

The Ontario Securities Commission

# OSC Bulletin

July 10, 2009

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

**The Ontario Securities Commission**

Cadillac Fairview Tower  
Suite 1903, Box 55  
20 Queen Street West  
Toronto, Ontario  
M5H 3S8

416-593-8314 or Toll Free 1-877-785-1555

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2075 Kennedy Road  
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416-609-3800 or 1-800-387-5164

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Fax: 416-595-8940

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Fax: 416-593-8240

- Registrant Regulation:

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General Counsel's Office:

Fax: 416-593-3681

Office of the Secretary:

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## Chapter 1

# Notices / News Releases

### 1.1 Notices

#### 1.1.1 Current Proceedings Before The Ontario Securities Commission

**JULY 10, 2009**

#### **CURRENT PROCEEDINGS**

#### **BEFORE**

#### **ONTARIO SECURITIES COMMISSION**

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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  
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Paulette L. Kennedy	—	PLK
David L. Knight, FCA	—	DLK
Patrick J. LeSage	—	PJL
Carol S. Perry	—	CSP

### SCHEDULED OSC HEARINGS

July 20, 2009	<b>Julius Caesar Phillip Vitug</b>
10:00 a.m.	s. 21.7
	J. Feasby in attendance for Staff
	Panel: LER/MGC/PLK
July 21, 2009	<b>Lehman Cohort Global Group Inc., Anton Schnedl, Richard Unzer, Alexander Grundmann and Henry Hehlsinger</b>
2:30 p.m.	s. 127
	H. Craig in attendance for Staff
	Panel: DLK
July 22 2009	<b>Andrew Keith Lech</b>
10:00 a.m.	s. 127(10)
	J. Feasby in attendance for Staff
	Panel: LER
July 23, 2009	<b>W.J.N. Holdings Inc., MSI Canada Inc., 360 Degree Financial Services Inc., Dominion Investments Club Inc., Leveragepro Inc., Prosporex Investment Club Inc., Prosporex Investments Inc., Prosporex Ltd., Prosporex Inc., Networth Financial Group Inc., Networth Marketing Solutions, Dominion Royal Credit Union, Dominion Royal Financial Inc., Wilton John Neale, Ezra Douse, Albert James, Elnonieth "Noni" James, David Whitely, Carlton Ivanhoe Lewis, Mark Anthony Scott, Sedwick Hill, Trudy Huynh, Dorlan Francis, Vincent Arthur, Christian Yeboah, Azucena Garcia and Angela Curry</b>
10:00 a.m.	s. 127
	H. Daley in attendance for Staff
	Panel: LER

Notices / News Releases

July 23, 2009 2:00 p.m.	<b>Teodosio Vincent Pangia</b> s. 127 J. Feasby in attendance for Staff Panel: LER	August 18, 2009 2:30 p.m.	<b>Paul Iannicca</b> s. 127 H. Craig in attendance for Staff Panel: TBA
July 27, July 30-31; August 5-7, August 11-14, August 21, 2009 9:00 a.m. August 4, 2009 2:00 p.m.	<b>Shane Suman and Monie Rahman</b> s. 127 and 127(1) C. Price in attendance for Staff Panel: JEAT/PLK	August 20, 2009 10:00 a.m.	<b>Gold-Quest International, Health and Harmony, Iain Buchanan and Lisa Buchanan</b> s. 127 H. Craig in attendance for Staff Panel: TBA
August 10, 2009 August 17, 2009 1:00 p.m.		August 20, 2009 10:00 a.m.	<b>Gold-Quest International, 1725587 Ontario Inc. carrying on business as Health and Harmony, Harmony Club Inc., Donald Iain Buchanan, Lisa Buchanan and Sandra Gale</b> s.127 H. Craig in attendance for Staff Panel: TBA
July 29, 2009 9:00 a.m.	<b>Goldbridge Financial Inc., Wesley Wayne Weber and Shawn C. Lesperance</b> s. 127 J. Feasby in attendance for Staff Panel: JEAT	August 31, 2009 10:00 a.m.	<b>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.</b> s. 127 and 127.1 Y. Chisholm in attendance for Staff Panel: JEAT/DLK/CSP
July 29, 2009 10:00 a.m.	<b>Lyndz Pharmaceuticals Inc., Lyndz Pharma Ltd., James Marketing Ltd., Michael Eatch and Rickey McKenzie</b> s. 127(1) and (5) J. Feasby in attendance for Staff Panel: JEAT	September 3, 4, and 9, 2009 9:30 a.m.	<b>MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric</b> s. 127 and 127(1) D. Ferris in attendance for Staff Panel: PJJ/CSP
August 10-17; 19-21, 2009 10:00 a.m.	<b>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</b> s. 127 S. Kushneryk in attendance for Staff Panel: TBA	September 8, 2009 10:00 a.m.	

September 3, 2009	<b>Brilliante Brasilcan Resources Corp., York Rio Resources Inc., Brian W. Aidelman, Jason Georgiadis, Richard Taylor and Victor York</b>	September 11, 2009	<b>M P Global Financial Ltd., and Joe Feng Deng</b>
10:00 a.m.	s. 127 S. Horgan in attendance for Staff Panel: TBA	10:00 a.m.	s. 127(1) M. Britton in attendance for Staff Panel: JEAT
September 8-11, 2009	<b>Imagin Diagnostic Centres Inc., Patrick J. Rooney, Cynthia Jordan, Allan McCaffrey, Michael Shumacher, Christopher Smith, Melvyn Harris and Michael Zelyony</b>	September 16, 2009	<b>Sextant Capital Management Inc., Sextant Capital GP Inc., Sextant Strategic Opportunities Hedge Fund L.P., Otto Spork, Robert Levack and Natalie Spork</b>
10:00 a.m.	s. 127 and 127.1 J. Feasby in attendance for Staff Panel: MGC/MCH	10:00 a.m.	s. 127 S. Kushneryk in attendance for Staff Panel: JEAT
September 9, 2009	<b>Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp., and Weizhen Tang</b>	September 21-25, 2009	<b>Swift Trade Inc. and Peter Beck</b>
10:00 a.m.	s. 127 and 127.1 M. Britton in attendance for Staff Panel: LER	10:00 a.m.	s. 127 S. Horgan in attendance for Staff Panel: TBA
September 10, 2009	<b>Shallow Oil &amp; Gas Inc., Eric O'Brien, Abel Da Silva, Gurdip Singh Gahunia aka Michael Gahunia and Abraham Herbert Grossman aka Allen Grossman</b>	September 21-28, September 30 – October 2, 2009	<b>Goldpoint Resources Corporation, Lino Novielli, Brian Moloney, Evanna Tomeli, Robert Black, Richard Wylie and Jack Anderson</b>
10:00 a.m.	s. 127(7) and 127(8) M. Boswell in attendance for Staff Panel: DLK	10:00 a.m.	s. 127(1) and 127(5) M. Boswell in attendance for Staff Panel: TBA
September 10, 2009	<b>Abel Da Silva</b>	September 29, 2009	<b>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.</b>
10:30 a.m.	s. 127 M. Boswell in attendance for Staff Panel: DLK	2:30 p.m.	s. 127(5) K. Daniels/A. Sonnen in attendance for Staff Panel: LER

September 29, 2009 2:30 p.m.	<b>Paladin Capital Markets Inc., John David Culp and Claudio Fernando Maya</b> s. 127 C. Price in attendance for Staff Panel: TBA	October 19 – November 10; November 12-13, 2009 10:00 a.m.	<b>Irwin Boock, Stanton Defreitas, 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</b> s. 127 and 127.1 H. Craig in attendance for Staff Panel: TBA
September 30 – October 23, 2009 10:00a.m.	<b>Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited</b> s. 127 M. Britton in attendance for Staff Panel: TBA	October 20, 2009 10:00 a.m.	<b>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</b> s. 127 and 127.1 Y. Chisholm in attendance for Staff Panel: TBA
October 6, 2009 2:30 p.m.	<b>Nest Acquisitions and Mergers and Caroline Frayssignes</b> s. 127(1) and 127(8) C. Price in attendance for Staff Panel: TBA	October 20, 2009 10:00 a.m.	<b>Maple Leaf Investment Fund Corp. and Joe Henry Chau</b> s. 127 A. Sonnen in attendance for Staff Panel: TBA
October 6, 2009 2:30 p.m.	<b>IMG International Inc., Investors Marketing Group International Inc., and Michael Smith</b> s.127 C. Price in attendance for Staff Panel: TBA	November 16, 2009 10:00 a.m.	
October 8, 2009 10:00 a.m.	<b>Global Energy Group, Ltd. and New Gold Limited Partnerships</b> s. 127 H. Craig in attendance for Staff Panel: DLK		
October 14, 2009 10:00 a.m.	<b>Axcess Automation LLC, Axcess Management, LLC, Axcess Fund, L.P., Gordon Alan Driver and David Rutledge</b> s. 127 M. Adams in attendance for Staff Panel: TBA		



November 16 – December 11, 2009	<b>Sulja Bros. Building Supplies, Ltd. (Nevada), Sulja Bros. Building Supplies Ltd., Kore International Management Inc., Petar Vucicevich and Andrew DeVries</b>	TBA	<b>Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)</b>
10:00 a.m.	s. 127 and 127.1  M. Britton in attendance for Staff  Panel: TBA		s. 127 and 127.1  D. Ferris in attendance for Staff  Panel: TBA
January 11, 2010	<b>Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton</b>	TBA	<b>Merax Resource Management Ltd. carrying on business as Crown Capital Partners, Richard Mellon and Alex Elin</b>
10:00 a.m.	s. 127  H. Craig in attendance for Staff  Panel: TBA		s. 127  H. Craig in attendance for Staff  Panel: TBA
TBA	<b>Yama Abdullah Yaqeen</b>	TBA	<b>Gregory Galanis</b>
	s. 8(2)  J. Superina in attendance for Staff  Panel: TBA		s. 127  P. Foy in attendance for Staff  Panel: TBA
TBA	<b>Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell</b>	TBA	<b>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</b>
	s. 127  J. Waechter in attendance for Staff  Panel: TBA		s. 127  C. Price in attendance for Staff  Panel: TBA
TBA	<b>Frank Dunn, Douglas Beatty, Michael Gollogly</b>	TBA	<b>Biovail Corporation, Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk and Kenneth G. Howling</b>
	s. 127  K. Daniels in attendance for Staff  Panel: TBA		s. 127(1) and 127.1  J. Superina, A. Clark in attendance for Staff  Panel: TBA

TBA            **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

TBA            **FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun**

s. 127

A. Sonnen in attendance for Staff

Panel: LER

TBA            **Berkshire Capital Limited, GP Berkshire Capital Limited, Panama Opportunity Fund and Ernest Anderson**

s. 127

E. Cole in attendance for Staff

Panel: TBA

TBA            **Tulsiani Investments Inc. and Sunil Tulsiani**

s. 127

A.Sonnen in attendance for Staff

Panel: TBA

TBA            **Hollinger Inc., Conrad M. Black, F. David Radler, John A. Boulton and Peter Y. Atkinson**

s. 127

J. Superina in attendance for Staff

Panel: TBA

TBA            **Uranium308 Resources Inc., Uranium308 Resources PLC., Michael Friedman, George Schwartz, Peter Robinson, Alan Marsh Shuman and Innovative Gifting Inc.**

s. 127

M. Boswell in attendance for Staff

Panel: TBA

**ADJOURNED SINE DIE**

**Global Privacy Management Trust and Robert Cranston**

**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**

**Global Petroleum Strategies, LLC, Petroleum Unlimited, LLC, Aurora Escrow Services, LLC, John Andrew, Vincent Cataldi, Charlotte Chambers, Carl Dylan, James Eulo, Richard Garcia, Troy Gray, Jim Kaufman, Timothy Kaufman, Chris Harris, Morgan Kimmel, Roger A. Kimmel, Jr., Erik Luna, Mitch Malizio, Adam Mills, Jenna Pelusio, Rosemary Salveggi, Stephen J. Shore and Chris Spinler**

**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**

1.1.2 OSC Staff Notice 11-739 (Revised) – Policy Reformulation Table of Concordance and List of New Instruments

OSC STAFF NOTICE 11-739 (REVISED)

POLICY REFORMULATION TABLE OF CONCORDANCE AND LIST OF NEW INSTRUMENTS

The following revisions have been made to the Table of Concordance and List of New Instruments. A full version of the Table of Concordance and List of New Instruments as of June 30, 2009 has been posted to the OSC Website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca) under Policy and Regulation/Status Summaries.

Table of Concordance

Item Key
The third digit of each instrument represents the following: 1-National/Multilateral Instrument; 2-National/Multilateral Policy; 3-CSA Notice; 4-CSA Concept Release; 5-Local Rule; 6-Local Policy; 7-Local Notice; 8-Implementing Instrument; 9-Miscellaneous

Reformulation

Instrument	Title	Status
	None	

New Instruments

11-739	Policy Reformulation Table of Concordance and List of New Instruments (Revised)	<b>Published April 3, 2009</b>
33-310	Proposed NI 31-103 <i>Registration Requirements</i> and Proposed Companion Policy 31-103CP <i>Registration Requirements</i>	<b>Published April 3, 2009</b>
11-762	Request for Comments Regarding Statement of Priorities for Fiscal Year Ending March 31, 2010 (Revised)	<b>Published May 1, 2009</b>
11-312	Notice of Correction – CSA Staff Notice 11-312 National Numbering System	<b>Published May 1, 2009</b>
52-324	Issues relating to a changeover to International Financial Reporting	<b>Published May 22, 2009</b>
45-106	Request for Comment on Proposed Amendments to NI 45-106 <i>Prospectus and Registration Exemptions</i>	<b>Published May 22, 2009</b>
45-102	Request for Comment on Proposed Amendments to NI 45-102 <i>Resale of Securities</i>	<b>Published May 22, 2009</b>
45-501	Request for Comment on Proposed Amendments to OSC Rule 45-501 <i>Ontario Prospectus and Registration Exemptions</i>	<b>Published May 22, 2009</b>
13-502	Notice of Ministerial Approval – Revocation and Replacement of OSC Rule 13-502 <i>Fees</i>	<b>In effect June 1, 2009</b>
13-503	Notice of Ministerial Approval – Revocation and Replacement of OSC Rule 13-503 <i>Fees (Commodity Futures Act)</i>	<b>In effect June 1, 2009</b>
21-309	Information Processor For Exchange-Traded Securities other than Options	<b>Published June 5, 2009</b>
31-311	Proposed NI 31-103 <i>Registration Requirements and Exemptions – Transition into the new registration regime</i>	<b>Published June 12, 2009</b>
81-101	Proposed Amendments to NI 81-101 <i>Mutual Fund Prospectus Disclosure</i> , Form 81-101F1 and 81-101F2 and Companion Policy CP <i>Mutual Fund Prospectus Disclosure</i>	<b>Published June 19, 2009</b>
81-102	Proposed Amendments to NI 81-102 <i>Mutual Funds and Companion Policy 81-102CP Mutual Funds</i>	<b>Published June 19, 2009</b>

**New Instruments**

81-106	Proposed Amendments to National Instrument 81-106 <i>Investment Fund Continuous Disclosure</i> and Companion Policy 81-106CP <i>Investment Fund Continuous Disclosure</i>	<b><i>Published June 19, 2009</i></b>
13-101	Proposed Amendments to National Instrument 13-101 <i>System for Electronic Document Analysis and Retrieval (SEDAR)</i>	<b><i>Published June 19, 2009</i></b>
13-315	Securities Regulatory Authority Closed Dates 2009 (Revised)	<b><i>Published June 19, 2009</i></b>
11-753	Statement of Priorities for Financial Year to End March 31, 2010 (Revised)	<b><i>Published June 26, 2009</i></b>
21-310	Information Processor for Corporate Debt Securities	<b><i>Published June 26, 2009</i></b>

For further information, contact:

Darlene Watson  
Project Coordinator  
Ontario Securities Commission  
416-593-8148

July 10, 2009

1.4 Notices from the Office of the Secretary

1.4.1 M P Global Financial Ltd. and Joe Feng Deng

**FOR IMMEDIATE RELEASE**  
July 2, 2009

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

**AND**

**IN THE MATTER OF  
M P GLOBAL FINANCIAL LTD. AND  
JOE FENG DENG**

**TORONTO** – The Commission issued an Order in the above named matter.

A copy of the Order dated June 29, 2009 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

For media inquiries: Wendy Dey  
Director, Communications  
& Public Affairs  
416-593-8120

Laurie Gillett  
Manager, Public Affairs  
416-595-8913

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

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

1.4.2 Factorcorp Inc. et al.

**FOR IMMEDIATE RELEASE**  
July 3, 2009

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

**AND**

**IN THE MATTER OF  
FACTORCORP INC.,  
FACTORCORP FINANCIAL INC., AND  
MARK IVAN TWERDUN**

**TORONTO** – The Commission issued an Order which provides that this matter is adjourned until October 5, 2009 at 10:00 a.m., or such other date as determined by the Office of the Secretary, for the purpose of having a pre-hearing conference on that date.

A copy of the Order dated June 30, 2009 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
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SECRETARY

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& Public Affairs  
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Manager, Public Affairs  
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Carolyn Shaw-Rimington  
Assistant Manager,  
Public Affairs  
416-593-2361

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1-877-785-1555 (Toll Free)

**1.4.3 Lyndz Pharmaceuticals Inc. et al.**

**FOR IMMEDIATE RELEASE  
July 6, 2009**

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

**AND**

**IN THE MATTER OF  
LYNDZ PHARMACEUTICALS INC.,  
LYNDZ PHARMA LTD., JAMES MARKETING LTD.,  
MICHAEL EATCH AND RICKEY MCKENZIE**

**TORONTO** – Following a hearing held today, the Commission issued an Order which provides that (1) pursuant to s. 127(8) of the Act, the Temporary Order is continued to July 30, 2009; and (2) this matter is adjourned to July 29, 2009 at 10:00 am.

A copy of the Order dated July 6, 2009 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

For media inquiries: Wendy Dey  
Director, Communications  
& Public Affairs  
416-593-8120

Laurie Gillett  
Manager, Public Affairs  
416-595-8913

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

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

**1.4.4 Tulsiani Investments Inc. and Sunil Tulsiani**

**FOR IMMEDIATE RELEASE  
July 6, 2009**

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

**AND**

**IN THE MATTER OF  
TULSIANI INVESTMENTS INC. AND  
SUNIL TULSIANI**

**TORONTO** – Further to the Notice from the Office of the Secretary dated June 29, 2009 in the above matter, please be advised that the hearing scheduled for July 9, 2009 will be held at 2:00 p.m. in Hearing Room A at 20 Queen Street West, 17th floor.

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

For media inquiries: Wendy Dey  
Director, Communications  
& Public Affairs  
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Laurie Gillett  
Manager, Public Affairs  
416-595-8913

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

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

## Chapter 2

# Decisions, Orders and Rulings

### 2.1 Decisions

#### 2.1.1 Bank of Nova Scotia and Scotiabank Tier 1 Trust

##### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption granted to a trust from continuous disclosure requirements under National Instrument 51-102 Continuous Disclosure Obligations and certification obligations under National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, subject to certain conditions – Trust established for purpose of effecting offerings of trust securities in order to provide bank with a cost-effective means of raising capital for Canadian bank regulatory purposes – Trust became reporting issuer upon filing a prospectus offering trust securities – Without relief, trust would have to comply with continuous disclosure and certification requirements – Given the nature, terms and conditions of the trust securities and various covenants of the bank in connection with the prospectus offering, the meaningful information to public holders of trust securities is information with respect to the bank, rather than the trust.

June 30, 2009

**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  
THE BANK OF NOVA SCOTIA (the "Bank")  
AND SCOTIABANK TIER 1 TRUST  
(the "Trust" and, together with the Bank, the "Filers")**

**DECISION**

##### Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision (the "**Exemption Sought**") under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") that the requirements contained in the Legislation to:

- (a) (i) file interim financial statements and audited annual financial statements and deliver same to the security holders of the Trust pursuant to sections 4.1, 4.3 and 4.6 of National Instrument 51-102 *Continuous Disclosure Obligations* ("**NI 51-102**"),
- (ii) file interim and annual management's discussion and analysis ("**MD&A**") and deliver same to the security holders of the Trust pursuant to sections 5.1 and 5.6 of NI 51-102,
- (iii) file an annual information form pursuant to section 6.1 of NI 51-102, and
- (iv) comply with any other requirements of NI 51-102
- (collectively defined as the "**Continuous Disclosure Obligations**"); and
- (b) file interim and annual certificates (collectively the "**Officers' Certificates**") pursuant to Parts 4, 5 and 6 of National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* ("**NI 52-109**") (the "**Certification Obligations**")

shall not apply to the Trust, subject to certain conditions.

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

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in each of the provinces and territories of Canada other than Ontario.

##### Interpretation

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

In this decision,

**"Bank Act"** means the *Bank Act* (Canada);

**"Prospectus"** means the final short form prospectus of the Bank and the Trust dated April 30, 2009 in respect of the Offering (as defined below);

“**Tax Act**” means the *Income Tax Act* (Canada);

### Representations

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

#### The Bank

1. The Bank is a Schedule 1 chartered bank subject to the provisions of the Bank Act. The corporate headquarters and executive offices of the Bank are located at Scotia Plaza, 44 King Street West, Toronto, Ontario M5H 1H1.
2. The authorized share capital of the Bank consists of an unlimited number of: (i) common shares without nominal or par value (the “**Bank Common Shares**”); and (ii) preferred shares without nominal or par value (the “**Bank Preferred Shares**”).
3. The Bank Common Shares are listed and posted for trading on the Toronto Stock Exchange and the New York Stock Exchange.
4. The Bank is a reporting issuer, or the equivalent, in each province and territory of Canada that provides for a reporting issuer regime (each a “**Reporting Jurisdiction**” and, collectively, the “**Reporting Jurisdictions**”) and is not, to the best of its knowledge, in default of any requirement of the securities legislation in the Reporting Jurisdictions.

#### The Trust

5. The Trust is a trust established under the laws of Ontario by Computershare Trust Company of Canada, as trustee (the “**Trustee**”) pursuant to a declaration of trust dated as of August 19, 2008, as amended and restated on May 7, 2009 and as it may be further amended, restated and supplemented from time to time (the “**Declaration of Trust**”).
6. The Trust's head and registered office is located at Scotia Plaza, 44 King Street West, Toronto, Ontario M5H 1H1. The Trust has a financial year-end of December 31.
7. The Trust completed an initial public offering (the “**Offering**”) of 7.802% Scotiabank Tier 1 Securities – Series 2009-1 Due June 30, 2108 (the “**Scotia BaTS III Series 2009-1**”) in each Reporting Jurisdiction on May 7, 2009 and may, from time to time, issue further series of debt securities (“**Scotia BaTS III**”). As a result of the Offering, the capital of the Trust consists of: (i) Scotia BaTS III Series 2009-1; and (ii) voting trust units (the “**Voting Trust Units**”). All of the outstanding Voting Trust Units are held, directly or indirectly, by the Bank.

8. As a result of having obtained a receipt for the Prospectus in respect of the Offering, the Trust is a reporting issuer, or the equivalent, in each of the Reporting Jurisdictions. The Trust is not, to the best of its knowledge, in default of any requirement of the securities legislation in the Reporting Jurisdictions.
9. The Trust is a single purpose vehicle established for the purpose of effecting offerings of securities, including Scotia BaTS III Series 2009-1 and Voting Trust Units (collectively, the “**Trust Securities**”), in order to provide the Bank with a cost-effective means of raising capital for Canadian bank regulatory purposes by means of (i) creating and selling the Trust Securities; and (ii) acquiring and holding assets, which will consist primarily of a senior unsecured deposit note of the Bank (the “**Bank Deposit Note**”) and other eligible assets as specified in the Prospectus (collectively, the “**Trust Assets**”). The Trust Assets will generate income for the payment of principal, interest, the redemption price, if any, and any other amounts, in respect of the Trust's debt securities, including the Scotia BaTS III Series 2009-1. The Trust will not carry on any operating activity other than in connection with offerings of Trust Securities and in connection with the Trust Assets.

#### Scotia BaTS III Series 2009-1

10. From the date of issue until June 30, 2108 the Trust will pay interest on the Scotia BaTS III Series 2009-1 in equal (subject to the reset of the interest rate) semi-annual instalments on June 30 and December 31 of each year (each an “**Interest Payment Date**”). Starting on June 30, 2019, and on every fifth anniversary of such date thereafter until June 30, 2104 (each such date, an “**Interest Reset Date**”), the interest rate on the Scotia BaTS III Series 2009-1 will be reset at an interest rate per annum equal to the Government of Canada Yield (as defined in the Prospectus) plus 7.05%.
11. Under an assignment, set-off and trust agreement entered into among the Bank, the Trust and BNY Trust Company of Canada as Indenture Trustee, dated May 7, 2009 (the “**Assignment and Set-Off Agreement**”), the Bank has agreed, for the benefit of the holders of Scotia BaTS III Series 2009-1, that if (i) the Bank elects, at its sole option, prior to the commencement of the interest period ending on the day immediately preceding the relevant Interest Payment Date, that holders of Scotia BaTS III Series 2009-1 invest interest thereon in a new series of Bank Preferred Shares (the “**Bank Deferral Preferred Shares**”); or (ii) for whatever reason, interest is not paid in full in cash on the Scotia BaTS III Series 2009-1 on any Interest Payment Date (in either case, an “**Other Deferral Event**”), the Bank will not declare dividends of any kind on the Bank Preferred Shares or, if no Bank Preferred Shares are then outstanding, on the



Bank Common Shares (the “**Dividend Restricted Shares**”) until the sixth month following the relevant Interest Payment Date (the “**Dividend Stopper Undertaking**”). Accordingly, it is in the interest of the Bank to ensure, to the extent within its control, that the Trust complies with the obligation to pay interest on each Interest Payment Date so as to avoid triggering the Dividend Stopper Undertaking.

12. On each Interest Payment Date on which a Deferral Event (as defined below) has occurred, holders of Scotia BaTS III Series 2009-1 will be required to invest interest paid thereon in a new series of Bank Deferral Preferred Shares. A “**Deferral Event**” means: (i) an Other Deferral Event; or (ii) the Bank has failed to declare cash dividends on all of the outstanding Bank Preferred Shares or, failing any Bank Preferred Shares being outstanding, on all of the outstanding Bank Common Shares, in accordance with its ordinary dividend practice in effect from time to time, in each case in the last 90 days preceding the commencement of the interest period for the Scotia BaTS III Series 2009-1 ending on the day preceding the relevant Interest Payment Date.
13. The Bank Deferral Preferred Shares will pay quarterly non-cumulative preferential cash dividends, as and when declared by the Board of Directors, subject to the provisions of the Bank Act, at the Perpetual Preferred Share Rate (as defined in the Prospectus), subject to any applicable withholding tax.
14. Prior to the issuance of any Bank Deferral Preferred Shares in respect of a Deferral Event, the Bank will not, without the approval of the holders of Scotia BaTS III Series 2009-1, delete or vary any terms attaching to the Bank Deferral Preferred Shares other than any amendments relating to the Bank Preferred Shares as a class.
15. The Scotia BaTS III Series 2009-1 will be automatically exchanged, without the consent of the holders thereof, for a series of newly-issued Bank Preferred Shares (the “**Bank Preferred Shares R**”) if: (i) an application for a winding-up order in respect of the Bank pursuant to the *Winding-up and Restructuring Act* (Canada) is filed by the Attorney General of Canada or a winding-up order in respect of the Bank pursuant to that Act is granted by a court; (ii) the Superintendent advises the Bank in writing that the Superintendent has taken control of the Bank or its assets pursuant to the Bank Act; (iii) the Superintendent advises the Bank in writing that the Superintendent is of the opinion that the Bank has a risk-based Tier 1 Capital ratio of less than 5.0% or a risk-based Total Capital ratio of less than 8.0%; (iv) the board of directors of the Bank advises the Superintendent in writing that the Bank has a risk-based Tier 1 Capital ratio of less than 5.0% or a risk-based Total Capital ratio of less than 8.0%; or (v) the Superintendent directs the Bank pursuant to the Bank Act to increase its capital or provide additional liquidity and the Bank elects to cause the Automatic Exchange as a consequence of the issuance of such direction or the Bank does not comply with such direction to the satisfaction of the Superintendent within the time specified therein (the “**Automatic Exchange**”).
16. Under the terms of a share exchange agreement between the Bank, the Trust and BNY Trust Company of Canada as Exchange Trustee (the “**Share Exchange Agreement**”), the Bank has granted to the Exchange Trustee for the benefit of the holders of the Scotia BaTS III Series 2009-1 the right to exchange such Scotia BaTS III Series 2009-1 for Bank Preferred Shares Series R upon an Automatic Exchange and the Exchange Trustee, on behalf of the holders of Scotia BaTS III Series 2009-1 has granted to the Bank the right to exchange such Scotia BaTS III Series 2009-1 for Bank Preferred Shares Series R upon an Automatic Exchange. Pursuant to the Share Exchange Agreement, the Bank has covenanted to take or refrain from taking certain actions so as to ensure that holders of Scotia BaTS III Series 2009-1 will receive the benefit of the Automatic Exchange, including obtaining the requisite approval of holders of the Scotia BaTS III Series 2009-1 to any amendment to the provisions of the Bank Preferred Shares Series R (other than any amendments relating to the Bank Preferred Shares as a class).
17. The Bank Preferred Shares Series R will pay quarterly non-cumulative preferential cash dividends, as and when declared by the Board of Directors, subject to the provisions of the Bank Act, at the Perpetual Preferred Share Rate (as defined in the Prospectus), subject to any applicable withholding tax.
18. If the Scotia BaTS III Series 2009-1 have not been exchanged for Bank Preferred Shares Series R pursuant to the Automatic Exchange, the Bank will not, without the approval of the holders of the Scotia BaTS III Series 2009-1, delete or vary any terms attaching to the Bank Preferred Shares Series R other than any amendments relating to the Bank Preferred Shares as a class.
19. The Scotia BaTS III Series 2009-1 have been structured to achieve Tier 1 regulatory capital for purposes of the guidelines of the Superintendent.
20. The Trust may, subject to approval of the Office of the Superintendent of Financial Institutions Canada (“**Superintendent Approval**”), at its option, on or after June 30, 2014, on giving not more than 60 nor less than 30 days’ notice, redeem the Scotia BaTS III Series 2009-1, in

- whole or in part. The redemption price per \$1,000 principal amount of Scotia BaTS III Series 2009-1 redeemed on any day that is not an Interest Reset Date will be equal to the greater of par and the Canada Yield Price, and the redemption price per \$1,000 principal amount of Scotia BaTS III Series 2009-1 redeemed on any Interest Reset Date will be par together, in either case, with accrued and unpaid interest to but excluding the date fixed for redemption, subject to any applicable withholding tax (the "**Redemption Price**").
21. Upon the occurrence of certain regulatory or tax events affecting the Bank or the Trust, the Trust may, at its option, without the consent of holders of the Scotia BaTS III Series 2009-1 but subject to Superintendent Approval, on giving not more than 60 nor less than 30 days' notice to the holders of the Scotia BaTS III Series 2009-1, redeem all but not less than all of Scotia BaTS III Series 2009-1 at a price equal to par plus accrued and unpaid interest.
  22. The Scotia BaTS III Series 2009-1 are direct unsecured obligations of the Trust, ranking at least equally with other subordinated indebtedness of the Trust from time to time issued and outstanding. In the event of the insolvency or winding-up of the Trust, the indebtedness evidenced by the Scotia BaTS III Series 2009-1 issued by the Trust will be subordinate in right of payment to the prior payment in full of all other liabilities of the Trust except liabilities which by their terms rank in right of equal payment with or subordinate to indebtedness evidenced by such Scotia BaTS III Series 2009-1.
  23. The Bank will not assign or otherwise transfer its obligations under the Share Exchange Agreement or the Assignment and Set-Off Agreement, except in the case of a merger, consolidation, amalgamation or reorganization or a sale of substantially all of the assets of the Bank.
  24. The Bank has covenanted that it will maintain direct or indirect ownership of 100% of the outstanding Voting Trust Units.
  25. As long as any Scotia BaTS III Series 2009-1 are outstanding, and are held by any person other than the Bank or its affiliates, the Trust may only be terminated in certain limited circumstances with the approval of the Bank as the holder of the Voting Trust Units and with Superintendent Approval. However, the Bank will not approve the termination of the Trust unless the Trust has sufficient funds to pay the Redemption Price. The Bank will not create or issue any Bank Preferred Shares which, in the event of insolvency or winding-up of the Bank, would rank in right of payment in priority to the Bank Preferred Shares Series R or the Bank Deferral Preferred Shares.
  26. The Scotia BaTS III Series 2009-1 are non-voting except in limited circumstances set out in the Declaration of Trust. The Voting Trust Units entitle the holder thereof (i.e. the Bank or an affiliate of the Bank) to vote in respect of certain matters regarding the Trust.
  27. Pursuant to the administration agreement dated August 19, 2008, as amended and restated, entered into between the Trust and the Bank, the Trustee has delegated to the Bank certain of its obligations in relation to the administration of the Trust. The Bank, as administrative agent, will provide advice and counsel with respect to the administration of the day-to-day operations of the Trust and other matters as may be requested by the Trustee from time to time.
  28. The Trust may, from time to time, issue further series of Trust Securities, the proceeds of which would be used to acquire additional Trust Assets.
  29. Because of the terms of the Trust Securities, the Share Exchange Agreement, the Assignment and Set-Off Agreement and the various covenants of the Bank, information about the affairs and financial performance of the Bank, as opposed to that of the Trust, is meaningful to holders of Scotia BaTS III Series 2009-1. The Bank's filings will provide holders of Scotia BaTS III Series 2009-1 and the general investing public with all information required in order to make an informed decision relating to an investment in Scotia BaTS III Series 2009-1 and any other Trust Securities that the Trust may issue from time to time. Information regarding the Bank is relevant both to an investor's expectation of being paid the principal, interest and Redemption Price, if any, and any other amount on the Scotia BaTS III Series 2009-1 when due and payable.

