition and exercise their conversion rights.

Sec. 1026. In connection with the securityholder meeting at which there will be a vote on a qualifying acquisition, the SPAC must prepare an information circular containing prospectus level disclosure of the resulting issuer assuming completion of the qualifying acquisition. This information circular must be submitted to the Exchange for pre-clearance prior to distribution.

Sec. 1027. In accordance with Section 1008, holders of securities who vote against the qualifying acquisition, must be entitled to convert their securities for their pro rata portion of the escrowed funds in the event that the qualifying acquisition is completed. Subject to applicable laws, securityholders who exercise their conversion rights shall be paid within 30 calendar days of completion of the qualifying acquisition and such converted securities shall be cancelled.

Prospectus Requirement for Qualifying Acquisition

Sec. 1028. The SPAC must prepare and file a prospectus containing disclosure regarding the SPAC and its proposed qualifying acquisition with the Canadian securities regulatory authority in each jurisdiction in which the SPAC and the resulting issuer is and will be a reporting issuer assuming completion of the qualifying acquisition and, if applicable, in the jurisdiction in which the head office of the resulting issuer assuming completion of the qualifying acquisition is located in Canada. The SPAC must obtain a receipt for its final prospectus from the applicable securities regulatory authorities prior to mailing the information circular described in Section 1026. If a receipt for the final prospectus is not obtained, completion of the qualifying acquisition will result in the delisting of the SPAC.

Exchange discretion with respect to the requirements of this Section may only be exercised after discussions with, and the concurrence of, the OSC.

Exchange Approval

Sec. 1029. The issuer resulting from the completion of the qualifying acquisition by the SPAC must meet the Exchange's original listing requirements set out in Part III of this Manual. Failure to obtain the Exchange's approval of the listing of the resulting issuer prior to the completion of the qualifying acquisition will result in the delisting of the SPAC.

Escrow Requirements

Sec. 1030. Upon completion of the qualifying acquisition, the resulting issuer shall be subject to the Exchange's Escrow Policy.

E. Liquidation Distribution and Delisting Upon Failure to Meet Timelines for a Qualifying Acquisition

Sec. 1031. If a listed SPAC fails to complete a qualifying acquisition within the permitted time set out in Section 1022, subject to applicable laws, it must complete a liquidation distribution within 30 calendar days after the end of such permitted time, pursuant to which the escrowed funds must be distributed to the holders of securities on a pro rata basis, and in accordance with Section 1032.

Sec. 1032. In accordance with Section 1004, the founding securityholders may not participate in any liquidation distribution with respect to any of their founding securities. In addition, in accordance with Section 1013, all deferred underwriter commissions held in escrow will be part of the liquidation distribution. A liquidation distribution therefore includes the minimum of 90% of the gross proceeds raised in the IPO, as required under Section 1010 and 50% of the underwriters' commissions as described in this Section. Any interest earned through permitted investments that remains in escrow shall also be part of the liquidation distribution. The amount distributed on a liquidation distribution shall however be net of any applicable taxes and direct expenses related to the liquidation distribution.

Sec. 1033. If a listed SPAC fails to complete a qualifying acquisition within the permitted time set out in Section 1022, the Exchange will delist the SPAC's securities on or about the date on which the liquidation distribution is completed.

F. Continued Listing Requirements Following Completion of a Qualifying Acquisition

Sec. 1034. Once a qualifying acquisition has been completed, the resulting issuer will be subject to all continued listing requirements in this Manual without exception.

ANCILLARY PROPOSED AMENDMENTS TO PART I – DEFINITIONS

Definitions to be added to Part I:

"**escrowed funds**" means the funds placed in trust or escrow as required under Section 1010;

"**founding securities**" means securities in the SPAC held by the founding securityholders, excluding any purchased by founding securityholders under the IPO prospectus, on the secondary market or under a rights offering by the SPAC;

"**founding securityholders**" means insiders and equity securityholders of a SPAC prior to the completion of the IPO who continue to be insiders or equity securityholders, as the case may be, immediately after the IPO;

"**IPO prospectus**" means the final prospectus for the initial public offering of the SPAC;

"**listing application**" means an application for the original listing on the Exchange in the form found in Appendix A of the Manual;

"**permitted investments**" means investments in the following: cash or in book based securities, negotiable instruments, investments or securities which evidence: (i) obligations issued or fully guaranteed by the Government of Canada, the Government of the United States of America or any Province of Canada or State of the United States of America; (ii) demand deposits, term deposits or certificates of deposit of banks listed Schedule I or Schedule III of the Bank Act (Canada), which have an approved credit rating by an approved credit rating organization (as defined under National Instrument 45-106 – Prospectus and Registration Exemptions); (iii) commercial paper directly issued by Schedule I or Schedule III Banks which have an approved credit rating by an approved credit rating organization (as defined under National Instrument 45-106 - Prospectus and Registration Exemptions); or (iv) call loans to and notes or bankers' acceptances issued or accepted by any depository institution described in (ii) above;

"**principal regulator**" means the issuer's principal regulator determined in accordance with Multilateral Instrument 11-102 - Passport System;

"**qualifying acquisition**" means the acquisition of assets or one or more businesses by a SPAC which result in the issuer meeting the Exchange's original listing requirements set out in Part III of the Manual;

"**SPAC**" means a special purpose acquisition corporation;

ANCILLARY PROPOSED AMENDMENTS TO PART III – ORIGINAL LISTING REQUIREMENTS

Sec. 307. Companies applying for a listing on the Exchange are placed in one of three categories: Industrial(General), Mining or Oil and Gas. All special purpose issuers such as exchange traded funds, split share corporations, income trusts, investment funds and limited partnerships are listed under the Industrial (General) category. All SPACs are listed under the Industrial (General) category. If the primary nature of a business cannot be distinctly categorized, the Exchange will designate the company to a listing category after a review of the company's financial statements and other documentation.

Sec. 308. There are specific minimum listing requirements for each of the three categories of companies. These requirements are set out in the following sections:

Industrial (excluding SPACs)	Sections 309 to 313
Mining	Sections 314 to 318
Oil and Gas	Sections 319 to 323

For SPACs, the minimum listing requirements, as well as other requirements, are set out in Part X.

The minimum listing requirements should be read in conjunction with the Exchange policy on quality of management, as set out in Section 325.

ANCILLARY PROPOSED AMENDMENTS TO
APPENDIX C
TORONTO STOCK EXCHANGE'S ESCROW POLICY STATEMENT

I. Introduction

Effective June 30, 2002, the Canadian Securities Administrators ("CSA") introduced National Policy 46-201, *Escrow for Initial Public Offerings* (the "National Policy"), and a standard form of escrow agreement, Form 46-201F1, *Escrow Agreement* (the "Escrow Form"), in connection with the National Policy.

As determined by the CSA, the fundamental objective of escrow is to encourage continued interest and involvement in an issuer, for a reasonable period after its initial Public Offering ("IPO"), by those principals whose continuing role would be reasonably considered relevant to an investor's decision to subscribe to the issuer's IPO.

