The Ontario Securities Commission

OSC Bulletin

November 13, 2009

Volume 32, Issue 46

(2009), 32 OSCB

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)

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Published under the authority of the Commission by:
Carswell, a Thomson Reuters business
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
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Subscriptions are available from Carswell at the price of $649 per year.

Subscription prices include first class postage to Canadian addresses. Outside Canada, these airmail postage charges apply on a current subscription:

U.S.	$175
Outside North America	$400

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ISSN 0226-9325
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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

NOVEMBER 13, 2009

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

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

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
Suite 1700, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

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David L. Knight, FCA	—	DLK
Patrick J. LeSage	—	PJL
Carol S. Perry	—	CSP
Charles Wesley Moore (Wes) Scott	—	CWMS

SCHEDULED OSC HEARINGS

November 24, 2009 2:30 p.m.	**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** s. 127 H. Daley in attendance for Staff Panel: CSP
November 24, 2009 2:30 p.m.	**Prosporex Investments Inc., Prosporex Forex SPV Trust, Anthony Diamond, Diamond+Diamond, and Diamond+Diamond Merchant Banking Bank** s. 127 H. Daley in attendance for Staff Panel: CSP

November 24, 2009 2:00 p.m. November 25 – December 7, 2009 10:00 a.m. December 8, 2009 2:00 p.m. December 9-23, 2009 10:00a.m.	**Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited** s. 127 M. Britton in attendance for Staff Panel: JDC/KJK
November 30, 2009 10:00 a.m.	**Paladin Capital Markets Inc., John David Culp and Claudio Fernando Maya** s. 127 C. Price in attendance for Staff Panel: DLK
November 30, 2009 2:00 p.m.	**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: DLK
December 1, 2009 10:00 a.m.	**Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjiaints Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd., Cambridge Resources Corporation, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group** s. 127 and 127.1 H. Craig in attendance for Staff Panel: TBA
December 2, 2009 2:00 p.m.	**Paul Iannicca** s. 127 H. Craig in attendance for Staff Panel: DLK
December 4, 2009 10:00 a.m.	**Sulja Bros. Building Supplies, Ltd. (Nevada), Sulja Bros. Building Supplies Ltd., Kore International Management Inc., Petar Vucicevich and Andrew DeVries** s. 127 and 127.1 M. Britton in attendance for Staff Panel: JEAT
December 9, 2009 10:00 a.m.	**Nest Acquisitions and Mergers and Caroline Frayssignes** s. 127(1) and 127(8) C. Price in attendance for Staff Panel: CSP
December 9, 2009 10:00 a.m.	**IMG International Inc., Investors Marketing Group International Inc., and Michael Smith** s. 127 C. Price in attendance for Staff Panel: CSP

December 10, 2009 10:00 a.m.	**Gold-Quest International, Health and Harmoney, Iain Buchanan and Lisa Buchanan** s. 127 H. Craig in attendance for Staff Panel: CSP
December 10, 2009 10:00 a.m.	**Gold-Quest International, 1725587 Ontario Inc. carrying on business as Health and Harmoney, Harmoney Club Inc., Donald Iain Buchanan, Lisa Buchanan and Sandra Gale** s. 127 H. Craig in attendance for Staff Panel: CSP
December 11, 2009 9:00 a.m.	**Tulsiani Investments Inc. and Sunil Tulsiani** s. 127 J. Superina in attendance for Staff Panel: JEAT
December 16, 2009 9:00 a.m.	**Goldpoint Resources Corporation, Lino Novielli, Brian Moloney, Evanna Tomeli, Robert Black, Richard Wylie and Jack Anderson** s. 127(1) and 127(5) M. Boswell in attendance for Staff Panel: MGC/DLK
January 11, 2010 10:00 a.m.	**Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton** s. 127 H. Craig in attendance for Staff Panel: TBA
January 12, 2010 10:00 a.m.	**Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva, Gurdip Singh Gahunia aka Michael Gahunia and Abraham Herbert Grossman aka Allen Grossman** s. 127(7) and 127(8) M. Boswell in attendance for Staff Panel: TBA
January 12, 2010 10:30 a.m.	**Abel Da Silva** s. 127 M. Boswell in attendance for Staff Panel: TBA
January 18, 2010; January 20-29, 2010 10:00 a.m. January 19, 2010 2:30 p.m.	**New Life Capital Corp., New Life Capital Investments Inc., New Life Capital Advantage Inc., New Life Capital Strategies Inc., 1660690 Ontario Ltd., L. Jeffrey Pogachar, Paola Lombardi and Alan S. Price** s. 127 S. Kushneryk in attendance for Staff Panel: TBA
January 18, 2010; January 20 – February 1, 2010; February 3-12, 2010 10:00 a.m. January 19, 2010 February 2, 2010 2:30 p.m.	**Borealis International Inc., Synergy Group (2000) Inc., Integrated Business Concepts Inc., Canavista Corporate Services Inc., Canavista Financial Center Inc., Shane Smith, Andrew Lloyd, Paul Lloyd, Vince Villanti, Larry Haliday, Jean Breau, Joy Statham, David Prentice, Len Zielke, John Stephan, Ray Murphy, Alexander Poole, Derek Grigor and Earl Switenky** s. 127 and 127.1 Y. Chisholm in attendance for Staff Panel: TBA
January 25-26, 2010 10:00 a.m.	**Lehman Cohort Global Group Inc., Anton Schnedl, Richard Unzer, Alexander Grundmann and Henry Hehlsinger** s. 127 H. Craig in attendance for Staff Panel: TBA

February 5, 2010 10:00 a.m.	**Hillcorp International Services, Hillcorp Wealth Management, Suncorp Holdings, 1621852 Ontario Limited, Steven John Hill, John C. McArthur, Daryl Renneberg and Danny De Melo** s. 127 A. Clark in attendance for Staff Panel: TBA
February 8-12, 2010 10:00 a.m.	**Goldbridge Financial Inc., Wesley Wayne Weber and Shawn C. Lesperance** s. 127 J. Feasby in attendance for Staff Panel: TBA
February 17 – March 1, 2010 10:00 .m.	**M P Global Financial Ltd., and Joe Feng Deng** s. 127(1) M. Britton in attendance for Staff Panel: TBA
February 17, 2010 10:00 a.m.	**Maple Leaf Investment Fund Corp. and Joe Henry Chau** s. 127 J. Superina in attendance for Staff Panel: TBA
March 1-8, 2010 10:00 a.m.	**Teodosio Vincent Pangia** s. 127 J. Feasby in attendance for Staff Panel: TBA
March 3, 2010 10:00 a.m.	**Brilliante Brasilcan Resources Corp., York Rio Resources Inc., Brian W. Aidelman, Jason Georgiadis, Richard Taylor and Victor York** s. 127 S. Horgan in attendance for Staff Panel: TBA
March 10, 2010 10:00 a.m.	**Global Energy Group, Ltd. And New Gold Limited Partnerships** s. 127 H. Craig in attendance for Staff Panel: TBA
April 13, 2010 2:30 p.m.	**Axcess Automation LLC, Axcess Fund Management, LLC, Axcess Fund, L.P., Gordon Alan Driver and David Rutledge, Steven M. Taylor and International Communication Strategies** s. 127 M. Adams in attendance for Staff Panel: TBA
May 3-28, 2010 10:00 a.m.	**Sextant Capital Management Inc., Sextant Capital GP Inc., Sextant Strategic Opportunities Hedge Fund L.P., Otto Spork, Robert Levack and Natalie Spork** s. 127 S. Kushneryk in attendance for Staff Panel: TBA
May 31 – June 4, 2010 10:00 a.m.	**Lyndz Pharmaceuticals Inc., James Marketing Ltd., Michael Eatch and Rickey McKenzie** s. 127(1) and (5) J. Feasby in attendance for Staff Panel: TBA
TBA	**Yama Abdullah Yaqeen** s. 8(2) J. Superina in attendance for Staff Panel: TBA
TBA	**Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell** s. 127 J. Waechter in attendance for Staff Panel: TBA

TBA

Frank Dunn, Douglas Beatty, Michael Gollogly

s. 127

K. Daniels in attendance for Staff

Panel: TBA

TBA

Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)

s. 127 and 127.1

D. Ferris in attendance for Staff

Panel: TBA

TBA

Merax Resource Management Ltd. carrying on business as Crown Capital Partners, Richard Mellon and Alex Elin

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA

Gregory Galanis

s. 127

P. Foy in attendance for Staff

Panel: TBA

TBA

Franklin Danny White, Naveed Ahmad Qureshi, WNBC The World Network Business Club Ltd., MMCL Mind Management Consulting, Capital Reserve Financial Group, and Capital Investments of America

s. 127

C. Price in attendance for Staff

Panel: TBA

TBA

Biovail Corporation, Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk and Kenneth G. Howling

s. 127(1) and 127.1

J. Superina, A. Clark in attendance for Staff

Panel: TBA

TBA

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: TBA

TBA

Shane Suman and Monie Rahman

s. 127 and 127(1)

C. Price in attendance for Staff

Panel: TBA

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	**MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric**
	s. 127 & 127(1)
	D. Ferris in attendance for Staff
	Panel: TBA
TBA	**Barry Landen**
	s. 127
	H. Craig in attendance for Staff
	Panel: TBA
TBA	**Imagin Diagnostic Centres Inc., Patrick J. Rooney, Cynthia Jordan, Allan McCaffrey, Michael Shumacher, Christopher Smith, Melvyn Harris and Michael Zelyony**
	s. 127 and 127.1
	J. Feasby in attendance for Staff
	Panel: TBA
TBA	**Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp., and Weizhen Tang**
	s. 127 and 127.1
	M. Britton 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

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

1.1.2 CSA Staff Notice 58-305 – Status Report on the Proposed Changes to the Corporate Governance Regime

CANADIAN SECURITIES ADMINISTRATORS'
STAFF NOTICE 58-305 – STATUS REPORT ON THE
PROPOSED CHANGES TO THE CORPORATE GOVERNANCE REGIME

On December 19, 2008, the Canadian Securities Administrators (**CSA**) published for comment proposed changes to the corporate governance regime entitled "Proposed Repeal and Replacement of National Policy 58-201 *Corporate Governance Guidelines*, National Instrument 58-101 *Disclosure of Corporate Governance Practices*, and National Instrument 52-110 *Audit Committees* and Companion Policy 52-110CP *Audit Committees*" (the **Proposal**).

We received numerous comments about the timing of the Proposal. A majority of commenters expressed the view that now is not an appropriate time to introduce significant changes to the corporate governance regime in Canada. Commenters pointed out that issuers are currently focused on business sustainability issues in a challenging economic climate, and on the transition to International Financial Reporting Standards. We also received significant comments on a wide range of other matters related to the Proposal.

Based on the comments we received, the CSA does not intend to implement the Proposal as originally published. We have concluded that now is not an appropriate time to recommend significant changes to the corporate governance regime.

We are reconsidering whether to recommend any changes to the corporate governance regime. We will publish any proposed changes for comment. They would not be effective until the 2011 proxy season at the earliest. The CSA will provide sufficient advance notice for issuers to adapt their corporate governance practices to fully comply with any revised regime.

Questions or Comments

You may refer questions and comments to:

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November 13, 2009

1.1.3 Notice of Commission Approval – Material Amendments to CDS Procedures - FINet Intraday Netting

CDS CLEARING AND DEPOSITORY SERVICES INC.

MATERIAL AMENDMENTS TO CDS PROCEDURES

FINET INTRADAY NETTING

NOTICE OF COMMISSION APPROVAL

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and CDS Clearing and Depository Services Inc. (CDS), the Commission approved on November 10, 2009, amendments filed by CDS to its procedures to modify the FINet intraday netting process so that it does not net potentially eligible future value-dated trades. A copy and description of these amendments were published for comment on September 4, 2009 at (2009) 32 OSCB 7070. No comments were received. Subsequent to the publication, it was determined that text should have been removed from section 18.4.2 and not section 18.4.1. The updated procedures reflecting the non-material change will be posted on the CDS web site.

1.3 News Releases

1.3.1 Canadian Securities Regulators to Maintain Current Corporate Governance Regime

FOR IMMEDIATE RELEASE
November 13, 2009

CANADIAN SECURITIES REGULATORS TO MAINTAIN CURRENT CORPORATE GOVERNANCE REGIME

Montréal – The Canadian Securities Administrators (CSA) today published CSA Staff Notice 58-305 *Status Report on the Proposed Changes to the Corporate Governance Regime*. The notice outlines the CSA's conclusion that now is not an appropriate time to introduce significant changes to Canada's corporate governance regime.

On December 19, 2008, the CSA published for comment proposed changes to the corporate governance regime entitled "Proposed Repeal and Replacement of National Policy 58-201 *Corporate Governance Guidelines*, National Instrument 58-101 *Disclosure of Corporate Governance Practices*, and National Instrument 52-110 *Audit Committees* and Companion Policy 52-110CP A*udit Committees*" (the Proposal).

The CSA received numerous comments about the timing of the Proposal. These comments noted issuers are currently focused on business sustainability issues, given the challenging economic climate, and on the transition to International Financial Reporting Standards.

Based on the comments received, the CSA does not intend to implement the Proposal as originally published. "We have concluded that now is not an appropriate time to recommend significant changes to the corporate governance regime" said Jean St-Gelais, Chair of the CSA and President & Chief Executive Officer of the Autorité des marchés financiers. "We are reconsidering whether to recommend any changes to the corporate governance regime."

Any further proposed changes to the Corporate Governance Regime will be published for comment and the CSA will provide sufficient advance notice for issuers to adapt their corporate governance practices to fully comply with any revised regime. Any proposed changes would not be effective until the 2011 proxy season at the earliest.

The CSA, the council of the securities regulators of Canada's provinces and territories, co-ordinates and harmonizes regulation for the Canadian capital markets.

For more information:

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1.3.2 Canadian Securities Regulators Enact Order Protection Rule to Maintain Integrity of Multiple Marketplaces

FOR IMMEDIATE RELEASE
November 13, 2009

CANADIAN SECURITIES REGULATORS ENACT ORDER PROTECTION RULE TO MAINTAIN INTEGRITY OF MULTIPLE MARKETPLACES

Toronto – The Canadian Securities Administrators (CSA) today announced amendments to National Instrument 21-101 *Marketplace Operation* (NI 21-101) and National Instrument 23-101 *Trading Rules* (NI 23-101) to create an Order Protection Rule and other additional requirements relating to trading on multiple marketplaces.

The Order Protection Rule requires all visible, immediately accessible, better-priced limit orders to be filled before other limit orders at inferior prices, regardless of the marketplace where the order is entered. Other amendments include a prohibition on intentionally locking or crossing markets.

"These amendments, the Order Protection Rule in particular, will help maintain investor confidence in the integrity of the Canadian market, which has rapidly evolved into a multiple marketplace environment," said Jean St-Gelais, Chair of the CSA and President & Chief Executive Officer of the Autorité des marchés financiers (Québec). "The new rules will ensure that orders that are entered are being treated fairly, regardless of the participant's sophistication or the order size."

The Order Protection Rule will require each marketplace to have policies and procedures in place to reasonably prevent trade-throughs. By introducing these requirements, the rule maintains the historical obligation of full depth-of-book protection in Canada and continues to facilitate fairness and provide investors an incentive to participate in the price discovery process, which in turn increases market liquidity.

Subject to ministerial approvals, the amendments (other than the Order Protection Rule) will come into force in all CSA jurisdictions on January 28, 2010. The Order Protection Rule will come into effect on February 1, 2011. The CSA continues to consult with industry and it will be developing and publishing a plan for the rollout of the Order Protection Rule.

The CSA, the council of the securities regulators of Canada's provinces and territories, co-ordinates and harmonizes regulation for the Canadian capital markets.

For more information:

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Louis Arki
Nunavut Securities Office
867-975-6587

Donn MacDougall
Northwest Territories
Securities Office
867-920-8984

Amendments to National Instrument 21-101
and National Instrument 23-101

Questions and Answers

1. What is the Order Protection Rule and why is it important?

Order protection ensures that all immediately accessible, visible, better-priced limit orders are executed prior to inferior-priced limit orders. It is important to support and maintain investor confidence and integrity in the Canadian capital market. It also promotes the price discovery process by rewarding those participants that display visible limit orders.

2. What is the current obligation and why should it be moved to a marketplace level?

Currently, investment dealers are subject to a full depth-of-book order protection obligation, which is set out in IIROC's UMIR 5.2 *Best Price Obligation*. However, some marketplaces enable trading by subscribers that are not dealers. The CSA have decided to shift this obligation to a marketplace level as opposed to a dealer-level in order to level the playing field and make all participants in the market, including non-dealer subscribers subject to the rule. In addition, there are fewer marketplaces than dealers, and we are of the view that a marketplace level obligation is more efficient.

Dealers do have the ability, on an order-by-order basis, to take on the responsibility of ensuring compliance with the Order Protection Rule. This involves using the "directed-action order". See the CSA Notice accompanying the amendments for details.

3. Does the Order Protection Rule impact best execution?

The Order Protection Rule does not impact a dealer's existing obligation to achieve best execution for its client under UMIR Rule 5.1 *Best Execution of Client Orders*. The rationale for a dealer's best execution obligation and the order protection obligation is different. The best execution obligation is based on the fiduciary duty that a dealer has to its client while order protection is based on the obligation of a participant to the market as a whole. The decision of how and where to trade (best execution) is determined by the particulars of the order and the needs of the client. However, all better-priced orders must be honoured at the time of execution (Order Protection Rule).

4. Why is a full depth-of-book obligation necessary?

A full depth-of-book obligation requires a participant to execute against all better-priced visible orders displayed on all marketplaces. This is in contrast to a "top-of-book" obligation which would require only the execution of the orders at the best bid or offer. The CSA are of the view that only a full depth-of-book obligation meets the policy objectives outlined above. In addition, this is the current standard for the Canadian market. Concerns about latency

and costs of compliance with respect to a full depth-of-book obligation are addressed in CSA Notice accompanying the amendments.

5. How will trading fees be monitored in an order protection environment that requires executions on marketplaces where the best price is shown?

The CSA will be taking a three pronged approach. First, the CSA will rely on current obligations in NI 21-101 that prohibit a marketplace from unreasonably conditioning or limiting access to its services and provide additional guidance as to what that prohibition means in the context of fees. Second, the Order Protection Rule prohibits discrimination between orders that originate on a marketplace and orders that are routed there. Finally, we will be asking all marketplaces to review and justify their current fees and fee structure in light of the existing obligations.

6. Why is the CSA prohibiting intentionally locking markets?

Although there is some debate as to whether a "locked market" represents the most efficient market because of its zero bid-ask spread, it is our view that a locked market is generally perceived as reflecting some inefficiencies in the market where the two orders would have matched if they were entered on a single marketplace. The CSA also wants to prevent confusion for investors, particularly retail investors, who may not understand why their order is not being executed if an opposite side order is posted and available at the same price as well as encourage the use of limit orders.

1.4 Notices from the Office of the Secretary

1.4.1 Adrian Samuel Leemhuis et al.

FOR IMMEDIATE RELEASE
November 10, 2009

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

AND

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

TORONTO – The Commission issued an Order in the above named matter which provides that the Temporary Order dated April 22, 2008, as varied, is terminated.

A copy of the Order dated November 6, 2009 is available at **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

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

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

1.4.2 Maple Leaf Investment Fund Corp. et al.

FOR IMMEDIATE RELEASE
November 11, 2009

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

AND

IN THE MATTER OF
MAPLE LEAF INVESTMENT FUND CORP.
AND JOE HENRY CHAU
(aka: HENRY JOE CHAU, SHUNG KAI CHOW and
HENRY SHUNG KAI CHOW)

TORONTO – The Commission issued an Order in the above noted matter which provides that (1) in respect of the Respondents, the Temporary Order is continued until February 19, 2010 or until further order of the Commission; and (2) this matter shall return before the Commission on February 17, 2010 at 10:00 a.m. or such other time as notified by the Secretary's Office.

A copy of the Order dated November 10, 2009 is available at **www.osc.gov.on.ca**.

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1.4.3 New Life Capital Corp. et al.

FOR IMMEDIATE RELEASE
November 11, 2009

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

AND

IN THE MATTER OF
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

TORONTO – The Commission issued an Order today in the above named matter granting Gowling Lafleur Henderson LLP leave to withdraw as counsel of record to the respondent New Life.

A copy of the Order dated November 11, 2009 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Investment Planning Counsel of Canada Limited and IPC Portfolio Services Inc.

Headnote

NP 11-203 – Application for exemption from the formal take-over bid and issuer bid requirements under applicable securities legislation as well as relief from the insider and issuer bid requirements under MI 61-101 – offeree issuer cannot satisfy non-reporting issuer exemptions from formal take-over and issuer bid requirements given that advisors are not technically employees for the purposes of the exemptions – relief granted subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 93.1 to 99, 104(2)(c).
OSC Rule 62-504 Take-over Bids and Issuer Bids.
MI 61-101 Protection of Minority Security Holders in Special Transactions.

October 13, 2009

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

AND

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

AND

IN THE MATTER OF
INVESTMENT PLANNING COUNSEL
OF CANADA LIMITED AND
IPC PORTFOLIO SERVICES INC.
(the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers:

(a) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the take-over bid and issuer bid requirements contained in the Legislation (the **Takeover Bid and Issuer Bid Provisions**) and the requirements related to insider bids and issuer bids set out in Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (the **MI 61-101 Provisions** and collectively with the Takeover Bid and Issuer Bid Provisions, the T**akeover Bid and Issuer Bid Requirements**) do not apply with respect to certain transfers of common shares of IPC Portfolio Services Inc. (**IPC Portfolio**); and

(b) for a decision under the Legislation that the application and this decision (the **Confidential Material**) be kept confidential and not be made public until the earlier of: (i) the date the Filers advise the principal regulator that there is no need for the Confidential Material to remain confidential; and (ii) the date that is 30 days after the date of this decision.

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* (the **MI 11-102**) is intended to be relied upon in all provinces and territories of Canada other than Ontario.

Interpretation

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

Representations

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

1. Investment Planning Counsel of Canada Limited (**IPCCL**) was formed by articles of amalgamation under the *Business Corporations Act* (Ontario) on January 1, 2009. Its registered and principal office is located in Toronto, Ontario.

2. IPC Portfolio was incorporated under the *Business Corporations Act (*Ontario) on June 30, 2009 and is currently a wholly-owned subsidiary of IPCCL. Its registered and principal office is located in Toronto, Ontario.

3. Neither IPCCL nor IPC Portfolio is and neither has ever been a reporting issuer, or its equivalent, in any of the provinces or territories of Canada.

4. IPCCL is an indirect wholly-owned subsidiary of IGM Financial Inc. (**IGM**). IGM was incorporated under the *Canada Business Corporations Act* on August 3, 1978 and its capital structure was reorganized by Articles of Amendment effective September 19, 1986. Its name was changed to "IGM Financial Inc." by Articles of Amendment effective April 30, 2004 and its Articles were re-stated effective April 30, 2004. IGM's registered and head office is located in Winnipeg, Manitoba. IGM is a reporting issuer, or its equivalent, in all of the provinces and territories of Canada. IGM's common shares and preferred shares, series A are listed on the Toronto Stock Exchange under the symbols "IGM" and "IGM.PR.A", respectively. IGM is not on the list of defaulting reporting issuers, or its equivalent, in any jurisdiction in which such a list is maintained.

5. Counsel Group of Funds Inc. (**Counsel**) was formed by articles of amalgamation under the *Business Corporations Act* (Ontario) on January 1, 2008 and is a wholly-owned subsidiary of IPC Portfolio. Counsel is registered as a portfolio manager in the Province of Ontario.

6. IPCCL through certain of its subsidiaries which are also affiliates of IPC Portfolio and Counsel conducts business across Canada through a network of financial advisors (the **Advisors**) who are affiliated with such subsidiaries. At the date hereof, there are approximately 656 Advisors. The Advisors are engaged in, among other things, the sale of mutual funds which are managed by Counsel. All Advisors have a written contract with an affiliate of IPC Portfolio pursuant to which they devote a substantial amount of their time and attention to the business of such affiliate as generally required by applicable self regulatory organizations. In accordance with such requirements, the written contract that each Advisor has with an affiliate of IPC Portfolio provides that an Advisor cannot engage in any business activity other than providing services to the affiliate of IPC Portfolio without first obtaining the consent of the affiliate of IPC Portfolio, which consent would be subject to receiving all applicable regulatory consents or approvals.

7. As the Filers wish to provide an opportunity to employees and Advisors to subscribe for an equity interest in IPC Portfolio from time to time, employees of IPC Portfolio or an affiliate of IPC Portfolio, Advisors and certain of their permitted assigns will be permitted to subscribe for common shares of IPC Portfolio (**Shares**) for cash, not to exceed 15% of the issued and outstanding shares of IPC Portfolio.

8. Other than IPCCL, each subscriber and future holder of Shares (the **Shareholders**) will be an employee of IPC Portfolio or an affiliate of IPC Portfolio, an Advisor or certain of their permitted assigns. For this purpose, a permitted assign of an employee or Advisor will be limited to a holding company, the sole shareholder of which is the employee or Advisor, a registered retirement savings plan or registered retirement income fund of the employee or Advisor and a trustee, custodian or administrator acting on behalf of, or for the benefit of the employee or Advisor or the estate of the employee or Advisor (collectively, the **Permitted Assigns**).

9. All Shareholders will be required to enter into a shareholders' agreement (the **Shareholders' Agreement**) with IPC Portfolio, IPCCL and all other Shareholders.

10. The proposed terms of the Shareholders' Agreement include: (i) the right of each Shareholder to require IPCCL to purchase its Shares from time to time; (ii) the right of IPCCL to purchase Shares from each Shareholder from time to time; (iii) an obligation of each Shareholder to sell its Shares to IPCCL or, at the option of IPCCL, to one of IPCCL's affiliates or to IPC Portfolio, and a corresponding obligation of IPCCL or, at the option of IPCCL, one of its affiliates or IPC Portfolio, to purchase Shares from each Shareholder upon the occurrence of certain triggering events, such as death, incapacity, termination, voluntary departure and material breach; and (iv) the right of IPCCL to purchase or, at the option of IPCCL, to cause one of its affiliates or IPC Portfolio to purchase, Shares from each Shareholder and the corresponding obligation of each Shareholder to sell its Shares to IPCCL or, at the option of IPCCL, to one of its affiliates or to IPC Portfolio, upon the occurrence of certain triggering events, such as bankruptcy or insolvency and certain events of default of the Shareholder (collectively, the **Transfers**).

11. The Shareholders' Agreement will contain an acknowledgement from each Shareholder that the Shareholder is aware that IPC Portfolio is not and will not become a reporting issuer and that IPC Portfolio will not be subject to the continuous disclosure requirements under the Legislation.

12. Pursuant to the terms of the Shareholders' Agreement, each Shareholder will receive copies of IPC Portfolio's annual financial statements.

13. The Legislation provides an exemption from the Takeover Bid and Issuer Bid Requirements in respect of a non-reporting issuer if:

    (a) the offeree issuer is not a reporting issuer;

    (b) there is no published market for the securities that are the subject of the bid; and

    (c) the number of security holders of that class of securities at the commencement of the bid is not more than 50, exclusive of holders who (i) are in the employment of the offeree issuer or an affiliate of the offeree issuer, or (ii) were formerly in the employment of the offeree issuer or in the employment of an entity that was an affiliate of the offeree issuer at the time of that employment, and who while in that employment were, and have continued after that employment to be, security holders of the offeree issuer.

14. Unless relief is granted, the Transfers will be subject to the Takeover Bid and Issuer Bid Requirements because IPC Porfolio's purchase of Shares from the Shareholders will be issuer bids and the purchase by IPCCL or an affiliate of IPCCL of Shares from the Shareholders will be takeover bids and any such Transfers will not be exempt under the Legislation as there may be more than 50 Shareholders, exclusive of employees.

15. If the Legislation treated the Advisors and Permitted Assigns in the same manner as employees, the Transfers would be exempt from the Takeover Bid and Issuer Bid Requirements.

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:

(a) the Takeover Bid and Issuer Bid Provisions shall not apply to the Transfers pursuant to the Shareholders' Agreement provided that at the time of the applicable Transfer:

    (i) IPC Portfolio is not a reporting issuer;

    (ii) there is no published market for the Shares; and

    (iii) the number of holders of Shares is not more than 50, exclusive of holders who:

        (A) are in the employment of IPC Portfolio or an affiliate of IPC Portfolio, are Advisors or are Permitted Assigns; or

        (B) were formerly in the employment of IPC Portfolio or in the employment of an entity that was an affiliate of IPC Portfolio at the time of that employment, and who while in that employment were, and have continued after that employment to be, security holders of IPC Portfolio directly or through a Permitted Assign or were formerly Advisors and who while

Advisors were, and have continued thereafter to be, security holders of IPC Portfolio directly or through a Permitted Assign.

(b) the Confidential Material will be kept confidential and not be made public until the earlier of: (i) the date the Filers advise the principal regulator that there is no need for the Confidential Material to remain confidential; and (ii) the date that is 30 days after the date of this decision.

"David L. Knight"
Commissioner
Ontario Securities Commission

"Paulette Kennedy"
Commissioner
Ontario Securities Commission

The decision of the principal regulator under the Legislation is that:

(a) the MI 61-101 Provisions shall not apply to the Transfers pursuant to the Shareholders' Agreement provided that at the time of the applicable Transfer, the conditions of the above-noted decision of the principal regulator in respect of the Takeover Bid and Issuer Bid Provisions are satisfied; and

(b) the Confidential Material will be kept confidential and not made public until the earlier of: (i) the date the Filers advise the principal regulator that there is no need for the Confidential Material to remain confidential; and (ii) the date that is 30 days after the date of this decision.

"Naizam Kanji"
Deputy Director, Mergers & Acquisitions
Corporate Finance Branch

2.1.2 AXA S.A.

Headnote

Exemptive Relief Applications – Application for relief from the prospectus and the dealer registration requirements in respect of certain trades made in connection with an employee share offering by a foreign issuer – The issuer cannot rely on the employee exemption in section 2.24 of National Instrument 45-106 Prospectus and registration Exemptions as the securities are not being offered to Qualifying Employees directly by the issuer, but through the special purpose entities – Number of Canadian employees is *de minimis* – Qualifying Employees will not be induced to participate in the offering by expectation of employment or continued employment – Qualifying Employees will receive disclosure documents – The special purpose entities are subject to the supervision of the local securities regulator – No market for the securities of the issuer in Canada.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74(1).
National Instrument 45-106 Prospectus and Registration Exemptions, ss. 2.24, 2.28.
National Instrument 45-102 Resale of Securities, s. 2.14.

TRANSLATION

August 25, 2009

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
QUÉBEC AND ONTARIO
(the "Jurisdictions")

AND

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

AND

IN THE MATTER OF
AXA S.A. (the "Filer")

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the "**Decision Maker**") has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") for:

1. an exemption from the prospectus requirements of the Legislation (the "**Prospectus Relief**") so that such requirements do not apply to

   (a) trades in units ("**Units**") of

      (i) AXA Shareplan Direct Global (the "**Principal Classic Compartment**"), a compartment of a permanent FCPE named Shareplan AXA Direct Global (the "**Fund**") which is a *fonds commun de placement d'entreprise* or "FCPE", a form of collective shareholding vehicle of a type commonly used in France for the conservation and custodianship of shares held by employee-investors;

      (ii) a temporary FCPE named AXA Actions Relais Global 2009 (the "**Temporary Classic Fund**"), which will merge with the Principal Classic Compartment following the completion of the Employee Share Offering (as defined below), such transaction being described as the "Merger" in paragraph 9(b) of the Representations (the term "**Classic Compartment**" used herein means, prior to the Merger, the Temporary Classic Fund, and following the Merger, the Principal Classic Compartment); and

      (iii) a compartment of the Fund named AXA Plan 2009 Global (the "**Leveraged Compartment**" and, together with the Principal Classic Compartment and the Temporary Classic Fund, the "**Compartments**"),

made pursuant to the Employee Share Offering to or with Qualifying Employees (as defined below) of Canadian Affiliates (as defined below) resident in the Jurisdictions and in British Columbia, Alberta, Manitoba, New Brunswick, Nova Scotia and Newfoundland and Labrador who elect to participate in the Employee Share Offering (collectively, the "**Canadian Participants**");

(b) trades in ordinary shares of the Filer (the "**Shares**") by the Compartments to Canadian Participants upon the redemption of Units as requested by Canadian Participants;

(c) the issuance of Units of the Principal Classic Compartment to holders of Leveraged Compartment Units upon the transfer of assets of the Leveraged Compartment to the Principal Classic Compartment at the end of the Lock-Up Period (as defined below);

2. an exemption from the dealer registration requirements of the Legislation (the "**Registration Relief**") so that such requirements do not apply to

(a) trades in Units of the Temporary Classic Fund or the Principal Classic Compartment made pursuant to the Employee Share Offering to or with Canadian Participants;

(b) trades in Units of the Leveraged Compartment made pursuant to the Employee Share Offering to or with Canadian Participants not resident in Ontario or Manitoba;

(c) trades in Shares by the Compartments to Canadian Participants upon the redemption of Units as requested by Canadian Participants; and

(d) the issuance of Units of the Principal Classic Compartment to holders of Leveraged Compartment Units upon the transfer of assets of the Leveraged Compartment to the Principal Classic Compartment at the end of the Lock-Up Period;

3. an exemption from the adviser registration requirements and dealer registration requirements of the Legislation so that such requirements do not apply to the manager of the Compartments, AXA Investment Managers Paris (the "**Management Company**"), to the extent that its activities described in paragraphs 13 and 14 of the Representations are subject to the adviser registration requirements and dealer registration requirements of the Legislation (such exemption being hereinafter referred to, collectively with the Prospectus Relief and the Registration Relief, as the "**Offering Relief**"); and

4. an exemption from the dealer registration requirements of the Legislation so that such requirements do not apply to the first trade in any Shares acquired by Canadian Participants pursuant to the Employee Share Offering (the "**First Trade Relief**").

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

(a) the Autorité des marchés financiers is the principal regulator for this application,

(b) the Filer has provided notice that section 4.7(1) of *Regulation 11-102 respecting Passport System* ("*Regulation 11-102*") is intended to be relied upon in British Columbia, Alberta, Manitoba, New Brunswick, Nova Scotia and Newfoundland and Labrador, and

(c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions*, *Regulation 45-102 respecting resale of securities*, *Regulation 45-106 respecting Prospectus and Registration Exemptions* and Regulation 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation formed under the laws of France. It is not and has no current intention of becoming a reporting issuer under the Legislation or under the securities legislation of British Columbia, Alberta, Manitoba, New Brunswick, Nova Scotia or Newfoundland and Labrador. The head office of the Filer is located in France.

2. The Filer carries on business in Canada through the following affiliated companies: AXA Assurances Inc., AXA Canada Inc., AXA Insurance (Canada) Ltd., AXA Pacific Insurance Company, AXA Assistance Canada Inc., AXA General Insurance and Anthony Insurance Inc. (collectively, the "**Canadian Affiliates**" and, together with the Filer and other affiliates of the Filer, the "**AXA Group**"). Each of the Canadian Affiliates is a direct or indirect controlled subsidiary of the Filer and is not, and has no current intention of becoming, a reporting issuer under the Legislation or under the securities legislation of British Columbia, Alberta, Manitoba, New Brunswick, Nova Scotia or Newfoundland and Labrador. The head office of the AXA Group in Canada is located in Québec and the greatest number of employees of Canadian Affiliates is employed in Québec.

3. As of the date hereof and after giving effect to the Employee Share Offering, Canadian residents do not and will not beneficially own (which term, for the purposes of this paragraph, is deemed to include all Shares held by the Compartments on behalf of Canadian Participants) more than 10% of the Shares and do not and will not represent in number more than 10% of the total number of holders of Shares as shown on the books of the Filer.

4. The Filer has established a global employee share offering for employees of the AXA Group (the "**Employee Share Offering**"). The Employee Share Offering is comprised of two subscription options:

   (a) an offering of Shares to be subscribed through the Temporary Classic Fund, which Temporary Classic Fund will be merged with the Principal Classic Compartment following completion of the Employee Share Offering (the "**Classic Plan**"); and

   (b) an offering of Shares to be subscribed through the Leveraged Compartment (the "**Leveraged Plan**").

5. Only persons who are employees of a member of the AXA Group during the reservation period and/or revocation period for the Employee Share Offering and who meet other employment criteria (the "**Employees**"), as well as persons who have retired from Canadian Affiliates of the AXA Group and who continue to hold units in collective shareholding vehicles in connection with previous employee share offerings of the Filer (the "**Retired Employees**" and, together with the Employees, the "**Qualifying Employees**") will be allowed to participate in the Employee Share Offering.

6. The Compartments have been established for the purpose of implementing the Employee Share Offering. There is no current intention for any of the Compartments to become a reporting issuer under the Legislation or under the securities legislation of British Columbia, Alberta, Manitoba, New Brunswick, Nova Scotia or Newfoundland and Labrador.

7. The Temporary Classic Fund is, and the Principal Classic Compartment and the Leveraged Compartment are compartments of, an FCPE, which is a shareholding vehicle of a type commonly used in France for the conservation and custodianship of shares held by employee investors. The Compartments have been registered with, and approved by, the *Autorité des marchés financiers* in France (the "**French AMF**"). Only Qualifying Employees will be allowed to hold Units of the Compartments.

8. All Units acquired under the Classic Plan or the Leveraged Plan by Canadian Participants will be subject to a hold period of approximately five years (the "**Lock-Up Period**"), subject to certain exceptions prescribed by French law (such as a release on death, disability or termination of employment).

9. Under the Classic Plan:

   (a) Canadian Participants will subscribe for Units in the Temporary Classic Fund, and the Temporary Classic Fund will subscribe for Shares using the Canadian Participant's contributions at a subscription price that is equal to the price calculated as the arithmetical average of the Share price (expressed in Euros) on Euronext Paris on the 20 trading days preceding the date of fixing of the subscription price by the Filer (the "**Reference Price**"), less a 20% discount.

   (b) Following the completion of the Employee Share Offering, the Temporary Classic Fund will be merged with the Principal Classic Compartment (subject to the French AMF's approval). Units of the Temporary Classic Fund held by Canadian Participants will be replaced with Units of the Principal Classic Compartment on a pro rata basis and the Shares subscribed for under the Employee Share Offering will be held in the Principal Classic Compartment (such transaction being hereinafter referred to as the "**Merger**").

   (c) Dividends paid on the Shares held in the Classic Compartment will be contributed to the Classic Compartment and used to purchase additional Shares. To reflect this reinvestment, new Units (or fractions thereof) of the Classic Compartment will be issued to participants.

(d) At the end of the Lock-Up Period or in the event of an early redemption resulting from the Canadian Participant relying on one of the exceptions to the Lock-Up Period prescribed by French law, a Canadian Participant may

(i) request to have his or her Units in the Classic Compartment redeemed in consideration for the underlying Shares or a cash payment equal to the then market value of the underlying Shares; or

(ii) continue to hold Units in the Classic Compartment and request to have those Units redeemed at a later date.

10. Under the Leveraged Plan:

(a) Canadian Participants will subscribe for Units in the Leveraged Compartment, and the Leveraged Compartment will then subscribe for Shares using the Employee Contribution (as described below) and certain financing made available by Société Générale (the "**Bank**"), which bank is governed by the laws of France.

(b) Canadian Participants will subscribe for Shares at a 20% discount from the Reference Price. Under the Leveraged Plan, a Canadian Participant effectively receives a share appreciation potential entitlement in the increase in value, if any, of the Shares subscribed on behalf of such Canadian Participant, including with respect to the Shares financed by the Bank Contribution (described below).

(c) Participation in the Leveraged Plan represents a potential opportunity for Qualifying Employees to obtain significantly higher gains than would be available through participation in the Classic Plan by virtue of the Qualifying Employee's indirect participation in a financing arrangement involving a swap agreement (the "**Swap Agreement**") between the Leveraged Compartment and the Bank. In economic terms, the Swap Agreement effectively involves the following exchange of payments: for each Share which may be subscribed for by a Qualifying Employee's contribution (expressed in Euros) (the "**Employee Contribution**") under the Leveraged Plan at the Reference Price less the 20% discount, the Bank will lend to the Leveraged Compartment (on behalf of the Canadian Participant) an amount sufficient to enable the Leveraged Compartment (on behalf of the Canadian Participant) to subscribe for additional nine Shares (the "**Bank Contribution**") at the Reference Price less the 20% discount.

(d) Under the terms of the Swap Agreement, at the end of the Lock-Up Period, the Leveraged Compartment will owe to the Bank an amount equal to A – [B+C], where:

(I) "A" is the market value of all the Shares at the end of the Lock-Up Period that are held in the Leveraged Compartment (as determined pursuant to the terms of the Swap Agreement),

(II) "B" is the aggregate amount of all Employee Contributions,

(III) "C" is an amount (the "**Appreciation Amount**") equal to

(X) 0.69 multiplied by the Reference Price, then further divided by the sum of

(1) 0.25 multiplied by the average price of the Shares based on weekly readings taken in the 12-month period beginning December 2013 (*i.e.* a total of 52 readings) (the "**Average Trading Price**")(in the event the Average Trading Price is lower than the Reference Price, the Reference Price will be used instead); and

(2) 0.75 multiplied by the Reference Price,

and further multiplied by

(Y) the positive difference, if any, between

(1) the Average Trading Price; and

(2) the Reference Price,

and further multiplied by

(Z) the number of Shares held in the Leveraged Compartment.

(e) In addition to the above, if, at the end of the Lock-Up Period, the market value of the Shares held in the Leveraged Compartment (i.e. item "A" in the above-noted formula) is less than 100% of the Employee

Contributions, the Bank will, pursuant to a guarantee contained in the Swap Agreement, make a contribution to the Leveraged Compartment to make up any shortfall.

(f) At the end of the Lock-Up Period, a Canadian Participant may elect to have his or her Leveraged Compartment Units redeemed in consideration for cash or Shares equivalent to

(i) the Canadian Participant's Employee Contribution, and

(ii) the Canadian Participant's portion of the Appreciation Amount, if any.

(g) If a Canadian Participant does not request the redemption of his or her Units in the Leveraged Compartment at the end of the Lock-Up Period, his or her investment in the Leveraged Compartment will be transferred to the Principal Classic Compartment upon the decision of the supervisory board of the Fund (subject to the approval of the French AMF). New Units of the Principal Classic Compartment will be issued to the applicable Canadian Participants in recognition of the assets transferred to the Principal Classic Compartment. Canadian Participants will be entitled to request the redemption of the new Units whenever they wish. However, following a transfer to the Principal Classic Compartment, the Employee Contribution and the Appreciation Amount will not be covered by the Swap Agreement (nor the Bank's guarantee contained therein).

(h) At the end of the Lock-Up Period or in the event of an early unwind resulting from the Canadian Participant exercising one of the exceptions to the Lock-Up Period, a Canadian Participant in the Leveraged Plan will, pursuant to the guarantee contained in the Swap Agreement, be entitled to receive at least 100% of his or her Employee Contribution.

(i) Under no circumstances will a Canadian Participant in the Leveraged Plan be liable to any of the Leveraged Compartment, the Bank or the Filer for any amounts in excess of his or her Employee Contribution under the Leveraged Plan.

(j) During the term of the Swap Agreement, an amount equal to the net amounts of any dividends paid on the Shares held in the Leveraged Compartment will be remitted by the Leveraged Compartment to the Bank as partial consideration for the obligations assumed by the Bank under the Swap Agreement.

(k) For Canadian federal income tax purposes, a Canadian Participant in the Leveraged Plan should be deemed to receive all dividends paid on the Shares financed by either the Employee Contribution or the Bank Contribution at the time such dividends are paid to the Leveraged Compartment, notwithstanding the actual non-receipt of the dividends by the Canadian Participants by virtue of the terms of the Swap Agreement.

(l) The declaration of dividends on the Shares (in the ordinary course or otherwise) is strictly determined by the board of directors of the Filer and approved by the shareholders of the Filer. The Filer has not made any commitment to the Bank as to any minimum payment of dividends during the term of the Lock-Up Period.

(m) To respond to the fact that, at the time of the initial investment decision relating to participation in the Leveraged Plan, Canadian Participants will be unable to quantify their potential income tax liability resulting from such participation, the Filer or the Canadian Affiliates will indemnify each Canadian Participant in the Leveraged Plan for the following costs: all tax costs to the Canadian Participants associated with the payment of dividends in excess of a specified amount of Euros per calendar year per Share during the Lock-Up Period such that, in all cases, a Canadian Participant will, at the time of the original investment decision, be able to determine his or her maximum tax liability in connection with dividends received by the Leveraged Compartment on his or her behalf under the Leveraged Plan.

(n) At the time the Leveraged Compartment's obligations under the Swap Agreement are settled, the Canadian Participant will realize a capital gain (or capital loss) by virtue of having participated in the Swap Agreement to the extent that amounts received by the Leveraged Compartment, on behalf of the Canadian Participant, from the Bank exceed (or are less than) amounts paid by the Leveraged Compartment, on behalf of the Canadian Participant to the Bank. Any dividend amounts paid to the Bank under the Swap Agreement will serve to reduce the amount of any capital gain (or increase the amount of any capital loss) that the Canadian Participant would have realized. Capital losses (gains) realized by a Canadian Participant may generally be offset against (reduced by) any capital gains (losses) realized by the Canadian Participant on a disposition of the Shares, in accordance with the rules and conditions under the *Income Tax Act* (Canada) or comparable provincial legislation (as applicable).

11. Under French law, the Temporary Classic Fund is an FCPE and the Principal Classic Compartment and the Leveraged Compartment are compartments of an FCPE, which is a limited liability entity. Each Compartment's portfolio will almost exclusively consist of Shares, although the Leveraged Compartment's portfolio will also include rights and associated

obligations under the Swap Agreement. The Compartments may also hold cash or cash equivalents pending investments in Shares and for the purposes of facilitating Unit redemptions.

12. The Management Company is a portfolio management company governed by the laws of France. The Management Company is registered with the French AMF to manage French investment funds and complies with the rules of the French AMF. The Management Company is not, and has no current intention of becoming, a reporting issuer under the Legislation or the securities legislation of British Columbia, Alberta, Manitoba, New Brunswick, Nova Scotia or Newfoundland and Labrador.

13. The Management Company's portfolio management activities in connection with the Employee Share Offering and the Compartments are limited to subscribing for Shares from the Filer, selling such Shares as necessary in order to fund redemption requests, and such activities as may be necessary to give effect to the Swap Agreement.

14. The Management Company is also responsible for preparing accounting documents and publishing periodic informational documents.

15. None of the Filer, the Management Company, the Canadian Affiliates or any of their employees, agents or representatives will provide investment advice to the Canadian Participants with respect to investments in the Shares or the Units.

16. Shares issued under the Employee Share Offering will be deposited in the respective Compartment's accounts with BNP Paribas Securities Services (the "**Depositary**"), a large French commercial bank subject to French banking legislation.

17. Under French law, the Depositary must be selected by the Management Company from among a limited number of companies identified on a list maintained by the French Minister of the Economy, Finance and Industry and its appointment must be approved by the French AMF. The Depositary carries out orders to purchase, trade and sell Shares and takes all necessary action to allow the Compartments to exercise the rights relating to the Shares held in their respective portfolios.

18. Participation in the Employee Share Offering is voluntary, and the Canadian resident Qualifying Employees will not be induced to participate in the Employee Share Offering by expectation of employment or continued employment.

19. The total amount invested by a Canadian Participant in the Employee Share Offering cannot exceed 25% of his or her estimated gross annual compensation for the 2009 calendar year. A Retired Employee may contribute up to a maximum of 25% of his or her gross annual compensation in the year before he or she retired. For the purposes of calculating these limits, a Canadian Participant's maximum "investment" in the Leveraged Compartment will include the additional Bank Contribution, if applicable.

20. The Shares are principally traded through compartment A of Euronext Paris. Shares are also traded on the New York Stock Exchange in the form of American Depositary Shares represented by American Depositary Receipts. The Shares are not currently listed for trading on any stock exchange in Canada and there is no intention to have the Shares so listed. As there is no market for the Shares in Canada, and as none is expected to develop, any first trades in Shares by Canadian Participants will be effected through the facilities of, and in accordance with, the rules and regulations of Euronext Paris.

21. The Filer will retain a securities dealer registered as a broker/investment dealer (the "**Registrant**") under the securities legislation of Ontario and Manitoba to provide advisory services to Canadian Participants resident in Ontario or Manitoba who express interest in the Leveraged Plan and to make a determination, in accordance with industry practices, as to whether an investment in the Leveraged Plan is suitable for each such Canadian Participant based on his or her particular financial circumstances. The Registrant will establish accounts for, and will receive the initial account statements from the Leveraged Compartment on behalf of such Canadian Participants. The Units of the Leveraged Compartment will be issued by the Leveraged Compartment to Canadian Participants resident in Ontario or Manitoba solely through the Registrant.

22. Units of the Leveraged Compartment will be evidenced by account statements issued by the Leveraged Compartment.

23. The Canadian Participants will receive an information package in the French or English language (according to their preference) which will include a summary of the terms of the Employee Share Offering, a tax notice containing a description of Canadian income tax considerations relating to the subscription to and holding of Units and the redemption thereof at the end of the Lock-Up Period, an information notice approved by the French AMF for each Compartment describing its main characteristics and a reservation and revocation form. The information package for Canadian Participants in the Leveraged Plan will include all the necessary information for general inquiry and support with respect to the Leveraged Plan and will also include a risk statement which will describe certain risks associated with an investment in Units pursuant to the Leveraged Plan, and a tax calculation document or electronic file which

Canadian Participants may use that will illustrate the general Canadian federal income tax considerations relating to the participation in the Leveraged Plan.

24. Upon request, Canadian Participants may receive copies of the Filer's annual report on Form 20-F filed with the Securities and Exchange Commission of the United States of America and/or the French *Document de Référence* filed with the French AMF in respect of the Shares as well as a copy of the relevant Compartment's rules (which are analogous to company by-laws). Canadian Participants will also have access to copies of the continuous disclosure materials relating to the Filer that are furnished to its shareholders generally.

25. There are approximately 2335 Employees resident in Canada, with the largest number residing in Québec (approximately 1402) and the second largest number residing in Ontario (approximately 469). There are approximately 34 eligible Retired Employees resident in Canada, with approximately 20 resident in Québec and 10 resident in Ontario. Qualifying Employees are also located in British Columbia, Alberta, Manitoba, New Brunswick, Nova Scotia and Newfoundland and Labrador. In total, there are approximately 2369 Qualifying Employees resident in Canada representing in the aggregate less than 3% of the number of Qualifying Employees of the AXA Group.

26. The Filer is not and none of the Canadian Affiliates are, in default of the securities legislation of Canada. To the best of the Filer's knowledge, the Management Company is not in default of the securities legislation of Canada.

Decision

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

The decision of the Decision Makers under the Legislation is that the Offering Relief is granted provided that

1. the prospectus requirements of the Legislation will apply to the first trade in any Shares acquired by Canadian Participants pursuant to this Decision unless the following conditions are met:

   (a) the issuer of the security

      (i) was not a reporting issuer in any jurisdiction of Canada at the distribution date, or

      (ii) is not a reporting issuer in any jurisdiction of Canada at the date of the trade;

   (b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada

      (i) did not own directly or indirectly more than 10% of the outstanding securities of the class or series, and

      (ii) did not represent in number more than 10% of the total number of owners directly or indirectly of securities of the class or series; and

   (c) the trade is made

      (i) through the facilities of an exchange, or a market, outside of Canada, or

      (ii) to a person or company outside of Canada;

2. in Québec, the required fees are paid in accordance with Section 271.6(1.1) of the *Securities Regulation* (Québec).

It is further the decision of the Decision Makers under the Legislation that the First Trade Relief is granted provided that the conditions set out in paragraphs 1(a), (b) and (c) under this decision granting the Offering Relief are satisfied.

"Jean Daigle"
Director, Corporate Finance
Autorité des marches financiers

"Claude Lessard"
Manager, Supervision of Intermediaries
Autorité des marches financiers

2.1.3 IPC Securities Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – NI 81-105 Mutual Fund Sales Practices, s.9.1 – exemption from subsection 7.1(3) of NI 81-105 to participating dealers to pay a commission rebate for clients to switch to related funds and exemption from subsection 8.2(3) of NI 81-105 to permit participating dealers to provide evergreen disclosure of equity interests to clients – the relief will not be prejudicial to clients.

Applicable Legislative Provisions

National Instrument 81-105 Mutual Funds Sales Practices, ss. 7.1(1)(b), 7.1(3), 8.2(3), 9.1.