#### 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:

1. in respect of the Continuous Disclosure Obligations:
  - (a) the Bank remains a reporting issuer under the Legislation and has filed all continuous disclosure documents that it is required to file by the Legislation;
  - (b) the Bank files with the securities regulatory authority or regulator in each Reporting Jurisdiction, in electronic format under the Trust's SEDAR profile, the continuous disclosure documents

- listed in paragraph 1(a), above, of this Decision, at the same time as they are required under the Legislation to be filed by the Bank;
- (c) the Trust pays all filing fees that would otherwise be payable by the Trust in connection with the filing of the continuous disclosure documents under NI 51-102;
- (d) the Trust sends, or causes the Bank to send, the Bank's interim and annual financial statements and interim and annual MD&A, as applicable, to holders of Trust Securities, at the same time and in the same manner as if the holders of Trust Securities were holders of similar debt securities of the Bank;
- (e) all outstanding securities of the Trust are either Scotia BaTS III Series 2009-1, additional series of debt securities having terms substantially similar to the Scotia BaTS III Series 2009-1 or Voting Trust Units;
- (f) the rights and obligations of the holders of additional series of Scotia BaTS III are the same in all material respects as the rights and obligations of the holders of the Scotia BaTS III Series 2009-1, with the exception of economic terms such as the interest payable by the Trust and redemption dates and prices;
- (g) the Bank is, directly or indirectly, the beneficial owner of all issued and outstanding voting securities of the Trust, including the Voting Trust Units;
- (h) the Trust does not carry on any operating activity other than in connection with offerings of its securities and the Trust has minimal assets, operations, revenues or cash flows other than those related to the Bank Deposit Note or the issuance, administration and repayment of the Trust Securities;
- (i) the Trust issues a news release and files a material change report in accordance with Part 7 of NI 51-102 as amended, supplemented or replaced from time to time, in respect of any material change in the affairs of the Trust that is not also a material change in the affairs of the Bank;
- (j) in any circumstances where the Scotia BaTS III Series 2009-1 (or any additional series of the Trust's debt securities having terms substantially similar to the Scotia BaTS III Series 2009-1) are voting, the Trust will comply with Part 9 of NI 51-102; and
- (k) the Trust complies with Parts 4A, 4B, 11 and 12 of NI 51-102.
2. in respect of the Certification Obligations:
- (a) the Trust is not required to, and does not, file its own interim filings and annual filings (as those terms are defined in NI 52-109);
- (b) the Trust is and continues to be exempted from the Continuous Disclosure Obligations and the Bank and the Trust are in compliance with the conditions set out in paragraph 1 above; and
- (c) the Bank files with the with the securities regulatory authority or regulator in each of the Reporting Jurisdictions, in electronic format under the Trust's SEDAR profile, the Officers' Certificates of the Bank at the same time as such documents are required under the Legislation to be filed by the Bank.
3. this decision shall expire 30 days after the date that a material adverse change occurs in the representations of the Trust in this decision.

"Michael Brown"  
Assistant Manager, Corporate Finance  
Ontario Securities Commission

**2.1.2 diversiTrust Stable Income Fund and  
Goodman & Company, Investment Counsel Ltd.**

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemptive relief granted to closed-end fund technically converting to a mutual fund from borrowing prohibition in National Instrument 81-102 Mutual Funds to borrow up to 15% of net assets – Exemptive relief also granted from certain mutual fund requirements concerning: transmission of purchase or redemption orders, issuing units for cash or securities, calculation and payment of redemptions, and date of record for payment of distributions – Conversion a result of circumstances beyond filer’s control – Fund trades on TSX, but no longer in distribution.

**Applicable Legislative Provisions**

National Instrument 81-102 Mutual Funds, ss. 2.6(a), 5, 9.1, 10, 12.1, 14.1, 19.1.

**June 30, 2009**

**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  
DIVERSITRUST STABLE INCOME FUND  
(the Fund) AND GOODMAN & COMPANY,  
INVESTMENT COUNSEL LTD. (the Manager,  
and together with the Fund, the Filers)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) for a decision under the Legislation that exempts the Fund from the following provisions of National Instrument 81-102 – Mutual Funds (NI 81-102):

1. Subsection 2.6(a) to permit the Fund to borrow cash to a limit of 15% of its net asset value and provide a security interest over its portfolio assets in connection therewith, in accordance with the terms of the Declaration of Trust (as defined herein);

2. Sections 9.1 and 10.2 to permit purchases and sales of the Fund’s trust units on the Toronto Stock Exchange (the TSX), instead of through order receipt offices;
3. Sections 10.1, 10.3, 10.4, 10.5 and 10.6 to permit the Fund to process redemption orders, determine the redemption price of securities, pay redemption proceeds, and suspend redemptions in accordance with the terms of the Declaration of Trust;
4. Subsection 12.1(1) to exempt the Fund from the requirement to file compliance reports or audit reports in accordance with Appendix B-1 of NI 81-102; and
5. Section 14.1 to permit the Fund to establish a record date for distributions in accordance with the rules of the TSX and the terms of the Declaration of Trust.

Paragraphs 1 through 5 above are collectively referred to in this decision as the Requested Relief.

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

1. the Ontario Securities Commission is the principal regulator for this application; and
2. the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 Passport System (MI 11-102) is intended to be relied upon in each of the provinces of Canada, other than the province of Ontario (the Non-Principal Jurisdictions).

**Interpretation**

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

**Representations**

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

1. The Fund is a closed-end investment trust established under the laws of the Province of Ontario pursuant to a declaration of trust dated August 22, 2003, as amended January 7, 2004 and October 31, 2007 (collectively, the Declaration of Trust). The Fund is expected to terminate on December 31, 2013 unless terminated earlier. Goodman & Company, Investment Counsel Ltd. is the manager and trustee (the Manager) of the Fund.
2. On September 26, 2003, pursuant to the final prospectus dated August 22, 2003 (the Prospectus) in respect of the Fund’s initial public

- offering of trust units (the Trust Units), the Fund completed its initial public offering of 19,000,000 transferable, redeemable Trust Units, each of which represents a beneficial interest in the Fund's net assets.
3. The Fund is no longer in distribution and the Fund will not conduct any further public offerings, provided however that any other fund (a Continuing Fund) into which the Fund merges or amalgamates may conduct further public offerings of its securities. To the extent the Continuing Fund is subject to the requirements of NI 81-102, the Continuing Fund will comply with the terms thereof.
  4. The Fund's investment objectives (the Investment Objectives) are set out in the Prospectus and Declaration of Trust and described as follows:
    - (a) Monthly Distributions: to provide unitholders of the Fund (Unitholders) with a stable stream of monthly cash distributions;
    - (b) Stability Rating: to maintain a Standard & Poor's SR-1 Stability Rating; and
    - (c) Return of Capital: to return the original issue price of the Trust Units (which in respect of Trust Units issued on the initial public offering of the Fund is \$10.00 per Trust Unit) to Unitholders on December 31, 2013, as well as to provide Unitholders some opportunity for capital appreciation above the original issue price.
  5. The Fund invested the proceeds received under its initial public offering and borrowings under its loan facility in accordance with its investment objectives.
  6. Until December 19, 2008, the Fund had received and maintained a stability rating of SR-1 from Standard & Poor's Corporation (S&P) for the Trust Units based on the composition of the Fund's portfolio of income securities, its Investment Objectives, investment strategy, and investment restrictions.
  7. A stability rating reflects S&P's current opinion on the prospective relative stability of distributable cash flow generation on a scale running from 'SR-1' to 'SR-7'. An SR-1 rating, S&P's highest available rating for trusts, limited partnerships or other entities formed to own debt and/or equity, or entitled to a royalty on revenues, of an underlying company or other entity, carrying on, directly or indirectly, an active business that generally makes regular and predictable distributions of substantially all its distributable cash flow to securityholders (Income Trusts), signifies S&P's assessment that the Trust Units have the highest level of distribution sustainability and the lowest level of distribution variability in relation to other Canadian rated Income Trusts.
  8. Until December 19, 2008, the Manager retained S&P to provide a stability rating for the Fund on an aggregate basis, which would include the effect of certain Income Trusts, the securities of which may be purchased for the Fund. S&P was paid a fee for these services, but had no other relationship with, or economic interest in, either the Fund or the Manager.
  9. On and effective December 19, 2008, S&P unilaterally announced that it had withdrawn and would no longer provide six fund-of-fund stability ratings, including the SR-1 stability rating utilized in the Investment Objectives of the Fund (the Triggering Event).
  10. On December 29, 2008, the Manager issued a press release and announced that, despite the withdrawal of the stability rating, the Manager would continue to manage the Fund as it was managed prior to the Triggering Event by investing in a diversified portfolio of high income securities including business trusts, resource trusts, utility trusts and REITs, as well as other high-yielding securities, to provide investors with a stable stream of monthly distributions. The Manager has no reason to believe that the Fund would not continue to receive an SR-1 stability rating if S&P had continued to provide such ratings.
  11. Section 6.25(1) of the Declaration of Trust provides that Trust Units may be surrendered for redemption at net asset value at least 10 business days prior to September 30 in each year (the Redemption Date), subject to the Fund's right to suspend redemptions. In addition, section 6.25(1) of the Declaration of Trust also provides that in the event that the Fund's stability rating is less than SR-1 for a period of 180 consecutive days or more, Trust Units may be surrendered for redemption at net asset value on or before the last day of the month following the expiry of such 180 day period and on each six month anniversary of such redemption date until such time as an SR-1 stability rating is reinstated for the Trust Units (each an Additional Redemption Date). This right was created to ensure that the Unitholders had the opportunity to redeem their Trust Units if the Fund was subject to a downgrade for a period of 180 consecutive days and then to provide a further opportunity every 180 days until such time as the Fund is able to "cure" any downgrade in its SR-1 stability rating.
  12. The Manager does not believe that the absence of a stability rating system is tantamount to the Fund maintaining a stability rating of less than SR-1

under s. 6.25 of the Declaration of Trust. To avoid any uncertainty, however, on June 30, 2009 and each successive Additional Redemption Date, Unitholders will be entitled to surrender their Trust Units for redemption by the Fund. Consequently, the Fund would entertain redemptions three times per year.

13. The absence of a stability rating system or the SR-1 rating of the Fund does not constitute a breach of the investment strategies or restrictions of the Fund. The Triggering Event also does not constitute a change in the investment objectives of the Fund.
14. Consistent with its investment strategies, the Fund has borrowed cash under a loan facility up to 15% of its net asset value and provided a security interest over its portfolio assets.
15. The Trust Units trade on the TSX.
16. In accordance with the Declaration of Trust, the redemption price per Trust Unit is an amount equal to the net asset value per Trust Unit determined as of the applicable redemption date, less any out-of-pocket expenses directly incurred by the Manager to satisfy such redemption. Unitholders receive payment of redemption proceeds on or before the tenth business day following the applicable redemption date.
17. Pursuant to Section 6.25(3) of the Declaration of Trust, the Trustee, at the direction of the Manager, may suspend the redemption of Trust Units or payment of redemption proceeds (a) during periods in which normal trading is suspended on one or more stock exchanges on which more than 50% of the Fund's investments (by value) are listed and traded; or (b) for any period not exceeding 120 days during which the Manager determines, with the approval of the board of governors of the Fund, that conditions exist which render impractical the sale of assets of the Fund or which impair the ability of the Manager to determine the value of the assets of the Fund.
18. A summary of the material provisions of the Declaration of Trust governing redemptions of Units and fundamental changes to the Fund was included in the Prospectus.

1. (a) if trading of the Fund's Trust Units on the TSX is suspended for a period exceeding thirty days, the Fund will begin taking all necessary steps to ensure that all amounts borrowed under the loan facility are fully repaid as soon as commercially reasonable but no later than sixty days from the date of suspension, provided that such repayment need not be completed if the suspension is lifted within sixty days from the date of the suspension; and  
(b) the Fund does not make a distribution to Unitholders where that distribution would impair the ability of the Fund to repay the funds borrowed under the loan facility.
2. Except as set out in representation 3 above, the Fund does not conduct any further public offerings.

"Darren McKall"  
Assistant-Manager, Investment Funds  
Ontario Securities Commission

### 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 Requested Relief is granted on the following conditions:

2.1.3 Scotia Capital Inc. and Scotia iTRADE Corp.

Headnote

Multilateral Instrument 11-102 Passport System – Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 33-109 Registration Information (NI 33-109) – relief from certain filing requirements of NI 33-109 in connection with a bulk transfer of business locations and registered and non-registered individuals under an amalgamation.

Multilateral Instruments Cited

Multilateral Instrument 11-102 Passport System.

National Instruments Cited

National Instrument 33-109 Registration Information.

June 29, 2009

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  
SCOTIA CAPITAL INC. (SCI)  
AND SCOTIA ITRADE CORP. (SCOTIA ITRADE)  
(the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of Ontario (the **Legislation**) for relief pursuant to section 7.1 of National Instrument 33-109 *Registration Information* (**NI 33-109**) to allow the bulk transfer of all of the registered individuals and all of the locations of each of the Filers to a new amalgamated entity, Scotia Capital Inc. (as described below) (**the Bulk Transfer**), on or about November 1, 2009 in accordance with section 3.1 of the companion policy to NI 33-109 (**the Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

- (ii) the Filers have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon by each of the Filers on the same basis in all of the other provinces and territories of Canada (together with Ontario, the **Jurisdictions**).

Interpretation

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

Representations

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

SCI

1. SCI is a subsidiary of The Bank of Nova Scotia (the **Bank**) and is 95% owned by the Bank and 5% owned by Scotia Securities Inc., which is a direct wholly-owned subsidiary of the Bank. The head office of SCI is in Ontario.
2. SCI is registered as a dealer in the category of investment dealer under the *Securities Act* (Ontario) and in the category of futures commission merchant under the *Commodity Futures Act* (Ontario). SCI maintains equivalent registrations in each of the other provinces and territories of Canada.
3. SCI is not in default of the securities legislation in any of the Jurisdictions.

Scotia iTRADE

4. Scotia iTRADE is an indirect wholly-owned subsidiary of SCI. The head office of Scotia iTRADE is in Ontario.
5. Scotia iTRADE is registered as a dealer in the category of investment dealer (or its equivalent) in all of the provinces of Canada.
6. Scotia iTRADE is not in default of the securities legislation in any of the Jurisdictions.

Amalgamation

7. SCI has confirmed that it will amalgamate with Scotia iTRADE and three private companies directly or indirectly wholly-owned by SCI (3045175 Nova Scotia Company, EGI Capital Corporation, and Scotia Trading Technologies Corporation (collectively, the **Private Companies**)) on November 1, 2009. The new amalgamated entity will be named Scotia Capital Inc. (**Amalco**).

## Decisions, Orders and Rulings

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8. None of the Private Companies are currently registered in any of the Jurisdictions.
9. Effective on November 1, 2009, all of the current registrable activities of Scotia iTRADE and SCI will become the responsibility of Amalco. Amalco will assume all of the existing registrations and approvals for all of the registered individuals and all of the locations of the Filers. It is not anticipated that there will be any disruption in the ability of the Filers to trade on behalf of their respective clients, and Amalco should be able to trade on behalf of such clients immediately after the amalgamation.
10. Amalco will continue to be registered in the same categories of registration as SCI and Scotia iTRADE, together, are registered immediately prior to the amalgamation in the respective Jurisdictions, and will be subject to, and will comply with, all applicable securities laws.
11. Amalco will carry on the same securities business of the Filers in substantially the same manner with essentially the same personnel.
12. The Exemption Sought will not be contrary to the public interest and will have no negative consequences on the ability of Amalco to comply with all applicable regulatory requirements or the ability to satisfy any obligations in respect of the clients of the Filers.
13. Given the significant number of registered individuals of SCI and Scotia iTRADE, it would be extremely difficult to transfer each individual to Amalco in accordance with the requirements of NI 33-109 if the Exemption Sought is not granted.
14. A customer communication plan has been developed and customers of Scotia iTRADE will be advised 60 days prior to the amalgamation.
15. The head office of Amalco will be SCI's current head office location, which is located at 40 King Street West, Scotia Plaza, Toronto, Ontario, M5W 2X6 Telephone: (416) 863-7411 Fax: (416) 862-3052.

"Erez Blumberger"  
Manager, Registrant Regulation  
Ontario Securities Commission

### 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 the Filers make acceptable arrangements with CDS Inc. for the payment of the costs associated with the Bulk Transfer, and make such payment in advance of the Bulk Transfer.

June 29, 2009



## 2.1.4 Criterion Diversified Commodities Currency Hedged Fund

### Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – application requesting new relief under NP 11-203 which replaces and varies a decision made under the Mutual Reliance Review System for Exemptive Relief Applications before March 17, 2008 – relief granted to commodity pool from the concentration and the illiquid asset restrictions in ss. 2.1(1) and 2.4 of NI 81-102 to allow it to invest substantially all of its assets in short-term notes linked to the performance of a diversified commodity index – National Instrument 81-102 Mutual Funds.

### Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 1.1, 2.1(1), 2.4, 19.1.

National Instrument 81-104 Commodity Pools.

July 3, 2009

**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  
CRITERION DIVERSIFIED COMMODITIES  
CURRENCY HEDGED FUND  
(the Filer or the Trust)**

**DECISION**

### MRRS Decision Background

In May 2006, the local securities regulatory authority or regulator in each of the provinces of Canada (the **MRRS Jurisdictions**) received an application from Criterion Investments Limited (the **Manager**) on behalf of the Filer (then known as the Criterion Dow Jones – AIG Commodity Index Fund) for an exemption from the following provisions of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) so as to permit the Filer to conduct its investment operations as described in its prospectus dated June 5, 2006:

- (i) section 2.1(1), which prohibits a mutual fund from having more than 10% of its net assets invested in the securities of any one issuer; and
- (ii) section 2.4, which prohibits a mutual fund from making certain illiquid investments;

(the **MRRS Relief**). The MRRS Jurisdictions granted the MRRS Relief in the Mutual Reliance Review System Decision Document dated June 5, 2006 (the **MRRS Decision**).

### Application Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption to vary the MRRS Decision so as to more closely align the MRRS Decision with the Filer's current name, investment objectives and strategies, and in particular to permit the Filer to invest all of its assets in one or more performance certificates, notes or other similar instruments having a term to maturity of no more than one year that are linked to a diversified commodity index (**Notes**), and to carry forward the MRRS Relief and the conditions of the MRRS Decision into a new passport decision under NI 81-102 (the **Current Relief Sought**).

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

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador.

### Interpretation

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

### Representations

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

1. The Trust is an investment trust established under the laws of the Province of Ontario pursuant to a declaration of trust dated as of May 18, 2005 and currently governed by an amended and restated declaration of trust dated October 22, 2008 (the **Declaration of Trust**). The Manager acts as the manager and trustee of the Trust. The head office of the Manager is located in Toronto, Ontario.
2. The Trust was established as a closed-end fund and completed its initial public offering of units on May 31, 2005. Its units were redeemable on an annual basis and were listed on the Toronto Stock Exchange (**TSX**). On May 12, 2006, the holders of units of the Trust (the **Unitholders**) approved the conversion of the Trust to an open-end commodity pool (the **Mutualization**) at a special meeting called for that purpose. As part of the

Mutualization, the existing units, which were re-designated as Class E Units, were de-listed from the TSX and became redeemable at the option of the holder each business day, and the name of the Trust was changed to "Criterion Diversified Commodities Currency Hedged Fund". The beneficial interest in the net assets and net income of the Trust was then divided into trust units of six classes, namely Class A Units, Class B Units, Class C Units, Class D Units and Class F Units, in addition to the Class E Units referred to above. In connection with the Mutualization, the Trust became subject to NI 81-102 and National Instrument 81-104 *Commodity Pools*.

3. Shortly following the Mutualization, substantially all of the assets of the Trust were invested in a series of index-linked notes with a term of not more than three months (the **Original Notes**) issued by AIG – FP Private Funding (**Cayman**) Limited (the **Original Note Issuer**) linked to the Dow Jones – AIG Commodity Total Return Index (the **Original Index**). The Original Notes were purchased in order to provide the Trust with the returns of the Original Index. The Original Notes provided the Trust on the maturity date of the Original Notes, or earlier at the request of the Trust in whole or in part, an amount calculated on the basis of a notional investment in the Original Index of an amount equal to the aggregate amount delivered to the Original Note Issuer during the term of the Original Note denominated in U.S. dollars and the performance of the Original Index from the date on which the monies are received by the Original Note Issuer from time to time (subject to adjustments as a result of partial settlements from time to time under the Original Notes). The obligations of the Original Note Issuer under the Original Notes were guaranteed by American International Group Inc. (**AIG**), which then had an approved credit rating, as that term is defined in NI 81-102.
4. Following the approval of the Unitholders given at a meeting held on January 7, 2008, the investment strategy of the Trust changed on February 2, 2008 from investing in an Original Note linked to the Original Index to investing in an Original Note linked to the AIG Basis Select Index Total Return.
5. At the January 7, 2008 meeting, Unitholders also approved an amendment to the Declaration of Trust to permit the Manager, as trustee of the Trust, to effect amendments to the Declaration of Trust to change the investment strategy of the Trust as the Manager deems necessary or advisable, provided that the investment strategy remains index- or rules-based and focussed on commodities. Accordingly, if the Trust purchases Notes linked to a commodity index to achieve its investment objectives, the issuer of the Notes may change from time to time, and the commodity

index to which the Notes are linked may change from time to time.

6. On September 17, 2008, the Trust redeemed the Original Note then outstanding, as a result of concerns about the solvency of the Original Note Issuer and AIG as its guarantor, as well as concerns about AIG's impending loss of an approved credit rating. On an interim basis, the Trust entered into an agreement with UBS AG to purchase a performance certificate that provided a return linked to the Dow-Jones–AIG Commodity Index Total Return. The initial term of this performance certificate was until October 22, 2008. The purpose of this transaction was to provide the Trust with exposure to a broad commodities index on an interim basis while the Manager sought a long-term commodities strategy for the Trust. Effective October 22, 2008, the Manager entered into an agreement with UBS AG in respect of such a long-term commodities strategy, which is the current strategy now used by the Trust.
7. The Trust's investment objective, as disclosed in its current prospectus, is to provide Unitholders with the opportunity for capital appreciation, using an investment strategy that is either index-based or rules-based and focused on commodities. All or substantially all of the value of the Trust's assets denominated in a currency other than the Canadian dollar will be hedged back to the Canadian dollar at all times.
8. Currently, in seeking to achieve its investment objective, the Trust provides Unitholders with indirect exposure to the returns of the UBS Bloomberg Constant Maturity Commodity Index (CMCI) AM Composite USD Total Return (the **CMCI AM**). To achieve this exposure, the Filer now invests substantially all of its assets in performance certificates issued by UBS AG (London Branch) (UBS) with a maximum term of one year (the **UBS Notes**).
9. The UBS Notes are uncollateralized obligations of UBS. The return on a UBS Note is linked to the performance of the CMCI AM. A UBS Note provides the Trust on the maturity date of the UBS Note (or earlier at the request of the Trust in whole or in part as described below) an amount calculated on the basis of a notional investment in the CMCI AM of an amount equal to the aggregate amount delivered to UBS during the term of the UBS Note denominated in U.S. dollars and the performance of the CMCI AM from the date on which the monies from the Trust are received by UBS from time to time, subject to adjustments as a result of repurchases from time to time (the **Maturity Value**).
10. Prior to the maturity date of a UBS Note, the Trust may, by giving notice to UBS on any scheduled

trading day, request that UBS repurchase all or a portion of the UBS Note. UBS will repurchase all or a portion of the UBS Note at the Maturity Value (unless UBS determines that normal conditions or applicable laws do not prevail in any markets relevant to the UBS Notes, UBS or the CMCI AM) and pay the repurchase amount within two business days. As a result, the value of a UBS Note at any time reflects the return of the CMCI AM.

11. For the purposes of calculating the net asset value of the Trust, the value of a UBS Note is determined by reference to the CMCI AM, which is based on the value of the commodity futures contracts comprising the CMCI. UBS calculates the Maturity Value of the UBS Notes in the same manner.
12. While the Trust currently holds UBS Notes, the Trust may in the future hold Notes issued by another issuer and that may be linked to another diversified commodity index. Such Notes constitute “debt-like securities” and “specified derivatives”, as those terms are defined in NI 81-102.
13. To enable the Trust to meet redemption requests and other obligations when due, the Trust will require the terms of the Notes to provide that the issuer of the Notes must redeem or repurchase the Notes on each business day, at the request of the Trust, at a price that reflects the closing level of the underlying index on the day of redemption or repurchase of the Notes, unless normal market conditions do not prevail. The Trust will require that the terms of the Notes provide that the issuer of the Notes will pay the proceeds of the redemption or repurchase within two business days.
14. An “illiquid asset” is defined in NI 81-102 to include a portfolio asset that cannot be readily disposed of through market facilities on which public quotations in common use are widely available at an amount that at least approximates the amount at which the portfolio asset is valued in calculating the net asset value per security of the mutual fund. As the UBS Notes and any Notes that the Trust may purchase in the future may not be disposed of through market facilities on which public quotations in common use are widely available, they would be considered to be illiquid assets.
15. As the Trust may invest up to 100% of its net assets in Notes (such as the UBS Notes), the Trust would have more than 10% of its net assets invested in the securities of an issuer. As well, the Trust’s investments in illiquid assets would exceed the limits in s. 2.4 of NI 81-102.

16. Following the issuance of this Decision, the Trust will no longer rely on the MRRS Decision.

**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 Current Relief Sought is granted provided that:

- (a) the issuer of Notes acquired by the Trust have an approved credit rating, as that term is defined in NI 81-102, at the time the Notes are acquired by the Trust,
- (b) the Trust redeem, sell or otherwise dispose of the Notes if the issuer of the Notes fails to maintain an approved credit rating, as that term is defined in NI 81-102, and
- (c) the terms of the Notes require the issuer of the Notes to redeem or repurchase the Notes on each business day upon the terms set out in paragraph 13 above.

“Darren McKall”  
Assistant Manager, Investment Funds  
Ontario Securities Commission

## 2.1.5 TD Asset Management Inc.

### Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to permit (i) interfund trading at 'last sale price' based on UMIR Rules, between a manager's pooled funds, NI 81-102 mutual funds, and managed accounts, (ii) principal trading of debt securities between the manager's pooled funds or managed accounts with an affiliate of the manager, (iv) in-species transactions involving the NI 81-102 funds, pooled funds and managed accounts, (v) purchases by the pooled funds in the primary market, of debt securities issued by related issuers, and (vi) purchases by the pooled funds in the secondary market, of debt and equity securities issued by a related issuer - Conditions of prior relief applied to each type of transaction.

