

The Ontario Securities Commission

OSC Bulletin

December 4, 2009

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

The Ontario Securities Commission

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Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

DECEMBER 4, 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
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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

December 7, 2009
10:00 a.m.
Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited

December 8, 2009
2:00 p.m.
s. 127
M. Britton in attendance for Staff
Panel: JDC/KJK

December 9-23, 2009

10:00 a.m.
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 Harmony, Iain Buchanan and Lisa Buchanan

s. 127
H. Craig in attendance for Staff
Panel: CSP

December 10, 2009	Gold-Quest International, 1725587 Ontario Inc. carrying on business as Health and Harmony, Harmony Club Inc., Donald Iain Buchanan, Lisa Buchanan and Sandra Gale	January 7, 2010	Paul Iannicca
10:00 a.m.		10:00 a.m.	s. 127
	s. 127		H. Craig in attendance for Staff
	H. Craig in attendance for Staff		Panel: DLK
	Panel: CSP	January 11, 2010	Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton
December 10, 2009	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	10:00 a.m.	s. 127
11:30 a.m.			H. Craig in attendance for Staff
			Panel: DLK
		January 12, 2010	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 and 127.1	10:00 a.m.	s. 127(7) and 127(8)
	H. Craig in attendance for Staff		M. Boswell in attendance for Staff
	Panel: TBA		Panel: DLK
December 11, 2009	Tulsiani Investments Inc. and Sunil Tulsiani	January 12, 2010	Abel Da Silva
9:00 a.m.	s. 127	10:30 a.m.	s. 127
	J. Superina in attendance for Staff		M. Boswell in attendance for Staff
	Panel: JEAT		Panel: DLK
December 16, 2009	Goldpoint Resources Corporation, Lino Novielli, Brian Moloney, Evanna Tomeli, Robert Black, Richard Wylie and Jack Anderson		
9:00 a.m.			
	s. 127(1) and 127(5)		
	M. Boswell in attendance for Staff		
	Panel: MGC/DLK		

January 15, 2010 10:00 a.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, Angela Curry and Prosporex Forex SPV Trust s. 127 H. Daley in attendance for Staff Panel: CSP	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: JEAT/CSP
January 18, 2010; January 20-29, 2010 10:00 a.m.	New Life Capital Corp., New Life Capital Investments Inc., New Life Capital Advantage Inc., New Life Capital Strategies Inc., 1660690 Ontario Ltd., L. Jeffrey Pogachar, Paola Lombardi and Alan S. Price s. 127 S. Kushneryk in attendance for Staff Panel: DLK/MCH	February 2, 2010 2:30 p.m.	Paladin Capital Markets Inc., John David Culp and Claudio Fernando Maya s. 127 C. Price in attendance for Staff Panel: DLK
January 19, 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: PJJ/PLK	February 3, 2010 10:00 a.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
January 19, 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: PJJ/PLK	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
January 20 – February 1, 2010; February 3-12, 2010 10:00 a.m.	Borealis International Inc., Synergy Group (2000) Inc., Integrated Business Concepts Inc., Canavista Corporate Services Inc., Canavista Financial Center Inc., Shane Smith, Andrew Lloyd, Paul Lloyd, Vince Villanti, Larry Haliday, Jean Breau, Joy Statham, David Prentice, Len Zielke, John Stephan, Ray Murphy, Alexander Poole, Derek Grigor and Earl Switenky s. 127 and 127.1 Y. Chisholm in attendance for Staff Panel: PJJ/PLK	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	M P Global Financial Ltd., and Joe Feng Deng	May 3-28, 2010	Sextant Capital Management Inc., Sextant Capital GP Inc., Sextant Strategic Opportunities Hedge Fund L.P., Otto Spork, Robert Levack and Natalie Spork
10:00 .m.	s. 127(1)	10:00 a.m.	
	M. Britton in attendance for Staff		s. 127
	Panel: TBA		S. Kushneryk in attendance for Staff
February 17, 2010	Maple Leaf Investment Fund Corp. and Joe Henry Chau		Panel: TBA
10:00 a.m.	s. 127	May 31 – June 4, 2010	Lyndz Pharmaceuticals Inc., James Marketing Ltd., Michael Eatch and Rickey McKenzie
	J. Superina in attendance for Staff	10:00 a.m.	s.1 27(1) and (5)
	Panel: TBA		J. Feasby in attendance for Staff
March 1-8, 2010	Teodosio Vincent Pangia		Panel: TBA
10:00 a.m.	s. 127		
	J. Feasby in attendance for Staff	June 29, 2010	Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp., and Weizhen Tang
	Panel: TBA	10:00 a.m.	s. 127 and 127.1
March 3, 2010	Brilliante Brasilcan Resources Corp., York Rio Resources Inc., Brian W. Aidelman, Jason Georgiadis, Richard Taylor and Victor York		M. Britton in attendance for Staff
10:00 a.m.	s. 127		Panel: TBA
	S. Horgan in attendance for Staff	TBA	Yama Abdullah Yaqeen
	Panel: TBA		s. 8(2)
March 10, 2010	Global Energy Group, Ltd. And New Gold Limited Partnerships		J. Superina in attendance for Staff
10:00 a.m.	s. 127		Panel: TBA
	H. Craig in attendance for Staff	TBA	Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell
	Panel: TBA		s. 127
April 13, 2010	Axcess Automation LLC, Axcess Fund Management, LLC, Axcess Fund, L.P., Gordon Alan Driver and David Rutledge, Steven M. Taylor and International Communication Strategies		J. Waechter in attendance for Staff
2:30 p.m.	s. 127	TBA	Panel: TBA
	M. Adams in attendance for Staff		Frank Dunn, Douglas Beatty, Michael Gollogly
	Panel: TBA		s. 127
			K. Daniels in attendance for Staff
			Panel: TBA

TBA	<p>Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)</p> <p>s. 127 and 127.1</p> <p>D. Ferris in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p>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</p> <p>s. 127</p> <p>M. Boswell in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p>Merax Resource Management Ltd. carrying on business as Crown Capital Partners, Richard Mellon and Alex Elin</p> <p>s. 127</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p>FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun</p> <p>s. 127</p> <p>C. Price in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p>Gregory Galanis</p> <p>s. 127</p> <p>P. Foy in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p>Shane Suman and Monie Rahman</p> <p>s. 127 and 127(1)</p> <p>C. Price in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p>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</p> <p>s. 127</p> <p>C. Price in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p>Berkshire Capital Limited, GP Berkshire Capital Limited, Panama Opportunity Fund and Ernest Anderson</p> <p>s. 127</p> <p>E. Cole in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p>Biovail Corporation, Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk and Kenneth G. Howling</p> <p>s. 127(1) and 127.1</p> <p>J. Superina, A. Clark in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p>MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric</p> <p>s. 127 and 127(1)</p> <p>D. Ferris in attendance for Staff</p> <p>Panel: TBA</p>

TBA	<p>Barry Landen</p> <p>s. 127</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>	<p><u>ADJOURNED SINE DIE</u></p> <p>Global Privacy Management Trust and Robert Cranston</p> <p>S. B. McLaughlin</p> <p>Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein, Robert Topol</p> <p>Portus Alternative Asset Management Inc., Portus Asset Management Inc., Boaz Manor, Michael Mendelson, Michael Labanowich and John Ogg</p> <p>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</p>
TBA	<p>Imagin Diagnostic Centres Inc., Patrick J. Rooney, Cynthia Jordan, Allan McCaffrey, Michael Shumacher, Christopher Smith, Melvyn Harris and Michael Zelyony</p> <p>s. 127 and 127.1</p> <p>J. Feasby in attendance for Staff</p> <p>Panel: TBA</p>	<p>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</p>
TBA	<p>IBK Capital Corp. and William F. White</p> <p>s. 127</p> <p>M. Vaillancourt in attendance for Staff</p> <p>Panel: TBA</p>	<p>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</p>
TBA	<p>Sulja Bros. Building Supplies, Ltd. (Nevada), Sulja Bros. Building Supplies Ltd., Kore International Management Inc., Petar Vucicevich and Andrew DeVries</p> <p>s. 127 and 127.1</p> <p>M. Britton in attendance for Staff</p> <p>Panel: TBA</p>	<p>Hollinger Inc., Conrad M. Black, F. David Radler, John A. Boulton and Peter Y. Atkinson</p>

1.1.2 OSC Staff Notice 51-706 – Corporate Finance Branch Report 2009

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OSC Staff Notice 51-706

→ 2009

Corporate Finance Branch Report



Corporate Finance Branch Report

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1. Introduction

This report summarizes the operational activities of the Corporate Finance Branch (the Branch or we) of the Ontario Securities Commission (OSC) during the year ended March 31, 2009 (fiscal 2009 or 2009). It also discusses developing issues and other findings that we believe will be of particular interest to issuers and their advisors.

The Branch is responsible for the regulation of issuers. The Branch's disclosure review programs further the OSC's investor protection mandate. In our reviews, we endeavour to facilitate access to the information investors need to make informed investment decisions without impeding capital flow. We believe this report will assist issuers and their advisors in providing meaningful information to investors.

This year, we focused, in particular, on issues arising from the severe market downturn that began in the fall of 2008. Together with extreme market volatility, the downturn led to a sharp decrease in public offerings in fiscal 2009. Branch resources were redeployed to address the risks arising from market developments. For example, in September 2008, the Canadian Securities Administrators (CSA) announced that their staff were closely monitoring continuous disclosure with a particular emphasis on the banking and financial services sector, along with highly leveraged reporting issuers. During this period, we also communicated with issuers that had defined benefit pension plans to promote robust and timely disclosure of material pension obligations.

In addition to our market conditions reviews, we performed a number of targeted reviews relating to financial instruments and inventory. Overall, we conducted 436 continuous disclosure reviews in fiscal 2009. A full discussion of our review programs and related results is provided in the report.

Another significant priority for the Branch involved preparing for the implementation of International Financial Reporting Standards (IFRS) in 2011. Section 5 contains a detailed discussion of IFRS transition issues.

The Branch is also responsible for monitoring compliance with securities laws in the context of take-over bids and other mergers and acquisitions transactions. Despite a decline in the aggregate level of mergers and acquisitions activities, there has been an increase in Commission hearings as transactions have become more hostile and complex in response to adverse market conditions. Mergers and acquisitions issues are discussed in Section 6.



ONTARIO
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COMMISSION

2. Summary of reviews

The goal of our review program is to facilitate access to the material information investors need to make informed investment decisions.

There are approximately 4,300 reporting issuers (other than investment funds) in Ontario. We focus on the approximately 1,125 reporting issuers with head offices in Ontario. These issuers represented \$457 billion or 36% of Canada's \$1,286 billion market capitalization as at March 31, 2009.

2.1 Continuous disclosure (CD) review program

We use a risk-based approach to select issuers for continuous disclosure review and to determine the areas of focus for our targeted CD reviews. We incorporate qualitative and quantitative criteria to identify issuers whose disclosure is likely to be materially improved or brought into compliance with securities laws or accounting standards as a result of our intervention.

Types of reviews

We completed 436 CD reviews in fiscal 2009. Ninety-nine were full reviews and 337 were targeted reviews. The table below shows the number of reviews completed in each of the past three fiscal years.

CD reviews completed

	2009	2008	2007
Full	99	123	126
Targeted	337	329	260
Total	436	452	386



Targeted reviews allow us to:

- monitor compliance with new requirements;
- communicate our interpretation of securities requirements and areas of concern;
- quickly address specific areas of risk; and
- assess compliance with new accounting standards.

In 2009, we focused on the following areas in our targeted reviews:

- reporting and disclosure issues associated with market conditions;
- disclosure of pension funding obligations for issuers with defined benefit pension plans;
- valuation and disclosure issues related to non-bank sponsored asset-backed commercial paper (ABCP);
- compliance with new accounting requirements related to financial instruments disclosures; and
- compliance with new accounting requirements for inventory.

Outcomes of reviews

Continuous disclosure reviews can result in any number of the following outcomes:

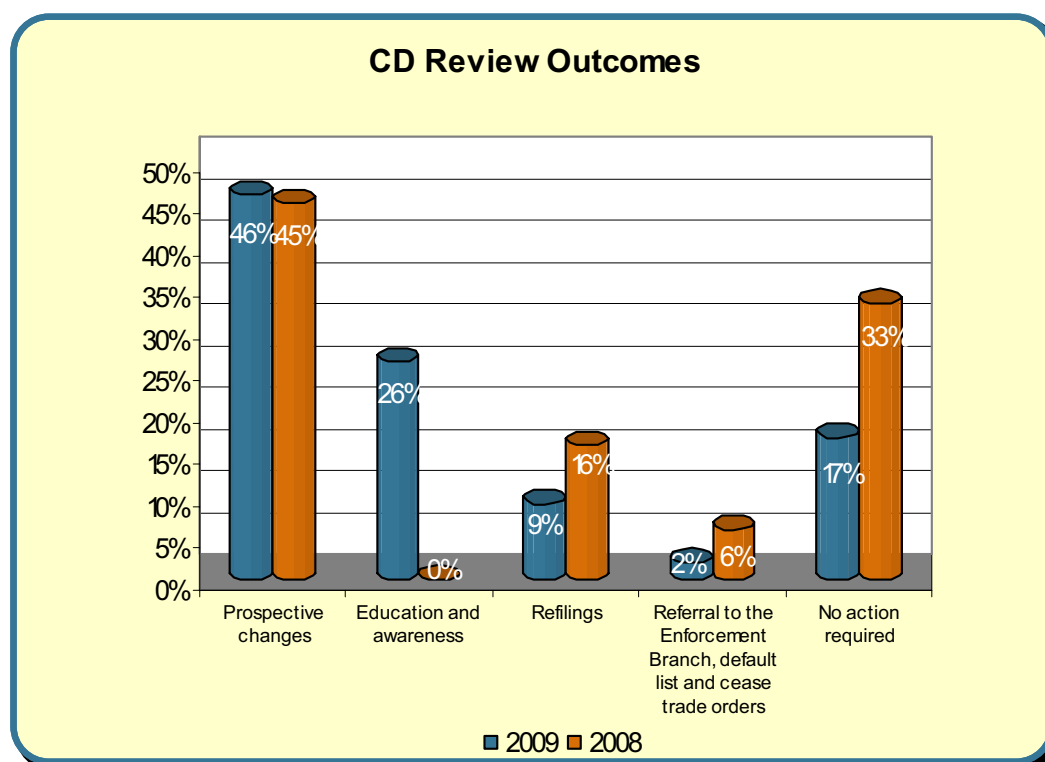
- prospective changes;
- education and awareness;
- refilings; and
- referral to the Enforcement Branch, the issuer being added to our default list and/or issuance of a cease trade order.

A review can also result in no further action.



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The chart below shows the outcomes of our CD reviews for the past two fiscal years. In fiscal 2009, 83% of our CD reviews resulted in an outcome compared with 67% in fiscal 2008. The increase in the number of outcomes is largely due to the reviews we conducted in response to market conditions.



Prospective changes

In 46% of our reviews, the issuer agreed to make a change to its disclosure in an upcoming filing. Most of these changes involved correcting deficiencies in the Management's Discussion and Analysis (MD&A) as required by [Form 51-102F1 Management's Discussion and Analysis](#) (Form 51-102F1) of [National Instrument 51-102 Continuous Disclosure Obligations](#) (NI 51-102). A significant number of issuers with defined benefit pension plans committed to improving disclosure of pension obligations. Issuers also committed to enhancing financial instruments and capital disclosures in financial statements.

Education and awareness

In fiscal 2009, 26% of our reviews provided education and promoted awareness. This is a new category we created to capture the outcomes from the market conditions reviews we began conducting in the fall of 2008. We identified issuers at risk of a specific disclosure issue and contacted them about our concern before they made their next CD filing. After the filing, we reviewed their disclosure to assess whether they had addressed the issue appropriately. This new proactive approach helped issuers provide complete,



transparent and timely disclosure to their investors about the effects of market conditions on their financial performance.

Refilings

In 9% of our reviews, we identified significant deficiencies that led the issuer to restate and refile documents, make retroactive changes or file documents that had not previously been filed. Most of the refilings related to the following areas:

- non-compliance with the certification obligations under Multilateral Instrument 52-109 or [National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings](#) (NI 52-109);
- failure to provide comparative financial statements in interim periods;
- incorrect application of Canadian GAAP in several areas including:
 - impairment of mineral properties;
 - revenue recognition; and
 - valuation of investments.

Refilings and retroactive corrections to CD documents are significant events. If an issuer refiles a CD document or makes a retroactive accounting change as a result of our review, the issuer's name, the date of refiling and a description of the deficiency are posted on our [Refilings and Errors list](#) on the OSC website for three years.

For more information

- For a description of our approach to refilings, see [OSC Staff Notice 51-711 List of Refilings and Corrections of Errors as a Result of Regulatory Reviews](#).
- For guidance on how we generally respond to certain types of continuous disclosure defaults, see [National Policy 12-203 Cease Trade Orders for Continuous Disclosure Defaults](#) (NP 12-203).

Referral to the Enforcement Branch, default list and cease trade orders

If an issuer's CD documents have serious deficiencies, we may add the issuer to the OSC's default list, issue a cease trade order, or refer the matter to the Enforcement Branch for further action. In fiscal 2009, 2% of our reviews resulted in one or more of these three outcomes.



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2.2 Prospectus and rights offerings

In fiscal 2009, we received 462 prospectuses and rights offering circulars, down from 657 in 2008. The decrease in offerings was particularly notable in the third and fourth quarters of the fiscal year and was largely due to market conditions.

Types of offering reviews

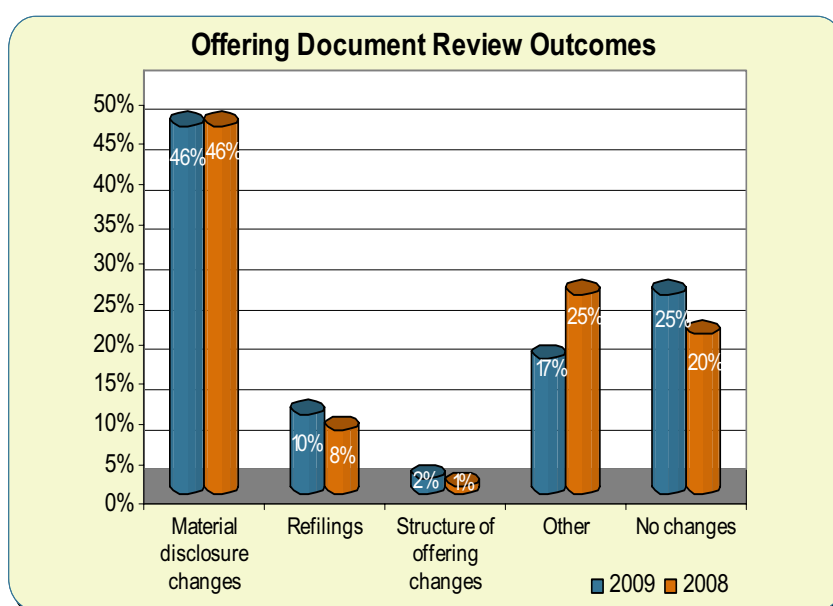
The table below shows the number and types of offering reviews we have conducted over the past three fiscal years.

Offering reviews completed

	2009	2008	2007
Basic	322	450	403
Full	53	94	89
Issue-oriented	52	89	93
Rights offerings	35	24	15
Total	462	657	600

Outcomes of reviews

75% of the prospectus and rights offering reviews resulted in outcomes requiring action. This is consistent with historical results. The table below shows the outcomes for the past two fiscal years.



Material disclosure changes

46% of the reviews resulted in material disclosure changes to comply with an accounting, legal or other regulatory requirement. In both fiscal 2008 and 2009, the primary areas of deficiency included MD&A, use of proceeds and risk factors disclosure.

Refilings

Ten per cent of the reviews resulted in the correction and refiling of significantly deficient documents or the filing of a required document that was not previously filed. Many of the deficiencies related to a failure to file technical reports and related consents.

Structure of offering changes

Two per cent of the reviews resulted in the issuer changing the structure of its offering. This was due either to our review or to changes in market conditions. The most common change was an increase in the minimum offering size to ensure that the issuer had sufficient funds to sustain its operations for a reasonable period of time.

Other

This category includes outcomes that do not result in a change to an offering document but are significant to our mandate in other ways. For example, it includes situations where exemptive relief was granted or procedural enhancements were implemented by the issuer as a result of our review. Seventeen per cent of the reviews resulted in this outcome.



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3. Response to Market Conditions

3.1 General

In the fall of fiscal 2009, the CSA took a variety of actions to respond to market conditions. As part of those initiatives, we closely monitored continuous disclosure, with a particular emphasis on the banking and financial services sectors, and on highly leveraged companies. We also:

- published in January 2009 [CSA Staff Notice 51-328 Continuous Disclosure Considerations Related to Current Economic Conditions](#) to provide guidance on the preparation of financial statements and MD&A in the current market environment;
- conducted a review of disclosure relating to certain defined benefit pension plans; and
- continued monitoring valuation and disclosure issues related to non-bank ABCP holdings.

These initiatives combined elements of our traditional CD reviews with proactive measures to alert issuers to areas of concern. For example, we identified issuers that appeared to be at higher risk of being significantly impacted by market conditions. We contacted 100 of these issuers in advance of their next filing deadline and asked them to provide more focused and transparent disclosure in the following areas:

- liquidity risk and sources of cash or cash equivalents;
- specific exposures related to credit risk;
- the assumptions used to determine fair value for financial instruments;
- the process for assessing impairment of assets including other than temporary impairment of financial instruments; and
- risks and exposures to loss related to off-balance sheet entities.

This proactive approach proved effective because the issuers sufficiently addressed our concerns in the disclosure documents they subsequently filed.

3.2 Pensions

In the fall of fiscal 2009, as market conditions began to significantly affect the pension funding obligations of issuers with defined benefit plans, we conducted a review to assess whether MD&A disclosures properly reflected the status of those obligations and adequately discussed any impact on the issuer's liquidity, capital resources and financial condition.



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We reviewed approximately 100 issuers with defined benefit plans. In the majority of cases, we requested prospective commitments to enhance MD&A disclosure relating to:

- the impact of the pension funding obligations on the issuer's capital, liquidity and financial position; and
- the risks associated with the issuer's funding status. This included the assumed rate of return and impact of market conditions on discount rates and other assumptions, and the extent to which measurement uncertainties were incorporated into the actuarial valuation process.

Recent changes to solvency funding requirements at both the federal and provincial level may provide temporary solvency funding relief for sponsors of defined benefit pension plans. In particular, the changes may allow pension plan sponsors to extend their solvency funding amortization period in respect of 2009 deficiencies from five to 10 years. Issuers with defined benefit pension plans should discuss in their MD&A the impact of any solvency relief that is material to their financial statements.

3.3. Non-bank sponsored asset-backed commercial paper

The non-bank sponsored ABCP market was restructured in January 2009 into new notes that track the life of the underlying assets. We reviewed the first and second quarter 2009 filings of holders of significant amounts of the new notes to assess their disclosure of the fair value and the classification of the new notes. We identified the following issues:

- inadequate disclosure of the factors and assumptions used to determine fair market value for illiquid securities;
- improper classification of the new notes as current assets on the balance sheet;
- failure to take into account all observable market data in the valuation methodology; and
- minimal discussion around changes in material assumptions and their impact on fair values from period to period.

For more information

See the [2008 Corporate Finance Branch Report](#) for a discussion of the reviews we conducted on the valuation and disclosure issues related to non-bank ABCP.



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4. Issues arising from reviews

This section is a summary of common issues we identified in our targeted and full CD reviews in fiscal 2009. It also provides guidance to issuers in complying with their CD requirements.

4.1 Disclosures related to financial instruments

We conducted a targeted review to assess compliance with the new accounting standards in Section 3862 *Financial Instruments – Disclosures* and Section 1535 *Capital Disclosures* in the CICA Handbook. The financial instruments standard requires increased disclosures of the risks associated with financial instruments including credit, liquidity and market risks, along with how these risks are managed. The capital disclosures standard requires issuers to disclose financial information that enables users of its financial statements to evaluate the entity's objectives, policies and processes for managing capital.

Most of the issuers reviewed did not provide all of the required financial instruments disclosures. The disclosure was often boilerplate and did not appropriately address the issuer's specific situation. In general, issuers did not provide a comprehensive discussion of the credit, liquidity and market risks associated with financial instruments. Many issuers did not include a sensitivity analysis related to their market risks. In these cases, issuers agreed to make prospective disclosure changes in their next financial statements filing.

We also found several instances where issuers did not provide the required capital disclosures. Specifically, they failed to disclose financial information that would enable users of their financial statements to evaluate the issuers' objectives, policies and processes for managing capital. In addition, some issuers did not discuss how economic conditions affected their policies and processes for managing capital.

4.2 Inventory

We conducted a targeted review to assess compliance with the new accounting requirements for inventory in CICA Handbook Section 3031 *Inventories*. This new standard reduces the number of alternatives for the measurement of inventories, permits reversals of prior write-downs, requires impairment testing at each period and has increased disclosure requirements.