October 20, 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
IPC SECURITIES CORPORATION
(IPC Securities),
IPC INVESTMENT CORPORATION
(IPC Investment) (collectively, the Filers) and
COUNSEL GROUP OF FUNDS INC.
(Counsel)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers and Counsel for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption under section 9.1 of National Instrument 81-105 *Mutual Fund Sales Practices* (**NI 81-105**) exempting the Filers and any other future dealer subsidiaries of Investment Planning Counsel Inc. (**IPCI**) (collectively, the **IPC Dealers**) and their representatives from:

(a) the prohibitions contained in paragraphs 7.1(1)(b) and subsection 7.1(3) of NI 81-105 prohibiting the IPC Dealers and their representatives from paying to a securityholder all or any part of a fee or commission payable by the securityholder on the redemption of securities of a mutual fund that occurs in connection with the purchase by the securityholder of securities of another mutual fund that is not in the same mutual fund family (a commission rebate) where the IPC Dealer is a member of the organization of the mutual fund the securities of which are being acquired (the **Commission Rebate Relief**); and

(b) the requirement to provide disclosure to clients of the IPC Dealers about equity interests held by certain representatives of the IPC Dealers required by subsection 8.2 (3) of NI 81-105 (the **Equity Disclosure Relief**).

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

Interpretation

Defined terms contained in NI 81-105 and in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

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

1. IPC Investments is registered in all provinces and territories of Canada as a dealer in the category of mutual fund dealer (or equivalent). IPC Investments is also registered with the principal regulator as a limited market dealer. IPC Investments is a member of the Mutual Fund Dealers Association of Canada.

2. IPC Securities is registered in all provinces, but not in any of the territories, of Canada as a dealer in the category of investment dealer (or the equivalent). IPC Securities is a member of the Investment Industry Regulatory Organization of Canada.

Corporate Structure and Relationships

3. The Filers are members of the organization of:

   (a) the mutual funds managed by Counsel (the **Counsel Funds**);

   (b) the mutual funds managed by Mackenzie Financial Corporation (**MFC**, and mutual funds shall be referred to as the **Mackenzie Funds**); and

   (c) the mutual funds managed by I.G. Investment Management, Ltd. (**IGIM**, and the mutual funds shall be referred to as the **IG Funds**).

   The Filers may in the future become members of the organization of other mutual funds, since an affiliate of the IPC Dealers may acquire interests in corporations that are managers of mutual funds (**Future Affiliated Funds**).

4. The Filers and Counsel previously received the same forms of relief as are addressed in this decision under a MRRS decision dated August 31, 2006 (the **Previous Decision**). Due to the changes in corporate structure described below, the Filers and Counsel cannot continue to rely upon the Previous Decision.

5. The Filers are not in default of securities legislation in any jurisdiction of Canada.

6. IGM Financial Inc. (**IGM**), a public company listed on The Toronto Stock Exchange, has or will increase its ownership of IPCI such that IPCI becomes for some period of time a wholly-owned subsidiary of IGM Financial. Counsel and the Filers are indirect subsidiaries of IPCI. IGM also owns IGIM, the manager of the IG Funds and MFC, the manager of the Mackenzie Funds. In the future, senior management of IPCI may be permitted to acquire shares of IPCI, but senior management will never be permitted to own, directly or indirectly, in the aggregate more than 15% of shares of IPCI and no individual member of senior management will be able to own, directly or indirectly, more than 10% of the shares of IPCI.

7. A newly incorporated company (**IPC Portfolio Services Inc.**), an indirect subsidiary of IPCI (and ultimately of IGM), will become the direct parent company of Counsel. Representatives of the IPC Dealers will be permitted to acquire, directly or indirectly (which may be through the ownership of shares of IPCI), in the aggregate up to 27.75% shares in IPC Portfolio Services Inc. The ability to acquire shares of IPC Portfolio Services Inc. will not be conditional upon the past or future sales of Counsel Funds, Mackenzie Funds or Future Affiliated Funds by the representatives.

8. The Filers act as participating dealers in respect of the Counsel Funds and the Mackenzie Funds, as well as for mutual funds managed by unrelated fund managers. The Filers do not distribute securities of the IG Funds.

9. The Filers act independently from Counsel and have no connection with MFC, other than through IGM, being their common ultimate parent company. The Filers and the representatives of the Filers are free to choose which mutual funds to recommend to their clients and consider recommending the Counsel Funds and the Mackenzie Funds to their clients in the same way as they consider recommending other third party mutual funds. The Filers and their representatives comply with their obligations at law and only recommend mutual funds that they believe would be suitable for their clients and in accordance with the clients' investment objectives. Counsel and MFC provide the Filers with the compensation and sales incentives described in the prospectus of the respective funds for distributing the Counsel Funds and the Mackenzie Funds in the same manner as Counsel and MFC do for any participating dealer

selling securities of the Counsel Funds and the Mackenzie Funds to their clients. All compensation and sales incentives paid to the Filers by Counsel, MFC and the manager of any Future Affiliated Funds will comply with NI 81-105.

10. The name of Counsel will be changing to Counsel Portfolio Services Inc. effective on or about October 22, 2009.

The Commission Rebate Prohibition

11. Following implementation of NI 81-105 in May 1998, the Filers and Counsel considered the prohibition contained in subsection 7.1(3) of NI 81-105 and its implications for switches by clients from third-party funds into the Counsel Funds. In a decision dated February 16, 2000 (the **Original Decision**) Counsel received relief from the Canadian securities administrators in all provinces and territories on behalf of all IPC Dealers (which included the Filers) from the prohibitions contained in subsection 7.1(3) to allow representatives of those dealers to pay the fees and commissions payable by clients upon redemption of third-party mutual funds (or "commission rebates") when the clients wish to switch from those third-party funds to the Counsel Funds, to a maximum amount of the commission earned on the purchase of the Counsel Funds. The Original Decision was replaced by the Previous Decision which also permitted the Filers to pay, directly or indirectly, a portion of the commission rebate in these circumstances to "top-up" any payment to a client by a representative so that clients switching into the Mackenzie Funds, Counsel Funds or Future Affiliated Funds from a third-party fund could receive a full commission rebate. This ability to provide clients with a full commission rebate eliminated a "reverse" incentive for clients to move from one third-party fund into another third-party fund, rather than into a Counsel Fund or a Mackenzie Fund that would otherwise exist under section 7.1 of NI 81-105. The Previous Decision addressed the then current corporate structure of Counsel and the Filers.

12. The Previous Decision no longer reflects Counsel's or the Filers' corporate structure and, therefore, Counsel and the Filers cannot continue to rely upon the Previous Decision.

13. Neither the Filers, nor any representative of the Filers, are or will be subject to quotas (whether express or implied) in respect of selling securities of the Counsel Funds or the Mackenzie Funds. None of the Filers, Counsel or MFC or any other member of the respective mutual fund organizations, provide any incentive (whether express or implied) to any representative of the Filers, or to the Filers to encourage those representatives or the Filers to recommend to clients the Counsel Funds or the Mackenzie Funds over third-party managed mutual funds.

14. Counsel and MFC comply with NI 81-105 in respect of sales incentives provided to the Filers in connection with sales of the applicable mutual funds. The Filers also comply with NI 81-105; and, in particular, section 4.1 of NI 81-105 in their compensation practices with their representatives.

15. The Filers believe that the same principles that resulted in the granting of the Previous Decision continue to apply despite the changes in the corporate structure. By imposing conditions that prohibit the members of the mutual fund organization (other than the IPC Dealers), which would include the managers of the mutual funds, from reimbursing the IPC Dealers or their representatives for the commission rebates paid to the IPC Dealers' clients and requiring the IPC Dealers and their representatives to offer commission rebates on identical terms to the IPC Dealers' clients without having such commission rebates conditional upon a switch to a related fund and regardless of whether the client switches to a third-party fund or a related fund, any potential for undue influence on the client is sufficiently mitigated. The conditions will not allow an IPC Dealer or its representatives to give commission rebates only when a client is switching to a related fund, or an IPC Dealer or its representatives to pay more of a commission rebate provided that the client switches to a related fund.

The Equity Interest Disclosure Requirement

16. It is proposed that representatives of the IPC Dealers (or their associates) may acquire equity interests in IPC Portfolio Services Inc. It is also proposed that senior members of management of IPCI (or their associates) may also acquire equity interests in IPCI. The maximum in the aggregate of equity interests held by such persons, directly or indirectly, will not exceed 15% of the outstanding equity interests in IPCI or 27.75% of IPC Portfolio Services Inc. IPC Portfolio Services Inc. was not addressed in the Previous Decision and given the change in ownership of IPCI and the possible purchase of equity interests in IPCI by senior management of IPCI in the future, the Filers and Counsel do not believe they could continue to rely upon the relief with respect to equity interest disclosure granted in the Previous Decision.

17. Without this Decision, subsections 8.2 (3), (4) and (5) of NI 81-105 would require the following:

    (a) if a security of one of Counsel Funds, the Mackenzie Funds or a Future Affiliated Fund is traded by any representative of a Filer, the Filer must deliver to the purchaser of that security, a document that discloses:

        (i) the amount of shares of IPC Portfolio Services Inc. and/or IPCI owned, directly or indirectly, by

(1) the representatives of that Filer and their associates, in aggregate;

(2) any representative together with his or her associates holding, directly or indirectly, a more than 5% equity interest in IPC Portfolio Services Inc. and/or IPCI; and

(3) the sales representative of that Filer and his or her associates, in aggregate, who is acting on the trade; and

(ii) the approximate percentage that IGM holds, directly or indirectly, of the securities of IPCI, which is the parent company of the Filers and of IPC Portfolio Services Inc., the parent company of Counsel;

(b) pursuant to subsection 8.2(4), a purchaser of a Counsel Fund, a Mackenzie Fund or a Future Affiliated Fund from a Filer must consent to the trade after he or she receives the disclosure document before the trade can be completed; and

(c) pursuant to subsection 8.2(5), a Filer is not required to deliver the disclosure document or obtain the consent of a purchaser of securities of one of the Counsel Funds, the Mackenzie Funds or a Future Affiliated Fund if that purchaser has previously acquired such securities and received a disclosure document, if the information contained in that disclosure document has not changed.

This will also be true with respect to any trades in securities of Counsel Funds, Mackenzie Funds and Future Affiliate Funds by any dealer that may in the future become an IPC Dealer.

18. With respect to trades in the Mackenzie Funds or a Future Affiliated Fund that is not managed by a subsidiary of IPCI (a **Non-IPCI Fund**), due to the only tangential connection between the Filers and MFC and the manager of the Non-IPCI Fund, as applicable, and, hence, the technical application only of the relevant sections of NI 81-105, the Filers seek a complete exemption from subsection 8.2(3), (4) and (5). Representatives may come to hold equity interests in IPC Portfolio Services Inc., which will be a subsidiary of IGM and an affiliate of MFC. Representatives who are also members of senior management of IPCI may come to hold equity interests in IPCI. The performance of the representatives' equity interest in IPC Portfolio Services Inc. and/or IPCI will not be related to or dependent upon the performance of MFC or any manager of a Non-IPCI Fund.

19. The Filers submit that it is appropriate that the Commission Rebate Relief and Equity Disclosure Relief extend to future IPC Dealers on the basis once such dealers become subsidiaries of IPCI the representations made in pargraphs 3, 5 and 6 through 9 and 13 through 18 will apply equally to such other dealers.

20. The Mackenzie Funds, the Counsel Funds and the Future Affiliated Funds will comply with the disclosure obligations that apply to them as required by subsection 8.2(1) and (2) of NI 81-105. In this way, clients of the IPC Dealers making investments in these funds will have access to complete information about the relationships between the relevant parties.

Decision

The principal regulator is satisfied that the decision meets the test set out in NI 81-105 and the Legislation that provides the principal regulator with the jurisdiction to make the decision.

The decision of the Principal Regulator under NI 81-105 and under the Legislation is that:

1. The Commission Rebate Relief is granted provided that

(a) For each switch made by a client of an IPC Dealer from an unrelated third-party fund to a Counsel Fund, a Mackenzie Fund or a Future Affiliated Fund or from a Counsel Fund to a Mackenzie Fund or a Future Affiliated Fund and vice versa where the IPC Dealer or one of its representatives agrees to pay a commission rebate to that client, the IPC Dealer and the representative will:

(i) Comply with the informed written consent provisions of paragraph 7.1 (1)(a) and the disclosure and consent provisions of Part 8 of NI 81-105 (modified by the Equity Disclosure Relief);

(ii) Advise the client, in writing and in advance of finalizing the switch, that any commission rebate proposed to be made available in connection with the purchase of a Counsel Fund, a Mackenzie Fund or a Future Affiliated Fund will

(A) be available to the client regardless of which mutual fund the redemption proceeds are to be invested in

(B) not be conditional on a purchase of a Counsel Fund, a Mackenzie Fund or a Future Affiliated Fund and

(C) in all cases, be not more than the amount of the gross sales commission earned by the IPC Dealer on the client's purchase of a Counsel Fund, Mackenzie Fund or Future Affiliated Fund; and

(b) The actual amount of the commission rebate paid in respect of the switch will be not more than the amount referred to in paragraph (ii) (C) above.

(c) An IPC Dealer or its representatives that provide commission rebates will not be reimbursed directly or indirectly in respect of that commission rebate in connection with a switch to a Counsel Fund, a Mackenzie Fund or a Future Affiliated Fund by any member of the organization of that fund, other than the IPC Dealer.

(d) Each IPC Dealer's compliance policies and procedures that relate to this decision will emphasize that any commission rebate agreed to be paid to a client by a representative cannot be conditional on the client acquiring a Counsel Fund, a Mackenzie Fund or a Future Affiliated Fund and will be made available to the client if the client wishes to switch to a unrelated third-party fund.

2. The Equity Disclosure Relief is granted provided that with respect to trades in the Counsel Funds or in a Future Affiliated Fund that is managed by a subsidiary of IPCI (an IPCI Fund):

(a) If a representative, together with his or her associates, owns, directly or indirectly, less than 5% of the securities of IPCI and less than 5% of the securities of IPC Portfolio Services Inc. and/or, if the representative is not a branch manager, the branch manager of that representative, together with his or her associates, owns, directly or indirectly, less than 5% of the securities in IPCI and less than 5% of the securities of IPC Portfolio Services Inc., and that representative trades in a security of a Counsel Fund or an IPCI Fund, then that representative will provide a disclosure document to the client that discloses that:

(i) the representatives of the IPC Dealer and their associates, in aggregate, own, directly or indirectly, no more than 15% of the securities of IPCI or more than 27.75% of IPC Portfolio Services Inc.;

(ii) either or both, as applicable,

(A) the representative of the IPC Dealer, who is acting on the trade, and his or her associates, in aggregate, own, directly or indirectly, no more than 5% of the securities of IPCI and no more than 5% of the securities of IPC Portfolio Services Inc.;

(B) the branch manager of the representative of the IPC Dealer, who is acting on the trade, and his or her associates, in aggregate, own, directly or indirectly, no more than 5% of the securities of IPCI and no more than 5% of the securities of IPC Portfolio Services Inc.; and

(iii) the client may call a specified toll-free number and obtain the actual amount of the equity interests held in IPCI and/or IPC Portfolio Services Inc. by above-noted individuals or groups of individuals.

(b) If a representative, together with his or her associates, owns, directly or indirectly, more than 5% of the securities of either IPCI or IPC Portfolio Services Inc. and/or if the representative is not a branch manager, the branch manager of the representative, together with his or her associates, owns, directly or indirectly, more than 5% of the securities of either IPCI and/or IPC Portfolio Securities Inc. and that representative trades in a security of a Counsel Fund or an IPCI Fund, then that representative will provide a disclosure document to the client that discloses that:

(i) the representatives of the IPC Dealer and their associates, in aggregate, own, directly or indirectly, no more than 15% of IPCI or more than 27.75% of IPC Portfolio Services Inc.;

(ii) either or both, as applicable:

(A) the representative and his or her associates, in aggregate, own, directly or indirectly, no more than 10% of the securities of IPCI and no more than 10% of the securities of IPC Portfolio Services Inc.;

(B) the branch manager of the representative of the IPC Dealer, who is acting on the trade, and his or her associates, in aggregate, own, directly or indirectly, no more than 10% of the securities of IPCI and no more than 10% of the securities of IPC Portfolio Services Inc.; and

(iii) the client may call a specified toll-free number and obtain the actual amount of the equity interests held in IPCI and/or IPC Portfolio Services Inc. by above-noted individuals or groups of individuals.

(c) The IPC Dealers will comply with subsection 8.2(4) of NI 81-105 as modified by subsection 8.2(5) of NI 81-105, when they are required to give disclosure to clients in the circumstances set out above.

"Paulette L. Kennedy"
Commissioner
Ontario Securities Commission

"Carol S. Perry"
Commissioner
Ontario Securities Commission

2.1.4 Moto Goldmines Limited – s. 1(10)

Headnote

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

Applicable Legislative Provisions

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

November 9, 2009

Moto Goldmines Limited
P.O. Box 1255
West Perth, Western Australia
6872

Dear Sirs/Mesdames:

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

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

As the Applicant has represented to the Decision Makers that:

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

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

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

(d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

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

2.1.5 AGL (ASG) Pty Ltd and Allied Gold Limited

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Take-over Bids – Identical consideration – Issuer needs relief from the requirement in subsection 97(1) of the Securities Act (Ontario) and section 2.23 of Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids that all holders of the same class of securities must be offered identical consideration – Under the bid, Canadian resident shareholders will receive shares of the offeror; shareholders who are residents of the U.S. or other foreign jurisdictions will receive substantially the same value as Canadian shareholders in the form of cash paid to such shareholders based on the proceeds from the sale of their shares.

Applicable Legislative Provisions

Securities Act , R.S.O. 1990, c. S.5, as am., ss. 97(1), 104(2)(c).

November 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
AGL (ASG) PTY LTD (the Offeror)
AND
ALLIED GOLD LIMITED (Allied Gold)
(collectively, the Filers)

DECISION

Background

The principal regulator in the Jurisdiction (the **Decision Maker**) has received an application from the Filers for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Filers from the requirement under the Legislation to offer identical consideration to all the holders of the same class of securities that are subject to a take-over bid in connection with the Filers' offer to purchase all of the issued and outstanding ordinary shares of Australian Solomons Gold Limited (the **Exemption Sought**).

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

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

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

Interpretation

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

Representations

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

1. each of Allied Gold and the Offeror is a corporation existing under the *Corporations Act 2001* (Commonwealth of Australia) (the **Australian Act**);

2. Allied Gold's registered office is located in Subiaco, Perth, Western Australia, Australia and Allied Gold's head office is located in Milton, Brisbane, Queensland, Australia;

3. the Offeror's registered and head office is located in Subiaco, Perth, Western Australia, Australia;

4. Allied Gold is a public company within the meaning of the Australian Act;

5. the Offeror is a proprietary company within the meaning of the Australian Act. The Offeror was incorporated on September 3, 2009 for the purpose of the Offer. All of the issued and outstanding shares of the Offeror are held by Allied Gold;

6. Allied Gold is an Australian company and has, pursuant to the Australian Act, no limit to the number of ordinary shares it may issue. As of September 29, 2009, there were 472,643,276 ordinary shares of Allied Gold (the **Allied Gold Shares**) issued and outstanding;

7. the Allied Gold Shares are listed on the Australian Securities Exchange and on the Alternative Investment Market of the London Stock Exchange;

8. on September 16, 2009, the Filers announced their intention to make an offer (the **Offer**) to acquire all of the outstanding ordinary shares (**ASG Shares**) of Australian Solomons Gold Limited (**ASG**);

9. ASG is a public company existing under the Australian Act;

10. ASG's head office and registered and records office is located in Albion, Brisbane, Queensland, Australia;

11. to the knowledge of the Filers, ASG is a reporting issuer in British Columbia, Manitoba, Alberta and Ontario and is not in default of any of the requirements of the applicable securities legislation of any such jurisdiction in which it is a reporting issuer;

12. the authorized capital of ASG consists of an unlimited number of ASG Shares. As of September 29, 2009, there were 129,784,650 ASG Shares outstanding;

13. the ASG Shares are listed and posted for trading on the Toronto Stock Exchange;

14. under the terms of the Offer, each holder of one ASG Share (other than Non-Exempt ASG Shareholders, as defined below) will receive consideration per ASG Share of 0.85 of an Allied Gold Share;

15. the offer of Allied Gold Shares to the holders of ASG Shares resident in a jurisdiction of Canada pursuant to the Offer will be exempt from the prospectus and registration requirements of the Legislation pursuant to Section 2.16 of National Instrument 45-106 *Prospectus and Registration Exemptions*;

16. the Allied Gold Shares issuable under the Offer have not been and will not be registered or otherwise qualified for distribution under the securities legislation of any jurisdiction outside of Australia, including the *United States Securities Act of 1933*, as amended (the **1933 Act**) and U.S. state securities laws. Accordingly, the delivery of Allied Gold Shares to holders of ASG Shares who: (i) are either U.S. Persons (as that term is defined in Regulation S under the 1933 Act) or resident in the United States or any territory or possession thereof (**U.S. Residents**); and (ii) are not "accredited investors" (as that term is defined in Regulation D under the 1933 Act) (the **Non-Exempt ASG US Shareholders**), or to holders of ASG Shares who are citizens or residents of any other jurisdiction outside of Canada (other than Australia and New Zealand) where delivery of Allied Gold Shares may not be effected without further action by the Filers (**ASG Foreign Shareholders**, and together with Non-Exempt ASG US Shareholders, the **Non-Exempt ASG Shareholders**) may constitute a violation of the laws of such jurisdictions;

17. Allied Gold has entered into a pre-bid agreement (the **Pre-Bid Agreement**) with Resource Capital

Fund III L.P., the largest shareholder of ASG (**RCF**), a U.S. organized and based entity which owns approximately 50% of the issued and outstanding ASG Shares. Pursuant to the Pre-Bid Agreement, RCF agreed, subject to customary exceptions, including in the event of a superior proposal: (i) to deposit under the Offer that number of ASG Shares equal to 19.9% of the total issued and outstanding ASG Shares (the **Acceptance Shares**); and (ii) to publicly announce its intention to deposit under the Offer all of the ASG Shares that it owns other than the Acceptance Shares. The Australian Act prohibits an offeror from acquiring a "relevant interest" in 20% or more of an issuer's securities, and these provisions of the Pre-Bid Agreement reflect customary Australian practice. The Pre-Bid Agreement does not require the Filers to make the Offer. RCF is an "accredited investor" for the purpose of the 1933 Act and is not a Non-Exempt ASG US Shareholder. Accordingly, Allied Gold Shares will be issued to RCF as consideration under the Offer pursuant to an exemption from the registration requirements under U.S. securities laws;

18. Rule 802 under the 1933 Act (**Rule 802**) provides an exemption from the registration requirements of the 1933 Act for offers and sales in any exchange offer for a class of securities of a foreign private issuer (as defined for purposes of the 1933 Act and the rules and regulations issued by the U.S. Securities and Exchange Commission thereunder) or in any exchange of securities for the securities of a foreign private issuer in any business combination if the holders of the foreign subject company resident in the United States hold no more than 10% of the securities that are the subject of the exchange offer or business combination. The holders of ASG Shares resident in the United States hold more than 10% of the issued and outstanding ASG Shares. Accordingly, the Filers cannot rely on the registration exemption in Rule 802 in connection with the Offer;

19. to the knowledge of the Filers, and based on the most recent registered shareholder list of ASG provided to the Filers on September 15, 2009 and the most recent geographic reports delivered to the Filers on October 13, 2009 and October 20, 2009, no more than 14,577,809 ASG Shares (representing approximately 11.2% of the issued and outstanding ASG Shares) are held by Non-Exempt ASG Shareholders

20. the take-over bid rules of the Australian Act apply to the Offer;

21. the Australian Act provides that where the consideration for a bid includes an offer of securities, the securities do not need to be offered to foreign holders of the target's securities if under the terms of the bid: (i) the bidder must appoint a nominee for foreign holders of the target's securities who is approved by the Australian Securities and Investments Commission; (ii) the bidder must transfer to the nominee the securities that would otherwise be transferred to the foreign holders who accept the bid for that consideration or the right to acquire those securities; and (iii) the nominee must sell the securities, or those rights, and distribute to each of those foreign holders their proportion of the proceeds of the sale net of expenses;

22. in lieu of delivering Allied Gold Shares to Non-Exempt ASG Shareholders, the Filers intend to use a mechanism, the details and procedures of which are described in paragraph 23 below (the **Vendor Placement**), as permitted under the Australian Act. As a result of the Vendor Placement, the registration requirements of the 1933 Act, in addition to the applicable laws of certain U.S. states and the requirements of any other jurisdictions which may otherwise require registration or qualification of the Allied Gold Shares (the **Other Foreign Jurisdictions**), will not apply to the Filers and/or the Offer because the Allied Gold Shares will not be delivered in the United States or the Other Foreign Jurisdictions to Non-Exempt ASG Shareholders;

23. Allied Gold proposes to deliver to a nominee under the Offer (the **Nominee**) the Allied Gold Shares which Non-Exempt ASG Shareholders would otherwise be entitled to receive under the Offer; the Nominee, through a registered broker, will sell those Allied Gold Shares by private sale or on any stock exchange on which the Allied Gold Shares are then listed after the payment date for the ASG Shares tendered by the Non-Exempt ASG Shareholders under the Offer and, as soon as possible after completion of the sale, the Nominee will remit the net proceeds of the sale to the Non-Exempt ASG Shareholders that tendered their ASG Shares under the Offer; such procedure to be modified as necessary to comply with the laws of the Other Foreign Jurisdictions;

24. any sale of Allied Gold Shares described in paragraph 23 above will be completed as soon as possible after the date on which the Offeror takes up the ASG Shares tendered by the Non-Exempt ASG Shareholders under the Offer and will be done in a manner intended to maximize the consideration to be received from the sale by the applicable Non-Exempt ASG Shareholders and minimize any adverse impact of the sale on the market for the Allied Gold Shares.

25. The Filers intend to use the Vendor Placement mechanism solely for the purchase of ASG Shares held by Non-Exempt ASG Shareholders;

26. the Offer to the Non-Exempt ASG Shareholders as amended by the Vendor Placement, and the sale of Allied Gold Shares for the benefit of the

Non-Exempt ASG Shareholders pursuant to the Vendor Placement, will not constitute a violation of U.S. federal and state securities laws or the laws of the Other Foreign Jurisdictions;

27. based on the exchange ratio of the Offer and on the maximum number of ASG Shares that, to the knowledge of the Filers, are held by Non-Exempt ASG Shareholders, and assuming the Offeror acquires 100% of the ASG Shares, the Allied Gold Shares to be sold under the Vendor Placement would represent approximately 2.1% of the outstanding Allied Gold Shares upon the take-up and payment of the ASG Shares under the Offer;

28. registration under the securities laws of the U.S. or the Other Foreign Jurisdictions of the Allied Gold Shares deliverable to Non-Exempt ASG Shareholders pursuant to the Offer, and the resulting ongoing reporting requirements, would be costly and burdensome to Allied Gold;

29. pursuant to paragraph (f) of the definition of "reporting issuer" in subsection 1(1) of the *Securities Act* (British Columbia), Allied Gold will be deemed to be a reporting issuer in British Columbia upon the take-up and payment of ASG Shares under the Offer. As a result, Allied Gold will thereafter be subject to the continuous disclosure obligations set out in National Instrument 51-102 *Continuous Disclosure Obligations* which are applicable to all reporting issuers in Canada;

30. the take-over bid circular prepared by the Filers and sent to all shareholders of ASG discloses the Vendor Placement mechanism to be followed for Non-Exempt ASG Shareholders who tender their ASG Shares to the Offer;

31. the Offer is not being made to, nor will deposits be accepted from or on behalf of, holders of ASG Shares in any jurisdiction in which the making or acceptance of the Offer would not be in compliance with the laws of such jurisdiction;

32. there is currently a liquid market (as such term is defined in Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*) for the Allied Gold Shares and Allied Gold has been advised by the registered broker who will sell the Allied Gold Shares in connection with the Vendor Placement that there would continue to be such a liquid market for the Allied Gold Shares following the completion of the Offer and the sale of the Allied Gold Shares on behalf of Non-Exempt ASG Shareholders as contemplated in the Offer; and

33. except to the extent that the Exemption Sought is granted, the Offer will comply with the requirements under applicable securities legislation concerning take-over bids.

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, in connection with the Offer, the Exemption Sought is granted, provided that Non-Exempt ASG Shareholders, who would otherwise receive Allied Gold Shares pursuant to the Offer, instead receive cash proceeds from the sale of Allied Gold Shares in accordance with the procedures set out in paragraph 23 above.

"David L. Knight"
Commissioner
Ontario Securities Commission

"Paulette Kennedy"
Commissioner
Ontario Securities Commission

2.1.6 EnCana Corporation and 7050372 Canada Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption from certain information circular requirements regarding reserves data and other oil and gas information – Split-off entity exempt from certain disclosure requirements of NI 51-101 subject to certain conditions, including the condition to provide a modified statement of reserves data and other oil and gas information containing the information contemplated by, and consistent with, U.S. Disclosure Requirements – Comparability of oil and gas reports essential to information circular – Impracticable for split-off entity to prepare NI 51-101 reports prior to filing deadline – Modified annual oil and gas forms and reliance on U.S. disclosure requirements.

Applicable Legislative Provisions

National Instrument 51-101 Standards for Disclosure for Oil and Gas Activities, s. 8.1.
National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1.
Form 51-102F5 Information Circular, Item 14.2.

October 20, 2009

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

AND

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

AND

IN THE MATTER OF
ENCANA CORPORATION (EnCana) AND
7050372 CANADA INC. (IOCo)
(the Filers)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filers (the **Application**) for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that:

(a) EnCana be exempt, subject to certain conditions, from the requirement to provide, under National Instrument 51-102 *Continuous Disclosure Obligations*, and more specifically under Item 14.2 of Form 51-102F5 *Information Circular* (**Form 51-102F5**), in the information circular (the **Information Circular**) to be sent to certain securityholders of EnCana in connection with an Arrangement (as defined herein), certain reserves data and other oil and gas information in respect of the IOCo Assets (as defined herein) in accordance with Item 5.5 of Form 41-101F1 *Information Required in a Prospectus* (**Form 41-101F1**) (the **Circular Disclosure Relief**);

(b) IOCo, upon completion of the Arrangement (as defined herein), be exempt, subject to certain conditions, from the requirements to disclose information concerning oil and gas activities in accordance with the following sections of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (**NI 51-101**):

(i) section 2.1;

(ii) A. sections 5.2(a)(iii) and (iv),

B. sections 5.2(b) and (c), and

C. section 5.3,

but only in respect of reserves as disclosed in accordance with US Disclosure Requirements (as defined below); and

(iii) sections 5.8, 5.15(a), 5.15(b)(i) and 5.15(b)(iv);

including as those requirements pertain to prospectuses, annual information forms and other disclosure documents (the **Continuous Disclosure Relief**); and

(c) this decision and the Application (collectively, the **Confidential Material**) be kept confidential and not be made public until the earlier of: (i) the date on which EnCana mails the Information Circular; (ii) the date that EnCana advises the Decision Makers that there is no longer any need for the Confidential Material to remain confidential; and (iii) the date that is 90 days after the date of this decision.

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

(a) the Alberta Securities Commission is the principal regulator for the Application;

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

(c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and CSA Staff Notice 51-324 *Glossary to NI 51-101 Standards of Disclosure for Oil and Gas Activities* 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:

The Arrangement

1. On May 11, 2008, EnCana issued a news release which described its intention to split EnCana into two focused energy companies – one a natural gas company and the other an oil company, respectively GasCo and IOCo. Due to an unusually high level of uncertainty and volatility in the global debt and equity markets, EnCana announced on October 15, 2008 a revision to the original corporate reorganization schedule and delayed seeking shareholder and court approval for the transaction until clear signs of stability returned to the financial markets. On September 10, 2009 the board of directors of EnCana unanimously approved and announced plans to proceed with the transaction.

2. The transaction will be implemented through a court-approved plan of arrangement (the **Arrangement**) under Section 192 of the *Canada Business Corporations Act* (**CBCA**).

3. As a result of the Arrangement, the holders (**Shareholders**) of common shares of EnCana (an **EnCana Share**) will receive, in exchange for each EnCana Share currently held, one new common share in EnCana and one common share of IOCo, which will undergo an amalgamation pursuant to a later step in the Arrangement with Cenovus Energy Inc. (**Subco**), currently a wholly subsidiary of EnCana, and become Cenovus Energy Inc.

4. EnCana will be required to obtain approval of the Arrangement from the Shareholders. In order to obtain such approval, EnCana must prepare and send an information circular in accordance with Form 51-102F5 to all Shareholders and hold a meeting of Shareholders (the **Meeting**). The Arrangement is expected to be completed as soon as practicable following the Meeting (the **Effective Date**). The Meeting is presently expected to be held on November 25, 2009. It is presently expected that the Information Circular will be mailed to Shareholders in late-October, 2009. The Arrangement is expected to be completed on or about November 30, 2009.

5. Prior to the Effective Date, Subco will acquire from EnCana the businesses that will be carried on by IOCo, being principally the Integrated Oil Division and the Canadian Plains Division of EnCana (the **IOCo Assets**).

EnCana Corporation

6. EnCana is a reporting issuer (or the equivalent thereof) in each of the provinces and territories of Canada.

7. To its knowledge, EnCana is not in default of any of the requirements of the securities legislation in any of the provinces or territories in which it is a reporting issuer.

8. On September 29, 2008, EnCana obtained, from the securities regulatory authorities of each of the provinces and territories of Canada a decision (the **EnCana Order**) providing exemptive relief from certain requirements of NI 51-101 subject to certain conditions including, but not limited to, a condition that disclosure be provided that is consistent with the disclosure requirements relating to reserves and oil and gas activities under United States securities legislation (including disclosure requirements or guidelines issued or referenced by the SEC) as interpreted and applied by the SEC (**US Disclosure Requirements**).

9. EnCana satisfies the basic qualification criteria as set out in Section 2.2 of National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**) and has a "current AIF" and "current annual financial statements" as such terms are defined in Section 1.1 of NI 44-101.

IOCo

10. IOCo was incorporated as a corporation under the CBCA on September 24, 2008 as 7050372 Canada Inc.

11. The head office of IOCo is in Calgary, Alberta. Upon the Arrangement becoming effective, the head office of IOCo will continue to be located in Calgary, Alberta and IOCo will be named Cenovus Energy Inc.

12. To its knowledge, IOCo is not in default of any of the requirements of the securities legislation in any of the provinces or territories in which it will become a reporting issuer.

13. Prior to the Effective Date, IOCo will not have any material assets and will not have conducted any active business activities, other than in respect of the Arrangement and, in the absence of exemptive relief, IOCo will not be a reporting issuer (or the equivalent thereof) in any jurisdiction.

14. Following completion of the Arrangement, IOCo anticipates that it will be a reporting issuer (or equivalent thereof) in each of the provinces and territories of Canada and will be an issuer engaged in oil and gas activities as defined in NI 51-101.

15. Prior to and but for the Arrangement, the IOCo Assets are and would be subject to the EnCana Order.

16. Following the Effective Date, IOCo does not expect to have full access to the information systems pertaining to, among other things, the historical (including for the year ended December 31, 2009) reserves data and other oil and gas information in respect of the IOCo Assets until January 2010.

17. Given the quantity of reserves data and other oil and gas information in respect of the IOCo Assets and the fact that EnCana will have, directly or indirectly, held the IOCo Assets for 11 out of the 12 months of the year ended December 31, 2009, it is not practicable for IOCo to be prepared to provide information that is inconsistent with the EnCana Order prior to IOCo's first required annual NI 51-101 filing by March 31, 2010.

The Information Circular

18. Form 41-101F1 requires the Information Circular to contain, inter alia, certain reserves data and other oil and gas information prescribed by Form 51-101F1 in respect of the IOCo Assets as at the date of the most recent audited balance sheet of IOCo to be included in the Information Circular, which is expected to be December 31, 2008.

19. The Information Circular will contain the following disclosure regarding IOCo and EnCana (collectively, the **Proposed Reserves Disclosure**):

IOCo Reserves Disclosure

(a) reserves data and other oil and gas information in respect of the IOCo Assets as at December 31, 2008 presented in a form consistent with US Disclosure Requirements and with the form of disclosure permitted under the terms of the EnCana Order, together with comparative reserves data and other oil and gas information in respect thereof for 2007 and 2006, in each case presenting reserves estimates prepared by independent qualified reserves evaluators (collectively, the **IOCo Reserves Disclosure**);

(b) the Report on Reserves Data by Independent Qualified Reserves Evaluators in respect of the IOCo Reserves Disclosure in substantially the same form (as amended to accurately reflect the form of IOCo Reserves

Disclosure being the subject of such report) as provided by EnCana for its December 31, 2008 reserves in its February 20, 2009 AIF; and

(c) the Report of Management and Directors on Reserves Data and Other Information in respect of the IOCo Reserves Disclosure as executed by the appropriate officers and directors of EnCana, and in substantially the same form (as amended to accurately reflect the form of IOCo Reserves Disclosure being the subject of such report) as provided by EnCana for its December 31, 2008 reserves in its February 20, 2009 AIF;

EnCana Reserves Disclosure

(a) Reserves data and other oil and gas information in respect of EnCana as at December 31, 2008 presented in a form consistent with the terms of the EnCana Order (the **EnCana Reserves Disclosure**);

(b) the Report on Reserves Data by Independent Qualified Reserves Evaluators in respect of the EnCana Reserves Disclosure in a form consistent with the terms of the EnCana Order; and

(c) the Report of Management and Directors on Reserves Data and Other Information in respect of the EnCana Reserves Disclosure as executed by the appropriate officers and directors of EnCana and in a form consistent with the terms of the EnCana Order.

20. In the event that a material change occurs in respect of EnCana which, had such material change occurred on or before December 31, 2008, would have resulted in a significant change to the information contained in the Proposed Reserves Disclosure, the Proposed Reserves Disclosure will include the disclosure required under Part 6 of NI 51-101 in respect of such material change.

Decision

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

The decision of the Decision Makers under the Legislation is that:

1. The Circular Disclosure Relief is granted provided that EnCana includes or incorporates by reference the Proposed Reserves Disclosure in the Information Circular.

2. The Continuous Disclosure Relief is granted provided that:

(a) **Annual Filings** – IOCo files with the securities regulatory authorities the following not later than the date on which it is required by the Legislation to file audited financial statements for its most recent financial year:

(i) a modified statement of reserves data and other oil and gas information relating to its oil and gas activities containing the information contemplated by, and consistent with, US Disclosure Requirements;

(ii) a modified report of qualified reserves evaluators in a form acceptable to the principal regulator; and

(iii) a modified report of management and directors on reserves data and other information in a form acceptable to the principal regulator;

(b) **Use of COGE Handbook** – IOCo's estimates of reserves and related future net revenue (or, where applicable, related standardized measure of discounted future net cash flows (the standardized measure)) are prepared or audited in accordance with the standards of the COGE Handbook modified to the extent necessary to reflect the terminology and standards of the US Disclosure Requirements;

(c) **Consistent Disclosure** – subject to changes in the US Disclosure Requirements and NI 51-101 and related policies, IOCo is consistent in its application of standards relating to oil and gas information and its disclosure of such information, within and between reporting periods, and without limiting the generality of the foregoing, in any disclosure made to the public, IOCo's estimates of reserves and related future net revenue (or, where applicable, related standardized measure) must be consistent with the reserves and related future net revenue (or, where applicable, related standardized measure) reported in its most recent filing with the Decision Maker;

(d) **Disclosure of this Decision and Effect** – IOCo

(i) at least annually, files on SEDAR (either as a separate document or in its annual information form) a statement:

(A) of IOCo's reliance on this decision;

(B) that explains generally the nature of the information that IOCo has disclosed or intends to disclose in the year in reliance on this decision and that identifies the standards and the source of the standards being applied (if not otherwise readily apparent); and

(C) to the effect that the information that IOCo has disclosed or intends to disclose in the year in reliance on this decision may differ from the corresponding information prepared in accordance with NI 51-101 standards (if that is the case), and briefly describes the principal differences between the standards applied and the requirements of NI 51-101; and

(ii) includes, reasonably proximate to all other written disclosure that IOCo makes in reliance on this decision, a statement:

(A) of IOCo's reliance on this decision;

(B) that explains generally the nature of the information being disclosed and identifies the standards and the source of the standards being applied (if it is not otherwise readily apparent);

(C) that the information disclosed may differ from the corresponding information prepared in accordance with NI 51-101 standards; and

(D) that reiterates or incorporates by reference the disclosure referred to in paragraph 2(d)(i)(C); and

(e) the Continuous Disclosure Relief will terminate on December 31, 2010.

3. The Confidential Material will be kept confidential and not be made public until the earlier of: (i) the date on which EnCana mails the Information Circular; (ii) the date that EnCana advises the Decision Makers that there is no longer any need for the Confidential Material to remain confidential; and (iii) the date that is 90 days after the date of this decision.

"Glenda A. Campbell, QC"
Alberta Securities Commission

"Stephen R. Murison"
Alberta Securities Commission

2.1.7 Sun Life Capital Trust II et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – capital trust established by insurance company to issue capital trust securities as cost-effective means of raising capital for Canadian insurance regulatory purposes exempted from eligibility requirements to file a short form prospectus, certain form requirements and permitted to abridge 10-day notice requirement – insurance company is exempt from requirements to file certain disclosure documents as long as its parent files required disclosure – parent has guaranteed certain obligations of the insurance company – relief granted as disclosure regarding the insurance company and parent is more relevant – relief subject to conditions – National Instrument 44-101 Short Form Prospectus Distributions – relief also granted for temporary confidentiality of decision.

Applicable Legislative Provisions

National Instrument 44-101 Short Form Prospectus Distributions , ss. 2.3, 2.8.
Form 44-101F1 Short Form Prospectus, items 6, 11.

July 27, 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
SUN LIFE CAPITAL TRUST II (the "Trust"),
SUN LIFE ASSURANCE COMPANY OF CANADA
("SLA") AND
SUN LIFE FINANCIAL INC.
("SLF" and, together with the Trust and SLA, the "Filers")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision (the "**Requested Relief**") under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") that:

1. the Trust be exempted from the following requirements of the Legislation in connection with offerings by the Trust from time to time of Notes:
   (a) the qualification requirements (the "**Qualification Requirements**") of Part 2 of National Instrument 44-101 – *Short Form Prospectus Distributions* ("**NI 44-101**"), such that the Trust is qualified to file a prospectus in the form of a short form prospectus; and
   (b) the disclosure requirements (the "**Disclosure Requirements**") in Item 6 (Earnings Coverage Ratios) and Item 11 (Documents Incorporated By Reference), with the exception of Item 11.1(1)(5), of Form 44-101F1 – *Short Form Prospectus* of NI 44-101 in respect of the Trust, as applicable;
2. the Application and this decision documents be held in confidence by the principal regulator, 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 other than Ontario.

Interpretation

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

Representations

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

SLF

1. SLF was incorporated under the *Insurance Companies Act* (Canada) (the "**Insurance Act**") on August 5, 1999. On the completion of the demutualization of SLA on March 22, 2000, SLF became the holding company which holds directly all of the outstanding shares of SLA. SLF's head office is located at 150 King Street West, Toronto, Ontario, M5H 1J9.
2. The authorized share capital of SLF consists of an unlimited number of (i) common shares, (ii) Class A shares issuable in series and (iii) Class B shares issuable in series.

3. SLF is a publicly traded company on the Toronto, New York and Philippines Stock Exchanges.

4. SLF is a reporting issuer in each province and territory of Canada and is not, to its knowledge, in default of its reporting issuer obligations under the securities legislation of any of the provinces or territories of Canada.

5. SLF is qualified to use the short form prospectus system provided by NI 44-101.

SLA

6. SLA is an insurance company under the Insurance Act and is regulated by the Superintendent of Financial Institutions (Canada) (the "**Superintendent**"). The head office of SLA is located at 150 King Street West, Toronto, Ontario, M5H 1J9.

7. The authorized share capital of SLA consists of an unlimited number of (i) Class A shares issuable in series, (ii) Class B shares issuable in series, (iii) Class C shares issuable in series, (iv) Class D shares issuable in series and (v) common shares. SLF holds all of the issued and outstanding shares of SLA.

8. SLA is a reporting issuer in each of the provinces and territories of Canada and is not, to its knowledge, in default of its reporting issuer obligations under the securities legislation of any of the provinces or territories of Canada.

9. SLF has guaranteed certain obligations of SLA in order to rationalize the securities reporting obligations of SLF and SLA (the "**SLF Guarantees**"). The SLF Guarantees include a full and unconditional subordinated guarantee of (i) $150 million of 6.30% subordinated debentures due 2028, $300 million of 6.65% subordinated debentures due 2015 and $800 million of 6.15% subordinated debentures due 2022 of SLA, and (ii) the preferred shares of SLA (the "**SLA Preferred Shares**") outstanding from time to time, other than preferred shares held by SLF and its affiliates (the "**SLF Preferred Share Guarantee**").

10. As a result of the SLF Guarantees, SLA received an exemption dated November 14, 2007 (the "**2007 SLA Order**") from the requirements to file certain continuous disclosure materials with the Canadian security regulatory authorities. Under the 2007 SLA Order, SLA is not required to file interim financial statements, annual and interim management's discussion and analysis, annual information forms, press releases and material change reports in respect of changes that are also material changes in the affairs of SLF, material contracts, and Chief Executive Officer and Chief Financial Officer Certifications. However, SLA is required to file annual audited financial statements, and certain summary information regarding SLA will be filed on a quarterly basis. In addition, SLF is required to send to holders of the debentures and preferred shares the disclosure materials that SLF is required to send to holders of its similar debt and preferred shares, respectively.

11. SLA satisfies each of the basic qualification criteria listed in section 2.2 of NI 44-101 other than sections 2.2 (d) and (e) and is deemed, pursuant to section 2.8(4) of NI 44-101, to have filed a notice of intention to be qualified to file a short form prospectus. SLA does not satisfy the requirements under section 2.2 (d) because it is exempt from filing interim financial statements, annual and interim management's discussion and analysis and annual information forms for so long as the terms and conditions of the 2007 SLA Order are satisfied, and it does not satisfy the requirement under section 2.2(e) because it is a wholly-owned subsidiary of SLF, so its equity securities are not listed on any exchange.

The Trust

12. The Trust will be a trust established under the laws of Ontario pursuant to a declaration of trust prior to the filing of a preliminary prospectus by the Trust, SLA and SLF.

13. The Trust is proposing to conduct an initial public offering (the "**Offering**") of one or more series of subordinated notes (the "**Notes**") in each of the provinces and territories of Canada and may, from time to time, issue further series of Notes. It is currently anticipated that the first series of Notes will be designated as Sun Life ExchangEable Capital Securities Series 2009-1 (the "**SLEECS**"). The Trust will be a newly-formed entity and, as such, will have no prior operating history. As a result of the Offering, the capital of the Trust will consist of the Notes issued pursuant to the Offering and voting trust units, issuable in series (the "**Voting Trust Units**" and collectively with the Notes, the "**Trust Securities**"). All of the Voting Trust Units will be held directly or indirectly by SLA.

14. The Trust will be a single purpose vehicle established for the purpose of effecting offerings of Trust Securities in order to provide SLA with a cost effective means of raising capital for Canadian insurance regulatory purposes by means of (i) creating and selling the Trust Securities and (ii) acquiring and holding assets, which will consist primarily of one or more senior unsecured debentures of SLA and other eligible assets to be specified in the prospectus for the Offering (the "**Prospectus**") ((i) and (ii) collectively, the "**Trust Assets**"). The Trust Assets will generate income for distribution to holders of Trust Securities. 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.

15. As a result of the Offering, it is expected that the Trust will become a reporting issuer in each of the provinces and territories of Canada.

SLEECS

16. The SLEECS will pay a fixed rate of interest on such dates (each, an "**Interest Payment Date**") as may be described in the Prospectus until such date as described in the Prospectus, following which the interest will be reset every five years (each such interest reset date, an "**Interest Reset Date**") until maturity at the Government of Canada Yield (as defined in the Prospectus) plus a spread to be described in the Prospectus.

17. Under agreements to be entered into among SLA, SLF, the Trust and a party acting as trustee, SLA and SLF will agree, for the benefit of the holders of SLEECS, that if, in respect of the SLEECS, (i) SLA elects, at its sole option, prior to the commencement of the interest period ending on the day preceding the relevant Interest Payment Date, that holders of the SLEECS invest interest payable in cash thereon on such Interest Payment Date in SLA Deferral Preferred Shares, or (ii) for whatever reason (other than as a result of a Missed Dividend Deferral Event) interest is not paid in full in cash on the SLEECS on any Interest Payment Date (in either case, an "**Other Deferral Event"**), (a) SLA will not declare cash dividends on any SLA Public Preferred Shares, or (b) if there are no SLA Public Preferred Shares outstanding, SLF will not declare cash dividends on any of its preferred shares or common shares (collectively, the "**SLF Dividend Restricted Shares**"), until a period of time specified in the Prospectus has elapsed (the "**Dividend Stopper Undertaking**"). Accordingly, it is in the interest of SLA and SLF to ensure, to the extent within their control, that the Trust pays the interest on the SLEECS in cash on each Interest Payment Date so as to avoid triggering the Dividend Stopper Undertaking. "**SLA Public Preferred Shares**" means, at any time, preferred shares of SLA which, at that time: (i) have been issued to the public (excluding any preferred shares of SLA held beneficially by affiliates of SLA), (ii) are listed on a recognized stock exchange, and (iii) have an aggregate liquidation entitlement of at least $200 million. "**SLA Deferral Preferred Shares**" means each series of SLA Preferred Shares to be issued to holders of SLEECS in respect of each Deferral Event.

18. On each Interest Payment Date on which a Deferral Event has occurred in respect of the SLEECS, holders will be required to invest interest payable on such SLEECS in SLA Deferral Preferred Shares. A "**Deferral Event**" means: (i) an Other Deferral Event, or (ii) SLA has failed to declare cash dividends on its Class B Non-Cumulative Preferred Shares Series A or, if there are SLA Public Preferred Shares outstanding, SLA has failed to declare cash dividends on any of its SLA Public Preferred Shares in accordance with their respective terms (other than a failure to declare dividends on any such shares during a Dividend Restricted Period) in the last 90 days preceding the commencement of the interest period ending on the day preceding the relevant Interest Payment Date ("**Missed Dividend Deferral Event**"). "**Dividend Restricted Period**" means the period from and including the Deferral Date (as defined in the Prospectus) to but excluding the first day of the applicable Dividend Declaration Resumption Month (as defined in the Prospectus).

19. The SLEECS will be automatically exchanged, without the consent of the holders, for a new series of SLA Preferred Shares upon the occurrence of certain stated events relating to the solvency of SLA or actions taken by the Superintendent in respect of SLA (an "**Automatic Exchange**").

20. The SLF Preferred Share Guarantee will apply to the SLA Preferred Shares issuable upon a Deferral Event or an Automatic Exchange, as applicable. In circumstances where SLF is not the subject of a winding-up order, the SLF Preferred Share Guarantee will entitle the holder to receive payment from SLF within 15 days of any failure by SLA to pay a declared dividend or to pay the redemption price on SLA Preferred Shares and, in the case of any amount remaining unpaid with respect to the preference of the SLA Preferred Shares upon a winding-up of SLA, within 15 days of the later of the date of the final distribution of property of SLA to its creditors and the date of the final distribution of surplus of SLA, if any, to its shareholders. In circumstances where SLF is the subject of a winding-up order, the SLF Preferred Share Guarantee will entitle the holder of SLA Preferred Shares to receive payment from SLF within 15 days of the determination of the final distribution of surplus of SLF, if any, to SLF's shareholders. Claims under the SLF Preferred Share Guarantee will be subordinate to all outstanding indebtedness and liabilities of SLF, unless otherwise provided by the terms of the instrument creating or evidencing any such liability. In the event that a failure to pay declared dividends, the redemption price or the liquidation preference occurs at a time when SLF is subject to a winding-up order, the SLF Preferred Share Guarantee has been structured so that the amount payable by SLF under the SLF Preferred Share Guarantee will be subject to reduction such that the claims of holders of the respective class of preferred shares of SLA under the SLF Preferred

Share Guarantee will, in effect, rank equally with the claims of holders of the respective class of preferred shares of SLF to any surplus assets of SLF remaining for distribution. Otherwise the SLF Preferred Share Guarantee would negatively impact the capital treatment of preferred shares of SLA for insurance regulatory purposes.

21. SLA will covenant that SLA will maintain direct or indirect ownership of 100% of the outstanding Voting Trust Units. Subject to regulatory approval, the SLEECS will constitute Tier 1 capital of SLA.

22. The SLEECS will be non-voting and will be unsecured obligations of the Trust ranking at least equally with other subordinated indebtedness of the Trust from time to time issued and outstanding. On a liquidation or winding-up of the Trust, the indebtedness evidenced by the SLEECS 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 payment equally with or subordinate to the indebtedness evidenced by the SLEECS. The holders of SLEECS will not be entitled to initiate proceedings for the termination of the Trust.

23. Pursuant to an administration agreement to be entered into between the trustee of the Trust (the "**Trustee**") and SLA, the Trustee will delegate to SLA certain of its duties in relation to the administration of the Trust. SLA, as administrative agent, will provide advice and counsel with respect to management of the assets of the Trust and other matters as may be requested by the Trustee from time to time and will administer the day-to-day operations of the Trust.