All terms contained in the TSX Escrow Policy are as defined in the National Policy.

II. Application of the National Policy

Under the National Policy, escrow is not required for an issuer listing on TSX that, immediately after completion of its IPO, is:

i) classified by TSX under sections 309.1, 314.1, or 319.1 of this Manual, as applicable, as an exempt issuer; or

ii) a non-exempt issuer with a market capitalization of at least $100 million.

All other issuers completing initial public offerings and listing on TSX will be subject to the National Policy. Principals of such issuers will be required to place their securities in escrow under an escrow agreement in accordance with the terms of the National Policy, to be administered by the relevant CSA jurisdiction and not by TSX.

III. Application of the TSX Escrow Policy

The TSX Escrow Policy applies to issuers not otherwise subject to the National Policy that have:

i) listed on TSX by completing reverse takeovers of TSX listed issuers ("backdoor listings");

ii) listed on TSX by completing a qualifying acquisition with a SPAC as contemplated in Part X; or

iii) conducted their IPOs in markets outside of a CSA jurisdiction within the 12 months preceding the date of the TSX listing application.

In deciding whether escrow is appropriate for such issuers, TSX will apply the principles of the National Policy. The provisions of the National Policy will be applied by TSX, including the use of the Escrow Form. TSX will administer escrow agreements entered into under the TSX Escrow Policy.

Subject to such terms and conditions as it may impose, TSX may:

i) exempt a person or issuer from the provisions of the TSX Escrow Policy otherwise applicable; or

ii) impose restrictions on a person or issuer beyond, or in addition to, those contained in the National Policy as applied to the TSX Escrow Policy where, in TSX's opinion, it would be in the public interest to do so.

Exchange discretion with respect to the escrow requirements applicable to founding securities may only be exercised after discussions with, and the concurrence of, the OSC.

For issuers where escrow is required, other than the founding securities held by founding securityholders of issuers listed on TSX by completing a qualifying acquisition with a SPAC as contemplated in Part X, a principal's escrow securities are to be released as follows:

On the date issuer's securities are listed on TSX (the listing date)	$^1/_4$ of the escrow securities
6 months after the listing date	$^1/_3$ of the remaining escrow securities
12 months after the listing date	$^1/_2$ of the remaining escrow securities
18 months after the listing date	the remaining escrow securities

For issuers where escrow is required, for founding securities held by founding securityholders of issuers listed on TSX by completing a qualifying acquisition with a SPAC as contemplated in Part X, the founding securityholders' founding securities are to be released as follows:

On the date issuer's securities are listed on TSX (the listing date)	$^1/_{10}$ of the founding securities
6 months after the listing date	$^1/_3$ of the remaining founding securities
12 months after the listing date	$^1/_2$ of the remaining founding securities
18 months after the listing date	the remaining founding securities

For issuers listed on TSX by completing a qualifying acquisition with a SPAC as contemplated in Part X, the listing date for purposes of this Escrow Policy is the date of closing of the qualifying acquisition by the SPAC.

IV. Administration of Existing Escrow Agreements

Issuers may apply to TSX to amend the terms of existing TSX escrow agreement and to request the transfer of securities within escrow or the early release of securities from escrow to reflect the release terms of the National Policy. For non-TSX escrow agreements, issuers must apply to the relevant exchange or relevant CSA jurisdiction under which the escrow agreement was originally entered into for any specific request to approve the transfer of securities within escrow or for the early release of securities from escrow.

The National Policy and the Escrow Form may be found on the web sites of CSA members including, but not limited to, the Ontario Securities Commission (www.osc.gov.on.ca).

APPENDIX B

SUMMARY OF COMMENTS
PART X – SPECIAL PURPOSE ACQUISITION CORPORATIONS (SPACS)

List of Commenters:

Borden Ladner Gervais LLP, Securities and Capital Markets Practice Group (BLG)

Canadian Foundation for Advancement of Investor Rights (FAIR)

Farris, Vaughan, Wills & Murphy LLP (Farris)

Kenmar Associates (Kenmar)

Lang Michener LLP (Lang)

Ogilvy Renault LLP (Ogilvy)

Osler, Hoskin & Harcourt LLP (Osler)

Scotia Capital Inc. (Scotia)

Stikeman Elliott LLP (Stikeman)

William Mackenzie (Mackenzie)

Two Commenters requested confidentiality (Confidential commenter)

Capitalized terms used and not otherwise defined shall have the meaning given in the Request for Comments for public interest amendments to add Part X – Special Purpose Acquisition Corporations to the TSX Company Manual, published in the OSC Bulletin on August 15, 2008.

Summarized Comments Received	*TSX Response*
Question 1: Is $30,000,000 minimum raised on the IPO appropriate? If not, why, and what would be an appropriate amount?	
Commenters were divided on this question. A number felt $30 million was high for the Canadian marketplace (Stikeman, BLG, Lang, Farris) and that a lower number would provide more flexibility and accessibility. Comparisons were made to the CPC program. It was suggested that the minimum should coincide with the maximum amount that can be raised under the CPC program (BLG), or more closely align with the CPC maximum (Lang). One commenter suggested the minimum should be higher, at $50 million, because of illiquidity concerns in the secondary market (Scotia), although another felt a lower minimum made sense based on the same illiquidity concerns (BLG).	SPACs are not merely larger CPCs, as they are intended to provide a listed vehicle for experienced management that have the credibility to raise sufficient funds for a qualifying acquisition that will meet the original listing requirements of TSX. While a lower minimum would arguably make SPACs more accessible, it is necessary to balance accessibility with credibility. The minimum size is also relevant to the structure of the SPAC. SPACs raising less than $30 million will likely encounter difficulty with the fundamental features of the vehicle, including having sufficient working capital in light of the escrow requirements, and completing a qualifying acquisition which meets TSX original listing requirements. No change is therefore proposed.
Other commenters agreed that $30 million was generally appropriate for the Canadian market (two confidential commenters). One commenter suggested specifying the minimum can also be the equivalent in US dollars, to accommodate US investors and dual listings (Osler).	SPACs raising an amount equivalent to at least C$30 million in US dollars (or another currency) will meet this requirement.