In general, while the issuers reviewed were in compliance with the measurement aspects of the standard, most did not provide all of the required new disclosures. The issuers agreed to make these disclosures in their next financial statement filings. Common disclosure deficiencies included a failure to:

- describe the various costs included in inventory;
- disclose the techniques used to measure inventory;
- disclose the carrying amount of inventory by major classification; for example, finished goods, raw materials and work in progress; and
- disclose separately all amounts related to inventory that were expensed during the period; for example, separately identifying the amount of cost of goods sold from write-downs of inventory to net realizable value.

4.3 Management's discussion and analysis (MD&A)

While we have seen improvements in the quality of MD&A in recent years, we continue to find deficiencies in many areas. Clear and informative disclosure is especially important in the current economic environment to help investors understand the risks and circumstances facing the companies in which they invest.

The objective of MD&A is to provide investors with an analysis of the issuer's business "through the eyes of management". To be meaningful, MD&A should be clearly presented and understandable to investors. It should give investors an accurate understanding of the issuer's current and prospective financial position and operating results. This includes the potential effects of known trends, commitments, events and uncertainties.

MD&A should not merely repeat information from the financial statements. It should complement and supplement the financial statements by providing an analysis of an issuer's business and a discussion of its results of operations and financial condition. This analysis must be balanced, with negative information presented as clearly as positive news.

Discussed below are the areas in MD&A where we continue to find deficiencies.

Liquidity and capital resources

We continue to be concerned about the quality of liquidity and capital resources disclosure. Many issuers simply provide boilerplate disclosure or repeat cash flow information readily available from their financial statements. This disclosure should provide sufficient details for investors to understand the company's financial condition and the risks associated with its principal sources of liquidity. For example, MD&A should discuss:



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- working capital requirements including fluctuations in operating cash flows;
- deterioration in financial ratios or other measures that could lead to defaults under credit agreements;
- significant risks of default on dividend payments, debt payments, debt covenants or other contractual obligations; and
- how the issuer intends to address any issues with refinancing.

In circumstances where a potential default referred to above is identified, the issuer should also outline its plans for remedying the deficiency.

Results of operations

We often see only a brief analysis of results of operations in MD&A, and usually that analysis is not quantified. Issuers should provide a detailed, analytical and quantified discussion of the various factors that affect revenue and expenses. This allows investors to assess how a given factor could affect the issuer's operations, readily perform trend or margin analysis, and assess the quality and potential variability of the company's earnings. For example, if an issuer has taken an impairment charge, the discussion in MD&A should not only include the numerical amount of the impairment, but should also explain the reasons why the impairment occurred.

Issuers without significant revenue from operations should provide a comprehensive discussion of their expenses and business objectives. For example, their MD&A should focus on:

- any impact of falling commodity prices on project plans or property values;
- progress updates for project plans, including a discussion of remaining expenditures required to achieve those plans;
- anticipated project timing, along with the additional costs the issuer will need to advance the project to the next commercialization level; and
- detailed reasons for not meeting a project milestone.

Issuers also need to provide an update in their MD&A on the use of proceeds from their most recent financing.

Critical accounting estimates

While non-venture issuers must provide an analysis of critical accounting estimates in their MD&A, many issuers simply repeated the description of accounting policies found in the notes to the financial statements. We expect MD&A to supplement and build on financial statement disclosure. The analysis



should include a discussion of the methodology and assumptions used to determine these estimates and their significance to the issuer's financial condition, changes in financial condition and results of operations.

The issuer should also discuss and quantify any changes in the methodology and assumptions used in determining the critical accounting estimates. Issuers generally did not disclose:

- details about the key assumptions used to determine the estimates;
- trends and uncertainties that could affect the estimates;
- sensitivities of the estimates to changes in assumptions; and
- the range of estimates from which the final estimates were selected.

Risks and uncertainties

MD&A must include a discussion of the risk factors and uncertainties the issuer believes will materially affect its future financial performance. We continue to see generic disclosure. Issuers should provide sufficient details to allow investors to understand the significance and impact that risks have on the issuer's financial position, operations and cash flows. In the current market, examples include exposure to market risk, liquidity risk, credit risk and the effects of industry and economic factors on the issuer's performance.

Impairment of goodwill, intangible assets and long-lived assets

MD&A must include an analysis of the effect of any material asset write-downs on the issuer's continuing operations. Current market conditions may increase the likelihood that the carrying values of assets are impaired.

If an impairment charge is taken, issuers should include a quantitative analysis of the write-down and a meaningful discussion of the reasons for the impairment. If significant impairment indicators are present but an impairment charge has not been taken, MD&A should include a discussion explaining why the charge was not taken.

Financial instruments disclosure

Many issuers did not disclose in their MD&A key assumptions and methodologies used to determine the fair value of financial instruments. They also failed to discuss the factors management considered in determining whether financial instruments that were not classified as held for trading were, in fact, impaired.



Non-GAAP financial measures

Issuers who choose to publish non-GAAP financial measures in their MD&A should also provide the disclosure set out in [CSA Staff Notice 52-306 Non-GAAP Financial Measures](#). This includes clear disclosure of the calculation of the non-GAAP measure and reconciliation to the most directly comparable measure calculated in accordance with GAAP with equal or greater prominence.

Related party disclosures

Issuers often copy the related party disclosure included in their financial statement notes into MD&A. The related party transactions disclosure in MD&A should not merely repeat the information found in the notes, but expand on the disclosure by including the qualitative and quantitative discussion necessary to understand the transaction's business purpose and economic substance. Specifically, issuers often neglect to discuss the identity of related parties and their relationship. As well, we note that there is minimal discussion around the business purpose of the transaction.

Selected annual information, summary of quarterly results and fourth quarter

Issuers must provide certain summary financial data derived from their financial statements in each MD&A filing. In addition, issuers should explain any significant period-to-period variations. This provides investors with a better understanding of the general trends impacting the issuer. This year, several issuers failed to include the qualitative discussion in their MD&A.

The annual MD&A should also include a discussion and analysis of any fourth quarter events that affected the issuer's financial condition, cash flows or results of operations. Many issuers failed to include this disclosure.

4.4 Deficiencies in financial statements

This section summarizes common disclosure and measurement deficiencies we identified in our reviews of financial statements.

Financial instruments

In addition to disclosure issues, we focused on recognition and measurement issues related to financial instruments. In particular, we looked at the valuation of financial instruments that did not have a quoted market price. It is important that investors receive both quantitative and qualitative disclosure on how fair values of financial instruments are determined in the absence of quoted market prices. This information



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should be provided in sufficient detail to allow a reader to understand how the issuer arrived at this valuation and the measurement uncertainty associated with the valuation.

The fair value of financial instruments is difficult to determine when markets are inactive and valuation models are used. In these circumstances, it is critical that issuers disclose key assumptions and methodologies used to determine fair value.

Recognition of revenue

We continue to see revenue recognition deficiencies. We will ask issuers to restate their financial statements when they prematurely recognize revenue in situations where transactions fail to materially meet all of the recognition criteria set out in CICA Handbook Section 3400 *Revenue*. If the risks and rewards of ownership of the asset remain with the issuer, the revenue should not be recognized.

We continue to focus on, and encounter, issues relating to the disclosure of revenue recognition policies. Accounting policies that are too high level to be meaningful to investors continue to be a concern to us. In some cases, the policies also failed to address material sources of revenue.

A common issue was inadequate disclosure of revenue recognition policies related to arrangements with multiple deliverables. If sales transactions have multiple elements, such as a product and service, the issuer should clearly state the accounting policy for each element, how multiple elements are determined and valued, and the description and nature of these arrangements. Issuers should regularly assess their disclosed policies to ensure that they provide a complete description of all significant elements of their revenue recognition practices.

Failure to consolidate variable interest entities

An enterprise should consolidate a variable interest entity (VIE) when it has a variable interest, or combination of variable interests, that will absorb a majority of its expected losses, receive a majority of its expected residual returns, or both. The enterprise that consolidates a VIE is called the primary beneficiary of that entity. A reporting issuer should determine whether it is the primary beneficiary of a VIE at the time the issuer becomes involved with the entity. Issuers should apply the guidance set out in CICA Handbook Accounting Guideline 15 *Consolidation of Variable Interest Entities* when assessing whether their variable interests have those characteristics.



Issuers will need to look through the “structure” of an arrangement. They should consider the existence of call or put options when determining whether an entity retains the majority of risks or rewards. If an issuer does not consider all possible VIEs, it may not be applying consolidation principles appropriately.

Impairment of goodwill

We raised comments where goodwill impairment indicators were present and the issuer had not taken an impairment charge. After reviewing the impairment analysis prepared by management, we found that some issuers did not fully consider the impact of the economic environment. For example, some issuers were using incomplete or unrealistic cash flow forecasts in testing goodwill for impairment. Other issuers were overly optimistic in establishing assumptions used to determine the fair value of their reporting units.

Going concern

In light of current economic conditions, issuers also need to consider the amendments to CICA Handbook Section 1400 *General Standards of Financial Statement Presentation*. The amendments apply to interim and annual financial statements for fiscal years beginning on or after January 1, 2008. They require issuers to carefully assess and disclose in the financial statements the material uncertainties that may put into question their ability to continue as a going concern.

We focused on issuers' disclosure of material uncertainties, including continued and expected operating losses, negative operating cash flows, a failure to obtain or renew financing, a significant decline in the demand for a company's products, declining prices, substantial refinancing requirements and an inability to make scheduled payments on debt. Issuers committed to enhance disclosure in this area going forward.

Material uncertainties will continue to be an area of focus in our reviews.



5. Transition to International Financial Reporting Standards (IFRS)

Converting from Canadian GAAP to IFRS represents a fundamental change to reporting standards. It is one of the most significant changes that issuers will have to deal with over the next few years. The process will require a significant commitment of resources by issuers and regulators, and sufficient advance planning to ensure a smooth transition.

5.1 MD&A disclosures relating to IFRS transition

Changing to IFRS may materially affect an issuer's reported financial position, results of operations and other business functions. To assist investors and other market participants with the transition, we issued [CSA Staff Notice 52-320 Disclosure of Expected Changes in Accounting Policies Relating to Changeover to International Financial Reporting Standards](#).

This notice describes our expectations for an issuer's disclosures of the expected changes in accounting policies related to the changeover. The detailed guidance provided in the notice also provides for an incremental approach to disclosure in annual and interim periods leading up to the changeover date.

Fiscal 2008

For fiscal 2008, our disclosure expectations focused on the key elements and timing of an issuer's IFRS conversion plan. Reporting issuers should have been aware that developing and implementing an IFRS conversion plan is not just an accounting exercise, since it will affect a wide variety of an issuer's business activities. We expected issuers to consider how the transition to IFRS would affect all business functions that rely on financial information and to communicate this to investors. Examples of critical business functions are information technology systems, executive compensation plans, treasury activities and investor relations.

If an issuer did not have a conversion plan, we generally believe this to be material information that should have been disclosed in MD&A. Given that there is less than approximately 13 months until the changeover date, we are concerned that issuers without a plan may be at greater risk of not meeting their future regulatory obligations.

Fiscal 2009

We expect issuers to generally be able to provide more detailed information about the expected effects of IFRS as we move closer to the changeover date. Specifically, an issuer's fiscal 2009 MD&A disclosures should provide a progress update on their conversion plan, along with describing the major identified

differences between the issuer's current accounting policies and those the issuer requires or expects to apply when preparing its IFRS financial statements.

Fiscal 2010

In 2010, we expect issuers to provide significant details of their conversion plan and information about key decisions on policy choices under IFRS 1 *First-time Adoption of International Financial Reporting Standards* (IFRS 1). As well, if an issuer has quantified information about the impact of IFRS accounting policy choices on its financial statements, this information should be disclosed.

Review of IFRS transition disclosures

We are completing a targeted review of the IFRS disclosures in issuers' fiscal 2008 and 2009 MD&As. Our preliminary results indicate that many issuers are providing boilerplate IFRS transition disclosure, which makes it difficult to assess the status of an issuer's changeover plan.

We believe that this disclosure is important for investors to assess the readiness of an issuer's transition to IFRS and the possible impact the adoption of IFRS will have on the issuer's financial statements. We plan to issue a staff notice that will summarize the final results of our review and provide additional guidance for issuers in filing future MD&A.

5.2 Regulatory impacts of IFRS transition

The CSA has been actively reviewing securities legislation to consider the extent of changes necessary to accommodate the transition to IFRS. On September 25, 2009, we published proposed [National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards](#) and proposed IFRS-related amendments to our continuous disclosure, prospectus and certification rules. These proposed amendments include a list of changes to accounting terms and phrases, and transition changes that should assist with the conversion to IFRS.

Our goal is to facilitate a smooth regulatory transition to IFRS. We welcome public comment on the proposals. Some of the more significant transitional amendments are highlighted below.

First IFRS interim financial report

IFRS 1 requires the preparation of an opening IFRS statement of financial position as at an issuer's date of transition to IFRS. For a calendar year-end company, the date of transition to IFRS is January 1, 2010. This opening statement of financial position is the starting point for an issuer's accounting under IFRS and provides meaningful information to investors. Given its importance, we are proposing to require that it

be presented in an issuer's first IFRS interim financial report. For a calendar year-end issuer, the first IFRS interim financial report will be for the quarter ending March 31, 2011.

We are also proposing to provide issuers with a 30-day extension to the filing deadline for the first IFRS interim financial report. This is because the first IFRS interim financial report will be due shortly after the filing of the Canadian GAAP annual financial statements for fiscal 2010. The extension is intended to assist management with their CEO and CFO certification process in the first quarter and to provide boards of directors and audit committees more time to review and approve the first IFRS interim filing.

Presentation of statement of cash flows

For consistency with IFRS, we are proposing to require issuers to present a cash flow statement in their interim financial statements only for the year-to-date period and the corresponding comparative period. [N 51-102](#) and existing Canadian GAAP require issuers to present a cash flow statement in their interim financial statements for a three-month and year-to-date period, along with corresponding comparative periods.

5.3 Early adoption of IFRS

A few issuers have elected to adopt IFRS prior to January 1, 2011. An issuer may adopt IFRS early if it meets key conditions for readiness, including readiness of staff, board of directors, audit committee and auditors. Issuers that elect to adopt early will have to address IFRS changeover and disclosure requirements in a more compressed timeframe. Orders that have been granted to allow early adoption are available on the [OSC website](#).

5.4 Canadian GAAP and IFRS differences

This section highlights some of the current differences between Canadian GAAP and IFRS. It is intended to assist issuers in developing and implementing their IFRS conversion plans. However, it is not a complete discussion. Issuers should carefully read all of the IFRS standards to ensure they identify all accounting differences and how they will impact their business.

Revenue recognition

Revenue is typically the single largest item reported in a company's financial statements. In addition to the direct impact that it has on an issuer's bottom line, investors also place great importance on revenue when making investment decisions. Issuers will need to focus on the IFRS accounting standards governing revenue recognition. In particular, they should note the absence of detailed guidance that these standards provide compared to Canadian GAAP.



The principal revenue recognition standards in IFRS include IAS 18 *Revenue* (IAS 18) and IAS 11 *Construction Contracts* (IAS 11). Some of the key differences between these standards and Canadian GAAP are in the following areas:

- where transactions consist of multiple elements that require separate accounting for each element, IFRS does not provide as detailed and prescriptive guidance on how to account for these various elements;
- the criteria for recognizing revenue for bill-and-hold arrangements under IFRS differs and may result in revenue being recognized earlier; and
- revenue recognition for long-term construction contracts is more restrictive in that revenue may only be recognized under the percentage of completion method as the completed contract method is not specifically addressed under IFRS.

The IASB and the Financial Accounting Standards Board (FASB) are currently working on a joint project with plans to publish a standard outlining a comprehensive set of principles for revenue recognition that will replace IAS 18 and IAS 11. Issuers must take into account any changes to these revenue recognition standards prior to the IFRS changeover date.

Business combinations

The objective of IFRS 3 *Business Combinations* is to improve the relevance, reliability and comparability of the information that a reporting issuer provides in its financial statements about the effects of a business combination. While there are currently several differences in accounting for business combinations between IFRS and Canadian GAAP, the AcSB has converged the accounting for business combinations with that prescribed by IFRS, which will be effective on Canada's changeover date. In the meantime, the following differences, while not exhaustive, will continue to exist:

- the methodologies for valuing the purchase consideration are different under IFRS and Canadian GAAP. Under IFRS, the consideration is based on the fair value of equity securities issued by the acquirer at the acquisition date. In contrast, Canadian GAAP determines the fair value of equity securities in reference to their market price for a reasonable period of time before and after the terms of the business combination are agreed to and announced;



- under Canadian GAAP, the cost of the business acquisition can include direct and incremental acquisition costs, while under IFRS these costs are generally expensed;
- IFRS has a broader concept of what constitutes a business, which may include those entities in the development stage. Under Canadian GAAP, development stage entities generally do not meet the definition of a business; and
- contingent consideration is recognized differently under both standards. IFRS requires that contingent consideration be recognized initially at fair value as part of the consideration transferred. Canadian GAAP, however, requires that contingent consideration be generally recognized as part of the cost of the acquisition only when the contingency is resolved and the consideration has been transferred.

Related party disclosures

Information about related parties and the extent to which related party transactions may affect reported results of an issuer is particularly important to investors because these transactions lack the independence that is inherent in other financial transactions. In light of this, one of the major differences for issuers is that Canadian GAAP addresses both the measurement and disclosure of related party transactions, while IAS 24 *Related Party Disclosures* only addresses disclosure requirements. Other differences include the following areas:

- the definition of related parties is broader under IFRS than under Canadian GAAP; and
- compensation for key management personnel is a related party disclosure under IFRS, whereas executive compensation arrangements are generally not considered related party transactions under Canadian GAAP but are governed by securities legislation.

While Canadian GAAP specifically excludes management compensation arrangements from the scope of related party transactions, executive compensation disclosure is required under Canadian securities legislation. The requirements can be found in [Form 51-102F6 Statement of Executive Compensation](#). Issuers should be aware that the pool of individuals and the types of compensation disclosed under IFRS and Form 51-102F6 could vary significantly. The context of these differences should be explained to investors so that the disclosure is meaningful in both instances.



Property, plant and equipment

IAS 16 *Property, Plant and Equipment* prescribes the required accounting treatment for property, plant and equipment, including the recognition of assets, the determination of their carrying amounts and the related depreciation charges and impaired amounts. Some of the more substantive differences are highlighted below:

- IFRS requires separate accounting for the different components of an asset when different depreciation methods or rates are appropriate for a component. In contrast, Canadian GAAP requires component accounting only when practicable;
- subsequent to the initial measurement of an asset, IFRS allows property, plant and equipment to be revalued to fair value if fair value can be measured reliably. There is no revaluation model under Canadian GAAP, therefore, property, plant and equipment assets must be carried at amortized cost;
- in certain circumstances, IFRS requires that borrowing costs be capitalized as part of the cost of property, plant and equipment, while Canadian GAAP allows borrowing costs to be expensed or capitalized; and
- the disclosure requirements are more extensive under IFRS in that a continuity schedule of the carrying amount of each class of property is required.

Impairment of assets

IAS 36 *Impairment of Assets* is the standard that describes the procedures that a reporting issuer applies to ensure that its assets are carried at no more than their recoverable amount. If the carrying amount of an asset exceeds its recoverable amount, as determined through use or sale of the asset, the asset is considered impaired and an impairment loss must be recognized.

While the concept of impairment is similar under IFRS and Canadian GAAP, the following are some significant differences that issuers need to be aware of:

- more frequent impairment testing may be required under IFRS since all assets (except for financial instruments) must be reviewed for indications of impairment at the end of each reporting period, whereas Canadian GAAP only requires a review of indications of impairment when events or changes in circumstances occur;



- under IFRS, the methods for recognizing and measuring impairment losses vary from Canadian GAAP. IFRS requires a one-step impairment process only, which may cause impairment losses to be recognized earlier;
- unlike Canadian GAAP, IFRS permits the reversal of impairment losses (except for goodwill) if there has been a change in the estimate used to determine the asset's previous recoverable amount; and
- IFRS requires more detailed disclosure than under Canadian GAAP.

Provisions

IAS 37 *Provisions, Contingent Liabilities and Contingent Assets* (IAS 37) is the standard that establishes the recognition and measurement of provisions under IFRS. Significant differences between Canadian GAAP and IAS 37 include:

- the definition of a provision under IFRS is broader as it includes both legal and constructive obligations. A constructive obligation arises when an entity creates a valid expectation that it will discharge certain responsibilities based on past or published practices amongst other conditions;
- the threshold for recognizing provisions under IFRS is interpreted to be lower. Under IFRS, provisions are recognized when they are “probable”, while provisions are only recognized under Canadian GAAP when they are “likely to occur”;
- when there is a range of outcomes available and no outcome is more likely than the others, IFRS requires the provision be measured at the mid-point of the range as compared to the low end of the range as required under Canadian GAAP;
- IFRS requires provisions to be discounted if the effects of the discounting are material, while under Canadian GAAP provisions are generally not discounted; and
- there are increased note disclosure requirements under IFRS, including a provision continuity schedule for each class of provision.

An exposure draft has been issued for proposed amendments to IAS 37, which may result in significant changes from the existing IFRS standard prior to changeover.



Financial instruments

IAS 39 *Financial Instruments: Recognition and Measurement* is the standard that establishes the principles for recognizing and measuring financial assets and liabilities. In addition, IAS 32 *Financial Instruments: Presentation* and IFRS 7 *Financial Instruments: Disclosures* describe the requirements for presenting and disclosing financial instruments respectively. While these standards are for the most part converged with Canadian GAAP, a close reading of the standards is warranted.

The IASB and the FASB are currently working on the accounting requirements for financial instruments in light of the suggestions made by the G20 and the Financial Stability Forum. Issuers should closely monitor accounting developments in this area and factor them into their IFRS conversion plans.

Investment properties

IAS 40 *Investment Property* (IAS 40) prescribes the recognition, measurement and related disclosure requirements for investment property. Investment property is property held to earn rental income, for capital appreciation, or both.

IAS 40 is an industry-specific standard that addresses investment property. Under Canadian GAAP, investment property is accounted for under the requirements for property, plant and equipment. The differences between the IFRS standard represents a significant difference from Canadian GAAP as follows:

- while under both IFRS and Canadian GAAP investment property is initially measured at cost, IFRS will allow an issuer to subsequently measure all investment property under the fair value model;
- under the fair value model, all changes in fair value are recognized in the income statement. Canadian GAAP requires the use of the historical cost model where these assets are subject to depreciation and impairment testing; and
- if the cost model is chosen under IFRS, disclosure of the fair value of all investment properties is required. The historical cost method under Canadian GAAP does not require disclosure of such fair value information.

Specific industry standards

This section highlights certain IFRS issues that may impact issuers in specific industries.



- IFRS 4 *Insurance Contracts*. This standard provides less guidance than Canadian GAAP, however issuers should closely monitor the IASB's work plan on Phase II. As part of Phase II, an exposure draft is expected to be issued in the fourth quarter of 2009 and as a final standard in 2011;
- IFRS 6 *Exploration for and Evaluation of Mineral Resources*. This standard provides industry-specific guidance related to exploration and evaluation expenditures. The IASB has an extractive activities project that is working to develop an acceptable approach to resolving accounting issues that are unique to upstream extractive activities. The ultimate objective of this project is to develop an IFRS on accounting for extractive activities that will supersede IFRS 6.
- Proposed IFRS standard for entities that operate in rate-regulated activities. In July 2009, the IASB issued a proposed IFRS standard to be followed by entities that operate in rate-regulated activities. While current Canadian accounting standards recognize rate-regulated activities, until the proposed standard is released, there will be no equivalent guidance under IFRS.



6. Mergers and Acquisitions

This section summarizes the following three areas of recent development involving mergers and acquisitions transactions:

- Staff's views on negative bid variations and the ability of bidders to unilaterally withdraw a bid;
- significant Commission decisions resulting from a hearing process; and
- the relevance of the Toronto Stock Exchange (TSX) staff notice on financial hardship to the financial hardship exemptions under [Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions](#) (MI 61-101).

6.1 Varying bid terms or withdrawing a bid

Some market participants have taken the view that a bidder can, at its discretion and at any time, amend a bid to make it less favourable to target security holders or unilaterally withdraw the bid prior to its expiry. We regard such actions as generally being inconsistent with the take-over bid regime and its underlying purpose to provide a transparent and predictable framework for take-over bids. Staff intend to closely monitor and review any actions taken by a bidder that would result in a negative bid variation or unilateral withdrawal to determine whether the bidder has failed to comply with applicable securities legislation or otherwise acted in a manner contrary to the public interest. We will, in particular, focus on whether the bidder's actions were based on a reasonable interpretation of bona fide conditions in its offer.