24. The Trust may, from time to time (including pursuant to the Offering), issue further series of Notes which qualify as Tier 1 capital of SLA for regulatory purposes, the proceeds which would be used to acquire additional Trust Assets.

25. Because of the terms of the Notes and the various covenants of SLA and SLF, and given that the SLF Preferred Share Guarantee will apply to the SLA Preferred Shares issuable upon the occurrence of an Automatic Exchange or Deferral Event and that SLA is exempt from making most continuous disclosure filings, information about the affairs and financial performance of SLA and SLF, as opposed to the Trust, is meaningful to holders of Notes.

26. It is expected that the SLEECS will receive an approved rating from an approved rating organization, as defined in National Instrument 41-101.

27. At the time of the filing of any prospectus in connection with offerings of Notes (including the Offering):

(a) the prospectus will be prepared in accordance with the short form prospectus requirements of NI 44-101 other than the Disclosure Requirements, except as permitted by the Legislation;

(b) the Trust will comply with all of the filing requirements and procedures set out in NI 44-101 other than the Qualification Requirements, except as permitted by the Legislation;

(c) SLF and SLA will continue to be regulated by the Superintendent;

(d) SLF will continue to be the direct or indirect beneficial owner of all of the issued and outstanding voting securities (as defined in the Legislation) of SLA;

(e) SLF and SLA will be reporting issuers or the equivalent thereof under the Legislation;

(f) SLF will continue to provide the SLF Preferred Share Guarantee;

(g) the prospectus will incorporate by reference the documents of SLF set forth under Item 11.1 of Form 44-101F1, and SLA's annual financial statements;

(h) the prospectus disclosure required by Item 11 (other than 11.1(1)(5)) of Form 44-101F1 in respect of the Trust) will be addressed by incorporating by reference SLF's public disclosure documents referred to in paragraph 27(g) above, and SLA's annual financial statements; and

(i) SLF will satisfy all of the criteria in section 2.2 of NI 44-101 and SLA will satisfy the criteria in section 2.2 of NI 44-101 other than sections 2.2(c), (d) and (e).

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 provided that:

(i) the Trust, SLA and SLF, as applicable, comply with paragraph 27 above;

(ii) SLA remains the direct or indirect owner of all of the outstanding Voting Trust Units;

(iii) SLA, as direct or indirect holder of the Voting Trust Units, will not propose changes to the terms and conditions of any outstanding Notes offered and sold pursuant to a short form prospectus of the Trust filed under this decision that would result in such Notes being exchangeable for securities other than SLA Preferred Shares;

(iv) the Trust has minimal assets, operations, revenues or cash flows other than those related to the issuance, administration and repayment of the Trust Securities or the administration of the Trust Assets;

(v) the Trust issues a news release and files a material change report in accordance with Part 7 of National Instrument 51-102 – Continuous Disclosure Obligations, 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 SLF or SLA;

(vi) the Trust becomes, on or before the filing of a preliminary short form prospectus in connection with the Offering and thereafter remains, an electronic filer under National Instrument 13-101 – System for Electronic Document Analysis and Retrieval (SEDAR);

(vii) following the Offering, the Trust is a reporting issuer in at least one jurisdiction in Canada;

(viii) following the Offering, the Trust files with the securities regulatory authorities in each jurisdiction in which it becomes a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction: (a) under all applicable securities legislation; (b) pursuant to an order issued by the securities regulatory authority; or (c) pursuant to an undertaking to the securities regulatory authority;

(ix) the securities to be distributed: (a) have received an approved rating on a provisional basis; (b) are not the subject of an announcement by an approved rating organization, of which the Trust is or ought reasonably to be aware, that the approved rating given by the organization may be downgraded to a rating category that would not be an approved rating; and (c) have not received a provisional or final rating lower than an approved rating from any approved rating organization; and

(x) the Trust files a notice declaring its intention pursuant to section 2.8 of NI 44-101 prior to or concurrently with the filing of the preliminary short form prospectus for the Offering.

The further decision of the principal regulator is that the application of the Filers and this decision shall be held in confidence by the principal regulator until the earlier of (i) the date that a preliminary prospectus has been filed in respect of the Offering and (ii) the date that is 90 days after the date of this decision document.

"Michael Brown"
Assistant Manager, Corporate Finance Branch

2.1.8 Sun Life Capital Trust II et al.

Headnote

Decision to extend confidentiality of a decision and related application subject to certain conditions.

October 23, 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
SUN LIFE CAPITAL TRUST II (the "Trust"),
SUN LIFE ASSURANCE COMPANY OF CANADA
("SLA") AND
SUN LIFE FINANCIAL INC.
("SLF" and, together with the Trust and SLA,
the "Filers")

DECISION

Background

The principal regulator in the Jurisdiction rendered a decision (the "Original Decision") dated July 27, 2009 to the effect that, subject to conditions:

1. the Trust be exempted from certain requirements of the Legislation in connection with offerings by the Trust from time to time of notes; and

2. the Decision and related application be held in confidence.

The principal regulator has received an application to vary the Original Decision by extending the period of time the Original Decision and related application will be kept confidential.

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 relief upon in each of the provinces and territories other than Ontario.

Interpretation

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

Representations

This decision is based on the representation made by the Filers that the facts set out in the Original Decision remain true and correct.

Decision

The decision of the principal regulator under the Legislation is that the Original Decision is varied such that the application of the Filers and this decision, together with the Original Decision and related application, shall be held in confidence until the earlier of (i) the date that a preliminary prospectus has been filed in respect of an offering by the Trust and (ii) November 24, 2009.

"Kelly Gorman"
Manager, Corporate Finance Branch

2.1.9 EnCana Corporation

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Deeming to be a Reporting Issuer – IOCo – Continuous Disclosure Relief – oil and gas disclosure requirements, continuous disclosure requirements, certification requirements, audit committee requirements and corporate governance disclosure requirements in connection with a reorganization – Prospectus and Registration Relief – exemption from prospectus and dealer registration requirements for trades in if, as, and when issued markets – Early Warning Relief – exemption from early warning requirements provided that acquiror uses defined method of calculation.

Applicable Legislative Provisions

Securities Act, R.S.A. 2000, c. S-4, Part 12, ss. 75, 110, 144, 145 and 221.
Securities Act, R.S.O. 1990, c. S.5, as am., Parts XX, XVIII (Continuous Disclosure) and XXXI.1 (Governance).
National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities.
National Instrument 51-102 Continuous Disclosure Obligations.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings.
National Instrument 52-110 Audit Committees.
National Instrument 58-101 Disclosure of Corporate Governance Practices.
Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids.

Citation: EnCana Corporation, Re, 2009 ABASC 522

October 28, 2009

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA AND ONTARIO

AND

BRITISH COLUMBIA, SASKATCHEWAN,
MANITOBA, QUÉBEC, NEW BRUNSWICK,
NOVA SCOTIA, PRINCE EDWARD ISLAND,
NEWFOUNDLAND AND LABRADOR,
NORTHWEST TERRITORIES, NUNAVUT,
AND YUKON

AND

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

AND

IN THE MATTER OF
ENCANA CORPORATION
(the Filer or EnCana)

DECISION

Background

The securities regulatory authority or regulator in each of Alberta and Ontario (the **Dual Exemption Decision Makers**) has received an application from the Filer (the **Application**) for, among other things, a decision under the securities legislation of those jurisdictions (the **Dual Legislation**) for the following (collectively, the **Dual Exemptions**):

(a) relief from the following requirements (the **Continuous Disclosure Relief Sought**) arising from reporting issuer status, as they would otherwise apply to IOCo (as described herein) as result of Deemed RI Status (as defined herein):

(i) the requirements under Parts XVIII (Continuous Disclosure) and XXXI.1 (Governance) of the *Securities Act* (Ontario) (the OSA) and Part 12 (Continuous Disclosure) of the *Securities Act* (Alberta), including:

A. the requirements of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*;

B. the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**);

C. the requirements of Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*;

D. the requirements of National Instrument 52-110 Audit Committees;

E. the requirements of National Instrument 58-101 Disclosure of Corporate Governance Practices; and

(b) relief, other than in Québec, from the prospectus and registration requirements (the **Prospectus and Registration Relief Sought**) for trades of securities representing IOCo Shares and New EnCana Shares (as respectively defined herein) in the When-Issued Markets (as defined herein).

The securities regulatory authority or regulator (the **Coordinated Exemptive Relief Decision Makers**) in each of Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut, and Yukon (the **Jurisdictions**) has received from the Filer, as part of the Application, an application for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for the following (collectively, the **Coordinated Exemptive Relief**):

(a) a decision deeming, as of the date of commencement of trading on a when-issued basis of the IOCo Shares (as defined herein) in the When-Issued Markets (as defined herein), IOCo to be a reporting issuer in each of the Jurisdictions (the **Deemed RI Status**); and

(b) a decision (the **Confidentiality Relief Sought**) that the Application, this decision document and all other correspondence made on behalf of the Filer with the Coordinated Exemptive Relief Decision Makers (as defined herein) in connection with the subject matter hereof (collectively, the **Confidential Materials**) be held in confidence by the Coordinated Exemptive Decision Makers until the earliest of the following:

(i) the date on which a news release is issued by the Filer announcing the anticipated date on which trading of the IOCo Shares in the When-Issued Markets will commence;

(ii) the date on which the Filer advises the Coordinated Exemptive Decision Makers that there is no longer any need to hold the Confidential Materials in confidence; and

(iii) 90 days after the date of this decision

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

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

(b) for the purpose of the Continuous Disclosure Relief Sought, 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, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut, and Yukon;

(c) for the purpose of the Prospectus and Registration Relief Sought, the Filer has provided notice that section 4.7(1) of MI 11-102 is intended to be relied upon in British Columbia, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut, and Yukon,

(d) the decision is the decision of the principal regulator and the decision evidences the decision of the securities regulatory authority or regulator in Ontario, and

(e) the decision evidences the decision of each Coordinated Exemptive Relief Decision Maker and the Dual Exemption Decision Makers.

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:

EnCana Corporation

1. The Filer is a corporation amalgamated under the *Canada Business Corporations Act* (the CBCA).

2. The head office of the Filer is located in Calgary, Alberta.

3. The Filer is a reporting issuer (or the equivalent thereof) in each of the Jurisdictions and is an electronic filer under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (**SEDAR**).

4. The issued and outstanding common shares of the Filer (the **EnCana Shares**) are listed on the Toronto Stock Exchange (the **TSX**) and the New York Stock Exchange (the **NYSE**).

The Arrangement

5. On May 11, 2008, the Filer issued a news release which described its intention to split the Filer into two focused energy companies – one a natural gas company and the other an oil company. The working names of the two entities are GasCo and IOCo. GasCo will be a continuation of EnCana and will carry on business using the EnCana name.

6. Due to an unusually high level of uncertainty and volatility in the global debt and equity markets, EnCana announced on October 15, 2008 a revision to the original corporate reorganization schedule and delayed seeking shareholder and court approval for the transaction until clear signs of stability returned to the financial markets. On September 10, 2009 the board of directors of EnCana unanimously approved plans to proceed with the transaction.

7. The transaction will be implemented through a plan of arrangement (the **Arrangement**) under Section 192 of the CBCA.

8. As a result of the Arrangement, the holders of EnCana Shares (the **Shareholders**) will receive, in exchange for each EnCana Share currently held, one new common share in EnCana (a **New EnCana Share**) and one common share of IOCo (an **IOCo Share**). IOCo will undergo an amalgamation pursuant to a later step in the Arrangement, as described herein.

9. The Filer will be required to obtain approval of the Arrangement from the Shareholders. In order to obtain such approval, the Filer must prepare and send an information circular in accordance with Form 51-102F5 (the **Information Circular**) to all Shareholders and hold a meeting of Shareholders (the **Meeting**). The Arrangement is expected to be completed as soon as practicable following the Meeting (the **Effective Date**). The Meeting is expected to be held on November 25, 2009. It is expected that the Information Circular will be mailed to Shareholders in late October, 2009. The Arrangement is anticipated to be completed on or about November 30, 2009.

IOCo (Pre-Amalgamation)

10. IOCo was incorporated under the CBCA on September 24, 2008 as 7050372 Canada Inc.

11. The head office of IOCo is in Calgary, Alberta.

12. Prior to the Effective Date, IOCo will not have any material assets and will not have conducted any active business activities, other than in respect of the Arrangement.

13. Prior to the Effective Date, there will be no securities of IOCo outstanding and the securities of IOCo will not be listed on any exchange.

14. IOCo will not conduct any trades or engage in a distribution of securities prior to the Effective Date other than as contemplated under the Arrangement.

15. Prior to the Effective Date, and before the settlement of any trades in the When-Issued Markets (as defined herein), the disclosure in the Information Circular in respect of IOCo and the IOCo Assets (as defined herein), and the historical

disclosure record of the Filer (which incorporates disclosure in respect of the IOCo Assets), will together provide a sufficient public record of information in respect of IOCo and the IOCo Assets.

IOCo Amalgamation

16. Cenovus Energy Inc. (**Subco**) is a wholly-owned, special-purpose finance subsidiary of the Filer, continued under the CBCA.

17. Prior to the Effective Date, Subco will acquire from the Filer the businesses that will be carried on by IOCo, being principally the Integrated Oil Division and the Canadian Plains Division of EnCana (the **IOCo Assets**).

18. Pursuant to the Arrangement, IOCo will amalgamate with Subco and the resulting amalgamated entity will be named Cenovus Energy Inc. (**Cenovus**).

19. Prior to the Effective Date, in the absence of Deemed RI Status, IOCo (pre-amalgamation) will not be a reporting issuer (or the equivalent thereof) in any of the Jurisdictions.

20. After the Effective Date, it is anticipated that Cenovus will be a reporting issuer (or equivalent thereof) in each of the provinces and territories of Canada.

When-Issued Markets

21. It is expected that, commencing on a date determined by the TSX and the NYSE and subsequent to the mailing of the Information Circular to the Shareholders, the TSX and the NYSE will establish markets (the **When-Issued Markets**) to permit "if, as and when issued trading" of the IOCo Shares and New EnCana Shares to be issued to Shareholders on the Effective Date. Trading of IOCo Shares or New EnCana Shares in the When-Issued Markets will not commence until after the Information Circular has been filed on SEDAR.

22. The When-Issued Markets will essentially permit market participants to purchase and sell IOCo Shares and New EnCana Shares prior to the completion of the Arrangement and the actual issuance of the IOCo Shares and New EnCana Shares thereunder. Because IOCo Shares and New EnCana Shares will not yet have been issued, trading in the When-Issued Markets will involve trades in rights to acquire IOCo Shares and New EnCana Shares, respectively, such rights effectively constituting securities (in Jurisdictions other than Québec) or derivatives (in Québec) traded and distributed by participants who trade in the When-Issued Markets.

23. No trade will settle in the When-Issued Markets until the Arrangement has been completed. The completion and settlement of any trade of IOCo Shares or New EnCana Shares in the When-Issued Markets will be conditional upon the completion of the Arrangement on the basis described in the Information Circular and the issuance of the IOCo Shares or New EnCana Shares, respectively, thereunder.

24. Trades in respect of IOCo Shares and New EnCana Shares on the When-Issued Markets would be subject to the prospectus and registration requirements in each of the Jurisdictions except Québec.

25. In the event that the Arrangement does not become effective, trading in respect of the IOCo Shares and the New EnCana Shares in the When-Issued Markets will cease at the direction of the TSX and the NYSE.

26. Any insider of the Filer who makes any trade of IOCo Shares or New EnCana Shares in the When-Issued Markets will file a report of such trade in the applicable Jurisdictions in the same manner as they would be required to do under the Legislation with respect to a trade of EnCana Shares.

27. Any insider of IOCo, or anyone who will be an insider of IOCo upon completion of the Arrangement, who makes any trade in respect of an IOCo Share or a New EnCana Share in the When-Issued Markets will file a report of such trade in the applicable Jurisdictions in the same manner as they would be required to do under the Legislation as if the subject of such trade were a security of IOCo unless such person files a report of the trade as an insider of the Filer.

Early Warning

28. The requirements under Part 5 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (**MI 62-104**) and Part XX of the OSA that an acquiror issue a news release, file a report and refrain from purchasing additional securities for a specified period of time when it acquires beneficial ownership of, or the power to exercise control or direction over, an aggregate of 10% or more of the outstanding securities of a class of voting or equity securities of a reporting issuer, or securities convertible into such securities, and at certain times thereafter (the **Early Warning Requirements**), apply to the acquisition of shares of a reporting issuer.

29. The When-Issued Markets involve trades in rights to receive IOCo Shares and New EnCana Shares and therefore, under section 1.8 of MI 62-104 and section 89(5) of the OSA, purchasers in the When-Issued Markets are deemed to acquire the underlying securities, being IOCo Shares or New EnCana Shares, as the case may be.

30. In order for the Early Warning Requirements to apply meaningfully to trading in the When-Issued Markets, it is necessary that an acquiror of IOCo Shares in the When-Issued Markets comply with the Early Warning Requirements as if the number of outstanding IOCo Shares for the purposes of calculating the applicable ownership thresholds under the Early Warning Requirements is determined by reference to the number of IOCo Shares that will be outstanding upon completion of the Arrangement, in accordance with the terms of the Arrangement.

Reporting Issuer Status

31. Although it is expected that Cenovus will become a reporting issuer on the Effective Date by virtue of the definition of "reporting issuer" in the Legislation, IOCo will not, pursuant to such definition, be a reporting issuer in any capacity prior thereto in the absence of Deemed RI Status.

32. To ensure that MI 62-104 and Part XX of the OSA apply to IOCo and trades of the IOCo Shares in the When-Issued Markets, in a manner that provides the public with meaningful advance notice of such trades, it is necessary that IOCo be declared to be a reporting issuer in each of the Jurisdictions.

33. In the event that the Arrangement does not become effective for any reason, the Filer will promptly file an application with the Coordinated Exemptive Relief Decision Makers for an order or decision deeming IOCo to have ceased to be a reporting issuer or the equivalent under the Legislation.

34. In the event that the Filer determines not to proceed with the Arrangement, it will promptly issue a news release to that effect.

Decision

Each of the principal regulator, the securities regulatory authority or regulator in Ontario and the Coordinated Exemptive Relief Decision Makers is satisfied that the decision meets the test set out in the Legislation for the relevant regulator or securities regulatory authority to make the decision.

The decision of the Dual Exemption Decision Makers under the Dual Legislation is that:

1. the Continuous Disclosure Relief Sought is granted provided that:

    (a) IOCo does not issue any securities and does not have any securities outstanding, other than securities necessary and incidental to the Arrangement;

    (b) the Filer issues a news release and files a material change report for each material change in the affairs of IOCo that is not also a material change in the affairs of the Filer; and

    (c) the Continuous Disclosure Relief will expire upon the earlier of:

        (i) the Effective Date; and

        (ii) the issuance by the Filer of a news release indicating that it is no longer proceeding with the Arrangement; and

2. the Prospectus and Registration Relief Sought in respect of trading in the When-Issued Markets is granted, other than in respect of any trade that is a control distribution (as defined in National Instrument 45-102 Resale of Securities), provided that:

    (a) in the event that the seller in a trade in respect of an IOCo Share or New EnCana Share is an insider or officer of EnCana, he or she has no reasonable grounds to believe that EnCana is in default of any requirement of the Legislation;

    (b) no unusual effort is made to prepare the market or create a demand for IOCo Shares or New EnCana Shares;

    (c) no extraordinary commission or consideration is paid to a person or company in respect of such trading;

    (d) the Information Circular has been available to the public on SEDAR for a period of not less than three hours prior to the commencement of trading in the When-Issued Markets;

(e) prior to the commencement of trading in the When-Issued Markets on the TSX or NYSE and in accordance with the time periods determined by the TSX or NYSE, respectively:

(i) the TSX or NYSE, as the case may be, shall have announced the creation of the When-Issued Markets, advising as to the symbols under which the IOCo Shares and New EnCana Shares will trade in the When-Issued Markets and the terms and conditions to settlement (an Announcement); and

(ii) as soon as practicable after the first Announcement, EnCana has disseminated by news release full information concerning the number of IOCo Shares that will be outstanding upon the completion of the Arrangement, the circumstances in which the Early Warning Requirements, as contemplated in this decision, will apply to the acquisition of IOCo Shares in the When-Issued Markets, advising as to the symbols under which the IOCo Shares will trade in the When-Issued Markets and the terms and conditions to settlement; and

(f) any other trade of IOCo Shares or New EnCana Shares made before the Effective Date (other than trades that may be made for the purposes of the Arrangement that are not trades to the public) shall be deemed to be a distribution or primary distribution to the public under the legislation of the jurisdiction or jurisdictions where the trade takes place.

The decision of the Coordinated Exemptive Relief Decision Makers under the Legislation is as follows:

1. the Deemed RI Status is granted provided that any trade in the When-Issued Markets that would cause the acquiror to acquire IOCo Shares in excess of 10% of the outstanding IOCo Shares will be a distribution unless the acquiror complies with MI 62-104 and Part XX of the OSA as if, for the purposes of section 5.2 of MI 62-104 and section 102.1 of Part XX of the OSA, the number of outstanding securities of IOCo is determined by reference to the number of IOCo Shares that will be outstanding upon completion of the Arrangement, in accordance with the terms of the Arrangement; and

2. the Confidentiality Relief Sought is granted.

“Glenda A. Campbell, QC”
Alberta Securities Commission

”Stephen R. Murison’
Alberta Securities Commission

2.1.10 BPO Properties Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – decision exempting the Filer from the requirement in s. 3.1 of National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency that financial statements be prepared in accordance with Canadian GAAP for so long as the Filer prepares its financial statements in accordance with IFRS-IASB - Filer has assessed the readiness of its staff, board, audit committee, auditors and investors – Filer must provide specified disclosure regarding early adoption of IFRS-IASB in a news release to be disseminated within seven days of the decision -- if the Filer files interim financial statements prepared in accordance with Canadian GAAP in the year it adopts IFRS-IASB, those interim statements must be restated using IFRS-IASB.

Applicable Legislative Provisions

National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency , ss. 3.1, 9.1.

November 5, 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
BPO PROPERTIES LTD. (THE FILER)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the Legislation) exempting the Filer from the requirement in section 3.1 of National Instrument 52-107 — *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107) that financial statements be prepared in accordance with Canadian GAAP for financial periods beginning on or after January 1, 2010 (the Exemption Sought), for so long as the Filer prepares its financial statements in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board (IFRS-IASB).

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, Newfoundland and Labrador, the Northwest Territories, Yukon and Nunavut (the Passport Jurisdictions).

Interpretation

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

Representations

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

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act* pursuant to articles of incorporation dated February 23, 1996. The head office of the Filer is located at Brookfield Place, 181 Bay Street, Suite 330, P.O. Box 762, Toronto, Ontario M5J 2T3.

2. The Filer is a reporting issuer or equivalent in the Jurisdiction and each of the Passport Jurisdictions. The Filer is not, to its knowledge, in default of its reporting issuer obligations under the Legislation or the securities legislation of the Passport Jurisdictions. The Filer's securities are listed on the Toronto Stock Exchange.

3. The Filer is a Canadian company that invests in real estate, focusing on the ownership and value enhancement of premier office properties. The current property portfolio is comprised of interests in 28 commercial properties totaling 18.4 million square feet and five development sites totaling 5.4 million square feet. Landmark properties include First Canadian Place in Toronto and Bankers Hall in Calgary.

4. As of September 1, 2009, the Filer's parent company, Brookfield Properties Corporation (BPC), indirectly beneficially owned 3,733,655 common shares and 21,678,532 non-voting equity shares of the Filer, representing approximately 56% and 100%, respectively, of the outstanding shares of each such class, which represents, in the aggregate, approximately 90% of the Filer's common equity. BPC is a reporting issuer or equivalent in the Jurisdiction and each of the Passport Jurisdictions other than the Northwest Territories, Yukon and Nunavut. BPC's securities

are listed on the Toronto Stock Exchange and the New York Stock Exchange. BPC is also a registrant with the United States Securities and Exchange Commission (SEC) and a foreign private issuer in the United States.

5. BPC has received an exemption from the requirement in section 3.1 of NI 52-107 that financial statements be prepared in accordance with Canadian GAAP for financial periods beginning on or after January 1, 2010, for so long as BPC prepares its financial statements in accordance with IFRS-IASB. BPC intends to begin preparing its financial statements in accordance with IFRS-IASB for periods beginning on or after January 1, 2010.

6. As of September 1, 2009, BPC's parent company, Brookfield Asset Management Inc. (BAM), directly and indirectly, owned 249,362,561 common shares and 13,796,870 Class A Redeemable Voting preferred shares of BPC, representing approximately 50% and 97%, respectively, of the outstanding shares of each such class. BAM is a reporting issuer or equivalent in the Jurisdiction and each of the Passport Jurisdictions. BAM's securities are listed on the Toronto Stock Exchange, the New York Stock Exchange and the Euronext Amsterdam Exchange. BAM is also a registrant with the SEC and a foreign private issuer in the United States.

7. BAM has received an exemption from the requirement in section 3.1 of NI 52-107 that financial statements be prepared in accordance with Canadian GAAP for financial periods beginning on or after January 1, 2009, for so long as BAM prepares its financial statements in accordance with IFRS-IASB. BAM intends to begin preparing its financial statements in accordance with IFRS-IASB for periods beginning on or after January 1, 2010.

8. The Canadian Accounting Standards Board has confirmed that publicly accountable enterprises will be required to prepare their financial statements in accordance with IFRS-IASB for interim and annual financial statements relating to fiscal years beginning on or after January 1, 2011.

9. NI 52-107 sets out acceptable accounting principles for financial reporting under the Legislation by domestic issuers, foreign issuers, registrants and other market participants. Under NI 52-107, a domestic issuer must use Canadian GAAP with the exception that an SEC registrant may use US GAAP. Under NI 52-107, only foreign issuers may use IFRS-IASB.

10. The Filer has not previously prepared financial statements that contain an explicit and unreserved statement of compliance with IFRS-IASB. In CSA Staff Notice 52-321 – *Early Adoption of International Financial Reporting Standards, Use of US GAAP and Reference to IFRS-IASB*, staff of the Canadian Securities Administrators recognized that some issuers may wish to prepare their financial statements in accordance with IFRS-IASB for periods beginning prior to January 1, 2011 and indicated that staff were prepared to recommend exemptive relief on a case by case basis to permit a domestic issuer to do so, despite section 3.1 of NI 52-107.

11. Subject to obtaining the Exemption Sought, the Filer intends to adopt IFRS-IASB effective January 1, 2010 for its financial statements for periods beginning on and after January 1, 2010.

12. The Filer believes that the adoption of IFRS-IASB for financial periods beginning on or after January 1, 2010 would be in its best interests and the best interests of users of its financial information for a number of reasons, including the following:

    a. it will align the basis of accounting under which the Filer prepares its financial statements with the basis of accounting under which BPC and BAM intend to prepare their respective financial statements for financial periods beginning on or after January 1, 2010;

    b. it will result in financial information that will more accurately represent the Filer's results of operations and financial position in particular because IFRS-IASB's greater use of fair value in conjunction with the Filer being an owner, operator and manager of long-lived assets that predominately appreciate over time rather than depreciate systematically will result in the carrying value of the Filer's assets and its tax balances more closely aligning to their economic values; and

    c. it will reduce the administrative burden and risk involved in preparing its consolidated financial statements and reporting to BPC if both entities' financial statements are prepared in accordance with IFRS-IASB.

13. The Filer is implementing a comprehensive IFRS-IASB conversion plan.

14. The Filer has carefully assessed the readiness of its staff, board of directors, audit committee, auditor, investors and other market participants to address the Filer's adoption of IFRS-IASB for financial periods beginning on January 1, 2010 and has concluded that they will be adequately prepared to address the Filer's adoption of IFRS-IASB for periods beginning on or after January 1, 2010.

15. The Filer has considered the implications of adopting IFRS-IASB for financial periods beginning before January 1, 2011 on its obligations under securities legislation, including, but not limited to, those relating to CEO and CFO certifications, business acquisition reports, offering documents and previously released material forward-looking information.

16. The Filer will disseminate a news release not more than seven days after the date of this decision document disclosing relevant information about its conversion to IFRS-IASB as contemplated by CSA Staff Notice 52-320 *Disclosure of Expected Changes in Accounting Policies Relating to Changeover to International Financial Reporting Standards*, including:

    a. the key elements and timing of its conversion plan to adopt IFRS-IASB;

    b. the exemptions available under IFRS 1 *First-time Adoption of International Financial Reporting Standards* that the Filer expects to apply in preparing financial statements in accordance with IFRS-IASB;

    c. the major identified differences between the Filer's current accounting policies and those the Filer is required or expects to apply in preparing financial statements in accordance with IFRS-IASB; and

    d. the impact of adopting IFRS-IASB on the key line items in the Filer's interim financial statements for the period ended June 30, 2009.

17. The Filer will update the information set out in the news release in its subsequent management's discussion and analysis, including, to the extent the Filer has quantified such information, quantitative information regarding the impact of adopting IFRS-IASB on the key line items in the Filer's financial statements.

Decision

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

19. The decision of the principal regulator under the Legislation is that the Exemption Sought is granted, subject to all of the following conditions:

    a. for so long as the Filer prepares its financial statements for financial periods beginning on or after January 1, 2010 in accordance with IFRS-IASB;

    b. provided that the Filers provides all of the communication as described and in the manner set out in paragraphs 16 and 17;

    c. provided that if the Filer files interim financial statements prepared in accordance with Canadian GAAP for one or more interim periods in the year that the Filer adopts IFRS-IASB, the Filer will restate and refile those interim financial statements originally prepared in accordance with Canadian GAAP in accordance with IFRS-IASB, together with the restated interim management's discussion and analysis as well as the certificates required by National Instrument 52-109 – Certification of Disclosure in Issuers' Annual and Interim Filings; and

    d. provided that if the Filer files its first IFRS-IASB financial statements in an interim period, those interim financial statements will present all financial statements with equal prominence, including the opening statement of financial position at the date of transition to IFRS-IASB.

"Jo-Anne Matear"
Assistant Manager, Corporate Finance

2.1.11 Richardson Partners Financial Limited and GMP Private Client L.P.

Headnote

Multilateral Instrument 11-102 Passport System – National Policy 11-203 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 in accordance with section 3.4 of Companion Policy 33-109CP to NI 33-109.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System.
National Instrument 33-109 Registraion Information and Companion Policy 33-109CP.
National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.

November 10, 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
RICHARDSON PARTNERS FINANCIAL LIMITED
(RPFL) AND GMP PRIVATE CLIENT L.P. (GMP)
(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 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, Richardson GMP Limited (as described below) (the **Bulk Transfer**), on or about November 12, 2009 in accordance with section 3.4 of the Companion Policy to NI 33-109, from the following requirements (the **Exemption Sought**):

1. to submit a notice regarding the termination of each employment, partner, or agency relationship under section 4.2 of NI 33-109;

2. to submit a registration application or a reinstatement notice for each individual seeking be a registered individual under section 2.2 or 2.3 of NI 33-109;

3. to submit a Form 33-109F4 or Form 33-109F7 for each permitted individual under section 2.5 of NI 33-109;

4. to notify the regulator of a change to the business location information in Form 33-109F3 under section 3.2 of NI 33-109.

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 subsection 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 (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:

GMP

1. GMP is a limited partnership established pursuant to the laws of Manitoba and has a head office located in Toronto, Ontario.

2. GMP carries on a wealth management business in British Columbia, Alberta, Ontario, and Quebec.

3. GMP is registered as an investment dealer, or equivalent, in each of the Jurisdictions. GMP is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**).

4. GMP is not in default of the securities legislation in any of the Jurisdictions.

RPFL

5. RPFL is a corporation incorporated pursuant to the laws of Canada and has a head office located in Manitoba.

6. RPFL carries on a wealth management business in British Columbia, Alberta, Saskatchewan,

Manitoba, Ontario, Quebec and Prince Edward Island.

7. RPFL is registered as an investment dealer, or equivalent, in each of the Jurisdictions. RPFL is a member of IIROC.

8. RPFL is not in default of the securities legislation in any of the Jurisdictions.

Richardson GMP Limited

9. On or about November 12, 2009, GMP and RPFL will combine the wealth management businesses of GMP and RPFL and form a successor company Richardson GMP Limited (the **Transaction**).

10. In order to effect the Transaction, on the day prior to the completion of the Transaction (on or about November 11, 2009), GMP intends to convert to a corporation and will continue as GMP Corp. (and in connection therewith, transfer all of its assets and liabilities to GMP Corp.) (the **Conversion**).

11. On the day following the completion of the Conversion, all of the current registerable activities of RPFL will become the responsibility of GMP Corp. GMP Corp. will assume all of the existing registrations and approvals for all of the registered individuals and all of the locations of RPFL.

12. Thereafter, GMP Corp., RPFL and Richardson Partners Financial Holdings Limited will amalgamate to form Richardson GMP Limited. 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 Richardson GMP Limited should be able to trade on behalf of such clients immediately after the Transaction.

13. Richardson Partners Financial Holdings Limited, being the sole shareholder of RPFL, is not currently registered in any of the Jursidictions.

14. Richardson GMP Limited will be registered in the same categories of registration as GMP and RPFL, together, were registered immediately prior to the Transaction in the respective Jurisdictions, and will be subject to, and will comply with, all applicable securities laws.

15. Richardson GMP Limited will carry on the same business of GMP and RPFL in substantially the same manner with essentially the same personnel.

16. The Exemption Sought will not be contrary to the public interest and will have no negative consequences on the ability of Richardson GMP Limited to comply with all applicable regulatory requirements or the ability to satisfy any obligations in respect of the clients of the Filers.

17. Given the significant number of registered individuals of GMP and RPFL, it would be extremely difficult to transfer each individual to Richardson GMP Limited in accordance with the requirements of NI 33-109 if the Exemption Sought is not granted.

18. The intention to complete the Transaction was announced on July 23, 2009 by a press release issued by GMP Capital Inc. (**GMP Capital**), the indirect parent corporation of GMP. A material change report was also filed by GMP Capital following the announcement. In addition, each of GMP and RPFL will include in the October statements to be mailed to clients notice that the Transaction will be completed in November, a statement of policies of Richardson GMP Limited and disclosure of the related issuers of Richardson GMP Limited. Further, GMP Capital will also issue a press release, and file a related material change report, announcing the completion of the Transaction following closing.

19. The head office of Richardson GMP Limited will be 145 King Street West, Suite 300, Toronto, Ontario, M5H 1J8. Telephone 416.943.6696. Fax 416.943.6184.

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.

"Erez Blumberger"
Manager, Registrant Regulation
Ontario Securities Commission

2.2 Orders

2.2.1 IGM Financial Inc. – s. 104(2)(c)

Headnote

Clause 104(2)(c) – Issuer bid – relief from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act – Issuer proposes to purchase, at a discounted purchase price, up to 1,000,000 of its common shares from one of its shareholders and/or such shareholder's 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).

October 31, 2009

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

AND

IN THE MATTER OF
IGM FINANCIAL INC.

ORDER
(Clause 104(2)(c))

UPON the application (the "**Application**") of IGM Financial Inc. (the "**Issuer**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to Section 104(2)(c) of the *Securities Act* (Ontario) (the "**Act**") exempting the Issuer from the requirements of Sections 94 to 94.8 and 97 to 98.7 of the Act (the "**Issuer Bid Requirements**") in connection with the proposed purchase or purchases (the "**Proposed Purchases**") of up to 1,000,000 (the "**Subject Shares**") of the Issuer's common shares (the "**Shares**") from Royal Bank of Canada and/or its 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 *Canada Business Corporations Act*.

2. The head office of the Issuer is located at 447 Portage Avenue, Winnipeg, Manitoba, R3C 3B6.

3. The Issuer is a reporting issuer in each of the provinces and territories of Canada and the Shares are listed for trading on the Toronto Stock Exchange (the "**TSX**"). 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 at June 30, 2009, the authorized common share capital of the Issuer consisted of an unlimited number of Shares, of which 264,051,238 were issued and outstanding.

5. Pursuant to a "Notice of Intention to Make a Normal Course Issuer Bid" filed with the TSX and dated March 18, 2009 (the "**Notice**"), the Issuer is permitted to make normal course issuer bid (the "**Bid**") purchases (each a "**Bid Purchase**") to a maximum of 13,123,814 Shares. To date, 343,400 Shares have been purchased under the Bid.

6. 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.

7. The Issuer and the Selling Shareholders intend to enter into one or more agreements of purchase and sale (the "**Agreement**") pursuant to which the Issuer will agree to acquire, by one or more trades occurring prior to December 31, 2009, the Subject Shares from the Selling Shareholders for a purchase price or 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.

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

9. 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.

10. But for the fact that the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Shares at the time of the trade, the Issuer could otherwise acquire the Subject Shares as a "block purchase" (a "**Block**

Purchase") in accordance with Section 629(l)7 of Part VI of the TSX Company Manual (the "**TSX Rules**") and Section 101.2(1) of the Act.

11. 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**").

12. 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*.

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

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

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

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

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

18. The Selling Shareholder has advised the Issuer that they do not directly or indirectly own more than 5% of the issued and outstanding Shares;

19. To the knowledge of the Issuer after reasonable inquiry, the Selling Shareholder owns the Subject Shares and the Subject Shares were not acquired in the anticipation of resale pursuant to the Proposed Purchases.

20. To the best of the Issuer's knowledge, as of October 2, 2009, the public float for the Shares consisted of approximately 40.4% for purposes of the TSX Rules.

AND UPON the Commission being satisfied that it would not be prejudicial to the public interest for the Commission to grant the requested exemption;

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

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

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

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

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

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

"Carol S. Perry"
Commissioner
Ontario Securities Commission

"Mary Condon"
Commissioner
Ontario Securities Commission

2.2.2 Adrian Samuel Leemhuis et al. – s. 127(8)

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

AND

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

**ORDER
(Subsection 127(8))**

WHEREAS on April 22, 2008, the Ontario Securities Commission (the "Commission") issued a Temporary Order pursuant to subsection 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that all trading in securities of and all trading of securities by Future Growth Group Inc., Future Growth Fund Limited, Future Growth Global Fund Limited, Future Growth Market Neutral Fund Limited, and Future Growth World Fund ("The Funds") shall cease, that all trading of securities by Adrian Leemhuis shall cease and that any exemptions contained in Ontario securities law do not apply to these respondents;

AND WHEREAS on May 1, 2008, the Commission issued a Temporary Order pursuant to subsection 127(5) of the Act that all trading in securities by ASL Direct Inc. ("ASL") shall cease and that any exemptions contained in Ontario securities law do not apply to ASL;

AND WHEREAS on May 2, 2008, the Commission issued an Amended Notice of Hearing to consider the extension of the Temporary Orders dated April 22, 2008 and May 1, 2008 (collectively the "Temporary Orders") to be held on May 6, 2008 at 2:30 p.m.;

AND WHEREAS on May 6, 2008 the Commission held a hearing and counsel for Staff and counsel for the Respondents attended before the Commission and confirmed that there was no objection to adjourning until May 16, 2008, and the Commission ordered that pursuant to subsection 127(8) the Temporary Orders be extended to May 16, 2008 and the hearing to consider the extension of these orders be adjourned to May 16, 2008;

AND WHEREAS the Commission held a hearing on May 16, 2008 and counsel for Staff and counsel for the Respondents attended before the Commission and at that time the Commission made an order continuing the Temporary Orders until May 26, 2008;

AND WHEREAS the Commission held a hearing on May 26, 2008 and counsel for Staff and counsel for the Respondents attended before the Commission and the Commission made an order continuing the Temporary Orders until June 17, 2008;

AND WHEREAS on June 16, 2008 the Commission made an Order that: continued the Temporary Orders until July 10, 2008; adjourned the hearing of the matter until July 9, 2008; and, varied the Temporary Order made April 22, 2008 to permit trading of the securities held by The Funds by Marvin & Palmer;

AND WHEREAS the Commission held a hearing on July 9, 2008 and counsel for Staff and counsel for the Respondents attended before the Commission and the Commission made an order continuing the Temporary Orders, as varied until October 28, 2008;

AND WHEREAS the Commission held a hearing on October 24, 2008 and counsel for Staff and counsel for the Respondents attended before the Commission and the Commission made an order continuing the Temporary Orders, as varied until December 1, 2008;

AND WHEREAS, pursuant to an Order of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial Court) dated November 4, 2008, KPMG Inc. was appointed as Receiver and Manager over the property and affairs of ASL;

AND WHEREAS the Commission held a hearing on December 1, 2008 and the Commission was advised that counsel for Staff and counsel for KPMG Inc., in its capacity as Receiver and Manager of ASL, consented to the making of the order with respect to ASL and counsel for the remaining Respondents did not oppose the making of this Temporary Order; the Commission made an order continuing the Temporary Orders, as varied until March 3, 2009;

AND WHEREAS the Commission held a hearing on March 3, 2009 and counsel for Staff and counsel for the Respondents attended before the Commission and, the Respondents having confirmed that they were not objecting to the Order, the Commission made an order:

1) discontinuing the Temporary Order against ASL dated May 1, 2008; and

2) continuing the Temporary Order made on April 22, 2008, as varied, by the Order of June 16, 2008, until June 3, 2009;

AND WHEREAS the Commission held a hearing on June 3, 2009 and counsel for Staff and counsel for the Respondents attended before the Commission and the Commission made an order:

1) varying the Temporary Order made on April 22, 2008, as varied to permit limited personal trading by Adrian Leemhuis; and

2) continuing the Temporary Order made on April 22, 2008, as varied, until September 30, 2009;

AND WHEREAS the Respondents have provided information in the context of Staff's ongoing investigation;

AND WHEREAS Staff and the Respondents agreed not to proceed to a contested hearing before the Commission pursuant to subsection 127(7) and filed consent with the Commission to an extension of the Temporary Order, as varied, until November 7, 2009;

AND WHEREAS the Commission ordered on September 29, 2009 that the Temporary Order dated April 22, 2008, as varied, be extended to November 7, 2009 and that the hearing to consider the extension of the Temporary Order, as varied be adjourned to November 6, 2009;

AND WHEREAS Staff filed a Statement of Allegations dated May 8, 2008 in support of its Amended Notice of Hearing to extend the Temporary Order dated April 22, 2008, as varied;

AND WHEREAS Staff withdraws the Statement of Allegations dated May 8, 2008;

AND WHEREAS Staff request an Order that the Temporary Order dated April 22, 2008, as varied, be terminated;

AND WHEREAS the Respondents consent to the requested Order;

IT IS HEREBY ORDERED that the Temporary Order dated April 22, 2008, as varied, is terminated.

DATED at Toronto this 6th day of November, 2009.

"David L. Knight"

2.2.3 Maple Leaf Investment Fund Corp. et al. – s. 127(8)

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

AND

IN THE MATTER OF
MAPLE LEAF INVESTMENT FUND CORP.
and JOE HENRY CHAU
(aka: HENRY JOE CHAU, SHUNG KAI CHOW and HENRY SHUNG KAI CHOW)

ORDER
(Section 127(8))

WHEREAS on May 5, 2009, the Ontario Securities Commission (the "Commission") made an order pursuant to sections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, in respect of Maple Leaf Investment Fund Corp. and Joe Henry Chau (aka: Henry Joe Chau, Shung Kai Chow and Henry Shung Kai Chow) (collectively, the "Respondents") that all trading in securities by the Respondents cease, and that any exemptions contained in Ontario securities law do not apply to the Respondents (the "Temporary Order");

AND WHEREAS a hearing was held on May 15, 2009 to consider the extension of the Temporary Order and at that time the Commission considered the evidence filed by Staff and the submissions of Staff and of the Respondents;

AND WHEREAS Maple Leaf Investment Fund Corp. and Joe Henry Chau consented to a continuation of the Temporary Order until November 19, 2009;

AND WHEREAS on May 15, 2009, the Commission ordered, pursuant to subsection 127(8) of the Act, that the Temporary Order as against the Respondents be extended until November 19, 2009;

AND WHEREAS Staff request an order of the Commission continuing the Temporary Order as against the Respondents until February 19, 2010.

AND WHEREAS Maple Leaf Investment Fund Corp. and Joe Henry Chau consent to an order continuing the Temporary Order until February 19, 2010;

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

IT IS ORDERED THAT:

1. in respect of the Respondents, the Temporary Order is continued until February 19 2010 or until further order of the Commission; and

2. this matter shall return before the Commission on February 17, 2010 at 10:00 a.m. or such other time as notified by the Secretary's Office.

DATED at Toronto this 10th day of November, 2009.

"David L. Knight"

2.2.4 New Life Capital Corp. et al. – ss. 1.4 and 5.4 of the Rules of Practice (1997), 20 OSCB 1947

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

AND

IN THE MATTER OF
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

ORDER
(Rules 1.4 and 5.4 of the
Rules of Practice (1997), 20 O.S.C.B. 1947)

WHEREAS Gowling Lafleur Henderson LLP is counsel of record for the respondents New Life Capital Corp., New Life Capital Investments Inc., New Life Capital Advantage Inc. and New Life Capital Strategies Inc. (collectively "New Life");

AND WHEREAS on October 15, 2009, Gowling Lafleur Henderson brought a written motion ("the Motion") to the Ontario Securities Commission (the "Commission") pursuant to Rules 1.4 and 5.4 of the Commission's *Rules of Practice* (1997), 20 O.S.C.B. 1947 for leave to withdraw as counsel of record for New Life;

AND WHEREAS Gowling Lafleur Henderson LLP submits that leave to withdraw should be granted on the basis that Gowling Lafleur Henderson LLP is no longer able to obtain instructions or payment from New Life or L. Jeffrey Pogachar and Paola Lombardi (the "Principals");

AND WHEREAS the Commission considers that Gowling LaFleur Henderson LLP has made reasonable efforts to contact New Life and the Principals;

AND WHEREAS the Principals are represented by independent counsel;

AND WHEREAS KPMG Inc. has been appointed Receiver and Manager of the New Life entities;

AND WHEREAS the Commission considers that New Life and the Principals have been properly served with the Motion;

AND WHEREAS Staff of the Commission does not oppose the Motion;

IT IS ORDERED THAT leave for the withdrawal of Gowling Lafleur Henderson LLP as counsel of record to the respondent New Life is hereby granted.

DATED at Toronto on this 11th day of November, 2009.

"James D. Carnwath"

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
Energy Conversion Technologies Inc.	05 Nov 09	17 Nov 09		
Hegco Canada Inc.	05 Nov 09	17 Nov 09		
Pixman Nomadic Media Inc.	09 Nov 09	20 Nov 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
Garrison International Ltd.	29 Oct 09	10 Nov 09	10 Nov 09		
Toxin Alert Inc.	06 Nov 09	18 Nov 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
Sprylogics International Corp.	02 June 09	15 June 09	15 June 09		
Strategic Resource Acquisition Corporation	23 Sept 09	05 Oct 09	05 Oct 09		
Coalcorp Mining Inc.	07 Oct 09	19 Oct 09	19 Oct 09		
Garrison International Ltd.	29 Oct 09	10 Nov 09	10 Nov 09		
Toxin Alert Inc.	06 Nov 09	18 Nov 09			

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Chapter 5

Rules and Policies

5.1.1 CSA Notice of Amendments to NI 21-101 Marketplace Operation and NI 23-101 Trading Rules

CANADIAN SECURITIES ADMINISTRATORS
NOTICE OF AMENDMENTS TO
NATIONAL INSTRUMENT 21-101 MARKETPLACE OPERATION AND
NATIONAL INSTRUMENT 23-101 TRADING RULES

I. INTRODUCTION

The Canadian Securities Administrators (the CSA or we) have made amendments (Amendments) to the following instruments:

1. National Instrument 21-101 *Marketplace Operation* (NI 21-101) and related Companion Policy 21-101CP (21-101 CP); and

2. National Instrument 23-101 *Trading Rules* (NI 23-101) and related Companion Policy 23-101CP (23-101 CP).

The key part of the Amendments introduces a framework to require all visible, immediately accessible, better-priced limit orders to be filled before other limit orders at inferior prices, regardless of the marketplace where the order is entered (Order Protection Rule or trade-through rule). Other parts of the Amendments include a prohibition on intentionally locking or crossing markets, and changes to marketplace technology requirements, clock synchronization, and information processor requirements.

We note that the best execution reporting requirements for marketplaces and dealers are not going forward at this time. We intend to republish these proposed amendments and when we do, we will include a summary of the comments received in response to our questions related to these proposed requirements and our responses. We also note that we have replaced the term “trade-through protection” with “order protection” but have not changed the underlying concept.

Subject to Ministerial approval requirements, the Amendments, other than those relating to the Order Protection Rule (i.e. other than changes to Part 6 of NI 23-101), will come into force on January 28, 2010 in all CSA jurisdictions. The Order Protection Rule will come into effect on February 1, 2011. Additional information regarding the implementation or adoption of the instruments in each province or territory is included in Appendix A to this Notice.

In Ontario, the Amendments were delivered by the Ontario Securities Commission (OSC) to the Minister of Finance for approval on November 13, 2009. We note that a blackline indicating the Amendments may be found on various commission websites.

Until the Amendments relating to the Order Protection Rule come into force, we expect participants, as defined in the Universal Market Integrity Rules (UMIR) of the Investment Industry Regulatory Organization of Canada (IIROC) to comply with UMIR 5.2 *Best Price Obligation* (UMIR Best Price Rule).

II. BACKGROUND

On July 22, 2005, the CSA published Discussion Paper 23-403 *Market Structure Developments and Trade-through Obligations* (2005 Discussion Paper).[1] The purpose of the 2005 Discussion Paper was to discuss evolving market developments and the consequential implications for the Canadian capital market, and in particular the obligation to avoid trade-throughs (order protection).

The 2005 Discussion Paper asked a number of questions to get feedback on what values and rules were important to Canadian market participants. Because of the importance of the issues relating to order protection and their impact on the Canadian capital market, the CSA held a public forum on October 14, 2005 to permit all interested parties to participate in discussions relating to order protection.[2]

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1 See (2005) 28 OSCB 6333 for background.

2 The transcript of the trade-through forum is published on the OSC website at: http://www.osc.gov.on.ca/documents/en/Securities-Category2/rule_20051014_23-403_trade-through-forum.

The CSA received feedback on a number of issues identified in the 2005 Discussion Paper where there was often no clear majority opinion and the views on either side of a given issue were split. However, the majority of commenters stated that they believed that all visible orders at a better price should trade before inferior-priced orders.

On April 20, 2007, the CSA along with Market Regulation Services Inc. or RS (now IIROC) published the *Joint Notice on Trade-Through, Best Execution and Access to Marketplaces* (Joint Notice).[3] The Joint Notice outlined a proposal for an order protection regime.[4]

On October 17, 2008, the CSA published proposed amendments to NI 21-101 and NI 23-101 and the related companion policies (collectively, the 2008 Proposed Amendments).[5] The CSA invited public comment on all aspects of the 2008 Proposed Amendments. Eighteen comment letters were received. We have considered the comments received and thank all commenters for their submissions. A list of those who submitted comments, as well as a summary of comments and our responses to them, are attached as Appendix B to this Notice.

In February 2009 the CSA formed an industry implementation committee (Implementation Committee) made up of interested parties representing marketplaces, dealers, vendors and buy side investors to assist in identifying and providing recommendations to the CSA and, where appropriate, to IIROC with respect to operational issues associated with the Order Protection Rule. Over 30 industry members have participated in this open committee. As part of its work, the Implementation Committee created sub-committees to discuss and make recommendations in five areas it believed could result in material changes to the rule. The recommendations of each sub-committee were presented to the Implementation Committee who then provided a report to the CSA. The Report of the Implementation Committee Regarding Potential Material Changes to the Proposed Trade-through Protection Rule (Implementation Committee Report) is attached as Appendix C to this Notice. We would like to thank all Implementation Committee members for their time and valuable contribution. We would especially like to thank Judith Robertson, Chair of the Implementation Committee.

III. ORDER PROTECTION RULE

1. What is Order Protection?

Order protection or trade-through protection, ensures that all immediately accessible, visible, better-priced limit orders are executed before inferior-priced limit orders and are not traded through. It is an obligation owed by all marketplace participants to the market as a whole. Many commenters on the 2008 Proposed Amendments indicated that they believe in the importance of an order protection obligation. Unlike the obligation for best execution, the obligation not to trade-through is not a fiduciary duty and cannot be waived.[6] Order protection applies whenever two or more marketplaces with protected orders are open for trading.

2. Why is Order Protection Important?

In a multiple marketplace environment, the assurance that better-priced orders will be filled ahead of inferior-priced orders is essential to maintain investor confidence and fairness in the market. Order protection is especially important to ensure the future participation of retail investors that have an historical expectation of such protection. Without such protection, there may not be sufficient incentive to contribute to the price discovery process because investors who disclose their intentions are not assured of the benefit of having their better-priced orders filled while others are able to use this information in their trading decisions. In addition, investors, including retail investors, may lose confidence that their orders are being treated fairly. This in turn, may contribute to the perception that an unlevel playing field exists providing certain participants with advantages over others. Such a perception may ultimately result in the removal of investors from the market.