### Applicable Legislative Provisions

Securities Act (Ontario), ss. 111(2)(a), 111(2)(c)(ii), 118(2)(a), 118(2)(b), 121(2)(a)(ii), 147.

Ontario Regulation 1015 General Regulation, s. 115(6).

National Instrument 81-107 Independent Review Committee for Investment Funds, ss. 6.1(2), 6.1(4).

July 2, 2009

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
ONTARIO AND ALBERTA, SASKATCHEWAN,  
NEW BRUNSWICK, NOVA SCOTIA,  
NEWFOUNDLAND AND LABRADOR**

**AND**

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

**AND**

**IN THE MATTER OF  
TD ASSET MANAGEMENT INC.  
(the Filer)**

**DECISION**

### Background

- A. The securities regulatory authority or regulator in Ontario has received an application (the **Application**) from the Filer under the securities legislation of the principal regulator (the **Legislation**) for:
- (a) a decision (the **Trading Prohibition Exemption Sought**) providing an exemption (a **Passport Exemption**) from the requirement (the **Trading Prohibition**) that prohibits a portfolio manager from knowingly causing an investment portfolio managed by it to purchase or sell the securities of any issuer from or to the account of a responsible person, any associate of a responsible person or the portfolio manager to permit:
    - (i) existing mutual funds and future mutual funds to which National Instrument 81-102 – *Mutual Funds (NI 81-102)* applies (each, an **NI 81-102 Fund** and, collectively, the **NI 81-102 Funds**) managed by the Filer, or any affiliate of the Filer (each, **TDAM**) to purchase securities from or sell securities to existing mutual funds and future mutual funds managed by TDAM to which NI 81-102 does not apply (each, a **Pooled Fund** and, collectively, the **Pooled Funds**) or a fully managed account managed by TDAM (each, a **Managed Account** and, collectively, the **Managed Accounts**);
    - (ii) an NI 81-102 Fund to purchase exchange-traded securities from or sell exchange-traded securities to another NI 81-102 Fund at the last sale price, as defined in the Market Integrity Rules of the Investment Industry Regulatory Organization of Canada, prior to the execution of the trade (the **Last Sale Price**) in lieu of the closing sale price (the **Closing Sale Price**) as contemplated by the definition of current market price referred to in paragraph (e) of Section 6.1(2) of National Instrument 81-107 – *Independent Review Committee for Investment Funds (NI 81-107)*;

- (iii) a Pooled Fund to purchase securities from or sell securities to another Pooled Fund, an NI 81-102 Fund or a Managed Account;
  - (iv) a Managed Account to purchase securities from or sell securities to a Pooled Fund or an NI 81-102 Fund;
  - (v) the transactions contemplated in (iii) and (iv) to occur at Last Sale Price instead of Closing Sale Price;
  - (vi) a Pooled Fund or a Managed Account to purchase debt securities from or sell debt securities to an affiliate of TDAM that is a principal dealer in the Canadian debt securities market (a **Principal Dealer**);
  - (vii) a Pooled Fund and a Managed Account to engage in *In Specie* Transactions, as described below; and
  - (viii) a Pooled Fund and an NI 81-102 Fund to engage in *In Specie* Transactions;
- (b) a decision (the **Related Issuer Exemption Sought**) providing an exemption (also, a **Passport Exemption**) from the requirement (the **Related Issuer Prohibition**) that prohibits a portfolio manager from knowingly causing an investment portfolio managed by it to invest in any issuer in which a responsible person or an associate of a responsible person is an officer or director unless the specific fact is disclosed to the client and the written consent of the client to the investment is obtained before the purchase to permit a Pooled Fund to purchase securities of an issuer (a **Related Issuer**) in which a director, officer or employee of TDAM, or an associate of a director, officer or employee of TDAM, is a director or officer without the prior written consent of the securityholders of the Pooled Fund; and
- (c) a decision (the **Related Securityholder Exemption Sought**) providing an exemption (also, a **Passport Exemption**) from the requirement (the **Related Securityholder Prohibition**) that prohibits a mutual fund from knowingly making or holding an investment in any person or company who is a substantial securityholder of the mutual fund, its management company or distribution company or in an issuer in which any person or company who is a substantial securityholder of the mutual fund, its management company or distribution company, has a significant interest to permit a Pooled Fund to purchase and hold securities of The Toronto-Dominion Bank (the **Bank**) or an issuer in which The Toronto-Dominion Bank has a significant interest (also, the **Bank**).
- B. The securities regulatory authority or regulator (the **First Coordinated Exemptive Relief Decision Makers**) in each of Ontario and Newfoundland and Labrador (the **First Jurisdictions**) has received an application from the Filer for a decision (the **First Coordinated Exemptive Relief**) under the securities legislation of the First Jurisdictions (the **Legislation**) for the Trading Prohibition Exemption Sought to permit the transactions described in paragraph A above.
- C. The securities regulatory authority or regulator (the **Second Coordinated Exemptive Relief Decision Makers** and, together with the First Coordinated Exemptive Relief Decision Makers, the **Coordinated Exemptive Relief Decision Makers**) in each of Ontario, Alberta, Saskatchewan, New Brunswick, Nova Scotia and Newfoundland and Labrador (the **Second Jurisdictions**) has received an application from the Filer under the securities legislation of the Second Jurisdictions (the **Legislation**) for a decision (the **Investment Counsel Exemption Sought**) providing an exemption (the Second Coordinated Exemptive Relief) from the requirement (the **Investment Counsel Prohibition**) that prohibits the purchase or sale of any security in which an investment counsel or any associate of an investment counsel has a direct or indirect beneficial interest from or to any portfolio managed or supervised by the investment counsel to permit the transactions described in paragraph A(a) above.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

- (a) the Ontario Securities Commission is the principal regulator for the Application;
- (b) the Filer has provided notice that Section 4.7 of Multilateral Instrument 11-102 – *Passport System* is intended to be relied upon in respect of each of the Passport Exemptions in the provinces and territories of Canada (the **Passport Jurisdictions**) other than Ontario as follows:
  - (i) in respect of the Trading Prohibition Exemption Sought, British Columbia, Alberta, New Brunswick, Saskatchewan, Quebec and Nova Scotia;

- (ii) in respect of the Related Issuer Exemption Sought, British Columbia, Alberta, New Brunswick, Saskatchewan, Quebec and Nova Scotia; and
- (iii) in respect of the Related Securityholder Exemption Sought, Alberta;
- (c) the decision is the decision of the principal regulator; and
- (d) the decision evidences the decision of each Coordinated Exemptive Relief Decision Maker.

**Interpretation**

Terms defined in the securities legislation of Ontario and the Passport Jurisdictions, National Instrument 14-101 – *Definitions*, NI 81-102 or NI 81-107 have the same meanings in this Decision. Certain other defined terms have the meanings given to them above or below under “Representations”.

**Representations**

1. The Filer’s head office is located in Toronto, Ontario.
2. TDAM is, or will be, registered as an investment counsel and portfolio manager or the equivalent in Ontario and each of the Passport Jurisdictions.
3. TDAM is, or will be, the manager and/or portfolio manager of each of the NI 81-102 Funds and the Pooled Funds (each, a **Fund**, and, collectively, the **Funds**).
4. TDAM is, or will be, the portfolio manager of each of the Managed Accounts.
5. The Bank is, or will be, a substantial securityholder of TDAM and has a significant interest in other issuers.
6. A director, officer or employee of TDAM or an associate of a director, officer or employee of TDAM may be a director or officer of the Bank or another Related Issuer.
7. Each of the Funds is, or will be, an open-end mutual fund trust or mutual fund corporation.
8. Each of the NI 81-102 Funds is, or will be, a reporting issuer in Ontario and in each of the Passport Jurisdictions. Each of the Pooled Funds is, or will be, qualified for distribution on a private placement basis pursuant to the Legislation and will not be a reporting issuer.
9. A Fund may be an associate of TDAM.
10. The Filer and the Funds are not in default of securities legislation in any jurisdiction of Canada.
11. TDAM may wish to cause an NI 81-102 Fund to purchase securities from or sell securities to an NI 81-102 Fund, a Pooled Fund or a Managed Account.
12. TDAM may wish to cause a Pooled Fund to purchase securities from or sell securities to another Pooled Fund, an NI 81-102 Fund or a Managed Account.
13. TDAM may wish to cause a Managed Account to purchase securities from or sell securities to an NI 81-102 Fund or a Pooled Fund.
14. TD Securities Inc. (**TDSI**), or another affiliate of TDAM (also, **TDSI**), is, or may be, a Principal Dealer.
15. TDAM may wish to place an order to purchase or sell debt securities on behalf of an NI 81-102 Fund, a Pooled Fund or a Managed Account directly with TDSI, acting as principal.
16. There is a limited supply of debt securities available to the NI 81-102 Funds, the Pooled Funds and the Managed Accounts.
17. TDSI is, frequently, a principal source of debt securities.
18. The NI 81-102 Funds can purchase debt securities from TDSI pursuant to relief they have received from the Trading Prohibition and the Investment Counsel Prohibition.

19. TDAM may wish to invest the portfolio of an NI 81-102 Fund or a Pooled Fund in securities issued by the Bank or other Related Issuers.
20. The NI 81-102 Funds can invest in securities of the Bank or other Related Issuers pursuant to Section 6.2 of NI 81-107 and pursuant to relief they have received from the Related Issuer Prohibition and the Related Securityholder Prohibition.
21. TDAM may wish to or be required to deliver securities to an NI 81-102 Fund in respect of the purchase by a Pooled Fund or a Managed Account of units of an NI 81-102 Fund and may wish to or be required to receive securities from an NI 81-102 Fund in respect of a redemption of units of an NI 81-102 Fund by a Pooled Fund or a Managed Account. (Such transactions are referred to as *In Specie* Transactions.)
22. TDAM may wish to or be required to cause a Managed Account to engage in *In Specie* Transactions with a Pooled Fund or an NI 81-102 Fund in respect of the purchase or redemption of units of a Pooled Fund or an NI 81-102 Fund by a Managed Account.
23. TDAM has received relief from the Trading Prohibition and the Investment Counsel Prohibition to permit *In Specie* Transactions between Managed Accounts and certain NI 81-102 Funds.
24. TDAM has established, or will establish, an independent review committee (IRC) in respect of each NI 81-102 Fund in accordance with the requirements of NI 81-107.
25. TDAM will establish an IRC (the members of which may also be members of the IRC of the NI 81-102 Funds) in respect of the Pooled Funds which rely on the Exemptions Sought.
26. The IRC of the Pooled Funds will be composed by TDAM in accordance with Section 3.7 of NI 81-107 and will be expected to comply with the standard of care set out in Section 3.9 of NI 81-107.
27. The mandate of the IRC of a Pooled Fund will include:
  - (i) approving purchases and sales of securities between the Pooled Fund and another Pooled Fund, an NI 81-102 Fund or a Managed Account;
  - (ii) approving purchases and sales of debt securities from or to a Principal Dealer; and
  - (iii) approving purchases of securities issued by the Bank or a Related Issuer; andon behalf of the Pooled Fund.
28. The IRC will not provide any of the approvals referred to in paragraph 27 unless it has made the determination set out in subsection 5.2(2) of NI 81-107.
29. Purchases and sales of securities involving an NI 81-102 Fund will be referred to the IRC of the NI 81-102 Fund under subsection 5.2(1) of NI 81-107 for approval on behalf of the NI 81-102 Fund.
30. If the IRC of an NI 81-102 Fund or a Pooled Fund becomes aware of an instance where TDAM, as manager of the NI 81-102 Fund or Pooled Fund, did not comply with the terms of this decision or a condition imposed by the IRC in its approval, the IRC of the NI 81-102 Fund or the Pooled Fund will, as soon as practicable, notify in writing the securities regulatory authority or regulator in the jurisdiction under which the NI 81-102 Fund or Pooled Fund is organized.
31. At the time of any transaction contemplated by this Decision, TDAM will have in place policies and procedures to enable the NI 81-102 Funds to engage in the transactions contemplated by the Decision with Pooled Funds and Managed Accounts.
32. The investment management agreement or other documentation in respect of a Managed Account will contain the authorization of the client for TDAM to purchase securities from or sell securities to an NI 81-102 Fund or a Pooled Fund, engage in *In Specie* Transactions with a Pooled Fund and purchase debt securities from a Principal Dealer.
33. TDAM cannot rely on the exemption from the Trading Prohibition and the Investment Counsel Prohibition codified under Section 6.1(4) of NI 81-107 unless the parties are both reporting issuers and the purchase or sale occurs, in the case of exchange-traded securities, at the Closing Sale Price.

## Decisions, Orders and Rulings

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34. When TDAM engages in a transaction which involves the purchase and sale of exchange-traded securities between two NI 81-102 Funds, two Pooled Funds, one NI 81-102 Fund and one Pooled Fund or between a Managed Account and a Fund it will follow the following procedures:
- (a) the portfolio manager will deliver the trade instructions in respect of a purchase or a sale of a security by a Fund or Managed Account (**Fund A**) to a trader on a TDAM trading desk;
  - (b) the portfolio manager will deliver the trade instructions in respect of a sale or purchase of a security by a Fund or Managed Account (**Fund B**) to a trader on a TDAM trading desk;
  - (c) the trader on a TDAM trading desk will have the discretion to execute the trade as an interfund trade between Fund A and Fund B at the Last Sale Price of the security, prior to the execution of the trade;
  - (d) the policies applicable to TDAM trading desks will require that all orders are to be executed on a timely basis and will remain open for a period not to exceed 30 days unless the portfolio manager cancels the order sooner; and
  - (e) the trader on a TDAM trading desk will advise the portfolio managers of Fund A and Fund B of the price at which the purchase or sale occurs.
35. TDAM cannot rely on the exemption from the Related Issuer Prohibition and the Related Securityholder Prohibition codified under Section 6.2(2) of NI 81-107 in respect of purchases by the Pooled Funds because that exemption does not apply to the Pooled Funds.
36. Each non-exchange traded security issued by a Related Issuer or the Bank that is purchased by a Pooled Fund in a primary distribution or treasury offering (a **Primary Offering**) pursuant to the Related Issuer and Related Securityholder Exemptions Sought will be a debt security, other than an asset backed commercial paper security, with a term to maturity of 365 days or more that has been given and continues to have, at the time of purchase, an "approved credit rating" by an approved credit rating organization.
37. Each non-exchange traded security issued by a Related Issuer or the Bank that is purchased by a Pooled Fund in a Primary Offering pursuant to the Related Issuer and Related Securityholder Exemptions Sought will be purchased in a Primary Offering where the terms of the Primary Offering, such as the size and the pricing, will be a matter of public record as evidenced in a prospectus, offering memorandum, press release or other public document.

### 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 is that the Trading Prohibition Exemption Sought and the Investment Counsel Exemption Sought are granted provided that:

- (a) the purchase or sale of securities is consistent with the investment objective of the NI 81-102 Fund, the Pooled Fund or the Managed Account, as the case may be;
- (b) TDAM refers a transaction that involves an NI 81-102 Fund or a Pooled Fund to the IRC of the Pooled Fund or the NI 81-102 Fund, as the case may be, in the manner contemplated by Section 5.1 of NI 81-107 and TDAM and the IRC of the NI 81-102 Fund or the Pooled Fund as the case may be, comply with Section 5.4 of NI 81-107 in respect of any standing instructions the IRC provides in connection with the transaction;
- (c) in the case of the purchase of exchange-traded securities from or sale of exchange-traded securities to an NI 81-102 Fund by an NI 81-102 Fund, the requirements of Section 6.1 of NI 81-107 apply except that for purposes of paragraph (e) of subsection 6.1(2) of NI 81-107 the current market price of the security may be the Last Sale Price;
- (d) in the case of the purchase of securities from or sale of securities to a Pooled Fund or a Managed Account by an NI 81-102 Fund:
  - (i) the IRC of the NI 81-102 Fund has approved the transaction on behalf of the NI 81-102 Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;



- (ii) if the transaction is with a Pooled Fund, the IRC of the Pooled Fund has approved the transaction on behalf of the Pooled Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;
  - (iii) if the transaction is with a Managed Account, the investment management agreement or other documentation in respect of the Managed Account authorizes the transaction; and
  - (iv) the transaction complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107 except that for purposes of paragraph (e) of subsection 6.1(2) in respect of exchange-traded securities the current market price of the security may be the Last Sale Price;
- (e) in the case of the purchase of securities from or sale of securities to another Pooled Fund, an NI 81-102 Fund or a Managed Account by a Pooled Fund:
- (i) the IRC of the Pooled Fund has approved the transaction on behalf of the Pooled Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;
  - (ii) if the transaction is with another Pooled Fund, the IRC of the other Pooled Fund has approved the transaction on behalf of the other Pooled Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;
  - (iii) if the transaction is with an NI 81-102 Fund, the IRC of the NI 81-102 Fund has approved the transaction on behalf of the NI 81-102 Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;
  - (iv) if the transaction is with a Managed Account, the investment management agreement or other documentation in respect of the Managed Account authorizes the transaction; and
  - (v) the transaction complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107 except that for purposes of paragraph (e) of subsection 6.1(2) in respect of exchange-traded securities the current market price of the security may be the Last Sale Price;
- (f) in the case of the purchase of securities from or sale of securities to an NI 81-102 Fund or a Pooled Fund by a Managed Account:
- (i) the investment management agreement or other documentation in respect of the Managed Account authorizes the transaction;
  - (ii) if the transaction is with an NI 81-102 Fund, the IRC of the NI 81-102 Fund has approved the transaction on behalf of the NI 81-102 Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;
  - (iii) if the transaction is with a Pooled Fund, the IRC of the Pooled Fund has approved the transaction on behalf of the Pooled Fund in accordance with the terms of subsection 5.2(2) of NI 81-107; and
  - (iv) the transaction complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107 except that for purposes of paragraph (e) of subsection 6.1(2) in respect of exchange-traded securities the current market price of the security may be the Last Sale Price;
- (g) in the case of the purchase of debt securities from or sale of debt securities to a Principal Dealer by a Pooled Fund or a Managed Account:
- (i) if the transaction is by a Pooled Fund, the IRC of the Pooled Fund has approved the transaction on behalf of the Pooled Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;
  - (ii) if the transaction is by a Managed Account, the investment management agreement or other documentation in respect of the Managed Account authorizes the transaction;
  - (iii) the transaction occurs in the secondary market;
  - (iv) the bid and ask price of the security is readily available, as provided in Commentary 7 to Section 6.1 of NI 81-107;

- (v) a purchase is not executed at a price which is higher than the available ask price and a sale is not executed at a price which is lower than the available bid price;
  - (vi) the purchase or sale is subject to applicable “market integrity requirements” as defined in NI 81-107; and
  - (vii) the Pooled Fund or Managed Account, as the case may be, keeps the written records required by subparagraph 6.1(2)(g) of NI 81-107;
- (h) in the case of an *In Specie* Transaction between a Pooled Fund and a Managed Account:
- (i) if the transaction is the purchase of units of a Pooled Fund by a Managed Account:
    - (A) TDAM obtains the prior written consent of the relevant Managed Account client before it engages in any *In Specie* Transactions in connection with the purchase of units of a Pooled Fund;
    - (B) the Pooled Fund would, at the time of payment, be permitted to purchase those securities;
    - (C) the securities are acceptable to TDAM, as portfolio adviser of the Pooled Fund, and consistent with the investment objective of the Pooled Fund;
    - (D) the value of the securities is at least equal to the issue price of the securities of the Pooled Fund for which they are payment, valued as if the securities were portfolio assets of that Pooled Fund;
    - (E) the account statement next prepared for the Managed Account will include a note describing the securities delivered to the Pooled Fund and the value assigned to such securities; and
    - (F) the Pooled Fund will keep written records of an *In Specie* Transaction in a financial year of the Pooled Fund, reflecting details of the securities delivered to the Pooled Fund and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place;
  - (ii) if the transaction is the redemption of units of a Pooled Fund by a Managed Account:
    - (A) TDAM obtains the prior written consent of the relevant Managed Account client before it engages in any *In Specie* Transactions in connection with the redemption of units of a Pooled Fund;
    - (B) the securities are acceptable to TDAM, as portfolio adviser of the Managed Account, and are consistent with the Managed Account’s investment objective;
    - (C) the value of the securities is equal to the amount at which those securities were valued in calculating the net asset value per security used to establish the redemption price;
    - (D) the holder of the Managed Account has not provided notice to terminate its Managed Account with TDAM;
    - (E) the account statement next prepared for the Managed Account will include a note describing the securities delivered to the Managed Account and the value assigned to such securities; and
    - (F) the Pooled Fund will keep written records of an *In Specie* Transaction in a financial year of the Pooled Fund, reflecting details of the securities delivered by the Pooled Fund and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place; and
  - (iii) TDAM does not receive any compensation in respect of any sale or redemption of units of a Pooled Fund (other than redemption fees which have been disclosed) and, in respect of any delivery of securities further to an *In Specie* Transaction, the only charge paid by the Managed Account is the commission charged by the dealer executing the trade; and

- (i) in the case of an *In Specie* Transaction between an NI 81-102 Fund and a Pooled Fund:
  - (i) if the transaction is the purchase of units of an NI 81-102 Fund by a Pooled Fund:
    - (A) the IRC of the NI 81-102 Fund has approved *In Specie* Transactions on behalf of the NI 81-102 Funds in accordance with the terms of subsection 5.2(2) of NI 81-107;
    - (B) the NI 81-102 Fund would, at the time of payment, be permitted to purchase those securities;
    - (C) the securities are acceptable to TDAM, as portfolio adviser of the NI 81-102 Fund, and consistent with the investment objective of the NI 81-102 Fund;
    - (D) the value of the securities is at least equal to the issue price of the securities of the NI 81-102 Fund for which they are payment, valued as if the securities were portfolio assets of that NI 81-102 Fund;
    - (E) the account statement next prepared for the Pooled Fund will include a note describing the securities delivered to the NI 81-102 Fund and the value assigned to such securities; and
    - (F) the NI 81-102 Fund will keep written records of an *In Specie* Transaction in a financial year of the NI 81-102 Fund, reflecting details of the securities delivered to the NI 81-102 Fund and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place;
  - (ii) if the transaction is the redemption of units of an NI 81-102 Fund by a Pooled Fund:
    - (A) the IRC of the NI 81-102 Fund has approved *In Specie* Transactions on behalf of the NI 81-102 Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;
    - (B) the securities are acceptable to TDAM, as portfolio adviser of the Pooled Fund, and consistent with the investment objective of the Pooled Fund;
    - (C) the value of the securities is equal to the amount at which those securities were valued in calculating the net asset value per security used to establish the redemption price;
    - (D) the account statement next prepared for the Pooled Fund will include a note describing the securities delivered to the Pooled Fund and the value assigned to such securities; and
    - (E) the NI 81-102 Fund will keep written records of an *In Specie* Transaction in a financial year of the NI 81-102 Fund, reflecting details of the securities delivered by the NI 81-102 Fund and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place; and
  - (iii) TDAM does not receive any compensation in respect of any sale or redemption of units of an NI 81-102 Fund (other than redemption fees which have been disclosed) and, in respect of any delivery of securities further to an *In Specie* Transaction, the only charge paid by the Pooled Fund is the commission charged by the dealer executing the trade.

The decision of the principal regulator is that the Related Issuer Exemption sought and Related Security Exemption Sought are granted provided that:

1. the IRC of the Pooled Fund has approved the transaction on behalf of the Pooled Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;
2. the purchase or holding is consistent with, or is necessary to meet, the investment objective of the Pooled Fund;
3. TDAM, as manager of the Pooled Fund, complies with Section 5.1 of NI 81-107 and TDAM and the IRC of the Pooled Fund comply with Section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;
4. if the transaction occurs in the secondary market:

- (a) if the security is listed and traded the purchase is made on an exchange on which the securities are listed and traded;
  - (b) if the security is not listed on an exchange:
    - (i) the security is a debt security that has been given, and continues to have, at the time of the purchase, an “approved credit rating” by an approved credit rating organization, within the meaning of those terms in NI 81-102;
    - (ii) the price payable for the security is not more than the ask price of the security; and
    - (iii) the ask price of the security is determined as follows:
      - (A) if the purchase occurs on a marketplace, the price payable is determined in accordance with the requirements of that marketplace; or
      - (B) if the purchase does not occur on a marketplace,
        - (1) the Pooled Fund may pay the price for the security, at which an independent, arm’s-length seller is willing to sell the security, or
        - (2) if the Pooled Fund does not purchase the security from an independent, arm’s-length seller, the Pooled Fund must pay the price quoted publicly by an independent marketplace or obtain, immediately before the purchase, at least one quote from an independent, arm’s-length purchaser or seller and not pay more than that quote;
  - (c) the transaction complies with any applicable “market integrity requirements” as defined in NI 81-107; and
  - (d) on or before the 90th day after the end of each financial year of the Pooled Fund, TDAM, as manager of the Pooled Fund, files with the securities regulatory authority or regulator the particulars of any such investments;
5. if the transaction occurs in a Primary Offering:
- (a) the size of the Primary Offering is at least \$100 million;
  - (b) at least two purchasers who are independent, arm’s-length purchasers, which may include “independent underwriters” within the meaning of National Instrument 33-105 – Underwriting Conflicts, collectively purchase at least 20% of the Primary Offering;
  - (c) no Pooled Fund shall participate in the Primary Offering if following its purchase the Pooled Fund would have more than 5% of its net assets invested in non-exchange traded debt securities of the Related Issuer or the Bank;
  - (d) no Pooled Fund shall participate in the Primary Offering if following its purchase the Pooled Fund together with related Pooled Funds will hold more than 20% of the securities issued in the Primary Offering; and
  - (e) the price paid for the securities by the Pooled Fund in the Primary Offering shall be no higher than the lowest price paid by any of the arm’s-length purchasers who participate in the Primary Offering; and
  - (f) on or before the 90th day after the end of each financial year of the Pooled Fund, TDAM, as manager of the Pooled Fund, files with the securities regulatory authority or regulator the particulars of any such investments.

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

“Mary G. Condon”  
Commissioner  
Ontario Securities Commission

## 2.1.6 NewGrowth Corp.

### Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemptive relief granted to an exchange traded split share company from certain mutual fund requirements and restrictions on; calculation and payment of redemptions, preparation of compliance reports, and date of record for payment of distributions – Since investors will generally buy and sell shares through the TSX, there are adequate protections and it would not be prejudicial to investors – National Instrument 81-102 – Mutual Funds.

### Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 10.3, 10.4(1), 12.1(1), 14.1, 19.1.

June 25, 2009

**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  
NEWGROWTH CORP.**

**DECISION**

### Background

The principal regulator in the Jurisdiction has received an application from NewGrowth Corp. (the “Filer”) for a decision under the securities legislation of the Jurisdiction (the “Jurisdiction”) under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* for relief from the following sections of National Instrument 81-102 *Mutual Funds* (“NI 81-102”) (collectively, “the NI 81-102 Requirements”) with respect to the Class B Preferred Shares, Series 2 (the “Series 2 Preferred Shares”) proposed to be issued by the Filer as described in a prospectus dated June 16, 2009 (the “Prospectus”):

- (a) section 10.3, which requires that the redemption price of a security of a mutual fund to which a redemption order pertains shall be the net asset value of a security of that class, or series of class, next determined after the receipt by the mutual fund of the order;
- (b) subsection 10.4(1), which requires that a mutual fund shall pay the redemption price for securities

that are the subject of a redemption order within three business days after the date of calculation of the net asset value per security used in establishing the redemption price;

- (c) subsection 12.1(1), which requires a mutual fund that does not have a principal distributor to complete and file a compliance report, and accompanying letter of the auditor, in the form and within the time period mandated by subsection 12.1(1); and
- (d) section 14.1, which requires that the record date for determining the right of securityholders of a mutual fund to receive a dividend or distribution by the mutual fund shall be calculated in accordance with section 14.1

### (“Exemption Sought”).

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

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that section 4.7(1) of Multinational Instrument 11-102 *Passport System* (“MI 11-102”) is intended to be relied upon in the jurisdictions of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador.

### Interpretation

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

### Representations

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

### The Filer

1. The Filer was incorporated under the *Business Corporations Act* (Ontario) on June 27, 1991 and completed its initial public offering of capital shares and equity dividend shares in 1992.
2. The Filer underwent a capital reorganization in June 1998, pursuant to which the outstanding capital shares were exchanged for class A capital shares (“Class A Capital Shares”), the outstanding equity dividend shares were redeemed and, in order to maintain the leveraged “split share” structure of the Filer, a new class of preferred shares (the “Preferred Shares”) was issued pursuant to a final long form prospectus dated June 16, 1998.