6.2 Significant Commission decisions

The Commission recently released decisions that provide guidance on its approach to key mergers and acquisitions issues. These decisions relate to the:

- review of TSX decisions;
- interaction between take-over bids and second step business combinations; and
- application of the Commission's public interest jurisdiction in determining whether to cease trade a shareholder rights plan.

Hearing and review of TSX decisions

The Commission considered two applications, each of which asked the Commission to review a TSX decision that approved the issuance of shares without imposing shareholder approval.



These decisions gave the Commission an opportunity to comment on the appropriate standard of review for a TSX listing committee decision and, in one of the decisions, discuss what factors are relevant to the TSX in exercising its discretion under section 603 of the TSX Company Manual (the Manual) to impose shareholder approval where a share issuance affects the quality of the marketplace.

HudBay Minerals Inc.

The Commission in [Re HudBay Minerals Inc.](#) held that shares issued by HudBay Minerals Inc. (HudBay) as consideration for the acquisition of all the common shares of Lundin Mining Corporation could not be listed by the TSX unless prior shareholder approval from HudBay shareholders was obtained.

The Commission deferred to the TSX's determination under section 604 of the Manual that the issuance of the shares would not affect control of HudBay within the meaning of that provision. The Commission concluded that the TSX's analysis with respect to section 604 was reasonable under the circumstances.

The Commission did not defer to the TSX's determination under section 603 because the TSX had not provided sufficient analysis to support its decision not to exercise its discretion to require shareholder approval under that section. As a result, the Commission proceeded to make its own determination under section 603 of the effect of the share issuance on the quality of the marketplace.

The Commission considered the following factors in its analysis and concluded that permitting the share issuance to proceed without the approval of HudBay shareholders would adversely affect the quality of the market place and be contrary to the public interest:

- the level of dilution;
- the transaction was a merger of equals;
- impact on the HudBay share price;
- HudBay's corporate governance practices in relation to the transaction;
- the transformational impact of the transaction on HudBay; and
- fair treatment of HudBay shareholders.

InterRent Real Estate Investment Trust

The Commission applied the standard of review for a TSX decision set out in HudBay to its review of the decision by the TSX to approve the listing of units in a private placement by [InterRent Real Estate Investment Trust](#) without requiring shareholder approval under section 603.



The Commission dismissed the application and upheld the TSX decision on the following grounds:

- the Commission had a sufficient basis upon which to defer to the TSX and the TSX decision was reasonable under the circumstances;
- TSX had made its decision after taking into account all relevant information and assessing all relevant regulatory considerations;
- TSX had followed an appropriate process in reviewing the concerns raised by the applicant;
- TSX had carefully articulated its rationale for its decision; and
- the applicant had failed to establish any of the grounds that would entitle the Commission to intervene.

Identical treatment in take-over bids and second step business combinations

In [*Re JLL Patheon Holding LLC*](#), the Commission considered an application by the special committee of Patheon Inc. (Patheon) for compliance and public interest orders in respect of an insider bid for Patheon shares made by JLL Patheon Holding LLC (JLL).

The basis of the application was that the insider bid by JLL violated both the identical treatment requirement and the prohibition against collateral agreements because of arrangements JLL had entered into with a group of Patheon shareholders (the MOVA Group). The MOVA Group was offered the opportunity to exchange its shares for shares of the acquisition vehicle as well as the ability to tender to the offer for cash. If the MOVA Group chose to exchange its shares for shares of the acquisition vehicle, it had the benefit of a voting agreement (the Voting Agreement) with JLL.

That agreement protected the MOVA Group from having their Patheon shares acquired without their consent in a second step acquisition transaction and, if the MOVA Group decided to avail themselves of this protection, granted them certain “tag-along”, “drag-along” and board representation rights. These terms were not offered to other Patheon shareholders. The Commission suggested, but did not conclusively determine, that the choice provided to the MOVA Group to obtain a continuing interest in JLL if the bid succeeded (and the benefit of the Voting Agreement), or to tender into the offer, violated the identical consideration requirement and the prohibition against collateral benefits.

At the hearing, JLL and the MOVA Group offered to terminate the Voting Agreement as a condition of the Commission’s dismissal of the application. The special committee of Patheon and OSC staff recommended to the Commission that it impose additional conditions in dismissing the application to



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ensure that JLL and the MOVA Group could not enter into arrangements similar to the Voting Agreement during the period of the bid and prior to completing any related subsequent acquisition transaction.

The Commission dismissed the application on the condition that JLL and the MOVA Group not enter into any collateral agreement or understanding for 120-days (that is the period after expiry of a bid during which tendered shares can be counted as part of the minority approval for a second step business combination). As a result of this condition, Patheon shareholders would know, at the time when making their decision to tender to the bid and effectively voting for a second step business combination, that the MOVA Group and JLL would not be entering into any collateral agreements or understandings as part of the bid or a second step business combination.

Shareholder rights plans

The Commission dismissed an application by Pala Investment Holdings Limited (Pala) for an order cease trading the shareholder rights plans of [Neo Material Technologies Inc.](#) (Neo).

In addition to its standard shareholder rights plan, the Neo board implemented an additional rights plan during the course of Pala's bid. This rights plan was different from the existing rights plan in that it prohibited partial bids. Neo shareholders had an opportunity to vote on this second rights plan at a shareholders' meeting held during the course of Pala's bid.

The issue before the Commission was whether it was in the public interest to cease trade the second rights plan where there was no evidence that it was being used by Neo to solicit other offers or otherwise conduct or sustain an auction for Neo. The Commission held that, under the circumstances, it was not yet time for the rights plan to be cease traded.

In its detailed reasons dated September 1, 2009, the Commission explained the basis for its decision. In staff's view, the determining factor for the Commission was that an overwhelming majority of Neo shareholders had made an informed decision to approve the second rights plan in the face of the Pala bid. This was, in effect, an informed rejection of the Pala bid. The Commission considered whether there were any considerations that would undermine reliance on the shareholder vote as the basis for permitting the rights plan to remain in effect. The Commission concluded that there was no evidence that the process undertaken by the Neo board in implementing the second rights plan and deciding not to solicit competing offers was not in the best interest of Neo and its shareholders. The Commission also held that there was no evidence that Neo shareholders were coerced into approving the second rights



plan or that there were any procedural irregularities relating to the meeting at which the second rights plan was approved.

6.3 Financial hardship exemption under MI 61-101

Issuers may be exempt from the minority approval and valuation requirements applicable to related party transactions under [MI 61-101](#) if they satisfy the grounds for financial hardship set out in paragraphs 5.5(g) and 5.7(e) of MI 61-101. The TSX may also exempt a transaction involving the issuance of securities from shareholder approval requirements if the issuer is able to demonstrate financial hardship in circumstances similar to those set out in MI 61-101. This exemption is set out in subsection 604(e) of the Manual.

The TSX published a notice dated April 27, 2009 (the TSX Staff Notice) that provides guidance on the types of procedural and informational considerations it would expect from issuers seeking to establish financial hardship as a basis for reliance upon the exemption in subsection 604(e). As the TSX financial hardship considerations are similar to, and based on, the financial hardship exemption in MI 61-101, the considerations set out in the TSX Staff Notice may be relevant to an issuer proposing to rely upon the financial hardship exemption in MI 61-101.



7. Contact Information

General inquiries	Inquiries and Contact Centre Telephone: (416) 593-8314 Toll-Free (North America): 1-877-785-1555
Branch report inquiries	<p>Margo Paul, Director Telephone: (416) 593-8136 Email: mpaul@osc.gov.on.ca</p> <p>Naizam Kanji, Deputy Director Telephone: (416) 593-8060 Email: nkanji@osc.gov.on.ca</p> <p>Lisa Enright, Manager Telephone: (416) 593-3686 Email: lenright@osc.gov.on.ca</p> <p>Kelly Gorman, Manager Telephone: (416) 593-8251 Email: kgorman@osc.gov.on.ca</p> <p>Sonny Randhawa, Assistant Manager Telephone: (416) 204-4959 Email: srandhawa@osc.gov.on.ca</p> <p>Carmen Tang, Legal Counsel Telephone: (416) 593-8215 Email: ctang@osc.gov.on.ca</p>
Cease trade orders and filing CD documents	Ann Mankikar, Supervisor, Financial Examiners Telephone: (416) 593-8281 Email: amankikar@osc.gov.on.ca
Preliminary receipts	<p>Merle Shiwbhajan, Review Officer Telephone: (416) 593-8239 Email: mshiwbhajan@osc.gov.on.ca</p> <p>Moses Seer, Administrative Support Clerk Telephone: (416) 593-3684 Email: mseer@osc.gov.on.ca</p>
Final receipts	Fareeza Baksh, Selective Review Officer Telephone: (416) 593-8062 Email: fbaksh@osc.gov.on.ca
Applications for exemptive relief	David Mattacott, Applications Administrator Telephone: (416) 593-8325 Email: dmattacott@osc.gov.on.ca



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OSC Staff Notice 51-706
2009 Corporate Finance Branch Report



As the regulatory body responsible for overseeing the capital markets in Ontario, the Ontario Securities Commission administers and enforces the provincial Securities Act, the provincial Commodity Futures Act and administers certain provisions of the provincial Business Corporations Act. The OSC is a self-funded Crown corporation accountable to the Ontario Legislature through the Minister of Finance.

1.1.3 Notice of Memorandum of Understanding Between the Minister of Finance and the OSC

**NOTICE OF MEMORANDUM OF UNDERSTANDING
BETWEEN
THE MINISTER OF FINANCE
AND THE
ONTARIO SECURITIES COMMISSION**

Subsection 3.7(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, requires the Commission and the Minister of Finance to enter into a Memorandum of Understanding (MOU) every five years. The MOU must set out:

- (a) the respective roles and responsibilities of the Minister and the Chair;
- (b) the accountability relationship between the Commission and the Minister;
- (c) the responsibility of the Commission to provide to the Minister business plans, operational budgets and plans for proposed significant changes in the operations or activities of the Commission; and
- (d) any other matter that the Minister may require.

In May 2003, the Commission and the Minister of Finance entered into an MOU that was to remain in effect until superseded by a new MOU. On November 5, 2009, the Minister of Finance and the Chair of Ontario Securities Commission executed a new MOU. The new MOU between the Minister of Finance and the Commission is being published today in the Bulletin.

Questions may be referred to:

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MEMORANDUM OF UNDERSTANDING DATED NOVEMBER 5, 2009

BETWEEN

THE MINISTER OF FINANCE OF ONTARIO
(herein called the "Minister")

AND

THE ONTARIO SECURITIES COMMISSION
(herein called the "Commission")

A INTRODUCTION

1. The Commission is a statutory corporation without share capital and is comprised of members appointed by the Lieutenant Governor in Council. The Commission is an agent of Her Majesty in right of Ontario (section 3(12) of the *Securities Act*) and is classified by the Management Board of Cabinet (Management Board) as a Regulatory Agency with a governing board, and, for purposes of the Procurement Directive, as a "Other Included Entity".
2. Under the *Securities Act* and the *Commodity Futures Act* (the "Statutes"), the Commission is responsible for the administration of the Statutes and for discharging the powers and duties assigned to it under the Statutes and any other relevant legislation.
3. The mandate of the Commission under section 1.1 of the *Securities Act* and section 1.1 of the *Commodity Futures Act* is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in their integrity.
4. The *Securities Act* requires that every five years the Commission and the Minister shall enter into a memorandum of understanding setting out:
 - a. the respective roles and responsibilities of the Minister and the Chair of the Commission (the "Chief Executive Officer" or "Chair");
 - b. the accountability relationship between the Commission and the Minister;
 - c. the responsibility of the Commission to provide to the Minister business plans, operational budgets and plans for proposed significant changes in the operations or activities of the Commission; and
 - d. any other matters that the Minister may require.
5. The *Securities Act* further requires that the Commission shall promptly give the Minister or his/her designate (the "Minister") such information about its activities, operations and financial affairs as the Minister requests.
6. The Minister and the Chair are committed to a strong and independent Commission that is empowered to fulfill its statutory mandate efficiently and effectively and share the goal of establishing and maintaining a co-operative relationship that facilitates the efficient administration of the Commission and fulfilment of its statutory responsibilities.
7. The purpose of this Memorandum of Understanding ("Memorandum") is to clarify the operational roles, responsibilities and relationship between the Commission and the Minister and record their mutual understanding in respect of these matters.
8. The Memorandum does not affect, modify, limit or interfere with the responsibilities of the Minister, the Commission or the Chair under the Statutes or any other legislation. In the event of a conflict between the provisions of the Memorandum and the Statutes or such other legislation, the Statutes or such other legislation shall prevail.

B GUIDING PRINCIPLES

9. The parties agree that they will adhere to the principles set out below in their relationship.
10. The Minister recognizes that the Commission is a statutory entity and that the Commission, the Chair and the Executive Director of the Commission (the "Executive Director" or "Chief Administrative Officer") exercise powers and perform duties in accordance with their respective mandates under the Statutes and other relevant legislation. The

Commission's regulatory and adjudicative decisions must be made and be seen by the public to be made in an independent and impartial manner.

11. The Commission shall operate as an arm's-length agency of the Government of Ontario.
12. Commission staff are employees of the Commission and are accountable to the Chair and the Chief Administrative Officer ("CAO"). The Commission is a public body for purposes of the *Public Service of Ontario Act, 2006* (PSOA) and is subject to those parts of the PSOA that establish a conflict of interest framework, provisions relating to political activity, and the mechanisms for disclosures of wrongdoing in the public service. Employees of the Commission are public servants under the PSOA and are subject only to those provisions described above.
13. The Commission acknowledges that it is accountable to the Minister as set out in the Statutes in exercising its statutory mandate. The fundamental principle of accountability will be observed in the management, administration and operations of the Commission.
14. As an agency of the Government, the Commission agrees to abide by the management principles established by the Government of Ontario. These principles include ethical behaviour, accountability, excellence in management, wise use of public funds, high quality service to the public and fairness in the marketplace.
15. All members and employees will be subject to the Commission's Code of Conduct relating to conflicts of interest in connection with the conduct of the affairs of the Commission.
16. The parties to this Memorandum are committed to avoiding duplication of work or services.
17. The parties to this Memorandum recognize that the timely exchange of information and effective consultation when necessary are essential to discharging their respective responsibilities.
18. The Commission undertakes to report to, and share information with, the Minister as required by the Statutes and this Memorandum.

C ROLES AND RESPONSIBILITIES

The Minister

The Minister is accountable to the Legislature for the Commission's fulfilment of its mandate and its compliance with government policies, and for reporting to the Legislature on the affairs of the Commission. In addition to the rights and duties of the Minister as set out in the Statutes, the Minister is responsible for:

19. monitoring the activities of the Commission to ensure that its mandate is being fulfilled. To this end, the Minister may designate a person to examine any financial or accounting procedures, activities or practices of the Commission, as provided in section 3.8(2) of the *Securities Act*;
20. reporting to Cabinet and the Legislature on the affairs of the Commission, including tabling reports in the Legislature as required. This includes the requirement that the Minister shall lay the Commission's annual report before the Assembly within one month of receiving the Commission's report;
21. reviewing the Commission's annual business plan and submitting the plan to Management Board, as required by the Agency Establishment and Accountability Directive, including pursuant to a request at any time by the Chair of Management Board to submit the Commission's business plan to Management Board for review;
22. as may be permitted, ensuring that the Commission is advised and consulted when significant new directions for the Commission are contemplated or when initiatives are taken to amend any legislation or regulations that affect the Commission;
23. ensuring that the Commission is aware of policy directions or decisions of the Government that may impact the Commission's business plan;
24. meeting with the Chair as necessary (at a minimum, once every quarter) to discuss issues relating to the effective discharge of the Commission's mandate and the need for services or support to be provided by the Ministry to the Commission;

25. making recommendations to Cabinet relating to the appointment and reappointment of the Chair, Vice-Chair(s) and Commission members pursuant to the process established by legislation or by Management Board, as applicable, following consultation with the Chair, as appropriate;
26. ensuring that members appointed to the Commission are aware of all policies, directives, guidelines and procedures for Cabinet appointees as applicable;
27. ensuring that the Commission is aware of all applicable Management Board Directives;
28. ensuring that the Commission receives such information and assistance as required or as requested to meet its responsibilities under the Statutes, other relevant legislation, applicable Management Board Directives and this Memorandum;
29. appointing an advisory committee under section 143.12 of the *Securities Act*;
30. directing that a periodic review of the Commission be conducted and making subsequent recommendations to Management Board;
31. following consultations with the Chair, recommending to Management Board the elimination, consolidation or acquisition of the Commission and any change to the Commission's mandate that needs corresponding change to the Commission's constituting instrument; and
32. recommending to Management Board the powers to be given to the Commission when a change in the mandate of the Commission is being proposed.

The Chair and Board of Directors

The Chair acknowledges that accountability to the government means direct accountability to the Minister. The Board of Directors of the Commission (the "Board") acknowledges that accountability to the government means accountability to the Minister through the Chair. In addition to the rights and duties as set out in the Statutes, the Chair and the Board are responsible and accountable to the Minister for:

33. overseeing the management of the financial and other affairs of the Commission in accordance with its statutory mandate and business plan;
34. overseeing the provision of high quality regulatory services that protect the public interest and enhance public confidence in the regulated sectors;
35. overseeing management's identification of principal risks to the Commission's operations and the implementation of appropriate processes to manage these risks and ensuring that the Commission otherwise conducts itself in accordance with good governance practices; and
36. ensuring that stakeholders are consulted, as appropriate, on the Commission's goals, objectives and strategic direction.

Furthermore, the Chair is responsible and accountable to the Minister for:

37. providing any necessary orientation of new members of the Commission, ensuring that new members are made aware of the provisions on conflict of interest, ethical conduct and political activities set out in the Commission's Code of Conduct, and developing and maintaining an effective performance measurement system for evaluating Commission members in a manner consistent with best practices;
38. reviewing with the Minister the Commission's performance based results included in the Commission's statement of priorities on an annual basis;
39. ensuring that a report describing the performance achieved as against the objectives and targets set out in the Commission's statement of priorities is published on an annual basis;
40. ensuring that significant policy initiatives undertaken by the Commission, and other matters relating to its operations, that would be of importance to the Minister are brought to the attention of the Minister in a timely fashion, as well as being addressed at the next scheduled monthly work-in-progress meeting;
41. ensuring the Commission's compliance with applicable Management Board Directives;

42. ensuring the Commission's compliance with the *Archives and Recordkeeping Act, 2006*, S.O. 2006, chapter 34, Schedule A;
43. causing the Commission to prepare and deliver to the Minister the Commission's statement of priorities, annual report including financial statements and any other information about the Commission's activities, operations and financial affairs as the Minister requests;
44. causing the Commission to prepare, submit and review with the Minister its business plan for the current year and at least two years beyond following its adoption by the Commission;
45. ensuring that the Commission's business plan includes a system of performance measures and a report on the achievement of the objectives set out in the business plan;
46. acting as the Commission's primary spokesperson;
47. at the request of the Minister, preparing material, attending and/or making a presentation before Cabinet, the Legislature or Committees of either, on matters affecting or pertaining to the Commission;
48. notifying the Minister of upcoming vacancies in order-in-council appointments to the Commission and making recommendations to the Minister on persons appropriate to fill such vacancies;
49. providing the Commission with such information, assistance and advice as the Commission requires to meet its responsibilities under the Statutes and other relevant legislation;
50. reviewing board members' expenses and ensuring procedures are established for reviewing and approving board members' per diem claims; and
51. evaluating the performance of the CAO in consultation with the Board.

The Board of Directors

Furthermore, the Board is responsible and accountable to the Minister for:

52. subject to the approval of the Minister, making by-laws governing a variety of corporate matters, including:
 - a. the administration, management and conduct of the affairs of the Commission;
 - b. the appointment of an auditor;
 - c. the powers, functions and duties of the Chair, each Vice-Chair and officers employed by the Commission;
 - d. the remuneration and benefits of the Chair, each Vice-Chair and the other members of the Commission; and
 - e. the appointment, operation or dissolution of committees of the Board and the delegation of duties of the Board to such committees.

(For example, the Board has established the following standing committees: Audit and Finance Committee, Governance and Nominating Committee, and Human Resources and Compensation Committee.)

The Deputy Minister

The Deputy Minister is accountable to the Minister for the performance of the Ministry in providing administrative support to the Commission and for carrying out the roles and responsibilities assigned to him by the Minister, Management Board Directives and this Memorandum. In accordance with the PSOA (and applicable Government directives), the Deputy Minister may delegate any of the powers and duties assigned to him by law. The Deputy Minister is responsible for:

53. advising and assisting the Minister in discharging assigned ministerial responsibility with respect to the Commission;
54. monitoring the activities of the Commission on behalf of the Minister to ensure that its mandate is being fulfilled and that it is acting in accordance with applicable Government policies;
55. meeting with the Chair at least quarterly to discuss issues relating to the effective discharge of the Commission's mandate;

56. informing the Commission of all directives, guidelines, policies and decisions of the Ministry and Government that apply to or may affect the Commission;
57. ensuring that the Commission receives such information and assistance as required or requested to meet its responsibilities under the Statutes, other relevant legislation, applicable Management Board Directives, and this Memorandum; and
58. undertaking on behalf of the Minister assessments of whether or not the Commission is fulfilling its legislative mandate, identifying any need for corrective action and recommending to the Minister ways to resolve issues that have been identified.

The Chief Administrative Officer

The CAO of the Commission is responsible and accountable to the Chair for:

59. the development, implementation and ongoing monitoring of an effective performance measurement and management system for the Commission under the direction of the Chair. The performance measures relating to the Commission's goals and priorities once approved by the Commission and prior to June 30 each year, will be forwarded to the Minister for approval;
60. ensuring that the Commission provides high quality service to the public in carrying out its responsibilities and establishes a process for responding to and resolving complaints from the public. The Commission's process for responding to complaints about the quality of services is separate from any statutory provisions about re-consideration, appeals, etc. of the Commission's adjudicative or regulatory decisions;
61. ensuring the development and maintenance of the necessary information and reporting systems in support of the efficient functioning of the Commission;
62. keeping the Chair and the Board informed and up-to-date on program operations;
63. ensuring that documents and reports are prepared as requested by the Board including corporate plans and budgets, annual business plans and quarterly reports; and
64. ensuring that documentation and proper controls are maintained to support expenditures and keep track of material variances between projected and actual expenditures.

D FINANCIAL ARRANGEMENTS

65. The operations of the Commission are funded by fees collected from market participants and details regarding the Commission's authority with respect to the fees and revenue it collects are set out in section 3.4 of the *Securities Act*.
66. The Commission acknowledges that property and/or services ordered/purchased by the Commission are purchased by it for the use of the Crown in right of Ontario, and are not subject to the goods and services tax.

E REPORTING REQUIREMENTS

67. The Commission shall forward for the Minister's approval an annual business plan by July of each year.
68. The business plan shall meet the requirements set out in Schedule D of the Agency Establishment and Accountability Directive.
69. Within six months after the end of each fiscal year, the Commission shall deliver to the Minister an annual report on the affairs of the Commission for that fiscal year. Within one month of receiving the Commission's annual report, the Minister shall lay the report before the Assembly.
70. The annual report shall include the Commission's audited financial statements for the most recently completed financial year and the auditor's report thereon; a description of activities during the financial year reported on; a discussion of significant variances between actual and planned results and an explanation of actions to be taken, if any, to address these variances; a description of the Commission's corporate governance structure; and the names of the appointees to the Commission, including when each was first appointed and when the current term of appointment expires.
71. The Commission will ensure that all reports and other material set out in Appendix A, required to be submitted to the Minister are submitted in a timely manner, as outlined in the Appendix.

F AUDIT ARRANGEMENTS

72. Pursuant to the *Securities Act*, the Commission shall prepare financial statements according to generally accepted accounting principles. The financial statements must present the financial position, results of operations and changes in the financial position of the Commission for its most recently completed financial year.
73. The Commission shall appoint one or more auditors licensed under the *Public Accountancy Act* or the Auditor General of Ontario to audit the financial statements of the Commission for each financial year.
74. The Chair shall provide the Minister with a copy of any report from an audit of the Commission conducted pursuant to paragraph 73 of this Memorandum. The Chair shall have an opportunity to comment on any audit report that is submitted to the Minister or Management Board prior to such submission.
75. The Commission shall advise the Minister annually of any outstanding audit recommendations.

G ADMINISTRATIVE ARRANGEMENTS

76. The Commission may participate in government-wide shared services or arrangements, where applicable.
77. The Commission shall respond to access requests and privacy investigations and shall fulfill all requirements under the Freedom of Information and Protection of Privacy Act (FOIPPA) with support from the Ministry of Finance FOIPPA Co-ordinator.
78. The Commission will be subject to the following Management Board Directives, Operational Policy and Guidelines:
- Agency Establishment and Accountability;
 - Enhancing Privacy: Computer Matching of Personal Information;
 - Freedom of Information and Privacy;
 - Government Appointees;
 - Management of Recorded Information;
 - Procurement;
 - Travel, Meal and Hospitality Expenses; and
 - Visual Identity.
79. Where the same matters dealt with in these Directives are the subject of provisions in the *Securities Act*, the regulations and the rules thereunder, the latter provisions will govern. For greater clarity, the provision under the heading "Remuneration" in the "Government Appointees" Directive that provides for remuneration of appointees is not applicable to the Commission by virtue of section 3.2 of the *Securities Act*.