Summarized Comments Received	*TSX Response*
Question 2: Is it appropriate to require the founders to hold securities equal to at least 10% of the proceeds raised in the IPO? Is it appropriate that the founders be permitted to purchase securities at less than the IPO price taking into account the limitations on transfers, voting and liquidation prior to completion of a qualifying acquisition?	
Comments on this question were varied. Two commenters supported the proposed 10% minimum founder's interest in the SPAC as an incentive (BLG) and because it is consistent with market practice (confidential commenter). Another commenter proposed removing the percentage minimum and leaving it to TSX discretion suggesting that guidance could instead be provided, and noting that neither NYSE nor NASDAQ has this requirement (Osler). One commenter suggested that an equity position is appropriate for founders, but at the IPO price (Scotia) to a minimum of 10% and a maximum of 15%. Scotia also submitted that if founders pay the IPO price for securities, it mitigates against management supporting an acquisition that is worth less than the IPO price. Another commenter proposed that founders' participation in excess of 10%, should be at a minimum price taking into account the IPO price (i.e., not less than 50% of the IPO price) subject to a maximum participation of 20% (BLG).	The founder's equity interest post-IPO cannot properly be reviewed without reference to the price paid for the founder securities, as both are intrinsically linked. The founders' level of interest should be reflective of the quality of the founders as well as their financial contribution to the SPAC. TSX therefore agrees that there should be more flexibility with respect to considering the adequacy of the founders' interest. Accordingly, TSX has amended Sections 1004 and 1002(c) to provide guidance as to the appropriate level for the founders' equity interest rather than as a specific requirement. TSX expects that founders' interest will be in the range of 10% to 20% of the outstanding equity of the SPAC. However, lower or higher levels may be acceptable depending on the financial and other contributions by the founders. TSX believes that founders are critical to the success of a SPAC and that unduly restricting their interests could negate the marketability and viability of SPACs as investment vehicles. TSX also believes that founder participation will be subject to negotiation between the underwriters and the founders and will take account relevant factors such as the experience and the track record of the founders as well as the sector (if specified) of the potential qualifying acquisition.
Some commenters considered founder securities as pay for performance, suggesting that securities received by founders vest only after the successful completion of a qualifying acquisition, with the share price at or above the IPO price immediately after the shareholder vote approving a qualifying acquisition (Mackenzie, Kenmar). One commenter suggested that it was inappropriate for founders to hold pre-IPO securities, unless contingent on performance after the qualifying acquisition (Mackenzie). This same commenter also proposed that the maximum founder interest should taper for larger IPOs. Another commenter suggested that founder securities be held for a minimum of 12 months after completion of a qualifying acquisition and time released over a three-year period (FAIR). Alternatively, this commenter suggested issuing stock options at the IPO price for up to 10% of the securities outstanding after the IPO, which would then vest over a three-year period after completion of a qualifying acquisition.	TSX recognizes that founders often have much at risk in a SPAC, both financially and reputationally, and may also be required to support administrative expenses of the SPAC until a qualifying acquisition. In addition, SPACs will not be able to adopt security-based compensation arrangements prior to completion of a qualifying acquisition. The incentive to permit founders to purchase securities at less than IPO price compensates founders for their time and risk. The restrictions on the transfer, voting and liquidation rights on founder securities further secures the founders' continued participation and aligns their interests with other SPAC securityholders. Members of the Canadian Securities Administrators are however requiring a more stringent escrow of founding securities where escrow is applicable in order to further align the interests of founding securityholders with SPAC securityholders upon completion of a qualifying acquisition. The TSX Escrow Policy Statement has therefore been revised to provide that where escrow is to be applied to an issuer that is listed on TSX by completing a qualifying acquisition with a SPAC as contemplated under Part X, 10% of the founding securities will be released at the date of closing of the qualifying acquisition. The remainder will be released on a time release basis over the following 18 months.

Summarized Comments Received	*TSX Response*
	TSX notes that in the past, escrow releases were sometimes pegged to performance targets. However, securities legislation and Exchange requirements have now migrated to time release escrows, as provided in National Policy 46-201 – Escrow for Initial Public Offerings ("NP 46-201") and the TSX Escrow Policy Statement. TSX will apply the TSX Escrow Policy Statement as revised to incorporate SPACs and founding securities. TSX notes that supplemental escrow requirements, performance based release terms and resale restrictions may be negotiated if dictated by the market.
Question 3: Should founding securityholders be limited to a maximum equity interest without an equity contribution which is equivalent to other securityholders? If so, what would be an appropriate level?	
As noted in Question 2, comments were made in support of a maximum equity interest for founders that is tied to the price paid by founders for such securities.	See the response to Question 2 above. TSX agrees to specify, as guidance, both a minimum and maximum percentage of securities that can be purchased by founders at less than the IPO price. This will allow more balance and flexibility for SPACs. Sections 1004 and 1002(c) have been amended accordingly.
Question 4: Is it appropriate to prohibit the identification of a qualifying acquisition target prior to the listing of the SPAC on TSX?	
Two commenters expressed support for the requirement that the SPAC cannot have an identified qualifying acquisition prior to listing (confidential commenter, BLG). Other comments received related to the restrictions in Section 1006. In particular, several commenters expressed concern with the prohibition against having entered into a "non-binding agreement with respect to a potential qualifying acquisition" (Stikeman, Osler, confidential commenter). Commenters were seeking clarification on what types of non-binding agreements were prohibited and the rationale for such a prohibition. They noted that SPACs could enter into confidentiality agreements or other non-binding expressions of interest which have numerous contingencies, consistent with a SPAC not having identified a qualifying acquisition, but perhaps being in the process of reviewing potential qualifying acquisitions. One comment suggested that SPACs should be permitted to have an identified target qualifying acquisition prior to listing (confidential commenter).	The prohibition against having identified a qualifying acquisition target is to ensure that the IPO process is not subverted. TSX agrees that allowing a SPAC to enter into non-binding agreements, including confidentiality agreements and non-binding letters of intent, does not contravene this principle. Accordingly, the prohibition against non-binding agreements has been removed. In the United States, there are strict prohibitions against the identification of a potential qualifying acquisition at the time of the SPAC IPO. Under the CPC program, a potential qualifying transaction can be quite advanced at the time of the CPC IPO. In Europe, at the time of the IPO, a SPAC may have already identifed a specific target and may be very advanced in negotiating the qualifying acquisition. The approach adopted by TSX therefore falls in between the spectrum set by the US, the CPC program and Europe.
Question 5: Should securityholders be entitled to an amount other than their pro rata share of the proceeds held in trust in the event that the conversion right is exercised or the liquidation distribution occurs?	
There were no comments received suggesting securityholders should be entitled to any amount other than their pro rata share of proceeds on conversion or liquidation. However a number of comments were received with respect to conversion rights and the process for conversion and liquidation. See Questions 16 and 17.	TSX believes that securityholders should be entitled to their pro rata share of the proceeds held in trust on exercise of conversion rights or in a liquidation distribution. No change is proposed.