The CSA believe that it is important that participants of all kinds, especially retail investors, should have confidence in the fairness and integrity of the Canadian market. They should be confident that when they enter an order on a marketplace their order will be treated fairly irrespective of the sophistication of the participant or the size of the order. Such confidence encourages greater participation from all types of investors which in turn increases liquidity in the market and promotes a more efficient price discovery process. As a result, the CSA believe that order protection is an essential component to the integrity of the Canadian market.

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3 (2007) 30 OSCB (Supp-3).

4 The Joint Notice also included proposed rule changes regarding access to marketplaces and proposed rule changes regarding best execution. The CSA published the amendments to best execution in their final form on June 20, 2008, and again on September 5, 2008, to be effective on September 12, 2008. We intend to re-examine the proposed rule amendments relating to direct market access and republish them for comment in 2010.

5 (2008) 31 OSCB 10033.

6 For a discussion about trade-through and best execution, please see the notice that accompanied the 2008 Proposed Amendments (2008) 31 OSCB at p. 10039.

3. The Current Regulatory Regime

Currently in Canada, order protection is addressed in IIROC's UMIR Best Price Rule. The UMIR Best Price Rule requires dealers when trading on marketplaces in Canada to use reasonable efforts to obtain the best price available for their trades. Under the UMIR Best Price Rule, dealers are required to introduce and comply with policies and procedures outlining how they will meet their best price obligations. There are a number of exemptions available and the factors to be considered in determining if reasonable efforts have been used are broadly outlined.[7]

The UMIR Best Price Rule currently applies only to dealers, which results in different requirements for dealers and non-dealers who are subscribers of alternative trading systems (ATSs). In addition, the rule currently does not provide the necessary infrastructure to effectively prevent trade-throughs. For example, it does not provide for a framework that would allow marketplace participants to simultaneously route orders to more than one marketplace.

IIROC will be revoking the UMIR Best Price Rule when the Order Protection Rule comes into effect. For details, please see IIROC Notice 09-0328 *Provisions Respecting Implementation of the Order Protection Rule*. Until then, the CSA expects participants to comply with the UMIR Best Price Rule.

4. The Proposed Order Protection Rule

This section outlines the key parts of the Order Protection Rule.[8] It identifies where changes have been made and describes the view of the Implementation Committee and our responses.

(a) Key Aspects of the Order Protection Rule

(i) Marketplace Obligation

The Order Protection Rule requires each marketplace to establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs on that marketplace. Marketplaces are required to regularly review and monitor the effectiveness of their policies and procedures and act promptly to remedy any identified deficiencies. The purpose of this approach is to require marketplaces to eliminate trade-throughs that can reasonably be prevented, but also provide them with flexibility about how to do so. Marketplaces may choose to implement the obligation in various ways including, for example, voluntarily establishing direct linkages to other marketplaces, rejecting orders, re-pricing orders, or designing specific trade execution algorithms. However, marketplaces are not able to avoid their obligations by establishing policies and procedures that require marketplace participants to take steps to reasonably prevent trade-throughs.

As part of the policies and procedures required under the Order Protection Rule, marketplaces are required to have policies and procedures relating to their automatic functionality and how they will handle failures, malfunctions or material delays experienced by other marketplaces. In addition, a marketplace is required to immediately inform all regulation services providers, any information processor (or any information vendor if no information processor exists), its marketplace participants, and all other marketplaces when it experiences a failure, malfunction or material delay of its systems or equipment or its ability to disseminate order and trade data.[9] It is also required to have policies and procedures that will outline how it will treat directed-action orders (see below for details on the directed-action order).

A marketplace is expected to show the effectiveness of its policies and procedures when evaluated by regulatory authorities by maintaining relevant information. This information would include how the marketplace evaluates its policies and procedures, any issues found and how issues were resolved.[10]

A marketplace is required to provide its policies and procedures, and any amendments thereto, to the securities regulatory authority and its regulation services provider 45 days prior to implementation. The CSA may be willing to grant an exemption to the 45 day time frame if appropriate.

(ii) Protected Orders

Order protection only applies to a protected order which is an order to buy or sell an exchange-traded security, other than an option, that is displayed on a marketplace that provides automated functionality and about which information is required to be provided to an information processor or information vendor.[11] The CSA do not consider special terms orders that are not immediately executable or that trade in a special terms book, such as all-or-none, minimum fill, or cash or delayed delivery, to

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7 See UMIR Rule 5.2 *Best Price Obligation* and the related policy.

8 The Order Protection Rule was previously referred to as the "trade-through protection rule" in the 2008 Proposed Amendments.

9 Section 6.3 of NI 23-101.

10 Section 6.1 of NI 23-101 and section 6.2 of 23-101CP.

11 Definition in section 1.1 of NI 23-101.

be orders that are protected.[12] However, those executing against these types of orders are required to execute against all better-priced orders first.

A marketplace that is considered to provide "automated functionality" offers the ability to immediately and automatically:

- permit an incoming order entered on the marketplace electronically to be marked as immediate-or-cancel,
- execute an immediate-or-cancel order,
- cancel unexecuted portions of that order,
- transmit a response to the sender indicating the action taken, and
- display information that updates the displayed orders on the marketplace.[13]

We note that we have changed the name for the marker of an order in the definition of automatic functionality in the 2008 Proposed Amendments from "fill-or-kill" to "immediate-or-cancel" to reflect industry standards.

(iii) Visible Orders

The Order Protection Rule only applies to orders or parts of orders that are visible. For an order to be protected, it must be displayed by a marketplace and information about it must be provided to an information processor or information vendor.

Hidden orders or those parts of iceberg orders that are not visible are not protected under the Order Protection Rule. Currently, the non-visible or "dark" portions of orders can be avoided in a transparent order book through the use of the "bypass" marker introduced by IIROC.[14] The bypass marker signals to the marketplace that the order routed to the marketplace should not execute against any hidden liquidity. The bypass marker can be used with the directed-action order exception described below.

(iv) Full Depth-of-book

The Order Protection Rule will maintain the existing standard in the UMIR Best Price Rule and apply to all visible orders and visible parts of orders entered into the book (i.e. full depth-of-book). This means that in order to execute an order at an inferior price, a marketplace, or a marketplace participant using a directed-action order, has to ensure that all protected orders that are visible at better price levels have been executed. This approach is different from the one adopted in Regulation NMS in the United States, which provides protection only to the best bid and offer on each trading center (top-of-book).[15]

The Implementation Committee was divided on whether or not the CSA should move from full depth-of-book to a different level of protection. Although the Implementation Committee agreed that depth-of-book protection was more complete and philosophically consistent with the policy objectives of the CSA, the Implementation Committee did not reach a consensus on whether the incremental protection of full depth was sufficient to justify the incremental costs. In order to further investigate this issue, CSA staff provided the Implementation Committee members with specific questions designed to obtain information regarding the costs associated with full depth protection over top-of-book protection. These questions and a summary of the responses received are attached as Appendix D.

We have reviewed the information received from the Implementation Committee and gathered throughout this process to determine whether to maintain full depth order protection or to move to a top-of-book standard. Specifically, we reviewed the comments received in response to the 2005 Discussion Paper, the Joint Notice, and the 2008 Proposed Amendments, and the submissions made for top-of-book and depth-of-book in the Implementation Committee recommendations, and the responses to the questions provided to the Implementation Committee (marketplaces, dealers, buy side investors, and vendors). While we recognize that some have the view that a top-of-book standard should be adopted, we note:

- A review of commenters who responded to the 2005 Discussion Paper and the Joint Notice showed a majority were in support of order protection that would apply to all visible orders regardless of where they are in the book. The majority of the comments received to the 2008 Proposed Amendments were also in favour of a full depth standard however, some commenters expressed different opinions on how many levels of the book should be protected under the rule.

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12 See subsection 5.1(3) of 21-101CP.

13 Section 1.1 of NI 23-101.

14 See IIROC Market Integrity Notice 2008-008 published on May 16, 2008.

15 Regulation National Market System, Section 242.611, Final Rule, Federal Register 124 (June 29, 2005) pp. 37620-37632.

- There was no clear consensus from the Implementation Committee on whether to maintain full depth protection or adopt top-of-book protection.

- The responses to the CSA's informal questions of the members of the Implementation Committee showed a majority who said that there were few incremental costs associated with full depth-of-book protection when compared to top-of-book. There was also no consensus on whether there may be an increased cost of latency associated with full depth protection.

The CSA have decided to maintain full depth-of-book protection. We believe the policy objectives of investor confidence in the fairness and integrity of the market are more effectively accomplished through full depth protection. We believe that it is important for investors, including retail investors, to know that any order they enter on a marketplace will be executed before an inferior-priced order. We also believe that shifting the current level of protection in Canada to a top-of-book obligation may be perceived as adopting a lower level of investor protection.

Several members of the Implementation Committee identified the potential for higher costs with full depth over top-of-book protection such as the cost of retaining a greater volume of data in order to show compliance with the Order Protection Rule. The CSA do not currently expect that demonstrating compliance with the Order Protection Rule will be materially different from showing compliance with dealers' best execution and best price obligations. We will be working with IIROC to develop our expectations regarding what information will need to be maintained by marketplaces and marketplace participants that choose to use the directed-action order. This expectation will be outlined in a staff notice.

(v) Anti-Avoidance

We have included an anti-avoidance provision that prohibits a person or company from routing orders to foreign marketplaces only for the purpose of avoiding the order protection regime in Canada.[16] In its report, the Implementation Committee recommended that any provision that required participants to execute better-priced orders in Canada before executing on foreign marketplaces should be limited to large, pre-arranged trades. As a result, IIROC will be publishing concurrently with this Notice amendments to UMIR to address this issue.[17]

We note however, that while marketplace participants are not required to assess foreign markets under the Order Protection Rule, they should consider foreign markets when addressing their best execution obligation.

(b) "Permitted" Trade-throughs

The overall purpose of order protection is to promote confidence and fairness in the market where the visible portion of better-priced limit orders trade ahead of inferior-priced orders. It is important to acknowledge, however, that the issues relating to preventing all trade-throughs in a multiple marketplace environment have become highly complex, particularly with the advent of new order types and other market structure developments in Canada.

As a result, we have included a number of circumstances where trade-throughs are permitted.[18] These "permitted" trade-throughs or "exceptions" are primarily designed to achieve workable inter-market order protection while facilitating the use of trading strategies and order types that are useful to investors. They are intended to promote fairness, innovation and competition. A marketplace or marketplace participant must have policies and procedures that outline in what circumstances they may rely on the exception and how such reliance will be evidenced.

(i) Failure, Malfunction or Material Delay of Systems or Equipment or its Ability to Disseminate Marketplace Data (Systems Issues Exception)

We are including an exception for any failure or malfunction or material delay of a marketplace's systems or equipment or ability to disseminate data (systems issues).[19] The intention of the Systems Issues Exception is to provide marketplaces and marketplace participants with flexibility when dealing with another marketplace that is experiencing a systems problem (either of a temporary nature or a longer-term issue). A marketplace that is experiencing a failure, malfunction, or material delay of its systems, equipment or ability to disseminate data is responsible for informing all other marketplaces, its marketplace participants, any information processor, and any regulation services providers when the failure, malfunction or material delay occurs.[20]

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16 Section 6.7 of NI 23-101.

17 On October 27, 2008 IIROC published a concept proposal respecting conditions on the conduct of trade on a foreign organized regulated market as part of IIROC Rules Notice 08-0163.

18 The list of "permitted" trade-throughs is set out in section 6.2 of NI 23-101.

19 Paragraphs 6.2(a) and 6.4(a)(i) of NI 23-101.

20 Paragraph 6.3(1) of 23-101CP.

If a marketplace fails repeatedly to provide an immediate response to orders received or there are material delays in the response time, and no notification has been issued by the marketplace that may be experiencing systems issues, a routing marketplace or a marketplace participant may rely on paragraph 6.2(a) or 6.4(a)(i) of NI 23-101, in accordance with its policies and procedures that outline processes for dealing with these systems issues. This allows for the flexibility that is necessary to deal with concerns about potential issues that arise because of latency. In these circumstances, the marketplace or marketplace participant must immediately notify the marketplace that may be having systems issues, its own marketplace participants (where applicable), any information processor, and all regulation services providers. This notification will alert a marketplace to the fact that it may be experiencing systems issues and help the marketplace in verifying whether this is true.

In the next few months, we expect to consult with industry and examine a number of implementation issues associated with the Systems Issues Exception including the parameters around the notification procedures and protocols.

(ii) Directed-Action Order

We have included an exception that informs a marketplace that if it receives a specific order type, it can immediately carry out the action specified by the sender without delay or regard to any other better-priced orders displayed by another marketplace.[21] We have changed the name of this order from an inter-market sweep order to a directed-action order (DAO).[22] We have also provided an exception for when simultaneous DAOs are sent.[23] In response to recommendations made by the Implementation Committee, the Amendments clarify the responsibilities of a marketplace and a marketplace participant when using the DAO. An order can be marked "DAO" by a marketplace or a marketplace participant. The marker, as its name suggests, allows for multiple actions to be taken. It may be sent to instruct the receiving marketplace to immediately execute and cancel, or immediately execute and book any remainder of the order. In addition, a DAO may be sent to instruct the receiving marketplace to book as a passive order awaiting execution.

To avoid interaction with hidden liquidity, the DAO may also be used in conjunction with the bypass marker, as defined in IIROC's UMIR. Regardless of whether a DAO uses the bypass marker, the sender is responsible for executing against all better-priced visible orders before executing at an inferior price. If a DAO is sent without the bypass marker and interacts with hidden liquidity, all better-priced visible orders must be taken out before executing at an inferior price.

The definition of a DAO allows for the simultaneous routing of more than one DAO in order to execute against protected orders. In addition, marketplace participants may send a single DAO to execute against the best protected bid or best protected offer. A DAO may enable participants to execute large block orders, provided that they simultaneously route one or more DAO's to execute against better-priced orders. This would facilitate compliance with the order protection obligation. Whenever a market participant uses a DAO, it must have policies and procedures outlining its use and be able to show compliance with its policies and procedures regarding its use.

The Implementation Committee recommended that the requirements be set out more specifically when marketplace participants choose to assume the responsibility for order protection compliance. Although this expectation was outlined in the policy, in response to the Implementation Committee's request, we clarified the obligation in subsection 6.4 of NI 23-101 which requires a marketplace participant to establish, maintain and ensure compliance with written policies and procedures that that are reasonably designed to prevent trade-throughs before using a DAO.

(iii) Changing Markets Exception

With the emergence of electronic trading, market conditions are changing and moving more rapidly with each new innovation in technology. The number of orders entered for every trade executed has increased dramatically in recent years. This means that the quoted price of a security can often change more quickly than the rate at which a trader can respond. As a result, we are allowing for a transaction that occurs when the marketplace displaying the best price that was traded through had displayed, immediately prior to executing a trade that resulted in a trade-through, an order with a price that was equal or inferior to the price of the trade-through transaction.[24] This exception is meant to provide some relief due to rapidly moving or changing markets.

The Implementation Committee recommended that a look-back exception be adopted where marketplaces could print a pre-arranged trade outside the national best bid or offer (NBBO) at the time of the print as long as: (a) the price was within the NBBO at the time the trade was agreed to, and (b) the trade is printed by a marketplace within 10 seconds of when the parties agreed to the trade.

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21 Paragraph 6.2(b) of NI 23-101.

22 Definition in section 1.1 of NI 23-101.

23 Paragraphs 6.2(c) and 6.4(a)(ii) of NI 23-101.

24 Paragraphs 6.2(d) and 6.4(a)(iii) of NI 23-101.

The CSA has responded by clarifying that the "changing markets" exception[25] addresses the Implementation Committee's concern regarding the latency involved when executing manual trades.

The "changing markets" exception allows for the execution of an order on a marketplace, within the best bid or offer on that marketplace but outside the best bid or offer displayed across all marketplaces in certain circumstances. The exception allows a trade-through to occur when an order has been sent to execute against the best protected bid or offer on a marketplace but by the time it is executed the best bid or offer across marketplaces has changed. The exception also permits a trade that has been agreed to off-marketplace (where a check has been performed to see if the negotiated price can be executed within the best bid or offer across marketplaces) to be traded when the best bid or offer displayed on another marketplace has changed before the trade is executed (i.e. printed) on the marketplace.

In Canada, the execution of orders of exchange-traded securities is only permitted to occur off-marketplace in a very limited number of circumstances. These circumstances are described in UMIR 6.4.[26] Negotiated trades that occur off-marketplace are not considered executed until they are printed on a marketplace. The "changing markets" exception will also facilitate the printing of manual trades after they have been agreed to in the context of the market, but may be outside of the market when they are entered on a marketplace.

However, the exception is not meant to change trading practices in Canada and allow for off-marketplace trading and reporting. Matched orders are considered to be executed only if they have been executed within the context of the marketplace on which the order is printed.

(iv) Non-Standard Orders

Non-standard orders have been included on the list of "permitted" trade-throughs. A non-standard order refers to an order for the purchase or sale of a security that is subject to non-standard terms or conditions relating to settlement that have not been set by the marketplace on which the security is listed or quoted.[27] A marketplace participant, however, may not add a special settlement term or condition to an order solely for the purpose that the order becomes a non-standard order so that it qualifies for an exception to the Order Protection Rule.

(v) Calculated-Price Order

We have included an exception for orders where the price is not known at the time of order entry and is not based, directly or indirectly, on the quoted price of the security at the time the commitment to execute the order was made.[28] We note that the language of the 2008 Proposed Amendments has been changed to more clearly describe the order. Orders that are included under this definition are:

- call market orders – where the price of a trade is calculated by the trading system of a marketplace at a time designated by the marketplace,
- opening orders – where each marketplace may establish its own formula for the determination of opening prices,
- closing orders – where execution occurs at the closing price on a particular marketplace, but at the time of order entry, the price is not known,
- volume-weighted average price orders – where the price of a trade is determined by a formula that measures a weighted average price on one or more marketplaces, and
- basis orders – where the price is based on prices achieved in one or more derivative transactions on a marketplace. To qualify as a basis order, this order must be approved by a regulation services provider or exchange or quotation and trade reporting system that monitors the conduct of its members or users respectively.[29]

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25 Formerly known as the "flickering order" exception.

26 Trades are permitted to occur off-marketplace if the trade is: an unlisted or non-quoted security, has received a regulatory exemption, to adjust an error, executed on a foreign organized regulated market, executed outside of Canada provided that the trade is reported appropriately, is the result of certain terms of the security, is the result of the exercise of an option, right, warrant or similar pre-existing contractual agreement, pursuant to a prospectus or exempt distribution, or is in a listed security that has been halted, delayed, or suspended.

27 Subparagraphs 6.2(e)(i) and 6.4(a)(iv)(A) of NI 23-101.

28 Subparagraphs 6.2 (e)(ii) and 6.4(a)(iv)(B) of NI 23-101.

29 Section 1.1.3 of NI 23-101CP.

(vi) Closing-Price Order

We have included an exception for an order entered on a marketplace for the purchase or sale of an exchange-traded security that executes at the established closing price on that marketplace for that trading day for that security.[30] Some marketplaces provide an after-hours trading session at a price established by that marketplace during its regular hours for marketplace participants who are required to benchmark to a certain closing price. Therefore, we have included an exception for trade-throughs resulting from the execution of transactions in these circumstances so that a better-priced order on another marketplace does not need to be accessed.

(vii) Crossed Market

We have included an exception for a trade-through that occurs when the best protected bid was higher than the best protected offer (crossed market).[31] Without this exception, no marketplace could execute transactions in a crossed market because it would constitute a trade-through. The CSA recognize that crossed markets may occur as a result of order protection only applying to displayed orders or parts of orders, and not to hidden or reserve orders. Intentionally crossing the market to take advantage of this exception would be a violation of section 6.5 of NI 23-101.

(c) Fair Access to Marketplaces

We have made amendments to 21-101CP to enhance the fair access provisions in NI 21-101.[32] Rather than setting a threshold for ATSs to permit access to all marketplace participants, the provisions require marketplaces to provide fair access to all of their services relating to order entry, trading, execution, routing and data. As well, marketplaces should permit fair access to their services for the purpose of complying with order protection requirements.

With respect to non-member/subscriber access to a marketplace, our view is that a marketplace should not be required to provide direct access to non-members/subscribers. It will be left to the marketplaces to determine how best to meet their order protection obligations. In the 2008 Proposed Amendments, we asked for comments on the various alternatives available to a marketplace to route orders to another marketplace. Certain commenters suggested that one option was for marketplaces to be directly linked by marketplaces becoming members or subscribers of all marketplaces that display protected orders through dealer entities. Other commenters suggested other options including that ATSs should be allowed to route orders to an exchange without being required to become a participating organization of the exchange, utilize an in-house or related-party capability to smart order route, licence a stand alone third party capability to smart order route, and price improve the order to a non-offending price level or reject a potentially offending order. In the next few months, we intend to consult with industry to discuss other issues relating to access.

(d) Trading Fee Limitation

In the 2008 Proposed Amendments, we proposed a principles-based trading fee limit. We asked for comments on whether the CSA should set an upper limit on fees charged to access an order for order protection purposes and if so, what this limit should be. Commenters were divided. Several expressed the view that an upper limit on fees should be set but there was no consensus what this limit should be. Others believed that a strict fee cap should not be set and that the issue would be addressed by market competition. We note that a trading fee is defined as "a fee that a marketplace charges for the execution of a trade on that marketplace."[33] It would include any fee charged to access an order, but does not include fees charged for routing or data dissemination.

In its report, the Implementation Committee concluded that it was advisable to include a trading fee limitation as part of the proposed rule. While divided on a specific cap, the Implementation Committee recommended that the CSA should consider adopting the model used in the United States that defines a set fee cap for stocks trading above $1, and a percentage of the value of the trade, for stocks trading below $1.

The CSA considered at great length whether to move from a principles-based approach to prescribing a specific trading fee cap. In our consideration, the following difficulties were identified in choosing a fee cap:

- When setting a trading fee as an amount per share, the fee will be a higher percentage of the transaction value for lower priced stocks than for those with higher prices.
- Dictating that fees should be charged on a cents per share or percent of value basis could limit the ability of marketplaces to implement innovative fee structures.

30 Subparagraphs 6.2(e)(iii) and 6.4(a)(iv)(C) of NI 23-101.
31 Paragraphs 6.2(f) and 6.4(v) of NI 23-101.
32 Sections 7.1 and 8.2 of 21-101CP.
33 Section 1.1 of NI 21-101.

- The Canadian market has a higher proportion of stocks that trade below $1 than in the U.S. and so simply implementing the U.S. fee model could have unanticipated implications. For example, setting the maximum allowable trading fee as a percent of value could unduly impact the viability of Canada's junior markets.

As a result, the CSA have decided to maintain taking a principles-based approach and not set a specific trading fee cap. Set out below is a three pronged approach that will be taken with respect to fees to prevent marketplaces from raising their fees to take advantage of the order protection regime and to address issues raised by the Implementation Committee.

a) Proposed Provision: The Order Protection Rule prohibits a marketplace from imposing a term for the execution of an order that has the effect of discriminating between orders that are routed to that marketplace and orders that are entered on that marketplace.[34]

b) Current Requirements: Sections 5.1 and 6.13 of NI 21-101 currently require marketplaces to not unreasonably prohibit, condition or limit access by a person or company to services offered by it. This includes limiting or conditioning access through the imposition of an unreasonable fee or fee model. In assessing whether such a barrier to access may exist, the marketplace should consider a number of factors including:

- the value of the security traded,
- the amount of the fee charged relative to the value of the security traded,
- the amount of fees charged on other marketplaces, and
- with respect to market data fees, the amount of market data fees charged relative to the market share of the marketplace.

Concern was expressed by the Implementation Committee that a prohibition on marketplaces from imposing trading fees that are equal to or greater than the trading increment defined in UMIR could imply that any trading fee up to the trading increment is reasonable. In fact, the intention of the provision was not to set the fees charged by marketplaces, but to preserve the integrity of the Order Protection Rule. Therefore, to address the issue of maintaining the policy goals of the Order Protection Rule, we have added a fifth factor in 21-101CP[35] that a marketplace should consider when determining if its fees unreasonably prohibit, condition or limit access to its services. In addition, we have maintained in 21-101CP that a trading fee greater than or equal to the minimum trading increment as defined in UMIR would unreasonably limit access to a marketplace's services as it would be inconsistent with the policy goals of order protection.

c) Letter to Marketplaces: In order to ensure that the fees that are currently charged by marketplaces in Canada do not unreasonably condition or limit access to their services, we will be asking all marketplaces to explain and justify their current fees and fee models and any changes made to their fees going forward prior to implementation to demonstrate that they are in compliance with NI 21-101.

(e) Locked and Crossed Markets

A "locked market" occurs when there are multiple marketplaces trading the same security and a bid (offer) on one marketplace is posted at the same price as an offer (bid) on another marketplace. Had both orders been entered onto the same marketplace the bid and the offer would have matched and a trade would have been executed. There are two ways for a locked market to be unlocked:

- typically, more buyers and sellers appear resulting in subsequent trades and immediate correction; or
- one of the participants involved in the lock removes its order and places the order on another marketplace to immediately execute the trade.

In contrast, a "crossed market" occurs when one participant's bid (offer) on one marketplace is higher (lower) than another participant's offer (bid) on a different marketplace. A crossed market condition between marketplaces usually does not last for a long period of time as someone will usually take advantage of the arbitrage opportunity.

While market participants agree that intentionally crossing markets should be prohibited, some argue that locking the market philosophically represents the most efficient market by eliminating the bid-ask spread. Others argue that locking the market creates confusion as market participants, including investors, do not understand why a displayed order is not being executed if there is an opposite order posted on another marketplace at the same price. Such confusion may impact the perception of the

[34] Subsection 10.2 of NI 21-101.

[35] Subsections 7.1(4)(e) and 8.2(4)(e) of 21-101CP.

efficiency and fairness of the Canadian market which may in turn impact confidence levels and discourage participation. In addition, if the trader locking the market is acting as agent for her client, locking the market instead of executing the order could be a violation of best execution obligations.

In the view of the CSA, the practice of intentionally locking or crossing the market may detract from market efficiency, lead to a perception of a lack of market integrity, and may create investor confusion. We think that if there is a posted order at which price the participant is willing to trade, that order should be executed. Furthermore, the prohibition could encourage more interaction between buyers and sellers and encourage the use of limit orders (by offering some protection to the first displayed order).

Section 6.5 of NI 23-101 prohibits a marketplace participant from intentionally locking or crossing a market by entering a protected order to buy a security at the same price or higher than the best protected offer or entering a protected order to sell a security at the same price or lower than the best protected bid. This section is meant to capture the situation where a marketplace participant enters an order intentionally to lock or cross a particular marketplace or the market as a whole. It is not intended to prohibit the use of marketable limit orders. As mentioned in subsection 4(b)(vii) of this Notice, an exception from the Order Protection Rule has been provided to allow for the resolution of crossed markets that occur unintentionally. An exception is not necessary to resolve locked markets.

An example of when a marketplace participant intentionally locks the market is when a marketplace participant enters a locking order on a particular marketplace to avoid paying a fee charged by a marketplace or to take advantage of a rebate offered by a marketplace. As well, the CSA would consider an order marked DAO or the remainder of a DAO that is booked and that locks or crosses the market to be an intentional locking or crossing of the market and a violation of NI 23-101.

The CSA recognize that locked or crossed markets may occur unintentionally. An unintentional lock or cross could occur in the following circumstances:

- as a result of latency issues when a marketplace participant has routed multiple DAOs to a variety of marketplaces;
- when one of the marketplaces displaying an order that is involved in the lock or cross was experiencing a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data;
- when the order locking or crossing the market was entered when the market was already crossed; and
- when an order that is posted after all displayed liquidity has been executed against and a reserve order generated a new visible bid above the displayed offer or a new offer below the displayed bid.[36]

IV. ADDITIONAL AMENDMENTS

Along with the Order Protection Rule, we have made additional amendments to NI 21-101 and NI 23-101.

1. Marketplace Systems

A number of changes have been made to the system requirements for a marketplace in Part 12 of NI 21-101. Most of these changes update the technical descriptions of the requirements and modify the requirements to better reflect what is taking place in practice. They also address some of the concerns raised regarding standards for marketplaces.

Part 12 of NI 21-101 requires a marketplace to address specific issues related to capacity management, system development and testing, system vulnerabilities and business continuity. The amendments also require a marketplace to develop and maintain a more comprehensive and integrated concept of a system of internal control. The defined scope of the annual independent systems review (ISR) is to provide assurance on these same issues.

The Amendments have removed the threshold to exempt an ATS from conducting an ISR. ATSs are now required to engage a qualified party to conduct an annual independent systems review and prepare a report under subsection 12.2(1) of the Instrument. A regulator or the securities regulatory authority may consider granting an exemption from this requirement. An exemption may be granted provided that the marketplace prepare a control self-assessment and file it with the regulator. In determining whether to grant the exemption, a number of factors will be considered including: the market share of the marketplace, the timing of the last independent systems review, and changes to systems or staff of the marketplace.[37]

Changes have also been made to the requirements for marketplaces to make available their technological requirements regarding interfacing with, or accessing the marketplace and, make available systems facilities for testing access. Before a new

[36] Subsection 6.4(2) of 23-101CP.
[37] Subsection 14.1(4) of 21-101CP.

marketplace begins operations, it must make these requirements available for at least three months and offer systems testing for at least a two month period. If the marketplace is already operating, all material changes to these requirements must be made available for a three-month period and offer testing to these systems for a two month period.[38] In response to public comments, we have included some flexibility so that if a marketplace must make an immediate change to address a failure, malfunction or material delay to its systems or equipment, such a change can be implemented if the marketplace immediately notifies the regulator and its regulation services provider of its intention to make the change and make the amended technological requirements available as soon as practicable.[39]

2. Transparency

Amendments have been made to Parts 9 and 10 of 21-101CP for the purposes of clarifying the requirements under sections 7.1, 7.2, 8.1 and 8.2 of NI 21-101 for marketplaces, inter-dealer bond brokers and dealers to provide accurate and timely order and trade information to an information processor, or to an information vendor that meets the standards set by a regulation services provider. Such information should not be made to any other person or company on a more timely basis than it is made to an information processor or information vendor.

3. Information Processor Requirements and Systems

We have made amendments to section 14.5 of NI 21-101 and Part 16 of 21-101CP regarding the technological requirements and obligations of an information processor. An information processor has similar requirements as marketplaces in this area including the ability to assess capacity management, system development and testing, system vulnerabilities and business continuity.[40]

NI 21-101 requires an information processor to provide accurate, timely and fair collection processing and distribution of information for orders and trades in securities. The CSA expect that in meeting this requirement, an information processor will ensure that all marketplaces, inter-dealer bond brokers and dealers will be given access on fair and reasonable terms. In addition, we also expect that no preferential treatment will be given to those providing information or those receiving information. Information should not be provided on a more timely basis to a single person or company or group of persons or companies over others.[41]

As of July 1, 2009 TSX Inc. is the information processor for equity securities in Canada. CanPX is the information processor for corporate debt securities.

4. Amendments to Sections 7.2, 7.4, and 8.3 of NI 23-101 – Agreement Between a Marketplace and a Regulation Services Provider

Because of the development to multiple marketplaces operating in Canada, amendments have been made that ensure that information from all marketplaces will be provided to a regulation services provider so that it can effectively conduct cross market surveillance. Subsections 7.2(c), 7.4(c), and 8.3(d) require that the agreement between a regulation services provider and a marketplace mandates the marketplace to provide all information that a regulation services provider reasonably requires to effectively monitor the conduct of and trading by marketplace participants on and across marketplaces and the conduct of the marketplaces as applicable. This amendment in no way changes the existing relationship between an exchange or quotation and trade reporting system and the regulation services provider that it has retained. Instead, it clarifies our expectation that the regulation services provider will be provided with the information it needs to effectively monitor trading on multiple marketplaces and to facilitate monitoring to ensure that certain standards and obligations are uniformly met by all marketplaces that the regulation services provider surveils. These standards and obligations will include, at a minimum, monitoring clock synchronization, the inclusion of specific designations, symbols and identifiers, order protection requirements and audit trail requirements.[42]

V. IMPLEMENTATION PERIOD

The Amendments, other than those relating to the Order Protection Rule, will become effective on January 28, 2010. The Amendments relating to the Order Protection Rule (Part 6 of NI 23-101, Part 6 of 23-101CP and the relevant definitions) will become effective on February 1, 2011. The difference in these dates reflects a transition period necessary for marketplaces and marketplace participants to be ready to implement the Order Protection Rule. We expect to provide further details regarding implementation in a separate notice to be published shortly.

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38 Subsections 12.3(1) and (2) of NI 21-101.

39 Subsection 12.3(4) of NI 21-101.

40 Subsection 14.5 of NI 21-101.

41 Subsection 16.1(3) of 21-101CP.

42 Section 7.5 of 21-101CP.

VI. QUESTIONS

Questions may be referred to any of:

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November 13, 2009

APPENDIX A

IMPLEMENTATION OR ADOPTION OF THE INSTRUMENTS

The instruments will be implemented as:

- a rule in each of Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia, New Brunswick, Ontario, the Northwest Territories, the Yukon Territory, Nunavut and Prince Edward Island;
- a regulation in Québec; and
- a commission regulation in Saskatchewan.

The companion policies will be adopted as a policy in each of the jurisdictions represented by the CSA.

In Ontario, the instruments and other required materials were delivered to the Minister of Finance on November 13, 2009. The Minister may approve or reject the instruments or return them for further consideration. If the Minister approves the instruments (or does not take any further action), the instruments will come into force on January 28, 2010.

In Québec, the instruments are a regulation made under section 331.1 of The Securities Act (Québec) and must be approved, with or without amendment, by the Minister of Finance. The instruments will come into force on the date of their publication in the Gazette officielle du Québec or on any later date specified in the regulation. They are also published in the Bulletin of the Autorité des marchés financiers.

In British Columbia, the implementation of the instruments is subject to ministerial approval. Provided all necessary approvals are obtained, British Columbia expects the instruments to come into force on January 28, 2010.

APPENDIX B

Summary of Public Comments on Proposed Amendments to National Instrument 21-101 *Marketplace Operation* (NI 21-101) and National Instrument 23-101 *Trading Rules* (NI 23-101)

Comments	*CSA Responses*
Necessity of Order Protection	
Many commenters indicated that they believe in the importance of an order protection obligation. One commenter however, was of the view that an order protection requirement is not necessary in light of advances in direct market access technology, smart order routing technology, improved transaction cost analysis products and other technology developments in the market.	*In our view, order protection is important for maintaining investor confidence and fairness in the market, especially where there is a high degree of retail participation and an historical expectation of order protection. The advances in technology do not address these important policy objectives.*
Depth of Order Protection	
Some commenters expressed an opinion as to how far the order protection obligation should be applied. Two commenters favoured full depth-of-book trade-through protection. One of these commenters further explained that current technology has addressed the complexity of a full-depth obligation and stated that unless analysis of the data generated to date provides evidence of a disadvantage, the obligation should remain as is. One commenter indicated that full depth-of-book protection would not provide substantial and meaningful protection and would introduce considerable latency into marketplace systems. This commenter suggested that the appropriate level of trade-through protection should be limited to five price levels. Another commenter supported initially implementing trade-through protection for top-of-book quotes only and expanding the obligation later on. One other commenter suggested protecting more than top-of-book but less than full depth-of-book. Some commenters had concerns about the implementation costs of a full-depth requirement.	*As discussed in the Canadian Securities Administrators Notice of Amendments to National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules (Notice), after review and analysis of the comment letters and the information and recommendations provided by the Implementation Committee (for details on the Implementation Committee, see Part II of the Notice) we have decided to maintain full depth-of-book protection. We believe that it is important for investors to know that any order they enter on a marketplace will be executed before an inferior-priced order.*
Fees	
One commenter suggested that the trading fees regime should be broadened to an “access fees” regime that restricts the fees a marketplace may charge other markets and smart order routing vendors for displayed “protected quote data” that they are obligated to consume to enforce order protection obligations. Commenters requested two clarifications with respect to fees: (1) that marketplaces are not restricted in setting fees for non-protected or specialty order types that are not executed strictly to comply with trade-through, such as benchmark orders, where the market participant elects to use such order types and (2) that a marketplace cannot discriminate based on the order’s originating marketplace and that imposing different terms on orders depending on	*We have removed the trading fee limitation requirement but have added language to sections 7.1 and 8.2 of 21-101CP to further explain certain factors the Canadian securities regulatory authorities will consider when determining if a marketplace’s fees unreasonably condition or limit access to its services.* *We also note that a marketplace is prohibited from imposing terms that discriminate between orders that originate on that marketplace and those that are routed to that marketplace under section 10.2 of NI 21-101.*

the identity of the originating marketplace should also not be permitted.	
Protected Orders	
One commenter submitted that the definitions of "protected bid" and "protected offer" as proposed need to be narrowed to include only those orders that are required to be provided to an information processor or information vendor. The following language was suggested: "…about which information is required to be provided pursuant to Part 7 of NI 21-101 to an information processor…".	*We agree and have made this suggested amendment.*
Enforcement	
A number of commenters requested clarification as to how the order protection obligation will be monitored and enforced. A commenter also called for meaningful fines or other penalties.	*We will be providing further information as to how the order protection obligation will be monitored and enforced in a subsequent notice prior to the implementation of the Order Protection Rule.*
Implementation of Order Protection Requirement	
One commenter specifically noted that the CSA should consider whether the industry is currently able to comply with the proposed requirements, and if not, whether additional time to develop the appropriate tools will cure their lack of ability to comply. This commenter also added that flexibility in implementation is needed to accommodate the various interests and levels of sophistication.	*We have been consulting with industry with respect to this issue and expect to provide a more detailed implementation schedule shortly.*
Locked and Crossed Markets	
One commenter stated that unless there is a prohibition on intentionally locking or crossing markets, marketplaces will have a difficult time implementing technology systems to comply with order protection requirements. Some solutions suggested by commenters included: (1) marketplaces should automatically re-price orders to prevent them from locking or crossing another market and (2) a designated information processor should be used to address or minimize locked and crossed markets.	*We agree that there should be a prohibition on intentionally placing orders that lock or cross the market and have included this prohibition in section 6.5 of NI 23-101.*
Trading Hours	
Some commenters cited that the application of order protection should only be required during regular trading hours and one commenter specifically suggested that that trade-through protection should be required either: (1) during the regular trading hours of 9:30 a.m. and 4:00 p.m. or (2) during such period of time when more than one marketplace operating a transparent continuous order book is open for trading.	*We are of the view that the order protection obligation is in effect if there are two or more marketplaces with protected orders open for trading. However, under paragraph 6.2(e) of NI 23-101, a marketplace would not be required to take steps to reasonably prevent trade-throughs during its after hours trading session where the price is established by that marketplace during its regular trading hours.*
Technology Systems Requirements	
The comments with respect to the proposed technology systems requirements were mixed. One commenter indicated that the increased detail proposed is generally useful and another was in favour of the proposed requirement for alternative trading systems (ATSs) to perform an annual independent systems review.	*We are of the view that the proposed technology systems requirements are necessary and important in order to update the existing requirements and to better reflect current practice.* *With respect to the suggestion that specific disaster recovery standards be set, we will consult with industry regarding a more detailed marketplace protocol to follow when experiencing*

	systems issues in the context of the systems issues exception.
One commenter suggested imposing requirements to prescribe specific disaster recovery standards and for the CSA to consider establishing minimum standards to be met by marketplaces in the event of non-disaster systems incidents. This commenter submitted that a "reasonable" disaster recovery plan is not sufficient and more detailed standards are required to address incidents that create systems outages. Another commenter indicated that ATSs should publish a full description of their fill allocation methodology in order for routing marketplaces to adequately adapt their routing logic in a way that will provide for the most effective execution of the trade-through obligation. Two commenters believed that the proposed requirements are too prescriptive and onerous. One of these commenters suggested that the level of requirements should be related to the complexity of the business and reliance by others on the system. With respect to the proposed notice and testing time periods, one commenter indicated that these time periods should not be prescribed but should be stated in terms of what is reasonable or appropriate under the circumstances while another commenter suggested shortening the time periods to 60 and 30 days and advised that an exception clause be added that would allow a marketplace to expedite material technology changes if deemed necessary in the circumstances.	*With respect to the comment that an exception clause be added to allow a marketplace to expedite material technology changes if deemed necessary, we agree and have amended paragraph 12.3 (4) of NI 21-101 accordingly.*
Fill-or-Kill Orders Two comments were made in relation to "fill-or-kill" orders. One commenter noted that "fill-or-kill" and "fill-and-kill" are terms that are used interchangeably and have different meanings in different jurisdictions. This commenter suggested that the CSA's definition of "fill-or-kill" or a description of such an order's functionality be included in the amendments. Another commenter suggested that the definition of "automated functionality" be revised to replace the references to "fill-or-kill" with "immediate-or-cancel" as this is the term that is consistently used throughout marketplaces in the U.S.	*We have replaced the term "fill-or-kill" with "immediate-or-cancel" in NI 23-101 to avoid any possible confusion and better reflect industry practice.*
Agreement between Marketplace and Regulation Services Provider One commenter indicated that the amendment to subsection 7.2(c) of NI 23-101 should be redrafted so that it does not reference that a regulation services provider monitors an exchange.	*These amendments clarify our expectation that a regulation services provider shall receive information it considers necessary from the marketplace participants and marketplaces it surveils to effectively monitor trading on multiple marketplaces. In addition, we expect that because it has the infrastructure in place to do so, IIROC will monitor certain aspects of a marketplace's compliance with respect to a limited number of applicable regulatory requirements including, order protection and clock synchronization.*

Onus of Order Protection Rule	
One commenter argued that the obligation of order protection should rest on dealers if a marketplace passes the obligation on. Another argued that the obligation should be on dealers and possibly on non-dealer subscribers, and a third supported placing the obligation only on dealers and non-dealer participants as an alternative to allowing dealers to assume the responsibility for themselves. One advocated allowing marketplaces to transfer or download the obligation to dealers because regulations in the U.S. allow marketplaces to either pass on part or all of the obligation to marketplace participants and that a marketplace may be required to take action which can have the impact of contradicting a decision made by the dealer with the purpose of complying with their fiduciary obligation.	*We continue to be of the view that the Order Protection Rule is best implemented at the marketplace level. The CSA have decided to shift this obligation to a marketplace level as opposed to a dealer-level to level the playing field that currently exists in Canada because the UMIR Best Price Rule only applies to dealers but not to non-dealers who are ATS subscribers. The Order Protection Rule makes all participants in the market subject to the rule. In addition, there are fewer marketplaces than dealers, and we are of the view that a marketplace level obligation is more efficient.* *However, we have provided for the ability of dealers to maintain control of their order flow by using a directed-action order.*
This commenter also cited several difficulties with moving the order protection obligation to marketplaces which included that the speed of trading would be dictated by trading venues and that a market participant's use of inter-market sweep orders (ISOs) would need to be overseen in addition to trading on foreign markets in order to determine compliance with the anti-avoidance provision. A commenter stated that cost and technology concerns of placing the obligation on dealers and non-dealer subscribers have already been addressed in practice by many dealers. However, a different commenter noted that not all dealers have found solutions.	
Filing of Order Protection Policies and Procedures	
One commenter noted that the requirement to file policies and procedures relating to the prevention of trade-throughs and any material changes at least 45 days prior to implementation decreases the flexibility of a marketplace to adapt to events as they occur and that it is not clear why these policies and procedures should be treated any differently than any other policies or procedures.	*We acknowledge that there may be circumstances where a marketplace may need to change its order protection policies and procedures in a prompt manner. We therefore note that an application requesting an abridgement of this timeframe would be a viable alternative to the legislated timeframe.*
Application of Order Protection Obligation to Active and Passive Orders	
One commenter requested clarification as to whether the order protection obligation applies to both active orders and passive orders sitting in the book. This commenter noted that the definition of "protected order" excludes special terms orders if passive. This commenter also noted that as the value of special terms orders is different than the value of trades executed on standard terms, there is no reason for the distinction between passive and active and concluded that all special terms trades should be excluded from the definition of a "protected order".	*There is no distinction between passive and active orders under the definition of "protected order".*
Trade-through Exceptions	
Systems Failure	
One commenter pointed out that both order entry malfunctions as well as data malfunctions could force a routing marketplace to claim "self help". This commenter	*We agree that marketplaces will need to act reasonably together and with third party suppliers in the event there is a problem in the communications lines between marketplaces.*

also noted that a marketplace could reasonably conclude that another marketplace is experiencing systems issues when in fact there is a connectivity breakdown between the two marketplaces. As well, this commenter suggested that marketplaces would need to act reasonably together and with third party suppliers to rectify this disconnect. In addition, this commenter also suggested that there should be a requirement for each marketplace to document and retain, in an auditable manner, the data that contributes to the marketplace's decision to cease routing to another marketplace.	*Relying on 6.2(a) of NI 23-101, a marketplace may cease routing to another marketplace if it reasonably concludes that the other marketplace is experiencing systems issues. As well, each marketplace would be expected, as part of its policies and procedures under Part 6 of NI 23-101 to document and retain data that contributed to its decision to cease routing to another marketplace.*
Inter-market Sweep Order (ISO) Requirements One commenter indicated that there should not be any additional steps imposed on a marketplace to verify an ISO order as long as a marketplace feature exists to check for an ISO marker and execute and route accordingly.	*We confirm that a marketplace that receives a directed-action order (previously referred to as an inter-market sweep order or ISO) will not have to perform any additional steps to verify it is a bone fide directed-action order but instead merely needs to check for the appropriate marker and execute and/or route or book accordingly. Its policies and procedures must outline what steps it will take upon receipt of a directed-action order.*
Certain commenters requested further guidance on the use of ISO orders, particularly with respect to who bears the regulatory burden in this instance and which regulator will be enforcing these rules.	*We have included a specific requirement with respect to a marketplace participant's responsibility when using a directed-action order in section 6.4 of NI 23-101 and provided more detailed guidance in the companion policy as to the regulatory obligation and how it should be met by the marketplace participant.*
Anti-Avoidance A few commenters supported the inclusion of an anti-avoidance provision.	*We agree there should be an anti-avoidance provision and have included this provision in section 6.7 of NI 23-101.*

Question 1: Should marketplaces be permitted to pass on the trade-through protection obligation to their marketplace participants? If so, in what circumstances? Please provide comment on the practical implications if this were permitted.

Comments	***CSA Responses***
The majority of commenters responding to this question were of the view that marketplaces should not be permitted to pass on the order protection obligation to marketplace participants except in certain circumstances. Some of these commenters indicated that when certain exceptions to the trade-through protection rule such as inter-sweep market orders and systems failure are triggered, it would be appropriate for dealers to assume the order protection responsibility for their orders. Three commenters were in favour of allowing marketplaces to pass on all or part of the order protection obligation to dealers. One commenter noted that this is the approach taken in the U.S. Another commenter was of the view that there is no useful purpose in prohibiting marketplaces from using any particular alternative for meeting the trade-through protection obligation.	*The CSA agree with the majority of commenters that marketplaces should not be permitted to pass on the order protection obligation to marketplace participants.* *However, if a marketplace participant sends a directed-action order, the order protection obligation is shifted to that marketplace participant.* *We also note that if a marketplace participant initiates the systems issues exception, we would expect that it could, among other things, send its orders to another marketplace, relying on the marketplace's order protection obligation, or choose to send a directed-action order. Sending a directed-action order would relieve the marketplace of its order protection obligation.*

Question 2: What length of time should be considered an "immediate" response by a marketplace to a received order?	
Comments	***CSA Responses***
Three commenters suggested that an immediate response could be considered to be any response time less than one second. One commenter suggested that an "immediate" response time should be interpreted as less than 50 milliseconds and another mentioned that 20 milliseconds or less should be used as a limit. Certain commenters were of the view that it is inappropriate to fix a particular time increment since the evolution in technology will change what is considered reasonable over time. These commenters suggested that a more appropriate measure of immediacy should be put in relative terms to the performance of other marketplaces or an agreed upon benchmark. Two commenters believed that the best approach is for marketplaces and market participants to include what constitutes an immediate response time in their written policies and procedures. One commenter indicated that marketplaces should provide the same speed of execution of ISO's as they do for other orders to ensure a prompt response to ISO's.	*We have decided not to attribute a specific time period to the word "immediate" but instead expect that marketplaces and marketplace participants will evaluate whether a response is "immediate" in the context of the type of order sent (electronic or manual) and the relative response time of other marketplaces.* *We will consult with industry to flesh out a consistent approach and develop a protocol to be followed by marketplaces and marketplace participants. We would expect the protocol to be reflected in the policies and procedures of marketplaces and marketplace participants.*
Question 3: Are any additional exceptions necessary?	
Commenters indicated that consideration should be given to: • how block trades may be executed in light of the proposed requirements; • routing of ISOs after cancellations, short sales and odd lots; • expanding the definition of "Calculated Price Order" to include "basket trades" where parties to a transaction agree to a price for a basket of securities where no single security makes up a substantial proportion of the basket; • situations where a buyer wishes to remain under 9.9% (or 5% where a bid is already present or for inter-listed shares) in the context of toe-hold purchases; and • situations where a buyer must remain below a specified level prescribed by law. <u>Contingent Orders, Internal Crosses</u> One commenter indicated that contingent orders and internal crosses should be exempted from the trade-through protection rule.	*Upon consideration of the suggestions received by commenters and the recommendations from the Implementation Committee, we have decided to add language to clarify a number of exceptions.* *Please see section 4(b) in Part III of the Notice for a full discussion of these changes.*

Systems Issues Exception Some commenters indicated that the systems issues exception should place a higher standard on marketplaces to be more transparent regarding the systems problem they are experiencing and demonstrate that they have resolved the systems issues.	*Marketplaces are required to provide notice of the problems under section 6.3 of NI 23-101 and we expect that they will issue a notice once the problems have been resolved. Details of how to declare a systems issue and actions to be taken in response will be fleshed out in a protocol.*
Negotiated Trades Two commenters indicated that an exception should be provided for negotiated trades. One commenter specifically mentioned that the negotiation system should only prohibit any bid or offer outside the spread at the time the bid or offer is made, but be permitted to execute the trade if the bid or offer moves outside the spread at the time the bid or offer is accepted by the counter-party (i.e. 20 seconds later).	*This issue was discussed by the Implementation Committee. Please see our response to this recommendation in subsection 4(b)(iii) in Part III of the Notice.*
Odd Lot Orders One commenter submitted that odd lot orders should not receive trade-through protection because to grant such protection would be unmanageable from a routing perspective and could result in higher clearing costs if market participants were required to execute against non-standard trading units.	*Order protection only applies to orders that are in the regular book. If odd lot orders are listed outside of the regular book, they would not garner order protection.*
Additional Exceptions Two commenters stated that while there did not appear to be any other additional exceptions necessary at this point, the CSA should remain open to re-assessing the rules as issues arise.	*We agree and once the Order Protection Rule is implemented, we will monitor the market to discern if any additional exceptions are required.*
Question 4*:* Please comment on the various alternatives available to a marketplace to route orders to another marketplace.	
The following have been suggested as alternatives to marketplaces routing orders to another marketplace: • marketplaces could be directly linked. Some of the commenters indicated that this could be done by marketplaces becoming members or subscribers of all the protected marketplaces through dealer entities, however it was mentioned that the cost of establishing these dealer entities would be significant; • one commenter expressed a concern about the above-mentioned alternative, specifically with respect to if a marketplace acts as a jitney for its participants, it would have to reveal the participants' codes and suggested that a marketplace should be able to transmit jitney orders under the marketplace's code instead; • new ATSs could display their quotes through a self-regulatory organization such as done through NYSE or NASDAQ in the U.S.;	*We thank all commenters for their suggestions on the alternatives available to a marketplace to route orders to another marketplace. In addition, we expect that the industry will further discuss the possible methods to be used to route orders.*

• an in-house or related-party capability to smart order route, license a stand-alone third-party capability to smart order route, price improve the order to a non-offending price level or reject a potentially offending order; • route an order intact, including the broker ID; and • adjust the definition of "jitney order" so that a participant of a marketplace could execute trades for other market participants that are not necessarily members of, or have an agreement with the marketplace where the trade is executed.	

Question 5: Should the CSA set an upper limit on fees that can be charged to access an order for trade-through purposes? If so, is it appropriate to reference the minimum price increment described in IIROC Universal Market Integrity Rule 6.1 as this limit?