H TIME PERIOD AND PROCESS FOR REVIEW AND AMENDMENT

80. This Memorandum, to be executed by the Minister and the Chair on behalf of the Commission, becomes effective when executed by the parties. It shall remain in effect for a period of five years from the date of signature unless earlier amended or replaced. If not earlier amended or replaced, this Memorandum must be reviewed before expiry and renewed or revised. It shall remain in effect until superseded by a new Memorandum of Understanding approved by Management Board and executed by the parties.
81. This Memorandum shall be reviewed upon the request of either party to it. This Memorandum must be either affirmed for continuance or revised upon the appointment of a new Minister or Chair.
82. The Minister is responsible for recommending to Management Board the approval of this Memorandum prior to execution by the parties. If this Memorandum is amended, the Minister shall submit a copy of the amended Memorandum to Management Board for approval.

IN WITNESS WHEREOF this Memorandum has been signed by the Minister and by the Chair of the Commission on behalf of the Commission.

"Dwight Duncan"	November 5, 2009
The Honourable Dwight Duncan	Date
Minister of Finance	
"W. David Wilson"	November 4, 2009
W. David Wilson	Date
Chair	
Ontario Securities Commission	

Appendix "A"

Ontario Securities Commission

Statutory Reporting Requirements and Communications with the Minister of Finance

Reporting Required under the *Securities Act* and *Commodity Futures Act* (CFA)

The following is a list of statutory reporting requirements (Commission to the Minister):

- **Memorandum of Understanding with the Minister:** The Commission and the Minister shall enter into an Memorandum of Understanding every five years, beginning with the 1998-99 fiscal year. (*Securities Act*, s. 3.7(1))
- **Provision of Information to the Minister:** The Commission shall promptly give the Minister such information about its activities, operations and financial affairs as the Minister requests. (*Securities Act*, s. 3.8(1))
- **Annual Report and Audited Financial Statements:** Within six months after the end of each fiscal year (i.e. by September 30), the Commission shall deliver to the Minister an annual report, including the Commission's audited financial statements, on the affairs of the Commission for that fiscal year. (*Securities Act*, s. 3.10(1))
- **Statement of Priorities:** The Commission is to deliver its statement of priorities to the Minister within 90 days after the end of its financial year (i.e. by June 30). (*Securities Act*, s. 143.9(1))

Statutory Requirements for Ministerial Approval

- **Ministerial Approval of By-laws:** The Commission must deliver to the Minister a copy of every by-law passed by it for Ministerial approval. (*Securities Act*, s. 3.2(4))
- **Ministerial Approval of Short-term Borrowing:** The Minister must approve terms and conditions of any short-term (up to two years) borrowing by the Commission. (*Securities Act*, s. 3.3(2))
- **Ministerial Approval of Commission Regulations:** Concurrently with making a rule and subject to the approval of the Minister, the Commission may make a regulation that amends or revokes any provision of a regulation made by the LGIC under the *Securities Act* or by the Commission under subsection 143(3) of the *Securities Act* or subsection 65(3) of the CFA, that in the opinion of the Commission is necessary or advisable to effectively implement the rule. (*Securities Act*, s. 143(3)) (CFA, s. 65(3))
- **Ministerial Approval of Non-publication of Notice of Urgent Rule:** The Commission is not required to publish notice of a proposed rule if it believes there is an urgent need for the rule and without it there is substantial risk of material harm to investors or to the integrity of the capital markets, and if the Minister approves. (*Securities Act*, s. 143.2(5)) (CFA, s. 67(5))
- **Ministerial Approval of Rules:** The Commission must deliver to the Minister a copy of every rule made by it together with the following:
 - (1) A copy of the notices published under section 143.2, unless publication of notice was not required, and copies of all documents referred to in the notices.
 - (2) A summary of the representations made and other documents submitted in respect of the rule as proposed.
 - (3) All other material information that was considered by the Commission in connection with the making of the rule. (*Securities Act*, s. 143.3(1)) (CFA, s. 68(1))
- **Ministerial Approval of Agreements, Memoranda of Understanding, Arrangements:** The Commission must deliver to the Minister for approval every agreement, memorandum of understanding or arrangement between the Commission and,
 - (1) another securities or financial regulatory authority;
 - (2) any self-regulatory body or organization; or
 - (3) any jurisdiction. (*Securities Act*, s. 143.10(1)) (CFA, s. 74(1))

Other Communications

- **Business Plan:** The practice is to forward the Plan to the Ministry following Board approval in accordance with the Memorandum and the Agency Establishment and Accountability Directive.
- **Information Sharing:** The Ministry of Finance and the Commission have established an information sharing protocol under which the Commission does not share information relating to securities regulatory investigations or proceedings except in accordance with the protocol and the *Securities Act*. In addition to the protocol, inquiries received by the Minister's office regarding a case in progress at the Commission are re-directed to the Commission. Any response made by the Minister's office to the inquiring party will indicate that the inquiry has been forwarded to the Commission and that the Minister cannot interfere with an enforcement investigation or proceeding.

Current Communications Protocol – Rules, Policies, Agreements, Memoranda of Understanding or Arrangements

1. Ministerial Approval of Rules

- The Commission must approve a proposed rule for publication for comment, following which the proposed rule will be published in the Bulletin. The minimum comment period is 90 days. (Note: Publication of notice of a proposed rule is not required in certain circumstances (see *Securities Act*, s. 143.2(5) and CFA, s. 67(5)). One of these is where the Commission believes there is an urgent need for the proposed rule and that, without it, there is a substantial risk of material harm to investors or the integrity of the capital markets. In these circumstances, the Commission must have prior approval of the Minister to make the rule without publication of notice.)
- If the Commission does not propose any material changes to the proposed rule after the comment period, the rule must go back to the Commission to be approved/made. It must then be delivered to the Minister for approval. A notice of the final rule must be published in the Bulletin.
- If material changes are made to the rule, then the Commission must approve its re-publication for further comment. The Ministry will be notified prior to any re-publication and provided with a copy of the changes to rule and the notice.
- Following any further comment period, the rule must be approved/made by the Commission. Once approved by the Commission, it will be sent to the Minister for approval and published in the Bulletin.
- Within 60 days after a rule is delivered to the Minister, the Minister may,
 - approve the rule,
 - reject the rule, or
 - return it to the Commission for further consideration.
- A rule that is approved by the Minister comes into force 15 days after it is approved unless there is a later day specified in the rule, in which case it comes into force on that later day.
- If the Minister does not approve a rule, reject it or return it to the Commission for further consideration, the rule comes into force:
 - if a day is specified in the rule that is at least 75 days after the rule is delivered to the Minister, then on that date;
 - if no date is specified, then on the 75th day after the rule is delivered to the Minister; or
 - if the date specified is within 75 days after the rule is delivered to the Minister, then on the 75th day after the rule is delivered to the Minister.

2. Policies

- There is no statutory requirement that policies be approved by the Minister. However, the Commission has adopted an informal practice of sending to the Ministry (for information purposes) a copy of every proposed and final policy.

3. Ministerial Approval of Agreements, Memoranda of Understanding or Arrangements

- The Commission must deliver to the Minister for approval and publish, subject to subsection 143.10(1.1), every agreement, memorandum of understanding or arrangement (MOU) between the Commission and,
 - another securities or financial regulatory authority;
 - any self-regulatory body or organization; or
 - any jurisdiction.
- If an MOU is required to be published, the Commission will provide the Minister with a copy of the proposed MOU together with a copy of the notice that will be published in the Bulletin.
- The Minister may approve or reject the MOU within 60 days after it is published in the Bulletin.
- If the Minister approves the MOU, it comes into effect on the date specified in the MOU, or if no date is specified, on the date approved. If the Minister does not approve or reject the MOU before the expiration of 60 days, the MOU comes into effect on the date specified in the MOU, or if no date is specified, on the expiry of the 60-day period.

4. Commission Regulations

- Concurrently with making a rule, and subject to the approval of the Minister, the Commission may make a regulation that amends or revokes any provision of a regulation made by the LGIC or by the Commission under section 143(3) of the *Securities Act* or section 65(2) of the CFA that in the opinion of the Commission is necessary or advisable to effectively implement the rule.
- The proposed regulation must be made by the Commission and sent to the Minister for final approval.

5. Other

- The Commission provides the Ministry with an overview of rule-making and MOU activity at the Commission on a regular basis.
- WIP meetings are scheduled on a regular basis.

1.4 Notices from the Office of the Secretary

1.4.1 Paladin Capital Markets Inc. et al.

**FOR IMMEDIATE RELEASE
November 30, 2009**

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

AND

**IN THE MATTER OF
PALADIN CAPITAL MARKETS INC.,
JOHN DAVID CULP AND
CLAUDIO FERNANDO MAYA**

TORONTO – Following a hearing held in the above noted matter, the Commission issued an Order which provides that (1) pursuant to sections 127(7) and 127(8), the Temporary Order is extended until February 3, 2010; and (2) the hearing is adjourned to February 2, 2010 at 2:30 p.m.

A copy of the Order dated November 30, 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 Irwin Boock et al.

**FOR IMMEDIATE RELEASE
November 30, 2009**

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

AND

**IN THE MATTER OF
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**

TORONTO – The Commission issued an Order in the above named matter which provides that the date for the hearing is adjourned until December 10, 2009 at 11:30 a.m. or such other date as determined by the parties and the Secretary's office, for the purpose of setting dates for the hearing of this matter on the merits.

A copy of the Order dated November 30, 2009 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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1.4.3 Uranium308 Resources Inc. et al.

**FOR IMMEDIATE RELEASE
December 1, 2009**

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

AND

**IN THE MATTER OF
URANIUM308 RESOURCES INC.,
URANIUM308 RESOURCES PLC.,
MICHAEL FRIEDMAN, GEORGE SCHWARTZ,
PETER ROBINSON, ALAN MARSH SHUMAN, AND
INNOVATIVE GIFTING INC.**

TORONTO – The Commission issued an Order in the above named matter which provides that (1) pursuant to subsection 127(8) of the Act that the Temporary Order is extended to February 4, 2010; and, (2) the hearing in this matter is adjourned to February 3, 2010, at 10:00 a.m. or such other time as advised by the Office of the Secretary of the Commission.

A copy of the Order dated November 30, 2009 is available at **www.osc.gov.on.ca**.

**OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY**

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

1.4.4 Paul Iannicca

**FOR IMMEDIATE RELEASE
December 1, 2009**

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

AND

**IN THE MATTER OF
PAUL IANNICCA**

TORONTO – The Commission issued an Order adjourning the hearing to January 7, 2010 at 10:00 a.m. or such other date as is agreed by the parties and determined by the Office of the Secretary.

A copy of the Order dated December 1, 2009 is available at **www.osc.gov.on.ca**.

**OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY**

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Nevsun Resources Ltd.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 52-107, s. 9.1 Acceptable Accounting Principles, Auditing Standards and Reporting Currency – An issuer wants relief from the requirement to prepare its financial statement in accordance with Canadian GAAP in order to use IFRS before the January 1, 2011 changeover date – The issuer has assessed the readiness of its staff, board, audit committee, auditors and investors; the issuer will provide detailed disclosure regarding its early adoption of IFRS in its MD&A as set out in CSA Staff Notice 52-320; the issuer will restate any financial statements prepared in accordance with Canadian GAAP for interim periods for the fiscal year in which they intend to adopt IFRS together with related interim MD&A and certificates required by NI 52-109.

Applicable Legislative Provisions

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

November 20, 2009

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA AND ONTARIO
(the Jurisdictions)**

AND

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

AND

**IN THE MATTER OF
NEVSUN RESOURCES LTD.
(the Filer)**

DECISION

Background

- 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (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 (the Exemption Sought), in order that the Filer may prepare its financial statements for financial periods beginning on or after January 1, 2010 in accordance with International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IFRS-IASB).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that sections 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta and Manitoba (the Passport Jurisdictions); and

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

Interpretation

- 2 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

- 3 The decision is based on the following facts represented by the Filer:
1. the head office of the Filer is located at 1075 West Georgia Street, Suite 800, Vancouver, British Columbia V6E 3C9;
 2. the Filer is a reporting issuer or equivalent in the Jurisdictions and each of the Passport Jurisdictions; the Filer is not 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 and the NYSE AMEX;
 3. the Filer is engaged in the exploration and development of gold and base metal properties located in Eritrea;
 4. the Filer currently prepares its financial statements in accordance with Canadian GAAP and it is required to reconcile its financial statements into generally accepted accounting principles in the United States (US GAAP) to comply with American filing requirements;
 5. the Filer has not previously prepared financial statements that contain an explicit and unreserved statement of compliance with IFRS;
 6. the Filer's material subsidiary Bisha Mining Share Company reports its financial statements in accordance with IFRS-IASB;
 7. 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 financial statements relating to fiscal years beginning on or after January 1, 2011;
 8. 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; under NI 52-107, only foreign issuers may use IFRS-IASB;
 9. 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;
 10. subject to obtaining the Exemption Sought, the Filer intends to adopt IFRS-IASB for its financial statements for periods beginning on and after January 1, 2010;
 11. the Filer believes that the adoption of IFRS-IASB will eliminate complexity and cost from the Filer's financial statement preparation process;
 12. the Filer is implementing a comprehensive IFRS-IASB conversion plan;
 13. the Filer has carefully assessed the readiness of its staff, board of directors, audit committee, auditors, investors and other market participants for the adoption of the Filer of IFRS-IASB for financial periods beginning on and after January 1, 2010 and has concluded that they will be adequately prepared for the Filer's adoption of IFRS-IASB for periods beginning on January 1, 2010;
 14. the Filer has considered the implication of adopting IFRS-IASB for financial periods beginning on or after January 1, 2010 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;

15. the Filer plans to disclose 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* in its management's discussion and analysis for the interim period ended September 30, 2009, including:
- (a) the key elements and timing of the Filer's changeover plan;
 - (b) the accounting policy and implementation decisions the Filer has made or will have to make;
 - (c) the exemptions available under IFRS 1 First-time Adoption of International Financial Reporting Standards (IFRS 1) that the Filer expects to apply in preparing financial statements in accordance with IFRS-IASB; and
 - (d) 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
16. the Filer will update the information set out in paragraph 15 including, to the extent known, quantitative information regarding the impact of adopting IFRS-IASB on key line items in the Filer's annual financial statements, in its annual management's discussion and analysis for the year ending December 31, 2009.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that:

- (a) the Filer prepares its annual financial statements for years beginning on or after January 1, 2010 in accordance with IFRS-IASB;
- (b) the Filer prepares its interim financial statements for interim periods beginning on or after January 1, 2010 in accordance with IFRS-IASB, except that if the Filer files interim financial statements prepared in accordance with Canadian GAAP for one or more interim periods for the financial year in which it adopts IFRS-IASB, the Filer will restate and re-file those interim financial statements in accordance with IFRS-IASB together with the related restated interim management's discussion and analysis and the certificates required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*;
- (c) the Filer provides the communication set out in paragraphs 15 and 16; and
- (d) the Filer's first IFRS-IASB financial statements for an interim period include an opening statement of financial position as at the date of transition to IFRS-IASB that is presented with prominence equal to the other statements that comprise those interim financial statements.

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

2.1.2 Labopharm Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for exemptive relief in relation to a proposed distribution of securities by the issuer by way of an "equity line of credit" – a draw down under an equity line of credit may be considered to be an indirect distribution of securities by the issuer to purchasers in the secondary market through the equity line purchaser acting as underwriter – relief granted to the issuer and purchaser from certain registration and prospectus requirements, subject to terms and conditions, including a 10% restriction on the number of securities that may be distributed under an equity line in any 12-month period, certain restrictions on the permitted activities of the purchaser and certain notification and disclosure requirements – Under the Distribution Agreement, the Purchaser, its affiliates, associates, partners or insiders, will agree not to hold a "short position" in Shares during the term of the Distribution Agreement. For clarity, the Purchaser, its affiliates, associates, partners or insiders may sell Shares to hedge their obligations to purchase the Shares to be issued pursuant to a drawdown notice, subject to the restrictions provided by section 20, the Legislation and the TSX regulations.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 71, 74(1), 147.

National Instrument 44-101 Short Form Prospectus Distributions.

National Instrument 44-102 Shelf Distributions.

November 23, 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
LABOPHARM INC.
("Labopharm" or the "Company"),
YA GLOBAL MASTER SPV LTD.
(the "Purchaser") and
YORKVILLE ADVISORS, LLC
(the "Purchaser Manager" and,
together with the Company and the Purchaser,
the "Filers")

DECISION

Background

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

- (a) that the following Prospectus (as defined below) disclosure requirements under the Legislation (the "**Prospectus Disclosure Requirements**") do not fully apply to the Company in connection with the Distribution (as defined below):
- (i) the statement in the Prospectus Supplement (as defined below) respecting statutory rights of withdrawal and rescission in the form prescribed by item 20 of Form 44-101F1 of National Instrument 44-101 – *Short Form Prospectus Distributions* ("**NI 44-101**"), and
 - (ii) the statements required by Subsections 5.5(2) and (3) of National Instrument 44-102 – *Shelf Distributions* ("**NI 44-102**");

- (b) that the prohibition from acting as a dealer unless the person is registered as such (the “Dealer Registration Requirement”) does not apply to the Purchaser and the Purchaser Manager in connection with the Distribution; and
- (c) that the requirement that a dealer send a copy of the Prospectus to a subscriber or purchaser in the context of a distribution (the “**Prospectus Delivery Requirement**”) does not apply to the Purchaser, the Purchaser Manager or the dealer(s) through whom the Purchaser distributes the Shares (as defined below) and that, as a result, rights of withdrawal or rights of rescission, price revision or damages for non-delivery of the Prospectus do not apply in connection with the Distribution.

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 Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 – *Passport System* (“**MI 11-102**”) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince-Edward-Island 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 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:

The Company

1. Labopharm is incorporated under the *Companies Act* (Québec) and has its head office located at 480 Armand-Frappier Blvd. in Laval, Québec.
2. Labopharm and its subsidiaries are engaged in the optimization of the performance of existing small molecule drugs using its proprietary controlled-release technologies.
3. Labopharm is a reporting issuer under the securities legislation in each of the provinces of Canada and is not in default of securities legislation in any Canadian jurisdiction.
4. Labopharm’s authorized share capital currently consists of an unlimited number of common shares (the “**Shares**”), without par value, and an unlimited number of preferred shares, without par value and issuable in series, of which 57,411,663 Shares and no preferred shares were outstanding as at October 21, 2009.
5. The Shares are listed for trading on the Toronto Stock Exchange (the “**TSX**”) and NASDAQ. Based on the closing price of \$1.74 of the Shares on the TSX on October 21, 2009, the current market capitalization of Labopharm is approximately \$100 million.
6. Labopharm is qualified to file a short form prospectus under Section 2.2 of NI 44-101 and therefore to file a base shelf prospectus under NI 44-102.
7. Labopharm intends to file with the securities regulator in each of the provinces of Canada a base shelf prospectus pertaining to various securities of the Company, including the Shares (such base shelf prospectus and any amendment thereto and renewal thereof, being referred to herein as the “**Base Shelf Prospectus**”).
8. The statements in Subsections 5.5(2) and (3) of NI 44-102 included in the Base Shelf Prospectus will be qualified by adding the following: “, *except in cases where an exemption from such delivery requirements has been obtained.*” (the “**Additional Disclosure**”).

The Purchaser

9. The Purchaser is an Exempt Company incorporated in the Cayman Islands with Limited Liability.

10. The Purchaser is managed by the Purchaser Manager, a Delaware limited liability company, having its head office at 101 Hudson Street, Suite 3700 in Jersey City, New Jersey, USA.
11. Neither the Purchaser nor the Purchaser Manager is a reporting issuer or registered as a registered firm as defined in National Instrument 31-103 – *Registration Requirements and Exemptions* in any jurisdiction of Canada. The Purchaser and the Purchaser Manager are not in default of securities legislation in any jurisdiction of Canada.

The Distribution Agreement

12. Labopharm proposes to enter into a standby equity distribution agreement with the Purchaser (the “**Distribution Agreement**”) pursuant to which the Purchaser would agree to purchase, and the Company would have the right but not the obligation to issue and sell, up to \$25 million of Shares (the “**Aggregate Commitment Amount**”) over a period of 36 months in a series of drawdowns.
13. Under the Distribution Agreement, the Company has the sole ability to determine the timing and the amount of the investment for each drawdown, subject to a maximum investment amount per drawdown and the Aggregate Commitment Amount.
14. The purchase price per Share and the number of Shares to be issued to the Purchaser for each drawdown will be calculated based on a predetermined percentage discount from the daily volume weighted average price of the Shares traded on the TSX over a period of ten trading days following a drawdown notice sent by the Company (the “**Drawdown Pricing Period**”). Labopharm may fix in such drawdown notice a minimum purchase price below which it will not issue any Shares for any given trading day.
15. On the 11th trading day following the date of the drawdown notice (the “**Settlement Date**”), the amount of the drawdown will be paid by the Purchaser and the relevant number of Shares will be issued by the Company.
16. The Distribution Agreement will provide that, at the time of each drawdown notice and at each Settlement Date, the Company will make a representation to the Purchaser that the Base Shelf Prospectus, as supplemented (the “**Prospectus**”), contains full, true and plain disclosure of all material facts relating to the Company and the Shares being distributed. The Company would therefore be unable to issue Shares when it is in possession of undisclosed information that would constitute a material fact or a material change.
17. On or after the Settlement Date for any drawdown, the Purchaser may seek to sell all or a portion of the Shares purchased under the drawdown.
18. The Purchaser, its affiliates, associates, partners or insiders, will agree not to own at any time, directly or indirectly, Shares representing more than 9.9 % of all issued and outstanding Shares.
19. Under the Distribution Agreement, the Purchaser, its affiliates, associates, partners or insiders, will agree not to hold a “short position” in Shares during the term of the Distribution Agreement.
20. The Purchaser and the Purchaser Manager will also agree, in effecting any resale of Shares, not to engage in any sales, marketing or solicitation activities of the type undertaken by underwriters in the context of a public offering. More specifically, the Purchaser and the Purchaser Manager will not (a) advertise or otherwise hold itself out as a dealer, (b) purchase or sell securities as principal from or to customers, (c) carry a dealer inventory in securities, (d) quote a market in securities, (e) extend or arrange for the extension of credit in connection with securities transactions, (f) run a book of repurchase and reverse repurchase agreements, (g) use a carrying broker for securities transactions, (h) lend securities for customers, (i) guarantee contract performance or indemnify the Company for any loss or liability from the failure of the transaction to be successfully consummated, (j) participate in a selling group, or (k) during a Drawdown Pricing Period, together with any affiliate, associate, subsidiaries, partners or insiders, sell Shares for gross proceeds in the aggregate exceeding the amount of the drawdown.
21. The Purchaser will not solicit offers to purchase Shares and will complete all sales of Shares through one or more dealer(s) unaffiliated with the Purchaser, the Purchaser Manager or Labopharm.

The Prospectus Supplements

22. Labopharm intends to file with the securities regulator in each of the provinces of Canada a prospectus supplement to the Base Shelf Prospectus (each a “**Prospectus Supplement**”) within two business days after the Settlement Date for each drawdown under the Distribution Agreement.

23. The Prospectus Supplement will include (i) the number of Shares sold, (ii) the price per Share, (iii) the disclosure required by Subsection 9.1(3) of NI 44-102, (iv) other information required by NI 44-101 omitted from the Base Shelf Prospectus in accordance with NI 44-102, and (v) the following statement:

Securities legislation in certain of the provinces of Canada provides purchasers with the right to withdraw from an agreement to purchase securities. This right may be exercised within two business days after receipt or deemed receipt of a prospectus and any amendment. In several of the provinces, the securities legislation further provides a purchaser with remedies for rescission or, in some jurisdictions, revisions of the price or damages if the prospectus and any amendment are not delivered to the purchaser, provided that the remedies for rescission, revisions of the price or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province. However, such rights and remedies will not be available to purchasers of common shares distributed under this prospectus because the prospectus will not be delivered to purchasers, as permitted under a decision document issued by the Autorité des marchés financiers on November 23, 2009.

In several of the provinces, the securities legislation further provides a purchaser with remedies for rescission or, in some jurisdictions, revisions of the price or damages if the prospectus and any amendment contain a misrepresentation, provided that the remedies for rescission, revisions of the price or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province. Such remedies remain unaffected by the non-delivery of the prospectus, as permitted under the decision document referred to above.

The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province for the particulars of these rights or consult with a legal adviser.