Summarized Comments Received	*TSX Response*
Question 6: Is it appropriate that the warrants will separate immediately after completion of the IPO, but not be exercisable until the completion of the qualifying acquisition? Why or why not?	
Commenters generally agreed that it was appropriate and consistent with market practice for warrants to separate after completion of the IPO and not be exercisable until the completion of the qualifying acquisition (Osler, Scotia, confidential commenter). One commenter however expressed that the warrants should not separate until after the qualifying acquisition is completed and should be exercisable for two years thereafter. This commenter also thought the warrant incentive was too complicated for investors (BLG).	TSX believes that it would be detrimental to the marketability and viability of SPACs if the warrants did not separate immediately after the IPO. Restricting the exercise of the warrants until after completion of the qualifying acquisition is sufficient protection against dilution of the SPAC. No change is therefore proposed.
Question 7: Is it appropriate to restrict debt financing to the time of or after completion of a qualifying acquisition? Why or why not?	
Two commenters supported the debt financing restrictions (BLG, Scotia) while another also supported the restrictions, but only with respect to third party financing (Osler). It was noted that it would not be appropriate for a shell company with cash to be leveraged (BLG). Another comment supported a SPAC being permitted to have an operating line of credit of up to 10% of the gross proceeds from the IPO (Scotia). Other commenters suggested that debt financing should not be restricted, in order to provide the SPAC with flexibility and funding to negotiate a qualifying acquisition (Stikeman, confidential commenter, Lang). It was proposed that debt obligations could be subordinated to securityholder rights (Stikeman). It was also suggested that founders should be able to fund the SPAC through debt, which would not be repayable until after a qualifying acquisition, and that TSX could pre-clear such arrangements (Osler).	TSX believes that it is inappropriate and in most cases unnecessary for SPACs to be leveraged prior to the qualifying acquisition. The restriction on debt financing will discipline management's expenses and use of funds. In accordance with Section 1009, debt financing may be entered into prior to the completion of a qualifying acquisition, provided that it is not drawn down upon other than concurrently or following the completion of a qualifying acquisition. Therefore, a SPAC will be able to use debt to satisfy in part the consideration payable for the qualifying acquisition and expenses related to such acquisition. If additional funds are needed before completion of a qualifying acquisition, the SPAC may complete a rights offering. No change is therefore proposed.
Question 8: Are 90% of gross proceeds raised on the IPO an appropriate minimum amount to be put into trust? If not, why, and what would be an appropriate amount?	
Comments provided in response to this question varied. Some commenters expressed concern that the minimum amount of gross proceeds to be put in trust may not provide SPACs with sufficient funds for administrative expenses until the qualifying acquisition (Farris, BLG, confidential commenter). One commenter suggested that approval of the independent directors, or of securityholders, should be sufficient to permit the use of additional trust proceeds for expenses (BLG). One commenter proposed that the minimum amount to be put in trust should be the lesser of: (i) 90%, and (ii) the gross proceeds less $6 million. Alternatively, the minimum should be set at 80% (confidential commenter). It was also recommended to increase the minimum amount of proceeds to be placed in trust to 95% in order to mitigate the SPAC trading down after the IPO which can lead to	The paramount objective of maintaining the proceeds in trust is to preserve funds to make a qualifying acquisition that will meet TSX original listing requirements, or alternatively, to maximize funds available for distribution upon liquidation or conversion. While this may limit the SPAC's working capital, the principal objective is to preserve the funds raised in the SPAC IPO. The recent trend in the U.S. has been toward 100% of the IPO proceeds being placed in trust, with working capital principally provided through the founders' investment and the interest from the funds in trust. TSX believes that having a minimum of 90% of the IPO proceeds in trust provides the SPAC with sufficient ability to fund its working capital needs while preserving sufficient funds for the SPAC to make a qualifying acquisition. No change is therefore proposed.

Summarized Comments Received	*TSX Response*
arbitrage opportunities for hedge funds (Scotia). This commenter also suggested that SPAC expenses be paid from a line of credit. One commenter submitted that 100% of the SPAC IPO proceeds should be put into trust (FAIR), while another commenter suggested no minimum was necessary, like AIM and AMEX, particularly given the relatively small market capitalization (confidential commenter).	
Question 9: Is it appropriate to require that the trust funds be invested in certain permitted investments? Should the SPAC be permitted to invest the funds as it sees fit, subject to disclosure in the IPO prospectus?	
One commenter recommended there be no requirement that the funds be invested in permitted investments and proposed that the list of permitted investments is too restrictive (BLG). Another commenter submitted that the SPAC should not be permitted to invest the funds as it sees fit, even if it is disclosed, since it is not the purpose of the vehicle (Scotia). A drafting suggestion was made to expand the list of permitted rating agencies in the definition of permitted investments (Stikeman).	As noted above, the paramount objective of maintaining the proceeds in trust is to preserve funds to make a qualifying acquisition that will meet TSX original listing requirements, or alternatively for distribution upon liquidation or conversion. In support of this objective, SPAC IPO proceeds should only be invested in permitted investments. No change is therefore proposed. The CSA has recently published a consultation paper seeking comments on a proposal for reducing reliance on the use of credit ratings in securities legislation. The definition of permitted investments will be revised to refer to approved credit rating organizations and approved credit ratings as defined in National Instrument 45-106 so that it may conform with changes that may be made in securities legislation in the future.
Question 10: Is it appropriate to permit the SPAC to use the interest from permitted investments provided any intended use is disclosed in the IPO prospectus? Why or why not?	
Three commenters responded that it is appropriate to use the interest generated from permitted investments toward SPAC expenses (BLG, Scotia, confidential commenter). One commenter suggested that it is not necessary to disclose the use in the prospectus since it will be subject to the oversight of the board of directors of the SPAC (BLG). A question was asked concerning whether the interest could be used to pay the SPAC's public company expenses or other expenses, such as litigation (Stikeman).	As set forth in Section 1014, SPACs may use the interest from permitted investments for expenses, provided such proposed uses are disclosed in the SPAC IPO prospectus. A small drafting amendment has been made to clarify that the interest may be used toward the SPAC's general administrative expenses after the IPO.
Question 11: Should 50% of the underwriters' commissions be required to be placed in trust only to be paid upon successful completion of a qualifying acquisition?	
It was suggested that this requirement will lead to an increase in overall underwriter commissions and incent the completion of borderline qualifying acquisitions (confidential commenter, Mackenzie). It was also proposed that the amount deferred should be negotiated between the founders and the underwriters rather than be required (Osler, two confidential commenters). TSX could then use its discretion in determining whether the amount deferred is appropriate (Osler).	TSX supports the alignment of the underwriters' interests with those of securityholders. The underwriters' commission should not be fully paid until such time as a qualifying acquisition is successfully completed. Should the SPAC fail to make a successful qualifying acquisition, a significant portion of the commission should be available to be returned to securityholders upon liquidation. Rather than leaving the amount of deferred underwriters' commission to be negotiated, TSX believes a consistent standard should be imposed to protect investors. On balance, the benefits of