Comments	*CSA Responses*
A few commenters agreed that an upper limit on fees that are charged to access an order for order protection purposes should be set with one commenter specifically stating that the UMIR Rule 6.1 limit was appropriate, another indicating that the $0.003 fee limit used in the U.S. is appropriate and yet another stating merely that the access fee should be nominal. A number of other commenters however, were of the view that a strict fee cap should not be set. One commenter indicated that the adoption of a principles-based approach would be preferable to establishing a strict fee cap and another indicated that this issue will be addressed by market competition. Another commenter cited that the CSA must adopt procedures to prevent marketplaces from establishing fee models which take advantage of the order protection requirements by paying large credits for liquidity with the intention of charging high fees for orders routed pursuant to the order protection obligation. Another commenter suggested that the CSA define what would constitute a pricing abuse warranting an explicit fee cap and move to implement any necessary rule change only if there is clear evidence that such pricing abuses are occurring or are imminent based on announced pricing changes. Certain other commenters supported taking marketplace fees into account when determining best price or determining routing table priorities. Several commenters supported the principle of non-discriminatory fees.	*We note that in addition to these comments, the CSA also took into account the Implementation Committee's recommendation to include a specific cap on trading fees as part of the Order Protection Rule when determining the final rule regarding fees. Please see section 4(d) of the Notice for further details.*

Question 6: Should there be a prohibition against intentionally creating a "locked market"?	
Comments	***CSA Responses***
The majority of commenters responding to this question indicated that there should be a prohibition against intentionally creating a locked market. One commenter further suggested that this prohibition should be applied to all market participants including marketplaces to protect the integrity and function of the market as a whole. Some commenters supported this position by stating that the prohibition of intentionally locking markets is consistent with U.S. regulation and that deliberately locking markets to generate fee rebates is acting contrary to the best interests of the marketplace as a whole. A number of commenters stated that intentionally locking markets may constitute manipulative and deceptive trading. Another commenter supported the effort to address the problem of locked markets but expressed the view that it should be the self-regulatory organizations that should regulate and enforce this subject matter. One suggestion to deal with locked markets included requiring marketplaces to move the sell-side orders to match the buy orders or take the locked order and move it to the marketplace that posted the passive order. Other commenters were not in favour of such a prohibition. These commenters indicated that a locked market does not pose the same policy issues as does a crossed market and that the only policy objection to a dealer intentionally locking a market is a best execution concern, namely a client has requested expeditious execution of an order but instead of immediately executing the order the dealer posts the order on another marketplace and increases the risk that the client's order may not execute at the desired price. A commenter also pointed out that while CSA staff may believe that prohibiting locked markets in all instances will improve liquidity, liquidity cannot be created by forcing dealers and their clients to trade. This commenter further explained that many participants will hold back on making their bids and offers and wait for the market to move away to permit them to post on a cheaper execution venue.	*We agree with the majority of commenters responding to this question and have maintained the prohibition against intentionally placing a "locking" order on a marketplace in section 6.5 of NI 23-101. The section is meant to capture the situation where a marketplace participant intentionally enters an order that locks or crosses a particular marketplace or the market as a whole.* *Additional guidance has been included in section 6.4 of Companion Policy 23-101CP to provide more detail as to which circumstances would be considered to be an unintentional locking or crossing of the market.*

SUMMARY OF PUBLIC COMMENTS ON PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 23-101 MARKETPLACE OPERATION AND NATIONAL INSTRUMENT 23-101 TRADING RULES

List of Commenters

1. Alpha ATS
2. BMO Nesbitt Burns Inc.
3. Canadian National Stock Exchange
4. Canadian Security Traders Association Inc.
5. CanDeal
6. Chi-X Canada ATS Limited
7. CIBC World Markets
8. Investment Industry Association of Canada
9. ITG Investment Technology Group
10. Liquidnet Canada Inc.
11. Omega ATS
12. RBC Asset Management Inc. and Phillips, Hager & North Investment Management Ltd.
13. RBC Dominion Securities Inc.
14. TD Asset Management
15. TD Securities Inc.
16. Simon Romano
17. TMX Group Inc.
18. TriAct Canada Marketplace

APPENDIX C

Report of the Implementation Committee
Regarding Potential Material Changes to the Proposed Trade-Through Protection Rule

Committee Members

Judith Robertson	Chair, Belzberg	Chris Sparrow	Liquidnet
Michael Brady	Alpha	Mark Armstrong	National Bank Financial
Randee Pavalow	Alpha	Nadyne McConkey	National Bank Financial
AnneMarie Ryan	AMR Associates	Fera Jeraj	National Bank Financial
Doug Clark	BMO Capital Markets	Al Kovacs	National Bank Financial
James Ehrensperger	BMO Capital Markets	Michael Sheridan	Norstar Securities
Jenny Drake	CCL Group	Mario Josipovic	Omega
Tal Cohen	Chi-X	Greg King	Omega
Matthew Trudeau	Chi-X	Spencer MacCosham	Raymond James
Kevin McCoy	CIBC	Kelley Hoffer	RBC
Cindy Petlock	CNSX Markets	Greg Mills	RBC
Richard Carleton	CNSX Markets	Vanessa Gardiner	Scotia Capital
Sonny Lennon	CSTA	Peter Haynes	TD Newcrest
Martin Hakker	Fidessa	Ray Tucker	TD Newcrest
Iven Bryer	Fidessa	Deanna Dobrowsky	TMX Group
Steve Harvey	Fidessa	David Chmelnitsky	
Darren Sumarah	Goldman Sachs	Tim Thurman	
Shawna Katan	Haywood Securities		
Susan Copland	IIAC		
Stephen Plut	ITS		
Torstein Braaten	ITG		
Jim Davies	IRESS		
Dave Mulder	IRESS		

The Implementation Committee identified 5 areas in the proposed rule where desired changes could rise to a level of materiality that would require a republication of the rule ("material changes"). We created a sub-committee to address each of these areas. The sub-committees were open to participation from all members of the Implementation Committee. They met to discuss the issues at least twice. The results of those discussions were presented and further discussed by the full Implementation Committee at least twice. The results of the sub-committee deliberations are included as Appendix A.

This report summarizes the concluding discussion of the Implementation Committee regarding the 5 areas of potential material change. In some circumstances, we have been able to create a specific recommendation(s). In others areas, a consensus conclusion was not possible. However, even where we were unable to agree on conclusions, we agreed on many of the supporting arguments. We have included this information to provide insight for the regulators and a direction of further investigation to assist in their deliberations.

1. Anti-Avoidance

- Recommendations

  i. The anti-avoidance provisions in the proposed rule and the proposed IIROC rule should be harmonized. This will ensure that all marketplace participants are operating under the same rule set.

  ii. It should contain prescriptive language, rather than remain principle based.

  iii. It should not constrain normal cross-border trading activities, or be in conflict with best execution decisions. It should be expressly limited to large, pre-arranged trades.

  iv. The CSA rule should reference the IIROC rule in some way to ensure continued harmonization and to allow for more timely changes to dollar amounts etc., as warranted.

  v. Proposed wording is included as Appendix B.

2. Exceptions

- Recommendations

i. One additional exception should be considered to address the situation where a trade is negotiated off-marketplace, in a manual manner. The exception would recognize that the parties to the trade could have negotiated the trade price to be within the NBBO at the time of the trade, but the market may have moved by the time the trade is posted, creating the appearance of a trade-through.

ii. The exception should include the concept of a "look back" i.e. the parties can look back to market

iii. The CSA should consider other constraints to this exception to avoid the potential for gaming or abuse. Many members were concerned about the seeming contradiction in creating an exception to accommodate manual trading when the general thrust of regulatory oversight is to migrate towards electronic audit trails and transparent, on marketplace, trading. For example, the rule should clearly define at what point the time clock starts. In some instances, (e.g. Liquidnet) the time of the trade is clearly captured by an electronic system whereas in other instances (e.g. phone based trading) the time of trade is not electronically captured. Another constraint to consider would be a size constraint. This exception is not necessary for normal course trading and should be restricted to exceptional circumstances like block trades.

iv. It was recognized that there would need to be harmonization with the UMIR wording which defines a trade occurring at the point it is printed on a marketplace.

v. The Committee thought the US rule of basing the look-back window around the time the trade was entered into an automated system had merit, but did not agree that 20 seconds was necessary or that the exception should only apply to agency block trades. The point was made that in the Canadian market, dealer capital has historically played a more important role than in the US and that there are circumstances where one block sized order is matched by several smaller, non-block orders.

vi. It is expected that there may be additional exceptions that will only be surfaced when the mechanics of implementation are more fleshed out. The CSA should imbed a simplified mechanism for adopting additional exceptions in the future, as needed. It should be noted that in the US experience, there were 17 additional exceptions granted after the rule was made final.

3. Dealer Responsibility

- Recommendations

i. The Committee believes that there are circumstances where a market participant would prefer not to rely on the routing mechanisms of a marketplace to ensure compliance with the trade-through rule. Therefore the proposed rule should be amended to set out the requirements more specifically when market participants choose to assume the responsibility for trade-through compliance. It is important to note that while the Committee used "dealer responsibility" as shorthand, the recommendation applies to all market participants, including access persons.

ii. The key reason is the recognition that some market participants may invest in specialized routing technology for competitive purposes. They desire the freedom to use their specialized technology and ignore the routing technology of the marketplace, provided that they can ensure the same standard of compliance.

iii. The suggested solution is to create a voluntary marker called an IEB ("Immediately Execute and Book"). This marker would signal to the marketplace that they need not enforce trade-through for that particular order, but should execute immediately and book the remainder or book the order without checking prices on other marketplaces.

iv. The Committee confirmed that the dealer would be responsible for trade-through compliance if a DMA client selected the IEB marker.

v. One issue that was raised by the Committee for consideration by the CSA was what the marketplace should do if booking the remainder of the IEB order would result in a crossed market.

vi. The subcommittee created a draft language proposal for inclusion in the rule (attached as Appendix C).

4. Depth-of-book

- Recommendation – The Committee recommends that the CSA oversee an independent review of the costs and benefits of full depth-of-book versus top-of-book. The Committee members are willing to assist through providing data and their particular views, however it must be recognized that each individual member's cost position will be different, competitive issues will have influence on responses and an over arching view is beyond the scope of this Committee. However, while the Committee is supportive of further research to guide the policy conclusions, there is no appetite for adding delay to this already lengthy process. Therefore, the CSA should only accept this recommendation if it is possible to conduct the further research in a timely manner.

  i. The Committee was split on its views on whether the CSA should consider limiting the protected orders to the top-of-book. While there were many strongly held views supporting a full depth-of-book standard among the dealers, marketplaces and vendors on the Committee, it is recognized that opinions on this matter in the dealer community appear to have shifted to supporting top-of-book, as evidenced by the IIAC survey results. It is further recognized that the Committee is lacking a full representation of buy-side, retail investors and smaller dealers. There was no support for a standard which incorporates an arbitrary number of levels.

  ii. There was agreement on many of the decision inputs; however different conclusions were drawn depending on the facts and weighting given.

  iii. The Committee agreed that depth-of-book protection was more complete and philosophically consistent with some of the policy objectives of the CSA.

  iv. The Committee agreed that depth-of-book was more complex and potentially more costly to the industry in aggregate. The Committee's view on costs is an industry wide perspective and includes the specific costs of implementing the rule which will vary by entity, plus the on-going costs of monitoring and enforcing the rule.

  v. The differences arose around the conclusions of whether the incremental protection of full depth was sufficient to justify the incremental costs.

  vi. The benefits of full depth are difficult to quantify, but a change from this standard would represent a change from the current standard which may contribute to the perception of a lower level of investor protection.

  vii. The incremental costs of full depth over top-of-book are also disputed and vary across participants and marketplaces. It is acknowledged that the current regime is a full depth-of-book regime, although this standard is not currently strictly enforced. Therefore the cost of implementing either full depth or top-of-book for each party (marketplace, vendor, and participant) from this point will depend on what they have currently put in place and whether the final rule is a change from the status quo.

  viii The Committee requests the CSA facilitate the research which may allow a greater consensus on this topic. An independent cost-benefit analysis, including the on-going costs of enforcement, data and impact on market structure would be extremely helpful. However, the Committee is not supportive of this additional research adding delay in the implementation of this rule. Below are some of the issues we recommend be further researched.

    i) Latency – there is a concern that the requirement to exhaust full depth will contribute to the latency associated with routing for trade through. If the trader must wait for the slowest market to respond multiple times they risk missing liquidity on other markets. What are the mitigations available to ensure that latency does not unduly disrupt trading e.g. self help, minimum standard for response time for marketplaces?

    ii) Enforcement – The costs of depth-of-book protection increase with a higher standard of enforcement. At the extreme, a zero-tolerance, trade by trade enforcement of full depth would be significantly more costly than a "pattern of behaviour" standard. What will the enforcement model require to ensure compliance? Will this be consistently applied between the CSA and IIROC?

iii) Record keeping and data – What are the standards of record keeping, audit trail and data storage required to protect against trade-throughs and ensure the ability to prove this when challenged? The requirement for full depth data for all markets solely for the purpose of trade-through compliance is significantly more costly than a top-of-book regime. Will the information processor supply sufficient data at a reasonable cost to allow regulatory compliance?

iv) Investor confidence/price formation – The majority of the current routing technology in Canada is iterative. With the increasing proportion of ELP providers the market structure may be changing. Depending upon the specific capabilities and speed of the order routers, the result may be that the market's ability to comply with trade through is *de facto* top-of-book. The orders that are actually protected may be ELP or hidden (iceberg) orders because they can replenish the top-of-book faster than an iterative order router can take out orders farther down the book. If this scenario is the norm, will the CSA find this outcome acceptable or will they look to create enforcement or other measures that will require additional costs to ensure those orders below the top are actually taken out e.g. requiring spray routers?

v) Block trades – There was a greater agreement, even among those favouring top-of-book, although still not a consensus, that a pre-arranged, block trade that would trade through several price levels should provide some liquidity for those orders lower in the book, as is done now. This could be possibly achieved with a hybrid structure (e.g. top-of-book for standard trades and full depth for blocks), a consistent application of the anti-avoidance provision and a stricter enforcement of the best execution requirements. Would the CSA consider whether this hybrid structure would accomplish enough of the benefit of full depth-of-book with lower costs to the industry?

vi) Best execution – Those members favouring full depth-of-book are concerned that, if the CSA selects a top-of-book solution, enforcement of best execution would need to be significantly increased. A cohesive enforcement regime of best execution and the anti-avoidance provisions would mitigate the lower level of order protection. What are the CSA and IIROC plans for monitoring and enforcing best execution?

vii) Intersection with other rules – There is the potential that a depth-of-book standard increases the complexity and cost of compliance with other trading rules. For example, the recent costs incurred by marketplaces, vendors and participants to accommodate the bypass marker would not have been incurred if the standard was a top-of-book. Are there other areas where we can anticipate increased costs to accommodate the intersection of trade through with other rules?

5. Fee Caps

- Recommendations

i. The Committee agreed that including fee caps for trading fees in the proposed rule was advisable. While the marketplaces generally felt that competitive forces were adequate to govern trading fees, they acknowledged the concern of market participants and were willing to accept a reasonable constraint.

ii. Given the concerns of the market participants, the Committee agreed that the proposed level of fee cap referencing a trading increment was not the most appropriate.

iii. One proposal that the Committee suggests the CSA consider is a model similar to the US model of a set price for stocks trading above $1 and a % of share price for stocks trading below $1.

iv. Although there were concerns regarding access, data and routing fees, the Committee did not believe it was necessary to impose any other fee caps at this time.

APPENDIX A - Report of the Implementation Committee

Trade-through Implementation Committee Recommendation Summary

SUB-COMMITTEE	MANDATE	SUBCOMMITTEE RECOMMENDATION(S)	OTHER VIEWS EXPRESSED	FINAL IMPLEMENTATION COMMITTEE RECOMMENDATION
Anti-Avoidance	To determine whether the anti-avoidance provision in the proposed rule is adequate, or additional requirements, as proposed by IIROC, are necessary.	1. Suggested changes to UMIR were presented (attached at TAB A). Prescriptive language in the ATS Rules rather than a principles-based rule was recommended. Clarity should be provided around the rules that regulators are concerned about large pre-arranged trades taking place in other jurisdictions and not trades of smaller size.	Other views expressed were that: - it would be better to use a relative metric because hard dollar values will need to be updated in time; and - a prescriptive rule should be included in UMIR that can be referenced in the ATS Rules. This would allow for quicker updates when needed.	
Exceptions	To determine whether there were gaps in the proposed rule that should be addressed through additional exemptions.	1. A 10 second look-back for pre-arranged trades was recommended. This look back exception would allow markets to print a pre-arranged trade outside the NBBO at the time of the print as long as: (a) the price was within the NBBO at the time the trade was agreed to, and (b) the trade is printed by a marketplace within 10 seconds of when the parties agreed to the trade. 2. The CSA should be able to adopt additional exceptions quickly, without the need for a long comment period, should a need present itself.	A contrary view was expressed that Recommendation #1 goes against the principles of trade-through protection and will have a negative impact on price discovery.	
Dealer Responsibility	To determine: - the extent of a dealer's responsibility with respect to preventing trade-throughs when relying on an ISO or systems exception; - the extent of a marketplace's responsibility in those circumstances; and - whether marketplaces should have the ability to rely on a dealer (or other participant) to take responsibility for	1. Presented revised language (attached at Tab B) to the proposed rule that: - introduces an "immediately execute/book" (IEB) order where a receiving marketplace would be required to immediately execute the order with any remainder to be booked and not implement its own policies and procedures to reasonably prevent trade-throughs; - provides for IEBs to be	Alternative language was presented (attached at Tab C) that does not materially change the recommended language but clarifies that after entering an IEB, one or more additional orders of sufficient volume must be routed, as necessary, to protected marketplaces with a better price to the IEB.	

SUB-COMMITTEE	MANDATE	SUBCOMMITTEE RECOMMENDATION(S)	OTHER VIEWS EXPRESSED	FINAL IMPLEMENTATION COMMITTEE RECOMMENDATION
	compliance with the trade-through protection rule.	used in conjunction with by-pass and immediate-or-cancel markers, depending on the sender's objectives; and - requires a marketplace or marketplace participant using an IEB to have policies and procedures to reasonably prevent trade-throughs that include the use of such an order.		
Depth of Book	To examine the proposal to continue a full depth-of-book trade-through obligation or whether there are policy reasons to impose it at a lesser depth (top-of-book or multi-levels).	1. Suggested maintaining full depth of book protection for the following reasons: - best alternative for maintaining investor confidence and maintaining the incentive to contribute to the price discovery process; - technology considerations should serve the market and its regulatory requirements; - SORs currently operating protect full depth of book; and - comparison with U.S. top of book requirement is not valid given the significantly greater number of trading venues and greater liquidity in U.S.	Others held that top of book protection is preferable to full depth because: - most SORs operate in an iterative, top of book approach; - it is a more practical way to regulate trade-through requirements; - investor confidence has not suffered in U.S. or Europe; - marketable orders typically exhaust 2 or 3 price levels making full depth of book protection unnecessarily onerous for the marginal protection it would provide over top of book protection; - it is important to consider limits and costs of technology; and - the latency of some marketplaces and race conditions could cause trade-throughs in a full depth of book environment,	
Fee Caps	To determine whether the proposed fee cap in the CSA amendments was appropriate and if not, what alternatives are available.	There was no agreed upon recommendation from the subcommittee.	Certain members of the sub-committee recommended: - the proposed cap for stocks should be a fee less than one half of one tick increment; - the use of a net pricing model; - fees should be capped for stocks priced under $1.00 using a percentage of the price.	

APPENDIX B - Report of the Implementation Committee

Anti-Avoidance Committee - Suggested changes to UMIR Anti-avoidance

(3) The exemption provided for in clause (d) of subsection (2) is unavailable if the order to be executed on the foreign organized regulated market would avoid execution against a better-priced order on a marketplace pursuant to Part 6 of the Trading Rules had the order been entered on a marketplace rather than the foreign organized regulated market and the order is on behalf of a Canadian account denominated in Canadian funds and is:

(a) part of an intentional cross;

(b) part of a pre-arranged trade;

(c) for more than 50 standard trading units; or

(d) has a value of $250,000 or more.

APPENDIX C - Report of the Implementation Committee

Page 4.(iv) Visible Orders

The Proposed Trade-through Protection Rule would only apply to orders or parts of orders that are visible. In other words, the orders would have to be displayed by the marketplace and information about them would have to have been provided to an information processor or information vendor.

In addition, hidden orders or those parts of iceberg orders that are not visible would not be protected. Currently, the manner by which "dark" portions of orders in an otherwise transparent order book would be avoided is by using the "bypass" marker introduced by IIROC.12 The bypass marker signals to the marketplace that the order routed to the marketplace should not execute against any hidden liquidity.

Page 4.(b) "Permitted" Trade-throughs

The overall purpose of trade-through protection is to promote confidence and fairness in the marketplace where the visible portions of better-priced limit orders trade ahead of inferior-priced orders. It is important to acknowledge, however, that the issues relating to preventing all trade-throughs in a multiple marketplace environment have become highly complex, particularly with the advent of new types of orders and other developments in market structure in Canada.

As a result, we have proposed a number of circumstances where, if trade-throughs result, they would be permitted.13 These "permitted" trade-throughs or "exceptions" are primarily designed to achieve workable inter-market trade-through protection while facilitating the use of trading strategies and order types that are useful to investors. They are intended to promote fairness, innovation and competition.

Trade-though protection is an obligation owed by all marketplace participants to the market as a whole. It is important that marketplace participants create policies and procedures that will reasonably prevent trade-throughs and maintain relevant information so that the effectiveness of section 6.1 of NI 23-101 can be adequately evaluated by regulatory authorities.14 Although we are placing a policies and procedures obligation on marketplaces to reasonably prevent trade-throughs, in certain circumstances a marketplace would not be in violation of this obligation when trading through better-priced orders on other marketplaces. One such circumstance would be where the marketplace executes an order from a marketplace participant or other marketplace that notifies the receiving marketplace that it should not take any action other than to execute and/or book the order. By marking an order "immediately execute/book" the sender of the order is accepting the obligation for complying with trade-through requirements.

Page 5.Question 2: What length of time should be considered an "immediate" response by a marketplace to a received order?

(ii) Immediately Execute/Book Order

We are proposing an exception from the obligation on marketplaces to utilize their policies and procedures to reasonably prevent trade-throughs to allow the use of immediately execute and/or book orders. An order marked "immediately execute/book" (IEB) informs the receiving marketplace that it can execute the order and book the remainder or book the order, as applicable, without delay or regard to any other better-priced orders displayed by another marketplace.16 In such situations the receiving marketplace would not have an obligation to implement its policies and procedures to reasonably prevent trade-throughs, which could include routing, re-pricing or rejecting the order. Any order may be marked "immediately execute/book" by a marketplace or a marketplace participant. The concept allows for simultaneous routing by a participant of more than one IEB order to execute against protected orders in a number of different marketplaces. In addition, marketplace participants may send a single IEB order to execute against the best protected bid or best protected offer. When used in conjunction with the "Bypass" and immediate-or-cancel markers, an IEB order would enable participants to execute large block orders, provided that they simultaneously route one or more IEB orders to execute against all better-priced protected orders, facilitating that participant's compliance with the trade-through requirements. The IEB order may be used in conjunction with the bypass and immediate-or-cancel markers, depending on the sender's objectives.

Page 87 – **Section 1.1 Definition** – "immediately execute and/or book order" or "IEB" means an order for the purchase or sale of an exchange-traded security, other than a derivative,

(a) entered on or routed to a marketplace to be executed immediately with any remainder to be booked or to be immediately placed in an order book; and

(b) identified as an immediately execute and/or book order;

and at the same time it is entered or routed, one or more additional orders of sufficient volume are routed, as necessary, to a marketplace to execute against the displayed volume of any protected order on that marketplace with a better price to the orders referred to in paragraph (a), so long as a marketplace participant that has marked an order "immediately execute and/or book", has policies and procedures to reasonably prevent trade-throughs that include the use of such an order;

page 90 6.3 Immediately Execute And/Or Book Order Requirements – A marketplace or marketplace participant responsible for the routing of an order marked execute and/or book must ensure it has appropriate policies and procedures to reasonably prevent trade-throughs when using such orders.

Page 98, 2.4 Definition of Immediately Execute And/Or Book Order – An order marked immediately execute and/or bookinforms the receiving marketplace that it can be immediately executed or booked as a passive order without reference to better-priced orders displayed by other marketplaces. An IEB order is utilized by a marketplace or marketplace participant to notify the recipient marketplace that it should immediately execute and/or book the order and not implement the marketplace's policies and procedures to reasonably prevent trade-throughs.

Page 101, (3) In certain circumstances, including in anticipation of utilizing an immediately execute and/or book order, a marketplace participant should create policies and procedures to reasonably prevent trade-throughs and should maintain relevant information to track routing decisions. For example, if a marketplace participant regularly uses an immediately execute and/or book order or has a process for routing orders if a marketplace experiences a systems failure, it should maintain policies and procedures outlining when it is appropriate to use that order type or outlining its routing choices, respectively as well as policies and procedures to reasonably prevent trade-throughs where an immediately execute and/or book order is utilized. If a marketplace participant regularly uses immediately execute and/or book orders or is sending an order to a marketplace that may be experiencing systems issues, it may also be appropriate for the marketplace participant to maintain relevant information so that compliance with Part 6 of NI 23-101 can be adequately evaluated by regulatory authorities.

Page 102 (b) Paragraph 6.2(b) of the Instrument contemplates that a marketplace would immediately execute or book any order identified as an immediately execute and/or book order. A marketplace that receives an immediately execute and/or book order would not need to delay its execution or take any action to reasonably prevent trade-throughs.

APPENDIX D

Summary of Responses to CSA Staff Questions
regarding costs of a full depth-of-book vs. a top-of-book order protection obligation

Note that a list of commenters has not been provided with this summary due to the sensitive commercial information that has been requested in some of the questions below.

Marketplaces

We received responses to the questions below from four marketplaces.

Question	Response Summary
1. How do you intend to implement your policies and procedures in order to comply with the proposed trade-through protection rule? How would a full depth-of-book trade-through obligation impact this strategy? How would a top-of-book trade-through obligation impact this strategy?	*Strategies that were identified included: (i) using a smart order routing service that was based on a full-depth obligation, (ii) using a reject and re-price strategy that utilizes the Canadian best bid/best offer (CBBO), and (iii) accepting only orders or methodologies (e.g. directed-action orders) that will not violate the requirements. The first two methods would not be impacted by implementing either a top-of-book or full depth-of-book obligation.* *One marketplace stated that full depth-of-book would require a marketplace to obtain and store full depth-of-book data from all marketplaces for all securities, which would have substantial cost impact*.
2. Does your marketplace currently offer routing capabilities to participants? If so, is the router intended to provide smart order routing services or to simply avoid trade-throughs? If the routing is intended to provide a smart order routing solution, how many price levels does the router evaluate when making routing decisions?	*Most of the responding marketplaces do offer routing capabilities to its participants. The router in most cases is designed to simply avoid trade-throughs. One smart order router that is intended to provide smart order routing services consolidates the entire depth-of-book.*
3. Please provide any estimates of the incremental latency associated with the router evaluating more than the best bid or offer when making routing decisions, including the measurement points.	*The majority of the respondents indicated that there is no additional latency associated with the router evaluating more than the best bid or offer when making routing decisions. One marketplace indicated that there would be an increase in processing time depending on the number of levels considered.*
4. If the router complies with the current depth-of-book best price requirements would there be any costs or cost savings associated with moving to a top-of-book standard (i.e. hardware or operating costs)? Would such a change result in changes to the router (i.e. software re-development)?	*The majority of responding marketplaces stated that they would not incur additional costs to implement a top-of-book standard.* *One marketplace indicated that substantial investment by developers of order routing and execution management technology and market making software systems used by electronic liquidity providers would be required if moving to a top-of-book standard.*
5. If your marketplace does not currently have routing technology or if the router only evaluates top-of-book information, please provide estimates of the incremental costs associated with developing and implementing a full depth-of-book router relative to a top-of-book only router.	*One respondent noted that a compliance solution that only requires use of the CBBO would comply equally with a top-of-book or full depth-of-book obligation.*

6. If you intend to use an ISO/IEB (inter-sweep market order/immediate execute and/or book order) order, how do you intend to comply with a full depth of book trade-through requirement? How would this change if a top-of-book trade-through obligation were imposed instead?	*Most marketplaces indicated that they are in the process of determining their approach to ISO/IEB orders.*

Dealer/Market Participants

We received responses to the questions below from eight dealer/market participants.

Question	Response Summary
1. If you intend to use an ISO/IEB marker, how would you implement your policies and procedures in order to comply with a full depth-of-book trade-through requirement? How would this change if a top-of-book trade-through obligation were imposed instead?	*One respondent indicated that there would be no change in the manner in which they comply with the requirements. Another respondent indicated that the current router that is used sweeps top-of-book information and can receive updates to evaluate the best price.* *One respondent indicated that demonstrating compliance with the requirements under a full-depth standard would require an increase in resources to review trading on a real-time basis resulting in enhanced system monitoring and testing, policies, procedures and record keeping to monitor the marketplaces.* *One commenter stated that if "sprays" occur for a single order, then the full depth-of-book prices will need to be captured each time.*
2. Relative to your current best execution obligation, what would be the incremental cost of implementing a top-of-book trade-through obligation? Please focus on the cost of developing and implementing a solution rather than the data storage cost associated with demonstrating compliance with the obligation or the cost of connecting/accessing marketplaces.	*Most respondents to this question do not believe that the incremental costs will be significant.* *One commenter was uncertain about incremental costs, but expected that they would be much higher.* *Another commenter expected to need new software, hardware, and telecom lines.*
3. Relative to your current best execution obligation, what would be the incremental cost of implementing a full depth-of-book trade-through obligation? Please focus on the cost of developing and implementing a solution rather than the data storage cost associated with demonstrating compliance with the obligation or the cost of connecting/accessing marketplaces.	*One respondent noted that the incremental costs of a top-of-book or full depth-of-book obligation are roughly the same if the costs associated with compliance, monitoring and increased latency are discounted. This respondent indicated that the cost of increased latency associated with a full depth requirement would surpass technology related costs.* *One respondent stated that a full depth requirement could lead to situations where a client order, when eventually filled is executed at a higher price than what was contemplated. This respondent also noted that a full depth-of-book obligation would impose a competitive disadvantage as U.S. markets only require top-of-book protection.* *Another respondent indicated that only other cost under a full depth obligation would be acquiring a system to monitor compliance independent of the routing technology used.* *Another commenter was uncertain about the cost implications but expected they would be much higher.* *Another commenter anticipated slightly higher costs.*

4. How many levels of order book information would be consumed and evaluated by your systems in order to demonstrate compliance with the existing best execution requirements?	*Most respondents indicated that the full depth-of-book data is consumed.*
5. Given that the current best price obligation applies to all price levels, what additional costs or cost savings would be incurred by moving to a top-of-book standard?	*Responses indicated that cost savings would be realized given that systems modifications would be minimal to ensure compliance. Respondents further explained they would save costs with respect to: consolidated data feeds, data storage, monitoring, exception reporting, and personnel. A couple of respondents also mentioned the cost of latency, with one respondent being of the view that the largest cost savings would be in terms of latency as opposed to hard dollars.*
6. Do you currently use a smart order router? Is it provided by a third party vendor or is it proprietary? Do you use more than one router (i.e. different desks use different routers?) In what areas? How much of your order flow is routed through a router?	*The vast majority of respondents use smart order routers. Most use a third party smart order router and most use more than one router. The majority of respondents indicated that they send most of their order flow through a smart order router.*

Vendors

We received responses to the questions below from three vendors.

Question	**Response Summary**
1. Please identify if your routing product is an iterative or spray router.	*All respondents currently supply an iterative router.*
2. How many levels of order book information does the router currently consume and evaluate when making routing decisions?	*The majority of respondents indicated that the iterative router bases routing decisions on the top-of-book information but the router continues to send orders until the full depth of the book is exhausted.*
3. How many levels of information are considered a requirement for a router to be able to assist its user in achieving best execution?	*All respondents indicated that top-of-book information is required for a router to be able to assist the user in achieving best execution.*
4. Relative to the requirements associated with the current best execution standard, what is the incremental cost of developing and operating a full depth-of-book router?	*The majority of respondents stated that there would be no incremental cost. One respondent indicated that if a more complicated algorithm needs to be designed to consider the entire depth of book across all markets prior to sending orders there would be costs incurred with the design, development and implementation of this algorithm.*
5. Please identify any incremental costs that would be incurred if the regulatory standard was changed to top-of-book.	*The majority of respondents stated that there would be no incremental cost. However, one indicated that it would need to build the capability to pull orders because the number of times a locked and cross market will occur will increase in a top-of-book environment.*
6. What would be the cost-savings of such a change?	*The majority of respondents indicated that there would be none or negligible savings. One predicted that it would incur increased costs.*

7. Please provide any estimates of the incremental latency associated with evaluating the order book's full depth when making routing decisions.	*The majority of respondents stated that there would be no incremental latency associated with a full-depth evaluation.* *One respondent indicated that there would be additional latency because of the increased amount of data that must be considered.*
8. Optional question – please provide us with an estimate of how many participants and/or how much order flow is routed through your router to the Canadian marketplaces.	*The vendors responding to this question provide their services to a large number of traders (including all major Canadian banks) and route a great amount of the order flow in Canada.*

AMENDMENTS TO
NATIONAL INSTRUMENT 21-101 MARKETPLACE OPERATION

1.1 Amendments

(1) This Instrument amends National Instrument 21-101 *Marketplace Operation*.

(2) The definitions in section 1.1 are amended as follows:

(a) the definition of "IDA" is repealed and replaced by the following ""IIROC" means the Investment Industry Regulatory Organization of Canada";

(b) the definition of "inter-dealer bond broker" is amended by:

(i) striking out "IDA" and substituting "IIROC";

(ii) striking out "By-law No. 36" and substituting "Rule 36"; and

(iii) striking out "Regulation 2100" and substituting "Rule 2100";

(c) the definition of "recognized exchange" by repealing and replacing paragraph (b) and substituting with the following:

"(b) in Québec, an exchange recognized by the securities regulatory authority under securities or derivatives legislation as an exchange or self-regulatory organization"; and

(d) the definition of "recognized quotation and trade reporting system" is amended by

(i) adding "and Québec" between "British Columbia" and ", a quotation and trade reporting system" in paragraph (a);

(ii) striking out "and" at the end of paragraph (a) and adding "and" at the end of paragraph (b); and

(iii) adding the following:

"(c) in Québec, a quotation and trade reporting system recognized by the securities regulatory authority under securities or derivatives legislation as an exchange or a self-regulatory organization";

(3) The following subsection is added to section 1.4:

"(3) In Québec, the term "security", when used in this Instrument, includes a standardized derivative as this notion is defined in the *Derivatives Act*.".

(4) Part 10 is amended by:

(a) striking out "Disclosure of" in the title of Part 10; and

(b) adding the following section after section 10.2:

"**10.3 Discriminatory Terms –** With respect to the execution of an order, a marketplace shall not impose terms that have the effect of discriminating between orders that are routed to that marketplace and orders that are entered on that marketplace.".

(5) (a) Subsection 11.5(1) is amended by:

(i) adding "and" between "securities," and "a dealer";

(ii) striking out "and a regulation services provider monitoring the activities of marketplaces trading those securities"; and

(iii) adding "with the clock used by a regulation services provider monitoring the activities of marketplaces and marketplace participants trading those securities." at the end of the sentence; and

(b) subsection 11.5(2) is amended by:

(i) adding “and” between “securities,” and “an inter-dealer bond broker”;

(ii) striking out “and a regulation services provider monitoring the activities of marketplaces, inter-dealer bond brokers or dealers trading those securities”; and

(iii) adding “with the clock used by a regulation services provider monitoring the activities of marketplaces, inter-dealer bond brokers or dealers trading those securities.” at the end of the sentence.

(6) Part 12 is repealed and replaced with the following:

“**PART 12 CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS**

12.1 System Requirements – For each of its systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, a marketplace shall

(a) develop and maintain

(i) reasonable business continuity and disaster recovery plans;

(ii) an adequate system of internal control over those systems; and

(iii) adequate information technology general controls, including without limitation, controls relating to information systems operations, information security, change management, problem management, network support and system software support;

(b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually,

(i) make reasonable current and future capacity estimates;

(ii) conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner; and

(iii) test its business continuity and disaster recovery plans; and

(c) promptly notify the regulator or, in Québec, the securities regulatory authority and, if applicable, its regulation services provider, of any material systems failure, malfunction or delay.

12.2 System Reviews – (1) For each of its systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, a marketplace shall annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards to ensure that it is in compliance with paragraph 12.1(a).

(2) A marketplace shall provide the report resulting from the review conducted under subsection (1) to

(a) its board of directors, or audit committee, promptly upon the report’s completion, and

(b) the regulator or, in Québec, the securities regulatory authority, within 30 days of providing the report to its board of directors or the audit committee.

12.3 Availability of Technology Requirements and Testing Facilities – (1) A marketplace shall make publicly available all technology requirements regarding interfacing with or accessing the marketplace in their final form,

(a) if operations have not begun, for at least three months immediately before operations begin; and

(b) if operations have begun, for at least three months before implementing a material change to its technology requirements.

(2) After complying with subsection (1), a marketplace shall make available testing facilities for interfacing with or accessing the marketplace,

(a) if operations have not begun, for at least two months immediately before operations begin; and

(b) if operations have begun, for at least two months before implementing a material change to its technology requirements.

(3) A marketplace shall not begin operations until it has complied with paragraphs (1)(a) and (2)(a).

(4) Subsections 12.3(1)(b) and (2)(b) do not apply to a marketplace if the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment if

(a) the marketplace immediately notifies the regulator, or in Québec, the securities regulatory authority, and, if applicable, its regulation services provider of its intention to make the change; and

(b) the marketplace publishes the changed technology requirements as soon as practicable.".

(7) Section 14.5 is repealed and replaced with the following:

"**14.5 System Requirements –** An information processor shall

(a) develop and maintain

(i) reasonable business continuity and disaster recovery plans;

(ii) an adequate system of internal controls over its critical systems; and

(iii) adequate information technology general controls, including, without limitation, controls relating to information systems operations, information security, change management, problem management, network support, and system software support;

(b) in accordance with prudent business practice, on a reasonably frequent basis and in any event, at least annually,

(i) make reasonable current and future capacity estimates for each of its systems;

(ii) conduct capacity stress tests of its critical systems to determine the ability of those systems to process information in an accurate, timely and efficient manner; and

(iii) test its business continuity and disaster recovery plans;

(c) annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards to ensure that it is in compliance with paragraph (a);

(d) provide the report resulting from the review conducted under paragraph (c) to

(i) its board of directors or the audit committee promptly upon the report's completion, and

(ii) the regulator or, in Québec, the securities regulatory authority, within 30 days of providing it to the board of directors or the audit committee; and

(e) promptly notify the following of any failure, malfunction or material delay of its systems or equipment

(i) the regulator or, in Québec, the securities regulatory authority; and

(ii) any regulation services provider, recognized exchange or recognized quotation and trade reporting system monitoring trading of the securities about which information is provided to the information processor.".

1.2 **Effective Date –** This Instrument comes into force on January 28, 2010.

AMENDMENTS TO COMPANION POLICY 21-101CP
TO NATIONAL INSTRUMENT 21-101 MARKETPLACE OPERATION

1.1 Amendments

(1) This instrument amends Companion Policy 21-101CP.

(2) Part 1 is amended by adding the following section as section 1.4:

"**1.4 Definition of Regulation Services Provider –** The definition of regulation services provider is meant to capture a third party provider that provides regulation services to marketplaces. A recognized exchange or recognized quotation and trade reporting system would not be a regulation services provider if it only conducts these regulatory services for its own marketplace or an affiliated marketplace.".

(3) Subsection 2.1(7) is amended by:

(a) striking out all references to the "IDA" and substituting "IIROC"; and

(b) striking out all reference to "By-law No. 36" and substituting "Rule 36"; and

(c) striking out all references to "Regulation 2100" and substituting "Rule 2100".

(4) Subsection 3.4(5) is amended by striking out the reference to the "IDA" and substituting "IIROC".

(5) Subsection 6.1(6) is amended by striking out "any change to the operating platform of an ATS, the types of securities traded, or the types of subscribers." and substituting "a change to the information in Exhibits A, B, C, F, G, I, and J of Form 21-101F2.".

(6) Section 7.1 is repealed and replaced by the following:

"7.1 Access Requirements – (1) Section 5.1 of the Instrument sets out access requirements that apply to a recognized exchange and a recognized quotation and trade reporting system. The Canadian securities regulatory authorities note that the requirements regarding access for members do not restrict the authority of a recognized exchange or recognized quotation and trade reporting system to maintain reasonable standards for access. The purpose of these access requirements is to ensure that rules, policies, procedures, fees and practices of the exchange or quotation and trade reporting system do not unreasonably create barriers to access to the services provided by the exchange or quotation and trade reporting system.".

(7) Section 7.1 is amended by adding the following after subsection (1):

"(2) For the purposes of complying with the order protection requirements in Part 6 of NI 23-101, a recognized exchange or recognized quotation and trade reporting system should permit fair and efficient access to

(a) a member or user that directly accesses the exchange or quotation and trade reporting system,

(b) a person or company that is indirectly accessing the exchange or quotation and trade reporting system through a member or user, or

(c) a marketplace routing an order to the exchange or quotation and trade reporting system.

The reference to "a person or company" in subsection (b) includes a system or facility that is operated by a person or company and a person or company that obtains access through a member or user.

(3) The reference to "services" in paragraph 5.1(b) of the Instrument means all services that may be offered to a person or company and includes all services relating to order entry, trading, execution, routing and data.

(4) Recognized exchanges and recognized quotation and trade reporting systems are responsible for ensuring that the fees they set are in compliance with section 5.1 of the Instrument. In assessing whether its fees unreasonably condition or limit access to its services, a recognized exchange or recognized quotation and trade reporting system should consider a number of factors, including

(a) the value of the security traded,

(b) the amount of the fee relative to the value of the security traded,

(c) the amount of fees charged by other marketplaces to execute trades in the market,

(d) with respect to market data fees, the amount of market data fees charged relative to the market share of the exchange or quotation and trade reporting system, and,

(e) with respect to order-execution terms, including fees, whether the outcome of their application is consistent with the policy goals of order protection.

The Canadian securities regulatory authorities will consider these factors, among others, in determining whether the fees charged by a recognized exchange or recognized quotation and trade reporting system unreasonably condition or limit access to its services. With respect to trading fees, our view is that a trading fee equal to or greater than the minimum trading increment as defined in IIROC's Universal Market Integrity Rules, as amended, would unreasonably condition or limit access to a recognized exchange's or recognized quotation and trade reporting system's services as it would be inconsistent with the policy goals of order protection. Trading fees below the minimum trading increment may also unreasonably condition or limit access to a recognized exchange's or recognized quotation and trade reporting system's services when taking into account factors including those listed above.".

(8) Section 8.2 is repealed and replaced by the following:

"8.2 Access Requirements – (1) Section 6.13 of the Instrument sets out access requirements that apply to an ATS. The Canadian securities regulatory authorities note that the requirements regarding access do not prevent an ATS from setting reasonable standards for access. The purpose of these access requirements is to ensure that the policies, procedures, fees and practices of the ATS do not unreasonably create barriers to access to the services provided by the ATS.".

(9) Section 8.2 is amended by adding the following:

"(2) For the purposes of complying with the order protection requirements in Part 6 of NI 23-101, an ATS should permit fair and efficient access to

(a) a subscriber that directly accesses the ATS,

(b) a person or company that is indirectly accessing the ATS through a subscriber, or

(c) a marketplace routing an order to the ATS.

In addition, the reference to "a person or company" in subsection (b) includes a system or facility that is operated by a person or company and a person or company that obtains access through a subscriber that is a dealer.

(3) The reference to "services" in paragraph 6.13(b) of the Instrument means all services that may be offered to a person or company and includes all services related to order entry, trading, execution, routing and data.

(4) ATSs are responsible for ensuring that the fees they set are in compliance with section 6.13 of the Instrument. In assessing whether its fees unreasonably condition or limit access to its services, an ATS should consider a number of factors, including

(a) the value of the security traded,

(b) the amount of the fee relative to the value of the security traded,

(c) the amount of fees charged by other marketplaces to execute trades in the market,

(d) with respect to market data fees, the amount of market data fees charged relative to the market share of the ATS, and,

(e) with respect to order-execution terms, including fees, whether the outcome of their application is consistent with the policy goals of order protection.

The Canadian securities regulatory authorities will consider these factors, among others, in determining whether the fees charged by an ATS unreasonably condition or limit access to its services. With respect to trading fees, our view is that a trading fee equal to or greater than the minimum trading increment as defined in IIROC's Universal Market Integrity Rules, as amended, would unreasonably condition or limit access to an ATS's services as it would be inconsistent with the policy goals of order protection. Trading fees below the minimum trading increment may also unreasonably condition or limit access to an ATS's services when taking into account factors including those listed above.".

(10) Part 9 is amended by:

(a) striking out the first two sentences of subsection 9.1(1) and substituting the following:

"(1) Subsection 7.1(1) of the Instrument requires a marketplace that displays orders of exchange-traded securities to any person or company to provide accurate and timely information regarding those orders to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider. Section 7.2 requires a marketplace to provide accurate and timely information regarding trades of exchange-traded securities to an information processor or, if there is no information processor, an information vendor that meets the standards set by a regulation services provider."; and

(b) repealing and replacing subsection 9.1(2) with the following:

"(2) In complying with sections 7.1 and 7.2 of the Instrument, a marketplace should not make the required order and trade information available to any other person or company on a more timely basis than it makes that information available to the information processor or information vendor. In addition, any information provided by a marketplace to an information processor or information vendor must include identification of the marketplace and should contain all relevant information including details as to volume, symbol, price and time of the order or trade.".

(11) Part 10 is amended by:

(a) striking out "; and" at the end of section 10.1(9); and

(b) adding the following as section 10.2:

"**10.2 Availability of Information –** In complying with the requirements in sections 8.1 and 8.2 of the Instrument to provide accurate and timely order and trade information to an information processor or an information vendor that meets the standards set by a regulation services provider, a marketplace, an inter-dealer bond broker or dealer should not make the required order and trade information available to any other person or company on a more timely basis than it makes that information available to the information processor or information vendor.".

(12) The following is added as section 12.2:

"**12.2 Discriminatory Terms –** Section 10.2 of the Instrument prohibits a marketplace from imposing terms that have the effect of discriminating between orders that are routed to that marketplace and orders that are entered on that marketplace.".

(13) Section 13.2 is repealed and replaced with the following:

"**13.2 Synchronization of Clocks –** Subsections 11.5(1) and (2) of the Instrument require the synchronization of clocks with a regulation services provider that monitors the trading of the relevant securities on marketplaces, and by, as appropriate, inter-dealer bond brokers or dealers. The Canadian securities regulatory authorities are of the view that synchronization requires continual synchronization using an appropriate national time standard as chosen by a regulation services provider. Even if a marketplace has not retained a regulation services provider, its clocks should be synchronized with any regulation services provider monitoring trading in the particular securities traded on that marketplace. Each regulation services provider will monitor the information that it receives from all marketplaces, dealers and, if appropriate, inter-dealer bond brokers, to ensure that the clocks are appropriately synchronized. If there is more than one regulation services provider, in meeting their obligation to coordinate monitoring and enforcement under section 7.5 of NI 23-101, regulation services providers are required to agree on one standard against which synchronization will occur. In the event there is no regulation services provider, a recognized exchange or recognized quotation and trade reporting system are also required to coordinate with other recognized exchanges or recognized quotation and trade reporting systems regarding the synchronization of clocks.".

(14) Section 14.1 is repealed and replaced with the following:

"**14.1 Systems Requirements –** This section applies to all the systems of a particular marketplace that are identified in the introduction to section 12.1 of the Instrument.

(1) Paragraph 12.1(a) of the Instrument requires the marketplace to develop and maintain an adequate system of internal control over the systems specified. As well, the marketplace is required to develop and maintain adequate general computer controls. These are the controls which are implemented to support information technology planning, acquisition, development and maintenance, computer operations, information systems support, and security. Recognized guides as to what constitutes adequate information technology controls include '*Information Technology Control Guidelines'* from The Canadian Institute of Chartered Accountants (CICA) and '*COBIT'* from the IT Governance Institute.

(2) Paragraph 12.1(b) of the Instrument requires a marketplace to meet certain systems capacity, performance, business continuity and disaster recovery standards. These standards are consistent with prudent business practice. The activities and tests required in this paragraph are to be carried out at least once a year. In practice, continuing changes in technology, risk management requirements and competitive pressures will often result in these activities being carried out or tested more frequently.

(3) Subsection 12.2(1) of the Instrument requires a marketplace to engage a qualified party to conduct an annual independent assessment of the internal controls referred to in paragraph 12.1(a) of the Instrument. A qualified party is a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal controls in a complex information technology environment. Before engaging a qualified party, a marketplace should discuss its choice with the regulator or, in Québec, the securities regulatory authority.

(4) Under section 15.1 of the Instrument, a regulator or the securities regulatory authority may consider granting a marketplace an exemption from the requirement to engage a qualified party to conduct an annual independent systems review and prepare a report under subsection 12.2(1) of the Instrument provided that the marketplace prepare a control self-assessment and file this self-assessment with the regulator or in Québec, the securities regulatory authority. The scope of the self-assessment would be similar to the scope that would have applied if the marketplace underwent an independent systems review. Reporting of the self-assessment results and the timeframe for reporting would be consistent with that established for an independent systems review.

In determining if the exemption is in the public interest, the regulator or securities regulatory authority may consider a number of factors including: the market share of the marketplace, the timing of the last independent systems review, and changes to systems or staff of the marketplace.".

(15) The following is added as section 14.2:

"**14.2 Availability of Technology Specifications and Testing Facilities –** (1) Subsection 12.3(1) of the Instrument requires marketplaces to make their technology requirements regarding interfacing with or accessing the marketplace publicly available in their final form for at least three months. If there are material changes to these requirements after they are made publicly available and before operations begin, the revised requirements should be made publicly available for a new three month period prior to operations. The subsection also requires that an operating marketplace make its technology specifications publicly available for at least three months before implementing a material change to its technology requirements.

(2) Subsection 12.3(2) of the Instrument requires marketplaces to provide testing facilities for interfacing with or accessing the marketplace for at least two months immediately prior to operations once the technology requirements have been made publicly available. Should the marketplace make its specifications publicly available for longer than three months, it may make the testing available during that period or thereafter as long as it is at least two months prior to operations. If the marketplace, once it has begun operations, proposes material changes to its technology systems, it is required to make testing facilities publicly available for at least two months before implementing the material systems change.

(3) Subsection 12.3(4) of the Instrument provides that if a marketplace must make a change to its technology requirements regarding interfacing with or accessing the marketplace to immediately address a failure, malfunction or material delay of its systems or equipment, it must immediately notify the regulator or, in Québec, the securities regulatory authority, and, if applicable, its regulation services provider. We expect the amended technology requirements to be made publicly available as soon as practicable, either while the changes are being made or immediately after.".

(16) Part 16 is amended by:

(a) repealing and replacing subsection 16.1(2) with the following:

"(2) An information processor is required under subsection 14.4(2) of the Instrument to provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities. The Canadian securities regulatory authorities expect that in meeting this requirement, an information processor will ensure that all marketplaces, inter-dealer bond brokers and dealers that are required to provide information are given access to the information processor on fair and reasonable terms. In addition, it is expected that an information processor will not give preference to the information of any marketplace, inter-dealer bond broker or dealer when collecting, processing, distributing or publishing that information.

(3) An information processor is required under subsection 14.4(5) of the Instrument to provide prompt and accurate order and trade information, and to not unreasonably restrict fair access to the information. As part of the obligation relating to fair access, an information processor is expected to make the disseminated and published information available on terms that are reasonable and not discriminatory. For example, an information processor will not provide order and trade information to any single person or company or group of persons or companies on a more timely basis than is afforded to others, and will not show preference to any single person or company or group of persons or companies in relation to pricing.";

(b) striking out "which are not unreasonably discriminatory" from paragraph 16.2(1)(b); and

(c) adding the following as section 16.4:

"**16.4 System Requirements –** Section 14.1 of this Companion Policy contains guidance on the systems requirements as it applies to an information processor.".

1.2 **Effective Date –** This instrument comes into force on January 28, 2010.

AMENDMENTS TO
NATIONAL INSTRUMENT 23-101 TRADING RULES

1.1 Amendments

(1) This Instrument amends National Instrument 23-101 *Trading Rules*.