3. In 2004, the Filer completed another capital reorganization (the "**2004 Reorganization**"). Pursuant to the 2004 Reorganization, 823,105 Class A Capital Shares were redeemed under the Special Retraction Right and all of the outstanding Preferred Shares were redeemed on June 25, 2004 in accordance with their terms. In order to maintain the leveraged "split share" structure of the Filer, Class B Preferred Shares, Series 1 ("**Series 1 Preferred Shares**") were issued pursuant to a prospectus dated June 17, 2004.
4. The Filer has applied and received exemptive relief dated June 21, 2004 (the "**Prior Decision**") from certain restriction in NI 81-102 with respect to the 2004 Reorganization. The Filer cannot rely on the Prior Decision for the 2009 Reorganization.
5. On May 11, 2009, the holders of the Class A Capital Shares approved a share capital reorganization (the "**2009 Reorganization**"). The 2009 Reorganization will permit holders of Class A Capital Shares to extend their investment in the Filer beyond the redemption date of June 26, 2009 for up to an additional 5 years. The 2009 Reorganization also provides holders of Class A Capital Shares with a special right of retraction (the "**Special Retraction Right**") to replace the originally scheduled final redemption. Under the 2009 Reorganization, holders of Class A Capital Shares who do not wish to extend their investment may choose to have their shares redeemed on June 26, 2009. If the 2009 Reorganization is not implemented, the Special Retraction Right will not become effective and the Class A Capital Shares will be redeemed by the Filer on June 26, 2009 in accordance with their terms.
6. The Series 2 Preferred Shares are being offered in order to maintain the leveraged "split share" structure of the Filer and will be issued on June 26, 2009 (the "**Offering**") such that there will be an equal number of Class A Capital Shares and Series 2 Preferred Shares outstanding on and after June 26, 2009.
7. The Filer will make the Offering to the public pursuant to a final prospectus (the "**Final Prospectus**") dated June 26, 2009.
8. The Class A Capital Shares will continue to be listed and posted for trading on The Toronto Stock Exchange (the "**TSX**") and the Series 2 Preferred Shares are expected to be listed and posted for trading on the TSX. An application requesting conditional listing approval has been made by the Filer to the TSX.
9. The primary undertaking of the Filer is to invest in a portfolio of common shares (the "**Portfolio Shares**") of selected Canadian chartered banks, telecommunication, utility and pipeline companies in order to generate fixed cumulative preferential distributions for the holders of the Filer's Series 2 Preferred Shares and to enable the holders of the Filer's Class A Capital Shares to participate in any capital appreciation in the Portfolio Shares. The Portfolio Shares will be the only material assets of the Filer.
10. The net proceeds of the Offering (after deducting the agent's fees and expenses of the issue), depending upon the number and value of Class A Capital Shares redeemed pursuant to the Special Retraction Right, will be used by the Filer to fund the redemption of all of the issued and outstanding Series 1 Preferred Shares of the Filer on June 26, 2009 as well as those Class A Capital Shares being redeemed pursuant to the Special Retraction Right together, with the net proceeds from the sale of a portion of the portfolio, if necessary.
11. It will be the policy of the Filer to hold the Portfolio Shares and to not engage in any trading of the Portfolio Shares, except:
  - (i) to complete the adjustment to and rebalancing of the Portfolio as described in the Prospectus;
  - (ii) to fund retractions or redemptions of Class A Capital Shares and Series 2 Preferred Shares;
  - (iii) following receipt of stock dividends on the Portfolio Shares;
  - (iv) if necessary, to fund any shortfall in the distribution on Series 2 Preferred Shares; and
  - (v) to meet obligations of the Filer in respect of liabilities including extraordinary liabilities.
12. Series 2 Preferred Share distributions will be funded from the dividends received on the Portfolio Shares. If necessary, any shortfall in the distributions on the Class B Preferred Shares will be funded by proceeds from the sale of Portfolio Shares.
13. The record date for the payment of Series 2 Preferred Share distributions, Class A Capital Share dividends or other distributions of the Filer will be set in accordance with the applicable requirements of the TSX.
14. The Class A Capital Shares and Series 2 Preferred Shares may be surrendered for retraction at any time. Retraction payments for Class A Capital Shares and Series 2 Preferred Shares will be made on the Retraction Payment Date (as defined in the Prospectus) provided the Class A Capital Shares and the Series 2 Preferred

Shares have been surrendered for retraction no later than the 15th day of that month. While the Filer's Unit Value (as defined in the Prospectus) is calculated weekly, the retraction price for the Class A Capital Shares and the Series 2 Preferred Shares will be determined based on the Unit Value in effect as at the Valuation Date (as defined in the Prospectus).

15. Any Class A Capital Shares and Series 2 Preferred Shares outstanding on a date approximately five years from the closing of the Offering, which date will be specified in the Final Prospectus, will be redeemed by the Filer on such date.

**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 is that the Exemption Sought is granted as follows:

- (a) section 10.3 – to permit the Filer to calculate the retraction price for the Class A Capital Shares and Series 2 Preferred Shares in the manner described in the Prospectus and on the applicable Valuation Date as defined in the Prospectus;
- (b) subsection 10.4(1) – to permit the Filer to pay the retraction price for the Class A Capital Shares and Series 2 Preferred Shares on the Retraction Payment Date, as defined in the Prospectus;
- (c) subsection 12.1(1) – to relieve the Filer from the requirement to file the prescribed compliance reports; and
- (d) section 14.1 – to relieve the Filer from the requirement relating to the record date for the payment of dividends or other distributions, provided that it complies with the applicable requirements of the TSX.

“Vera Nunes”  
Assistant Manager, Investment Funds  
Ontario Securities Commission

**2.1.7 Invesco Trimark Ltd. et al.**

**Headnote**

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of mutual fund mergers – approval required because mergers do not meet the criteria for pre-approval – certain mergers have differences in investment objectives and fee structures – certain mergers not a “qualifying exchange” or a tax-deferred transaction under Income Tax Act – securityholders of terminating funds provided with timely and adequate disclosure regarding the mergers.

**Applicable Legislative Provisions**

National Instrument 81-102 Mutual Funds, ss. 5.5(1)(b), 5.6.

**July 6, 2009**

**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  
INVESCO TRIMARK LTD.  
 (“Invesco Trimark”)**

**AND**

**IN THE MATTER OF  
INVESCO TRIMARK CORE AMERICAN EQUITY CLASS,  
TRIMARK GLOBAL TECHNOLOGY CLASS,  
TRIMARK GLOBAL TECHNOLOGY FUND AND  
TRIMARK DISCOVERY FUND  
(collectively, the “Terminating Funds”)**

**AND**

**INVESCO TRIMARK CORE GLOBAL EQUITY CLASS,  
TRIMARK U.S. COMPANIES CLASS AND  
TRIMARK U.S. COMPANIES FUND  
(collectively, the “Continuing Funds”)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from Invesco Trimark on behalf of the Terminating Funds for a decision under the securities legislation of the Jurisdiction of the principal regulator (the “**Legislation**”) for approval under subsection 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* (“**NI 81-102**”) to

merge each Terminating Fund into the Continuing Fund opposite its name below (the “Proposed Mergers”).

Terminating Fund	Continuing Fund
Invesco Trimark Core American Equity Class	Invesco Trimark Core Global Equity Class
Trimark Global Technology Class	Trimark U.S. Companies Class
Trimark Global Technology Fund	Trimark U.S. Companies Fund
Trimark Discovery Fund	Trimark U.S. Companies Fund

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

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) Invesco Trimark has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (“MI 11-102”) is intended to be relied upon in all of the other provinces and territories of Canada.

**Interpretation**

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

**Representations**

This decision is based on the following facts represented by Invesco Trimark:

- 1. Invesco Trimark is a corporation amalgamated under the laws of Ontario. Invesco Trimark is an indirect wholly-owned subsidiary of Invesco Ltd., a global investment manager, and is not in default of securities legislation in any jurisdiction. The head office of Invesco Trimark is located in Toronto, Ontario.
- 2. Invesco Trimark is the manager of each of the Terminating Funds and the Continuing Funds (the “Funds”) and is the trustee of each of the Funds except for Invesco Trimark Core American Equity Class, Trimark Global Technology Class, Invesco Trimark Core Global Equity Class and Trimark U.S. Companies Class (the “Classes”).
- 3. Each of the Classes is a separate class of AIM Trimark Corporate Class Inc., a mutual fund corporation incorporated by articles of incorporation under the laws of Ontario on October 4, 1994.

- 4. Each of the Funds, other than the Classes, is an open-end mutual fund trust established under the laws of Ontario by a declaration of trust.
- 5. Securities of the Funds are currently qualified for sale by a simplified prospectus and annual information form dated August 11, 2008, as amended, which have been filed and receipted in all of the provinces and territories of Canada.
- 6. Each of the Funds is a reporting issuer under applicable securities legislation of each province and territory of Canada and is not on the list of defaulting reporting issuers maintained under the applicable securities legislation of any of the provinces and territories of Canada.
- 7. Other than circumstances in which the securities regulatory authority of a province or territory of Canada has expressly exempted a Fund therefrom, each of the Funds follows the standard investment restrictions and practices established by NI 81-102.
- 8. The net asset value for each series of the Funds is calculated on a daily basis on each day that The Toronto Stock Exchange is open for trading.
- 9. Pre-approval of the Proposed Mergers under section 5.6 of NI 81-102 is not available as a reasonable person would not consider the fundamental investment objectives of the relevant Terminating Fund and Continuing Fund in each Proposed Merger to be substantially similar.
- 10. In the case of the Proposed Mergers of Trimark Global Technology Fund into Trimark U.S. Companies Fund and Trimark Discovery Fund into Trimark U.S. Companies Fund (collectively, the “Trust into Trust Mergers”), pre-approval under section 5.6 of NI 81-102 is not available as these Trust into Trust Mergers will be done on a taxable basis.
- 11. The Proposed Merger of Invesco Trimark Core American Equity Class, which has a management and advisory fee of 1.5%, into Invesco Trimark Core Global Equity Class, which has a management and advisory fee of 2.0%, involves two funds with fee structures that a reasonable person would not consider to be substantially similar, making pre-approval under section 5.6 of NI 81-102 unavailable for this Proposed Merger.
- 12. In the case of the Proposed Mergers of Invesco Trimark Core American Equity Class into Invesco Trimark Core Global Equity Class and Trimark Global Technology Class into Trimark U.S. Companies Class (collectively, the “Class into Class Mergers”), Invesco Trimark will be seeking the approval of securityholders of each of the two Terminating Funds pursuant to subsection 5.1(f) of NI 81-102. In addition, Invesco Trimark will be



- seeking the approval of securityholders of AIM Trimark Corporate Class Inc. as a whole and securityholders of each of the two relevant Continuing Funds as a separate Class pursuant to the *Business Corporations Act* (Ontario).
13. In the case of the Trust into Trust Mergers, Invesco Trimark will be seeking the approval of securityholders of each of the Terminating Funds pursuant to subsection 5.1(f) of NI 81-102. The approval of the securityholders of the Continuing Funds is not required.
  14. Except as described above, the Proposed Mergers meet all of the other criteria for pre-approved reorganizations and transfers under section 5.6 of NI 81-102.
  15. Pursuant to the Proposed Mergers, securityholders will receive securities in the same series of the applicable Continuing Fund as they currently own in the Terminating Fund.
  16. No sales charges will be payable in connection with the acquisition by a Continuing Fund of the investment portfolio of the applicable Terminating Fund.
  17. The portfolios and other assets of the Terminating Funds to be acquired by the applicable Continuing Fund arising from the Proposed Mergers are currently, or will be, acceptable, prior to the effective date of the Proposed Mergers, to the portfolio advisers of the applicable Continuing Fund and are or will be consistent with the investment objectives of the applicable Continuing Fund.
  18. Material change reports and press releases were filed via SEDAR on May 6, 2009 with respect to the Proposed Mergers, and amendments to the simplified prospectus and annual information form of the Funds were filed via SEDAR on May 7, 2009.
  19. Notices of Meeting, Management Information Circulars and Proxies in connection with meetings of securityholders were filed via SEDAR on June 24, 2009 and will be mailed to securityholders of the Terminating Funds. The Management Information Circulars contain disclosure of the management fees of the Continuing Funds. Securityholders of the Terminating Funds will be asked to approve the Proposed Mergers at meetings to be held on July 30, 2009.
  20. As required by the *Business Corporations Act* (Ontario), securityholders of Invesco Trimark Core Global Equity Class, Trimark U.S. Companies Class and AIM Trimark Corporate Class Inc. will also be mailed the Notices of Meetings, Management Information Circulars and Proxies in connection with the meetings of securityholders, and asked to approve the Proposed Mergers at meetings to be held on July 30, 2009.
  21. On June 1, 2004, in connection with a prior fund merger, Invesco Trimark received exemptions from the requirement to deliver:
    - (a) the current simplified prospectus of the continuing fund to securityholders of terminating funds in connection with all future mergers of mutual funds managed by Invesco Trimark (the "**Future Mergers**") pursuant to paragraph 5.6(1)(f)(ii) of NI 81-102; and
    - (b) the most recent annual and interim financial statements of the continuing fund to securityholders of the terminating funds in connection with all Future Mergers pursuant to paragraph 5.6(1)(f)(ii) of NI 81-102.

(The relief outlined in (a) and (b) are collectively referred to as the "**Prospectus and Financial Statement Delivery Relief**".)
  22. In accordance with the Prospectus and Financial Statement Delivery Relief, the material that will be sent to securityholders of the Terminating Funds will include a tailored simplified prospectus consisting of:
    - (a) the current Part A of the simplified prospectus of the applicable Continuing Fund, and
    - (b) the current Part B of the simplified prospectus of the applicable Continuing Fund.
  23. In accordance with the Prospectus and Financial Statement Delivery Relief:
    - (a) the management information circular that will be sent to securityholders provides sufficient information about the relevant Proposed Merger to permit securityholders to make an informed decision about the Proposed Merger;
    - (b) the management information circular that will be sent to securityholders with respect to the relevant Proposed Merger prominently discloses that securityholders can obtain the most recent interim and annual financial statements of the applicable Continuing Fund by accessing the SEDAR website at [www.sedar.com](http://www.sedar.com), by accessing Invesco Trimark's website, by calling Invesco Trimark's toll-free telephone number servicing securityholders both in English

- and French, or by faxing a request to Invesco Trimark;
- (c) upon request by a securityholder for financial statements, Invesco Trimark will make best efforts to provide the securityholder with financial statements of the applicable Continuing Fund in a timely manner so that the securityholder can make an informed decision regarding the relevant Proposed Merger; and
- (d) each Terminating Fund and Continuing Fund has an unqualified audit report in respect of its last completed financial period.
24. Securityholders of a Terminating Fund will continue to have the right to redeem securities of the Terminating Fund for cash at any time up to the close of business on the effective date of the Proposed Mergers.
25. The management information circular to be mailed to securityholders of the Terminating Funds discloses that securities of the Continuing Funds acquired by securityholders upon the Proposed Mergers are subject to the same redemption charges, to which their securities of the Terminating Funds were subject prior to the Proposed Merger. The management information circular also states that any redemption fees payable in connection with units purchased under the deferred sales charge option when unitholders redeem units of the Terminating Fund will apply.
26. The Independent Review Committee of the Funds provided a positive recommendation with respect to the Proposed Mergers and such recommendation is included in the management information circular to be mailed to securityholders of the Terminating Funds.
27. The Class into Class Mergers will each be a tax deferred transaction under subsection 86(1) of the Income Tax Act. The Trust into Trust Mergers will be taxable transactions and will not be qualifying exchanges.
28. Securityholders of the Terminating Funds will be provided with information about the differences between the Terminating Funds and the Continuing Funds as well as the tax implications of the Proposed Mergers in the management information circular, so that the securityholders of the Terminating Funds may consider this information before voting on the Proposed Mergers.
29. Invesco Trimark will pay for the costs of the Proposed Mergers. These costs consist mainly of brokerage charges associated with the trades that occur both before and after the date of the
- Proposed Mergers and legal, proxy solicitation, printing, mailing and regulatory fees.
30. Each Terminating Fund is expected to merge into the applicable Continuing Fund on or about the close of business on August 14, 2009 and the Continuing Funds will continue as publicly offered open-end mutual funds governed by the laws of Ontario.
31. The Class into Class Mergers will be structured as follows:
- (a) Invesco Trimark anticipates that there will be a period of approximately 2 to 3 weeks between the investor meetings at which the investors will vote on the Class into Class Mergers and the implementation of the Class into Class Mergers which receive all necessary approvals. If all necessary approvals are obtained, prior to the date of the Class into Class Mergers, each of the two Terminating Funds will liquidate all of the assets in its portfolio that the portfolio manager(s) of the relevant Continuing Fund do not wish to have in that Continuing Fund, and may hold the proceeds in cash, money market instruments, securities of affiliated money market funds, bonds or other debt securities. Accordingly, the Terminating Funds may not be fully invested in accordance with their investment objectives for this brief period of time prior to its Class into Class Merger;
- (b) each of the two Terminating Funds will satisfy or otherwise make provisions for any liabilities attributable to it out of the assets attributable to it;
- (c) the value of the underlying portfolio of assets attributable to each of these two Terminating Funds will be determined at the close of business on the effective date of the articles of amendment of AIM Trimark Corporate Class Inc. that change the shares of each of these two Terminating Funds to shares of the relevant Continuing Fund;
- (d) all of the issued and outstanding shares of each of these two Terminating Funds will be changed into shares of the relevant Continuing Fund on a dollar-for-dollar and series-by-series basis and distributed to the shareholders of the relevant Terminating Fund;
- (e) the shares of the Continuing Fund received by each shareholder of the relevant Terminating Fund will have the

- same aggregate net asset value as the shares of the Terminating Funds held by that shareholder on the effective date of the relevant Class into Class Merger;
  - (f) the aggregate net asset value of all of the shares of a Continuing Fund received by all shareholders of the relevant Terminating Fund will equal the value of the portfolio and other assets attributable to that Terminating Fund, and the shares of the Continuing Fund will be issued at the applicable series net asset value per share of the relevant Continuing Fund as of the close of business on the effective date of the relevant Class into Class Merger;
  - (g) the underlying portfolio of assets attributable to each of these two Terminating Funds will be included in the underlying portfolio of assets attributable to the relevant Continuing Fund; and
  - (h) as soon as reasonably possible, the shares of each of these two Terminating Funds will be cancelled.
32. The Trust into Trust Mergers will be structured as follows:
- (a) Invesco Trimark anticipates that there will be a period of approximately 2 to 3 weeks between the investor meetings at which the investors will vote on the Trust into Trust Mergers and the implementation of the Trust into Trust Mergers which receive all necessary approvals. If all necessary approvals are obtained, prior to the date of the Trust into Trust Mergers, each of the two Terminating Funds will liquidate all of the assets in its portfolio that the portfolio manager of Trimark U.S. Companies Fund does not wish to have in Trimark U.S. Companies Fund, and may hold the proceeds in cash, money market instruments, securities of affiliated money market funds, bonds or other debt securities. As a result, the Terminating Funds may not be fully invested in accordance with their investment objectives for this brief period of time prior to its Trust into Trust Merger;
  - (b) the value of each Terminating Funds' portfolio and other assets will be determined at the close of business on the effective date of the Trust into Trust Mergers in accordance with the Terminating Funds' declaration of trust;
  - (c) Trimark U.S. Companies Fund will acquire the investment portfolio and other assets of each Terminating Fund in exchange for units of Trimark U.S. Companies Fund;
  - (d) Trimark U.S. Companies Fund will not assume the liabilities of the Terminating Funds, and each Terminating Fund will retain sufficient assets to satisfy its estimated liabilities, if any, as of the date of the Proposed Mergers;
  - (e) the units of Trimark U.S. Companies Fund received by each unitholder of a Terminating Fund will have the same aggregate net asset value as the shares of that Terminating Fund held by that unitholder on the effective date of the relevant Trust into Trust Merger,
  - (f) the aggregate net asset value of all of the units of Trimark U.S. Companies Fund received by all unitholders of each Terminating Fund will equal the value of the portfolio and other assets attributable to that Terminating Fund, and the units of Trimark U.S. Companies Fund will be issued at the applicable series net asset value per unit as of the close of business on the effective date of the relevant Trust into Trust Merger;
  - (g) immediately thereafter, the units of the Continuing Fund received by the relevant Terminating Fund will be distributed to unitholders of the Terminating Fund on a dollar-for-dollar and series-by-series basis in exchange for their units in the Terminating Fund; and
  - (h) as soon as reasonably possible following the Proposed Mergers the Terminating Funds will be wound up.

**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 Proposed Mergers are approved.

“Darren McKall”  
Assistant Manager, Investment Funds  
Ontario Securities Commission

**2.2 Orders**

**2.2.1 M P Global Financial Ltd. and Joe Feng Deng**

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

**AND**

**IN THE MATTER OF  
M P GLOBAL FINANCIAL LTD. AND  
JOE FENG DENG**

**ORDER**

**WHEREAS** on the 13th day of April, 2009, the Ontario Securities Commission (the "Commission") made a temporary order (the "Temporary Order") against M P Global Financial Ltd. ("MP Global") and Joe Feng Deng also known as Feng Deng, Yue Wen Deng and Deng Yue Wen ("Deng") (collectively the "Respondents");

**AND WHEREAS** on April 13, 2009, the Commission ordered pursuant to subsection 126(7) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that the Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

**AND WHEREAS** the Temporary Order dated April 13, 2009 provided that:

1. pursuant to clause 2 of subsection 127(1) of the Act, that all trading of securities of MP Global shall cease;
2. pursuant to clause 2 of subsection 127(1) of the Act, that trading by Deng and MP Global shall cease; and
3. pursuant to clause 3 of subsection 127(1) of the Act, that the exemptions contained in Ontario securities law do not apply to MP Global or Deng;

**AND WHEREAS** on April 27, 2009, the Commission ordered that the Temporary Order be extended until May 26, 2009 and the hearing in this matter be adjourned to May 25, 2009 at 2:00 p.m.;

**AND WHEREAS** on May 25, 2009, the Commission ordered that the Temporary Order be extended until the completion of the hearing on June 29, 2009 and the hearing in this matter be adjourned to June 29, 2009 at 11:00 a.m.;

**AND WHEREAS** the Commission held a hearing on June 29, 2009;

**AND UPON** reading the materials filed and hearing submissions from Staff of the Commission and counsel for the Respondents;

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

**IT IS ORDERED** that the Temporary Order be extended to September 14, 2009 and the hearing in this matter be adjourned to September 11, 2009 at 10:00 a.m.;

**IT IS FURTHER ORDERED** that the Respondents may file materials within two weeks respecting the issue of whether the Commission has jurisdiction in this matter on the basis that there was a security issued and that upon the filing of the materials by the Respondents, counsel for the parties shall agree on a date to argue the issue of the Commission's jurisdiction.

**DATED** at Toronto this 29th day of June, 2009

"James E. A. Turner"

**2.2.2 Bank of Nova Scotia and Scotiabank Tier 1 Trust**

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption granted to a trust from continuous disclosure requirements under National Instrument 51-102 Continuous Disclosure Obligations and certification obligations under National Instrument 52-109 Certification of Disclosure in Issuers’ Annual and Interim Filings, subject to certain conditions – Trust established for purpose of effecting offerings of trust securities in order to provide bank with a cost-effective means of raising capital for Canadian bank regulatory purposes – Trust became reporting issuer upon filing a prospectus offering trust securities – Without relief, trust would have to comply with continuous disclosure and certification requirements – Given the nature, terms and conditions of the trust securities and various covenants of the bank in connection with the prospectus offering, the meaningful information to public holders of trust securities is information with respect to the bank, rather than the trust.

**June 30, 2009**

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

**AND**

**IN THE MATTER OF  
THE BANK OF NOVA SCOTIA AND  
SCOTIABANK TIER 1 TRUST**

**ORDER**

**WHEREAS** the Ontario Securities Commission (the “**Commission**”) has received an application from The Bank of Nova Scotia (the “**Bank**”) and Scotiabank Tier 1 Trust (the “**Trust**”) for an order, pursuant to section 6.1 of Ontario Securities Commission Rule 13-502 *Fees* (the “**Fees Rule**”), that the requirement to pay a participation fee under section 2.2 of the Fees Rule shall not apply to the Trust, subject to certain terms and conditions;

**AND WHEREAS** the Bank and the Trust have represented to the Commission that:

1. The Trust is a trust established under the laws of Ontario by Computershare Trust Company of Canada, as trustee (the “**Trustee**”) pursuant to a declaration of trust dated as of August 19, 2008, as amended and restated on May 7, 2009, and as it may be amended, restated and supplemented from time to time.
2. The Trust’s head and registered office is located in Toronto, Ontario. The Trust has a financial year-end of December 31.

3. The Trust completed an initial public offering (the “**Offering**”) of 7.802% Scotiabank Tier 1 Securities – Series 2009-1 Due June 30, 2108 (the “**Scotia BaTS III Series 2009-1**”) in each of the provinces and territories in Canada (the “**Jurisdictions**”) on May 7, 2009, and may, from time to time, issue further series of similar securities (“**Scotia BaTS III**”). As a result of the Offering, the capital of the Trust consists of: (i) Scotia BaTS III Series 2009-1 and (ii) voting trust units (the “**Voting Trust Units**”). All of the outstanding Voting Trust Units are held, directly or indirectly, by the Bank.
4. The Trust is a reporting issuer, or the equivalent, in the Jurisdictions. The Trust is not, to the best of its knowledge, in default of any requirement under the securities legislation in the Jurisdictions.
5. Pursuant to an administration agreement dated August 19, 2008, as amended and restated on May 7, 2009, the Trustee has delegated to the Bank certain of its obligations in relation to the administration of the Trust, including the day-to-day operations of the Trust and other matters as may be requested by the Trustee from time to time.
6. The Trust is a single purpose vehicle established for the purpose of effecting offerings of securities, including Scotia BaTS III and Voting Trust Units (collectively, the “**Trust Securities**”), in order to provide the Bank with a cost-effective means of raising capital for Canadian bank regulatory purposes by means of (i) creating and selling the Trust Securities; and (ii) acquiring and holding assets, which will consist primarily of a senior unsecured deposit note of the Bank (the “**Bank Deposit Note**”) and certain other eligible assets (collectively, the “**Trust Assets**”). The Trust Assets will generate income for the payment of principal, interest, the redemption price, if any, and any other amounts, in respect of the Trust’s debt securities, including the Scotia BaTS III Series 2009-1. The Trust will not carry on any operating activity other than in connection with offerings of Trust Securities and in connection with the Trust Assets.
7. No securities of the Trust are currently listed on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.
8. Pursuant to a decision document dated June 30, 2009 (the “**Continuous Disclosure Exemption Decision**”) granted to the Trust by the Commission, as principal regulator, on behalf of itself and the securities regulatory authorities of the Jurisdictions under the passport system contemplated by Multilateral Instrument 11-102 *Passport System* (“**MI 11-102**”), the Trust has been granted an exemption from the requirements contained in the securities legislation of the Province of Ontario (the “**Legislation**”) to:

- (a) (i) file interim financial statements and audited annual financial statements and deliver same to the security holders of the Trust pursuant to sections 4.1, 4.3 and 4.6 of National Instrument 51-102 *Continuous Disclosure Obligations* (“**NI 51-102**”);
- (ii) file interim and annual management’s discussion and analysis and deliver same to security holders of the Trust pursuant to sections 5.1 and 5.6 of NI 51-102;
- (iii) file an annual information form pursuant to section 6.1 of NI 51-102; and
- (iv) comply with any other requirements of NI 51-102
- (collectively referred to herein as the “**Continuous Disclosure Obligations**”); and
- (b) file interim and annual certificates (collectively, the “**Officers’ Certificates**”) pursuant to Parts 4, 5 and 6 of National Instrument 52-109 *Certification of Disclosure in Issuers’ Annual and Interim Filings* (the “**Certification Obligations**”).
9. As a result of granting the Continuous Disclosure Exemption Decision, the Trust is exempt from the Continuous Disclosure Obligations and the Certification Obligations, subject to certain terms and conditions, and no continuous disclosure documents concerning the Trust will be filed with the Commission.
10. The Office of the Superintendent of Financial Institutions Canada (“**OSFI**”) maintains strict guidelines and standards with respect to the capital adequacy requirements of federally regulated financial institutions, including the Bank, and, in particular, specifies minimum required amounts of capital to be maintained by such institutions. Tier 1 capital consists of common shareholders’ equity, qualifying non-cumulative perpetual preferred shares, qualifying innovative instruments and qualifying non-controlling interests arising on a consolidation from Tier 1 capital instruments. Innovative instruments, such as the Scotia BaTS III Series 2009-1, must satisfy the detailed requirements of OSFI’s Innovative Capital Guidelines (the “**OSFI Guidelines**”) to be included in the Tier 1 capital of the Bank. OSFI approved the inclusion of the Scotia BaTS III Series 2009-1 as Tier 1 capital of the Bank.
12. The Trust is a “Class 2 reporting issuer” under the Fees Rule and would be required (but for this Order) to pay participation fees under such rule.
13. The Bank, as a legal and factual matter, controls the Trust through its ownership of the Voting Trust Units issued by the Trust and its role as administrative agent of the Trust. The Bank has paid, and will continue to pay, participation fees applicable to it under section 2.2 of the Fees Rule.
14. The Fees Rule includes an exemption for “subsidiary entities” in subsection 2.9(2) of the Fees Rule. The Bank and the Trust meet all of the substantive requirements to rely on the exemption in subsection 2.9(2) of the Fees Rule, but for the definition of “subsidiary entity”. The Fees Rule defines “subsidiary entity” by reference to the accounting definition under Canadian generally accepted accounting principles (“**GAAP**”), rather than by reference to a legal definition based on control.
15. On November 1, 2004, the Canadian Institute of Chartered Accountants adopted Guideline 15, Consolidation of Variable Interest Entities (the “**VIE Guideline**”). According to the VIE Guideline, the Bank may not consolidate the Trust because the assets of the Trust consist primarily of the Bank Deposit Note, a liability of the Bank. As a result, the Trust may not, from a technical accounting perspective, be considered to be a “subsidiary entity” of the Bank for Canadian GAAP purposes and may not be entitled to rely on the exemption in section 2.9(2) of the Fees Rule.
- THE ORDER** of the Commission under the Fees Rule is that the requirements to pay a participation fee under section 2.2 of the Fees Rule shall not apply to the Trust, for so long as:
- (a) the Bank and the Trust continue to satisfy all of the conditions contained in the Continuous Disclosure Exemption Decision; and
- (b) the capitalization of the Trust represented by the Scotia BaTS III Series 2009-1 and any additional securities of the Trust that may be issued, from time to time, by the Trust is included in the participation fee calculation applicable to the Bank and the Bank has paid the participation fee calculated on this basis.

“Michael Brown”  
 Assistant Manager, Corporate Finance  
 Ontario Securities Commission

2.2.3 Factorcorp Inc. et al. – s. 127

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

AND

IN THE MATTER OF  
FACTORCORP INC.,  
FACTORCORP FINANCIAL INC., AND  
MARK IVAN TWERDUN

ORDER  
(Section 127 of the Act)

**WHEREAS** on May 12, 2009 the Ontario Securities Commission (the “Commission”) issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990 c. S.5, accompanied by a Statement of Allegations issued by Staff of the Commission on the same date against Factorcorp Inc., Factorcorp Financial Inc., and Mark Twerdun (“Twerdun”);

**AND WHEREAS** Staff of the Commission and Twerdun have requested that this matter be adjourned for a pre-hearing conference on October 5, 2009;

**AND WHEREAS** on May 12, 2009 a temporary order was continued against Twerdun, as varied on October 26, 2007, until this proceeding is concluded and a decision of the Commission is rendered or until the Commission considers it appropriate;

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

**IT IS HEREBY ORDERED** that this matter is adjourned until October 5, 2009 at 10 a.m., or such other date as determined by the Office of the Secretary, for the purpose of having a pre-hearing conference on that date.