Summarized Comments Received	*TSX Response*
One commenter agreed that the deferral requirement proposed by TSX is appropriate (Scotia).	greater protection afforded to securityholders by deferring the commission are believed to be greater than any potential harm that may be caused by the higher commissions or incentives. No change is therefore proposed.
Question 12: Is the application of TSX standard distribution requirements of 300 public holders holding at least one board lot and 1,000,000 freely tradeable securities appropriate? If not, why, and what would be an appropriate alternative?	
One commenter suggested reducing the required number of board lot holders to 200 as for CPCs since retail distribution will not be greater than a CPC and because a SPAC need not trade as actively as an operating issuer (BLG). Another commenter noted that the proposed distribution requirements are appropriate (Scotia).	No change is proposed. TSX notes that the distribution requirement of 200 board lot holders for CPCs is the same as those for all TSX Venture issuers. TSX is similarly proposing the same distribution requirements for SPACs as for all TSX issuers. There does not appear to be a significant reason to apply different distribution requirements for SPACs. TSX further believes that the distribution requirements will contribute to an orderly secondary market for SPAC securities.
Question 13: Is it appropriate to limit the additional issuance of securities following the IPO and prior to the completion of a qualifying acquisition? Why or why not?	
Some commenters supported the proposed limits on equity issuances in order to prevent dilution (Scotia, BLG).	As stated in the request for comments, TSX believes that SPAC securityholders must be protected against dilution prior to the qualifying acquisition.
Comments were also received submitting there should be no restrictions (confidential commenter, Stikeman). It was noted that CPCs do not have such restrictions (Stikeman). Some comments raised concern that the SPAC may not have sufficient funds to cover expenses and to negotiate a qualifying acquisition (Lang, Stikeman) and should therefore have the ability to complete equity financings prior to the qualifying acquisition.	The restriction is not relevant to CPCs because funds are not returned to securityholders if the CPC fails to make a qualifying acquisition. Further, a clear restriction on the SPACs ability to raise additional debt or equity imposes discipline on expenditures. No change is therefore proposed. See also the discussion about restrictions on debt financing at Question 7 and the response to Question 14 below.
Question 14: Is it appropriate to require SPACs raising additional capital to do so by a rights offering or should other means, such as private placements and public offerings, be permitted? Why or why not?	
Comments were received that SPACs should have flexibility to raise money if needed to facilitate a qualifying acquisition and not be subject to such a restriction (Stikeman, confidential commenter). It was proposed that if private placements are permitted, they should be required to be at the IPO price or greater, net of underwriting fees, for cash only, and subject to the same requirements as currently proposed for rights offerings (BLG). Another commenter suggested that a rights offering is acceptable, but that the proceeds should be permitted to be 100% allocated to working capital expenses (Lang). However others supported the restrictions and the allocation of funds raised as proposed by TSX (BLG, Scotia).	Protection against dilution is of paramount importance. If necessary, funds may be raised through a rights offering prior to completion of a qualifying acquisition. Funds raised by way of a rights offering must be placed into trust in the same proportion as the funds raised on the IPO. This restriction provides management with the incentive to plan and control expenses, while protecting SPAC investors from dilution and preserving proceeds to make a qualifying acquisition. It should also be noted that equity financings may be completed concurrently with the qualifying acquisition. See also the discussion of debt financing at Question 7.

Summarized Comments Received	*TSX Response*
	No change is therefore proposed.
Question 15: A SPAC listed on TSX must complete a qualifying acquisition within three years of the date of the closing of the distribution under the IPO prospectus. Is this timeline appropriate? If not, why, and what would be an appropriate alternative timeline?	
Three commenters agreed that three years is an appropriate timeline to complete a qualifying acquisition (BLG, Farris, confidential commenter). Two of these commenters suggested permitting the timeline to be extended with securityholder approval to prevent prejudice in negotiations toward the end of the timeline (BLG, Farris). One commenter proposed that the maximum should be only two years (Scotia).	TSX believes that three years is sufficient to complete a qualifying acquisition. This timeline is also consistent with that provided by other markets. Other markets also do not allow SPACs to extend the time period. A maximum of only two years may be unduly restrictive and create a competitive disadvantage. Under the rules, a SPAC which does not complete a qualifying acquisition will be delisted at the completion of the liquidation distribution. After delisting, Part X no longer applies to the SPAC. Consequently, SPAC investors would no longer be protected by the safeguards provided under Part X. No change in the time period nor permission for securityholder extension are therefore proposed. However, Section 1033 has been amended to clarify that a SPAC which does not complete a qualifying acquisition within the permitted time will be delisted.
Question 16: If a securityholder votes against a proposed qualifying acquisition, should there be a conversion right? Why or why not?	
Some commenters were concerned about the uncertainty caused by the conversion right since it will reduce the amount of proceeds available for the qualifying acquisition. One commenter submitted there should be no conversion rights (BLG). Another remarked that the rights are critical to the marketability of SPACs (confidential commenter).	The conversion rights granted to securityholders voting against the qualifying acquisition are an important investor protection feature and are fundamental to the vehicle. No change is therefore proposed.
Procedurally, clarification was sought on: (i) whether securities that are exercised for conversion are to be cancelled; (ii) the length of the notice period; and (iii) whether securities have to be voted against a qualifying acquisition in order to be converted (Stikeman).	Section 1008(a)(i) provides that securities issued by the SPAC must be convertible for securityholders who vote against a proposed qualifying acquisition. The SPAC will notify securityholders of applicable notice periods and other requirements in the information circular. TSX expects that converted securities will be cancelled and has amended Section 1027 to clarify this point.
Question 17: Should TSX require that a qualifying acquisition not proceed if a certain threshold percentage of securityholders exercise their conversion rights? If yes, what is an appropriate threshold? In conjunction with a conversion right threshold, should TSX review the resulting issuer on a continued listing basis rather than an original listing basis? Why or why not?	
It was generally agreed that SPACs should be responsible to set a threshold on conversion rights (Farris, confidential commenter). However, one comment was received submitting that TSX should not permit a qualifying acquisition to proceed if 20% or more securityholders exercise their conversion rights (Scotia).	Section 1025 generally permits a SPAC to impose conditions on the approval of a qualifying acquisition, and specifically permits issuers to set a percentage limit on conversion rights by public holders of securities. NYSE has set such maximum threshold at 40%, and only requires the issuer resulting from the qualifying acquisition to meet continued listing requirements, rather than original listing requirements. Therefore, the maximum threshold set by