(2) The following definitions are added to section 1.1:

"automated functionality" means the ability to

(a) immediately allow an incoming order that has been entered on the marketplace electronically to be marked as immediate-or-cancel;

(b) immediately and automatically execute an order marked as immediate-or-cancel against the displayed volume;

(c) immediately and automatically cancel any unexecuted portion of an order marked as immediate-or-cancel without routing the order elsewhere;

(d) immediately and automatically transmit a response to the sender of an order marked as immediate-or-cancel indicating the action taken with respect to the order; and

(e) immediately and automatically display information that updates the displayed orders on the marketplace to reflect any change to their material terms;

"calculated-price order" means an order for the purchase or sale of an exchange-traded security, other than an option, that is entered on a marketplace and for which the price of the security

(a) is not known at the time of order entry; and

(b) is not based, directly or indirectly, on the quoted price of an exchange-traded security at the time the commitment to execute the order was made;

"closing-price order" means an order for the purchase or sale of an exchange-traded security, other than an option, that is

(a) entered on a marketplace on a trading day; and

(b) subject to the conditions that

(i) the order be executed at the closing sale price of that security on that marketplace for that trading day; and

(ii) the order be executed subsequent to the establishment of the closing price;

"directed-action order" means a limit order for the purchase or sale of an exchange-traded security, other than an option, that,

(a) when entered on or routed to a marketplace is to be immediately

(i) executed against a protected order with any remainder to be booked or cancelled; or

(ii) placed in an order book;

(b) is marked as a directed-action order; and

(c) is entered or routed at the same time as one or more additional limit orders that are entered on or routed to one or more marketplaces, as necessary, to execute against any protected order with a better price than the order referred to in paragraph (a);

"non-standard order" means an order for the purchase or sale of an exchange-traded security, other than an option, that is entered on a marketplace and is subject to non-standardized terms or conditions related to settlement that have not been set by the marketplace on which the security is listed or quoted;

"protected bid" means a bid for an exchange-traded security, other than an option

(a) that is displayed on a marketplace that provides automated functionality; and

(b) about which information is required to be provided pursuant to Part 7 of NI 21-101 to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider;

"protected offer" means an offer for an exchange-traded security, other than an option,

(a) that is displayed on a marketplace that provides automated functionality; and

(b) about which information is required to be provided pursuant to Part 7 of NI 21-101 to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider;

"protected order" means a protected bid or protected offer; and

"trade-through" means the execution of an order at a price that is,

(a) in the case of a purchase, higher than any protected offer, or

(b) in the case of a sale, lower than any protected bid.".

(3) Subsection 3.1(2) is amended by adding "and the *Derivatives Act*" between "*Securities Act"* and "(Québec)".

(4) Part 6 is repealed and replaced by the following:

"**PART 6 ORDER PROTECTION**

6.1 Marketplace Requirements for Order Protection – (1) A marketplace shall establish, maintain and ensure compliance with written policies and procedures that are reasonably designed

(a) to prevent trade-throughs on that marketplace other than the trade-throughs referred to in section 6.2; and

(b) to ensure that the marketplace, when executing a transaction that results in a trade-through referred to in section 6.2, is doing so in compliance with this Part.

(2) A marketplace shall regularly review and monitor the effectiveness of the policies and procedures required under subsection (1) and shall promptly remedy any deficiencies in those policies and procedures.

(3) At least 45 days before implementation, a marketplace shall file with the securities regulatory authority and, if applicable, its regulation services provider the policies and procedures, and any significant changes to those policies and procedures, established under subsection (1).

6.2 List of Trade-throughs – The following are the trade-throughs referred to in paragraph 6.1(1)(a):

(a) a trade-through that occurs when the marketplace has reasonably concluded that the marketplace displaying the protected order that was traded through was experiencing a failure, malfunction or material delay of its systems or equipment or ability to disseminate marketplace data;

(b) the execution of a directed-action order;

(c) a trade-through by a marketplace that simultaneously routes a directed-action order to execute against the total displayed volume of any protected order that is traded through;

(d) a trade-though if, immediately before the trade-through, the marketplace displaying the protected order that is traded through displays as its best price a protected order with a price that is equal or inferior to the price of the trade-through;

(e) a trade-through that results when executing

(i) a non-standard order;

(ii) a calculated-price order; or

(iii) a closing-price order;

(f) a trade-through that was executed at a time when the best protected bid for the security traded through was higher than the best protected offer.

6.3 Systems or Equipment Failure, Malfunction or Material Delay – (1) If a marketplace experiences a failure, malfunction or material delay of its systems, equipment or its ability to disseminate marketplace data, the marketplace shall immediately notify

(a) all other marketplaces;

(b) all regulation services providers;

(c) its marketplace participants; and

(d) any information processor or, if there is no information processor, any information vendor that disseminates its data under Part 7 of NI 21-101.

(2) If executing a transaction described in paragraph 6.2(a), and a notification has not been sent under subsection (1), a marketplace that routes an order to another marketplace shall immediately notify

(a) the marketplace that it reasonably concluded is experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data;

(b) all regulation services providers;

(c) its marketplace participants; and

(d) any information processor disseminating information under Part 7 of NI 21-101.

(3) If a marketplace participant reasonably concludes that a marketplace is experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data, and routes an order to execute against a protected order on another marketplace displaying an inferior price, the marketplace participant must notify the following of the failure, malfunction or material delay

(a) the marketplace that may be experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data; and

(b) all regulation services providers.

6.4 Marketplace Participant Requirements for Order Protection – (1) A marketplace participant must not enter a directed-action order unless the marketplace participant has established, and maintains and ensures compliance with, written policies and procedures that are reasonably designed

(a) to prevent trade-throughs other than the trade-throughs listed below:

(i) a trade-through that occurs when the marketplace participant has reasonably concluded that the marketplace displaying the protected order that was traded through was experiencing a failure, malfunction or material delay of its systems or equipment or ability to disseminate marketplace data;

(ii) a trade-through by a marketplace participant that simultaneously routes a directed-action order to execute against the total displayed volume of any protected order that is traded through;

(iii) a trade-through if, immediately before the trade-through, the marketplace displaying the protected order that is traded through displays as its best price a protected order with a price that is equal or inferior to the price of the trade-through transaction;

(iv) a trade-through that results when executing

(A) a non-standard order;

(B) a calculated-price order; or

(C) a closing-price order;

(v) a trade-through that was executed at a time when the best protected bid for the security traded through was higher than the best protected offer; and

(b) to ensure that when executing a trade-through listed in paragraphs (a)(i) to (a)(v), it is doing so in compliance with this Part.

(2) A marketplace participant that enters a directed-action order shall regularly review and monitor the effectiveness of the policies and procedures required under subsection (1) and shall promptly remedy any deficiencies in those policies and procedures.

6.5 Locked or Crossed Orders – A marketplace participant shall not intentionally

(a) enter on a marketplace a protected order to buy a security at a price that is the same as or higher than the best protected offer; or

(b) enter on a marketplace a protected order to sell a security at a price that is the same as or lower than the best protected bid.

6.6 Trading Hours – A marketplace shall set the hours of trading to be observed by marketplace participants.

6.7 Anti-Avoidance – No person or company shall send an order to an exchange, quotation and trade reporting system or alternative trading system that does not carry on business in Canada in order to avoid executing against better-priced orders on a marketplace.

6.8 Application of this Part – In Québec, this Part does not apply to standardized derivatives.".

(5) Part 7 is amended by:

(a) repealing paragraph 7.2(c) and replacing it with the following:

"(c) that the recognized exchange will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information reasonably required to effectively monitor:

(i) the conduct of and trading by marketplace participants on and across marketplaces, and

(ii) the conduct of the recognized exchange, as applicable; and"; and

(b) repealing paragraph 7.4(c) and replacing it with the following:

"(c) that the recognized quotation and trade reporting system will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information reasonably required to effectively monitor:

(i) the conduct of and trading by marketplace participants on and across marketplaces, and

(ii) the conduct of the recognized quotation and trade reporting system, as applicable; and"; and

(c) amending section 7.5 by striking out "under this Part" and substituting "under Parts 7 and 8".

(6) Paragraph 8.3(d) is repealed and replaced by the following:

"(d) that the ATS will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information reasonably required to effectively monitor:

(i) the conduct of and trading by marketplace participants on and across marketplaces, and

(ii) the conduct of the ATS; and".

(7) Section 9.3 is amended by striking out "IDA Policy No. 5 Code of Conduct for IDA Member Firms Trading in Domestic Debt Markets" and substituting "IIROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets".

1.2 **Effective Date** – (1) This Instrument, other than subsections 1.1(2) and 1.1(4), comes into force on January 28, 2010.

(2) Subsections 1.1(2) and 1.1(4) come into force on February 1, 2011.

AMENDMENTS TO COMPANION POLICY 23-101CP
TO NATIONAL INSTRUMENT 23-101 TRADING RULES

1.1 Amendments

(1) This instrument amends Companion Policy 23-101CP.

(2) Part 1.1 is amended by adding the following after section 1.1.1:

"**1.1.2 Definition of automated functionality** – Section 1.1 of the Instrument includes a definition of "automated functionality" which is the ability to: (1) act on an incoming order; (2) respond to the sender of an order; and (3) update the order by disseminating information to an information processor or information vendor. Automated functionality allows for an incoming order to execute immediately and automatically up to the displayed size and for any unexecuted portion of such incoming order to be cancelled immediately and automatically without being booked or routed elsewhere. Automated functionality involves no human discretion in determining the action taken with respect to an order after the time the order is received. A marketplace with this functionality should have appropriate systems and policies and procedures relating to the handling of immediate-or-cancel orders.

1.1.3 Definition of calculated-price order – The definition of "calculated-price order" refers to any order where the price is not known at the time of order entry and is not based, directly or indirectly, on the quoted price of an exchange-traded security at the time the commitment to executing the order was made. This includes the following orders:

(a) a call market order – where the price of a trade is calculated by the trading system of a marketplace at a time designated by the marketplace;

(b) an opening order – where each marketplace may establish its own formula for the determination of opening prices;

(c) a closing order – where execution occurs at the closing price on a particular marketplace, but at the time of order entry, the price is not known;

(d) a volume-weighted average price order – where the price of a trade is determined by a formula that measures average price on one or more marketplaces; and

(e) a basis order – where the price is based on prices achieved in one or more derivative transactions on a marketplace. To qualify as a basis order, this order must be approved by a regulation services provider or an exchange or quotation and trade reporting system that oversees the conduct of its members or users respectively.

1.1.4 Definition of directed-action order – (1) An order marked as a directed-action order informs the receiving marketplace that the marketplace can act immediately to carry out the action specified by either the marketplace or marketplace participant who has sent the order and that the order protection obligation is being met by the sender. Such an order may be marked "DAO" by a marketplace or a marketplace participant. Senders can specify actions by adding markers that instruct a marketplace to:

(a) execute the order and cancel the remainder using an immediate-or-cancel marker,

(b) execute the order and book the remainder,

(c) book the order as a passive order awaiting execution, and

(d) avoid interaction with hidden liquidity using a bypass marker, as defined in IIROC's Universal Market Integrity Rules.

The definition allows for the simultaneous routing of more than one directed-action order in order to execute against any better-priced protected orders. In addition, marketplaces or marketplace participants may send a single directed-action order to execute against the best protected bid or best protected offer. When it receives a directed-action order, a marketplace can carry out the sender's instructions without checking for better-priced orders displayed by the other marketplaces and implementing the marketplace's own policies and procedures to reasonably prevent trade-throughs.

(2) Regardless of whether the entry of a directed-action order is accompanied by the bypass marker, the sender must take out all better-priced visible orders before executing at an inferior price. For example, if a marketplace or marketplace participant combines a directed-action order with a bypass marker to avoid executing against hidden

liquidity, the order has order protection obligations regarding the visible liquidity. If a directed-action order interacts with hidden liquidity, the requirement to take out all better-priced visible orders before executing at an inferior price remains.

1.1.5 Definition of non-standard order – The definition of "non-standard order" refers to an order for the purchase or sale of a security that is subject to terms or conditions relating to settlement that have not been set by the marketplace on which the security is listed or quoted. A marketplace participant, however, may not add a special settlement term or condition to an order solely for the purpose that the order becomes a non-standard order under the definition.

1.1.6 Definition of protected order – (1) A protected order is defined to be a "protected bid or protected offer". A "protected bid" or "protected offer" is an order to buy or sell an exchange-traded security, other than an option, that is displayed on a marketplace that provides automated functionality and about which information is provided to an information processor or an information vendor, as applicable, pursuant to Part 7 of NI 21-101. The term "displayed on a marketplace" refers to the information about total disclosed volume on a marketplace. Volumes that are not disclosed or that are "reserve" or hidden volumes are not considered to be "displayed on a marketplace". The order must be provided in a way that enables other marketplaces and marketplace participants to readily access the information and integrate it into their systems or order routers.

(2) Subsection 5.1(3) of 21-101CP does not consider orders that are not immediately executable or that have special terms as "orders" that are required to be provided to an information processor or information vendor under Part 7 of NI 21-101. As a result, these orders are not considered to be "protected orders" under the definition in the Instrument and do not receive order protection. However, those executing against these types of orders are required to execute against all better-priced orders first. In addition, when entering a "special terms order" on a marketplace, if it can be executed against existing orders despite the special term, then the order protection obligation applies.".

(3) Part 6 is repealed and replaced with the following:

"**PART 6 ORDER PROTECTION**

6.1 Marketplace Requirements for Order Protection – (1) Subsection 6.1(1) of the Instrument requires a marketplace to establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs by orders entered on that marketplace. A marketplace may implement this requirement in various ways. For example, the policies and procedures of a marketplace may reasonably prevent trade-throughs via the design of the marketplace's trade execution algorithms (by not allowing a trade-through to occur), or by voluntarily establishing direct linkages to other marketplaces. Marketplaces are not able to avoid their obligations by establishing policies and procedures that instead require marketplace participants to take steps to reasonably prevent trade-throughs.

(2) It is the responsibility of marketplaces to regularly review and monitor the effectiveness of their policies and procedures and take prompt steps to remedy any deficiencies in reasonably preventing trade-throughs and complying with subsection 6.1(2) of the Instrument. In general, it is expected that marketplaces maintain relevant information so that the effectiveness of its policies and procedures can be adequately evaluated by regulatory authorities. Relevant information would include information that describes:

(a) steps taken by the marketplace to evaluate its policies and procedures;

(b) any breaches or deficiencies found; and

(c) the steps taken to resolve the breaches or deficiencies.

(3) As part of the policies and procedures required in subsection 6.1(1) of the Instrument, a marketplace is expected to include a discussion of their automated functionality and how they will handle potential delayed responses as a result of an equipment or systems failure or malfunction experienced by another marketplace. In addition, marketplaces should include a discussion of how they treat a directed-action order when received and how it will be used.

(4) Order protection applies whenever two or more marketplaces with protected orders are open for trading. Some marketplaces provide a trading session at a price established by that marketplace during its regular trading hours for marketplace participants who are required to benchmark to a certain closing price. In these circumstances, under paragraph 6.2(e), a marketplace would not be required to take steps to reasonably prevent trade-throughs of orders on another marketplace.

6.2 Marketplace Participant Requirements for Order Protection – (1) For a marketplace participant that wants to use a directed-action order, section 6.4 of the Instrument requires a marketplace participant to establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs. In

general, it is expected that a marketplace participant that uses a directed-action order would maintain relevant information so that the effectiveness of its policies and procedures can be adequately evaluated by regulatory authorities. Relevant information would include information that describes:

(a) steps taken by the marketplace participant to evaluate its policies and procedures;

(b) any breaches or deficiencies found; and

(c) the steps taken to resolve the breaches or deficiencies.

The policies and procedures should also outline when it is appropriate to use a directed-action order and how it will be used as set out in paragraph 6.4(a) of the Instrument.

(2) Order protection applies whenever two or more marketplaces with protected orders are open for trading. Some marketplaces provide a trading session at a price established by that marketplace during its regular trading hours for marketplace participants who are required to benchmark to a certain closing price. In these circumstances, under paragraph 6.4(a)(iv)(C) of the Instrument, a marketplace participant would not be required to take steps to reasonably prevent trade-throughs of orders between marketplaces.

6.3 List of Trade-throughs – Section 6.2 and paragraphs 6.4(a)(i) to (a)(v) of the Instrument set forth a list of "permitted" trade-throughs that are primarily designed to achieve workable order protection and to facilitate certain trading strategies and order types that are useful to investors.

(a) (i) Paragraphs 6.2(a) and 6.4(a)(i) of the Instrument would apply where a marketplace or marketplace participant, as applicable, has reasonably concluded that a marketplace is experiencing a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data. A material delay occurs when a marketplace repeatedly fails to respond immediately after receipt of an order. This is intended to provide marketplaces and marketplace participants with flexibility when dealing with a marketplace that is experiencing systems problems (either of a temporary nature or a longer term systems issue).

(ii) Under subsection 6.3(1) of the Instrument, a marketplace that is experiencing systems issues is responsible for informing all other marketplaces, its marketplace participants, any information processor, or if there is no information processor, an information vendor disseminating its information under Part 7 of NI 21-101 and regulation services providers when a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data occurs. However, if a marketplace fails repeatedly to provide an immediate response to orders received and no notification has been issued by that marketplace that it is experiencing systems issues, the routing marketplace or a marketplace participant may, pursuant to subsections 6.3(2) and 6.3(3) of the Instrument respectively, reasonably conclude that the marketplace is having systems issues and may therefore rely on paragraph 6.2(a) or 6.4(a)(i) of the Instrument respectively. This reliance must be done in accordance with policies and procedures that outline processes for dealing with potential delays in responses by a marketplace and documenting the basis of its conclusion. If, in response to the notification by the routing marketplace or a marketplace participant, the marketplace confirms that it is not actually experiencing systems issues, the routing marketplace or marketplace participant may no longer rely on paragraph 6.2(a) or paragraph 6.4(a)(i) of the Instrument respectively.

(b) Paragraph 6.2(b) of the Instrument provides an exception from the obligation on marketplaces to use their policies and procedures to reasonably prevent trade-throughs when a directed-action order is received. Specifically, a marketplace that receives a directed-action order may immediately execute or book the order (or its remaining volume) and not implement the marketplace's policies and procedures to reasonably prevent trade-throughs. However, the marketplace will need to describe its treatment of a directed-action order in its policies and procedures. Paragraphs 6.2(c) and 6.4(a)(iii) of the Instrument provide an exception where a marketplace or marketplace participant simultaneously routes directed-action orders to execute against the total displayed volume of any protected order traded through. This accounts for the possibility that orders that are routed simultaneously as directed-action orders are not executed simultaneously causing one or more trade-throughs to occur because an inferior-priced order is executed first.

(c) Paragraphs 6.2(d) and 6.4(a)(ii) of the Instrument provide some relief due to moving or changing markets. Specifically, the exception allows for a trade-through to occur when immediately before executing the order that caused the trade-through, the marketplace on which the execution occurred had the best price but at the moment of execution, the market changes and another marketplace has the best price. The "changing markets" exception allows for the execution of an order on a marketplace, within the best bid or offer on that marketplace but outside the best bid or offer

displayed across marketplaces in certain circumstances. This could occur for example:

(i) where orders are entered on a marketplace but by the time they are executed, the best bid or offer displayed across marketplaces changed; and

(ii) where a trade is agreed to off-marketplace and entered on a marketplace within the best bid and best offer across marketplaces, but by the time the order is executed on the marketplace (i.e. printed) the best bid or offer as displayed across marketplaces may have changed, thus causing a trade-through.

(d) The basis for the inclusion of calculated-price orders, non-standard orders and closing-price orders in paragraphs 6.2(e) and 6.4(a)(iv) of the Instrument is that these orders have certain unique characteristics that distinguish them from other orders. The characteristics of the orders relate to price (calculated-price orders and closing-price orders) and non-standard settlement terms (non-standard orders) that are not set by an exchange or a quotation and trade reporting system.

(e) Paragraphs 6.2(f) and 6.4(a)(v) of the Instrument include a transaction that occurred when there is a crossed market in the exchange-traded security. Without this allowance, no marketplace could execute transactions in a crossed market because it would constitute a trade-through. With order protection only applying to displayed orders or parts of orders, hidden or reserve orders may remain in the book after all displayed orders are executed. Consequently, crossed markets may occur. Intentionally crossing the market to take advantage of paragraphs 6.2(f) and 6.4(a)(v) of the Instrument would be a violation of section 6.5 of the Instrument.

6.4 Locked and Crossed Markets – (1) Section 6.5 of the Instrument provides that a marketplace participant shall not intentionally lock or cross a market by entering a protected order to buy a security at a price that is the same as or higher than the best protected offer or entering a protected order to sell a security at a price that is the same as or lower than the best protected bid. The reference to a "protected order" means that when entering a visible, displayed order, a marketplace participant cannot lock or cross a visible, displayed order. It is not intended to prohibit the use of marketable limit orders. Paragraphs 6.2(f) and 6.4(a)(v) of the Instrument allow for the resolution of crossed markets that occur unintentionally.

(2) Section 6.5 of the Instrument prohibits a marketplace participant from intentionally locking or crossing a market. This would occur, for example, when a marketplace participant enters a locking or crossing order on a particular marketplace or marketplaces to avoid fees charged by a marketplace or to take advantage of rebates offered by a particular marketplace. There are situations where a locked or crossed market may occur unintentionally. For example:

(a) when a marketplace participant routes multiple directed-action orders that are marked immediate-or-cancel to a variety of marketplaces and because of latency issues, a locked or crossed market results,

(b) the locking or crossing order was displayed at a time when the marketplace displaying the locked or crossed order was experiencing a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data,

(c) the locking or crossing order was displayed at a time when a protected bid was higher than a protected offer;

(d) the locking or crossing order was posted after all displayed liquidity was executed and a reserve order generated a new visible bid above the displayed offer or offer below the displayed bid.

(3) If a marketplace participant using a directed-action order chooses to book the order or the remainder of the order, then it is responsible for ensuring that the booked portion of the directed-action order does not lock or cross the market. The Canadian securities regulatory authorities would consider a directed-action order or remainder of a directed-action order that is booked and that locks or crosses the market to be an intentional locking or crossing of the market and a violation of section 6.5 of the Instrument.

6.5 Anti-Avoidance Provision – Section 6.7 of the Instrument prohibits a person or company from sending an order to an exchange, quotation and trade reporting system or alternative trading system that does not carry on business in Canada in order to avoid executing against better-priced orders on a marketplace in Canada. The intention of this section is to prevent the routing of orders to foreign marketplaces only for the purpose of avoiding the order protection regime in Canada.".

(4) Part 7 is amended by:

(a) striking out "IDA Policy No. 5 Code of Conduct for IDA Member Firms Trading in Domestic Debt Markets" and substituting "IIROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets" in section 7.3;

(b) adding the following as section 7.5:

"**7.5 Agreement between a Marketplace and a Regulation Services Provider** – The purpose of subsections 7.2(c) and 7.4(c) of the Instrument is to facilitate the monitoring of trading by marketplace participants on and across multiple marketplaces by a regulation services provider. These sections of the Instrument also facilitate monitoring of the conduct of a recognized exchange and recognized quotation and trade reporting system for particular purposes. This may result in regulation services providers monitoring marketplaces that have retained them and reporting to a recognized exchange, recognized quotation and trade reporting system or securities regulatory authority if a marketplace is not meeting regulatory requirements or the terms of its own rules or policies and procedures. While the scope of this monitoring may change as the market evolves, we expect it to include, at a minimum, monitoring clock synchronization, the inclusion of specific designations, symbols and identifiers, order protection requirements and audit trail requirements.".

(c) adding the following as section 7.6:

"**7.6 Coordination of Monitoring and Enforcement** – (1) Section 7.5 of the Instrument requires regulation services providers, recognized exchanges and recognized quotation and trade reporting systems to enter into a written agreement whereby they coordinate the enforcement of the requirements set under Parts 7 and 8. This coordination is required in order to achieve cross-marketplace monitoring.

(2) If a recognized exchange or recognized quotation and trade reporting system has not retained a regulation services provider, it is still required to coordinate with any regulation services provider and other exchanges or quotation and trade reporting systems that trade the same securities in order to ensure effective cross-marketplace monitoring.

(3) Currently, only IIROC is the regulation services provider for both exchange-traded securities, other than options and in Québec, other than standardized derivatives, and unlisted debt securities. If more than one regulation services provider regulates marketplaces trading a particular type of security, these regulation services providers must coordinate monitoring and enforcement of the requirements set.".

1.2 **Effective Date** – (1) This instrument, other than subsections 1.1(2) and 1.1(3), comes into force on January 28, 2010.

(2) Subsections 1.1(2) and 1.1(3) come into force on February 1, 2011.

Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesScource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

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

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
10/02/2009 to 10/14/2009	96	0856348 B.C. Ltd. - Units	3,000,000.00	10,000,000.00
10/16/2009	8	Abitex Resources Inc. - Units	662,950.00	4,419,667.00
10/22/2009	23	African Metals Corp. - Units	1,250,500.00	12,505,000.00
10/28/2009	2	Amador Gold Corp. - Common Shares	13,500.00	300,000.00
10/30/2009	1	Armistice Resources Corp. - Flow-Through Shares	349,999.95	2,333,333.00
10/23/2009 to 10/27/2009	2	Aura Silver Resources Inc. - Common Shares	232,000.00	725,000.00
10/15/2009	1	Aura Silver Resources Inc. - Common Shares	100,000.00	312,500.00
10/08/2009	25	Base Resources Inc. - Common Shares	200,000.00	6,000,000.00
09/28/2009	38	Bayou Bend Petroleum Ltd. - Receipts	105,000,000.00	140,000,000.00
10/15/2009	93	Bio-Extraction Inc. - Common Shares	15,000,000.00	12,000,000.00
10/24/2008	1	BMG Bullion Fund - Units	23,000.00	2,163.54
10/09/2009	2	BMG Bullion Fund - Units	16,000.00	1,547.20
10/28/2009 to 10/29/2009	28	Bolero Resources Corp. - Units	1,050,000.00	7,000,000.00
10/27/2009	3	Brigham Exploration Company - Common Shares	6,956,250.00	625,000.00
10/09/2009	3	Bullion Management Group Inc. - Common Shares	26,000.00	13,000.00
10/09/2009	2	Bullion Management Group Inc. - Common Shares	45,000.00	32,500.00
10/13/2009	1	Cadan Resources Corporation - Units	1,000,000.00	5,000,000.00
10/21/2009	21	Canadian Solar Inc. - Common Shares	113,152,410.00	6,900,000.00
10/13/2009	2	Clairwest Equity Partners IV Limited Partnership - Units	5,000,000.00	5,000.00
10/23/2009	1	Credit Suisse International - Notes	5,254,000.00	1.00
10/20/2009	9	Decade Resources Ltd. - Units	400,500.00	450,000.00
10/13/2009 to 10/21/2009	41	Dejour Enterprises Ltd. - Flow-Through Shares	1,600,999.40	2,668,332.00
10/22/2009	10	Delavaco Energy Inc. - Common Shares	0.00	22,393,082.00

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
10/21/2009 to 10/22/2009	2	Development Notes Limited Partnership - Units	142,594.00	142,594.00
10/09/2009	1	Dorothy of Oz, LLC - Units	10,000.00	10,000.00
10/08/2009 to 10/15/2009	13	Eagle Peak Resources Inc. - Common Shares	140,554.00	140,554.00
10/22/2009	9	Fire River Gold Corp. - Units	413,004.90	N/A
10/22/2009 to 10/28/2009	2	First Leaside Fund - Trust Units	350,000.00	350,000.00
10/21/2009 to 10/27/2009	3	First Leaside Fund - Trust Units	36,823.00	36,823.00
10/22/2009 to 10/27/2009	4	First Leaside Premier Limited Partnership - Units	264,224.81	242,697.00
10/21/2009 to 10/29/2009	5	First Leaside Progressive Limited Partnership - Units	725,398.00	725,398.00
10/20/2009	1	Forest City Enterprises Inc. - Notes	262,500.00	N/A
10/22/2009	15	Forum Uranium Corporation - Units	900,080.00	11,251,000.00
10/30/2009	6	Foundation Mortgage 2 Corporation - Units	171,000.00	1,710.00
10/01/2008 to 09/30/2009	1	Franklin Templeton 2020 Conservative Portfolio - Units	225,368.43	27,335.11
10/01/2008 to 09/30/2009	1	Franklin Templeton 2020 Growth Portfolio - Units	419,505.33	58,138.43
10/01/2008 to 09/30/2009	1	Franklin Templeton 2020 Moderate Portfolio - Units	1,894,043.18	249,593.00
10/01/2008 to 09/30/2009	1	Franklin Templeton 2030 Conservative Portfolio - Units	56,771.04	7,152,876.80
10/01/2008 to 09/30/2009	1	Franklin Templeton 2030 Growth Portfolio - Units	423,130.57	61,619.75
10/01/2008 to 09/30/2009	1	Franklin Templeton 2030 Moderate Portfolio - Units	2,369,936.95	329,040.18
10/01/2008 to 09/30/2009	1	Franklin Templeton 2040 Conservative Portfolio - Units	25,234.81	3,327.35
10/01/2008 to 09/30/2009	1	Franklin Templeton 2040 Growth Portfolio - Units	529,998.35	79,808.01
10/01/2008 to 09/30/2009	1	Franklin Templeton 2040 Moderate Portfolio - Units	2,289,143.51	332,195.42
10/01/2008 to 09/30/2009	1	Franklin Templeton Retirement Portfolio - Units	463,274.46	52,080.42
10/28/2009	2	GMX Resources Inc. - Common Shares	3,240,000.00	200,000.00
10/28/2009	2	GMX Resources Inc. - Notes	756,000.00	N/A
07/14/2009 to 10/07/2009	47	Gulf Coast Basin Limited Partnership - Limited Partnership Units	1,080,000.00	108.00

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
10/20/2009	3	Headwaters Incorporated - Notes	2,860,559.63	N/A
10/14/2009 to 10/19/2009	12	IGW Real Estate Investment Trust - Trust Units	369,143.81	373,523.97
10/20/2009 to 10/27/2009	26	IGW Real Estate Investment Trust - Trust Units	2,094,549.50	2,095,760.00
10/15/2009	3	Kingwest Avenue Portfolio - Units	57,814.72	2,221.93
10/14/2009	1	Lateegra Gold Corp. - Common Shares	350,000.00	1,000,000.00
10/16/2009	30	Matamee Explorations Inc. - Units	1,534,959.90	8,527,555.00
10/20/2009	60	Mega Precious Metals Inc. - Common Shares	6,037,500.00	8,050,000.00
10/14/2009	8	MicroPlanet Technology Corp. - Notes	1,263,000.00	N/A
10/22/2009	4	Navios Maritime Holdings Inc. - Notes	19,384,733.01	N/A
10/28/2009	2	Navistar International Corporation - Notes	8,322,739.20	N/A
05/20/2009	1	Neilas (Shepherd Road), Limited Partnership - Limited Partnership Units	50,000.00	N/A
10/25/2009 to 11/02/2009	30	Nelson Financial Group Ltd. - Notes	1,627,000.00	30.00
10/01/2009 to 10/18/2009	2	New Solutions Financial (II) Corporation - Debentures	425,000.00	2.00
10/14/2009	89	Orex Minerals Inc. - Units	3,000,000.00	N/A
10/28/2009	2	PetroGlobe Inc. - Common Shares	700,000.00	5,384,615.00
10/20/2009	1	Pinetree Capital Ltd. - Common Shares	996,000.00	600,000.00
10/16/2009	32	Realm Energy International Corporation - Common Shares	1,694,000.00	16,940,000.00
10/08/2009	36	Red Mile Resources Fund No. 7 - Limited Partnership Units	14,118,908.00	12,119.00
08/12/2009	4	Red Mile Resources Fund No. 7 - Limited Partnership Units	699,000.00	N/A
11/04/2009	1	SGA Societe General Acceptance N.V. - Notes	4,320,000.00	4,320.00
11/04/2009	1	SGA Societe General Acceptance N.V. - Notes	27,000,000.00	27,000.00
11/04/2009	1	SGA Societe General Acceptance N.V. - Notes	4,440,000.00	4,440.00
11/04/2009	1	SGA Societe General Acceptance N.V. - Notes	7,200,000.00	7,200.00
07/10/2009 to 07/15/2009	15	Solfotara Mining Corp. - Units	745,800.00	2,130,857.00
10/29/2009	15	Synodon Inc. - Units	513,023.00	1,140,051.00
08/12/2009	1	Tactical Global Bond ETF Fund - Trust Units	3,312,697.12	328,136.01
10/23/2009 to 10/26/2009	77	Tasman Metals Ltd. - Common Shares	2,350,000.00	7,000,000.00

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
10/30/2009	10	Tenth Power Technologies Corp. - Units	694,000.00	4,626,668.00
10/26/2009	6	Terra Capital, Inc. - Notes	9,898,608.60	1.00
10/15/2009	1	UBS AG - Certificate	43,075.20	3.00
10/14/2009	1	UBS AG - Notes	1,000,000.00	N/A
10/15/2009	1	UBS AG - Notes	95,941.52	100,000.00
10/23/2009	1	UBS AG - Units	54,500.00	54,500.00
10/16/2009	1	UBS AG - Units	16,067.87	35.00
10/26/2009 to 10/27/2009	2	UBS AG, London Branch - Certificate	104,196.11	N/A
10/16/2009	27	Universal Power Corp. - Common Shares	2,112,500.00	2,805,000.00
10/08/2009	68	Vast Exploration Inc. - Warrants	15,000,000.00	20,000,000.00
10/27/2009	5	Virgin Metals Inc. - Common Shares	415,001.00	7,545,474.00
11/02/2009	1	Vitamin Shoppe Inc. - Common Shares	913,000.00	50,000.00
04/30/2009	7	Vortaloptics Inc. - Common Shares	146,024.02	185,907.00
10/23/2009	14	Wealth Minerals Ltd. - Common Shares	1,406,980.00	3,349,953.00
10/14/2009	73	Western Lithium Canada Corporation - Units	16,602,200.00	17,476,000.00
10/23/2009	1	Wimberley Apartments Limited Partnership - Units	22,207.50	30,000.00
10/19/2009	15	Worldwide Promotional Management Inc. - Common Shares	102,500.00	410,000.00
10/30/2009	29	Zaio Corporation - Units	1,096,875.05	7,312,499.00
10/26/2009	8	Zinccorp Resources Inc. - Common Shares	51,250.00	1,350,000.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Formation Metals Inc. (formerly Formation Capital Corporation)
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated November 10, 2009
NP 11-202 Receipt dated November 10, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1496778

Issuer Name:
Phoenix Technology Income Fund
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated November 10, 2009
NP 11-202 Receipt dated November 10, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1496756

Issuer Name:
Andina Minerals Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated November 9, 2009
NP 11-202 Receipt dated November 9, 2009
Offering Price and Description:
$25,000,000.00 -12,500,000 Units Price: $2.00 per Unit
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Canaccord Capital Corporation
Haywood Securities Inc.
RBC Dominion Securities Inc.
Promoter(s):
-
Project #1495515

Issuer Name:
Bellamont Exploration Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated November 10, 2009
NP 11-202 Receipt dated November 10, 2009
Offering Price and Description:
$10,122,500.00 - 13,000,000 Subscription Receipts each representing the right to receive one Class A Share and 2,750,000 Flow-Through Class A Shares Price: $0.62 per Subscription Receipt $0.75 per Flow-Through Class A Share
Underwriter(s) or Distributor(s):
FirstEnergy Capital Corp.
GMP Securities L.P.
RBC Dominion Securities Inc.
National Bank Financial Inc.
J.F. Mackie & Company Ltd.
Promoter(s):
-
Project #1496598

Issuer Name:
Calamos Advantaged Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated November 6, 2009
NP 11-202 Receipt dated November 10, 2009
Offering Price and Description:
$ * - * Units Price: $25.00 per Unit Minimum Purchase: 100 Units
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Blackmont Capital Inc.
Rothenberg Capital Management Inc.
Wellington West Capital Markets Inc.
Desjardins Securities Inc.
Research Capital Corporation
Promoter(s):
Legend Investment Partners Inc.
Project #1495134

Issuer Name:
Capricorn Business Acquisitions Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated November 4, 2009
NP 11-202 Receipt dated November 6, 2009
Offering Price and Description:
Minimum Offering: $200,000.00 or 2,000,000 Common Shares; Maximum Offering: $800,000.00 or 8,000,000 Common Shares Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Leede Financial Markets Inc.
Promoter(s):
-
Project #1494548

Issuer Name:
Exeter Resource Corporation
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated November 9, 2009
NP 11-202 Receipt dated November 9, 2009
Offering Price and Description:
$* - * Common Shares Price: $* per Common Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
TD Securities Inc.
BMO Nesbitt Burns Inc.
GMP Securities L.P.
Salman Partners Inc.
Thomas Weisel Partners Canada Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #1495734

Issuer Name:
Exeter Resource Corporation
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated November 10, 2009
NP 11-202 Receipt dated November 10, 2009
Offering Price and Description:
$50,017,500.00 - 8,550,000 Common Shares Price $5.85 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
TD Securities Inc.
BMO Nesbitt Burns Inc.
GMP Securities L.P.
Salman Partners Inc.
Thomas Weisel Partners Canada Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #1495734

Issuer Name:
Fortune Minerals Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated November 5, 2009
NP 11-202 Receipt dated November 5, 2009
Offering Price and Description:
$15,000,050.00 - 23,077,000 Units Price: $0.65 per Unit
Underwriter(s) or Distributor(s):
Paradigm Capital Inc.
CIBC World Markets Inc.
Dundee Securities Corporation
Jones, Gable & Company Limited
Loewen, Ondaatje, McCutcheon Limited
Promoter(s):
-
Project #1494279

Issuer Name:
GLG LIFE TECH CORPORATION
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated November 5, 2009
NP 11-202 Receipt dated November 5, 2009
Offering Price and Description:
US$ * - 3,625,000 Common Shares Price: US$ * per Common Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
GMP Securities L.P.
Desjardins Securities Inc.
Wellington West Capital Markets Inc.
Promoter(s):
-
Project #1494393

Issuer Name:
Global Uranium Fund Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated November 4, 2009
NP 11-202 Receipt dated November 5, 2009
Offering Price and Description:
Class C Warrants to Subscribe for up to * Equity Shares at a Subscription Price of $ *
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1493952

Issuer Name:
Great Basin Gold Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated November 3, 2009
NP 11-202 Receipt dated November 4, 2009
Offering Price and Description:
$110,000,000.00 - 8.0% Senior Unsecured Convertible Debentures due November 30, 2014
Price: $1,000.00 per Debenture
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Raymond James Ltd.
Thomas Weisel Partners Canada Inc.
Promoter(s):
-
Project #1493224

Issuer Name:
Hydrogenics Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated November 9, 2009
NP 11-202 Receipt dated November 10, 2009
Offering Price and Description:
US$16,000,000.00:
Common Shares
Preferred Shares
Debt Securities
Subscription Receipts
Warrants
Share Purchase Contracts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1495910

Issuer Name:
Linear Gold Corp.
Principal Regulator - Nova Scotia
Type and Date:
Preliminary Short Form Prospectus dated November 4, 2009
NP 11-202 Receipt dated November 4, 2009
Offering Price and Description:
$ * - * Units and * Flow-Through Shares Price: $* per Unit Price: $* per Flow-Through Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
Promoter(s):
-
Project #1493570

Issuer Name:
O'Leary Canadian Equity Income Fund
Principal Regulator - Quebec
Type and Date:
Preliminary Long Form Prospectus dated November 4, 2009
NP 11-202 Receipt dated
Offering Price and Description:
$ * - * Units Price: $12.00 per Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
National Bank Financial Inc.
Blackmont Capital Inc.
Canaccord Capital Corporation
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Wellington West Capital Markets Inc.
Dundee Securities Corporation
MGI Securities Inc.
Raymond James Ltd.
Desjardins Securities Corporation
Manulife Securities Incorporated
Research Capital Corporation
Promoter(s):
O'LEARY FUNDS MANAGEMENT LP
Project #1494603

Issuer Name:
Premier Canadian Income Fund (formerly Global Plus Income Trust)
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated November 5, 2009
NP 11-202 Receipt dated November 5, 2009
Offering Price and Description:
$100,000,000.00 - * Combined Units $* per Combined Unit Each Combined Unit consists of one Unit and one Warrant for one Unit.
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Canaccord Capital Corporation
Dundee Securities Corporation
Manulife Securities Incorporated
Wellington West Capital Markets Inc.
Promoter(s):
Mulvihill Capital Management Inc.
Project #1494407

Issuer Name:
Signature Global Telecom Split Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated November 5, 2009
NP 11-202 Receipt dated November 5, 2009
Offering Price and Description:
$ *- * Preferred Shares and * Class A Shares Price: $10.00 per Preferred Share and $15.00 per Class A Share
Underwriter(s) or Distributor(s):
TD Securities Inc.
Blackmont Capital Inc.
CIBC World Markets Inc
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
GMP Securities L.P.
Canaccord Capital Corporation
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Promoter(s):
CI Investments Inc.
Project #1494238

Issuer Name:
Superior Plus Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated November 9, 2009
NP 11-202 Receipt dated November 9, 2009
Offering Price and Description:
$45,000,000.00 - 3,750,000 Common Shares Price: $12.00 per Common Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
TD Securities Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Cormark Securities Inc.
Promoter(s):
-
Project #1496022

Issuer Name:
Temple Real Estate Investment Trust
Principal Regulator - Manitoba
Type and Date:
Preliminary Short Form Prospectus dated November 4, 2009
NP 11-202 Receipt dated November 4, 2009
Offering Price and Description:
5 YEAR 8.75% SENIOR SECURED CONVERTIBLE REDEEMABLE DEBENTURES in the Aggregate Principal Amount of $10,000,000.00 $10.00 per Debenture
Underwriter(s) or Distributor(s):
Wellington West Capital Inc.
Dundee Securities Corporation
Raymond James Ltd.
HSBC Securities (Canada) Inc.
Desjardins Securities Inc.
Blackmont Capital Inc.
Promoter(s):
-
Project #1493690

Issuer Name:
Temple Real Estate Investment Trust
Principal Regulator - Manitoba
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated November 10, 2009
NP 11-202 Receipt dated November 10, 2009
Offering Price and Description:
$10,000,000.00 - Minimum 1,000,000 5 Year 8.75% Senior Secured Convertible Redeemable Debentures; $15,000,000.00 - Maximum 1,500,000 5 Year 8.75% Senior Secured Convertible Redeemable Debentures
Price: $10 per Debenture
Underwriter(s) or Distributor(s):
Wellington West Capital Inc.
Dundee Securities Corporation
Raymond James Ltd.
HSBC Securities (Canada) Inc.
Desjardins Securities Inc.
Blackmont Capital Corporation
Promoter(s):
-
Project #1493690

Issuer Name:
Tonbridge Power Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated November 10, 2009
NP 11-202 Receipt dated November 10, 2009
Offering Price and Description:
$* - * Common Shares Price: $* per Common Share
Underwriter(s) or Distributor(s):
Clarus Securities Inc.
Macquarie Capital Markets Canada Ltd.
Dundee Securities Corporation
Promoter(s):
-
Project #1496518

Issuer Name:
TransAtlantic Petroleum Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated November 4, 2009
NP 11-202 Receipt dated November 4, 2009
Offering Price and Description:
$ * - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Genuity Capital Markets
Raymond James Ltd.
Thomas Weisel Partners Canada Inc.
Promoter(s):
-
Project #1493624

Issuer Name:
TransAtlantic Petroleum Ltd.
Principal Regulator - Alberta
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated November 5, 2009
NP 11-202 Receipt dated November 5, 2009
Offering Price and Description:
$100,001,900.00 - 42,554,000 Common Shares Price: $2.35 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Genuity Capital Markets
Raymond James Ltd.
Thomas Weisel Partners Canada Inc.
Promoter(s):
-
Project #1493624

Issuer Name:
T. Boone Pickens Energy Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated November 5, 2009
NP 11-202 Receipt dated November 5, 2009
Offering Price and Description:
(1) * Class A Combined Units $10.00 per Class A Combined Unit Each Class A Combined Unit consists of one Class A Unit and one Warrant for one Class A Unit; (2) * Class F Combined Units $10.00 per Class F Combined Unit Each Class F Combined Unit consists of one Class F Unit and one Warrant for one Class F Unit; (3) * Class U Combined Units U.S.$10.00 per
Class U Combined Unit Each Class U Combined Unit consists of one Class U Unit and one Warrant for one Class U Unit
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Promoter(s):
BMO Nesbitt Burns Inc.
Project #1494389

Issuer Name:
Sun Life Capital Trust II
Sun Life Assurance Company of Canada
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus (NI 44-101) dated November 9, 2009
NP 11-202 Receipt dated November 9, 2009
Offering Price and Description:
$* - *% Sun Life ExchangEable Capital Securities - Series 2009-1 due *, 2108
Price: $* per % Sun Life ExchangEable Capital Securities - Series 2009-1 due *, 2108
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
RBC Dominion Securities Inc.
Promoter(s):
Sun Life Assurance Company of Canada
Project #1495744/1495752

Issuer Name:
49 North 2009 Resource Flow-Through Limited Partnership
Principal Regulator - Saskatchewan
Type and Date:
Final Long Form Prospectus dated November 5, 2009
NP 11-202 Receipt dated November 5, 2009
Offering Price and Description:
Limited Partnership Units Price pre Unit: $10 - Maximum Offering: $10,000,000 (1,000,000 Units)
Minimum Offering: $1,000,000 (100,000 Units) Minimum Subscription: $2,000 (200 Units)
Underwriter(s) or Distributor(s):
MGI Securities Inc.
Canaccord Capital Corporation
Blackmont Capital Inc.
GMP Securities L.P.
Raymond James Ltd.
Research Capital Corporation
Wellington West Capital Inc.
Integral Wealth Securities Limited
M Partners Inc.
Union Securities Ltd.
Bolder Investment Partners, Ltd.
Industrial Alliance Securities Inc.
Leede Financial Markets Inc.
Promoter(s):
49 North 2009 Resource Fund Inc.
Project #1476833

Issuer Name:
AGF Aggressive Global Stock Fund
(Mutual Fund, Series D, Series F and Series O Securities)
AGF Aggressive U.S. Growth Fund
(Mutual Fund, Series D, Series F and Series O Securities)
AGF American Growth Class
(Mutual Fund, Series D, Series F, Series G, Series H, Series O, Series T and Series V Securities)
AGF American Growth Fund
(Series S Securities)
AGF Asian Growth Class
(Mutual Fund, Series D, Series F and Series O Securities)
AGF Asian Growth Fund
(Series S Securities)
AGF Canada Class
(Mutual Fund, Series D, Series F, Series O, Series T and Series V Securities)
AGF Canada Fund
(Series S Securities)
AGF Canadian All Cap Equity Fund
(Mutual Fund, Series F and Series O Securities)
AGF Canadian Balanced Fund
(Mutual Fund, Series D, Series F, Series G, Series H, Series O, Series T and Series V Securities)
AGF Canadian Balanced Value Fund
(Mutual Fund, Series D, Series F, Series G, Series H, Series O, Series T and Series V Securities)
AGF Canadian Bond Fund
(Mutual Fund, Series D, Series F and Series O Securities)
AGF Canadian Conservative Inflation Managed Income Fund
(Mutual Fund, Series D, Series F and Series O Securities)
AGF Canadian Growth Equity Fund Limited
(Mutual Fund, Series D, Series F and Series O Securities)
AGF Canadian High Yield Bond Fund
(Mutual Fund, Series D, Series F and Series O Securities)
AGF Canadian Large Cap Dividend Class
(Mutual Fund, Series D, Series F, Series O, Series T and Series V Securities)
AGF Canadian Large Cap Dividend Fund
(Mutual Fund, Series D, Series F, Series O, Series T, Series V and Classic Series Securities)
AGF Canadian Money Market Fund
(Mutual Fund, Series D, Series F and Series O Securities)
AGF Canadian Resources Fund Limited
(Mutual Fund, Series D, Series F and Series O Securities)
AGF Canadian Small Cap Fund
(Mutual Fund, Series D, Series F and Series O Securities)
AGF Canadian Stock Class
(Mutual Fund, Series D, Series F, Series G, Series H, Series O, Series T and Series V Securities)
AGF Canadian Stock Fund
(Mutual Fund, Series D, Series F, Series O, Series T and Series V Securities)
AGF Canadian Value Fund
(Mutual Fund, Series D, Series F, Series G, Series H and Series O Securities)
AGF China Focus Class
(Mutual Fund, Series D, Series F and Series O Securities)
AGF Dividend Income Fund
(Mutual Fund, Series D, Series F and Series O Securities)
AGF Dollar Cost Averaging Fund
(Mutual Fund and Series D Securities)

AGF Elements Balanced Portfolio
(Mutual Fund, Series D, Series F, Series O, Series T and Series V Securities)
AGF Elements Balanced Portfolio Class
(Mutual Fund, Series D, Series F, Series G, Series H, Series O, Series T and Series V Securities)
AGF Elements Conservative Portfolio
(Mutual Fund, Series D, Series F and Series O Securities)
AGF Elements Conservative Portfolio Class
(Mutual Fund, Series D, Series F, Series G, Series H and Series O Securities)
AGF Elements Global Portfolio
(Mutual Fund, Series D, Series F and Series O Securities)
AGF Elements Global Portfolio Class
(Mutual Fund, Series D, Series F, Series G, Series H and Series O Securities)
AGF Elements Growth Portfolio
(Mutual Fund, Series D, Series F, Series O, Series T and Series V Securities)
AGF Elements Growth Portfolio Class
(Mutual Fund, Series D, Series F, Series G, Series H, Series O, Series T and Series V Securities)
AGF Elements Yield Portfolio
(Mutual Fund, Series F, Series G, Series H and Series O Securities)
AGF Emerging Markets Class
(Mutual Fund, Series D, Series F, Series G, Series H and Series O Securities)
AGF Emerging Markets Fund
(Mutual Fund, Series D, Series F and Series O Securities)
AGF European Equity Class
(Mutual Fund, Series D, Series F, Series G, Series H, Series O, Series T and Series V Securities)
AGF European Equity Fund
(Series S Securities)
AGF Global Dividend Fund
(Mutual Fund, Series D, Series F, Series O, Series T and Series V Securities)
AGF Global Equity Class
(Mutual Fund, Series D, Series F, Series G, Series H, Series O, Series T and Series V Securities)
AGF Global Equity Fund
(Mutual Fund, Series D, Series F and Series O Securities)
AGF Global Government Bond Fund
(Mutual Fund, Series D, Series F and Series O Securities)
AGF Global High Yield Bond Fund
(Mutual Fund, Series D, Series F and Series O Securities)
AGF Global Real Estate Equity Class
(Mutual Fund, Series D, Series F and Series O Securities)
AGF Global Real Estate Equity Fund
(Series S Securities)
AGF Global Resources Class
(Mutual Fund, Series D, Series F and Series O Securities)
AGF Global Resources Fund
(Series S Securities)
AGF Global Value Class
(Mutual Fund, Series D, Series F, Series G, Series H, Series O, Series T and Series V Securities)
AGF Global Value Fund
(Mutual Fund, Series D, Series F, Series O, Series T and Series V Securities)
AGF International Stock Class
(Mutual Fund, Series D, Series F, Series G, Series H, Series O, Series T and Series V Securities)
AGF Japan Class
(Mutual Fund, Series D, Series F and Series O Securities)
AGF Japan Fund
(Series S Securities)
AGF Monthly High Income Fund
(Mutual Fund, Series D, Series F, Series O and Series T Securities)
AGF Precious Metals Fund
(Mutual Fund, Series D, Series F and Series O Securities)
AGF Short-Term Income Class
(Mutual Fund, Series D, Series F and Series O Securities)
AGF U.S. Dollar Money Market Account
(Mutual Fund Securities)
AGF U.S. Risk Managed Class
(Mutual Fund, Series D, Series F and Series O Securities)
AGF U.S. Risk Managed Fund
(Series S Securities)
AGF World Balanced Fund
(Mutual Fund, Series D, Series F, Series O, Series T and Series V Securities)
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated November 2, 2009 to the Simplified Prospectuses and Annual Information Forms dated April 20, 2009
NP 11-202 Receipt dated November 6, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
AGF Funds Inc.
Promoter(s):
-
Project #1389189/1400850

Issuer Name:
Alberta Oilsands Inc.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated November 6, 2009
NP 11-202 Receipt dated November 6, 2009
Offering Price and Description:
$10,350,100.01 - 500,000 Units and 12,778,000 Flow-Through Shares
Price: $0.40 per Unit $0.45 per Flow-Through Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Scotia Capital Inc.
Genuity Capital Markets
Octagon Capital Corporation
Raymond James Ltd.
Promoter(s):
-
Project #1489683

Issuer Name:
BMO Harris Canadian Money Market Portfolio
BMO Harris Canadian Bond Income Portfolio
BMO Harris Canadian Total Return Bond Portfolio
BMO Harris Canadian Corporate Bond Portfolio
BMO Harris Diversified Yield Portfolio
BMO Harris Canadian Income Equity Portfolio
BMO Harris Canadian Conservative Equity Portfolio
BMO Harris Canadian Growth Equity Portfolio
BMO Harris Growth Opportunities Portfolio
BMO Harris Canadian Special Growth Portfolio
BMO Harris U.S. Equity Portfolio
BMO Harris U.S. Growth Portfolio
BMO Harris International Equity Portfolio
BMO Harris International Special Equity Portfolio
BMO Harris Emerging Markets Equity Portfolio
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated November 4, 2009
NP 11-202 Receipt dated November 9, 2009
Offering Price and Description:
Mutual Fund Units @ Net Asset Value
Underwriter(s) or Distributor(s):
BMO Investments Inc.
Promoter(s):
-
Project #1482706

Issuer Name:
Class A and Class F Units (unless otherwise noted) of:
BMO Nesbitt Burns Canadian Stock Selection Fund (Class A, F and I Units)
BMO Nesbitt Burns U.S. Stock Selection Fund
BMO Nesbitt Burns Bond Fund
BMO Nesbitt Burns Balanced Fund
BMO Nesbitt Burns International Equity Fund
BMO Nesbitt Burns Balanced Portfolio Fund
BMO Nesbitt Burns Growth Portfolio Fund
BMO Nesbitt Burns Maximum Growth Portfolio Fund (formerly BMO Nesbitt Burns All Equity Portfolio Fund)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus and Annual Information Form dated November 5, 2009
NP 11-202 Receipt dated November 9, 2009
Offering Price and Description:
Class A, Class F and Class I Units @ Net Asset Value
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Promoter(s):
-
Project #1481894