(the "**Amended Statement of Rights**")

24. The Base Shelf Prospectus, as supplemented by each Prospectus Supplement, will (a) qualify the distribution of Shares to the Purchaser on the Settlement Date of the drawdown disclosed in the relevant Prospectus Supplement, (b) qualify the distribution of such Shares to purchasers who purchase them from the Purchaser through the dealer(s) engaged by the Purchaser through the TSX (or another exchange recognized by the securities regulator in each of the provinces of Canada) (the "**TSX Purchasers**") during the period that commences on the Settlement Date and ends on the earlier of (i) the date on which the distribution of such Shares has ended or (ii) the 40th day following the Settlement Date (collectively, the "**Distribution**").
25. The Prospectus Delivery Requirements are not workable in the context of the Distribution because the TSX Purchasers will not be readily identifiable as the dealer(s) acting on behalf of the Purchaser may combine the sell orders made under the Prospectus with other sell orders and the dealer(s) acting on behalf of the TSX Purchasers may combine a number of purchase orders.
26. The Prospectus Supplement will contain an underwriter's certificate in the form set out in Section 2.2 of Appendix B to NI 44-102 signed by the Purchaser.
27. At least three business days prior to the filing of any Prospectus Supplement, the Company will provide for comment to the Decision Makers a draft of such Prospectus Supplement.

Press Releases / Continuous Disclosure

28. The Company will promptly issue and file a press release upon execution of the Distribution Agreement, disclosing certain terms of said agreement, including the Aggregate Commitment Amount, and will file a copy of said agreement and a material change report within ten days of such execution.
29. The Company will promptly issue and file a press release upon issuance of a notice of a drawdown to the Purchaser, disclosing the amount of the drawdown, the maximum number of Shares to be issued and the minimum price per Share, if any, for such drawdown.
30. The Company will promptly issue and file a press release at each Settlement Date stating: (i) the number of Shares sold and the price per Share in such drawdown, (ii) that the Base Shelf Prospectus and the relevant Prospectus Supplement will be available on SEDAR and specifying where and how a copy of these documents can be obtained, and (iii) the Amended Statement of Rights. The Company will file a material change report within ten days of the Settlement Date if the Distribution constitutes a material change under applicable securities legislation.
31. The Company will also disclose the number and price of Shares sold to the Purchaser pursuant to the Distribution Agreement in its annual financial statements and MD&A filed on SEDAR.

Deliveries upon Request

32. The Company will deliver to the Decision Makers, upon request, a copy of each drawdown notice delivered by the Company to the Purchaser under the Distribution Agreement.
33. Pursuant to the Distribution Agreement, the Purchaser will agree to make available to the Decision Makers, upon request, full particulars of trading and hedging activities by the Purchaser or the Purchaser Manager (and, if required, trading and hedging activities by their affiliates, associates, partners or insiders) in relation to securities of the Company during the term of the Distribution Agreement.

Decisions

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:

- (a) the Prospectus Disclosure Requirements do not apply to the Company in connection with the Distribution, so long as:
 - (i) the Additional Disclosure is included in the Base Shelf Prospectus;
 - (ii) the Company files Prospectus Supplements that (A) qualify the Distribution, (B) include the disclosure required by Subsection 9.1(3) of NI 44-102, and (C) include the Amended Statement of Rights;
 - (iii) the Company issues a press release immediately:
 - (A) upon entering into the Distribution Agreement, disclosing certain terms of the agreement including the Aggregate Commitment Amount,
 - (B) upon delivery of a drawdown notice to the Purchaser, disclosing the amount of the drawdown, the maximum number of Shares to be issued and the minimum price per Share, if any, for such drawdown, and
 - (C) at each Settlement Date, disclosing (i) the number of Shares sold and the price per Share for such drawdown, (ii) that the Base Shelf Prospectus and the relevant Prospectus Supplement will be available on SEDAR and specifying where and how a copy of these documents can be obtained, and (iii) the Amended Statement of Rights;
 - (iv) the number of Shares distributed by the Company under one or more equity lines of credit, including the equity line of credit established under the Distribution Agreement, does not exceed:
 - (A) in any 12 month period, 10 % of the aggregate number of Shares outstanding calculated at the beginning of such period, and
 - (B) during the term of the Distribution Agreement, 19.9% of the aggregate number of Shares outstanding calculated at the date of the Distribution Agreement; and
 - (v) the Company delivers to the Decision Makers and the TSX, upon request, a copy of each drawdown notice delivered by the Company to the Purchaser under the Distribution Agreement;
- (b) the Dealer Registration Requirement does not apply to the Purchaser or the Purchaser Manager in connection with the Distribution, so long as:
 - (i) the Purchaser and the Purchaser Manager do not solicit offers to purchase the Shares in any of the provinces of Canada and effect each Distribution to the TSX Purchasers through the TSX (or other recognized exchange) using one or more dealer(s) unaffiliated with the Purchaser, the Purchaser Manager or the Company;
 - (ii) no extraordinary commission or consideration is paid by the Purchaser or the Purchaser Manager to a person or company in respect of the Distribution to the TSX Purchasers; and

- (iii) the Purchaser and the Purchaser Manager make available to the Decision Makers, upon request, full particulars of trading and hedging activities by the Purchaser or the Purchaser Manager (and, if required, trading and hedging activities by their affiliates, associates, partners or insiders) in relation to the securities of the Company during the term of the Distribution Agreement;
- (c) the Prospectus Delivery Requirement does not apply to the Purchaser, the Purchaser Manager or the dealer(s) through whom the Purchaser distributes the Shares and that, as a result, rights of withdrawal or rights of rescission, price revision or damages for non-delivery of the Prospectus do not apply in connection with the Distribution, so long as the conditions (i) through (iii) provided in paragraph (b) of the decision are met; and
- (d) this decision will only apply to any Distribution completed within 36 months following the date of execution of the Distribution Agreement, at which point such decision will terminate.

“Louis Morisset”
Superintendant, Securities Markets

“Mario Albert”
Superintendant, Distribution

Furthermore, considering the application received from the Filers under the Legislation, the decision of the principal regulator under the coordinated review system for applications is that the Filers’ application for exemptive relief in connection with the Distribution, its supporting materials, subsequent correspondence and this decision document be kept confidential and declared inaccessible until the earlier of:

- (a) the date the Company publicly announces by way of a press release the execution of the Distribution Agreement,
- (b) the date the Company advises the principal regulator that there is no longer a need for the Confidential Materials to remain confidential or be declared inaccessible, or
- (c) December 31, 2009.

The decision of the principal regulator evidences the decision of the securities regulatory authority or regulator in Ontario.

“Benoit Longtin”
Interim Corporate Secretary

2.1.3 Scotia Asset Management L.P.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption granted to permit in specie subscriptions and redemptions by separately managed accounts in mutual funds where portfolio manager of managed accounts is also portfolio manager of the mutual funds.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, s. 13.5(2)(b)(ii) and (iii).
National Instrument 81-107 Independent Review Committee for Investment Funds.

October 30, 2009

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(THE JURISDICTION)**

AND

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

AND

**IN THE MATTER OF
SCOTIA ASSET MANAGEMENT L.P.
(the Filer)**

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for a decision providing an exemption from the requirement that prohibits a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase or sell a security from or to the investment portfolio of an associate of a responsible person, or from or to the investment portfolio of an investment fund for which a responsible person acts as an adviser (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 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 each of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador and Yukon (the Non-Principal Jurisdictions).

Interpretation

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

BNS means The Bank of Nova Scotia.

Funds means the Scotia Funds, together with any other investment funds established in the future for which SAM LP is the manager and portfolio manager.

In Specie Transfer means causing a Separately Managed Account to deliver securities to a Fund in respect of the purchase of units of the Fund by the Separately Managed Account, or receiving securities from the investment portfolio of a Fund in respect of a redemption of units of the Fund by the Separately Managed Account.

Managed Account Agreements means the investment management agreements between clients and SCICL.

NI 31-103 means National Instrument 31-103 *Registration Requirements and Exemptions*.

NI 81-102 means National Instrument 81-102 *Mutual Funds*.

Reorganization means the internal reorganization of the asset management and investment fund manager businesses currently conducted by SSI, SCICL and Scotia Capital Inc.

SAM LP means Scotia Asset Management L.P.

SCICL means Scotia Cassels Investment Counsel Limited.

Scotia Funds means each of the mutual funds currently managed by SSI.

Separately Managed Account means an account of a client that is managed on a segregated basis rather than on a pooled basis.

SSI means Scotia Securities Inc.

Representations

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

1. SCICL is a corporation organized under the *Canada Business Corporations Act* and is registered as a portfolio manager in each of the provinces and territories of Canada, other than Northwest Territories and Nunavut.
2. SCICL is a wholly-owned subsidiary of BNS and currently acts as portfolio manager in respect of various private client accounts and mutual funds managed by its affiliate, SSI.
3. SSI is a wholly-owned subsidiary of BNS and acts as a mutual fund dealer and as the manager and trustee of the family of open-end mutual funds known as the Scotia Funds.
4. SCICL currently acts as portfolio manager for several of the Scotia Funds.
5. The Filer is an Ontario limited partnership, which is wholly-owned directly or indirectly by BNS. The general partner of the Filer is Scotia Asset Management G.P. Inc., an Ontario company wholly-owned directly or indirectly by BNS with its head office in Toronto, Ontario.
6. The Filer is registered as a portfolio manager, exempt market dealer and commodity trading manager in Ontario and as a portfolio manager in each of the other provinces and territories of Canada, excluding Northwest Territories and Nunavut.
7. The Filer and SSI are affiliates based on the definition of "affiliate" in National Instrument 45-106 *Prospectus and Registration Exemptions*.
8. The predecessor to the Filer, SCICL, was granted identical relief in the Jurisdiction and certain of the Non-Principal Jurisdictions, under an MRRS Decision Document dated March 30, 2006, by the Ontario Securities Commission as principal regulator for the decision (the **Original Decision**).
9. The Scotia group of companies (**Scotia Group**) is planning a Reorganization of its asset management and investment fund manager businesses currently conducted by three entities within the Scotia Group (**SSI**, **SCICL** and **Scotia Capital Inc.**). The effective date of the Reorganization is scheduled for November 1, 2009.
10. Under the Reorganization, the asset management business conducted by SCICL at the time of the Reorganization and the investment fund manager business conducted by SSI at the time of the Reorganization will be transferred to SAM LP, such that SAM LP will become the manager and trustee of the Scotia Funds and the portfolio manager of those Scotia Funds for which SCICL currently acts as portfolio manager. As a result of this reorganization, SCICL will no longer, as of November 1, 2009, be relying on the relief granted under the Original Decision and the Filer requires the Exemption Sought as the Original Decision is not available to the Filer.
11. The Filer is, to the best of its knowledge, not in default of the securities legislation of any jurisdiction of Canada.

12. Each of the existing Funds is an open-end mutual fund trust established under the laws of the Province of Ontario. The existing Funds are reporting issuers in each of the provinces and territories of Canada but future Funds may not be reporting issuers. Any Fund that is a reporting issuer has appointed, or will appoint, an independent review committee (**IRC**) in accordance with the requirements of National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**).
13. SCICL currently provides discretionary portfolio management services to clients pursuant to Managed Account Agreements. Based on the value of the assets of the clients and depending on the allocation of a client's assets to a particular asset class, SCICL either manages the client's assets on a segregated account basis or on a pooled basis. Following the Reorganization, the Managed Account Agreements will be assigned to SAM LP and SAM LP will provide these discretionary portfolio management services to the clients.
14. Pursuant to its Managed Account Agreements with its clients, SCICL has full authority to provide its portfolio management services, including investing clients in mutual funds for which SCICL is the portfolio manager and for changing those funds as SCICL determines in accordance with the mandate of the clients.
15. The Filers may wish to or be required to deliver securities held in a Separately Managed Account to a Fund in respect of a purchase of units of the Fund, and may wish to or be required to receive securities from a Fund in respect of a redemption of units of the Fund by a Separately Managed Account.
16. As the Filer will be the trustee of the Funds, each Fund will be an 'associate' of the Filer and accordingly, absent the grant of the Exemption Sought, the Filer would be precluded by the provisions of section 13.5(2)(b)(ii) of NI 31-103 from effecting the In-Specie Transfers. As the Filer is a registered adviser which is or will be the manager and portfolio manager of the Funds and is or will be the portfolio manager of the Separately Managed Accounts, absent the grant of the Exemption Sought the Filer would be precluded by the provisions of Section 13.5(2)(b) (iii) of NI 31-103 from effecting the In Specie Transfers.
17. Effecting In Specie Transfers of securities between the Separately Managed Accounts and the Funds will allow the Filer to manage each asset class more effectively and reduce transaction costs for the client and the Fund. For example, In Specie Transfers reduce market impact costs, which can be detrimental to the clients and/or Funds(s). In Specie Transfers also allow a portfolio manager to retain within its control institutional-size blocks of securities that otherwise would need to be broken and re-assembled.
18. The only cost which will be incurred by a Fund or Separately Managed Account for an In Specie Transfer is a nominal administrative charge levied by the custodian of the Fund in recording the trades and any commission charged by the dealer executing the trade.
19. The Filer will obtain the prior specific written consent of the relevant Separately Managed Account client before it engages in any In Specie Transfers in connection with the purchase or redemption of units of the Funds for the Separately Managed Account.
20. The Filer, as manager of the Funds, will value the securities transferred under an In Specie Transfer on the same valuation day on which the unit purchase price or redemption price of a Fund is determined. With respect to the purchase of units of a Fund, the securities transferred to a Fund under an In Specie Transfer in satisfaction of the purchase price of those units will be valued as if the securities were portfolio assets of the Fund, as contemplated by subsection 9.4(2)(b)(iii) of NI 81-102. With respect to the redemption of units of a Fund, the securities transferred to a Separately Managed Account in satisfaction of the redemption price of those units will have a value equal to the amount at which those securities were valued in calculating the net asset value per security used to establish the redemption price of the units of the Fund, as contemplated by subsection 10.4(3)(b) of NI 81-102.
21. In Specie Transfers will be subject to (i) compliance with the written policies and procedures of the Filer respecting In Specie Transfers that are consistent with applicable securities legislation, and (ii) the oversight of the Filer's Compliance Department, to ensure that the transaction represents the business judgment of the Filer acting in its discretionary capacity with respect to the Fund and the Separately Managed Account, uninfluenced by considerations other than the best interests of the Fund and Separately Managed Account. The results of the oversight and review by the Filer's Compliance Department will be submitted in the form of a report to the Filer's board of directors on a quarterly basis.

Decision

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

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

- (a) in connection with the purchase of units of a Fund by a Separately Managed Account:
 - (i) where the Fund is a reporting issuer,
 - (A) the Filer, as manager of the Fund, obtains the approval of the IRC of the Fund in respect of an In-Specie Transfer in accordance with the terms of s. 5.2(2) of NI 81-107; and
 - (B) the Filer, as manager of the Fund, and the IRC of the Fund, comply with the requirements of section 5.4 of NI 81-107 for any standing instructions the IRC provides in respect of an In-Specie Transfer;
 - (ii) the Filer obtains the prior written consent of the client of the relevant Separately Managed Account before it engages in any In Specie Transfers in connection with the purchase of units of the Fund;
 - (iii) the Fund would at the time of payment be permitted to purchase the securities of the Separately Managed Account;
 - (iv) the securities are acceptable to the Filer as portfolio manager of the Fund and consistent with the Fund's investment objectives;
 - (v) the value of the securities sold to the Fund is at least equal to the issue price of the units of the Fund for which they are payment, valued as if the securities were portfolio assets of that Fund;
 - (vi) the account statement next prepared for the Separately Managed Account will include a note describing the securities delivered to the Fund and the value assigned to such securities; and
 - (vii) the Fund keeps written records of all In Specie Transfers during the financial year of the Fund, reflecting details of the securities delivered to the Fund and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place;
- (b) in connection with the redemption of units of a Fund by a Separately Managed Account:
 - (i) where the Fund is a reporting issuer,
 - (A) the Filer, as manager of the Fund, obtains the approval of the IRC of the Fund in respect of an In-Specie Transfer in accordance with the terms of s. 5.2(2) of NI 81-107; and
 - (B) the Filer, as manager of the Fund, and the IRC of the Fund, comply with the requirements of section 5.4 of NI 81-107 for any standing instructions the IRC provides in respect of an In-Specie Transfer;
 - (ii) the Filer obtains the prior written consent of the client of the relevant Separately Managed Account to the payment of redemption proceeds in the form of an In Specie Transfer;
 - (iii) the securities are acceptable to the Filer as portfolio manager of the Separately Managed Account and consistent with the Separately Managed Account's investment objectives;
 - (iv) the value of the securities is equal to the amount at which those securities were valued in calculating the net asset value per unit of the Fund used to establish the redemption price;
 - (v) the holder of the Separately Managed Account has not provided notice to terminate its Managed Account Agreement with the Filer;
 - (vi) the account statement next prepared for the Separately Managed Account will include a note describing the securities delivered to the Separately Managed Account and the value assigned to such securities; and
 - (vii) the Fund keeps written records of all In Specie Transfers during the financial year of the Fund, reflecting details of the securities delivered by the Fund and the value assigned to such securities, for

five years after the end of the financial year, the most recent two years in a reasonably accessible place; and

- (c) the Filer does not receive any compensation in respect of any sale or redemption of units of a Fund and, in respect of any delivery of securities further to an In Specie Transfer, the only charge paid by the Separately Managed Account, if any, is the commission charged by the dealer executing the trade.

This decision is effective November 1, 2009.

"Vera Nunes"

Assistant Manager, Investment Funds Branch
Ontario Securities Commission

2.1.4 Premium Brands Income Fund – 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).

Citation: Premium Brands Income Fund, Re, 2009 ABASC 495

October 15, 2009

Bryan & Company LLP
2600 Manulife Place
10180 - 101 Street
Edmonton, AB T5J 3Y2

Attention: Douglas O. Goss, Q.C.

Dear Sir:

Re: Premium Brands Income Fund (the Applicant) – Application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the Jurisdictions) that the Applicant is not a reporting issuer

The Applicant has applied to the local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions for a decision under the securities legislation (the **Legislation**) of the Jurisdictions to be deemed to have ceased to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that:

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

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is deemed to have ceased to be a reporting issuer and that the Applicant's status as a reporting issuer is revoked.

"Blaine Young"
Associate Director, Corporate Finance

2.1.5 North American Financials Capital Securities Trust

Labrador, Yukon, Northwest Territories and Nunavut.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from National Instrument 81-106 Investment Fund Continuous Disclosure to permit an investment fund that uses specified derivatives to calculate its NAV on a weekly basis and not on a daily basis, subject to certain conditions.

Applicable Legislative Provisions

National Instrument 81-106 Investment Fund Continuous Disclosure, s. 14.

September 28, 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
NORTH AMERICAN FINANCIALS
CAPITAL SECURITIES TRUST
(the-Filer)**

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) for relief from the requirement in section 14.2(3)(b) of National Instrument 81106 *Investment Fund Continuous Disclosure* (NI 81-106) that the-net asset value (NAV) of an investment fund must be calculated at least once every business day if the investment fund uses specified derivatives (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 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 Alberta, British Columbia, Manitoba, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and

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 will be an investment trust, to be established under the laws of Ontario pursuant to a trust agreement.
2. Connor, Clark & Lunn Capital Markets Inc. (the Manager) is the promoter and manager of the Filer. The Manager will be responsible for providing or arranging for the provision of administrative services required by the Filer. The head office of the Manager is located in Ontario.
3. The Filer filed a preliminary prospectus (the Preliminary Prospectus) dated September 2, 2009 on SEDAR with respect to a public offering (the Offering) of Class A Units and Class F Units (collectively, the Units, and each holder of a Unit a Unitholder) a receipt for which was issued by the Ontario Securities Commission on September 3, 2009. The Offering of the Units is a one-time offering and the Filer will not continuously distribute the Units.
4. The Filer's investment objectives are (i) to provide Unitholders with attractive taxadvantaged quarterly cash distributions, and (ii) to return to Unitholders at least the original issue price of the Units upon termination of the Fund on November 30, 2014. The Filer will seek to achieve its investment objectives through exposure to an actively managed portfolio (the Portfolio) consisting primarily of investment grade capital securities of the six largest Canadian banks, large Canadian insurance companies and U.S. financial institutions with a minimum issuer rating of A by Standard & Poor's, a division of the McGraw Hill Companies, Inc.
5. The Portfolio will be held by North American Portfolio Trust (NAPT), a trust to be established under the laws of the Province of Ontario pursuant to a trust agreement. The Manager is also the manager and promoter of NAPT.
6. NAPT will be established for the purpose of acquiring and holding the Portfolio. The Filer will seek to achieve its investment objective by entering into a forward purchase and sale agreement (the Forward Agreement) with a Canadian financial institution or one of its affiliates

(the Counterparty) pursuant to which the Counterparty will agree to deliver to the Filer on the earlier of: (i) November 30, 2014; or (ii) any other date upon which the Forward Agreement is terminated in accordance with its terms (the Forward Termination Date), a portfolio consisting of Canadian public issuers that are "Canadian securities" as defined in subsection 39(6) of the *Income Tax Act* (Canada) (the Canadian Securities Portfolio). The aggregate value of the Canadian Securities Portfolio will be equal to the redemption proceeds of a corresponding number of units of NAPT, net of any amount owing by the Filer to the Counterparty.

7. To provide liquidity for the Class A Units, an application requesting conditional listing approval will be made on behalf of the Filer to the Toronto Stock Exchange (the TSX).
8. The Class F Units are designed for fee-based accounts and differ from the Class A Units in the following ways: (i) Class F Units will not be listed on a stock exchange; (ii) the fees payable to the syndicate of agents with respect to the Offering on the issuance of the Class F Units are lower than the Class A Units; and (iii) the service fee component of the management fee payable to the Manager, being 0.40% per annum of the net asset value attributable to the Class A Units, plus applicable taxes, is only payable with respect to the Class A Units. The Class F Units are convertible into Class A Units and it is expected that liquidity for the Class F Units will be obtained by means of conversion into Class A Units and the sale of those Class A Units through the facilities of the TSX.
9. Class A Units and Class F Units may be redeemed on the second last business day of April of any year commencing in 2011 (but must be surrendered by the Unitholder on the last business day of March in order to be redeemed), subject to certain conditions, at a redemption price per Unit equal to 100% of the net asset value per Unit of the relevant class, as applicable (less any costs associated with the redemption, including brokerage costs, and less any net-realized capital gains to the Filer that are distributed to a Unitholder concurrently with the proceeds of disposition on redemption).
10. In addition to such annual redemption right, Class A Units and Class F Units may be redeemed on the second last business day of each month, other than in the month of April (but must be surrendered by the Unitholder on the last business day of the month preceding the redemption month in order to be redeemed), subject to certain conditions, at a redemption price computed by reference to the market price of the Class A Units on the applicable monthly redemption date (and

less any costs associated with the redemption, including brokerage costs).

11. Class F Units may be converted in any week on the first business day of the week (the Conversion Date) by delivering a notice and surrendering such Class F Units by 5:00 p.m. (Toronto time) at least 5 business days prior to the Conversion Date. For each Class F Unit so converted, a holder will receive that number of Class A Units equal to the net asset value per Class F Unit as of the close of trading on the business day immediately preceding the Conversion Date divided by the net asset value per Class A Unit as of the close of trading on the business day immediately preceding the Conversion Date.
12. Under section 14.2(3)(b) of NI 81-106, an investment fund that is a reporting issuer that uses or holds specified derivatives, such as the Filer intends to do, must calculate its net asset value on a daily basis.
13. The Filer proposes to calculate net asset value on the Friday of each week (or if any Friday is not a business day, the immediately preceding business day) and the last business day of each month.
14. The Preliminary Prospectus discloses, and the final prospectus of the Filer will disclose, that the net asset value per Unit of each class of Units will be calculated and made available to the financial press for publication on a weekly basis. The Manager will post the net asset value per Unit of each class of Units on its website at www.cclcapitalmarkets.com.

Decision

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

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

- (a) the Class A Units are listed on the TSX; and
- (b) the Filer calculates the net asset value per Unit of each class of Units at least weekly.

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

2.1.6 Cominar Real Estate Investment Trust and National Bank Financial Inc.

TRANSLATION

October 16, 2009

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for exemptive relief to permit issuers to and underwriter, acting as agent, to make "at the market" prospectus distributions (ATM distributions) to purchasers through facilities of Toronto Stock Exchange (TSX) – issuer proposing to enter into equity distribution agreement with agent relating to ATM distributions through TSX – ATM distributions to be made pursuant to shelf prospectus procedures in Part 9 of NI 44-102 Shelf Distributions – issuers will issue a press release and file agreement on SEDAR – issuers will file in connection with ATM distribution (i) a shelf prospectus in the jurisdictions, and (ii) a prospectus supplement describing terms of equity distribution agreement – prospectus qualifies distribution of securities by issuers to purchasers who purchase securities from the issuers pursuant to an ATM distribution – application for relief from prospectus delivery requirement in subsection 71(1) of the Securities Act (Ontario) (the Act) and relief from certain prospectus form requirements (including requirements which prescribe language describing purchasers' statutory rights) – delivery of prospectus not practicable in circumstances of an ATM distribution model premised on concept of "constructive delivery" (access equals delivery) of prospectus to purchasers as a result of filing prospectus on SEDAR – relief from prospectus delivery requirement has effect of removing two-day right of withdrawal in subsection 71(2) of the Act and remedies of rescission or damages for non-delivery of the prospectus in s. 133 of the Act - remedies a purchaser of securities may have against issuers or agent for rescission or damages if prospectus contains a misrepresentation remain unaffected by non-delivery of prospectus and the decision – relief granted on certain terms and conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 71(1), 71(2), 147

Applicable Ontario Rules

National Instrument 44-101 Short Form Prospectus Distributions, Part 8 and Item 20 of Form 44-101F1.