Summarized Comments Received	*TSX Response*
Two commenters noted that in the U.S., large investors or groups of investors (often hedge funds) have blocked or threatened to block qualifying acquisitions. These commenters suggested that TSX rules explicitly permit a SPAC to set a maximum number of securities that can be converted by larger investors or by a group of investors acting in concert (Osler, Farris).	NYSE on conversion helps ensure that the qualifying acquisition is adequate. Under the rules proposed by TSX, the issuer resulting from the qualifying acquisition will have to meet TSX original listing requirements. TSX therefore believes that the adequacy of the qualifying acquisition is protected without requiring a specific threshold on conversion rights to be set under Part X. No change is therefore proposed. The rules do not prohibit a feature which limits the exercise of conversion rights by large securityholders or securityholders acting as a group. However TSX would expect such a limitation to be adequately disclosed in the SPAC IPO prospectus.
Question 18: Is it appropriate to require the minimum value of a qualifying acquisition be at least 80% of the IPO proceeds in trust? Why or why not?	
Two commenters suggested that no minimum is necessary (BLG, confidential commenter). One suggested this because the SPAC has to meet original listing requirements taking into account the qualifying acquisition (BLG), while the other noted that other markets such as AIM and AMEX have no such requirement (Confidential commenter). One commenter agreed with this minimum because it mitigates concerns that a SPAC would instead make small acquisitions (Scotia).	TSX believes that it is important to set a minimum value for the qualifying acquisition relative to the proceeds raised in the SPAC. This will not only allow the resulting issuer meeting TSX original listing requirements, but also ensure the SPAC IPO proceeds are used as intended. This is a fundamental feature which supports the principal objective of the vehicle. No change is therefore proposed.
Question 19: If a qualifying acquisition is composed of multiple acquisitions, is it appropriate to require them to close concurrently in order to satisfy the fair market value of the qualifying acquisition?	
Three commenters suggested concurrent closings for multiple acquisitions are unnecessary (Stikeman, BLG, Scotia) and noted that they may be difficult to accomplish. Another commenter noted this is consistent with market practice (confidential commenter).	TSX acknowledges that concurrent closings may be difficult to accomplish. However, concurrent closings may be necessary to ensure that the qualifying acquisition(s) have a minimum value of at least 80% of the SPAC IPO proceeds. As noted above, this will not only support the resulting issuer meeting TSX original listing requirements, but also ensure the SPAC IPO proceeds are used as intended. No alternative solution seems apparent which would meet these objectives. No change is therefore proposed.
Question 20: Is it appropriate to require SPAC issuers to obtain a receipt for a prospectus that assumes completion of a qualifying acquisition prior to mailing the information circular and completing the qualifying acquisition? Why or why not?	
A number of comments received did not support the requirement for a SPAC to obtain a receipt for a prospectus assuming completion of a qualifying acquisition (Ogilvy, Farris, Scotia, BLG, Lang, Stikeman). These comments focused on the information being available in the information circular, such that the prospectus requirement was excessive and unnecessary, providing no additional benefits or investor protections, and resulting in regulatory duplication. It was also noted that the prospectus would lead to additional costs, delays and uncertainty.	TSX thanks the commenters for their input on this point. However, members of the Canadian Securities Administrators are requiring that the prospectus requirement remain as originally proposed to provide a layer of investor protection. Members of the Canadian Securities Administrators currently review information circulars filed on SEDAR by reporting issuers as part of their CD review programs. However, it remains the responsibility of the reporting issuer

Summarized Comments Received	*TSX Response*
One commenter noted the existence of a prospectus and registration exemption specifically contemplating relief for an amalgamation, merger, reorganization or arrangement that is described in an information circular (Section 2.11, National Instrument 45-106) (Ogilvy). This exemption, together with the current disclosure regime for information circulars, contemplates full prospectus level disclosure in an information circular, not a prospectus. Comments included reference to many circumstances in which an information circular with prospectus level disclosure is sufficient, i.e., reverse take-overs, arrangements (Farris). Of particular note, a number of comments provided that the prospectus requirement does not improve the position of investors. Investors will receive prospectus level disclosure in the information circular and are protected by the secondary market liability regime. (Ogilvy. Farris). Investors were considered to be sufficiently informed and protected through the information circular and other existing protections (Lang, Farris, Ogilvy, Scotia, BLG, confidential commenter) and notably, have a significant exit strategy (Osler).	to ensure that the information circular that it filed complies with applicable securities legislation, policies and practices prior to it being sent to securityholders. Although pre-clearing the information circular could be a viable alternative, it would take some time to develop a system for the securities regulators to pre-clear an information circular rather than a prospectus, which would delay the introduction of Part X. TSX expects that information circulars will append the prospectus in order to ensure it contains the same disclosure.
Comments were received suggesting that if a prospectus is required, the review of the prospectus and information circular should be concurrent, to prevent additional delays (two confidential commenters, Lang). A confidential review process was also suggested to decrease unforeseen delays. It was further submitted that only the issuer's principal regulator should need to issue a receipt (Stikemans).	See the response at Question 20.
Question 21: What are the benefits of the SPAC clearing a prospectus prior to mailing the information circular and completing the qualifying acquisition? What are the costs? Please consider all stakeholders, including securityholders, the public and the marketplace.	
No benefits were put forth in the comment letters received. Costs noted included those associated with additional delays, uncertainty as well as incremental legal costs, prospectus preparation and filing costs.	See the response at Question 20.
Question 22: Will the prospectus requirement materially affect costs and timing of a qualifying acquisition? If yes, how? How do these costs and timing issues compare with benefits provided by the prospectus?	
See Question 21.	
Question 23: Is the time frame for liquidation and distribution appropriate? Why or why not?	
Generally, commenters supported the time frame as reasonable and consistent with market practice (Scotia, BLG, confidential commenter). However, it was also suggested that securityholders should be able to vote to extend the time before liquidation to permit a qualifying acquisition (BLG, Farris). One commenter further submitted	As noted under Question 15, a SPAC will be delisted and will have to complete a liquidation distribution if it fails to make a qualifying acquisition in the permitted time. Even with securityholder approval, it would not be appropriate to permit a SPAC to continue, since the Part X would no longer apply to the delisted SPAC. No change is therefore

Summarized Comments Received	*TSX Response*
that the vote could be a majority of the minority, excluding securities held by founders (BLG).	proposed.
Some commenters were concerned about the interaction of the liquidation distribution requirements with corporate solvency restrictions and bankruptcy laws (Stikeman, Osler) and suggested providing flexibility to address inconsistencies that could arise in this respect (Osler).	TSX does not expect SPACs to initiate bankruptcy or winding up proceedings prior to a liquidation distribution. However, a minor amendment has been made to Section 1031 to accommodate other applicable laws that could impact timing of payments under a liquidation distribution scenario.
Question 24: Are there any additional requirements or rules that would be appropriate for SPACs that should be considered?	
One comment letter suggested that IPO costs for the SPAC be capped at 2% of gross proceeds (Scotia). The same commenter proposed that over-allotment options issued at the IPO are appropriate to permit secondary market stabilization efforts.	TSX does not regulate or provide guidance on IPO or other financing costs. The issuance of over-allotment options for a SPAC IPO will be governed by applicable securities legislation.
Question 25: Are there additional factors, not discussed in this Request for Comments, to consider in adopting Part X?	
A number of comments were received concerning the minimum price per security of $5. It was noted that TSX does not set a minimum security price for other listings (Lang, Farris) and that the minimum on NYSE is $4 per security (Osler).	TSX recognizes that it does not have a minimum price in its other original listing requirements for non-SPAC issuers. However, given the unique nature of SPACs, TSX supports setting a minimum price because an issuer without an operating business may be prone to more price volatility or price manipulation with an excessively low security price. In addition, distribution requirements would be impacted with a security price below $1, because at that price level, a board lot is set at 500 securities, rather than 100 securities However, TSX agrees that the minimum price need not be as high as $5.00 in order to achieve this objective. The minimum price has therefore been reduced to $2.00 per security in order to afford more flexibility for the SPACs capital structure while preserving an orderly market for such securities.
Two comments were received with respect to product suitability, particularly for retail investors (Kenmar, FAIR). One commenter suggested the product only be available to accredited investors (FAIR).	TSX does not generally regulate whether certain financial products are suitable for particular purchasers. Registered dealers are expected to know their clients and whether certain products are suitable for their investment profiles. However, it should be noted that the rules being proposed for SPACs contain a number of measures to bolster investor protection which support the suitability of the product for a range of investors.
Question 26: Are there additional ancillary rule amendments, not discussed in this Request for Comments, to consider in adopting Part X?	
No comments were received.	