Issuer Name:
Brompton Advantaged Oil & Gas Income Fund
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 4, 2009
NP 11-202 Receipt dated November 5, 2009
Offering Price and Description:
Warrants to Subscribe for up to 5,586,245 Units at a Subscription Price of $4.79
Underwriter(s) or Distributor(s):
-
Promoter(s):
Brompton Funds Management Limited
Project #1487953

Issuer Name:
Brompton Advantaged VIP Income Fund
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 4, 2009
NP 11-202 Receipt dated November 5, 2009
Offering Price and Description:
Warrants to Subscribe for up to 5,446,319 Units at a Subscription Price of $ 9.08
Underwriter(s) or Distributor(s):
-
Promoter(s):
Brompton Funds Management Limited
Project #1487954

Issuer Name:
Brompton Oil & Gas Income Fund
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 4, 2009
NP 11-202 Receipt dated November 5, 2009
Offering Price and Description:
Warrants to Subscribe for up to 11,030,342 Units at a Subscription Price of $ 4.74
Underwriter(s) or Distributor(s):
-
Promoter(s):
Brompton Funds Management Limited
Project #1487955

Issuer Name:
Brompton VIP Income Fund
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 4, 2009
NP 11-202 Receipt dated November 5, 2009
Offering Price and Description:
Warrants to Subscribe for up to 13,663,062 Units at a Subscription Price of $8.33
Underwriter(s) or Distributor(s):
-
Promoter(s):
Brompton Funds Management Limited
Project #1487956

Issuer Name:
Core Canadian Dividend Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 6, 2009
NP 11-202 Receipt dated November 10, 2009
Offering Price and Description:
Warrants to Subscribe for up to 2,949,146 Units at a Subscription Price of $7.11
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1484324

Issuer Name:
Detour Gold Corporation
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 3, 2009
NP 11-202 Receipt dated November 4, 2009
Offering Price and Description:
$250,016,250.00 - 17,545,000 Common Shares $14.25 per Common Share
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
Canaccord Capital Corporation
Macquarie Capital Markets Canada Inc.
Paradigm Capital Inc.
Raymond James Ltd.
Fraser Mackenzie Limited
Haywood Securities Inc.
Laurentian Bank Securities Inc.
Sandfire Securities Inc.
Thomas Weisel Partner Canada Inc.
Wellington West Capital Markets Inc.
Promoter(s):
-
Project #1489514

Issuer Name:
Ember Resources Inc.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated November 9, 2009
NP 11-202 Receipt dated November 9, 2009
Offering Price and Description:
$20,000,500.00 - 23,530,000 Common Shares $0.85 per Common Share
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
FirstEnergy Capital Corp.
GMP Securities L.P.
Peters & Co. Limited
Promoter(s):
-
Project #1489531

Issuer Name:
Series A, Series B and Series F Shares (unless otherwise indicated) of:
Fidelity Canadian Disciplined Equity Class (Series T5, T8, S5 and S8 Shares also available)
Fidelity Canadian Growth Company Class
Fidelity Canadian Opportunities Class
Fidelity Dividend Class (Series T5, T8, S5 and S8 Shares also available)
Fidelity Greater Canada Class (Series T5, T8, S5 and S8 Shares also available)
Fidelity Special Situations Class
Fidelity True North Class (Series T5, T8, S5 and S8 Shares also available)
Fidelity American Disciplined Equity Class (Series T5, T8, S5 and S8 Shares also available)
Fidelity American Opportunities Class
Fidelity Growth America Class (Series T5, T8, S5 and S8 Shares also available)
Fidelity Small Cap America Class
Fidelity AsiaStar Class
Fidelity China Class
Fidelity Emerging Markets Class
Fidelity Europe Class
Fidelity Far East Class
Fidelity Global Class (Series T5, T8, S5 and S8 Shares also available)
Fidelity Global Disciplined Equity Class (Series T5, T8, S5 and S8 Shares also available)
Fidelity Global Dividend Class (Series T5, T8, S5 and S8 Shares also available)
Fidelity International Disciplined Equity Class (Series T5, T8, S5 and S8 Shares also available)
Fidelity Japan Class
Fidelity NorthStar Class (Series T5, T8, S5 and S8 Shares also available)
Fidelity Global Consumer Industries Class
Fidelity Global Financial Services Class
Fidelity Global Health Care Class
Fidelity Global Natural Resources Class
Fidelity Global Real Estate Class (Series T5, T8, S5 and S8 Shares also available)
Fidelity Global Technology Class
Fidelity Global Telecommunications Class
Fidelity Canadian Asset Allocation Class (Series T5, T8, S5, S8, F5 and F8 Shares also available)
Fidelity Canadian Balanced Class (Series T5, T8, S5, S8, F5 and F8 Shares also available)
Fidelity Income Class Portfolio (Series T5, T8, S5, S8, F5 and F8 Shares also available)
Fidelity Global Income Class Portfolio (Series T5, T8, S5, S8, F5 and F8 Shares also available)
Fidelity Balanced Class Portfolio (Series T5, T8, S5, S8, F5 and F8 Shares also available)
Fidelity Global Balanced Class Portfolio (Series T5, T8, S5, S8, F5 and F8 Shares also available)
Fidelity Growth Class Portfolio (Series T5, T8, S5, S8, F5 and F8 Shares also available)
Fidelity Global Growth Class Portfolio (Series T5, T8, S5, S8, F5 and F8 Shares also available)
Fidelity Canadian Short Term Income Class
Principal Regulator - Ontario
Type and Date:

Amendment #2 dated November 2, 2009 to the Simplified Prospectuses and Annual Information Forms dated March 20, 2009
NP 11-202 Receipt dated November 4, 2009
Offering Price and Description:
Series A, B, F, T5, T8, S5, S8, F5 and F8 Shares @ Net Asset Value
Underwriter(s) or Distributor(s):
Fidelity Investments Canada ULC
Promoter(s):
Fidelity Investments Canada ULC
Project #1373469

Issuer Name:
Series A, Series B, Series F and Series O units (unless otherwise indicated) of:
Fidelity Canadian Disciplined Equity® Fund (Series T5, T8, S5 and S8 units also available)
Fidelity Canadian Growth Company Fund
Fidelity Canadian Large Cap Fund
Fidelity Canadian Opportunities Fund
Fidelity Dividend Fund (Series T5, T8, S5 and S8 units also available)
Fidelity Greater Canada Fund (Series T5, T8, S5 and S8 units also available)
Fidelity Income Trust Fund
Fidelity Special Situations Fund
Fidelity True North® Fund (Series T5, T8, S5 and S8 units also available)
Fidelity American Disciplined Equity® Fund (Series T5, T8, S5 and S8 units also available)
Fidelity American Disciplined Equity® Currency Neutral Fund (Series O units only)
Fidelity American Opportunities Fund
Fidelity American Value Fund
Fidelity Growth America Fund (Series T5, T8, S5 and S8 units also available)
Fidelity Small Cap America Fund
Fidelity AsiaStar™ Fund
Fidelity China Fund
Fidelity Emerging Markets Fund
Fidelity Europe Fund
Fidelity Far East Fund
Fidelity Global Fund (Series T5, T8, S5 and S8 units also available)
Fidelity Global Disciplined Equity® Fund (Series T5, T8, S5 and S8 units also available)
Fidelity Global Disciplined Equity® Currency Neutral Fund (Series O units only)
Fidelity Global Dividend Fund (Series T5, T8, S5 and S8 units also available)
Fidelity Global Opportunities Fund
Fidelity International Disciplined Equity™ Fund (Series T5, T8, S5 and S8 units also available)
Fidelity International Disciplined Equity™ Currency Neutral Fund (Series O units only)
Fidelity International Value Fund
Fidelity Japan Fund
Fidelity Latin America Fund
Fidelity NorthStar® Fund (Series T5, T8, S5 and S8 units also available)
Fidelity Overseas Fund
Fidelity Global Consumer Industries Fund
Fidelity Global Financial Services Fund
Fidelity Global Health Care Fund
Fidelity Global Natural Resources Fund
Fidelity Global Real Estate Fund (Series T5, T8, S5 and S8 also available)
Fidelity Global Technology Fund
Fidelity Global Telecommunications Fund
Fidelity Canadian Asset Allocation Fund (Series T5, T8, S5 and S8 units also available)
Fidelity Canadian Balanced Fund (Series T5, T8, S5 and S8 units also available)
Fidelity Monthly Income Fund (Series T5, T8, S5 and S8 units also available)
Fidelity Monthly High Income Fund (Series T8 and S8 units also available)
Fidelity Global Asset Allocation Fund (Series T5, T8, S5 and S8 units also available)
Fidelity Global Monthly Income Fund (Series T5, T8, S5 and S8 units also available)
Fidelity Income Portfolio (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Global Income Portfolio (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Balanced Portfolio (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Global Balanced Portfolio (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Growth Portfolio (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity Global Growth Portfolio (Series T5, T8, S5, S8, F5 and F8 units also available)
Fidelity ClearPath™ 2005 Portfolio (Series T5, T8, S5 and S8 units also available)
Fidelity ClearPath™ 2010 Portfolio (Series T5, T8, S5 and S8 units also available)
Fidelity ClearPath™ 2015 Portfolio (Series T5, T8, S5 and S8 units also available)
Fidelity ClearPath™ 2020 Portfolio
Fidelity ClearPath™ 2025 Portfolio
Fidelity ClearPath™ 2030 Portfolio
Fidelity ClearPath™ 2035 Portfolio
Fidelity ClearPath™ 2040 Portfolio
Fidelity ClearPath™ 2045 Portfolio
Fidelity ClearPath™ Income Portfolio (Series T5, T8, S5 and S8 units also available)
Fidelity Income Replacement 2017 Portfolio
Fidelity Income Replacement 2019 Portfolio
Fidelity Income Replacement 2021 Portfolio
Fidelity Income Replacement 2023 Portfolio
Fidelity Income Replacement 2025 Portfolio
Fidelity Income Replacement 2027 Portfolio
Fidelity Income Replacement 2029 Portfolio
Fidelity Income Replacement 2031 Portfolio
Fidelity Income Replacement 2033 Portfolio
Fidelity Income Replacement 2035 Portfolio
Fidelity Income Replacement 2037 Portfolio
Fidelity Canadian Bond Fund
Fidelity Canadian Money Market Fund (Series C and D units also available)
Fidelity Canadian Short Term Bond Fund
Fidelity American High Yield Fund
Fidelity American High Yield Currency Neutral Fund

Fidelity U.S. Money Market Fund (Series A and B units only)
Fidelity Global Bond Fund
Fidelity Global Bond Currency Neutral Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated November 2, 2009
NP 11-202 Receipt dated November 4, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Fidelity Investments Canada Limited
Fidelity Investments Canada ULC
Promoter(s):
Fidelity Investments Canada ULC
Project #1481108

Issuer Name:
First Premium Income Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 6, 2009
NP 11-202 Receipt dated November 10, 2009
Offering Price and Description:
Warrants to Subscribe for up to 1,883,543 Units at a Subscription Price of $11.30
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1484325

Issuer Name:
GrowthWorks Commercialization Fund Ltd.
Principal Regulator - Ontario
Type and Date:
Amendment #3 dated October 29, 2009 to the Long Form Prospectus dated October 30, 2008
NP 11-202 Receipt dated November 6, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
GrowthWorks Capital Ltd.
Promoter(s):
GrowthWorks WV Management Ltd.
Project #1329602

Issuer Name:
GrowthWorks Commercialization Fund Ltd.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated November 6, 2009
NP 11-202 Receipt dated November 10, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
GrowthWorks Capital Ltd.
Promoter(s):
-
Project #1480588

Issuer Name:
GuestLogix Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 6, 2009
NP 11-202 Receipt dated November 6, 2009
Offering Price and Description:
CDN$7,200,000.00 - 6,000,000 COMMON SHARES Cdn $1.20 per Common Share Price: Cdn $1.20 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Paradigm Capital Inc.
Northern Securities Inc.
Versant Partners Inc.
Promoter(s):
-
Project #1489213

Issuer Name:
Harmony Balanced and Income Portfolio
(Embedded Series, Series F, Series T, Series V and Wrap Series Securities)
Harmony Balanced Growth Portfolio
(Embedded Series, Series F, Series T, Series V and Wrap Series Securities)
Harmony Balanced Growth Portfolio Class
(Embedded Series, Series F, Series T, Series V and Wrap Series Securities)
Harmony Balanced Portfolio
(Embedded Series, Series F, Series T, Series V and Wrap Series Securities)
Harmony Canadian Enhanced Fixed Income Pool Class
(Embedded Series, Series F, Series T, Series V and Wrap Series Securities)
Harmony Canadian Equity Pool
(Embedded Series, Series F, Series T, Series V and Wrap Series Securities)
Harmony Canadian Equity Pool Class
(Embedded Series, Series F, Series T, Series V and Wrap Series Securities)
Harmony Canadian Fixed Income Pool
(Embedded Series, Series F, Series T, Series V and Wrap Series Securities)
Harmony Conservative Portfolio
(Embedded Series, Series F, Series T, Series V and Wrap Series Securities)
Harmony Growth Plus Portfolio
(Embedded Series, Series F, Series T, Series V and Wrap Series Securities)
Harmony Growth Plus Portfolio Class
(Embedded Series, Series F, Series T, Series V and Wrap Series Securities)
Harmony Growth Portfolio
(Embedded Series, Series F, Series T, Series V and Wrap Series Securities)
Harmony Growth Portfolio Class
(Embedded Series, Series F, Series T, Series V and Wrap Series Securities)
Harmony Maximum Growth Portfolio
(Embedded Series, Series F, Series T, Series V and Wrap Series Securities)

Harmony Maximum Growth Portfolio Class
(Embedded Series, Series F, Series T, Series V and Wrap Series Securities)
Harmony Money Market Pool
(Embedded Series, Series F and Wrap Series Securities)
Harmony Non-traditional Pool
(Embedded Series, Series F, Series T, Series V and Wrap Series Securities)
Harmony Non-traditional Pool Class
(Embedded Series, Series F, Series T, Series V and Wrap Series Securities)
Harmony Overseas Equity Pool
(Embedded Series, Series F, Series T, Series V and Wrap Series Securities)
Harmony Overseas Equity Pool Class
(Embedded Series, Series F, Series T, Series V and Wrap Series Securities)
Harmony U.S. Equity Pool
(Embedded Series, Series F, Series T, Series V and Wrap Series Securities)
Harmony U.S. Equity Pool Class
(Embedded Series, Series F, Series T, Series V and Wrap Series Securities)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated November 2, 2009 to the Simplified Prospectuses and Annual Information Forms dated July 16, 2009
NP 11-202 Receipt dated November 9, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
AGF Fund Inc.
AGF Funds Inc.
Promoter(s):
AGF Funds Inc.
Project #1438740

Issuer Name:
Jazz Air Income Fund
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated November 4, 2009
NP 11-202 Receipt dated November 4, 2009
Offering Price and Description:
$75,000,000.00 - 9.50% Convertible Unsecured Subordinated Debentures Due December 31, 2014
Underwriter(s) or Distributor(s):
TD Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Beacon Securities Limited
Genuity Capital Markets G.P.
Salman Partners Inc.
Versant Partners Inc.
Promoter(s):
-
Project #1490110

Issuer Name:
Class A Units and Class I Units (unless otherwise indicated) of:
MD Balanced Fund
MD Bond Fund
MD Bond & Mortgage Fund
MD Dividend Fund
MD Equity Fund
MD Growth Investments Limited (Series A Shares and Series I Shares)
MD Income & Growth Fund
MD International Growth Fund
MD International Value Fund
MD Select Fund
MD American Growth Fund
MD American Value Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated October 30, 2009 to the Simplified Prospectuses and Annual Information Forms dated June 4, 2009
NP 11-202 Receipt dated November 6, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
MD Management Limited
Promoter(s):
MD Private Trust Company
Project #1416049

Issuer Name:
Series A units, Series F units and Series I units (unless otherwise indicated) of:
NEI Money Market Fund (formerly Northwest Money Market Fund) (Series A units and Series I units)
Northwest Canadian Equity 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 Select Global Balanced Portfolio (formerly Northwest Quadrant Balanced Portfolio) (Series A units and Series F units)
Northwest Select Global Growth Portfolio (formerly Northwest Quadrant Balanced Growth Portfolio) (Series A units and Series F units)
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated November 2, 2009 to the Simplified Prospectuses and Annual Information Forms dated June 30, 2009
NP 11-202 Receipt dated November 10, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Northwest & Ethical Investments L.P.,
Project #1426183

Issuer Name:
Open Range Energy Corp.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated November 4, 2009
NP 11-202 Receipt dated November 4, 2009
Offering Price and Description:
$65,012,500.00 - 1,350,000 Common Shares Issuable upon Exercise of 31,350,000 Subscription Receipts; 3,050,000 Common Shares Issuable upon Exercise of 3,050,000 Flow-Through Special Warrants
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
FirstEnegy Capital Corp.
National Bank Financial Inc.
Canaccord Capital Corporation
Raymond James Ltd.
Dundee Securities Corporation
GMP Securities L.P.
Promoter(s):
-
Project #1489130

Issuer Name:
Orleans Energy Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated November 4, 2009
NP 11-202 Receipt dated November 4, 2009
Offering Price and Description:
$10,000,000.00
3,125,000 Flow-Through Shares
Price: $3.20 per Flow-Through Share

Underwriter(s) or Distributor(s):
National Bank Financial Inc.
GMP Securities L.P.
Peters & Co. Limited
RBC Dominion Securities Inc.
Thomas Weisel Partners Canada Inc.
Research Capital Corporation
Promoter(s):
-
Project #1490219

Issuer Name:
Painted Pony Petroleum Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated November 4, 2009
NP 11-202 Receipt dated November 5, 2009
Offering Price and Description:
$51,744,000.00 - 8,800,000 Class A Shares $5.88 per Class A Share
Underwriter(s) or Distributor(s):
FirstEnergy Capital Corp.
RBC Dominion Securities Inc.
Wellington West Capital Markets Inc.
Thomas Weisel Partners Canada Inc.
CIBC World Markets Inc.
Cormark Securities Inc.
Promoter(s):
-
Project #1490202

Issuer Name:
PEAK ENERGY SERVICES TRUST
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated November 10, 2009
NP 11-202 Receipt dated November 10, 2009
Offering Price and Description:
Offering of rights to subscribe for 12% convertible secured subordinated debentures Price: $100 per Debenture
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1491797

Issuer Name:
S Split Corp.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 6, 2009
NP 11-202 Receipt dated November 10, 2009
Offering Price and Description:
Warrants to Subscribe for up to 3,818,100 Units (each Unit consisting of consisting of one Class A Share and one Preferred Share) at a Subscription Price of $18.75
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1484320

Issuer Name:
The VenGrowth Advanced Life Sciences Fund Inc.
The VenGrowth III Investment Fund Inc.
The Vengrowth Traditional Industries Fund Inc.
Type and Date:
Amendment #1 dated October 27, 2009 to the Long Form Prospectus dated November 21, 2008
Receipted on November 4, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
ACFO/ACAF SPONSOR CORP.
Project #1332209

Issuer Name:
Top 10 Canadian Financial Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 6, 2009
NP 11-202 Receipt dated November 10, 2009
Offering Price and Description:
Warrants to Subscribe for up to 6,001,492 Units at a Subscription Price of $10.59
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1484322

Issuer Name:
Toronto Hydro Corporation
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated November 4, 2009 to the Short Form Base Shelf Prospectus dated December 12, 2008
NP 11-202 Receipt dated November 5, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1355101

Issuer Name:
Vast Exploration Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 6, 2009
NP 11-202 Receipt dated November 9, 2009
Offering Price and Description:
20,000,000 Common Shares issuable on exercise of outstanding Special Warrants
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
GMP Securities L.P.
Haywood Securities Inc.
Genuity Capital Markets
Promoter(s):
-
Project #1488554

Issuer Name:
World Financial Split Corp.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 6, 2009
NP 11-202 Receipt dated November 10, 2009
Offering Price and Description:
Warrants to Subscribe for up to 8,557,010 Units (each Unit consisting of consisting of one Class A Share and one Preferred Share) at a Subscription Price of $13.14
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1484321

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Amalgamation	Scotia Capital Inc./Scotia Capitaux Inc. and Scotia iTrade Corp./Societe Scotia iTrade To form: Scotia Capital Inc./Scotia Capitaux Inc.	Investment Dealer and Futures Commission Merchant	November 1, 2009
Name Change	From: AGF Funds Inc./Les Fonds AGF Inc., To: AGF Investments Inc./Placements AGF Inc.	Mutual Fund Dealer, Exempt Market Dealer, Portfolio Manager and Commodity Trading Manager,	November 2, 2009
Suspended pursuant to section 28 because the company ceased all registerable activities as of November 1, 2009.	1751805 Ontario Inc. (formerly Scotia Securities Inc.)	Mutual Fund Dealer	November 3, 2009
Change of Category	Cypress Capital Management Ltd.	From: Exempt Market Dealer and Portfolio Manager To: Portfolio Manager	November 6, 2009

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 MFDA Hearing Panel Issues Reasons for Decision with Respect to Professional Investment Services (Canada) Inc. Settlement Hearing

NEWS RELEASE
For immediate release

MFDA HEARING PANEL ISSUES REASONS FOR DECISION WITH RESPECT TO PROFESSIONAL INVESTMENT SERVICES (CANADA) INC. SETTLEMENT HEARING

November 4, 2009 (Toronto, Ontario) – A Hearing Panel of the Prairie Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA") has issued its Reasons for Decision in connection with the settlement hearing held in Calgary, Alberta on October 9, 2009 in the matter of Professional Investment Services (Canada) Inc.

A copy of the Reasons for Decision is available on the MFDA website at 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

13.1.2 MFDA Hearing Panel Issues Reasons for Decision with Respect to Wayne Larson Hearing

NEWS RELEASE
For immediate release

MFDA HEARING PANEL ISSUES REASONS FOR DECISION WITH RESPECT TO WAYNE LARSON HEARING

November 6, 2009 (Toronto, Ontario) – A Hearing Panel of the Prairie Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA") has issued its Reasons for Decision in connection with the Hearing on the Merits held in Edmonton, Alberta on August 27, 2009 in the matter of Wayne Larson.

The Hearing Panel imposed the following penalties and costs on Mr. Larson:

- A permanent prohibition on the authority of Mr. Larson to conduct securities related business while in the employ of, or associated with, any MFDA Member:
- A fine in the aggregate amount of $205,000[1] in respect of the three allegations set out in the Notice of Hearing: and
- Costs attributable to conducting the investigation and prosecution of the matter in the amount of $7,500.

A copy of the Reasons for Decision is available on the MFDA website at 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

[1] The aggregate fine amount of $250,000 published by News Release dated August 28, 2009 was a misprint.

13.1.3 MFDA Hearing Panel issues Reasons for Decision with respect to Alden M. Kaley Settlement Hearing

NEWS RELEASE
For immediate release

MFDA HEARING PANEL ISSUES REASONS FOR DECISION WITH RESPECT TO ALDEN M. KALEY SETTLEMENT HEARING

November 6, 2009 (Toronto, Ontario) – A Hearing Panel of the Atlantic Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA") has issued its Reasons for Decision in connection with the Settlement Hearing held in Fredericton, New Brunswick on August 21, 2009 in the matter of Alden M. Kaley.

A copy of the Reasons for Decision is available on the MFDA website at 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

13.1.4 MFDA Hearing Panel Makes Findings Against Purisima Dy

NEWS RELEASE
For immediate release

MFDA HEARING PANEL MAKES FINDINGS AGAINST PURISIMA DY

November 10, 2009 (Toronto, Ontario) – A disciplinary hearing in the matter of Purisima Dy (the "Respondent") was held yesterday before a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA") in Toronto, Ontario.

An Agreed Statement of Facts was filed prior to the hearing in which the Respondent admitted to a number of facts and allegations, as a consequence of which MFDA Staff withdrew Allegations #2 and #3 in the Notice of Hearing issued on October 21, 2008.

Hearing Panel found that Allegation #1 in the Notice of Hearing, set out below, had been established:

> Allegation #1: The Respondent was convicted in June 2007 for fraud contrary to s. 380(1)(a) of the *Criminal Code* and thereby failed to observe the high standards of ethics and conduct in the transaction of business and be of such character and business repute as is consistent with the standards prescribed by MFDA Rule 2.1.1.

The Hearing Panel made the following orders at the conclusion of the hearing and advised that it would issue written reasons for its decision in due course:

- A fine in the amount of $50,000;
- A permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member; and
- Costs in the amount of $2,500.

A copy of the Notice of Hearing is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, 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 Postpones Next Appearance in the Matter of Carmen Moerike

NEWS RELEASE
For immediate release

MFDA POSTPONES NEXT APPEARANCE IN THE MATTER OF CARMEN MOERIKE

November 10, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding against Carmen G. Moerike by Notice of Hearing dated June 22, 2009.

The next appearance in this matter, previously scheduled to take place on November 13, 2009 in Regina, Saskatchewan, has been postponed to a date to be announced.

A copy of the Notice of Hearing is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 145 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Marco Wynnyckyj
Hearings Coordinator
416-945-5146 or mwynnyckyj@mfda.ca

13.1.6 Request for Comments – Amendments to Part VI of the TSX Company Manual

TORONTO STOCK EXCHANGE

REQUEST FOR COMMENTS

AMENDMENTS TO PART VI OF THE
TORONTO STOCK EXCHANGE ("TSX") COMPANY MANUAL
(THE "MANUAL")

TSX is publishing proposed changes to Part VI of the Manual relating to certain requirements and exemptions for acquisitions of investment funds (the "Amendments"). The Amendments are being published for a 30-day comment period.

The Amendments will be effective upon approval by the Ontario Securities Commission (the "OSC") following public notice and comment. Comments should be in writing and delivered by December 14, 2009 to:

Michal Pomotov
Legal Counsel
Toronto Stock Exchange
The Exchange Tower
130 King Street West
Toronto, Ontario M5X 1J2
Fax: (416) 947-4461
Email: tsxrequestforcomments@tsx.com

A copy should also be provided to:

Susan Greenglass
Acting Director
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8
Fax: (416) 595-8940
Email: marketregulation@osc.gov.on.ca

Comments will be publicly available unless confidentiality is requested.

Overview

On April 3, 2009, TSX published a Request for Comments (the "2009 RFC") on its security holder approval requirements for acquisitions. In response to the 2009 RFC, a concern was raised regarding the application of security holder approval requirements for acquisitions of investment funds. Also, certain market participants have recently expressed interest in TSX codifying security holder approval requirements for investment funds that are being acquired.

Further to the 2009 RFC, TSX amended its rules for security holder approval requirements for acquisitions (the "2009 RFC Amendment"). TSX is publishing this Request for Comments in part because of the impact of the 2009 RFC Amendment on investment funds. TSX requires security holder approval for the issuance of securities as full or partial consideration for an acquisition where such number of securities exceeds 25% of the issued and outstanding securities of the listed issuer (Subsection 611(c)). Prior to the 2009 RFC Amendment, a listed issuer acquiring a public company (a reporting issuer or issuer of equivalent status having 50 or more beneficial security holders, excluding insiders and employees) (Subsection 611(d)) was generally exempt from Subsection 611(c). Investment funds engaged in permitted mergers were therefore generally exempt from the security holder approval requirement.

This Request for Comments proposes Amendments to Part VI of the Manual: (i) to require security holder approval by investment funds that are the subject of an acquisition, unless certain conditions are met; and (ii) to provide an exemption from the security holder approval requirement in Subsection 611(c) for an acquiror investment fund, subject to certain conditions being met.

This Request for Comments explains the rationale and objective of the Amendments and seeks public comment. Following the comment period, TSX will determine whether to implement the Amendments, based on the comments it receives. If TSX determines to implement the Amendments as proposed, they will be published, together with a summary of the comments received, prior to implementation. If the Amendments are materially modified or withdrawn, TSX will publish a further Request for Comments or subsequent notice, together with a summary of the comments received.

Summary of the Amendments

Subsection 604(g) Security holder approval

TSX is proposing to require security holder approval of an investment fund which is the subject of an acquisition, unless certain conditions are met. In particular, the target fund must provide its security holders with a redemption right for cash proceeds prior to completion of the acquisition, which cannot be for less than net asset value ("NAV") of the fund. If specific security holder approval is not being sought for the acquisition, it has been TSX practice to require investment funds to offer their security holders a redemption right for cash proceeds at NAV prior to being acquired. TSX seeks to codify this practice in the Manual to improve transparency for market participants.

Subsection 611(d) Exemption from security holder approval

TSX is also proposing to exempt an investment fund from the security holder approval requirement for acquisitions exceeding 25% dilution as set out in Subsection 611(c), provided that certain conditions are met. In particular, the consideration offered by the acquiring investment fund cannot exceed the NAV of the investment fund that is the subject of the acquisition.

Text of the Amendments

TSX is proposing to add a new Subsection 604(g) as follows:

> **Sec. 604. Security Holder Approval.**
>
> (g) When a listed issuer that is an investment fund is being acquired, TSX will require that such investment fund obtain security holder approval for the acquisition, unless all of the following conditions are met:
>
> > (i) the listed issuer has a permitted merger clause in its constating documents which permits the acquisition of the listed issuer without security holder approval;
> >
> > (ii) the consideration offered to security holders of the listed issuer for the acquisition has a value that is not less than NAV;
> >
> > (iii) the independent review committee of the listed issuer being acquired has: (A) determined that the investment objectives, valuation procedures and fee structure of the listed issuer and the acquiring issuer are substantially the same; and (B) approved the acquisition; and
> >
> > (iv) the listed issuer is providing its security holders with a redemption right for cash proceeds which are not less than its NAV, together with adequate notice and description of such redemption right and the acquisition.

TSX is proposing to amend Subsection 611(c) and add a new Subsection 611(d) as follows:

> **Sec. 611. Acquisitions.**
>
> (c) Subject to Subsection 611(d), security holder approval will be required in those instances where the number of securities issued or issuable in payment of the purchase price for an acquisition exceeds 25% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis.
>
> (d) Subject to Subsection 611(b), TSX will not require security holder approval where the listed issuer is an investment fund and all of the following conditions are met:
>
> > (i) the issuer being acquired is an investment fund that calculates and publishes its NAV at least once a month;
> >
> > (ii) the consideration being offered for the acquisition does not exceed the NAV of the investment fund that is the subject of the acquisition; and
> >
> > (iii) the independent review committee of the acquiring listed issuer has: (A) determined that the investment objectives of the listed issuer and the issuer being acquired are substantially the same; and (B) approved the acquisition; and

(iv) the number of securities issued or issuable in payment of the purchase price for the acquisition does not exceed 100% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis.

A blackline of the proposed Amendments is attached at Appendix A.

Rationale and Discussion of the Amendment

In this section we discuss the rationale for: (i) requiring security holder approval of an acquisition by a target investment fund unless certain conditions are met; and (ii) exempting an investment fund from the Subsection 611(c) security holder approval requirement provided certain conditions are met.

(i) Security Holder Approval Requirements for Target Investment Funds

Certain concerns have been raised by market participants regarding investment funds which are the subject of an acquisition. Because investment funds are typically created by a declaration of trust or similar constating documents, they are not generally subject to the protections of a corporate statute such as the *Canadian Business Corporations Act*, which generally would provide that target security holders must approve an acquisition. In addition, the constating documents of some investment funds have a "permitted merger" clause which allows the fund to be acquired without the approval of its security holders provided that certain conditions have been met.

TSX does permit investment funds to include a permitted merger clause in their constating documents. However, when an investment fund is being acquired, TSX has, as a matter of practice, required that the investment fund provide a redemption right to its security holders for cash proceeds based on NAV, unless the target fund seeks specific security holder approval for the acquisition. Subsection 604(g) will codify this practice and clarify TSX's position on the redemption right to be provided to security holders.

TSX is concerned about the protection of security holders in funds with a permitted merger clause because they potentially permit fundamental alterations in an investment to occur without security holder approval. For example, permitted mergers can result in: (i) indirect extension of the life of the investment fund if security holders are merged into a fund with a longer term; (ii) change in termination rights, such that security holders that would otherwise be able to obtain cash proceeds upon the termination of the fund are merged into a fund with different termination rights; and (iii) change in redemption rights or other fundamental terms of the investment fund.

For conventional mutual funds, there is a requirement in National Instrument 81-102 that the funds participating in a merger transaction bear none of the costs and expenses associated with the transaction. For conventional mutual funds, the rationale is that such mergers benefit fund managers, not necessarily security holders.

Accordingly, we are proposing to formally require that an investment fund which is the subject of an acquisition must obtain security holder approval for the acquisition, unless: (i) security holders are provided with a redemption right for cash proceeds equal to NAV; (ii) the investment objectives, valuation procedures and fee structure of the acquiror and target are substantially similar, as determined by the target fund's independent review committee, and the independent review committee of the target fund has approved the acquisition; and (iii) adequate notice of the redemption right and a description of the acquisition are provided to all security holders in order to allow them to make an informed decision whether to exercise their redemption rights.

Questions:

Please comment on the following questions:

1. Is it appropriate for TSX to require security holder approval of an acquisition by a listed investment fund which is the subject of an acquisition?

2. Should security holder approval be required in all instances, regardless of any conditions that may be met? Please explain your response with reference to investor protection and the costs of seeking security holder approval.

3. Are the proposed conditions to permit an acquisition without security holder approval appropriate?

4. Are there additional conditions that should be required to permit an acquisition without security holder approval? If so, what are they?

5. Should an investment fund be permitted to deduct the administrative expenses involved in exercising the redemption right? If so, would it be appropriate to cap the administrative expenses that could be charged, and at what level?

6. Is it appropriate that the independent review committee determine whether the investment objectives, valuation procedures and fee structure of the funds are substantially similar? Is there anything else that the independent review committee of the fund should specifically be required to review in order for an acquisition to proceed without security holder approval?

7. Is it appropriate that TSX require that the investment funds participating in a merger bear none of the costs and expenses associated with the transaction?

(ii) Exemption from Security Holder Approval Requirement for Acquiring Investment Funds

In response to the 2009 RFC, TSX received a comment letter suggesting that closed end investment funds should not be subject to a dilution test for security holder approval of an acquisition of another investment fund. It was submitted that for investment funds with a permitted merger clause, there are sufficient investor protections because of TSX practice with respect to such mergers and because of conflict of interest provisions under securities legislation, including review of the transaction by the fund's independent review committee.

Investment funds are generally different than other listed issuers in that their purpose is typically exposure to, or investment in, a specified sector, rather than an operating business. Investment funds typically calculate and publish their NAV frequently. Because of the nature of an investment fund, control issues do not typically arise, and normally there is no premium offered in connection with an acquisition. The consideration offered for the acquisition of an investment fund is generally equal to the NAV of the target investment fund. Security holders in the acquiring fund do not therefore suffer economic dilution because they are diluted only in respect of their percentage ownership of the acquiring fund. In contrast, it would be unusual for the acquisition of an operating business not to be done at a premium. In addition, investment funds typically do not hold an annual security holder meeting, making the cost considerations of requiring security holder approval particularly relevant.

TSX is therefore proposing to exempt listed investment funds acquiring other investment funds from the security holder approval requirement in Subsection 611(c), provided that certain conditions are met. One of the key concerns addressed by Subsection 611(c) is that an acquisition may fundamentally alter a security holder's investment through dilution. We believe that this concern is not relevant for security holders in investment funds, provided that the proposed conditions are met. However, no exemption will be available if dilution is over 100%. This restriction is to mirror a restriction applicable to conventional mutual funds subject to National Instrument 81-102. As conditions to providing an exemption from the security holder approval requirement: (i) the fund must calculate and report NAV at least monthly; (ii) a premium is not permitted; the consideration offered may not exceed NAV of the investment fund that is the subject of the acquisition; (iii) the investment objectives of the investment fund, as determined by the independent review committee, must be substantially similar, and the independent review committee of the acquiror fund must approve the acquisition; and (iv) dilution cannot exceed 100%.

Questions:

Please comment on the following questions:

8. Is it appropriate to provide investment funds with an exemption from the security holder approval requirement set out in Subsection 611(c)? If not, please explain.

9. Should security holder approval be required for an investment fund acquiror where dilution is more than 25%, regardless of any conditions that may be met? Please explain your response with reference to investor protection and the costs of seeking security holder approval.

10. Are there any circumstances under which the proposed exemption should not apply (i.e., for conventional mutual funds, there is no exemption from security holder approval if the transaction is a material change for the acquiror fund)?

11. Are the proposed conditions for an exemption from the security holder approval requirement appropriate?

12. Are there additional conditions that should be added in order to permit the exemption from security holder approval? If so, what are they?

13. Is it appropriate that the independent review committee determine whether the investment objectives of the funds are substantially similar? Is there anything else that the independent review committee of the fund should specifically be required to review in order for an acquisition to proceed without security holder approval?

Ancillary Proposed Rule Amendments

The following ancillary rule amendments are non-public interest and will only be made at the effective time of Amendments.

Part I – Introduction

Definitions will be added. The definition of "investment fund", currently in Subsection 628(vii) of the Manual, will be moved to Part I and will be updated. See **Appendix B**.

Question:

14. Are there additional ancillary rule amendments, not discussed in this Request for Comments, to consider in adopting the Amendments?

Transition

Given that the 2009 RFC Amendment has been approved and will be effective on November 24, 2009, TSX recognizes that investment funds will not have an exemption from security holder approval requirements for acquisitions subject to Subsection 611(c). TSX will consider on a case by case basis applications by investment funds for a discretionary exemption from the security holder approval requirement in Subsection 611(c) provided the terms set out in this Request for Comments are present.

Public Interest

TSX is publishing the Amendments for a 30-day comment period, which expires December 14, 2009. The Amendments will only become effective following public notice and the approval of the OSC.

APPENDIX A

PROPOSED PUBLIC INTEREST AMENDMENTS TO PART VI OF

THE TORONTO STOCK EXCHANGE COMPANY MANUAL

Sec. 604(g). Security Holder Approval

(g) When a listed issuer that is an investment fund is being acquired, TSX will require that such investment fund obtain security holder approval for the acquisition, unless all of the following conditions are met:

(i) the listed issuer has a permitted merger clause in its constating documents which permits the acquisition of the listed issuer without security holder approval;

(ii) the consideration offered to security holders of the listed issuer for the acquisition has a value that is not less than NAV;

(iii) the independent review committee of the listed issuer being acquired has: (A) determined that the investment objectives, valuation procedures and fee structure of the listed issuer and the acquiring issuer are substantially the same; and (B) approved the acquisition; and

(iv) the listed issuer is providing its security holders with a redemption right for cash proceeds which are not less than NAV, together with adequate notice and description of such redemption right and the acquisition.

Sec. 611. Acquisitions.

(c) Subject to Subsection 611(d), s~~S~~ecurity holder approval will be required in those instances where the number of securities issued or issuable in payment of the purchase price for an acquisition exceeds 25% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis.

(d) ~~[Intentionally deleted.]~~ Subject to Subsection 611(b), TSX will not require security holder approval where the acquiring listed issuer is an investment fund and all of the following conditions are met:

(i) the issuer being acquired is an investment fund that calculates and publishes its NAV at least once a month;

(ii) the consideration being offered for the acquisition does not exceed the NAV of the investment fund that is the subject of the acquisition;

(iii) the independent review committee of the acquiring listed issuer has: (A) determined that the investment objectives of the listed issuer and the issuer being acquired are substantially the same; and (B) approved the acquisition; and

(iv) the number of securities issued or issuable in payment of the purchase price for the acquisition does not exceed 100% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis.

APPENDIX B

PROPOSED NON-PUBLIC INTEREST ANCILLARY AMENDMENTS TO PART I OF

THE TORONTO STOCK EXCHANGE COMPANY MANUAL

Interpretation

"investment fund" has the same definition found in the OSA ~~National Instrument 51-102 – *Continuous Disclosure Obligations*~~.

"IRC" means the independent review committee of an investment fund established under National Instrument 81-107 – Independent Review Committee for Investment Funds;

"NAV" means net asset value and has the same meaning as provided in National Instrument 81-106 – Investment Fund Continuous Disclosure;

13.1.7 Technical Amendments to CDS Procedures – New Corporate Action Liability Management Service (CALMS) – Notice of Effective Date

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

TECHNICAL AMENDMENTS TO CDS PROCEDURES

NEW CORPORATE ACTION LIABILITY MANAGEMENT SERVICE (CALMS)

NOTICE OF EFFECTIVE DATE

A. DESCRIPTION OF THE CDS PROCEDURE AMENDMENT

Background

The proposed amendments are to describe a new electronic facility - Corporate Action Liability Management service (CALMS) - within the CDS Services web infrastructure, which subscribing participants will use for the submission and tracking of liability notifications (commonly known as "letters of liability") as related to corporate action events.

A "letter of liability" provides details of when securities must be delivered to settle an outstanding 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. Currently participants use a manual and paper-based method to exchange these letters.

CALMS will replace the paper/fax based exchange of letters of liability with on-line electronic communications. Using a browser-based application, Participants will electronically submit and track their liability notifications throughout their lifecycle, from initiation to acceptance. 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.

The CDS Procedures marked for the amendments may be accessed at the CDS website at:
http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-blacklined?Open.

Description of Proposed Amendments

The proposed amendments describe the Corporate Action Liability Management service (CALMS), and provide a form for Participants to subscribe to the CALMS service.

Participating in CDS Services
Ch 3: Web services, s 3.7: Corporate Action Liability Management service (new)

CDSX843 Web Services Request for CDS Participants form (update)

CDS Procedure Amendments are reviewed and approved by CDS's Strategic Development Review Committee ("SDRC"). The SDRC determines or reviews, prioritizes and oversees CDS-related systems development and other changes proposed by participants and CDS. The SDRC's membership includes representatives from the CDS Participant community and it meets on a monthly basis.

These amendments were reviewed and approved by the SDRC on September 24, 2009.

B. REASONS FOR TECHNICAL CLASSIFICATION

The amendments proposed pursuant to this Notice are considered technical in nature, and are consequential amendments intended to implement a material Rule that has been published for comment by the OSC and AMF.

C. EFFECTIVE DATE OF THE CDS PROCEDURE AMENDMENT

Pursuant to Appendix A ("Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC") of the Recognition and Designation Order, as amended on November 1, 2006, and Annexe A ("Protocole d'examen et d'approbation des Règles de Services de Dépot et de Compensation CDS Inc. par l'Autorité des marchés financiers") of AMF Decision 2006-PDG-0180,

made effective on November 1, 2006, CDS has determined that the proposed amendments will become effective on a date subsequently determined by CDS, and as stipulated in the related CDS Bulletin.

D. QUESTIONS

Questions regarding this notice may be directed to:

Laura Ellick
Manager, Business Systems
Business Systems Development & Support
CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9

Telephone: 416-365-3872
Fax: 416-365-9625
Email: lellick@cds.ca

13.1.8 IIROC Rules Notice – Request for Comments – UMIR – Provisions Respecting Implementation of the Order Protection Rule

RULES NOTICE

REQUEST FOR COMMENTS – UMIR

PROVISIONS RESPECTING IMPLEMENTATION OF THE ORDER PROTECTION RULE

Summary

This IIROC Notice provides notice that, on September 23, 2009, the Board of Directors ("Board") of the Investment Industry Regulatory Organization of Canada ("IIROC") approved proposed amendments ("Proposed Amendments") to the Universal Market Integrity Rules ("UMIR") that would be consequential to the implementation by the Canadian Securities Administrators ("CSA") of changes to National Instrument 23-101 – *Trading Rules* ("Trading Rules") regarding trade-through protection ("Order Protection Rule").[1]

In particular, the Proposed Amendments would:

- repeal the rule and policies respecting the "best price" obligation of Participants;
- provide that the Order Protection Rule can not be avoided when a Participant is considering a trade on a foreign organized regulated market;
- require a Participant or Access Person to have adequate policies and procedures for the handling of orders that do not rely on a marketplace to ensure compliance with the Order Protection Rule;
- make a number of consequential changes to UMIR including:
  - repealing those portions of the rules and policies on trading supervision and gatekeeper reports dealing with the "best price" obligation from,
  - confirming that the "best execution" obligation is subject to the Order Protection Rule,
  - introducing a marker for a "directed action order" as defined for the Order Protection Rule, and
  - extending the existing provisions of UMIR governing foreign currency translation and the calculation of the value of an order to the determination whether the execution of certain trades on a foreign organized regulated market may give rise to an obligation to fill "better-priced" orders on a marketplace.

Until the Order Protection Rule comes into force and the Proposed Amendments have been approved and implemented, Participants remain subject to the "best price" obligation under Rule 5.2 of UMIR.[2] The Order Protection Rule is expected to come into force on February 1, 2011.

Rule-Making Process

IIROC has been recognized as a self-regulatory organization by each of the Canadian provincial securities regulatory authorities (the "Recognizing Regulators") and, as such, is authorized to be a regulation services provider for the purposes of National Instrument 21-101 ("Marketplace Operation Instrument") and the Trading Rules.

As a regulation services provider, IIROC administers and enforces trading rules for the marketplaces that retain the services of IIROC.[3] IIROC has adopted, and the Recognizing Regulators have approved, UMIR as the integrity trading rules that will apply in any marketplace that retains IIROC as its regulation services provider.

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1 Canadian Securities Administrators Notice, Notice of Amendments to National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*, (2009) 32 OSCB 9403. Reference should be made to this notice for particulars on the Order Protection Rule including a discussion of the development of the Order Protection Rule and the policy rationale underlying the rule.

2 For further guidance on the current application of the "best price" obligation, reference should be made to:

- IIROC Notice 09-0107 – Rules Notice – Notice of Approval – UMIR – *Provisions Respecting the "Best Price" Obligation* (April 17, 2009);
- IIROC Notice 09-0108 – Rules Notice – Guidance Note – UMIR – *Specific Questions Related to the "Best Price" Obligation* (April 17, 2009); and
- Market Integrity Notice 2008-010 - *Guidance – Complying with "Best Price" Obligations* (May 16, 2008).

3 Presently, IIROC has been retained to be the regulation services provider for: the Toronto Stock Exchange ("TSX"), TSX Venture Exchange ("TSXV") and Canadian National Stock Exchange ("CNSX"), each as an as an "exchange" for the purposes of the Marketplace Operation Instrument ("Exchange"); and for Alpha Trading Systems ("Alpha"), Bloomberg Tradebook Canada Company, Chi-X Canada ATS Limited ("Chi-X"), Liquidnet Canada Inc. ("Liquidnet"), Omega ATS Limited ("Omega") and TriAct Canada Marketplace LP (the operator of "MATCH Now"), each as an alternative trading system ("ATS"). CNSX presently operates an "alternative market" known as "Pure Trading" that is entitled to trade securities that are listed on other Exchanges and that presently trades securities listed on the TSX and TSXV.

The text of the Proposed Amendments is set out in Appendix "A". The Proposed Amendments have been classified as a "Public Comment Rule" and the Board has determined that the Proposed Amendments are in the public interest in that the Proposed Amendments are consequential to changes being proposed by the CSA to the Trading Rules.

Comments are requested on all aspects of the Proposed Amendments, including comments on policy alternatives that may be available to the implementation of the Proposed Amendments. Comments on the Proposed Amendments should be in writing and delivered by ***January 12, 2010*** to:

James E. Twiss,
Vice President, Market Regulation Policy,
Investment Industry Regulatory Organization of Canada,
Suite 900,
145 King Street West,
Toronto, Ontario. M5H 1J8

Fax: 416.646.7265
e-mail: jtwiss@iiroc.ca

A copy should also be provided to Recognizing Regulators by forwarding a copy to:

Susan Greenglass
Acting Director, Market Regulation
Ontario Securities Commission
Suite 1903, Box 55,
20 Queen Street West
Toronto, Ontario. M5H 3S8

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

Commentators should be aware that a copy of their comment letter will be publicly available on the IIROC website (www.iiroc.ca under the heading "Policy" and sub-heading "Market Proposals/Comments") after the comment period has ended. A summary of the comments contained in each submission will also included in a future IIROC Notice dealing with the republication or approval of the Proposed Amendments.

After considering the comments on the Proposed Amendments received in response to this Request for Comments together with any comments of the Recognizing Regulators, staff of IIROC may recommend that revisions be made to the Proposed Amendments. If the revisions are not of a material nature, the Board has authorized the President to approve the revisions on behalf of IIROC and the Proposed Amendments as revised will be subject to approval by the Recognizing Regulators. If the revisions are material, the Proposed Amendments as revised will be submitted to the Board for ratification and, if ratified, will be republished for further public comment.

Current "Best Price" Provisions

The "best price" obligation[4] requires a Participant to make "reasonable efforts" to fill better-priced orders that are displayed on a "protected marketplace"[5] at the time the Participant executes at an inferior price on another marketplace or foreign organized regulated market. A Participant owes a "best price" obligation to only the "visible" portion of a "better-priced" order on a protected marketplace. If a marketplace permits the entry of an "iceberg" order for which only a portion of the volume is disclosed, no "best price obligation" is owed to the portion of the order that is not visible at the time the Participant is determining its obligation under Rule 5.2. At the present time, iceberg orders are permitted on Alpha, Chi-X, CNSX, Omega, Pure, TSX and TSXV.

If a protected marketplace has visible orders but the marketplace is not open for trading at that time, the "best price" obligation does not apply to such orders. A Participant may trade at any time taking into account all visible orders on marketplaces then open for trading. The "best price" obligation is owed to orders displayed in a special trading facility of a marketplace that

[4] Rule 5.2 of UMIR, *Best Price Obligation*.
[5] UMIR defines a "protected marketplace" as a marketplace that:

- disseminates order data in real-time and electronically through an information processor or one or more information vendors in accordance with the Marketplace Operation Instrument;
- permits dealers to have access to trading in the capacity as agent;
- provides fully-automated electronic order entry; and
- provides fully-automated order matching and trade execution.

conducts trading before or after the "regular" trading hours of that marketplace if other marketplaces are open for trading during the time that the special trading facility is operating.

The policies under Rule 5.2 provide that a Participant will be considered to have made "reasonable efforts" to comply with the "best price" obligation if the Participant has:

- entered the order on a marketplace that will ensure compliance with the "best price" obligation;
- used an acceptable order router; or
- provided the order to another Participant for entry on a marketplace.

If a Participant uses another means to enter an order on a marketplace, a number of factors will be taken into account in determining whether a Participant has made "reasonable efforts" to obtain the best available prices on a protected marketplace. Among the specific factors is whether:

- the protected marketplace recently launched operations;
- order information from the protected marketplace is available through a data vendor used by the Participant;
- the protected marketplace has recently had a material malfunction or interruption of services; and
- the protected marketplace has demonstrated an inordinate proportion of "inferior fills" with respect to tradeable orders routed to it.

A Participant is not permitted to take transaction costs into account as a factor in determining the "best price" obligation. "Reasonable efforts" does not require a Participant to maintain a connection to each protected marketplace.

Each Participant must adopt policies and procedures to ensure compliance with its "best price" obligation and the policies and procedures must include the relevant factors upon which it is relying in making trading decisions. Each Participant must review its policies and procedures on an ongoing basis to reflect changes to the trading environment and market structure.

Effective June 1, 2009, orders sent by a Participant to a marketplace for the purpose of executing against "better-priced" orders should be marked as a "bypass order" to insure that the order does not execute against "hidden" volume or other specialty orders which are not taken into account in the determination of the "disclosed volume".[6]

Summary of the Amendments

Repeal of the "Best Price" Obligation

With the adoption of the Order Protection Rule, it is the view of IIROC that the "best price" obligation is essentially redundant to the protection of better-priced orders disclosed in a consolidated market display. For this reason, the Proposed Amendments would repeal Rule 5.2 and Policy 5.2 upon the Order Protection Rule coming into force.

Relationship to the "Best Execution" Obligation

The obligation not to trade-through, like the "best price" obligation, is an obligation which is owed by market participants to the market generally. UMIR recognizes that the "best execution" obligation is owed by a Participant to its client. The Proposed Amendments would add Part 4 to Policy 5.1 to confirm that the "best execution" obligation is subject to the "trade-through protection" obligation under the Order Protection Rule (in the same manner that the "best execution" obligation is currently subject to the "best price" obligation).

Trading Supervision Requirements

The Proposed Amendments would repeal the requirement under Policy 7.1 that the policies and procedures adopted by a Participant as part of its trading supervision obligation include specific provisions respecting the "best price" obligation. However, this requirement has been replaced by a requirement that a Participant or Access Person adopt policies and procedures to ensure compliance with trade-through obligations under the Order Protection Rule if the Participant or Access Person intends to use a "directed action order" or if a Participant intends to undertake certain trades on foreign organized regulated markets.