National Instrument 44-102 Shelf Distributions, Part 9 and s. 1.1 of Appendix A.

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
QUÉBEC AND ONTARIO AND
BRITISH COLUMBIA, ALBERTA,
SASKATCHEWAN, MANITOBA,
NOVA SCOTIA, NEW BRUNSWICK,
PRINCE EDWARD ISLAND AND
NEWFOUNDLAND AND LABRADOR**

AND

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

AND

**IN THE MATTER OF
COMINAR REAL ESTATE INVESTMENT TRUST AND
NATIONAL BANK FINANCIAL INC.
(the "Applicants")**

DECISION

Background

The securities regulatory authority or regulator in Quebec and Ontario (the "**Decision Maker**") has received an application from the Applicants (the "**Application**") for a decision under the securities legislation of those jurisdictions (the "**Legislation**") for the following relief:

- (a) that the requirement that a dealer who receives an order to subscribe for or purchase a security offered in a distribution to which the prospectus requirement of the Legislation applies deliver to the purchaser a copy of the prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) and any amendment to the prospectus not later than the second working day after the subscription or purchase (the "**Prospectus Delivery Requirement**") does not apply to National Bank Financial Inc. (the "**Underwriter**") or any Selling Agent (as defined below) in connection with at-the-market distributions (the "**ATM Distributions**") as defined in National Instrument 44-102 *Shelf Distributions* (the "**NI 44-102**") made by Cominar Real Estate Investment Trust (the "**Issuer**") pursuant to the Equity Distribution Agreement (as defined below) (the "**Prospectus Delivery Relief**");
- (b) that the requirement to include in a prospectus supplement: (i) a certificate of the Issuer in the form specified in NI 44-102 and (ii) the statement respecting purchaser's statutory rights of withdrawal and remedies of rescission or damages in the form prescribed by item 20 of Form 44-101F1 under *National Instrument 44-101 Respecting*

Short Form Prospectus Distributions (collectively the “**Prospectus Form Requirement**”), do not apply to a prospectus supplement to be filed in connection with the ATM Distributions, provided the alternative certificate and disclosure contemplated herein is provided (such exemption being hereinafter referred to, collectively with the Prospectus Delivery Relief, as the “**Prospectus Relief**”); and

The securities regulatory authority or regulator in each of Quebec, Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (collectively, the “**Jurisdiction**”) (**Coordinated Exemptive Relief Decision Makers**) has received an application from the Applicants for a decision under securities legislation of the Jurisdiction (the “**Legislation**”) for a decision that the Application and this decision (the “**Confidential Material**”) be kept confidential and not be made public until the earlier of (i) the date on which the Issuer enters into the Equity Distribution Agreement; (ii) the date the Applicants advise 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 (the “**Confidential Relief**”).

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

- (a) the *Autorité des marchés financiers* is the principal regulator for this application;
- (b) the Applicants 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, Nova Scotia, New Brunswick, Prince Edward Island 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.
- (d) the decision evidences the decision of each Coordinated Exemptive Relief Decision Maker.

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 Applicants (as applicable to each of them):

The Issuer

- 1. The Issuer is an unincorporated closed-end investment trust established under the laws of the Province of Québec. The principal office of the Issuer is located in Québec City, Québec.
- 2. The Issuer owns a diversified real estate portfolio of 215 retail, industrial and mixed-use properties.
- 3. The Issuer is a reporting issuer under the Legislation of each of the Jurisdictions and is not, to its knowledge, in default of its obligations as a reporting issuer under such Legislation.
- 4. The units of the Issuer (the “**Units**”) are listed on the Toronto Stock Exchange (the “**TSX**”).

The Underwriter

- 5. The Underwriter is based in Montreal, Québec, and is registered as an investment dealer under the Legislation of each of the Jurisdictions, is a member of the Investment Industry Regulatory Organization of Canada, and is a participating organization of the TSX.

Base Shelf Prospectus

- 6. The Issuer will file under National Policy 11-202 – *Process for Prospectus Reviews in Multiple Jurisdictions* (“**NP 11-202**”) a short form base shelf prospectus (the “**Shelf Prospectus**”) in the Jurisdictions for the distribution of Units. The Shelf Prospectus will contain the non-forward looking issuer certificate contemplated by section 1.1 of Appendix B to NI 44-102.

Proposed ATM Distributions

- 7. The Issuer is proposing to enter into an equity distribution agreement (the “**Equity Distribution Agreement**”) with the Underwriter, pursuant to which the Issuer may issue and sell Units through the Underwriter, as agent, as described below.
- 8. Prior to making ATM Distributions, the Issuer will have filed in the Jurisdictions in connection with the ATM Distributions a prospectus supplement describing the ATM Distributions, including terms of the Equity Distribution Agreement (the “**Prospectus Supplement**”).
- 9. The Issuer will issue a news release regarding the entering into of the Equity Distribution Agreement and will file the Equity Distribution Agreement on SEDAR. The news release will indicate that the Shelf Prospectus and Prospectus Supplement have been filed on SEDAR and specify where and how purchasers may obtain a copy. A copy of the news release will also be posted on the Issuer's website.

10. Under the Prospectus Supplement, the Issuer may issue and sell Units in an amount not to exceed 10% of the market value of the outstanding Units calculated in accordance with section 9.2 of NI 44-102.
 11. The Underwriter will, in turn, sell Units in Canada through methods constituting an ATM Distribution, including sales made on the TSX through the Underwriter, as agent, directly or through another TSX participating organization retained by the Underwriter to act as selling agent for the Underwriter (such other TSX participating organization, a **"Selling Agent"**).
 12. The Underwriter will act as an agent on behalf of the Issuer in connection with the sale of the Units on pre-existing trading markets in which Units are traded (**"Trading Markets"**) and will be the sole entity paid an underwriting fee (in this instance an agency fee) or commission by the Issuer in connection with such sales. The Underwriter will sign an underwriter's certificate in the Prospectus Supplement filed on SEDAR. The Underwriter will effect the ATM Distributions on Trading Markets either itself or through a Selling Agent. If the sales are effected through a Selling Agent, the Underwriter will pay the Selling Agent a customary seller's commission for effecting the trades on its behalf. A purchaser's rights and remedies under the Legislation against the Underwriter as underwriter of an ATM Distribution through a Trading Market will not be affected by a decision to effect the sale directly or through a Selling Agent.
 13. The number of Units sold on Trading Markets pursuant to an ATM Distribution on any trading day will not exceed 25% of the trading volume of the Units on the TSX on that day.
 14. The Equity Distribution Agreement will provide that, at the time of each sale of Units pursuant to an ATM Distribution, the Issuer will make a representation to the Underwriter that the Shelf Prospectus, as supplemented by the Prospectus Supplement, contains full, true and plain disclosure of all material facts relating to the Issuer and Units being distributed. The Issuer would therefore be unable to proceed with sales pursuant to an ATM Distribution when it is in possession of undisclosed information that would constitute a material fact or a material change in respect of the Units.
 15. If, after the Issuer delivers a sell notice to the Underwriter, the sale of Units specified in the notice, taking into consideration prior sales, would constitute a material fact or material change, the Issuer would have to suspend sales under the Equity Distribution Agreement until either (i) it has filed a material change report or amended the Shelf Prospectus or Prospectus Supplement, or (ii) circumstances have changed so that the sales would no longer constitute a material fact or material change.
 16. In determining whether the sale of the number of Units specified in the sell notice would constitute a material fact or material change, the Issuer will take into account a number of factors, including, without limitation: (i) the parameters of the sell notice including the number of Units proposed to be sold and any price or timing restrictions that the Issuer may impose; (ii) the percentage of the outstanding Units that the number of Units proposed to be sold represents; (iii) the trading volume and volatility of Units; (iv) any recent development in the business, affairs and capital structure of the Issuer; and (v) the prevailing market conditions generally.
 17. The Underwriter will monitor closely the market's reaction to trades made under the ATM Distributions in order to evaluate the likely market impact of future trades. The Underwriter has experience and expertise in managing sell orders to limit downward pressure on the Unit price. If the Underwriter has concerns as to whether a particular sell order placed by the Issuer may have a significant effect on the market price of the Units, the Underwriter will recommend against effecting the trade at that time as it is in the interest of both the Issuer and the Underwriter to minimize the market impact of sales under an ATM Distribution.
 18. The underwriter's certificate to be signed by the Underwriter and included in the Prospectus Supplement will be in the form prescribed by section 2.2 of Appendix B to NI 44 102.
- Prospectus Delivery Requirement*
19. Pursuant to the Prospectus Delivery Requirement, a dealer effecting a trade of the Units on behalf of the Issuer as part of an ATM Distribution is required to deliver a prospectus to all investors who purchase Units on Trading Markets.
 20. The delivery of a prospectus is not practicable in the circumstances of an ATM Distribution as neither the Underwriter nor a Selling Agent effecting the trade will know the identity of the purchasers.
 21. Although purchasers under an ATM Distribution would not physically receive a printed prospectus, the Shelf Prospectus and the Prospectus Supplement (together with all documents incorporated by reference) will be filed and readily available to all purchasers electronically via SEDAR. Moreover, the Issuer will issue a news release that specifies where and how copies of the Shelf Prospectus and the Prospectus Supplement can be obtained.

22. The liability of an issuer or an underwriter (and others) for misrepresentation in a prospectus pursuant to the civil liability provisions of the Legislation will not be affected by the grant of an exemption from the Prospectus Delivery Requirement, as purchasers of securities offered by a prospectus during the period of distribution have a right of action for damages or rescission without regard as to whether the purchaser relied on the misrepresentations and whether or not the purchaser in fact received a copy of the prospectus.

Withdrawal Right

23. Pursuant to the Legislation, an agreement to purchase securities is not binding on the purchaser if a dealer receives, not later than midnight on the second day, exclusive of Saturdays, Sundays and holidays, after receipt by the purchaser of the latest prospectus or any amendment to the prospectus, a notice in writing that the purchaser does not intend to be bound by the agreement of purchase (the “**Withdrawal Right**”).
24. The Withdrawal Right is not workable in the context of an ATM Distribution because the Shelf Prospectus and Prospectus Supplement will not be delivered to purchasers.

Right of Rescission or Damages for Non-Delivery

25. Pursuant to the Legislation, a purchaser of securities has a right of rescission or damages against a dealer for non-delivery of the prospectus (the “**Right of Action for Non-Delivery**”).
26. The Right of Action for Non-Delivery is not workable in the context of an ATM Distribution because the Shelf Prospectus and Prospectus Supplement will not be delivered to purchasers.

Disclosure of Securities Sold in ATM Distributions

27. The Issuer will file on SEDAR a report disclosing the number and average price of Units distributed by the Issuer pursuant to the Shelf Prospectus and Prospectus Supplement filed in connection with the ATM Distributions, as well as gross proceeds, commissions and net proceeds, within seven calendar days after the end of the month with respect to sales made during the prior month.
28. The Issuer will also disclose in the ordinary course the number and average price of Units sold under ATM Distributions, as well as gross proceeds, commissions and net proceeds in its annual and interim financial statements and related MD&A filed on SEDAR.

Prospectus Form Requirements

29. Exemptive relief from the Prospectus Form Requirements is required, including with respect to the Issuer's certificate contained in the Prospectus Supplement, to reflect that no pricing supplement will be filed subsequent to the Prospectus Supplement. Accordingly, the Issuer will file the Prospectus Supplement with the following forward looking issuer certificate which will supersede and replace, solely as regards to ATM Distributions contemplated by the Prospectus Supplement, the non-forward looking issuer certificate contained in the Shelf Prospectus:

The short form prospectus, as supplemented by the foregoing, together with the documents incorporated in the prospectus by reference as of the date of a particular distribution of securities offered under the prospectus as supplemented, will, as of that date, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus as supplemented, as required by the securities legislation of each of the provinces of Canada.

30. Exemptive relief from the Prospectus Form Requirements is required to reflect the Issuer's relief from the Prospectus Delivery Requirement. Accordingly, the Issuer will include the following language in the Prospectus Supplement in replacement of the language prescribed by the Prospectus Form Requirements:

Securities legislation in certain of the provinces of Canada (the “Jurisdictions”) provides purchasers with the right to withdraw from an agreement to purchase securities and with remedies for rescission or, in some Jurisdictions, revision of the price or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment are not delivered to the purchaser, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. However, purchasers of Units under the issuer's at-the-market distributions will not have any right to withdraw from an agreement to purchase the Units and will not have remedies for rescission or, in some Jurisdictions, revision of the price or damages for non delivery of the Shelf Prospectus or this Prospectus Supplement because the Shelf Prospectus and this Prospectus Supplement relating to Units purchased by such purchaser will not be delivered, as permitted under the Decision dated

●, 2009 and granted pursuant to *National Policy 11-203 Respecting Process for Exemptive Relief Applications in Multiple Jurisdictions*.

Securities legislation in the Jurisdictions also provides purchasers with remedies for rescission or, in some Jurisdictions, revision of the price or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment contain a misrepresentation, provided that the remedies are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's jurisdiction. Any remedies under the securities legislation of the Jurisdictions that a purchaser of Units under the issuer's at-the-market distributions may have against the issuer or the Underwriter for rescission or, in some jurisdictions, revision of the price or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment contain a misrepresentation remain unaffected by the non-delivery of the Shelf Prospectus and this Prospectus Supplement and the Decision referred to above.

Purchasers should refer to the applicable provisions of the securities legislation of their respective jurisdictions and the Decision referred to above for the particulars of their rights or consult with a legal adviser.

31. The modified disclosure of purchasers' rights set forth in paragraph 30 above will supersede the statement of purchasers' rights contained in the Shelf Prospectus.

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 Legislation is that the Dual Exemption for Prospectus Relief is granted provided that:

- (a) as it relates to the Prospectus Delivery Requirement, the representations in paragraphs 9, 11, 12, 14, 15 and 17 are complied with;

- (b) as it relates to the Prospectus Form Requirements, the disclosure described in paragraphs 27, 29 and 30 is made; and

- (c) this decision will terminate 25 months after the issuance of a receipt for the Shelf Prospectus under the Legislation.

"Jean Daigle"

Director, Corporate Finance

The decision of the Coordinated Review Decision Makers under the Legislation is that the Coordinated Exemptive Relief for Confidential Relief is granted provided that the Confidential Material will be kept confidential and not be made public until the earlier of: (i) the date on which the Applicants enter into an Equity Distribution Agreement; (ii) the date the Applicants advise 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.

"Benoit Longtin"

Interim Secretary

2.1.7 Scotia Asset Management L.P.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption from the reporting requirements of clause 117(1)(c) of the Securities Act (Ontario) provided that certain disclosure is made in the management reports of fund performance for each mutual fund and that certain records of portfolio transactions are kept.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 117(1)(c), 117(2).

Rules Cited

National Instrument 81-106 Investment Fund Continuous Disclosure.

October 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
SCOTIA ASSET MANAGEMENT L.P.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the provisions of the Legislation requiring a management company to file a report within thirty days after each month end relating to every purchase or sale effected by a mutual fund through any related person or company with respect to which the related person or company received a fee either from the mutual fund or from the other party to the transaction or both (the **Reporting Requirement**) shall not apply to purchases and sales effected by the Funds (as defined below) through any Related Party (as defined below) (the **Requested 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 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, New Brunswick, Nova Scotia and Newfoundland and Labrador (the **Non-principal Jurisdictions**).

Interpretation

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

Funds means those Scotia Mutual Funds and Pinnacle Program Funds managed by the Filer, together with such other current and future funds managed by the Filer and in respect of which the Filer acts as portfolio manager from time to time.

NI 81-106 means National Instrument 81-106 *Investment Fund Continuous Disclosure*.

Related Party means SCI, SSI or other brokers or dealers that are subsidiaries or affiliates of The Bank of Nova Scotia.

SCI means Scotia Capital Inc.

SSI means Scotia Securities Inc.

Representations

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

1. The Filer is an Ontario limited liability partnership, which is wholly-owned, directly or indirectly, by The Bank of Nova Scotia. The Filer is registered as a portfolio manager (or equivalent) under the securities legislation of the Jurisdiction and each of the Non-principal Jurisdictions. It is also registered as a commodity trading manager and exempt market dealer in Ontario.
2. Each of SSI and SCI is a corporation existing under the laws of Ontario.
3. SCI is registered as an investment dealer under the securities legislation in the Jurisdiction and each of the Non-principal Jurisdictions. SCI is an affiliate of the Filer.
4. SSI is registered as a mutual fund dealer under the securities legislation in each of the jurisdictions of Canada. SSI is an affiliate of the Filer.
5. The Funds are or will be mutual funds that are reporting issuers in each province and territory of Canada.

6. Each Related Party is a “related person or company” to the Funds within the meaning of the Legislation because each Related Party and each of SSI and SCI is a subsidiary or affiliate of The Bank of Nova Scotia.
7. The Filer is the portfolio manager of the Funds and accordingly is a “management company” or equivalent under the Legislation. From time to time, the Filer may hire sub-advisors to the Funds.
8. The Filer has discretion to allocate the brokerage transactions of the Funds in any manner that it believes to be in the Funds’ best interests. As disclosed in the annual information forms of the existing Funds; the Filer may allocate brokerage business of the Funds to a Related Party, provided that such transactions are made on terms and conditions comparable to those offered by unrelated brokers and dealers.
9. The purchase or sale of securities effected through a Related Party reflects the business judgement of the Filer uninfluenced by considerations other than the best interests of the Funds. In allocating brokerage transactions, consideration is given to commission rates and to research, execution and other services offered.
10. The introduction of NI 81-106 on June 1, 2005 resulted in the Funds having to disclose in their interim and annual management reports of fund performance (**MRFPs**) any transactions involving Related Parties, and the Filer having to make essentially the same disclosure within 30 days at the end of any month in which a transaction with a Related Party occurs.
11. Pursuant to NI 81-106, the Funds prepare and file interim and annual MRFPs that disclose any transactions involving a Related Party, including the identity of the Related Party, its relationship to the Fund, the purpose of the transaction, the measurement basis used to determine the recorded amount and any ongoing commitments to the Related Party. A discussion of portfolio transactions with a Related Party must include the dollar amount of commission, spread or any other fee that a Fund paid to any Related Party in connection with the transaction.
12. In the absence of the Requested Relief, the Reporting Requirement requires the Filer to prepare a report of any purchase or sale of securities by a Fund that is effected through a Related Party and file it with the principal regulator within 30 days of the end of the month in which the transaction occurs. This report discloses the issuer of the securities, the class or designation of the securities, the amount or number of securities, the consideration, the name of the Related Party, the name of the person or company that paid the fee to the Related Party and the amount of the fee received.
13. The predecessor to the Filer, Scotia Cassels Investment Counsel Limited (**SCICL**), was granted identical relief in the Jurisdiction and the Non-principal Jurisdictions, under a MRRS Decision Document dated February 13, 2008, by the Ontario Securities Commission as principal regulator for the decision (the **Original Decision**).
14. Pursuant to an internal reorganization effective November 1, 2009 involving SCICL, the Filer and certain of their affiliates, the portfolio management activity carried on by SCICL prior to November 1, 2009 will be transferred to and continue to be carried on by the Filer as of November 1, 2009. As a result of this reorganization, SCICL will, as of November 1, 2009, no longer be relying on the relief granted under the Original Decision and the Filer will require the Requested Relief as the Original Decision is not available to the Filer.
15. The Filer is, to the best of its knowledge, not in default of the securities legislation in any jurisdiction of Canada.
16. It is costly and time consuming to provide the information required by the Reporting Requirement on a monthly and segregated basis for each Fund.

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:

- (a) the annual and interim MRFPs for each Fund disclose
 - (i) the name of the Related Party,
 - (ii) the amount of fees paid to each Related Party, and
 - (iii) the person or company who paid the fees, if they were not paid by the Fund; and
- (b) the records of portfolio transactions maintained by each Fund include, separately for every portfolio transaction effected by the Fund through a Related Party,
 - (i) the name of the Related Party,
 - (ii) the amount of fees paid to the Related Party, and

- (iii) the person or company who paid the fees.

This decision is effective November 1, 2009.

“David L. Knight”
Commissioner
Ontario Securities Commission

“Mary G. Condon”
Commissioner
Ontario Securities Commission

2.1.8 Scotia Asset Management L.P.

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Relief granted to permit a portfolio manager, on behalf of a mortgage fund, to continue to purchase and sell mortgages from and to affiliates of the portfolio manager past November 1, 2009 – Relief issued on conditions which contemplate IRC approval and oversight

Applicable Legislative Provisions

Securities Act (Ontario), ss. 117(1)(a), 117(1)(c), 117(2).
National Instrument 31-103 Registration Requirements, s. 13.5(2)(b)(i).

October 28, 2009

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

AND

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

AND

**IN THE MATTER OF
SCOTIA ASSET MANAGEMENT L.P.
(the Filer)**

DECISION

Background

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

- (a) that the Filer, as adviser to Scotia Mortgage Income Fund (the **Fund**), be exempt from the requirement which prohibits a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase or sell securities of any issuer from or to the investment portfolio of a responsible person (the **Related Party Relief**); and
- (b) that the Filer be exempt from the obligation to file monthly reports in respect of such related party transactions (the **Reporting Relief**),

((a) and (b) are collectively the **Requested Relief**).

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

- (i) the Ontario Securities Commission (the **OSC**) is the principal regulator for the Application; and
- (ii) 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, Québec, New Brunswick, Nova Scotia, Saskatchewan, and Newfoundland and Labrador (the Non-principal Jurisdictions).

Interpretation

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

Representations

1. The Filer is an Ontario limited partnership and has its head office in Toronto, Ontario. It is registered in the category of portfolio manager in the Jurisdiction. It is also registered as a portfolio manager in each of the Non-principal Jurisdictions.
2. Scotia Securities Inc. (**SSI**) is a corporation amalgamated under the laws of Ontario. SSI is the trustee and manager of the Fund until November 1, 2009 at which time the Filer will become trustee and manager of the Fund.
3. The Fund is an open-end mutual fund established under the laws of the Province of Ontario.
4. The Fund is a reporting issuer under the securities laws of each of the provinces and territories of Canada and is not in default of any requirements of applicable securities legislation.
5. The Fund is qualified for distribution in each of the provinces and territories of Canada under a simplified prospectus and annual information form dated November 3, 2008.
6. An independent review committee (**IRC**) under National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**) has been appointed for the Fund.
7. The Filer has been appointed to provide portfolio management and investment advisory services to the Fund. As portfolio manager of the Fund, the Filer is a "responsible person" as defined in the Legislation.
8. The investment objective of the Fund is to provide regular interest income. It invests primarily in high quality mortgages on residential properties in Canada.

9. Scotia Mortgage Corporation and The Bank of Nova Scotia (**BNS**) are "affiliates" of the Filer within the meaning of the Legislation and accordingly, the Filer is deemed to own securities beneficially owned by Scotia Mortgage Corporation or BNS.
10. Neither Scotia Mortgage Corporation or BNS, nor any director, officer or employee of either of them participates in the formulation of investment decisions made on behalf of, or advice given to, the Fund by the Filer.
11. The Filer is prohibited under the Legislation from purchasing or selling, on behalf of the Fund, the securities of any issuer from or to its own account so that the Fund is prohibited from purchasing mortgages from, or selling mortgages to BNS, Scotia Mortgage Corporation or any other affiliate of the Filer, as such mortgages are deemed to be beneficially owned by the Filer.
12. The Filer seeks greater flexibility to purchase and sell mortgages, on behalf of the Fund, in the event that Scotia Mortgage Corporation is unable for any reason to sell mortgages to the Fund. The Requested Relief, if granted, will permit the Filer greater flexibility to purchase and sell mortgages, on behalf of the Fund, from or to Scotia Mortgage Corporation, BNS, or any other affiliate of the Filer.
13. NI 81-107 does not provide an exemption for principal trading of the type contemplated by the Requested Relief.
14. The provisions of National Policy Statement No. 29 set out guidelines relating to the acquisition of mortgages by a mutual fund from lending institutions with whom such fund does not deal at arm's length and provide certain protections to the investing public.
15. The IRC of the Fund will consider the policies and procedures of the Filer and will provide its approval on whether the proposed transactions in mortgages achieve a fair and reasonable result for the Fund in accordance with section 5.2(2) of NI 81-107.
16. To the extent that the Fund is purchasing mortgages from, or selling mortgages to, BNS, Scotia Mortgage Corporation or another affiliate of the Filer, this fact is set out, and will continue to be set out, in the simplified prospectus and annual information form of the Fund.
17. The Legislation requires the filing of a report by the Filer with respect to each transaction involving

the purchase and sale of mortgages between the Fund and any related person or company (**Related Company**) as defined in the Legislation, including BNS, Scotia Mortgage Corporation or another affiliate of the Filer, and with respect to each transaction involving the purchase and sale of a mortgage effected by the Fund in respect of which BNS, Scotia Mortgage Corporation or another affiliate of the Filer receives a fee either from the Fund or the Filer or from both (the **Reporting Requirement**).