Summarized Comments Received	*TSX Response*
General:	
General support for the proposal was provided by a number of commenters. One commenter noted that SPACs may help small and mid-cap entities in Canada grow, and suggested that simple rules will help to support the success of the proposal (BLG). Other commenters support the adaptation of Canadian regulations to evolving global markets in which SPACs have become a major source of capital (Osler, Farris). It was suggested that at a smaller market capitalization as proposed, there is less need for specific targets and thresholds like in NYSE's and NASDAQ's prescriptive rules (confidential commenter).	TSX thanks the commenters for their input.
Another commenter generally supported a more flexible regulatory approach like AMEX rather than the rigid rules of NYSE and NASDAQ, noting that the majority of the investor protections proposed in Part X have evolved from negotiations among underwriters, issuers and institutional investors under the more flexible regime (Farris). This commenter suggests that prescriptive regulations stifle the evolution of deal structures and investor protection mechanisms.	TSX believes it is important to codify the practices that have developed abroad in order to provide a framework for the development of SPACs in Canada
One commenter noted that dilution as a result of founding securityholder's holdings should be boldly disclosed to investors, on the face page of the prospectus (Mackenzie).	TSX agrees that disclosure of product features is important. It is the issuer's responsibility to ensure that the prospectus contains full, true and plain disclosure, which may include information about dilution from founding securities.
Two comments were received with respect to the jurisdiction of incorporation requirement in the draft rule. One commenter suggested SPACs should not be limited to corporate entities, nor limited as to jurisdiction (BLG). Another comment suggested TSX publish a list of acceptable jurisdictions to prevent delays in seeking the Exchange's opinion on a jurisdiction and to reduce uncertainty for the SPAC (Lang).	SPACs that are not corporate entities will be considered by the Exchange on a discretionary basis. TSX does not propose to publish a list of acceptable jurisdictions because such list would be subject to constant change. Also, some jurisdictions are acceptable to TSX only after changes are made to the listed issuer. TSX is committed to working efficiently with issuers to reduce delays and uncertainty.
Three commenters noted potential confusion with the references to trust arrangements in the draft rule (Stikeman, Osler, Farris). It was noted that such trusts for SPAC proceeds may be confused with trusts that are separate legal entities and that the references should be clarified or changed to include escrow.	TSX agrees with these comments and has amended the drafting in throughout Part X to reflect this point.
A comment was received requesting clarification of whether SPAC employees can receive security based compensation that would be treated like founder securities (Stikeman)	Security based compensation plans are not permitted prior to completion of the qualifying acquisition. It is unlikely a SPAC will have full-time employees that are not founders prior to the qualifying acquisition. Security based compensation should not therefore be required, and the prohibition provides further investor protection from dilution.

Summarized Comments Received	*TSX Response*
A comment was received supporting placing the proceeds of the founding securityholders' founder securities in trust (Osler) and requesting clarification in the drafting.	The founding securityholders' generally make their investment in the SPAC prior to the IPO, such that the proceeds are not SPAC IPO proceeds and would not be subject to the escrow requirements in Part X. This approach is consistent with the SPAC rules in the US. Part X does not prohibit an agreement with the founder securityholders to place proceeds from the founder securities investment into escrow. Section 1032 has been amended to clarify this point.
One comment was received suggesting TSX analyze the need for SPACs in Canada (FAIR).	TSX has observed SPAC activity in the US and Europe, and the introduction of SPAC listing rules on both NYSE and NASDAQ. TSX rules governing SPACs contemplate a number of measures to bolster investor protection. The rule will not become final until the approval from the OSC has been received. The board of directors of TSX has determined that Part X is not contrary to public interest.
Comments were received suggesting that a 30-day comment period was not sufficient (Kenmar, Mackenzie, FAIR).	In accordance with the Protocol for Commission Oversight of Toronto Stock Exchange Rule Proposals between the Ontario Securities Commission and Toronto Stock Exchange, public interest rules are to be published for a 30-day comment period, although a longer period is permissible. The request for comments was published in the OSC Bulletin, and is on the OSC website as well as the TSX website. Further, TSX sent an email notification to its issuers, legal counsel, dealers, etc. advising of the rule's publication and comment period. This request for comments followed the protocol. We note that we accommodated several commenters who requested additional time to respond.

13.1.4 CDS Rule Amendment Notice – Technical Amendments to CDS Rules – Governance Concordance – Executive Committee

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

TECHNICAL AMENDMENTS TO CDS RULES

GOVERNANCE CONCORDANCE - EXECUTIVE COMMITTEE

NOTICE OF EFFECTIVE DATE

A. DESCRIPTION OF THE RULE AMENDMENT

Background

On November 1, 2006, The Canadian Depository for Securities Limited ("CDS Ltd.") undertook a corporate restructuring initiative that, *inter alia*, created CDS, a subsidiary for the clearing, settlement, and depository businesses. Subsequent to corporate restructuring, CDS Ltd. and CDS updated their governance practices. On February 2, 2007, the Board of Directors of CDS Ltd. approved amendments to the by-laws of CDS Ltd. and CDS as well as revising the terms of reference for the Board and committees thereof. Amendments to the by-laws and terms of reference were provided to the recognizing regulators (l'Autorité des marchés financiers, the Bank of Canada, and the Ontario Securities Commission) on February 14, 2007.

Specifically, the ability of the Executive Committee of the Board of Directors to act on behalf of the full Board of Directors between Board of Director meetings was removed by the revised terms of reference. As a practical matter, it is noted that, since the implementation of the original CDS Participant Rules in 1994, the Executive Committee has never exercised the authority granted by Rule 3.2.1.

While not impacting the proposed CDS Participant Rule amendments, it is noted that the Executive Committee was renamed the Governance/Human Resources Committee at the time of the governance updates.

Description of Proposed Amendments

The proposed amendments bring the CDS Participant Rules in line with the revised terms of reference. As the Executive Committee cannot act on the behalf of the full Board of Directors, references to the same in the CDS Participant Rules have been removed.