**DATED** at Toronto, this 30th day of June, 2009.

“Lawrence E. Ritchie”  
Vice-Chair

2.2.4 Elliott International Capital Advisors Inc. – s. 80 of the CFA

Headnote

Section 80 of the Commodity Futures Act (Ontario) – Relief from the adviser registration requirements of subsection 22(1)(b) of the CFA in respect of acting as an adviser to certain non-Canadian investment funds and similar investment vehicles primarily offered outside of Canada in respect of trades in commodity futures contracts and commodity futures options primarily traded on commodity futures exchanges outside Canada and primarily cleared through clearing corporations outside Canada, subject to certain terms and conditions. Relief mirrors exemption available in section 7.10 of Ontario Securities Commission Rule 35-502 – Non Resident Advisers.

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 22(1)(b), 80.  
Securities Act, R.S.O. 1990, c. S.5, as am. – Rule 35-502 – Non Resident Advisers.

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

AND

IN THE MATTER OF  
ELLIOTT INTERNATIONAL  
CAPITAL ADVISORS INC.

ORDER  
(Section 80 of the CFA)

**UPON** the application (the **Application**) of Elliott International Capital Advisors Inc. (the **Applicant**) to the Ontario Securities Commission (the **Commission** or the **OSC**) for an order, pursuant to section 80 of the CFA, that the Applicant (including its directors, officers and employees) be exempt, for a period of five years, from the adviser registration requirement in paragraph 22(1)(b) of the CFA in connection with the Applicant acting as an adviser to certain non-Canadian mutual funds, non-redeemable investment funds and similar investment vehicles (the **Funds**, as defined below) primarily offered outside of Canada in respect of trades in commodity futures contracts and commodity futures options primarily traded on commodity futures exchanges outside Canada and primarily cleared through clearing corporations outside Canada;

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

**AND UPON** the Applicant having represented to the Commission that:

1. The Applicant is a company incorporated under the laws of the State of Delaware, U.S.A., with its primary office located in New York, New York, U.S.A. The Applicant does not have an office in Canada and has no directors, officers or employees resident in Canada.
2. The Applicant operates as an exempt commodity pool operator and exempt commodity trading advisor with the National Futures Association in the United States. The Applicant is also exempt from registering with the United States Securities and Exchange Commission as an investment adviser. The Applicant is not registered and has no current intention of becoming registered in any capacity under the CFA or under the *Securities Act* (Ontario) (the **OSA**).
3. The Applicant acts as an investment adviser in respect of certain non-Canadian mutual funds, non-redeemable investment funds or similar investment vehicles, including Elliott International Limited and Elliott International L.P., and may in the future establish or advise certain other non-Canadian mutual funds, non-redeemable investment funds or similar investment vehicles (collectively, the **Funds**).
4. The Funds advised by the Applicant that are or will be the subject of this Order are or will be established outside of Canada. Securities of the Funds are and will be primarily offered outside of Canada to institutional investors and high net worth individuals. To the extent the securities of the Funds are offered to Canadian investors, such investors will each qualify as an “accredited investor” for the purposes of National Instrument 45-106 – *Prospectus and Registration Exemptions*, and will only be distributed in Ontario through one or more registrants under the OSA, in reliance upon an exemption from the prospectus requirements of the OSA.
5. None of the Funds has any intention of becoming a reporting issuer under the OSA or under the securities legislation of any other jurisdiction in Canada.
6. The Funds may, as a part of their investment program, invest in commodity futures contracts and commodity futures options primarily traded on commodity futures exchanges outside Canada and primarily cleared through clearing corporations outside Canada.
7. Paragraph 22(1)(b) of the CFA prohibits a person or company from acting as an adviser unless the person or company is registered as an adviser under the CFA, or is registered as a representative or as a partner or an officer of a registered adviser and is acting on behalf of such registered adviser, and otherwise satisfies the applicable requirements specified in section 22 of the CFA. Under the CFA, “adviser” means a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to trading in “contracts”, and “contracts” means commodity futures contracts and commodity futures options.
8. Where securities of the Funds are offered by the Funds to an Ontario resident, and the Applicant engages in the business of advising the Funds as to the investing in or the buying or selling of securities, the Applicant may, by so acting, be interpreted as acting as an adviser, as defined in the OSA, to the Ontario resident who acquires the securities offered by the Funds, as suggested in the Notice of the Commission dated October 2, 1998, requesting comments on the then-proposed OSA Rule 35-502. Similarly, where securities of the Funds are offered to an Ontario resident, and the Applicant engages in the business of advising the Funds as to trading in commodity futures contracts or commodity futures options, the Applicant may, by so acting, also be interpreted as acting as an adviser (as defined in the CFA) to the Ontario resident who acquires the securities offered by the Funds.
9. There is presently no rule under the CFA that provides an exemption from the adviser registration requirement in paragraph 22(1)(b) of the CFA for a person or company acting as an adviser in respect of commodity futures options and commodity futures contracts that is similar to the exemption from the adviser registration requirement in section 25(1)(c) of the OSA for acting as an adviser (as defined in the OSA) in respect of securities that is provided under section 7.10 of Rule 35-502.
10. As would be required under section 7.10 of Rule 35-502, securities of the Funds are or will be:
  - (a) primarily offered outside of Canada;
  - (b) only distributed in Ontario through one or more registrants under the OSA; and
  - (c) distributed in Ontario in reliance upon an exemption from the prospectus requirements of the OSA.
11. The Applicant, where required, is or will be appropriately registered or licensed or is, or will be, entitled to rely on appropriate exemptions from such registrations or licences to provide advice to the Funds pursuant to the applicable legislation of its principal jurisdiction.
12. Prior to purchasing any securities in one or more of the Funds, all investors in the Funds who are Ontario residents will receive disclosure that includes:



- (a) a statement that there may be difficulty in enforcing any legal rights against the relevant Fund or the Applicant (or the individual representatives of the Applicant) advising the relevant Fund, because such entities are resident outside of Canada and all or substantially all of their assets are situated outside of Canada; and
- (b) a statement that the Applicant advising the relevant Fund is not, or will not be, registered with or licensed by any regulatory authority in Canada and, accordingly, the protections that might otherwise be available to clients of a registered adviser under the OSA and the CFA will not be available to purchasers of securities of the Funds.

**AND UPON** being satisfied that it would not be prejudicial to the public interest for the Commission to grant the exemption requested on the basis of the terms and conditions proposed;

**IT IS ORDERED** pursuant to section 80 of the CFA, that the Applicant (including its directors, officers and employees) is exempted, for a period of five years, from the adviser registration requirement in paragraph 22(1)(b) of the CFA in connection with the Applicant acting as an adviser to the Funds provided that at the relevant time that such activities are engaged in:

- (a) the Applicant is not ordinarily resident in Ontario;
- (b) the Applicant is appropriately registered or licensed, or entitled to rely upon appropriate exemptions from registration or licensing requirements, in order to provide advice to the Funds pursuant to the applicable legislation of the Applicant's principal jurisdiction;
- (c) the Funds invest in commodity futures contracts and commodity futures options primarily traded on commodity futures exchanges outside Canada and primarily cleared through clearing corporations outside Canada;
- (d) securities of the Funds are:
  - (i) primarily offered outside of Canada,
  - (ii) only distributed in Ontario through one or more registrants under the OSA; and
  - (iii) distributed in Ontario, in reliance on an exemption from the

prospectus requirements of the OSA; and

- (e) prior to purchasing any securities in one or more of the Funds, all investors in the Funds who are Ontario residents shall have received disclosure that includes:
  - (i) a statement that there may be difficulty in enforcing any legal rights against the relevant Fund or the Applicant (or the individual representatives of the Applicant) advising the relevant Fund, because such entities are resident outside of Canada and all or substantially all of their assets are situated outside of Canada; and
  - (ii) a statement that the Applicant advising the relevant Fund is not, or will not be, registered with or licensed by any regulatory authority in Canada and, accordingly, the protections that might otherwise be available to clients of a registered adviser under the OSA and the CFA will not be available to purchasers of securities of the relevant Fund.

June 26, 2009

"Mary G. Condon"  
Commissioner  
Ontario Securities Commission

"Paulette L. Kennedy"  
Commissioner  
Ontario Securities Commission

**2.2.5 Pershing Square Capital Management, L.P. –  
s. 218 of the Regulation**

**Headnote**

Application for an order, pursuant to section 218 of the Regulation, exempting the Applicant from the requirement in section 213 of the Regulation that the Applicant be incorporated, or otherwise formed or created, under the laws of Canada or a province or territory of Canada, for the Applicant to be registered under the Act as a dealer in the category of limited market dealer.

**Regulation Cited**

R.R.O. 1990, Regulation 1015, amended to O.Reg. 500/06, sections 213 and 218.

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

**AND**

**IN THE MATTER OF  
R.R.O. 1990, REGULATION 1015, AS AMENDED  
(the Regulation)**

**AND**

**IN THE MATTER OF  
PERSHING SQUARE CAPITAL MANAGEMENT, L.P.**

**ORDER  
(Section 218 of the Regulation)**

**UPON** the application (the **Application**) of Pershing Square Capital Management, L.P. (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order, pursuant to section 218 of the Regulation, exempting the Applicant from the requirement in section 213 of the Regulation that the Applicant be incorporated, or otherwise formed or created, under the laws of Canada or a province or territory of Canada, in order for the Applicant to be registered under the Act as a dealer in the category of limited market dealer (**LMD**);

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

**AND UPON** the Applicant having represented to the Commission that:

1. The Applicant is a limited partnership formed under the laws of the State of Delaware, United States of America. The head office of the Applicant is located in New York City, New York, United States of America.
2. The Applicant is registered as an investment adviser with the United States Securities and Exchange Commission.

3. The Applicant is not presently registered in any capacity under the Act. The Applicant has applied to the Commission for registration under the Act as a dealer in the category of LMD.

4. The Applicant's primary business is managing private investment funds on a discretionary basis. The Applicant markets the funds it manages, as well as funds managed by its affiliates to certain sophisticated clients, such as institutional clients and high net-worth individuals.

5. In Ontario, the Applicant intends to, among other things, market to accredited investors and other exempt purchasers units, shares, limited partnership interests and other securities or funds that are primarily offered outside of Canada. The clients would primarily include large institutional investors and high net-worth individuals. These limited market activities may be undertaken directly, or in conjunction with or through another registered dealer, including providing and receiving referrals to and from such dealer.

6. Section 213 of the Regulation provides that a registered dealer that is not an individual must be a company incorporated, or a person formed or created, under the laws of Canada or a province or territory of Canada.

7. The Applicant is not resident in Canada and will not maintain an office in Canada. The Applicant does not require a separate Canadian company in order to carry out its proposed LMD activities in Ontario. It is more efficient and cost-effective to carry out those activities through the existing company.

8. Without the relief requested, the Applicant would not meet the requirements of the Regulation for registration as a dealer in the category of LMD as it is not a company incorporated, or a person formed or created, under the laws of Canada or a province or territory of Canada.

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

**IT IS ORDERED**, pursuant to section 218 of the Regulation, and in connection with the registration of the Applicant as a dealer under the Act in the category of LMD, that section 213 of the Regulation shall not apply to the Applicant, provided that:

1. The Applicant appoints an agent for service of process in Ontario.
2. The Applicant shall provide to each client resident in Ontario a statement in writing disclosing the non-resident status of the Applicant, the Applicant's jurisdiction of residence, the name and address of the agent for service of process of the

- Applicant in Ontario, and the nature of risks to clients that legal rights may not be enforceable.
3. The Applicant will not change its agent for service of process in Ontario without giving the Commission 30 days' prior notice of such change by filing a new Submission to Jurisdiction and Appointment of Agent for Service of Process.
4. The Applicant and each of its registered directors, officers, or partners irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial, and administrative tribunals of Ontario and any administrative proceedings in Ontario, in any proceedings arising out of or related to or concerning its registration under the Act or its activities in Ontario as a registrant.
5. The Applicant will not have custody of, or maintain customer accounts in relation to, securities, funds, and other assets of clients resident in Ontario.
6. The Applicant will inform the Director immediately upon the Applicant becoming aware:
- (a) that it has ceased to be registered in the United States as an adviser;
  - (b) of its registration in any other jurisdiction not being renewed or being suspended or revoked;
  - (c) that it is the subject of a regulatory proceeding, investigation or disciplinary action by any financial services or securities regulatory authority or self-regulatory authority;
  - (d) that the registration of its salespersons or officers who are registered in Ontario have not been renewed or have been suspended or revoked in any Canadian or foreign jurisdiction; or
  - (e) that any of its salespersons or officers who are registered in Ontario are the subject of a regulatory proceeding, investigation or disciplinary action by any financial services or securities regulatory authority or self-regulatory authority in any Canadian or foreign jurisdiction.
7. The Applicant will pay the increased compliance and case assessment costs of the Commission due to the Applicant's location outside Ontario, including the cost of hiring a third party to perform a compliance review on behalf of the Commission.
8. The Applicant will make its books and records outside Ontario, including electronic records, readily accessible in Ontario, and will produce physical records for the Commission within a reasonable time if requested.
9. If the laws of the jurisdiction in which the Applicant's books and records are located prohibit production of the books and records in Ontario without the consent of the relevant client the Applicant shall, upon a request by the Commission:
- (a) so advise the Commission; and
  - (b) use its best efforts to obtain the client's consent to the production of the books and records.
10. The Applicant will, upon the Commission's request, provide a representative to assist the Commission in compliance and enforcement matters.
11. The Applicant and each of its registered directors, officers, or partners will comply, at the Applicant's expense, with requests under the Commission's investigation powers and orders under the Act in relation to the Applicant's dealings with Ontario clients, including producing documents and witnesses in Ontario, submitting to audit or search and seizure processes or consenting to an asset freeze, to the extent such powers would be enforceable against the Applicant if the Applicant were resident in Ontario.
12. If the laws of the Applicant's jurisdiction of residence that are otherwise applicable to the giving of evidence or production of documents prohibit the Applicant or the witnesses from giving the evidence without the consent or leave of the relevant client or any third party, including a court of competent jurisdiction, the Applicant shall:
- (a) so advise the Commission; and
  - (b) use its best efforts to obtain the client's consent to the giving of the evidence.
13. The Applicant will maintain appropriate registration and regulatory organization membership, in the jurisdiction of its principal operations, and if required, in its jurisdiction of residence.

June 30, 2009.

"Lawrence Ritchie"  
Commissioner  
Ontario Securities Commission

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

2.2.6 Lyndz Pharmaceuticals Inc. et al. – ss. 127(1), 127(5)

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

**AND**

**IN THE MATTER OF  
LYNDZ PHARMACEUTICALS INC.,  
LYNDZ PHARMA LTD., JAMES MARKETING LTD.,  
MICHAEL EATCH AND RICKEY MCKENZIE**

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

**WHEREAS** on December 4, 2008, the Ontario Securities Commission (the “Commission”) ordered pursuant to sections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”) that immediately for a period of 15 days from the date thereof: (a) all trading in securities of Lyndz Pharmaceuticals Inc. shall cease; (b) all trading in securities by the Respondents shall cease; and (c) the exemptions contained in Ontario securities law do not apply to the Respondents (the “Temporary Order”);

**AND WHEREAS** on December 8, 2008, the Commission issued a Notice of Hearing, accompanied by Staff’s Statement of Allegations;

**AND WHEREAS** on December 17, 2008, the Temporary Order was continued to February 13, 2009;

**AND WHEREAS** on February 13, 2009, the Temporary Order was continued to April 22, 2009;

**AND WHEREAS** on April 21, 2009, the Temporary Order was continued to July 7, 2009;

**AND WHEREAS** on July 6, 2009, a hearing was held in this matter;

**AND WHEREAS** counsel for Michael Eatch, Rickey McKenzie, Lyndz Pharmaceuticals Inc. and James Marketing Ltd. have consented to the continuation of the Temporary Order;

**AND WHEREAS** Lyndz Pharma Ltd did not appear;

**AND UPON RECEIVING** submissions from counsel for Staff of the Commission (“Staff”);

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

**IT IS ORDERED THAT** pursuant to s. 127(8) of the Act, the Temporary Order is continued to July 30, 2009; and

**IT IS FURTHER ORDERED THAT** this matter is adjourned to July 29, 2009 at 10:00 am.

**DATED** at Toronto this 6th day of July, 2009

“James E. A. Turner”

**2.2.7 Pioneer Institutional Asset Management, Inc. – s. 218 of the Regulation**

**Headnote**

Application for an order, pursuant to section 218 of the Regulation, exempting the Applicant from the requirement in section 213 of the Regulation that the Applicant be incorporated, or otherwise formed or created, under the laws of Canada or a province or territory of Canada, for the Applicant to be registered under the Act as a dealer in the category of limited market dealer.

**Regulation Cited**

R.R.O. 1990, Regulation 1015, amended to O. Reg. 500/06, ss. 213, 218.

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

**AND**

**IN THE MATTER OF  
R.R.O. 1990, REGULATION 1015, AS AMENDED  
(the Regulation)**

**AND**

**IN THE MATTER OF  
PIONEER INSTITUTIONAL ASSET  
MANAGEMENT, INC.**

**ORDER  
(Section 218 of the Regulation)**

**UPON** the application (the **Application**) of Pioneer Institutional Asset Management, Inc. (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order, pursuant to section 218 of the Regulation, exempting the Applicant from the requirement in section 213 of the Regulation that the Applicant be incorporated, or otherwise formed or created, under the laws of Canada or a province or territory of Canada, in order for the Applicant to be registered under the Act as a dealer in the category of limited market dealer (**LMD**);

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

**AND UPON** the Applicant having represented to the Commission that:

1. The Applicant is a corporation organized under the laws of the State of Delaware, United States of America. The Applicant has its principal place of business at 60 State Street in Boston, Massachusetts, United States of America.
2. The Applicant is registered as an investment adviser with the United States Securities and Exchange Commission.
3. The Applicant provides investment management services to various unregistered pooled investment vehicles and separate accounts.
4. The Applicant is not presently registered in any capacity under the Act. The Applicant has applied to the Commission for registration under the Act as a dealer in the category of LMD and as an adviser in the category of international adviser.
5. Section 213 of the Regulation provides that a registered dealer that is not an individual must be a company incorporated, or a person formed or created, under the laws of Canada or a province or territory of Canada.
6. The Applicant is not resident in Canada and will not maintain an office in Canada. The Applicant does not require a separate Canadian company in order to carry out its proposed LMD activities in Ontario. It is more efficient and cost-effective to carry out those activities through the existing company.

7. Without the relief requested, the Applicant would not meet the requirements of the Regulation for registration as a dealer in the category of LMD as it is not a company incorporated, or a person formed or created, under the laws of Canada or a province or territory of Canada.

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

**IT IS ORDERED**, pursuant to section 218 of the Regulation, and in connection with the registration of the Applicant as a dealer under the Act in the category of LMD, that section 213 of the Regulation shall not apply to the Applicant, provided that:

1. The Applicant appoints an agent for service of process in Ontario.
2. The Applicant shall provide to each client resident in Ontario a statement in writing disclosing the non-resident status of the Applicant, the Applicant's jurisdiction of residence, the name and address of the agent for service of process of the Applicant in Ontario, and the nature of risks to clients that legal rights may not be enforceable.
3. The Applicant will not change its agent for service of process in Ontario without giving the Commission 30 days' prior notice of such change by filing a new Submission to Jurisdiction and Appointment of Agent for Service of Process.
4. The Applicant and each of its registered directors, officers, or partners irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial, and administrative tribunals of Ontario and any administrative proceedings in Ontario, in any proceedings arising out of or related to or concerning its registration under the Act or its activities in Ontario as a registrant.
5. Securities, funds, and other assets of the Applicant's clients in Ontario will be held as follows:
  - (a) by the client; or
  - (b) by a custodian or sub-custodian:
    - (i) that meets the guidelines prescribed for acting as a sub-custodian of the portfolio securities of a mutual fund in Part 6 of National Instrument 81-102 *Mutual Funds*;
    - (ii) that is:
      - (1) subject to the agreement announced by the Bank for International Settlements (BIS) on July 1, 1988 concerning international convergence of capital measurement and capital standards; or
      - (2) exempt from the requirements of paragraph 3.7(1)(b)(ii) of OSC Rule 35-502 *Non Resident Advisers*; and
    - (iii) if such securities, funds and other assets are held by a custodian or sub-custodian that is the Applicant or an affiliate of the Applicant, that custodian holds such securities, funds and other assets in compliance with, or pursuant to an exemption from, the requirements of the Regulation.
6. Securities of the Applicant's clients in Ontario may be deposited with or delivered to a recognized depository or clearing agency.
7. The Applicant will inform the Director immediately upon the Applicant becoming aware:
  - (a) that it has ceased to be registered in the United States as an adviser;
  - (b) of its registration in any other jurisdiction not being renewed or being suspended or revoked;
  - (c) that it is the subject of a regulatory proceeding, investigation or disciplinary action by any financial services or securities regulatory authority or self-regulatory authority;
  - (d) that the registration of its salespersons or officers who are registered in Ontario have not been renewed or have been suspended or revoked in any Canadian or foreign jurisdiction; or
  - (e) that any of its salespersons or officers who are registered in Ontario are the subject of a regulatory proceeding, investigation or disciplinary action by any financial services or securities regulatory authority or self-regulatory authority in any Canadian or foreign jurisdiction.

## Decisions, Orders and Rulings

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8. The Applicant will pay the increased compliance and case assessment costs of the Commission due to the Applicant's location outside Ontario, including the cost of hiring a third party to perform a compliance review on behalf of the Commission.
9. The Applicant will make its books and records outside Ontario, including electronic records, readily accessible in Ontario, and will produce physical records for the Commission within a reasonable time if requested.
10. If the laws of the jurisdiction in which the Applicant's books and records are located prohibit production of the books and records in Ontario without the consent of the relevant client the Applicant shall, upon a request by the Commission:
  - (a) so advise the Commission; and
  - (b) use its best efforts to obtain the client's consent to the production of the books and records.
11. The Applicant will, upon the Commission's request, provide a representative to assist the Commission in compliance and enforcement matters.
12. The Applicant and each of its registered directors, officers, or partners will comply, at the Applicant's expense, with requests under the Commission's investigation powers and orders under the Act in relation to the Applicant's dealings with Ontario clients, including producing documents and witnesses in Ontario, submitting to audit or search and seizure processes or consenting to an asset freeze, to the extent such powers would be enforceable against the Applicant if the Applicant were resident in Ontario.
13. If the laws of the Applicant's jurisdiction of residence that are otherwise applicable to the giving of evidence or production of documents prohibit the Applicant or the witnesses from giving the evidence without the consent or leave of the relevant client or any third party, including a court of competent jurisdiction, the Applicant shall:
  - (a) so advise the Commission; and
  - (b) use its best efforts to obtain the client's consent to the giving of the evidence.
14. The Applicant will maintain appropriate registration and regulatory organization membership, in the jurisdiction of its principal operations, and if required, in its jurisdiction of residence.

July 6, 2009.

"Lawrence Ritchie"  
Commissioner  
Ontario Securities Commission

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

**2.2.8 Brazilian Resources, Inc. – s. 144**

**Headnote**

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

**Statutes Cited**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127, 144.

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

**AND**

**IN THE MATTER OF  
BRAZILIAN RESOURCES, INC.**

**ORDER  
(Section 144)**

**WHEREAS** on May 20, 2009, the Director made an order under paragraph 2 and paragraph 2.1 of subsection 127(1) of the Act (the "Permanent Order") that all trading in and acquisitions of the securities of

**BRAZILIAN RESOURCES, INC.  
(the "Reporting Issuer")**

whether direct or indirect, cease until the Permanent Order is revoked by the Director;

**AND WHEREAS** the Permanent Order was made on the basis that the Reporting Issuer was in default of certain filing requirements under Ontario securities law;

**AND WHEREAS** the Reporting Issuer has represented to the Commission that:

1. The Reporting Issuer is a corporation organized under the name Northeast Asset Management under the laws of the State of New Hampshire pursuant to articles of incorporation dated November 27, 1990. The Issuer changed its name to Brazilian Resources, Inc. pursuant to articles of amendment dated September 26, 1994. The Issuer's registered and head office is located at 125 N. State Street, Concord, New Hampshire, U.S.A. 03301.
2. The Reporting Issuer is a junior resource company with expertise in seeking, evaluating, financing and owning interests in mining, infrastructure, food irradiation and distribution and other industries in Brazil.
3. The Reporting Issuer is a reporting issuer under the securities legislation of the provinces of Ontario, Alberta and British Columbia (the "Reporting Jurisdictions").

4. The Reporting Issuer's common shares (the "Common Shares") were listed on the TSX Venture Exchange (NEX Board) (the "NEX Board") under the trading symbol BZI.H. On August 2, 2005, the Issuer voluntarily delisted the Common Shares from the NEX Board. The Common Shares have not been listed on any exchange since August 2, 2005.
5. The authorized capital of the Issuer consists of 320,000,000 Common Shares and 160,000,000 preferred shares.
6. The Reporting Issuer has filed with the Reporting Jurisdictions all outstanding continuous disclosure that is required to be filed under the securities legislation of the Reporting Jurisdictions, except any continuous disclosure that staff of the Reporting Jurisdictions elected not to require as contemplated in part 3.1(2) and 3.1(3) of National Policy 12-202 *Revocation of a Compliance-Related Cease Trade Order*, and has paid all outstanding activity, participation and late filing fees that are required to be paid.
7. The Reporting Issuer's SEDAR profile and SEDI issuer profile supplement are up-to-date.

**AND WHEREAS** the Director is of the opinion that it is not prejudicial to the public interest to revoke the Permanent Order;

**IT IS ORDERED** under section 144 of the Act that the Permanent Order is revoked.

**DATED** at Toronto this 6th day of July, 2009.

"Lisa Enright"  
Manager, Corporate Finance Branch  
Ontario Securities Commission



2.2.9 Rogers Communications 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, approximately 3,230,000 of its Class B Non-Voting shares from two shareholders and/or their affiliates – 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).

June 12, 2009

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

AND

IN THE MATTER OF  
ROGERS COMMUNICATIONS INC.

ORDER  
(Clause 104(2)(c))

UPON the application (the “**Application**”) of Rogers Communications 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 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 3,230,000 (the “**Subject Shares**”) of the Issuer’s Class B Non-Voting shares (the “**Shares**”) from The Royal Bank of Canada (up to 1,830,000 Shares) and/or BMO Nesbitt Burns Inc. (up to 1,400,000 Shares) and/or either of such shareholder’s affiliates (collectively, the “**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 *Business Corporations Act* (British Columbia).

2. The head office of the Issuer is located at 333 Bloor Street East, 10th Floor, Toronto, Ontario, M4W 1G9.
3. The Issuer is a reporting issuer in each of the provinces of Canada and the Shares are listed for trading on the Toronto Stock Exchange (the “**TSX**”) and the New York Stock Exchange. The Issuer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.
4. As of June 4, 2009, the authorized common share capital of the Issuer consists of 112,462,014 Class A Voting shares and 1,400,000,000 Shares, of which 510,554,287 Shares were issued and outstanding as at that date.
5. Each of the Selling Shareholders has advised the Issuer that it does not directly or indirectly own more than 5% of the issued and outstanding Shares.
6. 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.
7. Pursuant to a “Notice of Intention to Make a Normal Course Issuer Bid” filed with the TSX, dated February 18, 2009 and amended as of May 19, 2009 (the “**Notice**”), the Issuer is permitted to make normal course issuer bid (the “**Bid**”) purchases (each a “**Bid Purchase**”) to a maximum of the lesser of 48,000,000 Shares and that number of Shares that can be purchased under the Bid for an aggregate purchase price of C\$1,500,000,000 in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the “**TSX Rules**”). As at June 4, 2009, 9,000,000 Shares have been purchased under the Bid.
8. In addition to making Bid Purchases by means of open market transactions, the Notice contemplates that the Issuer may purchase Shares by way of exempt offer.
9. The Issuer and the Selling Shareholders intend to enter into one or more agreements of purchase and sale (each, an “**Agreement**”) pursuant to which the Issuer will agree to acquire, by trades occurring prior to August 31, 2009, the Subject Shares from the Selling Shareholders for purchase prices (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.
10. 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 apply.
11. 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.
12. 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(1)7 of the TSX Rules and Section 101.2(1) of the Act.
13. 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**”).
14. 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 Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions*.
15. Management is of the view that the Issuer will be able to purchase the Subject Shares at a lower price than the price at which the Issuer will be able to purchase the Shares under the Bid and management is of the view that this is an appropriate use of the Issuer’s funds.
16. The purchase of Subject Shares will not adversely affect the Issuer or the rights of any of the Issuer’s securityholders. As the Subject Shares are non-voting shares, the Proposed Purchases will not affect control of the Issuer. The Proposed Purchases will be carried out with a minimum of cost to the Issuer.
17. To the best of the Issuer’s knowledge, as of June 4, 2009 the public float for the Shares consisted of approximately 91.55% for purposes of the TSX Rules.
18. 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.
19. Other than the Purchase Price, no additional fee or other consideration will be paid in connection with the Proposed Purchases.
20. At the time that an Agreement is entered into by the Issuer and the Selling Shareholders and at the time of each Proposed Purchase, neither the Issuer nor the Selling Shareholders will be aware of any “material change”, or “material fact”, (each as defined in the Act) in respect of the Issuer that has not been generally disclosed.
- 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(1)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 and issue and file a news release disclosing the purchase of the Subject Shares; and
  - (f) at the time that the Agreement is entered into by the Issuer and the Selling Shareholders and at the time of each Proposed Purchase, neither the Issuer nor the Selling Shareholders will be aware of any “material change”, or

“material fact”, (each as defined in the Act) in respect of the Issuer that has not been generally disclosed.

“Margot C. Howard”  
Commissioner  
Ontario Securities Commission

“Mary G. Condon”  
Commissioner  
Ontario Securities Commission

## 2.3 Rulings

### 2.3.1 RBC Capital Markets Corporation – ss. 38 of the CFA and s. 6.1 of OSC Rule 91-502 Trades in Recognized Options

#### Headnote

Application to the Commission, pursuant to section 38 of the Commodity Futures Act (CFA), for a ruling that the Applicant be exempted from the dealer registration requirement in paragraph 22(1)(a) and the prohibition against trading on non-recognized exchanges in section 33 of the CFA. The Applicant will offer to certain of its clients in Ontario (Institutional Clients) the ability to trade in commodity futures contracts and commodity futures options that trade on exchanges located outside Canada through the Applicant. The Institutional Clients are the same as “designated institutions” as that term is defined in section 204(1) of Ont. Reg. 1015 – General Regulation made under the Securities Act.