18. Since the introduction of National Instrument 81-106 *Investment Fund Continuous Disclosure (NI 81-106)*, mutual funds are no longer required to prepare a statement of portfolio transactions. NI 81-106 now requires the Fund to prepare and file annual and interim management reports of fund performance that include a discussion of transactions involving related parties to the Fund. When discussing portfolio transactions with related parties, NI 81-106 requires the Fund to include the dollar amount of commission, spread, or any other fee paid to a related party in connection with a portfolio transaction.
19. The predecessor to the Filer, Scotia Cassels Investment Counsel Limited (**SCICL**), was granted identical relief in the Jurisdiction and the Non-principal Jurisdictions, under an MRRS Decision Document dated November 1, 2007, by the Ontario Securities Commission as principal regulator for the decision (the **Original Decision**).
20. Pursuant to an internal reorganization effective November 1, 2009 involving SCICL, the Filer and certain of their affiliates, the portfolio management activity carried on by SCICL prior to November 1, 2009 will be transferred to and carried on by the Filer as of November 1, 2009. As a result of this reorganization, SCICL will, as of November 1, 2009, no longer be relying on the relief granted under the Original Decision.
21. The Filer is, to the best of its knowledge, not in default of securities legislation of any jurisdiction of Canada.

Decision

Related Party Relief

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

The decision of the principal regulator under the Legislation is that the Related Party Relief is granted, provided that:

- (a) the purchase or sale is consistent with, or is necessary to meet, the investment objective of the Fund;

- (b) the IRC of the Fund has approved the transaction in accordance with section 5.2(2) of NI 81-107;
- (c) the Filer, as manager of the Fund, complies with section 5.1 of NI 81-107;
- (d) the Filer, as manager of the Fund, and the IRC of the Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions; and
- (e) the Fund keeps the written records required by section 6.1(2)(g) of NI 81-107;

This decision is effective November 1, 2009.

"Vera Nunes"

Assistant Manager, Investment Funds Branch
Ontario Securities Commission

Reporting Relief

The principal regulator is satisfied that the decision meets 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 Reporting Relief is granted provided that:

- (a) the annual and interim management reports of fund performance for the Fund disclose
 - (i) the name of the Related Company,
 - (ii) the amount of fees paid to each Related Company, and
 - (iii) the person or company who paid the fees if they were not paid by the Fund; and
- (b) the records of portfolio transactions maintained by each Fund include, separately for every portfolio transaction effected by the Fund through a Related Company,
 - (i) the name of the Related Company,
 - (ii) the amount of fees paid to the Related Company, and
 - (iii) the person or company who paid the fees.

This decision is effective November 1, 2009.

“David L. Knight”
Commissioner
Ontario Securities Commission

“Mary G. Condon”
Commissioner
Ontario Securities Commission

2.1.9 Toromont Industries Ltd.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Takeover Bids – Pre-Bid Integration – Offeror requires relief from subsection 2.4(1) of Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids and subsection 93.2(1) of the Securities Act (Ontario), which require that an offeror making a take-over bid must offer consideration for the securities deposited under the bid that is at least equal to and in the same form as the highest consideration paid by the offeror in any purchase not generally available to holders of such securities and made within the period of 90 days immediately preceding such bid – payment of common shares of the offeror in lieu of cash permitted because (i) common shares of offeror are highly liquid; and (ii) market price of common shares of offeror is at a substantial premium to the cash price paid under prior transaction.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 93.2(1), 104(2)(c).

Citation: Toromont Industries Ltd., Re, 2009 ABASC 562

November 12, 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
TOROMONT INDUSTRIES LTD.
(the Filer)**

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the requirement under the Legislation that an offeror making a take-over bid must offer consideration for the securities deposited under the bid that is at least equal to and in the same form as the highest consideration paid by the offeror in any purchase not generally available to holders of such securities and made within the period of 90 days immediately preceding such bid (the **Pre-Bid Integration**

Requirement) shall not apply to a take-over bid to be made by the Filer (the **Offer**) to purchase all of the issued and outstanding trust units (**Trust Units**) of Enerflex Systems Income Fund (**Enerflex**) and all of the issued and outstanding class B limited partnership units (**Exchangeable LP Units** and, together with the Trust Units, the **Units**) of Enerflex Holdings Limited Partnership (**Enerflex LP**) (the **Exemption Sought**).

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

- (a) the Alberta Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that subsection 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, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, the Northwest Territories, Nunavut 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* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation existing under the *Canada Business Corporations Act* and its registered and head office is located in Concord, Ontario.
2. The Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia and Prince Edward Island and is not in default of any of the requirements of securities legislation applicable to it.
3. The authorized share capital of the Filer consists of an unlimited number of common shares (the **Filer Shares**) and an unlimited number of preferred shares. As at October 26, 2009, there were 64,731,937 Filer Shares issued and outstanding and no preferred shares were issued and outstanding.
4. The Filer Shares are listed and posted for trading on the Toronto Stock Exchange (the **TSX**).

5. Enerflex is an open-ended mutual fund trust governed by the laws of the Province of Alberta pursuant to a Deed of Trust dated August 22, 2006 and its head office is located in Calgary, Alberta.
6. Enerflex is a reporting issuer in each of the provinces and territories of Canada.
7. The authorized capital of Enerflex consists of an unlimited number of Trust Units and an unlimited number of special voting units. As at November 1, 2009, there were 44,281,622 Trust Units issued and outstanding and one special voting unit issued and outstanding.
8. The Trust Units are listed and posted for trading on the TSX.
9. Enerflex LP, an indirect subsidiary of Enerflex, is a limited partnership formed under the laws of the Province of Alberta pursuant to a limited partnership agreement dated August 23, 2006. Enerflex LP's head office is located in Calgary, Alberta.
10. Enerflex LP is a reporting issuer in British Columbia, Alberta, Saskatchewan, Québec and Nova Scotia.
11. The authorized capital of Enerflex LP consists of an unlimited number of class A limited partnership units, all of which are held indirectly by Enerflex, and an unlimited number of Exchangeable LP Units. The Exchangeable LP Units are exchangeable for Trust Units on a one-for-one basis. As at November 1, 2009, there were 2,663,422 Exchangeable LP Units outstanding.
12. During the period from August 14, 2009 to October 2, 2009, the Filer acquired an aggregate of 702,700 Trust Units (the **Pre-Bid Purchases**) for cash consideration. No additional Trust Units have been purchased by the Filer since October 2, 2009. The highest price paid by the Filer for a Trust Unit in the Pre-Bid Purchases was \$10.05 (the **Highest Pre-Bid Purchase Price**).
13. On October 16, 2009, the Filer publicly announced that it had made a proposal to Enerflex to enter into a business combination transaction whereby the holders of Units would receive cash and Filer Shares representing total consideration of \$13.50 per Unit, with at least 50% of the consideration comprised of cash and the balance in Filer Shares.
14. The Filer and Enerflex were not able to successfully negotiate a business combination transaction, and on November 12, 2009, the Filer announced its intention to proceed with the Offer.

15. As consideration for each Unit, the Filer will offer pursuant to the Offer, at the option of the holders of Units, either (i) \$13.50 cash or (ii) \$0.05 cash plus 0.5098 Filer Shares, subject in each case to pro ration. The maximum amount of cash payable by the Filer pursuant to the Offer will be 50% of the total consideration and the balance will be payable in Filer Shares.
16. There is a "liquid market", as that term is defined in section 1.2 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (MI 61-101), in the Filer Shares; the Filer has received an opinion from its financial advisor to that effect.
17. In any event, there will continue to be a "liquid market", as that term is defined in section 1.2 of MI 61-101, in the Filer Shares subsequent to the Filer taking up and paying for the Units pursuant to the terms of the Offer; the Filer has received an opinion from its financial advisor to that effect.
18. The \$13.50 price offered under the Offer represents a 34% premium to the closing price of the Trust Units on the TSX on October 16, 2009 and a 34% premium to the Highest Pre-Bid Purchase Price.
19. The consideration to be received by holders of Trust Units pursuant to the Offer, including those holders who will receive all or a substantial portion of their consideration in Filer Shares, represents a significant premium to the Highest Pre-Bid Purchase Price, and the Filer has received an opinion from its financial advisor to that effect.

Decision

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

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

"William S. Rice, QC"
Alberta Securities Commission

"Stephen R. Murison"
Alberta Securities Commission

2.1.10 Scotia Asset Management L.P. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Relief granted to portfolio manager to engage the funds it manages in purchases of debt securities of related entities in the primary market – relief conditional on IRC approval and compliance with pricing requirements.

Applicable Legislative Provisions

Securities Act (Ontario), ss. 111(2)(a), 111(2)(c)(ii), 111(3)
National Instrument 31-103 Registration Requirements, s. 13.5(2)(a).

National Instrument 81-107 Independent Review Committee for Investment Funds, s. 6.2.

October 28, 2009

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

AND

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

AND

**IN THE MATTER OF
SCOTIA ASSET MANAGEMENT L.P.
(the Filer)**

AND

**IN THE MATTER OF
MUTUAL FUNDS
subject to NI 81-102 Mutual Funds
(NI 81-102) for which the Filer acts as portfolio advisor
and/or manager and any mutual funds subject to
NI 81-102 that may be established in the future for
which the Filer acts as portfolio advisor and/or
manager (the Filer Funds)**

DECISION

Background

The principal regulator in the Jurisdiction received an application (the **Application**) from the Filer on behalf of each Filer Fund for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for relief from:

- (a) the prohibition in the Legislation of the Jurisdiction (the **Related Shareholder Relief**) that prohibits a mutual fund from making or holding an investment in any person or company who is a substantial

security holder of the mutual fund, its management company or distribution company (each a **Related Shareholder**);

- (b) the prohibition in the Legislation of the Jurisdiction (the **Related Party Relief**) that prohibits a mutual fund from making or holding an investment in an issuer in which a Related Shareholder has a significant interest (each, a **Related Party**); and
- (c) the prohibition in the Legislation of the Jurisdiction (the **Related Issuer Relief**) that prohibits a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase a security of an issuer (each, a **Related Issuer**) in which a responsible person or an associate of a responsible person is a partner, officer or director unless this fact is disclosed to the client, and the written consent of the client to the purchase is obtained before the purchase.

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

- (i) the Ontario Securities Commission (the **OSC**) is the principal regulator for the Application;
- (ii) in respect of the Related Shareholder Relief and the Related Party Relief, 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, Québec, New Brunswick, Nova Scotia and Newfoundland and Labrador (the **Non-principal Jurisdictions**); and
- (iii) in respect of the Related Issuer Relief, the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nunavut and Yukon.

Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions*, in MI 11-102, in NI 81-102 and in National Instrument 81-107 – *Independent Review Committee for Investment Funds* (**NI 81-107**) have the same meaning in this decision unless otherwise defined.

In this decision the term **Related Person** will be used to refer to a Related Shareholder, a Related Party or a Related Issuer depending on the provision that is being considered and the term **Requested Related Person Securities Relief** will be used to refer to the Related Shareholder Relief, the Related Party Relief and the Related Issuer Relief, together, requested by the Filer on behalf of the Filer Funds.

Representations

This decision is based on the following facts represented by the Filer in respect of the Filer and the Filer Funds.

1. The Filer is or will be the portfolio adviser and/or the manager of the Filer Funds of the Filer.
2. The Filer and the Filer Funds are or will be compliant with the requirements of NI 81-107. Accordingly, each Filer Fund has or will have an independent review committee (**IRC**) established in accordance with NI 81-107.
3. The investment strategies of each of the Filer Funds that relies on the Requested Related Person Securities Relief permit or will permit it to invest in the securities purchased.
4. Related Persons of the Filer are significant issuers of securities.
5. Section 6.2 of NI 81-107 provides an exemption from the prohibitions in the Related Shareholder Relief, Related Party Relief and Related Issue Relief for exchange-traded securities, such as common shares. It does not permit a Filer Fund, or the Filer on behalf of a Filer Fund, to purchase non-exchange-traded securities issued by Related Persons. Some securities of Related Persons, such as debt securities, of the Filer are not listed and traded.
6. Related Persons (in particular those that are Canadian banks) are issuers of highly rated commercial paper and other debt instruments. The Filer considers that the Filer Funds should have access to such securities for the following reasons:
 - (a) There is currently and has been for several years a very limited supply of highly rated corporate debt.
 - (b) Diversification is reduced to the extent that a Filer Fund is limited with respect to investment opportunities.
 - (c) To the extent that a Filer Fund is trying to track or outperform a benchmark it is important for the Filer Fund to be able to purchase any securities included in the benchmark. Debt securities of Related Persons of the Filer are included in most of the Canadian debt indices.
7. The Filer is seeking the Related Shareholder Relief, Related Party Relief and Related Issuer Relief to permit the Filer Funds of the Filer to purchase and hold non-exchange traded securities that are debt securities, other than asset backed commercial paper securities, with a term

to maturity of 365 days or more, issued by a Related Person in a Primary Offering.

8. Each non-exchange traded security purchased by a Filer Fund pursuant to the Related Shareholder Relief, Related Party Relief and Related Issuer Relief will be a debt security, other than an asset backed commercial paper security, with a term to maturity of 365 days or more, issued by a Related Person that has been given and continues to have, at the time of purchase, an "approved credit rating" by an approved credit rating organization.
9. Each non-exchange traded debt security purchased by a Filer Fund pursuant to the Related Shareholder Relief, Related Party Relief and Related Issuer Relief will be purchased in a Primary Offering where the terms of the Primary Offering, such as the size and the pricing, will be a matter of public record as evidenced in a prospectus, offering memorandum, press release or other public document.
10. The predecessor to the Filer, Scotia Cassels Investment Counsel Limited (**SCICL**), and Scotia Securities Inc. (**SSI**) and Scotia Capital Inc. (**SCI**) were granted identical relief in the Jurisdiction and the Non-principal Jurisdictions, under an MRRS Decision Document dated December 23, 2008, by the Ontario Securities Commission as principal regulator for the decision (the **Original Decision**).
11. Pursuant to an internal reorganization effective November 1, 2009 involving SCICL, the Filer and certain of their affiliates, the portfolio management and investment fund management activities carried on by SCICL, SSI and/or SCI (except for the portfolio management activities SCI carries on as an IIROC member) prior to November 1, 2009 will be transferred to and carried on by the Filer as of November 1, 2009. As a result of this reorganization, neither SCICL, SSI nor SCI will, as of November 1, 2009, be relying on the relief granted under the Original Decision and the Filer requires the Requested Related Person Purchase Relief as the Original Decision is not available to the Filer.
12. The Filer is, to the best of its knowledge, not in default of the securities legislation of any jurisdiction of Canada.

Decision

Related Shareholder Relief and Related Party Relief

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

The decision of the principal regulator is that the Related Shareholder Relief and Related Party Relief is granted to permit the Filer to purchase and hold non-exchange traded

debt securities, other than asset backed commercial paper securities, with a term to maturity of 365 days or more, issued by a Related Person in a Primary Offering on behalf of the Filer Funds on the conditions that:

- (a) the purchase or holding is consistent with, or is necessary to meet, the investment objective of the Filer Fund;
- (b) at the time of the purchase the IRC of the Filer Fund has approved the transaction in accordance with Section 5.2(2) of NI 81-107;
- (c) the manager of the Filer Fund complies with section 5.1 of NI 81-107 and the manager and the IRC of the Filer Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;
- (d) the size of the Primary Offering is at least \$100 million;
- (e) at least 2 purchasers who are independent arm's-length purchasers, which may include "independent underwriters" within the meaning of National Instrument 33-105 – *Underwriting Conflicts*, collectively purchase at least 20% of the Primary Offering;
- (f) no Filer Fund shall participate in the Primary Offering if following its purchase the Filer Fund would have more than 5% of its net assets invested in non-exchange traded debt securities of the Related Person;
- (g) no Filer Fund shall participate in the Primary Offering if following its purchase the Filer Fund together with related Filer Funds will hold more than 20% of the securities issued in the Primary Offering;
- (h) the price paid for the securities by a Filer Fund in the Primary Offering shall be no higher than the lowest price paid by any of the arm's length purchasers who participate in the Primary Offering; and
- (i) no later than the time the Filer Fund files its annual financial statements, the Filer files with the securities regulatory authority or regulator the particulars of any such investments.

This decision will expire on the coming into force of any securities legislation relating to fund purchases of Related Person debt securities in a Primary Offering.

This decision is effective November 1, 2009.

"David L. Knight"
Commissioner
Ontario Securities Commission

"Mary G. Condon"
Commissioner
Ontario Securities Commission

Related Issuer Relief

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

The decision of the principal regulator is that the Related Issuer Relief is granted to permit the Filer to purchase and hold non-exchange traded debt securities, other than asset backed commercial paper securities, with a term to maturity of 365 days or more, issued by a Related Person in a Primary Offering on behalf of the Filer Funds on the conditions that:

- (j) the purchase or holding is consistent with, or is necessary to meet, the investment objective of the Filer Fund;
- (k) at the time of the purchase the IRC of the Filer Fund has approved the transaction in accordance with Section 5.2(2) of NI 81-107;
- (l) the manager of the Filer Fund complies with section 5.1 of NI 81-107 and the manager and the IRC of the Filer Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;
- (m) the size of the Primary Offering is at least \$100 million;
- (n) at least 2 purchasers who are independent arm's-length purchasers, which may include "independent underwriters" within the meaning of National Instrument 33-105 – *Underwriting Conflicts*, collectively purchase at least 20% of the Primary Offering;
- (o) no Filer Fund shall participate in the Primary Offering if following its purchase the Filer Fund would have more than 5% of its net assets invested in non-exchange traded debt securities of the Related Person;
- (p) no Filer Fund shall participate in the Primary Offering if following its purchase the Filer Fund together with related Filer Funds will hold more than 20% of the securities issued in the Primary Offering;

- (q) the price paid for the securities by a Filer Fund in the Primary Offering shall be no higher than the lowest price paid by any of the arm's length purchasers who participate in the Primary Offering; and
- (r) no later than the time the Filer Fund files its annual financial statements, the Filer files with the securities regulatory authority or regulator the particulars of any such investments.

This decision will expire on the coming into force of any securities legislation relating to fund purchases of Related Person debt securities in a Primary Offering.

This decision is effective November 1, 2009.

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

**2.1.11 Lombard Odier Darier Hentsch (Canada),
Limited Partnership et al.**

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Cease to be a reporting issuer under securities legislation – The Funds are not eligible to rely on simplified process set in the CSA Staff Notice 12-307 because the Funds are beneficially owned by more than 50 persons; the Funds distribute their securities only to clients accounts that are fully managed by the manager.

Applicable Legislative Provisions

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

November 27, 2009

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,
MANITOBA, ONTARIO, QUÉBEC,
NEW BRUNSWICK, NOVA SCOTIA, AND
NEWFOUNDLAND AND LABRADOR
(the “Jurisdictions”)**

AND

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

AND

**IN THE MATTER OF
LOMBARD ODIER DARIER HENTSCH (CANADA),
LIMITED PARTNERSHIP
(the “Manager”)**

AND

**IN THE MATTER OF
LODH OPUS – DIVERSIFIED CANADIAN EQUITY
FUND, LODH OPUS – AMERICAN EQUITY FUND
LODH OPUS – CANADIAN SMALL
CAPITALIZATION EQUITY FUND,
LODH OPUS – EAFE EQUITY FUND,
LODH OPUS – MONEY MARKET FUND,
LODH OPUS – FIXED INCOME FUND
(collectively, the “Funds” and together with
the Manager, the “Filers”)**

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the “**Decision Maker**”) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the “**Legislation**”) for, as applicable, the revocation of the reporting issuer

status of the Funds or for a declaration that each of the Funds be deemed to have ceased to be a reporting issuer (the “**Exemption Sought**”).

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

- (a) the *Autorité des marchés financiers* is the principal regulator for this application (the “**Principal Regulator**”), and
- (b) the decision is the decision of the Principal Regulator and evidences the decision of each other Decision Maker.

Interpretation

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

Representations

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

1. The Funds were created on May 27, 2003 pursuant to a declaration of trust governed by the laws of the Province of Québec and the federal laws of Canada applicable therein. The Funds were created as non-redeemable investment funds. The units of the Funds now known as series L units were issued pursuant to this declaration of trust and were distributed pursuant to the prospectus exemption under the applicable securities legislation;
2. Lombard Odier Darier Hentsch (Canada), Limited Partnership, acting by its general partner Lombard Odier Darier Hentsch Management (Canada) Inc., is the manager of the Funds. The Manager is duly registered with the Principal Regulator, the Ontario Securities Commission, the Alberta Securities Commission and the British Columbia Securities Commission as a securities adviser with an unrestricted practice or an equivalent category. RBC Dexia Investor Services Trust is the trustee of the Funds;
3. On June 28, 2007, the declaration of trust was amended and restated, converting each of the Funds into mutual funds. The amended and restated declaration of trust permitted, among other things, the issuance of new series of units of the Funds;
4. The Funds became reporting issuers in each of the Jurisdictions on September 27, 2007, the date on which the Principal Regulator granted a receipt (the “**Initial Receipt**”) for the simplified prospectus of the Funds dated September 24, 2007 (the “**Simplified Prospectus**”) with respect to the

- distribution of series L, P and S units of the Funds (the “**Reporting Issuer Event**”);
5. At the time of the renewal of the Simplified Prospectus on October 7, 2008, the simplified prospectus of the Funds dated October 6, 2008 with respect to the distribution of Series L, P, S and G units of each Fund, except for the LODH Opus – Money Market Fund for which only series L, P and S units were subject to the distribution, was granted a receipt by the Principal Regulator;
 6. As at the date hereof, the Manager holds, as registered and beneficial holder, all of the outstanding series P, S and G units of the Funds, while the outstanding series L units of the Funds are held, as beneficial holders, by clients of the Manager who have signed a discretionary management agreement with the Manager;
 7. The efforts deployed following the Reporting Issuer Event did not lead to the expected results and the distribution of units of the Funds to new investors was insufficient. As at April 1, 2009 and since the issuance of the Initial Receipt, there has been no more than 15 new unitholders for each Fund in Québec and Ontario (except for the LODH Opus – Money Market Fund for which there has been 21 new unitholders in Québec);
 8. All unitholders of the Funds are in Québec and Ontario. In Ontario, the unitholders held their units prior to the Reporting Issuer Event, which means there has been no new unitholder in Ontario since the Initial Receipt was granted;
 9. Notwithstanding the Reporting Issuer Event, the units of the Funds are distributed exclusively by Lombard Odier Darier Hentsch Securities (Canada) Inc., as principal distributor, and are exclusively made available for purchase to clients of the Manager who have signed discretionary management agreements with the Manager;
 10. As at the date hereof, all unitholders of the Funds in Québec are “accredited investors” as defined under subsections 1.1 (j), (k), (l), (m) or (q) (as applicable) of National Instrument 45-106 – *Prospectus and Registration Exemptions* (“**NI 45-106**”). Furthermore, some unitholders in Québec acquired their units in accordance with the provisions of the exemption set forth under Section 2.10 of NI 45-106 (minimum amount investment). Unitholders of the Funds in Ontario are “accredited investors” as defined under subsections 1.1(j), (k), (l), (m) or (t) of NI 45-106;
 11. No unitholder of the Funds has an investment policy containing restrictions to invest in mutual funds which are reporting issuers in any Canadian jurisdiction;
 12. Since the date of the Initial Receipt, no unitholder of the Funds has made an investment decision with respect to the Funds, as series L units of the Funds are exclusively purchased by the Manager on behalf of its clients who have executed discretionary management agreements with the Manager;
 13. The decision of the Funds to become reporting issuers was not made further to any request, demand or condition by existing unitholders prior to the Reporting Issuer Event;
 14. The Funds are not in default of any of their obligations as reporting issuers under the Legislation;
 15. No management fees are charged to the Funds in respect of series L units of each Fund, but a negotiated management fee is charged directly by the Manager to unitholders of the Funds, as described in the Simplified Prospectus and in accordance with the discretionary management agreements. As current unitholders of the Funds, except for the Manager, only hold series L units of the Funds, the Exemption Sought would not be prejudicial to unitholders of the Funds with respect to management fees since the revocation of the reporting issuer status of the Funds would not result in a change to the previously negotiated management fee; the Manager assumes directly the legal fees, books and record fees, independent review committee fees and audit fees of the Funds;
 16. On September 22, 2009, the Manager issued a press release, and concurrently notified the unitholders of the Funds, stating that an application for the Exemption Sought had been made and that, should the Exemption Sought be granted, the Funds would cease to be reporting issuers everywhere in Canada;
 17. Should the Exemption Sought be granted, the Funds will continue to comply with the applicable provisions of National Instrument 81-106 – *Investment Fund Continuous Disclosure*; and
 18. Granting the Exemption Sought would not be prejudicial to holders of units of the Funds.
- Decision**
- Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.
- The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted.
- “Louis Morisset”
Autorité des marchés financiers

2.1.12 Scotia Asset Management L.P. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Relief granted to portfolio manager to engage the funds it manages in purchases of debt securities of related entities in the secondary market – relief conditional on IRC approval and compliance with pricing requirements.