The "directed action order" will act as an instruction to the marketplace on which the order is entered not to check for better-priced orders on other marketplaces and to immediately execute or book the order (in which case the Participant or Access Person entering the order assumes the responsibility for the execution or booking of the order not to result in a trade-through).

[6] For more information on the use of a "bypass order" see IIROC Notice 09-0128 – Rules Notice – Guidance Note – UMIR – *Specific Questions Related to the Use of the Bypass Order Marker* (May 1, 2009) and IIROC Notice 09-0034 – Rules Notice – Guidance Note – UMIR – *Implementation Date for Marking of Bypass Orders* (February 3, 2009).

In using a "directed action order", the Participant or Access Person will have assumed the obligation for trade-through protection and the marketplace will be able to execute the order without delay or regard to any other better-priced orders displayed by another marketplace. In order to be able to use a "directed action order", the Order Protection Rule requires that the person entering the order must "establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs …"[7]

In the view of IIROC, the policies and procedures which a Participant or Access Person must adopt will be comparable to the existing policies and procedures which a Participant must have for compliance with the "best price" obligation under Rule 5.2 of UMIR. The policies and procedures must specifically address the circumstances when the bypass order marker will be used in conjunction with a "directed action order".

Each Participant or Access Person must test the adequacy of the policies and procedures in preventing trade-throughs on a regular basis which shall not be less than monthly. IIROC would expect that the results of the compliance testing would be retained by the Participant or Access Person in order that IIROC would be able to review any test and its results as part of trade desk review or other compliance audit by IIROC.

Condition on the Conduct of Certain Trades on a Foreign Organized Regulated Market

Policy Rationale for the Condition

In its comment on CSA Discussion Paper 23-403 and in its submission to the public forum following that paper, Market Regulation Services Inc. ("RS") supported the introduction of trade-through obligations imposed at the marketplace level that would benefit investors on Canadian marketplaces. However, RS noted that:

> … the marketplace-level solution proposed in the Discussion Paper must be supplemented by a parallel obligation on market participants in connection with their trading outside Canada. That is, market participants should not be permitted to trade through better-priced orders on a Canadian marketplace by directing their trading activity to markets outside Canada, but should remain subject to their obligation to displace those better-priced orders on Canadian marketplaces. RS believes that such an obligation is necessary in Canada to protect better-priced orders on Canadian marketplaces given the significance of trading in inter-listed securities on Canadian marketplaces. [8]

One of the principal reasons that RS was of the opinion that a supplemental obligation was required was the inter-play with other UMIR requirements, particularly order exposure requirements. Under Rule 6.3 of UMIR, if a Participant receives a client order for 50 standard trading units or less with a value of $100,000 or less the Participant must, subject to certain exceptions, enter the client order on a marketplace.[9] Under Rule 6.3, the Participant may execute the client order upon receipt at a better price than orders indicated in a consolidated market display. If the Participant executes the client order against a principal order or non-client order at a better price, Rule 8.1 of UMIR requires that the Participant must have taken reasonable steps to ensure that the price is the best available price for the client, taking into account the condition of the market at the time. The order exposure rule was designed to ensure that clients received the "best price" by:

- requiring their orders to be immediately exposed to a "transparent" marketplace (that discloses order information to information vendors in real-time) rather than being held by a Participant to be matched internally with future order flow; and
- supporting the price discovery mechanism by ensuring that "small" limit orders are included in the displayed volume.

The ability of certain transactions to bypass better-priced orders on a marketplace undercuts the policy rationale for the requirement for the exposure of certain client orders on a transparent marketplace and complicates the ability of a Participant to satisfy its fiduciary obligations with respect to the handling of the client order. IIROC is of the view that it would be unfair to retail investors to require that their limit orders be displayed but once displayed not to require Participants to take all reasonable steps to ensure that those displayed "better-priced" orders are protected.

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7 Section 6.4 of NI 23-101.

8 Market Regulation Services Inc., *Response to Request for Comments – CSA Discussion Paper 23-403 – Market Structure Developments and Trade-Through Obligations*, p. 14. At the time of the response to the Discussion Paper, trading in securities inter-listed between the TSX and an exchange in the United States accounted for approximately 55% of the value of trading on TSX and this proportion has increased to approximately 60% in the first 8 months of 2009.

9 For the purposes of UMIR, 50 standard trading units would be: 5,000 units of a security trading at $1.00 or more per unit; 25,000 units of a security trading at $0.10 or more per unit and less than $1.00 per unit; and 50,000 units of a security trading at less than $0.10 per unit.

CSA Anti-Avoidance Provisions

IIROC acknowledges that the Order Protection Rule contains an anti-avoidance provision.[10] However, it should be noted that the anti-avoidance provision included in the Order Protection Rule does not impose a requirement that dealers adopt policies and procedures for considering better-priced orders on a marketplace in Canada prior to executing at an inferior price on a foreign organized regulated marketplace.

IIROC was concerned that a Participant that executes orders on a foreign organized regulated market in order to obtain "best execution" for their client that has the effect of trading-through better-priced orders on a marketplace would not be caught by the CSA anti-avoidance rule. In particular, in connection with the execution of pre-arranged trades or intentional crosses, the interest of one or both parties to the trade is to minimize or avoid "interference" from better-priced orders. In the case of the execution of a "block" trade, certainty of execution may have a higher priority with the client than price. Adding conditions to UMIR on the conduct of certain trades on a foreign organized regulated market would supplement the CSA anti-avoidance provision and ensure that the interests of those retail investors whose orders have been compelled to be exposed in a consolidated market display have been compromised if the displayed orders are bypassed. This matter was considered by the Trade-through Implementation Committee, an industry group established early in 2009 by the CSA to provide specific advice and guidance on the implementation of trade-through requirements, which recommended that the anti-avoidance provision in the Order Protection Rule be supplemented by specific provisions in UMIR.

Condition on "Off-Marketplace" Trades

The Proposed Amendments would buttress the anti-avoidance provisions in the Order Protection Rule. Rule 6.4 of UMIR requires a Participant, subject to certain enumerated exceptions, to execute a trade in a listed security on a marketplace. One of the enumerated exceptions, allows a Participant to execute a trade on a foreign organized regulated market. The Proposed Amendments would limit the availability of this exception if the order which is to be entered on a foreign organized regulated market would have executed against better-priced orders on a marketplace had the order been entered on a marketplace. The Proposed Amendments would not impose the obligation to consider better-priced orders on a marketplace when a Participant executes a trade on behalf of:

- a non-Canadian account; or
- a Canadian account that is denominated in a foreign currency.

The Proposed Amendments would also limit the types of orders to which the obligation would apply. The obligation to consider better-priced orders on a marketplace would only apply when a Participant was executing on a foreign organized regulated market an order that meets on of the following four conditions:

- is part of an intentional cross;
- is part of a pre-arranged trade;
- is for more than 50 standard trading units; or
- has a value of $250,000 or more.

The Proposed Amendments do not impose a similar obligation on Access Persons to consider better-priced orders on a marketplace as UMIR does not require that an Access Person execute trades on a marketplace.

Compliance with the Condition on Executing "Off-Marketplace" Trades

For orders which a Participant intends to execute "off-marketplace" on a foreign organized regulated market, the Proposed Amendments would continue the existing UMIR obligation to consider and honour better-priced orders on a protected marketplace. With the adoption of the Order Protection Rule, a Participant would have several means of complying with this obligation, including:

1. Continuation of Existing Policies and Procedures of the Participant

If a Participant has access to each protected marketplace, the Participant will be aware at the time that the Participant is considering the entry of the order on a foreign organized regulated market whether better-priced orders are displayed on a protected marketplace. In these circumstances, a Participant would enter a "directed action order" as contemplated by the Order Protection Rule on each of the marketplaces displaying a better-priced order. In order to enter a "directed action order", the Participant must have in place policies and

[10] Section 6.7 of NI 23-101. The text of the proposed provision is:
No person or company shall send an order to an exchange, quotation and trade reporting system or alternative trading system that does not carry on business in Canada in order to avoid executing against better-priced orders on a marketplace.

procedures that, in the opinion of IIROC, are comparable to the existing policies and procedures which a Participant must have for the purposes of complying with the "best price" obligation under Rule 5.2 of UMIR.

2. Reliance on Marketplace Policies and Procedures

Under the Order Protection Rule, each marketplace must establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs on that marketplace. If at least one marketplace implements trade-through protection by the establishment of direct linkages to all other marketplace that may have a "protected order", then a Participant would be able to satisfy any obligation that would be imposed by the Proposed Amendments by entering a "fill and kill" order on such a marketplace at the intended price that the balance of the order would execute on entry on a foreign organized regulated market. The Participant that entered the order on the marketplace need not have access to all of the other marketplaces or even been aware that better-priced orders were present on other marketplaces in order to be able to comply with the condition under the Proposed Amendments. (If no marketplace implements trade-through protection by the establishment of direct linkages to all other marketplaces that may have a "protected order", a Participant may have to enter orders on one or more marketplaces depending upon the way marketplaces have chosen to provide trade-through protection.)

Consequential Amendments

With the proposed repeal of Rule 5.2 dealing with the "best price" obligation, the Proposed Amendments would also make several consequential changes to UMIR including:

- *Gatekeeper Requirements* – The Proposed Amendments would repeal the requirement under Rule 10.16 that a Participant investigate and report on a possible violation of the "best price" obligation that the Participant becomes aware of as part of its gatekeeper obligation.
- *Foreign Currency Translation* - The Proposed Amendments would move the provisions related to foreign currency translation for the purpose of determining when a better-priced order exists on a marketplace from Part 3 of Policy 5.2 (which will be repealed by the Proposed Amendments) to Part 6 of Rule 6.4.
- *Interpretation – Determination of Value of an Order* - The Proposed Amendments would also extend the current methodology used for determining the value of an order for the purposes of Rule 6.3 and Rule 8.1 to the determination of the value of an order in Rule 6.4(3)(d).
- *Order Markers* – The Proposed Amendments would introduce a requirement in Rule 6.2 for "directed action orders" entered on a marketplace to carry an acceptable designation that would be displayed in the order information provided to the information processor or information vendors that would be publicly available.

Summary of the Impact of the Proposed Amendments

The most significant impacts of the adoption of the Proposed Amendments would be that Participants would be relieved of the obligation of ensuring that when an order entered on a marketplace is executed, better-priced order in the disclosed volume of orders on a protected marketplace are not ignored or traded-through. This obligation would be placed upon the marketplace receiving the order, in accordance with their policies and procedures adopted in accordance with the provisions of Part 6 of the Trading Rules.

However, if a Participant or Access Person has marked an order as a "directed action order", they would have an obligation to ensure that better-priced orders on a marketplace displayed in a consolidated market display are honoured when executing that order on a marketplace. A Participant or Access Person would not be entitled to use the "directed action order" marker unless they had established, maintained and ensured compliance with written policies and procedures that are reasonably designed to prevent trade-throughs. Similar policies and procedures would also apply when a Participant intends to execute certain orders at an inferior price on a foreign organized regulated market.

Changes from the Initial Proposed Amendments and Concept Proposal

On October 27, 2008, IIROC issued IIROC Notice 08-0163 requesting comments on proposed amendments to UMIR respecting the implementation of the Trade-through Protection Rule proposed by the CSA ("Initial Proposed Amendments") and a concept proposal designed to prevent avoidance of the Trade-through Protection Rule ("Concept Proposal").[11] The Concept Proposal has been incorporated into the Proposed Amendments. The following is a summary of the significant changes made to the Initial Proposed Amendments and the Concept Proposal reflected in the Proposed Amendments:[12]

[11] IIROC Notice 08-0163 – Rules Notice – Request for Comments – UMIR – *Provisions Respecting the Implementation of the Trade-through Protection Rule* (October 27, 2008).

[12] The changes to the Initial Proposed Amendments and the Concept Proposal are highlighted in red in column 1 of Appendix "B".

- the orders executed on a foreign organized regulated market that must take into account better-priced orders on a marketplace in accordance with amendments to Rule 6.4 have been limited to orders from a Canadian account denominated in Canadian currency that meets one of the following four conditions:
  - is part of an intentional cross,
  - is part of a pre-arranged trade,
  - is for more than 50 standard trading units, or
  - has a value of $250,000 or more; and
- provision for a marker to designate a "directed action order" has been added to Rule 6.2; and
- provision for policies and procedures in the use of a "directed action order" by a Participant or Access Person and for a Participant executing certain trades on a foreign organized regulated market has been added to Rule 7.1 and Policy 7.1.

Technological Implications and Implementation Plan

Co-ordination with the Coming into Force of the Order Protection Rule

Any amendments to UMIR respecting the repeal of the "best price" obligations would be expected to become effective on the date the Order Protection Rule comes into force.

"Best Price" Policies and Procedures

To the extent that a Participant intends to rely on a marketplace for compliance with the Order Protection Rule, a Participant will be able to delete its policies and procedures that have been put in place to ensure compliance with the "best price" obligation under UMIR. If a Participant or Access Person intends to use the "directed action order", then the Participant or Access Person must have policies and procedures to reasonably ensure that the entry of their order will not result in a trade-through. These policies and procedures would be essentially the same as those required of a Participant to ensure compliance with the "best price" obligation. A Participant may also have to essentially retain the policies and procedures to ensure compliance with the "best price" obligation if the Participant intends to execute certain types of trades on a foreign organized regulated market.

Gatekeeper Reports on Use of "Directed Action Orders"

Rule 10.16 of UMIR, allows IIROC to designate any requirement for which a Participant or Access Person must undertake a review of any activity that may be a violation of the requirement and to provide a report to IIROC if the review finds that a violation has occurred. If the Proposed Amendments are approved by the Recognizing Regulators, IIROC would propose to designate that a "gatekeeper report"[13] would be required from any Participant or Access Person that determined that:

- an order marked as a "directed action order" did not comply with the policies and procedures of the Participant or Access Person; and
- a periodic test of the policies and procedures adopted by the Participant or Access Person found that the policies and procedures with respect to the use of a "directed action order" were not adequate.

Notice of the designation for the purposes of Rule 10.16 would be included in the IIROC Notice issued in connection with the approval by the Recognizing Regulators of the Proposed Amendments.

Appendices

- Appendix "A" sets out the text of the Proposed Amendments to UMIR that are consequential to changes to the Trading Rules regarding the Order Protection Rule;
- Appendix "B" sets out a summary of the comment letters received in response to the Request for Comments on the proposed amendments as set out in IIROC Notice 08-0163 – Rules Notice – Request for Comments – UMIR – *Provisions Respecting the Implementation of Trade-through Protection* (October 27, 2008). Appendix "B" also sets out the response of IIROC to the comments received and provides additional commentary on the Proposed Amendments. Appendix "B" also contains the text of the relevant provisions of the Rules and Policies as they would read following the adoption of the Proposed Amendments. The changes from the Initial Proposed Amendments and the Concept Proposal are highlighted.

[13] For additional information on the filing of a "gatekeeper report", reference should be made to Market Integrity Notice 2008-011 – *Guidance – New Procedures for Gatekeeper Reports* (May 18, 2008).

Appendix "A"
Provisions Respecting Implementation of the Order Protection Rule

The Universal Market Integrity Rules are amended as follows:

1. Subsection (3) of Rule 1.2 is amended by deleting the word "and" and inserting the phrase ", Rule 6.4 and Rule" after the phrase "Rule 6.3".

2. Rule 5.2 is deleted.

3. Rule 6.2 is amended by inserting the following as subclause (v.4) in clause (b) of subsection (1):

   (v.4) a directed action order as defined in the Trading Rules,

4. Rule 6.4 is amended by:

   (a) inserting a period after the first occurrence of the word "marketplace" and renumbering that sentence as subsection (1);
   (b) deleting the phrase "unless the trade is" and substituting the phrase "Subsection (1) does not apply to a trade" and renumbering the sentence as subsection (2); and
   (c) inserting the following as subsection (3):

   (3) The exemption provided for in clause (d) of subsection (2) is unavailable to an order of a Canadian account denominated in Canadian funds that:

   (a) is part of an intentional cross;
   (b) is part of a pre-arranged trade;
   (c) is for more than 50 standard trading units; or
   (d) has a value of $250,000 or more

   if the entry of the order on a foreign organized regulated market would avoid execution against a better-priced order entered on a marketplace pursuant to Part 6 of the Trading Rules.

5. Rule 7.1 is amended by adding the following as subsection (5):

   (5) Notwithstanding any other provision of this Rule, a Participant or Access Person shall not mark an order on entry to a marketplace as a directed action order unless the Participant or Access Person has established, maintained and ensured compliance with written policies and procedures that are reasonably designed to prevent trade-throughs other than those trade-throughs permitted in Part 6 of the Trading Rules.

6. Rule 10.16 is amended by deleting clause (f) of subsection (1) and renumbering the remaining clauses accordingly.

The Policies to the Universal Market Integrity Rules are amended as follows:

1. Part 4 of Policy 5.1 is deleted and the following substituted:

   Part 4 – Subject to Order Protection Rule

   Notwithstanding any instruction or consent of the client, the provision of "best execution" for a client order is subject to compliance with the "order protection rule" under Part 6 of the Trading Rules by the marketplace on which the order is entered or by the Participant if the Participant has marked the order as a directed action order in accordance with Rule 6.2. Similarly, if a Participant considers a foreign organized regulated market in order to provide a client with "best execution", the Participant must ensure that the condition in subsection (3) of Rule 6.4, if applicable, is satisfied prior to the execution on the foreign organized regulated market.

2. Policy 5.2 is deleted.

3. Policy 6.4 is amended by adding the following as Part 6:

Part 6 – Foreign Currency Translation

If a trade is to be executed on a foreign organized regulated market in a foreign currency, the foreign trade price shall be converted to Canadian dollars using the exchange rate the Participant would have applied in respect of a trade of similar size on a foreign organized regulated market in that foreign jurisdiction in order to determine whether the condition in subsection (3) of Rule 6.4 restricting avoidance of Part 6 of the Trading Rules has been met. The Market Regulator regards a difference of one trading increment or less as "marginal" because the difference would be attributable to currency conversion. A Participant shall maintain with the record of the order the exchange rate used for the purpose of determining whether a better priced order existed on a marketplace and such information shall be provided to the Market Regulator upon request in such form and manner as may be reasonably required by the Market Regulator in accordance with subsection (3) of Rule 10.11

3. Part 6 of Policy 7.1 is deleted and the following substituted:

Part 6 – Specific Provisions Respecting Trade-throughs

Each Participant must adopt written policies and procedures that are adequate, taking into account the business and affairs of the Participant, to ensure that an order:

- marked as “directed action order” in accordance with Rule 6.2 does not result in a trade-through other than a trade-through permitted under Part 6 of the Trading Rules; or
- entered on a foreign organized regulated market complies with the conditions in subsection (3) of Rule 6.4.

Each Access Person must adopt written policies and procedures that are adequate, taking into account the business and affairs of the Access Person, to ensure that an order marked as a “directed action order” in accordance with Rule 6.2 does not result in a trade-through other than a trade-through permitted under Part 6 of the Trading Rules.

The policies and procedures must set out the steps or process to be followed by the Participant or Access Person to ensure that the execution of an order does not result in a trade-through. The policies and procedures must specifically address the circumstances when the bypass order marker will be used in conjunction with a “directed action order”. These policies and procedures must address the steps which the Participant or Access Person will undertake on a regular basis, which shall not be less than monthly, to test that the policies and procedures are adequate.

Appendix "B"
Comments Received in Response to
IIROC Notice 08-0163 – *Rules Notice - Request for Comments – UMIR - Provisions Respecting Implementation of Trade-through Protection*

On October 27, 2008, IIROC issued IIROC Notice 08-0163 requesting comments on proposed amendments to UMIR respecting the implementation of the Trade-through Protection (now referred to as the Order Protection Rule) under the ATS Rules by the CSA ("Initial Proposed Amendments") and a concept proposal designed to prevent avoidance of the Order Protection Rule ("Concept Proposal"). IIROC received comments on the Initial Proposed Amendments and Concept Proposal from:

Alpha Trading Systems ("Alpha")
BMO Financial Group ("BMO")
CNSX Markets ("CNSX")
Canadian Security Traders Association, Inc. ("CSTA")
Investment Industry Association of Canada ("IIAC")
ITG Canada Corp ("ITG")
Liquidnet Canada Inc. ("Liquidnet")
RBC Asset Management ("RBCAM")
RBC Dominion Securities Inc. ("RBCDS")
TD Securities Inc. ("TD")

A copy of each comment letter submitted in response to the Request for Comments is publicly available on the IIROC website (www.iiroc.ca under the heading "Policy" and sub-heading "Market Proposals/Comments"). The following table presents a summary of the comments received on the Initial Proposed Amendments and/or Concept Proposal together with the response of IIROC to those comments. Column 1 of the table highlights the revisions to the Initial Proposed Amendments and the Concept Proposal made by IIROC in response to these comments and the comments of the Recognizing Regulators.

Text of Provisions Following Adoption of the Proposed Amendments (Changes from Initial Proposed Amendments and Concept Proposal Highlighted)	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
1.2 Interpretation (3) In determining the value of an order for the purposes of Rule 6.3, Rule 6.4 and Rule 8.1, the value shall be calculated as of the time of the receipt or origination of the order and shall be calculated by multiplying the number of units of the security to be bought or sold under the order by: (a) in the case of a limit order for the purchase of a security, the lesser of: (i) the specified maximum price in the order, and (ii) the best ask price; (b) in the case of a limit order for the sale of a security, the greater of: (i) the specified minimum price in the order, and (ii) the best bid price; (c) in the case of a market order for the purchase of a security, the best ask price; and (d) in the case of a market order for the sale of a security, the best bid price.		The revision to Rule 1.2(3) to add reference to Rule 6.4 is consequential to the adoption of one of the four enumerated tests for an order to be subject to the anti-avoidance provision added as Rule 6.4(3) that refers to the value of the orders. Orders which are part of an intentional cross, pre-arranged trade, for more than 50 standard trading units or with a value of $250,000 or more and which will be executed on a foreign organized regulated market will, in effect, be subject to compliance with Order Protection Rule.
5.2 Best Price Obligation – repealed	**Alpha -** Strongly supports position taken by IIROC.	IIROC acknowledges support for the proposal to repeal the "best price" obligation upon the implementation of the proposed Order Protection Rule by the Canadian Securities Administrators.

Text of Provisions Following Adoption of the Proposed Amendments (Changes from Initial Proposed Amendments and Concept Proposal Highlighted)	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
	Liquidnet - Removal of the UMIR best price rule on dealers is the most advisable way to address the disparate treatment of dealers and other market participants as they relate to the best price rule.	See response to Alpha comment above.
	RBCAM and RBCDS - Trade-through protection imposed at marketplace level reflects more practical and effective approach to maintaining fairness in Canadian markets. Proposed elimination of current best price obligation will address a number of inefficiencies under current framework.	See response to Alpha comment above.
6.2 Designations and Identifiers (1) Each order entered on a marketplace shall contain: … (b) a designation acceptable to the Market Regulator for the marketplace on which the order is entered, if the order is: … (v.4) <u>a directed action order as defined in the Trading Rules,</u>		The proposed revision to Rule 6.2 is consequential upon the CSA adopting provision for the "directed action order" under the Trading Rules. If an order is marked as a "directed action order", the marketplace receiving the order may immediately execute the order upon receipt without checking whether a better-priced order is then displayed on another marketplace and the Participant assumes responsibility to ensure that the execution of the order does not result in a trade-through.
6.4 Trades to be on a Marketplace (1) A Participant acting as principal or agent may not trade nor participate in a trade in a security by means other than the entry of an order on a marketplace. (2) Subsection (1) does not apply to a trade: (a) **Unlisted or Non-Quoted Security** – in a security which is not a listed security or a quoted security; (b) **Regulatory Exemption** – required or permitted by a Market Regulator to be executed other than on a marketplace in order to maintain a fair or orderly market and provided, in the case of a listed security or quoted security, the Market Regulator requiring or permitting the order to be executed other than on a marketplace shall be the Market Regulator of the Exchange on which the security is listed or of the QTRS on which the security is quoted; (c) **Error Adjustment** – to adjust by a journal entry an error in connection with a client order;	**CNSX -** Premature to enforce best price obligation on dealers vis à vis trades on foreign markets in manner proposed.	Under the current Rule 5.2 and Policy 5.2 of UMIR, each Participant must take into account better-priced orders on Canadian marketplaces before executing at an inferior price on a foreign organized regulated market. UMIR provides certain exemptions from this requirement when handling orders from non-Canadian accounts. IIROC is not proposing a "new requirement" but rather the continuation of an existing obligation since compliance with the Order Protection Rule is moved to the marketplace level. Marketplaces are not in a position to replace the "obligations" which each Participant has when the Participant chooses to execute on a foreign organized regulated marketplace.
	Liquidnet - It would not be feasible to apply trade through restrictions	See response to CNSX comment above.

Text of Provisions Following Adoption of the Proposed Amendments (Changes from Initial Proposed Amendments and Concept Proposal Highlighted)	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
(d) **On a Foreign Organized Regulated Market** – executed on a foreign organized regulated market; (e) **Outside of Canada** – executed as principal with a non-Canadian account or as agent if both the purchasers and seller are non-Canadian accounts provided the trade is reported to a marketplace or a foreign organized regulated market in accordance with the reporting requirements of the marketplace of foreign organized regulated market; (f) **Term of Securities** – as a result of a redemption, retraction, exchange or conversion of a security in accordance with the terms attaching to the security; (g) **Options** – as a result of the exercise of an option, right, warrant or similar pre-existing contractual arrangement; (h) **Prospectus and Exempt Distributions** – pursuant to a prospectus, take-over bid, issuer bid, amalgamation, arrangement or similar transaction including any distribution of previously unissued securities by an issuer; or (i) **Non-Regulatory Halt, Delay or Suspension** – in a listed security or quoted security in respect of which trading has been halted, delayed or suspended in circumstances described in clause (3)(a) or subclause (3)(b)(8) of Rule 9.1 that is not listed, quoted or traded on a marketplace other than the Exchange or QTRS on which the security is halted, delayed or suspended provided such trade is reported to a marketplace. (3) The exemption provided for in clause (d) of subsection (2) is unavailable to an order of a Canadian account denominated in Canadian funds that: (a) is part of an intentional cross; (b) is part of a pre-arranged trade; (c) is for more than 50 standard trading units; or (d) has a value of $250,000 or more if the entry of the order on a ~~trade to be executed on the~~ foreign organized regulated market would avoid execution against a better-priced order on a marketplace pursuant to Part 6 of the Trading Rules ~~had the order been entered on~~	to trades by Canadian customers executed in non-Canadian markets, as proposed in the IIROC paper. Such restrictions would cause frustrations for customers, involve significant costs to industry participants and adversely affect speed and performance or marketplace systems.	
		As a result of comments made by the Trade-Through Implementation Committee, IIROC proposes that the limitation on the ability to execute on a foreign organized regulated market be limited to circumstances when the Participant is acting for a Canadian account that is denominated in Canadian funds. An order would be required to take into account better-priced orders on a Canadian marketplace if the order meets any one of the following four conditions: (a) is part of an intentional cross; (b) is part of a pre-arranged trade; (c) is for more than 50 standard trading units; or (d) has a value of $250,000 or more. There would be no obligation to better-priced orders on a Canadian marketplace if the Participant was acting as agent for either a Canadian account denominated in a foreign currency or a non-Canadian account.

Text of Provisions Following Adoption of the Proposed Amendments (Changes from Initial Proposed Amendments and Concept Proposal Highlighted)	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
~~a marketplace rather than the foreign organized regulated market~~.		
7.1 Trading Supervision Obligations (5) Notwithstanding any other provision of this Rule, a Participant or Access Person shall not mark an order on entry to a marketplace as a directed action order unless the Participant or Access Person has established, maintained and ensured compliance with written policies and procedures that are reasonably designed to prevent trade-throughs other than those trade-throughs permitted in Part 6 of the Trading Rules.		The revision to Rule 7.1 of UMIR is consequential to the requirement in section 6.4 of the Trading Rules that a market participant establish, maintain and ensure compliance with written policies and procedures reasonably designed to prevent trade-throughs. Rule 7.1 of UMIR presently imposes obligations for written policies and procedures on Participants and this revision extends the obligation to Access Persons that intend to use "directed action orders".
10.16 Gatekeeper Obligations of Directors, Officers and Employees of Participants and Access Persons (1) An officer, director, partner or employee of a Participant shall forthwith report to their supervisor or the compliance department of the Participant upon becoming aware of activity in a principal, non-client or client account of the Participant or a related entity that the officer, director, partner or employee believes may be a violation of: (a) Subsection (1) of Rule 2.1 respecting just and equitable principles of trade; (b) Rule 2.2 respecting manipulative and deceptive activities; (c) Rule 2.3 respecting improper orders and trades; (d) Rule 4.1 respecting frontrunning; (e) Rule 5.1 respecting best execution of client orders; (f) Rule 5.3 respecting client priority; (g) Rule 6.4 respecting trades to be on a marketplace; and (h) any Requirement that has been designated by the Market Regulator for the purposes of this subsection.		
Policy 5.1 – Best Execution of Client Orders **Part 4 – Subject to Order ~~Trade-through~~ Protection Rule Obligation** Notwithstanding any instruction or consent of the client, the provision of "best execution" for a client order is subject to compliance with the "order ~~trade-through~~ protection rule" ~~obligation~~ under Part 6 of the Trading Rules by the marketplace on which the order is entered or by the Participant if the Participant has marked the order as a directed action order in accordance with Rule 6.2.		The proposed revisions to Part 4 of Policy 5.2 are consequential to the change in terminology used in the Trading Rules from that proposed in 2008 and the inclusion of provision for a Participant to use a marker designated an order as a "directed action order".

Text of Provisions Following Adoption of the Proposed Amendments (Changes from Initial Proposed Amendments and Concept Proposal Highlighted)	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
Similarly, if a Participant considers a foreign organized regulated market in order to provide a client with "best execution", the Participant must ensure that the condition in subsection (3) of Rule 6.4, if applicable, is satisfied prior to the execution on the foreign organized regulated market.		
Policy 5.2 – Best Price Obligation ***Part 1 – Qualification of Obligation – repealed***		
Policy 5.2 – Best Price Obligation ***Part 2 – Orders on Other Marketplaces – repealed***		
Policy 5.2 – Best Price Obligation ***Part 3 – Foreign Currency Translation – repealed***		
Policy 6.4 – Trades to be on a Marketplace **Part 6 – Foreign Currency Translation** If a trade is to be executed on a foreign organized regulated market in a foreign currency, the foreign trade price shall be converted to Canadian dollars using the exchange rate the Participant would have applied in respect of a trade of similar size on a foreign organized regulated market in that foreign jurisdiction in order to determine whether the condition in subsection (3) of Rule 6.4 restricting avoidance of Part 6 of the Trading Rules has been met. The Market Regulator regards a difference of one trading increment or less as "marginal" because the difference would be attributable to currency conversion. A Participant shall maintain with the record of the order the exchange rate used for the purpose of determining whether a better priced order existed on a marketplace and such information shall be provided to the Market Regulator upon request in such form and manner as may be reasonably required by the Market Regulator in accordance with subsection (3) of Rule 10.11.		
Policy 7.1 – Trading Supervision Obligation **Part 6 – Specific Provisions Respecting Trade-throughs ~~the Best Price Obligation~~ –** Each Participant must adopt written policies and procedures that are adequate, taking into account the business and affairs of the Participant, to ensure that an order: • marked as "directed action order" in accordance with Rule 6.2 does not result in a trade-through other than a trade-through permitted under Part 6 of the Trading Rules; or		IIROC has revised the proposed repeal of Part 6 of Policy 7.1 to provide for a Participant or Access Person to adopt appropriate policies and procedures for the marking of an order as a "directed action order" and for testing to ensure that these policies and procedures are adequate to prevent trade-throughs other than those permitted by section 6.4 of the Trading Rules.

Text of Provisions Following Adoption of the Proposed Amendments (Changes from Initial Proposed Amendments and Concept Proposal Highlighted)	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
• entered on a foreign organized regulated market complies with the conditions in subsection (3) of Rule 6.4. Each Access Person must adopt written policies and procedures that are adequate, taking into account the business and affairs of the Access Person, to ensure that an order marked as a "directed action order" in accordance with Rule 6.2 does not result in a trade-through other than a trade-through permitted under Part 6 of the Trading Rules. The policies and procedures must set out the steps or process to be followed by the Participant or Access Person to ensure that the execution of an order does not result in a trade-through. The policies and procedures must specifically address the circumstances when the bypass order marker will be used in conjunction with a "directed action order". These policies and procedures must address the steps which the Participant or Access Person will undertake on a regular basis, which shall not be less than monthly, to test that the policies and procedures are adequate. ~~**Repealed**~~		
Specific Questions on the Concept Proposal 1. *Should specific provisions be added to UMIR to protect better-priced orders on marketplaces before permitting trading at an inferior price on a foreign organized regulated market (as contemplated by the Concept Proposal set out in Appendix "B")?*	**Alpha -** Strongly believes that it is necessary to adopt requirements to protect better-priced orders on Canadian marketplaces.	IIROC acknowledges support for the proposal.
	BMO, CNSX, IIAC and RBCDS - Complexity involved in monitoring multiple domestic and foreign markets, routing orders to these markets and maintaining detailed audit trail records would pose significant burden on Participants. Even if systems were designed to comply with obligation, benefits of implementation would be marginal, as arbitrage activity is designed to trade against situations that would result in trade-through. Issues surrounding exchange rates raise a number of questions (e.g. rate, where and when is conversion to be done, who bears foreign exchange risk). There is also the issue of the lack of a consolidated feed for foreign markets as well as questions relating to whether fees are taken into account. Need to provide dealers who have	Under the current Rule 5.2 and Policy 5.2 of UMIR, each Participant must take into account better-priced orders on Canadian marketplaces before executing at an inferior price on a foreign organized regulated market. UMIR provides certain exemptions from this requirement when handling orders from non-Canadian accounts. IIROC is not proposing a "new requirement" but rather the continuation of an existing obligation as compliance with the order protection rule is moved to the marketplace level. The "best price" obligation does not force a Participant to take into account foreign organized regulated markets. If the Participant, further to its best execution obligation, determines to take such a foreign organized regulated market into account in handling a particular client order, the Participant may do so provided better-priced orders on

Text of Provisions Following Adoption of the Proposed Amendments (Changes from Initial Proposed Amendments and Concept Proposal Highlighted)	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
	orally negotiated a permitted trade with an appropriate time period in which to execute trade a concern given volatility of markets. Any rule must take into account market considerations. Order sent to a foreign market is handled by a foreign broker not necessarily under control of Canadian Participant. Timing of execution could violate proposed rule due to delays or latency in quotes, routing or volatile exchange rates. Proposal could discourage Participants from considering foreign markets as an option in routing decisions in order to avoid costs of developing monitoring systems.	Canadian marketplaces are "displaced". As a result of comments made by the Trade-Through Implementation Committee, IIROC proposes that the limitation on the ability to execute on a foreign organized regulated market be limited to circumstances when the Participant is acting for a Canadian account that is denominated in Canadian funds. An order would be required to take into account better-priced orders on a Canadian marketplace if the order meets any one of the following four conditions: (a) is part of an intentional cross; (b) is part of a pre-arranged trade; (c) is for more than 50 standard trading units; or (d) has a value of $250,000 or more. The existing rules are clear that a "trade" does not occur until such time as the trade is executed on a marketplace or "off-marketplace" in accordance with one of the exemptions. A Participant bears the "displacement" risk that is associated with any delay between the "oral negotiations" and the execution of the trade on a marketplace. Policy 5.2 of UMIR presently provides that in ascertaining whether the "best price" obligation is applicable, the price at which the trade would occur on the foreign organized regulated market is converted to Canadian currency using the exchange rate the Participant would have applied in respect of a trade of a similar size on a marketplace in that foreign jurisdiction.
	BMO, CSTA and ITG - Proposed anti-avoidance provision is appropriate to prohibit routing of orders to foreign marketplaces strictly for purpose of avoiding trade-through regime in Canada. No specific provisions should be	IIROC is seeking to supplement the "anti-avoidance" rule proposed by the CSA. The IIROC proposal will ensure that any large order or any intentional cross or pre-arranged trade that is to be executed on a foreign organized regulated market has considered "protected orders"

Text of Provisions Following Adoption of the Proposed Amendments (Changes from Initial Proposed Amendments and Concept Proposal Highlighted)	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
	added to UMIR. Addition of a prescriptive rule that only applies to IIROC members will only weaken the efforts by the application of consistent regulation to all market participants. Provisions would create regulatory asymmetry, as foreign regulators do not have such provisions. Domestically it also creates an unlevel playing field in respect of IIROC members and those regulated by the CSA or other SROs.	on Canadian marketplaces. Historically, the United States has imposed the "Three Quote Rule" which governs the execution of orders for securities outside of the United States. While exemptions from the rule are provided for trades executed on the TSX and TSXV, no exemption is provided for trades executed on other marketplaces. IIROC and the CSA do not impose similar restrictions on the execution of orders outside of Canada. Given the differences in the size and liquidity of the markets in Canada and the United States, regulatory symmetry while desirable should not be allowed to undermine the integrity of the Canadian markets.
	Liquidnet - Adding provisions would cause significant frustration for customers, involve significant cost to industry participants and adversely affect speed and performance of marketplace systems.	See responses to BMO, CSTA and ITG comments above.
	ITG and RBCDS - Provisions not required. In practice, marketplace participants by default materially enforce trade-through obligations when dealers use marketplace routers and comply with their best execution obligations to their clients. Fundamental regulatory obligation is sufficient to ensure that market participants are not trading through better priced orders on any Canadian marketplace unless there are justifiable reasons in the best interests of their clients.	All rules are a designed to strike a "balance" for Participants between the "justifiable reasons in the best interest of their clients" and the interests of the market as a whole. The Canadian marketplace, given its size and relative lack of liquidity, has rules which force the exposure of orders on transparent marketplaces thereby supporting the operation of the price discovery mechanism. In the view of IIROC, orders which have been "forced" into the public domain should be protected. Achieving best execution in the interest of their clients is subject to compliance with requirements designed to ensure fairness and integrity in an efficient market.
	RBCAM - Yes, specific provisions should be added to UMIR to protect better-priced orders on marketplaces before permitting trading at an inferior price on a foreign organized regulated market. A very important requirement which should prevent trade-through on trades in inter-listed securities.	

Text of Provisions Following Adoption of the Proposed Amendments (Changes from Initial Proposed Amendments and Concept Proposal Highlighted)	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
2. *If a requirement to consider better-priced orders on marketplaces before permitting trading at an inferior price on a foreign organized regulated market is added to UMIR, should such the requirement be limited to the handling of:* • *intentional crosses;* • *pre-arranged trades;* • *block orders with a market value of $100,000 or more?*	**Alpha -** The proposed requirement should not be limited.	
	CNSX - Ongoing monitoring of cross-border trading should include gathering of data that would help make this type of decision.	IIROC wishes to ensure that the implementation of the Order Protection Rule does not result in a change to the dynamic for deciding when foreign organized regulated markets are considered in the execution of certain types of trades. Since this movement would be undertaken to avoid inter-action with better-priced orders on Canadian marketplaces, IIROC believes it is in the best interests of the market to take steps to prevent the emergence of this possibility rather than trying to curtail it at a future date.
	CSTA - There should be no such requirement. If such a requirement is added to UMIR, it should include only intentional crosses and pre-arranged trades. Block orders with a market value of $100,000 or more could cause orders on inter-listed securities to go directly to non-Canadian brokers in the US thereby avoiding our markets, and application of our Rules.	Presently, block trades do not go directly to non-Canadian brokers. It is unclear why the continuation of an existing requirement would cause the shift suggested by the CSTA. As a result of comments by the Trade-Through Implementation Committee, IIROC has revised the limitation on "block trades" such that an order must be either for 50 standard trading units or more or have a value of more than $250,000.
	IIAC - If there are concerns with specific types of trades (intentional crosses, pre-arranged trades or block orders with a market value of $100,000 or more) and IIROC can demonstrate that there have been actual occurrences that materially disadvantage clients or market participants, then regulation may be appropriate, but only if other methods of dealing with the problem are proven ineffective.	See response to CNSX comment above.
	ITG - If added to UMIR, obligation should only be applicable to situations in which the intent clearly was to avoid better-priced orders on a Canadian protected marketplace. In most cases, intentional crosses and pre-arranged trades would be situations in which a Participant may want to avoid displacement obligations, however, application of	IIROC acknowledges that arbitrage will generally keep market prices in inter-listed securities between Canadian and US markets within "acceptable bounds". IIROC therefore suggested limiting the obligation to those types of trades that are most likely to cause a significant (and often temporary) change in the prevailing market price.

Text of Provisions Following Adoption of the Proposed Amendments (Changes from Initial Proposed Amendments and Concept Proposal Highlighted)	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
	this duty to markets should not be dependent on how a trade was submitted.	
	Liquidnet - These types of trades are those for which trade-through requirement is least appropriate. Institutional investor should not be impeded from buying stock in privately negotiated transaction where the institution can avoid the market impact costs that result from exposing the institution's order to traditional market intermediaries.	IIROC is of the contrary view. Orders displayed on a Canadian marketplace (often pursuant to the obligations under Rule 6.3 dealing with Order Exposure) are in need of greatest protection when orders are being executed that will move the prevailing market price. For example, orders displayed on marketplaces will be more negatively impacted when a block trade for 10,000,000 shares is crossed on an foreign organized regulated market (at a discount or premium to the prevailing market) then when a retail order for 100 shares is executed on a US market because the client wants US currency exposure. Unlike retail investors, institutional investors are not generally required to avail themselves of the services of a dealer or the facilities of a marketplace. If the institutional investors do chose to use a marketplace, they should be subject to the same requirements as the retail investors.
	RBCAM - There is a legitimate need for some special terms orders to receive exemption from the trade-through obligation and any abuses of these terms are sufficiently covered by UMIR. All other types of orders should be subject to the requirement to consider better-priced orders on marketplaces.	IIROC acknowledges the comment.
	RBCDS - Requirement should be so limited.	IIROC acknowledges the comment.
3. *If a requirement to consider better-priced orders on marketplaces before permitting trading at an inferior price on a foreign organized regulated market is added to UMIR, are there any exemptions or other limitations on the requirement that would be appropriate?*	**Alpha -** Additional exemptions would be inconsistent with the intent of the Trade-Through Protection Rule Proposal and would result in the creation of an unfair competitive disadvantage to Canadian marketplaces.	IIROC acknowledges the comment.

Text of Provisions Following Adoption of the Proposed Amendments (Changes from Initial Proposed Amendments and Concept Proposal Highlighted)	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
	IIAC - Requirement should be limited to trades in accounts that are denominated in Canadian currency. By extension, there should be no requirement to protect a domestic market for a trade in an inter-listed security where it is being traded in a market that trades in the currency of the accounts added to UMIR.	IIROC accepts this suggestion as it would streamline compliance with the Concept Proposal.
	ITG - Foreign exchange spreads and costs are unevenly applied to trades by industry. It may be impractical to impose requirement on trades routed to foreign market where account settles in that foreign currency as rate applied to measure trade-through obligations would likely be much smaller or at very least different than rate applied to price for settlement on particular trade.	IIROC acknowledges that there are variations across the industry in the handling of foreign currency depending upon various factors including the size and business lines of the Participant. For that reason, the test which IIROC proposes is a test focused on the practices of that Participant rather than an arbitrary industry-wide standard.
	Liquidnet - If such a requirement were implemented, an exception should apply for block trades. Institutions are generally very happy to trade blocks inside the spread without market impact cost. They object when trades executed outside the spread as a result of fast market movement need to be cancelled.	All market participants need to adjust to the increased pace and volatility of markets. The "best price" rule was predicated on "reasonable efforts" and the trade-through protection rule will also incorporate this concept.
	RBCAM - Only some special terms orders should receive exemption.	IIROC acknowledges the comment.
	RBCDS - There are valid circumstances in which a dealer may execute on a foreign market in order to obtain "best execution" for their client that may have the effect of trading through better-priced orders on a Canadian marketplace.	"Best price" and "best execution" under UMIR have always been distinct concepts with one rule being the obligation to the market and the other the obligation to the client. Under UMIR, "best execution" is subject to compliance with "best price" and it is the position of IIROC that "best execution" should be subject to compliance with "order protection".
4. Should a Participant that trades as principal with a non-Canadian account in a trade that is not executed on a marketplace or a foreign organized regulated market (in accordance with the exemption for "off-marketplace" trades provided in clause (e) of Rule 6.4 of UMIR) be required to consider better-priced orders on a marketplace that are on the same side of the transaction as the Participant?	**Alpha -** Concepts set out by the CSA should be applied in relation to all trading activity, including where Participants execute "off-marketplace" trades.	IIROC acknowledges the comment.
	BMO, CSTA, IIAC, ITG, RBCAM and RBCDS - Participants should not be required to consider better-	Historically in the United States, FINRA has imposed the "Three Quote Rule" which sets out various

Text of Provisions Following Adoption of the Proposed Amendments (Changes from Initial Proposed Amendments and Concept Proposal Highlighted)	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
	priced orders when executing "off-marketplace" trades. Trade through requirement should not apply to trades that are exempt from the requirement to be printed on a Canadian marketplace. Such trades are reportable and therefore subject to audit. Participant that trades as principal with a non-Canadian account in an off-marketplace trade should not be required to consider better-priced orders on a marketplace that are on the same side of the transaction as the Participant. Non-Canadian clients are not subject to UMIR. No other Securities Regulator requires its members to look to outside markets as part of the regulation. Participants assume risk when executing "off-marketplace" trades therefore they should have option of executing against better-priced orders if they wish to mitigate this risk. The circumstances in 6.4(e) are not comparable to trading on a foreign market for inter-listed securities. Although trades that are negotiated or occur during market hours should be priced within the context of the market, the requirement to conduct business openly and fairly and in accordance with just and equitable principles is sufficient under these circumstances.	handling requirements when an order from a US client is sent outside the United States for execution. IIROC does not believe that such a structure is either appropriate or necessary in connection with trades executed outside of Canada with non-Canadian accounts. Generally, IIROC is content to allow the rules in the foreign jurisdiction governing the activities of that non-Canadian account should apply. Trades involving a Participant and a non-Canadian client are subject to UMIR though UMIR contains a number of specific exemptions in respect of such transactions. IIROC has revised the Proposed Amendments such that the limitation would only apply to particular types of orders when the Participant is trading on behalf of a "Canadian account denominated in Canadian currency."
	CNSX - IIROC should rigorously monitor and enforce dealers' existing best execution obligations in respect of cross-border transactions and at same time, take the opportunity to gather information about cross-border trading practices as well as availability, costs and efficiencies of technology solutions that will be required for effective compliance.	In the view of IIROC, the best execution obligation should be subject to compliance with "order protection" in the same manner as it currently is subject to the "best price" obligations. IIROC acknowledges that there will be circumstances where pursuit of "best execution" would, in the absence of specific provisions in UMIR or the Trading Rules, justify ignoring better-priced orders on a marketplace.

Text of Provisions Following Adoption of the Proposed Amendments (Changes from Initial Proposed Amendments and Concept Proposal Highlighted)	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
	ITG - Timing of when such a trade is effective and when it is recorded will create significant challenges to monitor, record and evidence applicable exchange rate that should be applied.	Reference should be made to existing requirements regarding foreign currency translation under Part 3 of Policy 5.2 of UMIR.
General Comments	**BMO and CNSX -** Single joint notice, as in April 2007 would have streamlined the comment process.	The "joint" notice in April of 2007 also included separate notices from the CSA and IIROC (then Market Regulation Services Inc.). Given the timing of the approval of the IIROC proposal by the Board of IIROC, the publication was not done concurrent with the CSA but the comment period provided corresponded with that under the CSA proposal.
	CNSX - Notice does not canvass the alternatives before presenting conclusions. Reliance upon analysis used several years ago, before multiple markets became a practical reality. Significant coordination issues have not been addressed regarding the monitoring and enforcement of marketplace obligations. Why are IIROC (and CSA) satisfied that it is appropriate to prohibit orders that intentionally or unintentionally result in trade-throughs, but have allowed introduction of new order types that free-ride on the pricing provided by other orders to step in front of them, undermining the price discovery process?	Both the CSA and IIROC have issued a number of proposals and discussion papers regarding trade-through/order protection and best price obligations. The proposal by IIROC will conform the requirements of UMIR to amendments by the CSA to the Trading Rules. IIROC will monitor whether trading on marketplaces is being done in conformance with the requirements of the Order Protection Rule. In accordance with Rule 10.1 of UMIR, IIROC will inform the applicable securities regulatory authorities if the results of such monitoring indicate a failure to comply with the Trading Rules. UMIR permits marketplaces to compete for trade executions at the best ask price or best bid price. Marketplaces which provide executions at "better" prices are afforded priority.
	Liquidnet - Trade-through requirement is not necessary in light of advances in direct market access technology, smart order routing technology, improved transaction cost analysis products and other technology developments in the market.	If the only objective of the parties to a trade was to maximize proceeds in the case of a sale or minimize cost in the case of a purchase, the technological advances would obviate the need for the Order Protection Rule. However, such technology can create unfairness in the market when factors other than price are considerations in executions.

Chapter 25

Other Information

25.1 Consents

25.1.1 Flagship Industries Inc. – s. 4(b) of the Regulation

Headnote

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the laws of British Columbia.

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 181.
Securities Act, R.S.O. 1990, c. S.5, as am.

Regulations Cited

Regulation made under the Business Corporations Act, Ont. Reg. 289/00, as am., s. 4(b).

IN THE MATTER OF
R.R.O. 1990, REGULATION 289/00,
AS AMENDED (the "Regulation")
MADE UNDER THE
BUSINESS CORPORATIONS ACT (ONTARIO),
R.S.O. 1990 c. B.16, AS AMENDED (the "OBCA")

AND

IN THE MATTER OF
FLAGSHIP INDUSTRIES INC.

CONSENT
(Subsection 4(b) of the Regulation)

UPON the application of Flagship Industries Inc. (the "Applicant") to the Ontario Securities Commission (the "Commission") requesting the consent from the Commission to continue in another jurisdiction pursuant to subsection 4(b) of the Regulation;

AND UPON considering the application and the recommendation of the staff to the Commission;

AND UPON the Applicant representing to the Commission that:

1. The Applicant was formed by articles of amalgamation under the OBCA dated June 30, 1988 under the name “Flagship Resources Ltd.”. By articles of amendment dated March 28, 1991, the name of the Applicant was changed to its current name, “Flagship Industries Inc.”.

2. The authorized share capital of the Applicant consists of an unlimited number of common shares, 1,000,000 Class A preference shares and an unlimited number of Class A special shares. As at the record date, August 13, 2009, of the annual and special meeting of the shareholders of the Applicant held on September 18, 2009 (the “Meeting”), an aggregate of 103,586,375 common shares were issued and outstanding and no Class A preference shares or Class A special shares were outstanding. The common shares of the Applicant are listed for trading on the TSX Venture Exchange under the symbol “FII”.

3. The Applicant’s registered office is located at 365 Bay Street, Wildeboer Dellelce Place, Suite 800, Toronto, Ontario, Canada M5H 2V1.

4. The Applicant has made an application to the Director under the OBCA pursuant to section 181 of the OBCA (the "Application for Continuance") for authorization to continue as a corporation under the BCBCA (the "Continuance"). Following the Continuance, the Applicant's registered office will be located in Vancouver, British Columbia.

5. Pursuant to subsection 4(b) of the Regulation, where a corporation is an offering corporation, the Application for Continuance must be accompanied by a consent from the Commission.

6. The Applicant is an offering corporation under the OBCA and is a reporting issuer under the *Securities Act* (Ontario) (the "Act"). The Applicant is also a reporting issuer under the securities legislation of each of the provinces of Alberta and British Columbia.

7. The Applicant is not in default under any provision of the Act or the regulations or rules made under the Act or under the securities legislation of any other jurisdiction where it is a reporting issuer.

8. The Applicant is not a party to any proceedings or to the best of its knowledge, information and belief, any pending proceeding under the Act.

9. The holders of the common shares of the Applicant (the "Shareholders") were asked to consider and, if thought fit, pass a special resolution authorizing the Continuance at the Meeting. The special resolution authorizing the Continuance was approved by 100% of the votes cast by the Shareholders at the Meeting.

10. The principal reason for the Continuance is that the Applicant's principal place of business is located, and the majority of the Applicant's management reside, in British Columbia.

11. The Applicant intends to remain a reporting issuer in the provinces of Ontario, British Columbia and Alberta following the Continuance.

12. Pursuant to section 185 of the OBCA, all Shareholders of record as of the record date for the Meeting were entitled to exercise dissent rights with respect to the Application for Continuance. The management information circular provided to the shareholders in connection with the Meeting advised the Shareholders of their dissent rights under the OBCA.

13. The material rights, duties and obligations of a corporation governed by the BCBCA are substantially similar to those of a corporation governed by the OBCA.

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

THE COMMISSION HEREBY CONSENTS to the continuance of the Applicant as a corporation under the BCBCA.

DATED at Toronto on this 10th day of November, 2009.

"David L. Knight"
Commissioner
Ontario Securities Commission

"Mary G. Condon"
Commissioner
Ontario Securities Commission

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