Application to the Director for an exemption, pursuant to section 6.1 of OSC Rule 91-502 – Trades in Recognized Options (Rule 91-502), exempting the Applicant and its Representatives from the proficiency requirements in section 3.1 of Rule 91-502 for trades in commodity futures options.

#### Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 22, 33, 38.

#### Rules Cited

Ontario Securities Commission Rule 91-502 Trades in Recognized Options, ss. 3.1, 6.1.

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

**AND**

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

**AND**

**IN THE MATTER OF  
RBC CAPITAL MARKETS CORPORATION**

**RULING & EXEMPTION  
(Section 38 of the CFA and Section 6.1 of Rule 91-502)**

**UPON** the application (the **Application**) of RBC Capital Markets Corporation (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for:

- (a) a ruling of the Commission, pursuant to section 38 of the CFA, that the Applicant be exempted from the dealer registration requirements in the CFA (as defined below) and the trading restrictions in the CFA (as defined below) in connection with trades (**Futures Trades**) in contracts (as defined below) for the Applicant's own account and by certain of the Applicant's clients who are Institutional Clients (as defined below); and
- (b) an exemption of the Director, pursuant to section 6.1 of OSC Rule 91-502 – *Trades in Recognized Options (Rule 91-502)*, exempting the Applicants and its salespersons, directors, officers and employees (the **Representatives**) from section 3.1 of Rule 91-502 in connection with Futures Trades:

**AND WHEREAS** for the purposes of this ruling and exemption (the **Decision**):

- (i) the following terms shall have the following meanings:

**“CFTC”** means the United States Commodity Futures Trading Commission;

**“commodity futures contract”** and **“commodity futures option”** have the meanings ascribed to those terms in the CFA;

**“contract”** means a commodity futures contract or a commodity futures option that trades on one or more organized exchanges based outside of Canada and cleared through one or more clearing corporations based outside of Canada;

**“dealer registration requirements in the CFA”** means the provisions of section 22 of the CFA that prohibit a person or company from trading in a contract unless the person or company satisfies the applicable provisions of section 22 of the CFA;

**“FINRA”** means the Financial Industry Regulatory Authority in the United States;

**“Institutional Client”** means a client that falls within the category of investors listed in the Appendix to the Decision;

**“NFA”** means the National Futures Association in the United States;

**“SEC”** means the United States Securities and Exchange Commission; and

**“trading restrictions in the CFA”** means the provisions of section 33 of the CFA that prohibit a person or company from trading in a contract unless the person or company satisfies the

applicable provisions of section 33 of the CFA; and

- (ii) terms used in the Decision that are defined in the OSA, and not otherwise defined in the Decision or in the CFA, shall have the same meaning as in the OSA, unless the context otherwise requires;

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

**AND UPON** the Applicant having represented to the Commission and the Director as follows:

1. The Applicant is a corporation incorporated under the laws of the State of Minnesota, U.S.A. Its head office is located at One Liberty Plaza, 165 Broadway, New York, NY 10006-1404.
2. The Applicant is a subsidiary of RBC Capital Markets Holdings (USA) Inc., which is organized under the laws of Delaware and which is an indirect subsidiary of Royal Bank of Canada.
3. The Applicant is registered as a broker-dealer with the SEC and a futures commission merchant with the CFTC and is a member of FINRA, the NFA, the Chicago Mercantile Exchange, the Chicago Board of Trade, the New York Mercantile Exchange and other U.S. and other non-Canadian exchanges. Under its registrations and memberships, the Applicant is authorized to handle customer orders and receive and hold customer margin deposits, and otherwise act as a futures broker, in the United States. Rules of the CFTC and the NFA require the Applicant to maintain adequate capital levels, make and keep specified types of records relating to customer accounts and transactions, and comply with other forms of customer protection rules. In order to protect customers in the event of insolvency or financial instability of the Applicant, the Applicant is required to ensure that customer securities and monies are separately accounted for and segregated from the securities and monies of the Applicant. The Applicant is also required to obtain acknowledgements from banks and brokers holding customer funds or securities that such funds or securities are to be separately held on behalf of such customers, with no right of set-off against the Applicant's obligations or debts.
4. The Applicant is a market maker for U.S. agency securities and acts as broker for customers buying and selling equity and/or debt securities, and as a broker for futures and options on futures contracts. Its clients include financial institutions, corporations, hedge funds and a small number of high net worth individuals.
5. The Applicant is registered under the OSA as a dealer in the category of international dealer.

6. The Applicant proposes to (a) trade in contracts for its own account, (b) offer certain of its Institutional Clients in Ontario the ability to trade in contracts through the Applicant, and (c) conduct execution and clearing services with respect to contracts for Institutional Clients resident in Ontario.
  7. The Applicant will solicit business only from persons in Ontario who qualify as Institutional Clients.
  8. The Applicant will only offer Institutional Clients in Ontario the ability to trade contracts that trade on exchanges based outside Canada (the **Recognized Exchanges**), unless such Futures Trades in contracts are routed through an agent that is a dealer registered in Ontario under the CFA.
  9. Clients in Ontario will be able to execute Futures Trades through the Applicant by contacting the Applicant's exchange floor staff or global execution desk. Clients in Ontario may also be able to self-execute Futures Trades electronically via an independent service vendor and/or other electronic trading routing.
  10. The Applicant may execute a client's order on the relevant Recognized Exchange in accordance with the rules and customary practices of the exchange, or engage another broker to assist in the execution of orders. The Applicant will remain responsible for the execution of each such order.
  11. The Applicant may perform both execution and clearing functions for Futures Trades or may direct that a trade executed by the Applicant be cleared through a carrying broker if the Applicant is not a member of the Recognized Exchange or clearing house on which the trade is executed and cleared. Alternatively, the client will be able to direct that Futures Trades executed by the Applicant be cleared through clearing brokers not affiliated with the Applicant (each, a **Non-RBC Clearing Broker**). In addition, the Applicant may, from time to time, act as a clearing broker under give-up arrangements entered into with futures brokers that will execute Futures Trades for an Applicant's client on a Recognized Exchange.
  12. If the Applicant performs only the execution of a client's order for a Futures Trade and "gives-up" the transaction for clearance to a Non-RBC Clearing Broker, such clearing broker will also be required to comply with the rules of the exchanges and clearing houses of which it is a member and any relevant regulatory requirements, including under any applicable legislation. Each such Non-RBC Clearing Broker will represent to the Applicant in a give-up agreement that it will perform its obligations in accordance with applicable laws, governmental, regulatory, self-regulatory, exchange and clearing house rules and the customs and usages of the exchange or clearing house on which the relevant client's orders for Futures Trades will be executed and cleared. The Applicant will not enter into a give-up agreement with any Non-RBC Clearing Broker located in the United States unless such clearing broker is registered with the CFTC and/or the SEC, as applicable.
  13. Clients that direct the Applicant to give up transactions in contracts for clearance and settlement by Non-RBC Clearing Brokers will execute the give-up agreements described above.
  14. Clients will pay commissions for trades to the Applicant or the Non-RBC Clearing Broker or such commissions may be shared with the Non-RBC Clearing Broker.
  15. The trading restrictions in the CFA apply unless, among other things, a contract is traded on a recognized or registered commodity futures exchange and the form of the contract is approved by the Director. To date, no foreign commodity futures exchanges have been recognized or registered under the CFA.
  16. If the Applicant is exempted from the dealer registration requirements in the CFA, the Applicant will be precluded from relying upon the statutory exemptions from the trading restrictions in the CFA that the Commission has granted to date.
  17. Section 3.1 of Rule 91-502 states that any person who trades as agent in, or gives advice in respect of, a recognized option is required to successfully complete the Canadian Options Course (which has been replaced by the Derivatives Fundamentals Course and the Options Licensing Course).
  18. All Representatives who trade options in the United States have passed the futures and options proficiency examination (i.e., the National Commodity Futures Examination (Series 3)) administered by FINRA.
- AND UPON** the Commission and the Director being satisfied that it would not be prejudicial to the public interest to grant the order requested;
- IT IS ORDERED** pursuant to section 38 of the CFA that the Applicant be exempted from the dealer registration requirements in the CFA and the trading restrictions in the CFA in connection with Futures Trades for its own account and by certain of its clients who are Institutional Clients, provided that:
- (a) at the time that trading activity is engaged in:

- (i) the Applicant is registered with the SEC as a broker-dealer and with the CFTC as a futures commission merchant and is a member of the FINRA and the NFA in good standing; and
- (ii) the Applicant is either registered as an international dealer under the OSA or is exempt from registration as an international dealer in accordance with applicable Ontario securities law;
- (b) each client in Ontario effecting Futures Trades is an Institutional Client and, if using a Non-RBC Clearing Broker, has represented and covenanted that the broker is or will be appropriately registered or exempt from registration under applicable legislation;
- (c) the Applicant only executes Futures Trades for Ontario clients on exchanges based outside Canada, unless such Futures Trades are routed through an agent that is a dealer registered in Ontario under the CFA; and
- (d) each client in Ontario effecting Futures Trades receives disclosure upon entering into the agreement by which it establishes an account with the Applicant that includes:
  - (i) a statement that there may be difficulty in enforcing any legal rights against the Applicant or any of its directors, officers or employees because they are resident outside of Canada and all or substantially all of their assets are situated outside of Canada; and
  - (ii) a statement that the Applicant is not registered under Ontario commodities futures legislation and, accordingly, the protections available to clients of a dealer registered under Ontario commodities futures legislation will not be available to clients of the Applicant.

“Paulette L. Kennedy”  
Commissioner  
Ontario Securities Commission

**IT IS THE DECISION** of the Director, pursuant to section 6.1 of Rule 91-502, that section 3.1 of Rule 91-502 does not apply to the Applicant and its Representatives in respect of Futures Trades, provided that the Applicant and its Representatives maintain their respective registrations with the CFTC and SEC that permit them to trade commodity futures options in the United States.

June 29, 2009

“Erez Blumberger”  
Manager, Registrant Regulation  
Ontario Securities Commission

June 29, 2009

“Mary G. Condon”  
Commissioner  
Ontario Securities Commission

**Appendix**

**INSTITUTIONAL CLIENTS**

“Institutional Clients” include all of the following:

- (a) a financial intermediary;
- (b) the Federal Business Development Bank;
- (c) a subsidiary of any company referred to in clause (a) or (b), where the company beneficially owns all of the voting securities of the subsidiary;
- (d) the Government of Canada or any province or territory of Canada;
- (e) any municipal corporation or public board or commission in Canada;
- (f) a mutual fund, other than a private mutual fund, having net assets of at least \$5,000,000;
- (g) a trustee pension plan or fund sponsored by an employer for the benefit of its employees and having net assets of at least \$5,000,000;
- (h) a registered dealer;
- (i) a company or person, other than an individual, that is an accredited investor as defined in section 1.1 of National Instrument 45-106 *Prospectus and Registration Exemptions*; and
- (j) a person or company deemed to be a “designated institution” under subsection 204(2) of Ontario Regulation 1015 – *General Regulation* made under the *Securities Act* (Ontario).

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## Chapter 3

# Reasons: Decisions, Orders and Rulings

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### 3.1 OSC Decisions, Orders and Rulings

#### 3.1.1 Donovan Gene Brown – s. 26.3

**IN THE MATTER OF  
THE REGISTRATION OF  
DONOVAN GENE BROWN**

**OPPORTUNITY TO BE HEARD BY THE DIRECTOR  
SUBSECTION 26(3) OF THE SECURITIES ACT, R.S.O. 1990, C. S.5**

**Date of decision:** July 2, 2009

**Director:** Erez Blumberger  
Manager, Registrant Regulation  
Ontario Securities Commission

**Oral Submissions by:** Michael Denyszyn, Legal Counsel  
For staff of the Ontario Securities Commission

Donovan Gene Brown  
For the Registrant

#### **Background**

[1] Donovan Gene Brown (the **Registrant**) has been registered under the *Securities Act*, R.S.O. 1990, c. S.5 (the **Act**) as a mutual fund dealer salesperson and limited market dealer salesperson for Dundee Private Investors Inc. (**DPII**) since August 22, 2006.

[2] On March 13, 2009, DPII submitted a financial disclosure change notice to the Ontario Securities Commission (**OSC**) indicating that a requirement to pay had been issued by the Canada Revenue Agency (**CRA**) against the Registrant on February 27, 2009.

[3] On March 27, 2009, OSC staff sent a letter to the Registrant and to DPII proposing terms and conditions for monthly close supervision reporting, be imposed on the registration of the Registrant.

[4] The Director may restrict a registration by imposing terms and conditions under section 26 of the Act, but must provide the registrant with the opportunity to be heard by the Director.

[5] The Registrant requested an opportunity to be heard through an in-person appearance, which was conducted on June 2, 2009. At the conclusion of the hearing, I communicated my decision to impose terms and conditions for monthly close supervision reporting on the registration of the Registrant. The analysis leading to my decision is set out in detail below.

#### **Submissions**

##### *Summary of staff's submissions*

[6] Registrants are subject to a fit and proper standard for registration, which is not only an initial, but an ongoing requirement. The fit and proper standard is based on three well-established criteria that have been identified by the OSC: integrity, competence and financial soundness.

[7] Here, none of the evidence suggests that the Registrant's integrity or competence are in question. However, OSC staff recommended to the Director that the registration of the Registrant be subject to close supervision, as the requirement to pay has a bearing on the Registrant's financial soundness because there is a risk that the Registrant may engage in self-interested activities at the expense of clients.

[8] It is OSC staff's practice to impose close monthly supervisory terms and conditions on the registration of an individual who has an unresolved requirement to pay from the CRA. It is not OSC staff's practice to wait until evidence surfaces of self-interested activities by a registrant before recommending the imposition of close monthly supervisory terms and conditions.

*Summary of the Registrant's submissions*

[9] The Registrant explained that errors had been made with his tax return dating back to 1999. In the course of trying to resolve his tax issues in the past few years since the issue came to light, he became very ill with lymphoma cancer and was unable to work very much. Subsequent to his recovery from his illness, he then went through a divorce and is now a single father.

[10] As a result of all that he has been through in the past few years, the Registrant explained that he let his tax situation "slip", which led to the accumulation of further interest and penalties. However, he is working with his current accountant to resolve his tax issues which he anticipates to be resolved within the next three to six months.

[11] The Registrant did however stress that throughout the time he has been in the business, although he has been going through a lot of stress, not once has he been unethical. Specifically, he noted that his priority is his clients and that he would never do anything to deceive them of their funds.

[12] The Registrant expressed concern that the fact that he will be under close supervision will create a "very negative impression" of him.

*Summary of staff's reply*

[13] OSC staff reiterated that there are no concerns about Mr. Brown's integrity or competence. However, it is important that such decisions be made public as consistent with OSC's investor protection mandate so to provide transparency and disclosure of terms and conditions on registrants in Ontario's capital markets.

**Analysis**

*Suitability for registration*

[14] The fit and proper standard for registration is both an initial and an ongoing requirement for registrants. The fit and proper standard is based on three well established criteria that have been identified by the OSC:

The [Registrant Regulation] section administers a registration system which is intended to ensure that all Applicants under the *Securities Act* and the *Commodity Futures Act* meet appropriate standards of integrity, competence and financial soundness ...

(Ontario Securities Commission, Annual Report 1991, Page 16)

[15] When analyzing these criteria staff consider:

- **integrity** – honesty and good faith, particularly in dealings with clients, and compliance with Ontario securities law;
- **competence** – prescribed proficiency and knowledge of the requirements of Ontario securities law; and
- **financial soundness** – an indicator of a firm's capacity to fulfill its obligations and can be an indicator of the risk that an individual will engage in self-interested activities at the expense of clients.

[16] As mentioned above, in this case neither the Registrant's integrity nor his competence are in question. However, the requirement to pay overdue taxes raises concern regarding the financial soundness of the Registrant. To mitigate the potential increased risk concerning self-interested activities by the Registrant, staff recommended that terms and conditions for monthly close supervision reporting be imposed on the registration of the Registrant.

[17] It is OSC staff practice to impose terms and conditions for monthly close supervision reporting on an individual's registration should, among other things, that person file for bankruptcy, receive a garnishment or receive a notification to pay overdue taxes, which is the situation in the case at hand. The terms and conditions are removed when the financial obligations resulting from the event have been satisfied. This practice is consistent with the investor protection mandate of the OSC.

**Decision**

[18] I find that the requirement to pay overdue taxes that has been made by the CRA does, on its face, raise concerns about the Registrant's financial soundness. While I empathize with the Registrant's personal circumstances which have factored into and made it more difficult for him to pay the tax debt owing to the CRA, I am mindful of the investor protection mandate of the OSC. Accordingly, it is my decision to impose the terms and conditions as set out in Exhibit A on the registration of Donovan Gene Brown. These terms and conditions will be lifted upon OSC staff receiving evidence that the obligation to pay has been fulfilled to the satisfaction of the CRA.

July 2, 2009

"Erez Blumberger"  
Manager, Registrant Regulation

**EXHIBIT "A"**

Proposed Conditions For Registration

of

Donovan Gene Brown

Monthly Close Supervision Reports are to be completed on the registrant's sales activities and dealings with clients. The supervision reports are to be retained with the sponsoring firm and must be made available for review upon request. These terms and conditions are to continue until the obligation has been satisfied and acceptable evidence has been provided to the OSC.

\_\_\_\_\_  
Approved Officer for  
Dundee Private Investors Inc.

\_\_\_\_\_  
Donovan Gene Brown

\_\_\_\_\_  
Print Name of Signatory Above

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT "A" (cont.)**

Standard Monthly Close Supervision Report\*

Donovan Gene Brown

I hereby certify that supervision has been conducted for the month ending \_\_\_\_\_ of the trading activities of Donovan Gene Brown, by the undersigned. I further certify the following:

1. All orders from the salesperson were reviewed and approved by a compliance officer or branch manager of Dundee Private Investors Inc.
2. There were no client complaints received during the preceding month. If there were complaints, a description of the complaint and follow-up action initiated by the company is attached.
3. All payments for the purchase of the investments were made payable to the dealer. There were no cash payments accepted.
4. The transactions of the salesperson were reviewed during the preceding month to ensure compliance with the policies and procedures of the dealer, including the suitability of investments for clients. If there were any violations, a description of the violation and follow-up action is attached.

\_\_\_\_\_  
Signature

Compliance Officer/Branch Manager of Dundee Private Investors Inc.

Printed name of signatory above:

\_\_\_\_\_  
Date

\* In the case of violations or client complaints, the regulator must be notified within five business days.

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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/Revoke
Petrol One Corp.	08 July 09	20 July 09		
Central Industries Corporation Inc.	07 July 09	20 July 09		
Pyramid Petroleum Inc.	24 June 09	06 July 09	06 July 09	
Brazilian Resources, Inc.	06 May 09	19 May 09	19 May 09	06 July 09

### 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
Airesurf Networks Holdings Inc.	07 May 09	19 May 09	19 May 09	03 July 09	
First Metals Inc.	13 May 09	25 May 09	25 May 09	03 July 09	
Synergex Corporation	02 Apr 09	14 Apr 09	14 Apr 09	08 July 09	
Newlook Industries Corp.	07 May 09	19 May 09	19 May 09	08 July 09	

### 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
Coalcorp Mining Inc.	18 Feb 09	03 Mar 09	03 Mar 09		
Synergex Corporation	02 Apr 09	14 Apr 09	14 Apr 09	08 July 09	
Wedge Energy International Inc.	04 May 09	15 May 09	15 May 09		
Airesurf Networks Holdings Inc.	07 May 09	19 May 09	19 May 09	03 July 09	
Newlook Industries Corp.	07 May 09	19 May 09	19 May 09	08 July 09	
First Metals Inc.	13 May 09	25 May 09	25 May 09	03 July 09	
Spylogics International Corp.	02 June 09	15 June 09	15 June 09		

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## Chapter 7

# Insider Reporting

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This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see [www.carswell.com](http://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](http://www.sedi.ca)).

## Chapter 8

# Notice of Exempt Financings

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### REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price (\$)	# of Securities Distributed
05/29/2009	18	Afrasia Mineral Fields Inc. - Units	150,000.00	5,000,000.00
06/26/2009	6	All Canadian Investment Corporation - Units	190,000.00	190.00
06/17/2009	13	Ameriprise Financial, Inc. - Common Shares	32,012,180.00	36,000,000.00
06/16/2009	55	AuEx Ventures Inc. - Units	11,000,000.00	5,000,000.00
06/10/2009	141	Biovail Corporation - Notes	388,535,000.00	N/A
06/22/2009	36	Blackline GPS Inc. - Units	594,900.00	2,974,500.00
06/18/2009	24	Canada Fluorspar Inc. - Common Shares	1,999,999.54	5,278,594.00
06/25/2009	1	Cangold Limited - Common Shares	200,000.00	2,000,000.00
06/23/2009	1	Chemspec International Limited - Common Shares	10,440.00	1,000.00
01/01/2008 to 12/31/2008	15	CIBC Balanced Fund - Units	10,466,583.22	859,824.00
01/01/2008 to 12/01/2008	2	CIBC Canadian Bond Index Plus Fund - Units	5,963,000.00	604,492.00
01/01/2008 to 12/01/2008	8	CIBC Canadian Equity TSE 300 Index Fund - Units	108,483,181.34	10,526,198.00
01/01/2008 to 12/01/2008	23	CIBC Canadian Equity Value Fund - Units	1,051,340.44	98,838,000.00
01/01/2008 to 12/01/2008	26	CIBC Canadian Money Market Fund - Units	14,930,304.27	1,717,337.00
01/01/2008 to 12/31/2008	19	CIBC EAFE Equity Fund - Units	6,032,405.99	849,703.00
01/01/2008 to 12/01/2008	24	CIBC Fixed Income Fund - Units	4,405,928.47	419,742.00
01/01/2008 to 12/31/2008	1	CIBC Global Balanced Fund - Units	7,667,360.78	749,616.00
01/01/2008 to 12/01/2008	13	CIBC Global Canadian Bond Index Fund - Units	121,270,719.85	19,201,201.00
01/01/2008 to 12/31/2008	8	CIBC International Equity Index Fund - Units	54,371,833.73	6,280,607.00
01/01/2008 to 12/31/2008	11	CIBC Small Cap Fund - Units	974,329.93	50,201.00
01/01/2008 to 12/01/2008	29	CIBC U.S. Equity S&P 500 Synthetic Index Fund - Units	53,280,136.17	7,754,856.00

**Notice of Exempt Financings**

<b>Transaction Date</b>	<b># of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b># of Securities Distributed</b>
01/01/2008 to 12/01/2008	7	CIBC U.S. Equity Fund - Units	6,552,330.73	1,072,212.00
01/01/2008 to 12/01/2008	14	CIBC U.S. Equity S&P 500 Index Fund - Units	101,591,878.83	16,398,197.00
06/01/2009	16	Continent Resources Inc. - Units	428,450.00	3,895,000.00
06/22/2009	5	CVTech Group Inc. - Receipts	6,080,000.00	3,800,000.00
06/11/2009	1	Cypress Sharpridge Investments Inc. - Common Shares	2,416,040.00	200,000.00
06/30/2009	1	Davis-Rea Ltd. Balanced Pooled Fund - Units	10,531.00	1,016.74
06/05/2009	1	DCT Industrial Trust Inc. - Common Shares	2,370,000.00	500,000.00
05/21/2009 to 06/17/2009	84	Donner Metals Ltd. - Common Shares	1,673,534.00	N/A
06/24/2009	2	Duoyuan Global Water Inc. - American Depository Shares	2,017,136.00	110,000.00
06/02/2009	24	Earthworks Industries Inc. - Units	725,000.00	2,927,563.00
06/12/2009	2	Equinix, Inc. - Notes	2,794,250.00	2.00
06/16/2009	3	FuelCell Energy, Inc. - Common Shares	6,811,208.28	6,737,166.00
06/22/2009 to 06/26/2009	4	General Motors Acceptance Corporation of Canada, Limited - Notes	1,062,278.62	10,622.00
06/12/2009	7	Gold Summit Corporation - Units	181,889.82	1,818,898.00
06/04/2009	74	Golden Band Resources Inc. - Units	2,457,000.00	12,285,000.00
06/02/2009	1	Graphic Packaging International Inc. - Notes	2,106,760.97	N/A
06/24/2009	1	Hi Ho Silver Resources Inc. - Common Shares	37,400.00	748,000.00
05/13/2009 to 05/22/2009	32	IGW Real Estate Investment Trust - Trust Units	845,628.35	844,471.64
07/01/2009	2	Invesco Mortgage Capital Inc. - Common Shares	6,960,000.00	300,000.00
06/09/2009	9	InvestPlus Finance III Corp. - Bonds	230,000.00	2,300.00
06/09/2009	9	InvestPlus Investments III Corp. - Common Shares	230.00	2,300.00
03/31/2009	22	JER Envirotech International Corp. - Common Shares	4,149,847.00	41,498,470.00
06/24/2009	21	Kelso Technologies Inc. - Common Shares	225,970.00	9,038,800.00
06/10/2009	4	Klondike Silver Corp. - Flow-Through Shares	500,000.00	8,333,332.00
06/17/2009	1	Marret HYS Trust - Units	202,212,500.00	20,221,250.00
06/17/2009	13	Mazorro Resources Inc. - Units	160,000.00	2,000,000.00
06/05/2009	18	Med BioGene Inc. - Units	1,233,879.00	15,423,488.00

**Notice of Exempt Financings**

<b>Transaction Date</b>	<b># of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b># of Securities Distributed</b>
06/24/2009	1	Medidata Solutions, Inc. - Common Shares	161,000.00	10,000.00
06/25/2009	38	Medoro Resources Ltd. - Common Shares	2,837,361.00	11,200,000.00
06/25/2009	38	Medoro Resources Ltd. - Common Shares	6,900,000.00	57,500,000.00
06/30/2009	1	Millennium International, Ltd. - Common Shares	116,280.00	N/A
06/25/2009 to 07/02/2009	31	Nelson Financial Group Ltd. - Notes	1,288,000.00	N/A
06/11/2009 to 06/16/2009	21	Newport Canadian Equity Fund - Units	1,044,000.00	9,329.96
06/12/2009 to 06/18/2009	62	Newport Fixed Income Fund - Units	3,563,626.14	34,163.03
06/16/2009	1	Newport Global Equity Fund - Units	10,000.00	177.96
06/11/2009 to 06/18/2009	66	Newport Yield Fund - Units	3,721,118.64	36,242.69
06/01/2009	3	North American Financial Group Inc. - Debt	85,000.00	3.00
06/28/2009	43.06	North American Gem Inc. - Flow-Through Units	558,900.00	3,030,000.00
06/22/2009	28	OmniLake Registered Capital Inc. - Bonds	1,275,000.00	12,750.00
06/19/2009	39	Oromin Explorations Ltd. - Common Shares	20,000,000.30	N/A
06/22/2009	12	Outlook Resources Inc. - Units	96,500.00	9,650,000.00
06/23/2009	11	Petrostar Petroleum Corporation - Units	173,500.00	2,168,750.00
06/02/2009	17	PFC2019 Pacific Financial Corp. - Bonds	1,119,000.00	N/A
05/22/2009 to 05/25/2009	2	Redux Duncan City Centre Limited Partnership - Limited Partnership Units	25,000.00	25,000.00
06/11/2009	4	Royal Bank of Canada - Notes	1,300,000.00	N/A
06/18/2009	28	Seafield Resources Ltd. - Units	344,500.00	8,612,500.00
06/25/2009	1	Smithfield Foods, Inc. - Notes	1,158,000.00	1.00
05/25/2009	4	Sodanol Corporation - Common Shares	550,000.00	3,450.00
05/15/2009	44	Solitaire Minerals Corp. - Flow-Through Units	490,000.00	1,580,000.00
06/01/2009	3	Spartan Arbitrage Fund Limited Partnership - Units	45,000.00	4,500.00
06/10/2009	1	Stone Energy Corporation - Common Shares	1,776,160.00	200,000.00
06/23/2009	1	Sumitomo Mitsui Financial Group Inc. - Common Shares	3,573,498.00	75,000.00
06/01/2009	2	Tenet Healthcare Corporation - Notes	14,028,717.27	N/A
05/28/2009	9	The Brick Group Income Fund - Debt	90,000,000.00	N/A
06/25/2009	1	UBS AG - Common Shares	97,000,000.00	293,258,050.00

**Notice of Exempt Financings**

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<b>Transaction Date</b>	<b># of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b># of Securities Distributed</b>
06/05/2009	139	Vast Exploration Inc. - Units	10,000,000.00	25,000,000.00
06/01/2009	3	Velocity Capital Fund 1 L.P. - Limited Partnership Interest	1,304,631.44	N/A
05/31/2009	30	Vertex Fund - Trust Units	4,951,723.47	N/A
06/05/2009	3	West High Yield (W.H.Y.) Resources Ltd. - Units	500,000.00	1,250,000.00
06/26/2009	6	Yankee Hat Minerals Ltd. - Common Shares	191,235.50	4,780,888.00

## Chapter 11

# IPOs, New Issues and Secondary Financings

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**Issuer Name:**

AIM Global Growth Fund  
AIM International Growth Fund  
Invesco Canadian Focus Fund  
Invesco Global Equity Fund  
Trimark Canadian Plus Dividend Fund  
Trimark Global Dividend Fund  
Trimark U.S. Small Companies Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectuses dated July 3, 2009  
NP 11-202 Receipt dated July 7, 2009

**Offering Price and Description:**

Series A, B, D, DCA, DCA Heritage, DSC, F, F4, F6, F8, I, T4, T6, T8 and SC (as applicable)

**Underwriter(s) or Distributor(s):**

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**Promoter(s):**

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**Project #1444709**

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**Issuer Name:**

Alliance Grain Traders Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated July 2, 2009  
NP 11-202 Receipt dated July 2, 2009

**Offering Price and Description:**

\$99,431,150.00 (6,118,840 Subscription Receipts) Price:  
\$16.25 per Subscription Receipt

**Underwriter(s) or Distributor(s):**

Genuity Capital Markets  
Wellington West Capital Markets Inc.  
Macquarie Capital Markets Canada Ltd.  
GMP Securities L.P.  
First Republic Capital Corporation

**Promoter(s):**

-

**Project #1444426**

**Issuer Name:**

Aquarius Capital Corp.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary CPC Prospectus dated July 7, 2009  
NP 11-202 Receipt dated July 7, 2009

**Offering Price and Description:**

\$200,000.00 to \$400,000.00 - 2,000,000 to 4,000,000  
Price: \$0.10 per Common Share

**Underwriter(s) or Distributor(s):**

Northern Securities Inc.