The CDS Participant Rules marked for the amendments may be accessed at the CDS website at:

http://www.cds.ca/cdsclearinghome.nsf/pages/-en-participantrules?open

B. REASONS FOR TECHNICAL CLASSIFICATION

The amendments proposed pursuant to this Notice are considered technical amendments as they are amendments required to ensure consistency or compliance with an existing rule, securities legislation of other regulatory requirement.

C. EFFECTIVE DATE OF THE RULE

Pursuant to Appendix A ("Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC") of the OSC Recognition and Designation Order, as amended 1 November, 2006, and Annexe A ("Protocole d'examen et d'approbation des Règles de Services de Dépôt et de Compensation CDS Inc. par l'Autorité des marchés financiers") of AMF Decision 2006-PDG-0180, made effective on 1 November, 2006, CDS has determined that these amendments will be effective on a date subsequently determined by CDS, and as stipulated in the related CDS Bulletin.

These amendments were reviewed and approved by the Board of Directors[1] of The Canadian Depository for Securities Limited on November 26, 2008.

D. QUESTIONS

Questions regarding this notice may be directed to:

[1] Pursuant to a unanimous shareholder agreement between CDS Ltd. and CDS, effective as of November 01, 2006, CDS Ltd., which acts under the supervision of its Board of Directors, assumed all rights, powers, and duties of the CDS Board of Directors.

Legal Department
CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9

Fax: 416-365-1984
e-mail: attention@cds.ca

TOOMAS MARLEY
Chief Legal Officer

13.1.5 MFDA Adjourns Hearing on the Merits in the Matter of Tony Tung-Yuan Lin

NEWS RELEASE
For immediate release

MFDA ADJOURNS HEARING ON THE MERITS
IN THE MATTER OF
TONY TUNG-YUAN LIN

December 15, 2008 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding in respect of Tony Tung-Yuan Lin by Notice of Hearing dated May 16, 2008.

The hearing of this matter on its merits commenced on Friday, December 12, 2008 in the Hearing Room located at the Wosk Centre for Dialogue, 580 West Hastings Street, Vancouver, British Columbia and was adjourned to a date, time and place to be announced.

A copy of the Notice of Hearing is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers. The MFDA regulates the operations, standards of practice and business conduct of its 154 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Shaun Devlin
Vice-President, Enforcement
416-943-4672 or sdevlin@mfda.ca

13.1.6 MFDA Adjourns Appearance in the Matter of Domenic Fanelli and Michele Torchia

NEWS RELEASE
For immediate release

MFDA ADJOURNS APPEARANCE IN THE MATTER OF DOMENIC FANELLI AND MICHELE TORCHIA

December 15, 2008 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding in respect of Domenic Fanelli and Michele Torchia by Notice of Hearing dated June 13, 2008.

The first appearance in this matter took place on August 12, 2008 at which time the Hearing Panel directed, among other things, that the next appearance in this proceeding would take place on December 17, 2008 at 10:00 a.m. (Eastern) in the Hearing Room located at the offices of the MFDA at 121 King Street West, Suite 1000, Toronto, Ontario, or as soon thereafter as the hearing can be held.

The December 17, 2008 appearance has been adjourned to a date, time and place to be announced.

A copy of the Notice of Hearing is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers. The MFDA regulates the operations, standards of practice and business conduct of its 154 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Shaun Devlin
Vice-President, Enforcement
416-943-4672 or sdevlin@mfda.ca

13.1.7 MFDA Adjourns Hearing on the Merits in the Matter of Marlene Legare

NEWS RELEASE
For immediate release

MFDA ADJOURNS HEARING ON THE MERITS IN THE MATTER OF MARLENE LEGARE

December 15, 2008 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding in respect of Marlene Legare by Notice of Hearing dated June 12, 2008.

The hearing of this matter on its merits commenced today in the Hearing Room located at the Wosk Centre for Dialogue, 580 West Hastings Street, Vancouver, British Columbia and was adjourned to a date, time and place to be announced.

The hearing is open to the public except as may be required for the protection of confidential matters.

A copy of the Notice of Hearing is available on the MFDA website at www.mfda.ca.

The Mutual Fund Dealers Association of Canada is the self-regulatory organization for Canadian mutual fund dealers. The MFDA regulates the operations, standards of practice and business conduct of its 154 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Yvette MacDougall
Hearings Coordinator
416-943-4606 or ymacdougall@mfda.ca

13.1.8 MFDA Adjourns Settlement Hearing regarding Peter Bruno Lamarche

NEWS RELEASE
For immediate release

MFDA ADJOURNS SETTLEMENT HEARING REGARDING PETER BRUNO LAMARCHE

December 15, 2008 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") announced on November 20, 2008 that it had issued a Notice of Settlement Hearing regarding the presentation, review and consideration of a proposed settlement agreement by a Hearing Panel of the Central Regional Council.

The settlement hearing, originally scheduled to commence at 10:00 a.m. (Eastern) on Tuesday, December 16, 2008 in the Hearing Room located at 121 King Street West, Suite 1000, Toronto, Ontario, has been adjourned to a date, time and place to be announced. The settlement agreement will be between staff of the MFDA and Peter Lamarche and involves matters for which Mr. Lamarche may be disciplined by the Regional Council pursuant to MFDA By-laws.

The hearing will be open to the public except as may be required for the protection of confidential matters. A copy of the Notice of Settlement Hearing is available on the MFDA website at www.mfda.ca.

The Mutual Fund Dealers Association of Canada is the self-regulatory organization for Canadian mutual fund dealers. The MFDA regulates the operations; standards of practice and business conduct of its 154 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Yvette MacDougall
Hearings Coordinator
416-943-4606 or ymacdougall@mfda.ca

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Chapter 25

Other Information

25.1 Approvals

25.1.1 AlphaNorth Asset Management – s. 213(3)(b) of the LTCA

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act – application by manager, with no prior track record acting as trustee, for approval to act as trustee of pooled funds and future pooled funds to be established and managed by the applicant and offered pursuant to a prospectus exemption.

Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., s. 213(3)(b).

December 12, 2008

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Attention: Elise Lenser

Dear Sirs/Medames:

Re: AlphaNorth Asset Management (the "Applicant")
Application pursuant to clause 213(3)(b) of the Loan and Trust Corporations Act (Ontario) for approval to act as trustee
Application No. 2008/0782

Further to your application dated November 6, 2008 (the "Application") filed on behalf of the Applicant, and based on the facts set out in the Application and the representation by the Applicant that the assets of AlphaNorth Large Cap Fund and such other funds as the Applicant may establish from time to time, will be held in the custody of a trust company incorporated and licensed or registered under the laws of Canada or a jurisdiction, or a bank listed in Schedule I, II or III of the Bank Act (Canada), or an affiliate of such bank or trust company, the Ontario Securities Commission (the "Commission") makes the following order.

Pursuant to the authority conferred on the Commission in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of AlphaNorth Large Cap Fund and such other funds which may be established and managed by the Applicant from time to time, the securities of which will be offered pursuant to a prospectus exemption.

Yours truly,

"Wendell S. Wigle"

"Carol S. Perry"

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