**Promoter(s):**

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**Project #1445400**

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**Issuer Name:**

B2Gold Corp.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated July 6, 2009  
NP 11-202 Receipt dated July 6, 2009

**Offering Price and Description:**

\$25,005,000.00 - 33,340,000 Common Shares Price:  
C\$0.75 Per Common Share

**Underwriter(s) or Distributor(s):**

Genuity Capital Markets  
Macquarie Capital Markets Canada Ltd.  
Blackmont Capital Inc.  
Haywood Securities Inc.

**Promoter(s):**

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**Project #1445151**

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**Issuer Name:**

BE Resources Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated July 2, 2009  
NP 11-202 Receipt dated July 3, 2009

**Offering Price and Description:**

\$\* - \* Shares Price: \$ \* per Share

**Underwriter(s) or Distributor(s):**

Canaccord Capital Corporation

**Promoter(s):**

-

**Project #1444606**

**Issuer Name:**

Faircourt Income & Growth Split Trust  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated July 3, 2009  
NP 11-202 Receipt dated July 6, 2009

**Offering Price and Description:**

OFFERING OF 4,903,305 RIGHTS TO SUBSCRIBE FOR AN AGGREGATE OF UP TO 4,903,305 UNITS, EACH UNIT CONSISTING OF ONE TRUST UNIT AND ONE WARRANT Price: One Right and \$ \* per Unit The Subscription Price equals \* % of the net asset value per Trust Unit on \* , 2009

**Underwriter(s) or Distributor(s):**

TD Securities Inc.

**Promoter(s):**

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**Project #1444857**

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**Issuer Name:**

Hydro One Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Base Shelf Prospectus dated July 6, 2009  
NP 11-202 Receipt dated July 6, 2009

**Offering Price and Description:**

\$3,000,000,000 - Medium Term Notes (unsecured)

**Underwriter(s) or Distributor(s):**

BMO Nesbitt Burns Inc.  
Casgrain & Company Limited  
CIBC World Markets Inc.  
HSBC Securities (Canada) Inc.  
Laurentian Bank Securities Inc.  
National Bank Financial Inc.  
RBC Dominion Securities Inc.  
Scotia Capital Inc.  
TD Securities Inc.

**Promoter(s):**

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**Project #1445070**

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**Issuer Name:**

Man Canada AHL DP Investment Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated July 3, 2009  
NP 11-202 Receipt dated July 3, 2009

**Offering Price and Description:**

Class A Units, Class B Units, Class C Units, Class F Units, Class I Units, Class O Units, Class P Units, Class Q Units and Class R Units Price: Initially at \$10 per Unit and subsequently at Net Asset Value per Unit Minimum Purchase (except Class I Units): \$5,000

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

Man Investments Canada Corp.

**Project #1444657**

**Issuer Name:**

Mawer Global Equity Fund  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Simplified Prospectus dated July 2, 2009  
NP 11-202 Receipt dated July 3, 2009

**Offering Price and Description:**

Class A and Class O Units

**Underwriter(s) or Distributor(s):**

Mawer Investment Management Inc.  
Mawer Investment Management Ltd.

**Promoter(s):**

Mawer Investment Management Inc.

**Project #1444607**

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**Issuer Name:**

Seaview Energy Inc.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated June 30, 2009  
NP 11-202 Receipt dated July 2, 2009

**Offering Price and Description:**

\$10,684,175.00 - 11,246,500 Class A Shares issuable on exercise or conversion of outstanding Subscription Receipts Price: \$0.95 per Subscription Receipt

**Underwriter(s) or Distributor(s):**

National Bank Financial Inc.  
First Energy Capital Corp.  
CIBC World Markets Inc.  
GMP Securities L.P.  
Macquarie Capital Markets Canada Ltd.  
Dundee Securities Corporation  
Wellington West Capital Markets Inc.

**Promoter(s):**

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**Project #1444137**

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**Issuer Name:**

Verdant Financial Partners I Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary CPC Prospectus dated June 30, 2009  
NP 11-202 Receipt dated July 2, 2009

**Offering Price and Description:**

MINIMUM OFFERING: \$200,000.00 or 1,000,000 Common Shares; MAXIMUM OFFERING: \$1,200,000.00 or 6,000,000 Common Shares PRICE: \$0.20 per Common Share

**Underwriter(s) or Distributor(s):**

Blackmont Capital Inc.

**Promoter(s):**

Paul Maasland  
**Project #1443970**

**Issuer Name:**

Vuzix Corporation  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated June 30, 2009  
NP 11-202 Receipt dated July 2, 2009

**Offering Price and Description:**

\$ \* - \* Units (each Unit consisting of one share of common stock and one-half of one common stock purchase warrant) Price: \$ \* per Unit

**Underwriter(s) or Distributor(s):**

Canaccord Capital Corporation  
Bolder Investment Partners, Ltd.

**Promoter(s):**

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**Project #1443965**

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**Issuer Name:**

Artis Real Estate Investment Trust  
Principal Regulator - Manitoba

**Type and Date:**

Final Short Form Prospectus dated July 3, 2009  
NP 11-202 Receipt dated July 3, 2009

**Offering Price and Description:**

\$40,000,000.00 - 7.50% Series E Convertible Redeemable Unsecured Subordinated Debentures due June 30, 2014

**Underwriter(s) or Distributor(s):**

Canaccord Capital Corporation  
CIBC World Markets Inc.  
BMO Capital Markets Inc.  
National Bank Financial Inc.  
RBC Dominion Securities Inc.  
Scotia Capital Inc.  
TD Securities Inc.  
Blackmont Capital Inc.  
Desjardins Securities Inc.  
Macquarie Capital Markets Canada Inc.  
Brookfield Financial Corp.

**Promoter(s):**

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**Project #1440172**

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**Issuer Name:**

Australian Solomons Gold Limited  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated July 7, 2009  
NP 11-202 Receipt dated July 7, 2009

**Offering Price and Description:**

C\$7,770,000.00 - 25,900,000 Ordinary Shares Price: C\$0.30 per Offered Share

**Underwriter(s) or Distributor(s):**

Paradigm Capital Inc.  
Haywood Securities Inc.  
Fraser Mackenzie Limited

**Promoter(s):**

-

**Project #1437823**

**Issuer Name:**

BAM Split Corp.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated July 3, 2009  
NP 11-202 Receipt dated July 3, 2009

**Offering Price and Description:**

\$125,000,000.00 - 5,000,000 Class AA Preferred Shares, Series 4

**Underwriter(s) or Distributor(s):**

Scotia Capital Inc.  
RBC Dominion Securities Inc.  
BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
National Bank Financial Inc.  
TD Securities Inc.  
HSBC Securities (Canada) Inc.  
Desjardins Securities Inc.

**Promoter(s):**

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**Project #1440250**

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**Issuer Name:**

Brett Resources Inc.  
Principal Regulator - British Columbia

**Type and Date:**

Final Short Form Prospectus dated July 3, 2009  
NP 11-202 Receipt dated July 3, 2009

**Offering Price and Description:**

\$12,200,000.00 - 7,196,000 Units 8,503,750 Flow Through Shares

**Underwriter(s) or Distributor(s):**

Dundee Securities Corporation  
Cormark Securities Inc.

**Promoter(s):**

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**Project #1439755**

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**Issuer Name:**

Claymore Global Monthly Advantaged Dividend ETF  
Claymore Advantaged Canadian Bond ETF  
Claymore Advantaged High Yield Bond ETF  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated June 23, 2009 to the Long Form Prospectus dated April 28, 2009  
NP 11-202 Receipt dated July 7, 2009

**Offering Price and Description:**

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**Underwriter(s) or Distributor(s):**

Claymore Investments, Inc.

**Promoter(s):**

Claymore Investments Inc.

**Project #1403730**



**Issuer Name:**

Counsel Global Real Estate  
Principal Regulator - Ontario

**Type and Date:**

Amendment #2 dated June 30, 2009 to the Simplified  
Prospectus and Annual Information Form dated January 7,  
2009

NP 11-202 Receipt dated July 6, 2009

**Offering Price and Description:**

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**Underwriter(s) or Distributor(s):**

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**Promoter(s):**

Counsel Group of Funds Inc.

Project #1349722

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**Issuer Name:**

Credential Enrich Canadian Equity Pool  
Credential Enrich Income Pool  
Credential Enrich International Equity Pool  
Credential Enrich US Equity Pool  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated June 30, 2009

NP 11-202 Receipt dated July 7, 2009

**Offering Price and Description:**

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**Underwriter(s) or Distributor(s):**

Credential Asset Management Inc.

**Promoter(s):**

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Project #1431416

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**Issuer Name:**

Criterion Diversified Commodities Currency Hedged Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated June 29, 2009

NP 11-202 Receipt dated July 3, 2009

**Offering Price and Description:**

Investment trust securities at net asset value

**Underwriter(s) or Distributor(s):**

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**Promoter(s):**

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Project #1424117

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**Issuer Name:**

Criterion International Equity Fund  
(Class A, Class B, Class D, Class F, Class I, Class L, Class  
M, Class O, Class P and Class Q Units)

Criterion Global Dividend Fund  
(Class A, Class B, Class D, Class F, Class I, Class L, Class  
M, Class O, Class P and Class Q Units)

Criterion Water Infrastructure Fund  
(Class A, Class B, Class D, Class F, Class I, Class L, Class  
M, Class O, Class P and Class Q Units)

Criterion U.S. Buyback Fund  
(Class H, Class F, Class I, Class U, Class P, Class Q,  
Class X, Class Y and Class Z Units)

Criterion Global Clean Energy Fund  
(Class H, Class F, Class I, Class U, Class P and Class Q  
Units)

Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated June 26, 2009 to the Simplified  
Prospectuses and Annual Information Forms dated June  
16, 2009

NP 11-202 Receipt dated July 6, 2009

**Offering Price and Description:**

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**Underwriter(s) or Distributor(s):**

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**Promoter(s):**

-

Project #1416735

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**Issuer Name:**

Dynamic Strategic Yield Class  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form  
dated July 3, 2009

NP 11-202 Receipt dated July 6, 2009

**Offering Price and Description:**

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**Underwriter(s) or Distributor(s):**

Goodman & Company, Investment Counsel Ltd.

**Promoter(s):**

Goodman & Company, Investment Counsel Ltd.

Project #1414704

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**Issuer Name:**

Educators Balanced Fund  
Educators Diversified Fund  
Educators Dividend Fund  
Educators Global Fund  
Educators Growth Fund  
Educators Money Market Fund  
Educators Mortgage & Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated July 3, 2009  
NP 11-202 Receipt dated July 7, 2009

**Offering Price and Description:**

Class A and Class B Units @ Net Asset Value

**Underwriter(s) or Distributor(s):**

Educators Financial Group Inc.

**Promoter(s):**

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**Project #1427123**

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**Issuer Name:**

Ethical Advantage 2010 Fund  
Ethical Advantage 2015 Fund  
Ethical Advantage 2020 Fund  
Ethical Advantage 2030 Fund  
Ethical Advantage 2040 Fund  
Ethical American Multi-Strategy Fund  
Ethical Balanced Fund  
Ethical Canadian Dividend Fund  
Ethical Canadian Index Fund  
Ethical Canadian Stock Fund  
Ethical Global Dividend Fund  
Ethical Global Equity Fund  
Ethical Growth Fund  
Ethical Income Fund  
Ethical International Equity Fund  
Ethical Monthly Income Fund  
Ethical Special Equity Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated June 30, 2009  
NP 11-202 Receipt dated July 7, 2009

**Offering Price and Description:**

Class A, Class D and Class F Units @ Net Asset Value

**Underwriter(s) or Distributor(s):**

Credential Asset Management Inc.

Credential Asset Management

**Promoter(s):**

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**Project #1428618**

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**Issuer Name:**

FRIEDBERG FOREIGN BOND FUND  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus dated July 6, 2009  
NP 11-202 Receipt dated July 7, 2009

**Offering Price and Description:**

Mutual Fund Securities at Net Asset Value

**Underwriter(s) or Distributor(s):**

Friedberg Mercantile Group Ltd.

**Promoter(s):**

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**Project #1437602**

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**Issuer Name:**

International Royalty Corporation  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus (NI 44-101) dated July 7, 2009

NP 11-202 Receipt dated July 7, 2009

**Offering Price and Description:**

\$50,055,000.00 - 14,100,000 common shares Price: \$3.55 per Offered Share

**Underwriter(s) or Distributor(s):**

Scotia Capital Inc.  
CIBC World Markets Inc.  
Raymond James Ltd.  
Haywood Securities Inc.

**Promoter(s):**

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**Project #1442717**

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**Issuer Name:**

Jov Canadian Equity Class  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus dated July 3, 2009  
NP 11-202 Receipt dated July 7, 2009

**Offering Price and Description:**

Mutual fund securities at net asset value

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

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**Project #1426159**

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**Issuer Name:**

Mackenzie Saxon Money Market Fund (Investor Series and B-Series Units)  
Mackenzie Saxon Bond Fund (Investor Series, B-Series, Advisor Series and F-Series Units)  
Mackenzie Saxon Balanced Fund (Investor Series, B-Series, Advisor Series and F-Series, Series A, Series F, Series F8, Series I, Series O, Series T6 and Series T8 Units)  
Mackenzie Saxon High Income Fund (Investor Series, B-Series, Advisor Series, F-Series, Series I and Series O Units)  
Mackenzie Saxon Stock Fund (Investor Series, B-Series, Advisor Series, F-Series, Series I and Series O Units)  
Mackenzie Saxon Small Cap Fund (Investor Series, B-Series, Advisor Series, F-Series, Series F, Series I and Series O Units)  
Mackenzie Saxon Microcap Fund (Investor Series, B-Series, Advisor Series, F-Series, Series I and Series O Units)  
Mackenzie Saxon U.S. Equity Fund (Investor Series, B-Series, Advisor Series, F-Series, Series I and Series O Units)  
Mackenzie Saxon U.S. Small Cap Fund (Investor Series, B-Series, Advisor Series and F-Series Units)  
Mackenzie Saxon International Equity Fund (Investor Series, B-Series, Advisor Series, F-Series, Series I and Series O Units)  
Mackenzie Saxon World Fund (Investor Series, B-Series, Advisor Series, F-Series, Series I and Series O Units)  
Mackenzie Saxon Global Small Cap Fund (Investor Series, B-Series, Advisor Series and F-Series Units)  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated June 25, 2009 to the Simplified Prospectuses and Annual Information Forms dated May 25, 2009

NP 11-202 Receipt dated July 7, 2009

**Offering Price and Description:**

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**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

Mackenzie Financial Corporation  
Project #1409977

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**Issuer Name:**

Mackenzie Saxon High Income Fund  
Mackenzie Saxon Stock Fund  
Mackenzie Saxon Small Cap Fund  
Mackenzie Saxon Microcap Fund  
Mackenzie Saxon U.S. Equity Fund  
Mackenzie Saxon U.S. Small Cap Fund  
Mackenzie Saxon International Equity Fund  
Mackenzie Saxon World Fund  
Mackenzie Saxon Global Small Cap Fund  
Principal Regulator - Ontario

**Type and Date:**

Amendment #2 dated June 25, 2009 to Final Simplified Prospectuses and Annual Information Forms dated January 26, 2009

NP 11-202 Receipt dated July 6, 2009

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

Mackenzie Financial Corporation  
Project #1355994

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**Issuer Name:**

Manulife Financial Capital Trust II  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated July 6, 2009

NP 11-202 Receipt dated July 7, 2009

**Offering Price and Description:**

\$1,000,000,000.00.00 - 7.405% Manulife Financial Capital Trust II Notes - Series 1 due December 31, 2108 (MaCSTM II – Series 1)

**Underwriter(s) or Distributor(s):**

RBC Dominion Securities Inc.  
National Bank Financial Inc.

**Promoter(s):**

-

Project #1440212

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**Issuer Name:**

Series A Units, Series F Units and Series I Units (unless otherwise indicated) of:  
Northwest Money Market Fund (Series A Units and Series I Units)  
Northwest Canadian Equity Fund  
Northwest Canadian Bond Fund  
Northwest Canadian Dividend Fund  
Northwest Growth and Income Fund  
Northwest Global Equity Fund  
Northwest U.S. Equity Fund  
Northwest EAFE Fund  
Northwest Specialty High Yield Bond Fund  
Northwest Specialty Global High Yield Bond Fund  
Northwest Specialty Equity Fund  
Northwest Specialty Innovations Fund  
Northwest Specialty Growth Fund Inc.  
Northwest Quadrant Conservative Portfolio (Series A Units and Series F Units)  
Northwest Quadrant Income Portfolio (Series A Units and Series F Units)  
Northwest Quadrant Balanced Portfolio (Series A Units and Series F Units)  
Northwest Quadrant Balanced Growth Portfolio (Series A Units and Series F Units)  
Northwest Quadrant Growth Portfolio (Series A Units and Series F Units)  
Northwest Quadrant Global Growth Portfolio (Series A Units and Series F Units)  
Northwest Quadrant Global Equity Portfolio (Series A Units and Series F Units)  
Northwest Quadrant All Equity Portfolio (Series A Units and Series F Units)  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated June 30, 2009  
NP 11-202 Receipt dated July 7, 2009

**Offering Price and Description:**

Series A Units, Series F Units and Series I Units @ Net Asset Value

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

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**Project #1426183**

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**Issuer Name:**

Northwest Global Growth and Income Corporate Class  
Principal Regulator - Ontario

**Type and Date:**

Amendment #2 dated June 29, 2009 to the Simplified Prospectus and Annual Information Form dated November 3, 2008

NP 11-202 Receipt dated July 7, 2009

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

Noethwest & Ethical Investments Inc.

**Project #1324863**

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**Issuer Name:**

RBC Canadian T-Bill Fund (Series A, Series D, Series I and Series O units)  
RBC Canadian Money Market Fund (Series A, Advisor Series, Series D, Series F, Series I and Series O units)  
RBC Premium Money Market Fund (Series A, Series F and Series I units)  
RBC \$U.S. Money Market Fund (Series A, Series D, Series I and Series O units)  
RBC Premium \$U.S. Money Market Fund (Series A, Series F and Series I units)  
RBC Canadian Short-Term Income Fund (Series A, Advisor Series, Series D, Series F, Series I and Series O units)  
RBC Bond Fund (Series A, Advisor Series, Series D, Series F, Series I and Series O units)  
RBC Advisor Canadian Bond Fund (Advisor Series, Series F and Series O\* units)  
RBC Canadian Bond Index Fund (Series A units)  
RBC Monthly Income Fund (Series A, Advisor Series, Series D, Series F and Series O units)  
RBC \$U.S. Income Fund (Series A, Advisor Series, Series D and Series F units)  
RBC Global Bond Fund (Series A, Advisor Series, Series D, Series F, Series I and Series O units)  
RBC Global Corporate Bond Fund (Series A, Advisor Series, Series D, Series F, Series I and Series O units)  
RBC Global High Yield Fund (Series A, Advisor Series, Series D, Series F, Series I and Series O units)  
RBC Managed Payout Solution (Series A, Advisor Series and Series F units)  
RBC Managed Payout Solution - Enhanced (Series A, Advisor Series and Series F units)  
RBC Managed Payout Solution - Enhanced Plus (Series A, Advisor Series, Series D, Series F and Series O units)  
RBC Balanced Fund (Series A, Advisor Series, Series T, Series D, Series F, Series I and Series O units)  
RBC Balanced Growth Fund (Series A, Advisor Series, Series T, Series D, Series F and Series O units)  
RBC Jantzi Balanced Fund (Series A, Advisor Series, Series D, Series F and Series I units)  
RBC Select Very Conservative Portfolio (Series A, Advisor Series and Series F units)  
RBC Select Conservative Portfolio (Series A, Advisor Series, Series F and Series O units)  
RBC Select Balanced Portfolio (Series A, Advisor Series, Series F and Series O units)  
RBC Select Growth Portfolio (Series A, Advisor Series, Series F and Series O units)  
RBC Select Aggressive Growth Portfolio (Series A, Advisor Series, Series F and Series O units)  
RBC Select Choices Conservative Portfolio (Series A and Advisor Series units)  
RBC Select Choices Balanced Portfolio (Series A and Advisor Series units)  
RBC Select Choices Growth Portfolio (Series A and Advisor Series units)

RBC Select Choices Aggressive Growth Portfolio (Series A and Advisor Series units)  
RBC Target 2010 Education Fund (Series A units)  
RBC Target 2015 Education Fund (Series A units)  
RBC Target 2020 Education Fund (Series A units)  
RBC Target 2025 Education Fund (Series A units)  
RBC Canadian Dividend Fund (Series A, Advisor Series, Series T, Series D, Series F, Series I and Series O units)  
RBC Canadian Equity Fund (Series A, Advisor Series, Series D, Series F, Series I and Series O units)  
RBC Jantzi Canadian Equity Fund (Series A, Advisor Series, Series D, Series F and Series I units)  
RBC Canadian Index Fund (Series A units)  
RBC O'Shaughnessy Canadian Equity Fund (Series A, Advisor Series, Series D and Series F units)  
RBC O'Shaughnessy All-Canadian Equity Fund (Series A, Advisor Series, Series D, Series F and Series O units)  
RBC Canadian Equity Income Fund (formerly, RBC Canadian Diversified Income Trust Fund) (Series A, Advisor Series, Series D, Series F and Series O units)  
RBC North American Dividend Fund (Series A, Advisor Series, Series T, Series D, Series F and Series O units)  
RBC North American Value Fund (Series A, Advisor Series, Series D, Series F and Series O units)  
RBC North American Growth Fund (Series A, Advisor Series, Series D, Series F, Series I and Series O units)  
RBC U.S. Equity Fund (Series A, Advisor Series, Series D, Series F, Series I and Series O units)  
RBC U.S. Equity Currency Neutral Fund (Series A, Advisor Series, Series D, Series F and Series O units)  
RBC U.S. Index Fund (Series A units)  
RBC U.S. Index Currency Neutral Fund (Series A units)  
RBC O'Shaughnessy U.S. Value Fund (Series A, Advisor Series, Series D, Series F, Series I and Series O units)  
RBC U.S. Mid-Cap Equity Fund (Series A, Advisor Series, Series D, Series F, Series I and Series O units)  
RBC U.S. Mid-Cap Equity Currency Neutral Fund (Series A, Advisor Series, Series D, Series F and Series O units)  
RBC O'Shaughnessy U.S. Growth Fund (Series A, Series D, Series F and Series O units)  
RBC O'Shaughnessy U.S. Growth Fund II (Series A, Advisor Series, Series D and Series F units)  
RBC Life Science and Technology Fund (Series A, Series D and Series F units)  
RBC International Equity Fund (Series A, Advisor Series, Series D, Series F and Series O units)  
RBC International Index Currency Neutral Fund (Series A units)  
RBC O'Shaughnessy International Equity Fund (Series A, Advisor Series, Series D, Series F, Series I and Series O units)

RBC European Equity Fund (Series A, Advisor Series, Series D, Series F and Series O units)  
RBC Asian Equity Fund (Series A, Advisor Series, Series D, Series F and Series O units)  
RBC Global Dividend Growth Fund (Series A, Advisor Series, Series T, Series D, Series F, Series I and Series O units)  
RBC Jantzi Global Equity Fund (Series A, Advisor Series, Series D, Series F and Series I units)  
RBC O'Shaughnessy Global Equity Fund (Series A, Advisor Series, Series D, Series F, Series I and Series O units)  
RBC Global Energy Fund (Series A, Advisor Series, Series D and Series F units)  
RBC Global Precious Metals Fund (Series A, Advisor Series, Series D, Series F and Series I units)  
RBC Global Consumer and Financials Fund (Series A, Advisor Series, Series D and Series F units)  
RBC Global Health Sciences Fund (Series A, Advisor Series, Series D and Series F units)  
RBC Global Resources Fund (Series A, Advisor Series, Series D and Series F units)  
RBC Global Technology Fund (Series A, Advisor Series, Series D and Series F units)  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated July 2, 2009  
NP 11-202 Receipt dated July 6, 2009

**Offering Price and Description:**

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**Underwriter(s) or Distributor(s):**

Royal Mutual Funds Inc.  
RBC Direct Investing Inc.  
Royal Mutual Funds Inc.  
RBC Asset Management Inc.  
RBC Dominion Securities Inc.  
Royal Mutual Funds Inc./RBC Direct Investing Inc.

**Promoter(s):**

RBC Asset Management Inc.

**Project #1426251**

**Issuer Name:**

The Manufacturers Life Insurance Company  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated July 6, 2009  
NP 11-202 Receipt dated July 7, 2009

**Offering Price and Description:**

\$1,000,000,000.00 - 7.405% Manulife Financial Capital Trust II Notes - Series 1 due December 31, 2108 (MacSTM II - Series 1)

**Underwriter(s) or Distributor(s):**

RBC Dominion Securities Inc.  
National Bank Financial Inc.

**Promoter(s):**

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**Project #1440491**

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**Issuer Name:**

ZENN Motor Company Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated July 7, 2009  
NP 11-202 Receipt dated July 7, 2009

**Offering Price and Description:**

Minimum: \$7,525,000.00 - 2,150,000 Common Shares  
Maximum: \$10,010,000.00 2,860,000 Common Shares

**Underwriter(s) or Distributor(s):**

Paradigm Capital Inc.  
Thomas Weisel Partners Canada Inc.

**Promoter(s):**

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**Project #1435095**

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**Issuer Name:**

Sabretooth Energy Ltd.  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated June 30, 2009  
NP 11-202 Receipt dated July 2, 2009

**Offering Price and Description:**

UP TO \$10,000,000.00 - OFFERING OF 38,460,514 RIGHTS TO SUBSCRIBE FOR 27,027,027 COMMON SHARES Price: \$0.37 per Common Share

**Underwriter(s) or Distributor(s):**

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**Promoter(s):**

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**Project #1435332**

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## Chapter 12

# Registrations

### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Name Change	From: Equity Research Corp.  To: ERESEARCH CORPORATION	Limited Market Dealer and Securities Adviser	October 31, 2008
New Registration	Independent Trading Group (ITG) Inc.	Investment Dealer	July 03, 2009
New Registration	INL Capital Inc.	Limited Market Dealer	July 3, 2009
New Registration	Pioneer Institutional Asset Management, Inc.	International Adviser (Investment Counsel & Portfolio Manager) and Limited Market Dealer	July 6, 2009
Change of Category	NBC Alternative Investments Inc.	From: Investment Counsel and Portfolio Manager Commodity Trading Manager  To: Investment Counsel and Portfolio Manager Commodity Trading Manager Limited Market Dealer	July 6, 2009



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## Chapter 13

# SRO Notices and Disciplinary Proceedings

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### 13.1.1 MFDA Issues Notice of Hearing Regarding Martin Horvath

#### NEWS RELEASE For immediate release

#### MFDA ISSUES NOTICE OF HEARING REGARDING MARTIN HORVATH

**July 2, 2009** (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada (“MFDA”) today announced that it has commenced disciplinary proceedings against Martin Horvath (the “Respondent”).

MFDA staff alleges in its Notice of Hearing that the Respondent engaged in the following conduct contrary to the By-laws, Rules or Policies of the MFDA:

**Allegation #1:** Between approximately September 2006 and September 14, 2007, the Respondent had and continued in another gainful occupation that was not disclosed to and approved by the Member by referring individuals to overseas real estate agents, contrary to MFDA Rule 1.2.1(d).

**Allegation #2:** Between May 2004 and September 14, 2007, the Respondent engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member by recommending, referring or facilitating purchases of investment products by individuals outside the Member, contrary to MFDA Rule 1.1.1(a).

**Allegation #3:** Between May 2004 and September 14, 2007, the Respondent had and continued in another gainful occupation that was not disclosed to and approved by the Member by recommending, referring or facilitating purchases of investment products by individuals outside the Member, contrary to MFDA Rule 1.2.1(d).

**Allegation #4:** Commencing September 5, 2007, the Respondent has failed or refused to provide documents and information to MFDA Staff during the course of an investigation, contrary to s. 22.1 of MFDA By-law No. 1.

The first appearance in this matter will take place by teleconference before a Hearing Panel of the MFDA’s Central Regional Council in the Hearing Room located at the offices of the MFDA, 121 King Street West, Suite 1000, Toronto, Ontario on September 23, 2009 at 10:00 a.m. (Eastern) or as soon thereafter as the appearance can be held.

The purpose of the first appearance is to schedule the date for the commencement of the hearing of this matter on its merits and to address any other procedural matters. The first appearance is open to the public, except as may be required for the protection of confidential matters. Members of the public attending the first appearance will be able to listen to the proceeding by teleconference.

A copy of the Notice of Hearing is available on the MFDA website at [www.mfda.ca](http://www.mfda.ca).

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 146 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](mailto:sdevlin@mfda.ca)

13.1.2 MFDA Issues Notice of Hearing Regarding Paul A. Henry

*For further information, please contact:*  
Shaun Devlin  
Vice-President, Enforcement  
416-943-4672 or sdevlin@mfd.ca

**NEWS RELEASE**  
For immediate release

**MFDA ISSUES NOTICE OF HEARING  
REGARDING PAUL A. HENRY**

**July 2, 2009** (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada (“MFDA”) today announced that it has commenced disciplinary proceedings against Paul Anthony Henry (the “Respondent”).

MFDA staff alleges in its Notice of Hearing that the Respondent engaged in the following conduct contrary to the By-laws, Rules or Policies of the MFDA:

**Allegation #1:** Between June 6, 2006 and July 6, 2007, the Respondent accepted \$6,440 for investment from client LG, of which amount he failed to invest, return or otherwise account for \$2,440, thereby misappropriating those monies and failing to deal fairly, honestly and in good faith with client LG, contrary to MFDA Rules 2.1.1.

**Allegation #2:** On or about November 2, 2006, the Respondent fabricated and mailed an “Investment Statement” to client LG that was untrue, misleading and detrimental to the interests of client LG, contrary to MFDA Rules 2.8.2(a) and (c) and Rule 2.1.1.

**Allegation #3:** On or about June 8, 2007, the Respondent received a written complaint from client LG which he failed to report to the Member, contrary to MFDA Policy 6, section 4.1(b)(ii) and MFDA Rules 1.1.2 and 2.11.

The first appearance in this matter will take place by teleconference before a Hearing Panel of the MFDA’s Central Regional Council in the Hearing Room located at the offices of the MFDA, 121 King Street West, Suite 1000, Toronto, Ontario on October 1, 2009 at 10:00 a.m. (Eastern) or as soon thereafter as the appearance can be held.

The purpose of the first appearance is to schedule the date for the commencement of the hearing of this matter on its merits and to address any other procedural matters. The first appearance is open to the public, except as may be required for the protection of confidential matters. Members of the public attending the first appearance will be able to listen to the proceeding by teleconference.

A copy of the Notice of Hearing is available on the MFDA website at [www.mfda.ca](http://www.mfda.ca).

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 146 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

13.1.3 MFDA Issues Notice of Hearing Regarding Ben A. Kaley

**NEWS RELEASE**  
For immediate release

**MFDA ISSUES NOTICE OF HEARING  
REGARDING BEN A. KALEY**

**July 2, 2009** (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada (“MFDA”) today announced that it has commenced disciplinary proceedings against Ben Alden Kaley (the “Respondent”).

MFDA staff alleges in its Notice of Hearing that the Respondent engaged in the following conduct contrary to the By-laws, Rules or Policies of the MFDA:

**Allegation #1:** Between February 2007 and August 2007, the Respondent engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member, contrary to MFDA Rules 1.1.1(a) and 2.1.1.

**Allegation #2:** Between February 2007 and August 2007, the Respondent carried on a dual occupation that was not properly disclosed to and approved by the Member, contrary to MFDA Rules 1.2.1(d) and 2.1.1.

The first appearance in this matter will take place by teleconference before a Hearing Panel of the MFDA’s Atlantic Regional Council on August 18, 2009 at 10:00 a.m. (Atlantic) or as soon thereafter as the appearance can be held. The purpose of the first appearance is to schedule the date for the commencement of the hearing of this matter on its merits and to address any other procedural matters.

The first appearance is open to the public, except as may be required for the protection of confidential matters. Members of the public who want to listen to the first appearance should contact Marco Wynnyckyj, MFDA Hearings Coordinator, at 416-945-5146 or by email at [mwynnyckyj@mfd.ca](mailto:mwynnyckyj@mfd.ca) on or before August 14, 2009 to obtain particulars. The hearing on the merits will take place at a location in Fredericton, New Brunswick at a time and place to be announced at a later date.

A copy of the Notice of Hearing is available on the MFDA website at [www.mfda.ca](http://www.mfda.ca).

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 146 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@mfd.ca](mailto:sdevlin@mfd.ca)

13.1.4 MFDA Issues Notice of Hearing Regarding Carmen G. Moerike

**NEWS RELEASE**  
For immediate release

**MFDA ISSUES NOTICE OF HEARING  
REGARDING CARMEN G. MOERIKE**

**July 6, 2009** (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada (“MFDA”) today announced that it has commenced disciplinary proceedings against Carmen G. Moerike (the “Respondent”).

MFDA staff alleges in its Notice of Hearing that the Respondent engaged in the following conduct contrary to the By-laws, Rules or Policies of the MFDA:

**Allegation #1:** Between January 11, 2002 and January 28, 2008, the Respondent borrowed monies from clients BC and MF to finance his outside business activities, thereby giving rise to an actual or potential conflict of interest which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rule 2.1.4 and MFDA Rule 2.1.1.

**Allegation #2:** From November 2002 to November 2007, the Respondent accepted and held a general power of attorney or other similar authorization for clients BC and MF, contrary to MFDA Rule 2.3.1(a).

**Allegation #3:** Between September 25, 2006 and March 28, 2007, the Respondent failed to comply with the policies and procedures of the Members for which he was an Approved Person by failing to disclose to the Members his personal financial dealings with clients BC and MF, thereby interfering with the ability of the Members to supervise his activities, contrary to MFDA Rules 1.1.2 and 2.5.1 and MFDA Rule 2.1.1.

The first appearance in this matter will take place by teleconference before a Hearing Panel of the MFDA’s Prairie Regional Council in the Hearing Room located at 800 – 6th Avenue S.W., Suite 850, Calgary, Alberta on August 5, 2009 at 10:00 a.m. (Mountain), or as soon thereafter as the appearance can be held.

The purpose of the first appearance is to schedule the date for the commencement of the hearing of this matter on its merits and to address any other procedural matters. The first appearance is open to the public, except as may be required for the protection of confidential matters. Members of the public attending the first appearance will be able to listen to the proceeding by teleconference.

A copy of the Notice of Hearing is available on the MFDA website at [www.mfda.ca](http://www.mfda.ca).

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 146 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

**13.1.5 MFDA Sets Date for Hearing with Respect to Penalty in the Matter of Gary A. Price**

**NEWS RELEASE**  
For immediate release

**MFDA SETS DATE FOR HEARING  
WITH RESPECT TO PENALTY  
IN THE MATTER OF GARY A. PRICE**

**July 7, 2009** (Toronto, Ontario) – A Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (“MFDA”) issued its Decision and Reasons with respect to misconduct in the matter of Gary Alan Price on June 12, 2009.

The hearing of this matter with respect to penalty has been scheduled to take place before the Hearing Panel on July 23, 2009 at 9:00 a.m. (Eastern) in the Hearing Room located at 121 King Street West, Suite 1000, Toronto, Ontario, or as soon thereafter as the hearing can be held.

The hearing will be open to the public, except as may be required for the protection of confidential matters.

A copy of the Decision and Reasons is available on the MFDA web site at [www.mfda.ca](http://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 146 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

13.1.6 TSX Inc. Notice – Approval of Amendments to the Rules of the Toronto Stock Exchange to Repeal the ATX Rules

TSX INC. NOTICE

APPROVAL OF AMENDMENTS TO THE RULES OF  
THE TORONTO STOCK EXCHANGE (EXCHANGE) TO REPEAL THE ATX RULES

Introduction

In accordance with the Protocol for Commission Oversight of Toronto Stock Exchange Rule Proposals between the Ontario Securities Commission (OSC) and Toronto Stock Exchange (Protocol), TSX Inc. (TSX) has adopted and the OSC has approved certain amendments (Amendments) to the provisions in the Rules of the Toronto Stock Exchange (Rule Book). The Amendments will become effective on **July 24, 2009**.

Purpose

The Amendments repeal the ATX provisions from the Rule Book, namely Rule 4-108 and related definitions that will not be used going forward. TSX has made the business decision to decommission ATX. Therefore, the ATX rules and related definitions are no longer required and should be removed from the Rule Book.

Non-Public Interest Rule

The Amendments are not considered to be a “public interest” rule. The Amendments delete a specific product from the Rule Book. The ATX rules are no longer necessary as the product has been decommissioned and will no longer be offered.

Amendments

The Amendments are provided in Appendix A.

Timing

Because the Amendments are not considered to be a public interest rule, in accordance with the Protocol the Amendments were deemed to be approved by the OSC at the time TSX filed its Amendments submission on June 30, 2009. The Amendments will become effective on **July 24, 2009**.

## APPENDIX A

The following rules will be repealed in their entirety:

RULES	POLICIES
<p><b>“Alternative Trade eXecution (ATX)”</b> is a subscription-based facility of the Exchange to match Intents against Exchange destined order flow as well as other Intents. All matches in ATX are sent to the Exchange for trade execution.</p> <p><b>Added (June 13, 2007)</b></p>	
<p><b>“ATX Subscriber”</b> means a Participating Organization that has subscribed to use ATX.</p> <p><b>Added (June 13, 2007)</b></p>	
<p><b>“Central Intent Book (or CIB)”</b> means a blind electronic book that holds all Intents entered by ATX Subscribers.</p> <p><b>Added (June 13, 2007)</b></p>	
<p><b>“Intent”</b> means a firm indication by a person, acting as principal or agent, of a willingness to buy or sell a security provided that certain specified conditions are satisfied, such as a quote spread and bid offer quote volume.</p> <p><b>Added (June 13, 2007)</b></p>	
<p><b>“Minimum Quote Spread”</b> is a spread value that is entered on an Intent by an ATX Subscriber that specifies a minimum quote spread that must be satisfied in order for an Intent to be eligible to match in ATX.</p> <p><b>Added (June 13, 2007)</b></p>	
<p><b>“Minimum Quote Volume”</b> is a volume that is entered on an Intent by an ATX Subscriber that specifies a minimum quote volume that must be satisfied in order for an Intent to be eligible to match in ATX.</p> <p><b>Added (June 13, 2007)</b></p>	
<p><b>“Priority Allocation Group (PAG)”</b> is a feature in ATX that allows an ATX Subscriber to define its in-house priority allocation for purposes of matching orders and Intents.</p> <p><b>Added (June 13, 2007)</b></p>	

RULES	POLICIES
<p><b><u>PART 4 – TRADING OF LISTED SECURITIES</u></b></p>	
<p><b>DIVISION 1 - MARKET FOR LISTED SECURITIES</b></p> <p><b>4-108 ATX Facility</b></p> <p>(1) Intent Entry</p> <p>Intents may be entered, by an ATX Subscriber, into the CIB at any time on a Trading Day. Intents entered in the CIB will not interact with the Book.</p> <p>(2) Intent Size Increment</p> <p>The ATX facility operates in a minimum size increment of one security for each Intent.</p> <p>(3) Order Entry</p> <p>Orders from an ATX Subscriber may be routed to ATX at any time on a Trading Day. Orders that an ATX Subscriber routes to ATX will not be held in the CIB but will match with Intents held in the CIB in accordance this Rule 4-108.</p> <p>(4) Eligible Orders</p> <p>Orders which are at least one security in volume are eligible for matching in ATX.</p> <p>(5) Matching of Intents and Orders</p> <p>(a) All Intents entered by an ATX Subscriber must have a Minimum Quote Spread and a Minimum Quote Volume specified. Both of these conditions must be satisfied in order for an Intent to be eligible to match in ATX. A Minimum Quote Spread is satisfied, if, at the time of the match, the spread value of the CBBO is greater than or equal to the Intent's Minimum Quote Spread. A Minimum Quote Volume is satisfied if, at the time of the match, the aggregate volume of the CBBO, on the same side as the Intent, is greater than or equal to the Intent's Minimum Quote Volume.</p> <p>(b) Orders will be immediately matched with Intents in the CIB that are on the contra side of the order, subject to Rule 4-108(5)(a). A buy order will be matched with a sell Intent at the Canadian Best Offer, at such time, plus price improvement as determined from time to time by the Exchange. A sell order will be matched with a buy Intent at the Canadian Best Bid, at such time, plus price improvement as determined from time to time by the Exchange.</p> <p>(c) Subject to Rule 4-108(5)(a), active Intents will be immediately matched with other Intents in the CIB that are on the contra side of the active Intent. An active buy Intent will be matched</p>	



RULES	POLICIES
<p>with a sell Intent at the Canadian Best Offer, at such time, plus price improvement as determined from time to time by the Exchange. An active sell Intent will be matched with a buy Intent at the Canadian Best Bid, at such time, plus price improvement as determined from time to time by the Exchange.</p> <p>(d) All matching in ATX will occur during the Regular Session but will not occur if the security is halted or delayed by the Exchange or RS.</p> <p>(e) Matches will not execute if at the time the match is reported to the Exchange it is outside the bid price and ask price quoted on the Exchange. Notwithstanding Rules 4-801 and 4-802, matches will execute if at the time the match is reported to the Exchange it is at the bid price or ask price quoted on the Exchange.</p> <p>(6) Priority of Matches</p> <p>Notwithstanding Rules 4-801 and 4-802 and subject to Rule 4-108(5)(a), orders shall match with Intents in the CIB and active Intents shall match with other Intents in the CIB:</p> <p>(a) Orders shall match with Intents in the CIB in the following manner and sequence:</p> <ul style="list-style-type: none"> <li>(i) orders with Intents from the same ATX Subscriber according to such ATX Subscriber's PAG assignment. Intents with the same PAG assignment are matched with orders in time priority; then</li> <li>(ii) orders with Intents that meet a minimum volume requirement, as determined by the Exchange from time to time. Where multiple Intents meet the minimum volume requirement, these Intents shall be matched in time priority, without regard to the size of the Intents; then</li> <li>(iii) orders with all other Intents in time priority; then</li> <li>(iv) any residual volume of the order is sent immediately to the Book.</li> </ul> <p>(b) Active Intents shall match against Intents in the CIB in the following manner and sequence:</p> <ul style="list-style-type: none"> <li>(i) Intents with other Intents from the same ATX Subscriber according to such ATX Subscriber's PAG assignment. Intents with the same PAG assignment are matched with other Intents in time priority; then</li> <li>(ii) Intents with other Intents that meet a minimum volume requirement, as</li> </ul>	

RULES	POLICIES
<p>determined by the Exchange from time to time. Where multiple Intents meet the minimum volume requirement, these Intents shall be matched in time priority, without regard to the size of the Intent; then</p> <p>(iii) Intents with all other Intents in time priority.</p> <p>(7) Unmatched Intents</p> <p>An unmatched Intent will remain in the CIB until such Intent:</p> <ul style="list-style-type: none"> <li>(a) is matched with an order or an active Intent;</li> <li>(b) is cancelled by the ATX Subscriber; or</li> <li>(c) expires based on the duration of the Intent.</li> </ul> <p>(8) Application of Exchange Requirements</p> <p>Except as otherwise provided in this Rule, all Exchange Requirements shall apply to the entry and execution of Intents and orders. For greater certainty, for purposes of Rule 2-501, Rule 2-502, Rule 2-503 and their related policies, reference to the term orders shall include both orders and Intents entered in the ATX facility, and reference to the term Book in Policy 2-502(2)(e) shall include CIB.</p> <p><b>Added (June 13, 2007)</b></p>	

**13.1.7 Material Amendments to CDS Rules – CALMS (Corporate Action Liability Management Service) – Request for Comments**

**CDS CLEARING AND DEPOSITORY SERVICES INC. (“CDS”)**

**MATERIAL AMENDMENTS TO CDS RULES**

**CALMS (CORPORATE ACTION LIABILITY MANAGEMENT SERVICE)**

**REQUEST FOR COMMENTS**

**A. DESCRIPTION OF THE PROPOSED CDS RULE AMENDMENTS**

The Entitlements Subcommittee of the Strategic Development Review Committee (“SDRC”) requested that CDS develop and implement a new service for the submission and tracking of liability notifications (commonly known as “letters of liability”) for corporate action events. The new service is called CALMS (Corporate Action Liability Management Service). In order to allow for this web-based electronic facility, Rule 6.8 “Reorganization and Exercise of Rights” will be amended to describe the optional new CALMS functionality and to clarify Participant and CDS responsibilities and obligations. In addition, definitions of the terms “CALMS” and “CA Liability Record” will be added in Rule 1.2.1.

**B. NATURE AND PURPOSE OF THE PROPOSED CDS RULE AMENDMENTS**

The amendments proposed pursuant to this Notice are considered material amendments as they are amendments required to: (i) implement a new function to allow Participants to enter and track letter of liability notifications between them; and (ii) to confirm that CDS is not responsible for information transmitted through CALMS, for the enforceability of an accepted CALMS letter of liability or for performance of obligations by Participants to an accepted CALMS letter of liability.

**C. IMPACT OF THE PROPOSED CDS RULE AMENDMENTS**

The current manual and paper-based process to finalize a letter of liability between Participants operates outside of CDS. A “letter of liability” provides details of when securities must be delivered to settle a trade and the consequences (or liability owed by one Participant to another Participant) for failing to make delivery by the specified date when a corporate action event for the securities is pending. Participants communicate with one another by signing paper-based letters of liability and faxing them. The letter of liability can be amended and transmitted by fax several times before being finalized by the parties to it.

CALMS will replace the paper/fax based exchange of letters of liability with on-line electronic communications. CALMS will use a browser-based Graphics User Interface to the on-line application and will permit Participants to electronically submit and track their liability notifications throughout their life cycle (from initiation to acceptance), including time and date and the user taking the specific action. The “initiating Participant” will submit through CALMS a proposed letter of liability, called a “CA Liability Record”, to its counterparty Participant. The counterparty Participant may accept or reject the CA Liability Record or suggest amendments to it. CALMS is independent of CDSX but will draw upon CDSX corporate action event and other information, where available, to insert in the CA Liability Record the relevant details about the parties, the security, the corporate action event and the liability being agreed to. Electronic alerts will advise Participants when a CALMS activity has occurred and when the relevant processing dates have been reached. Participants will be able to self-subscribe to those alerts they wish to receive.

Implementation of CALMS will significantly reduce Participant manual efforts in creating and processing letters of liability between Participants in the high risk world of voluntary corporate actions. First, significant time is currently wasted by Participants waiting for faxes to be sent, searching for faxes received and tracking down faxes gone astray. Second, with faxes, there is no systematic method to track and record each step in the life cycle of a letter of liability and who performed that step. Third, significant manual time is spent gathering and inputting relevant details in a letter of liability.

There are also inherent risks associated with the current process of using different forms of letters of liability, depending who is the other Participant to a letter of liability. CALMS will employ one standard form of CA Liability Record and will use automated corporate action event and other information for CDSX eligible securities: this will reduce the Participants’ costs and risks and will provide an accurate, uniform and reliable method to handle finalizing the obligation (or liability) owed from one Participant to another. Participants may use CALMS for both CDSX eligible securities and ineligible securities, however it may not be possible to draw upon corporate action event and other information for CDSX ineligible securities.

Participants are not required to use CALMS, and may chose to use it for some transactions and not others. Therefore, unless both Participants involved in a trade to be settled have agreed to use CALMS, it is possible that some Participants who have opted to use CALMS will be forced to continue to use the existing manual paper/fax process with a Participant who has not opted to use the service.

There should be no impact to other parties who are not participants, or to the securities and financial markets in general.

**C.1 Competition**

There is expected to be no impact on competition.

**C.2 Risks and Compliance Costs**

There is expected to be no impact on compliance costs specific to CALMS, apart from fees for transactions. There is expected to be a reduction in costs and risk to those Participants who use CALMS due to the standardization of one form of a letter of liability, availability of electronic alerts and the ability to track the life cycle of the letter of liability. Furthermore, as the service is between Participants only, the proposed Rule confirms responsibilities between Participants who use CALMS and that CDS is not responsible for the information transmitted through CALMS, or the enforceability of an accepted letter of liability, or for the performance of obligations by the Participants to an accepted CALMS letter of liability. It is not expected that CDS will incur any additional external costs to implement CALMS.

**C.3 Comparison to International Standards – (a) Committee on Payment and Settlement Systems of the Bank for International Settlements, (b) Technical Committee of the International Organization of Securities Commissions, and (c) the Group of Thirty**

The Committee on Payment and Settlement Systems of the Bank of International Settlements, the Technical Committee of the International Organization of Securities Commissions and the Group of Thirty do not refer to tracking letters of liability specifically, the proposed program is in-line with a move to an electronic environment and there is low risk involved in this program.

**D. DESCRIPTION OF THE RULE DRAFTING PROCESS**

**D.1 Development Context**

For years, Participants have used the manual paper/fax process for letters of liability independent of CDS. Some Participants have had the opportunity to use DTC's electronic process for letters of liability and find the DTC service far more efficient than the manual process. CALMS has been developed to provide Participants with a similar process for the Canadian financial market, to reduce costs and inefficiencies and to speed the processing of letters of liability.

**D.2 Rule Drafting Process**

Each amendment to the CDS Participant Rules is reviewed by CDS's Legal Drafting Group ("LDG"). The LDG is a committee that includes members of Participants' legal and business groups. The LDG's mandate is to advise CDS management and its Board of Directors on rule amendments and other legal matters relating to centralized securities depository and clearing services in order to ensure that they meet the needs of CDS, its Participants and the securities industry.

These amendments were reviewed and approved by the Board of Directors of CDS on June 23, 2009.

**D.3 Issues Considered**

CDS investigated possible solutions that would both achieve the overall objective and benefits of eliminating the current manual paper/fax process while continuing to provide Participants with the choice of whether or not to use CALMS. CDS also considered mandating this service for use by all Participants; however, the SDRC has asked CDS to proceed with CALMS as an optional service.

**D.4 Consultation**

This initiative was identified and approved by the SDRC as a top priority development project for CDS, and in this regard, CDS consulted with Participants on possible alternatives to improve the current manual process.

**D.5 Alternatives Considered**

CDS considered building an electronic facility that would not only encompass the electronic communication and maintenance of corporate action liability records, but would also interface with CDSX to allow such records to be issued against CNS (Continuous Net Settlement) positions, automatically process settlements against the records and execute any records where liability had been accepted. After presenting the above described proposal to Participants, it was decided that CALMS would be developed initially to provide an electronic method of communicating corporate action liability records (replacing the current manual faxing of such letters) as well as an on-line repository for such records. CALMS is viewed as the best way to deliver the

required functionality to Participants in order to improve the current manual paper/fax process. The internet based system facilitates the use of electronic alerts.

#### **D.6 Implementation Plan**

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.2 of the Ontario *Securities Act*. The Autorité des marchés financiers has authorized CDS to carry on clearing activities in Québec pursuant to sections 169 and 170 of the Québec *Securities Act*. In addition CDS is deemed to be the clearing house for CDSX<sup>®</sup>, a clearing and settlement system designated by the Bank of Canada pursuant to section 4 of the *Payment Clearing and Settlement Act*. The Ontario Securities Commission, the Autorité des marchés financiers and the Bank of Canada will hereafter be collectively referred to as the "Recognizing Regulators".

The amendments to Participant Rules may become effective upon approval of the amendments by the Recognizing Regulators following public notice and comment. The target date for implementation is November 16, 2009.

#### **E. TECHNOLOGICAL SYSTEMS CHANGES**

##### **E.1 CDS**

CDS will create a new web access manager on [www.cds.ca](http://www.cds.ca) to provide Participants with the ability to obtain web IDs, assign user roles, maintain user contact information and control access to CDS's web based applications. Access to a web ID and a web application will be managed by a web user administrator (WUA) and web access administrator (WAA) respectively. The ability to access the different functions in CALMS will be controlled by the WAA appointed by the Participant.

##### **E.2 CDS Participants**

Participants will be required to have access to the internet to register and use CALMS from [www.cds.ca](http://www.cds.ca). There are no other external development impacts to CDS Participants.

##### **E.3 Other Market Participants**

There are no external development impacts to other market participants within the Canadian environment.

#### **F. COMPARISON TO OTHER CLEARING AGENCIES**

DTC offers a similar service, called SMART/Track for Corporate Action Liability Notification Service, which is also web-based system that provides automated communication and tracking of corporate action liability notices for securities undergoing a voluntary corporate action event. CDS is not aware of any other depositories that use a similar electronic system.

#### **G. PUBLIC INTEREST ASSESSMENT**

CDS has determined that the proposed amendments are not contrary to the public interest.

#### **H. COMMENTS**

Comments on the proposed amendments should be in writing and submitted within 30 calendar days following the date of publication of this notice in the Ontario Securities Commission Bulletin to:

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](mailto:attention@cds.ca)

Copies should also be provided to the **Autorité des marchés financiers** and the **Ontario Securities Commission** by forwarding a copy to each of the following individuals:

M<sup>e</sup> Anne-Marie Beaudoin  
Secrétaire de l'Autorité  
Autorité des marchés financiers  
800, square Victoria, 22<sup>e</sup> étage  
C.P. 246, tour de la Bourse  
Montréal (Québec) H4Z 1G3

Manager, Market Regulation  
Market Regulation Branch  
Ontario Securities Commission  
Suite 1903, Box 55,  
20 Queen Street West  
Toronto, Ontario, M5H 3S8

Télécopieur: (514) 864-6381  
Courrier électronique: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

Fax: 416-595-8940  
e-mail: [marketregulation@osc.gov.on.ca](mailto:marketregulation@osc.gov.on.ca)

CDS will make available to the public, upon request, all comments received during the comment period.

#### **I. PROPOSED CDS RULE AMENDMENTS**

Appendix "A" contains text of current CDS Participant Rules marked to reflect proposed amendments as well as text of these rules reflecting the adoption of the proposed amendments.

Resa Sitzer  
Managing Director, Legal

**APPENDIX "A"**  
**PROPOSED CDS RULE AMENDMENTS**

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
<p><b>Add: New Definition to Rule 1.2.1</b></p> <p><u>"CA Liability Record" has the meaning ascribed to that term in Rule 6.8.5.</u></p> <p><u>"CALMS" means the Corporate Action Liability Management Service described in Rule 6.8.5.</u></p> <p><b>Add: New Rule 6.8.5</b></p> <p><b><u>6.8.5 Corporate Action Liability Management Service</u></b></p> <p><b><u>(a) Use of CALMS for Reorganization Events</u></b></p> <p><u>Participants may use CALMS to transmit and enter into a CALMS letter of liability (a "CA Liability Record") describing their obligations to one another as a result of a reorganization event affecting a Securities transaction to which they are a party. CALMS provides functionality to communicate between CALMS Participants the details of the effect of reorganization events on that Securities transaction (including changes in the delivery or payment obligations, or additional obligations arising from a failure to perform at a particular time). The transaction may involve either CDSX eligible Securities or ineligible Securities. The submission and acceptance of such details constitutes the agreement of the CALMS Participants to a CA Liability Record between them in the form set out in the Procedures and User Guides.</u></p> <p><b><u>(b) Execution and Dispute Resolution</u></b></p> <p><u>Each Participant using CALMS has the sole responsibility for:</u></p> <ul style="list-style-type: none"> <li><u>(i) the accuracy and completeness of information transmitted through CALMS;</u></li> <li><u>(ii) accepting or rejecting any proposed CA Liability Record;</u></li> <li><u>(iii) performance of their obligations under any accepted CA Liability Record; and</u></li> <li><u>(iv) the resolution of any disputes arising with respect to their use of CALMS, including the acceptance or rejection of a proposed CA Liability Record, performance or non-performance under an accepted CA Liability Record, and any consequences arising from such performance or non-performance.</u></li> </ul> <p><b><u>(c) CDS Responsibility</u></b></p> <p><u>CDS is not responsible for:</u></p> <ul style="list-style-type: none"> <li><u>(i) the information transmitted through CALMS;</u></li> </ul>	<p><b>Add: New Definition to Rule 1.2.1</b></p> <p>"CA Liability Record" has the meaning ascribed to that term in Rule 6.8.5.</p> <p>"CALMS" means the Corporate Action Liability Management Service described in Rule 6.8.5.</p> <p><b>Add: New Rule 6.8.5</b></p> <p><b>6.8.5 Corporate Action Liability Management Service</b></p> <p><b>(a) Use of CALMS for Reorganization Events</b></p> <p>Participants may use CALMS to transmit and enter into a CALMS letter of liability (a "CA Liability Record") describing their obligations to one another as a result of a reorganization event affecting a Securities transaction to which they are a party. CALMS provides functionality to communicate between CALMS Participants the details of the effect of reorganization events on that Securities transaction (including changes in the delivery or payment obligations, or additional obligations arising from a failure to perform at a particular time). The transaction may involve either CDSX eligible Securities or ineligible Securities. The submission and acceptance of such details constitutes the agreement of the CALMS Participants to a CA Liability Record between them in the form set out in the Procedures and User Guides.</p> <p><b>(b) Execution and Dispute Resolution</b></p> <p>Each Participant using CALMS has the sole responsibility for:</p> <ul style="list-style-type: none"> <li>(i) the accuracy and completeness of information transmitted through CALMS;</li> <li>(ii) accepting or rejecting any proposed CA Liability Record;</li> <li>(iii) performance of their obligations under any accepted CA Liability Record; and</li> <li>(iv) the resolution of any disputes arising with respect to their use of CALMS, including the acceptance or rejection of a proposed CA Liability Record, performance or non-performance under an accepted CA Liability Record, and any consequences arising from such performance or non-performance.</li> </ul> <p><b>(c) CDS Responsibility</b></p> <p>CDS is not responsible for:</p>

<b>Text of CDS Participant Rules marked to reflect proposed amendments</b>	<b>Text CDS Participant Rules reflecting the adoption of proposed amendments</b>
(ii) <u>the enforceability of any CA Liability Record; or</u>  (iii) <u>performance or non-performance by a Participant of any accepted CA Liability Record.</u>	(i) the information transmitted through CALMS;  (ii) the enforceability of any CA Liability Record; or  (ii) performance or non-performance by a Participant of any accepted CA Liability Record.



**13.1.8 MFDA Issues Notice of Hearing Regarding Michael Rosenfelder**

*For further information, please contact:*  
Shaun Devlin  
Vice-President, Enforcement  
416-943-4672 or sdevlin@mfd.ca

**NEWS RELEASE**  
**For immediate release**

**MFDA ISSUES NOTICE OF HEARING  
REGARDING MICHAEL ROSENFELDER**

**July 8, 2009** (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada (“MFDA”) today announced that it has commenced disciplinary proceedings against Michael Rosenfelder (the “Respondent”).

MFDA staff alleges in its Notice of Hearing that the Respondent engaged in the following conduct contrary to the By-laws, Rules or Policies of the MFDA:

**Allegation #1:** Between January 2005 and September 2005, the Respondent engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member by selling, referring or facilitating the sale of an investment product to clients BK and IR outside the Member, contrary to MFDA Rules 1.1.1(a) and 2.1.1.

**Allegation #2:** Between January 2005 and September 2005, the Respondent had and continued in another gainful occupation that was not disclosed to and approved by the Member by selling, referring or facilitating the sale of an investment product to clients BK and IR outside the Member, contrary to MFDA Rules 1.2.1(d) and 2.1.1.

The first appearance in this matter will take place by teleconference before a Hearing Panel of the MFDA’s Central Regional Council in the Hearing Room located at the offices of the MFDA, 121 King Street West, Suite 1000, Toronto, Ontario on July 28, 2009 at 10:00 a.m. (Eastern) or as soon thereafter as the appearance can be held.

The purpose of the first appearance is to schedule the date for the commencement of the hearing on its merits and to address any other procedural matters. The first appearance is open to the public, except as may be required for the protection of confidential matters. Members of the public attending the first appearance will be able to listen to the proceeding by teleconference.

A copy of the Notice of Hearing is available on the MFDA website at [www.mfda.ca](http://www.mfda.ca).

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 146 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

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