Applicable Legislative Provisions

Securities Act (Ontario), ss. 111(2)(a), 111(2)(c)(ii), 111(3).

National Instrument 31-103 Registration Requirements, s. 13.5(2)(a).

National Instrument 81-107 Independent Review Committee for Investment Funds, s. 6.2.

October 28, 2009

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

AND

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

AND

IN THE MATTER OF
SCOTIA ASSET MANAGEMENT L.P.
(the Filer)

AND

IN THE MATTER OF
THE MUTUAL FUNDS
listed in Schedule A and any mutual funds subject
to National Instrument 81-102 Mutual Funds
(NI 81-102) that may be established in the future
for which the Filer acts as portfolio advisor and/or
manager (the Filer Funds)

DECISION

Background

The principal regulator in the Jurisdiction received an application (the **Application**) from the Filer on behalf of each Filer Fund for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for relief from:

- (a) the prohibition in the Legislation of the Jurisdiction (the **Related Shareholder Relief**) that prohibits a mutual fund from making or holding an investment in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company (each a **Related Shareholder**);
- (b) the prohibition in the Legislation of the Jurisdiction (the **Related Party Relief**) that prohibits a mutual fund from making or holding an investment in an issuer in which a Related Shareholder has a significant interest (each, a **Related Party**); and
- (c) the prohibition in the Legislation of the Jurisdiction (the **Related Issuer Relief**) that prohibits a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, from purchasing a security of any issuer (each a **Related Issuer**) in which a responsible person or an associate of a responsible person is a partner, officer or director unless this fact is disclosed to the client and the written consent of the client to the purchase is obtained before the purchase.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

- (i) the Ontario Securities Commission (the **OSC**) is the principal regulator for the Application;
- (ii) in respect of the Related Shareholder Relief and Related Party Relief, the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**M1 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Québec, New Brunswick, Nova Scotia, and Newfoundland and Labrador (the **Non-principal Jurisdictions**); and
- (iii) in respect of the Related Issuer Relief, the Filer has provided notice that Section 4.7(1) of M1 11-102 is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nunavut and Yukon Territory.

Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions* (NI 14-101), M1 11-102, in NI 81-102 and in National Instrument 81-107 – *Independent Review Committee for Investment Funds* (NI 81-107) have the same meaning in this decision unless otherwise defined.

In this decision the term **Related Person** will be used to refer to a Related Shareholder, a Related Party or a Related Issuer depending on the provision that is being considered and the term **Requested Related Person Securities Relief** will be used to refer to the Related Shareholder Relief, the Related Party Relief and the Related Issuer Relief, together, requested by the Filer on behalf of the Filer Funds.

Representations

This decision is based on the following facts represented by the Filer in respect of the Filer and the Filer Funds.

1. The Filer is or will be the portfolio adviser and/or the manager of the Filer Funds of the Filer.
2. The Filer and the Filer Funds are or will be compliant with the requirements of NI 81-107. Accordingly, each Filer Fund has or will have an independent review committee (**IRC**) established in accordance with NI 81-107.
3. The investment strategies of each of the Filer Funds that relies on the Requested Related Person Securities Relief permit or will permit it to invest in the securities purchased, either as a principal strategy in achieving its investment objective or as a temporary strategy pending the purchase of other securities.
4. Related Persons of the Filers are significant issuers of securities.
5. The Filers previously obtained Related Shareholder Relief, Related Party Relief and Related Issuer Relief (the **Existing Related Person Relief**) so that a Filer Fund of the Filer could invest in common shares of Related Persons of the Filer.
6. Section 6.2 of NI 81-107 provides an exemption from the prohibitions comprising the Requested Related Person Securities Relief for exchange-traded securities, such as common shares. It does not permit a Filer Fund, or the Filer on behalf of a Filer Fund, to purchase non-exchange-traded securities issued by Related Persons. Some securities of Related Persons, such as debt securities, of the Filers are not listed and traded.
7. The Filer is restricted from purchasing and holding non-exchange-traded securities of Related Persons on behalf of the Filer Funds. Such Related Persons (in particular those that are Canadian banks) are issuers of highly rated commercial paper and other debt instruments. The Filer considers that the Filer Funds should have access to such securities for the following reasons:
 - (a) There is currently and has been for several years a very limited supply of highly rated corporate debt.
 - (b) Diversification is reduced to the extent that a Filer Fund is limited with respect to investment opportunities.
 - (c) To the extent that a Filer Fund is trying to track or outperform a benchmark it is important for the Filer Fund to be able to purchase any securities included in the benchmark. Debt securities of Related Persons of the Filer are included in most of the Canadian debt indices.
8. The Filer is seeking the Related Shareholder Relief, Related Party Relief and Related Issuer Relief to permit the Filer Funds of the Filer to purchase and hold non-exchange-traded securities that are debt securities issued by a Related Person.

9. Each purchase of non-exchange traded securities of a Related Person will occur in the secondary market and not under primary distributions or treasury offerings of a Related Person.
10. Each non-exchange traded security purchased by a Filer Fund pursuant to the Requested Related Person Securities Relief will be a debt security issued by a Related Person that has been given and continues to have, at the time of purchase, an "approved credit rating" by an approved credit rating organization.
11. If a Filer Fund's purchase of non-exchange traded securities issued by a Related Person involves an interfund trade with another fund to which NI 81-107 applies, the provisions of section 6.1(2) of NI 81-107 will apply to such transaction.
12. The predecessor to the Filer, Scotia Cassels Investment Counsel Limited (**SCICL**), and Scotia Securities Inc. (**SSI**) and Scotia Capital Inc. (**SCI**) were granted identical relief in the Jurisdiction and the Non-principal Jurisdictions, under an MRRS Decision Document dated May 22, 2008, by the Ontario Securities Commission as principal regulator for the decision (the **Original Decision**).
13. Pursuant to an internal reorganization effective November 1, 2009 involving SCICL, the Filer and certain of their affiliates, the portfolio management and investment fund manager activities carried on by SCICL, SSI and/or SCI (except for the portfolio management activities SCI carries on as an IIROC member) prior to November 1, 2009 will be transferred to and carried on by the Filer as of November 1, 2009. As a result of this reorganization, neither SCICL, SSI nor SCI will, as of November 1, 2009, be relying on the relief granted under the Original Decision and the Filer requires the Requested Related Person Securities Relief as the Original Decision is not available to the Filer.
14. The Filer is, to the best of its knowledge, not in default of the securities legislation of any jurisdiction of Canada.

Decision

Related Shareholder and Related Party Relief

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

The decision of the principal regulator is that the Related Shareholder Relief and Related Party Relief is granted to permit the Filer to purchase Related Person debt securities in the secondary market on behalf of the Filer Funds on the condition that:

- (a) the purchase or holding is consistent with, or is necessary to meet, the investment objective of the Filer Fund;
- (b) the IRC of the Filer Fund has approved the transaction in accordance with Section 5.2(2) of NI 81-107;
- (c) the manager of the Filer Fund complies with section 5.1 of NI 81-107 and the manager and the IRC of the Filer Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;
- (d) the price payable for the security is not more than the ask price of the security;
- (e) the ask price of the security is determined as follows:
 - (i) if the purchase occurs on a marketplace, the price payable is determined in accordance with the requirements of that marketplace; or
 - (ii) if the purchase does not occur on a marketplace,
 - (A) the Filer Fund may pay the price for the security at which an independent, arm's length seller is willing to sell the security, or
 - (B) if the Filer Fund does not purchase the security from an independent, arm's length seller, the Filer Fund must pay the price quoted publicly by an independent marketplace or obtain, immediately before the purchase, at least one quote from an independent, arm's length purchaser or seller and not pay more than that quote;
- (f) the transaction complies with any applicable "market integrity requirements"; and

- (g) no later than the time the Filer Fund files its annual financial statements, the Filer files with the securities regulatory authority or regulator the particulars of any such investments.

This decision is effective November 1, 2009.

“David L. Knight”
Commissioner
Ontario Securities Commission

“Mary G. Condon”
Commissioner
Ontario Securities Commission

Related Issuer Relief

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

The decision of the principal regulator is that the Related Issuer Relief is granted to permit the Filer to purchase Related Person debt securities in the secondary market on behalf of the Filer Funds on the condition that:

- (h) the purchase or holding is consistent with, or is necessary to meet, the investment objective of the Filer Fund;
- (i) the IRC of the Filer Fund has approved the transaction in accordance with Section 5.2(2) of NI 81-107;
- (j) the manager of the Filer Fund complies with section 5.1 of NI 81-107 and the manager and the IRC of the Filer Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;
- (k) the price payable for the security is not more than the ask price of the security;
- (l) the ask price of the security is determined as follows:
 - (i) if the purchase occurs on a marketplace, the price payable is determined in accordance with the requirements of that marketplace; or
 - (ii) if the purchase does not occur on a marketplace,
 - (A) the Filer Fund may pay the price for the security at which an independent, arm's length seller is willing to sell the security, or
 - (B) if the Filer Fund does not purchase the security from an independent, arm's length seller, the Filer Fund must pay the price quoted publicly by an independent marketplace or obtain, immediately before the purchase, at least one quote from an independent, arm's length purchaser or seller and not pay more than that quote.
- (m) the transaction complies with any applicable “market integrity requirements”; and
- (n) no later than the time the Filer Fund files its annual financial statements, the Filer files with the securities regulatory authority or regulator the particulars of any such investments.

This decision is effective November 1, 2009

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

SCHEDULE A

Scotia T-Bill Fund
Scotia Premium T-Bill Fund
Scotia Money Market Fund
Scotia U.S. \$ Money Market Fund
Scotia Mortgage Income Fund
Scotia Canadian Income Fund
Scotia Cassels Short-Mid Government Bond Fund
Scotia Cassels Canadian Corporate Bond Fund
Scotia U.S. \$ Bond Fund
Scotia Global Bond Fund
Scotia Diversified Monthly Income Fund
Scotia Canadian Balanced Fund
Scotia Cassels Advantaged Income Fund
Scotia Canadian Tactical Asset Allocation Fund
Scotia Canadian Dividend Fund
Scotia Cassels Canadian Equity Fund
Scotia Canadian Blue Chip Fund
Scotia Canadian Growth Fund
Scotia Canadian Small Cap Fund
Scotia Resource Fund
Scotia Cassels North American Equity Fund
Scotia Cassels U.S. Equity Fund
Scotia U.S. Growth Fund
Scotia U.S. Value Fund
Scotia International Value Fund
Scotia Cassels International Equity Fund
Scotia European Fund
Scotia Pacific Rim Fund
Scotia Latin American Fund
Scotia Global Growth Fund
Scotia Global Small Cap Fund
Scotia Global Opportunities Fund
Scotia Global Climate Change Fund
Scotia Canadian Bond Index Fund
Scotia Canadian Index Fund
Scotia U.S. Index Fund
Scotia CanAm® Index Fund
Scotia Nasdaq Index Fund
Scotia International Index Fund
Scotia Selected Income & Modest Growth Portfolio
Scotia Selected Balanced Income Growth Portfolio
Scotia Selected Moderate Growth Portfolio
Scotia Selected Aggressive Growth Portfolio
Scotia Partners™ Income & Modest Growth Portfolio
Scotia Partners Balanced Income & Growth Portfolio
Scotia Partners Moderate Growth Portfolio
Scotia Partners Aggressive Growth Portfolio
Scotia Vision Conservative 2010 Portfolio
Scotia Vision Aggressive 2010 Portfolio
Scotia Vision Conservative 2015 Portfolio
Scotia Vision Aggressive 2015 Portfolio
Scotia Vision Conservative 2020 Portfolio
Scotia Vision Aggressive 2020 Portfolio
Scotia Vision Conservative 2030 Portfolio
Scotia Vision Aggressive 2030 Portfolio
Scotia Bond Fund
Scotia INNOVA Income Portfolio
Scotia INNOVA Balanced Income Portfolio
Scotia INNOVA Balanced Growth Portfolio
Scotia INNOVA Growth Portfolio
Scotia INNOVA Maximum Growth Portfolio

Pinnacle Short Term Income Fund
Pinnacle Income Fund
Pinnacle High Yield Income Fund
Pinnacle American Core-Plus Bond Fund
Pinnacle Global Real Estate Securities Fund
Pinnacle Strategic Balanced Fund
Pinnacle Canadian Value Equity Fund
Pinnacle Canadian Mid Cap Value Equity Fund
Pinnacle Canadian Growth Equity Fund
Pinnacle Canadian Small Cap Equity Fund
Pinnacle American Value Equity Fund
Pinnacle American Mid Cap Value Equity Fund
Pinnacle American Large Cap Growth Equity Fund
Pinnacle American Mid Cap Growth Equity Fund
Pinnacle International Equity Fund
Pinnacle International Small to Mid Cap Value Equity Fund
Pinnacle Global Equity Fund
Pinnacle Balanced Income Portfolio
Pinnacle Conservative Balanced Growth Portfolio
Pinnacle Balanced Growth Portfolio
Pinnacle Conservative Growth Portfolio
Pinnacle Growth Portfolio

2.1.13 Scotia Asset Management L.P. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Relief granted to portfolio manager to engage the funds it manages in purchases of debt securities of related entities in the secondary market – relief conditional on IRC approval and compliance with pricing requirements.

Applicable Legislative Provisions

Securities Act (Ontario), s. 111(2)(a), 111(2)(c)(ii), 111(3).

National Instrument 31-103 Registration Requirements, s. 13.5(2)(a).

National Instrument 81-107 Independent Review Committee for Investment Funds, s. 6.2.

October 28, 2009

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

AND

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

AND

IN THE MATTER OF
SCOTIA ASSET MANAGEMENT L.P.
(the Filer)

AND

IN THE MATTER OF
THE MUTUAL FUNDS
listed in Schedule A and any mutual funds subject
to National Instrument 81-102 Mutual Funds
(NI 81-102) that may be established in the future
for which the Filer acts as portfolio advisor and/or
manager (the Filer Funds)

DECISION

Background

The principal regulator in the Jurisdiction received an application (the **Application**) from the Filer on behalf of each Filer Fund for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for relief from:

- (a) the prohibition in the Legislation of the Jurisdiction (the **Related Shareholder Relief**) that prohibits a mutual fund from making or holding an investment in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company (each a **Related Shareholder**);
- (b) the prohibition in the Legislation of the Jurisdiction (the **Related Party Relief**) that prohibits a mutual fund from making or holding an investment in an issuer in which a Related Shareholder has a significant interest (each, a **Related Party**); and
- (c) the prohibition in the Legislation of the Jurisdiction (the **Related Issuer Relief**) that prohibits a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, from purchasing a security of any issuer (each a **Related Issuer**) in which a responsible person or an associate of a responsible person is a partner, officer or director unless this fact is disclosed to the client and the written consent of the client to the purchase is obtained before the purchase.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

- (i) the Ontario Securities Commission (the **OSC**) is the principal regulator for the Application;
- (ii) in respect of the Related Shareholder Relief and Related Party Relief, 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, Québec, New Brunswick, Nova Scotia, and Newfoundland and Labrador (the **Non-principal Jurisdictions**); and
- (iii) in respect of the Related Issuer Relief, the Filer has provided notice that Section 4.7(1) of MI 11-102 is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nunavut and Yukon Territory.

Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions* (NI 14-101), MI 11-102, in NI 81-102 and in National Instrument 81-107 – *Independent Review Committee for Investment Funds* (NI 81-107) have the same meaning in this decision unless otherwise defined.

In this decision the term **Related Person** will be used to refer to a Related Shareholder, a Related Party or a Related Issuer depending on the provision that is being considered and the term **Requested Related Person Securities Relief** will be used to refer to the Related Shareholder Relief, the Related Party Relief and the Related Issuer Relief, together, requested by the Filer on behalf of the Filer Funds.

Representations

This decision is based on the following facts represented by the Filer in respect of the Filer and the Filer Funds.

1. The Filer is or will be the portfolio adviser and/or the manager of the Filer Funds of the Filer.
2. The Filer and the Filer Funds are or will be compliant with the requirements of NI 81-107. Accordingly, each Filer Fund has or will have an independent review committee (**IRC**) established in accordance with NI 81-107.
3. The investment strategies of each of the Filer Funds that relies on the Requested Related Person Securities Relief permit or will permit it to invest in the securities purchased, either as a principal strategy in achieving its investment objective or as a temporary strategy pending the purchase of other securities.
4. Related Persons of the Filers are significant issuers of securities.
5. The Filers previously obtained Related Shareholder Relief, Related Party Relief and Related Issuer Relief (the **Existing Related Person Relief**) so that a Filer Fund of the Filer could invest in common shares of Related Persons of the Filer.
6. Section 6.2 of NI 81-107 provides an exemption from the prohibitions comprising the Requested Related Person Securities Relief for exchange-traded securities, such as common shares. It does not permit a Filer Fund, or the Filer on behalf of a Filer Fund, to purchase non-exchange-traded securities issued by Related Persons. Some securities of Related Persons, such as debt securities, of the Filers are not listed and traded.
7. The Filer is restricted from purchasing and holding non-exchange-traded securities of Related Persons on behalf of the Filer Funds. Such Related Persons (in particular those that are Canadian banks) are issuers of highly rated commercial paper and other debt instruments. The Filer considers that the Filer Funds should have access to such securities for the following reasons:
 - (a) There is currently and has been for several years a very limited supply of highly rated corporate debt.
 - (b) Diversification is reduced to the extent that a Filer Fund is limited with respect to investment opportunities.
 - (c) To the extent that a Filer Fund is trying to track or outperform a benchmark it is important for the Filer Fund to be able to purchase any securities included in the benchmark. Debt securities of Related Persons of the Filer are included in most of the Canadian debt indices.
8. The Filer is seeking the Related Shareholder Relief, Related Party Relief and Related Issuer Relief to permit the Filer Funds of the Filer to purchase and hold non-exchange-traded securities that are debt securities issued by a Related Person.

9. Each purchase of non-exchange traded securities of a Related Person will occur in the secondary market and not under primary distributions or treasury offerings of a Related Person.
10. Each non-exchange traded security purchased by a Filer Fund pursuant to the Requested Related Person Securities Relief will be a debt security issued by a Related Person that has been given and continues to have, at the time of purchase, an "approved credit rating" by an approved credit rating organization.
11. If a Filer Fund's purchase of non-exchange traded securities issued by a Related Person involves an interfund trade with another fund to which NI 81-107 applies, the provisions of section 6.1(2) of NI 81-107 will apply to such transaction.
12. The predecessor to the Filer, Scotia Cassels Investment Counsel Limited (**SCICL**), and Scotia Securities Inc. (**SSI**) and Scotia Capital Inc. (**SCI**) were granted identical relief in the Jurisdiction and the Non-principal Jurisdictions, under an MRRS Decision Document dated May 22, 2008, by the Ontario Securities Commission as principal regulator for the decision (the **Original Decision**).
13. Pursuant to an internal reorganization effective November 1, 2009 involving SCICL, the Filer and certain of their affiliates, the portfolio management and investment fund manager activities carried on by SCICL, SSI and/or SCI (except for the portfolio management activities SCI carries on as an IIROC member) prior to November 1, 2009 will be transferred to and carried on by the Filer as of November 1, 2009. As a result of this reorganization, neither SCICL, SSI nor SCI will, as of November 1, 2009, be relying on the relief granted under the Original Decision and the Filer requires the Requested Related Person Securities Relief as the Original Decision is not available to the Filer.
14. The Filer is, to the best of its knowledge, not in default of the securities legislation of any jurisdiction of Canada.

Decision

Related Shareholder and Related Party Relief

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

The decision of the principal regulator is that the Related Shareholder Relief and Related Party Relief is granted to permit the Filer to purchase Related Person debt securities in the secondary market on behalf of the Filer Funds on the condition that:

- (a) the purchase or holding is consistent with, or is necessary to meet, the investment objective of the Filer Fund;
- (b) the IRC of the Filer Fund has approved the transaction in accordance with Section 5.2(2) of NI 81-107;
- (c) the manager of the Filer Fund complies with section 5.1 of NI 81-107 and the manager and the IRC of the Filer Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;
- (d) the price payable for the security is not more than the ask price of the security;
- (e) the ask price of the security is determined as follows:
 - (i) if the purchase occurs on a marketplace, the price payable is determined in accordance with the requirements of that marketplace; or
 - (ii) if the purchase does not occur on a marketplace,
 - (A) the Filer Fund may pay the price for the security at which an independent, arm's length seller is willing to sell the security, or
 - (B) if the Filer Fund does not purchase the security from an independent, arm's length seller, the Filer Fund must pay the price quoted publicly by an independent marketplace or obtain, immediately before the purchase, at least one quote from an independent, arm's length purchaser or seller and not pay more than that quote;
- (f) the transaction complies with any applicable "market integrity requirements"; and

- (g) no later than the time the Filer Fund files its annual financial statements, the Filer files with the securities regulatory authority or regulator the particulars of any such investments.

This decision is effective November 1, 2009.

“David L. Knight”
Commissioner
Ontario Securities Commission

“Mary G. Condon”
Commissioner
Ontario Securities Commission

Related Issuer Relief

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

The decision of the principal regulator is that the Related Issuer Relief is granted to permit the Filer to purchase Related Person debt securities in the secondary market on behalf of the Filer Funds on the condition that:

- (h) the purchase or holding is consistent with, or is necessary to meet, the investment objective of the Filer Fund;
- (i) the IRC of the Filer Fund has approved the transaction in accordance with Section 5.2(2) of NI 81-107;
- (j) the manager of the Filer Fund complies with section 5.1 of NI 81-107 and the manager and the IRC of the Filer Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;
- (k) the price payable for the security is not more than the ask price of the security;
- (l) the ask price of the security is determined as follows:
 - (i) if the purchase occurs on a marketplace, the price payable is determined in accordance with the requirements of that marketplace; or
 - (ii) if the purchase does not occur on a marketplace,
 - (A) the Filer Fund may pay the price for the security at which an independent, arm's length seller is willing to sell the security, or
 - (B) if the Filer Fund does not purchase the security from an independent, arm's length seller, the Filer Fund must pay the price quoted publicly by an independent marketplace or obtain, immediately before the purchase, at least one quote from an independent, arm's length purchaser or seller and not pay more than that quote.
- (m) the transaction complies with any applicable “market integrity requirements”; and
- (n) no later than the time the Filer Fund files its annual financial statements, the Filer files with the securities regulatory authority or regulator the particulars of any such investments.

This decision is effective November 1, 2009.

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

SCHEDULE A

Scotia T-Bill Fund
Scotia Premium T-Bill Fund
Scotia Money Market Fund
Scotia U.S. \$ Money Market Fund
Scotia Mortgage Income Fund
Scotia Canadian Income Fund
Scotia Cassels Short-Mid Government Bond Fund
Scotia Cassels Canadian Corporate Bond Fund
Scotia U.S. \$ Bond Fund
Scotia Global Bond Fund
Scotia Diversified Monthly Income Fund
Scotia Canadian Balanced Fund
Scotia Cassels Advantaged Income Fund
Scotia Canadian Tactical Asset Allocation Fund
Scotia Canadian Dividend Fund
Scotia Cassels Canadian Equity Fund
Scotia Canadian Blue Chip Fund
Scotia Canadian Growth Fund
Scotia Canadian Small Cap Fund
Scotia Resource Fund
Scotia Cassels North American Equity Fund
Scotia Cassels U.S. Equity Fund
Scotia U.S. Growth Fund
Scotia U.S. Value Fund
Scotia International Value Fund
Scotia Cassels International Equity Fund
Scotia European Fund
Scotia Pacific Rim Fund
Scotia Latin American Fund
Scotia Global Growth Fund
Scotia Global Small Cap Fund
Scotia Global Opportunities Fund
Scotia Global Climate Change Fund
Scotia Canadian Bond Index Fund
Scotia Canadian Index Fund
Scotia U.S. Index Fund
Scotia CanAm® Index Fund
Scotia Nasdaq Index Fund
Scotia International Index Fund
Scotia Selected Income & Modest Growth Portfolio
Scotia Selected Balanced Income Growth Portfolio
Scotia Selected Moderate Growth Portfolio
Scotia Selected Aggressive Growth Portfolio
Scotia Partners™ Income & Modest Growth Portfolio
Scotia Partners Balanced Income & Growth Portfolio
Scotia Partners Moderate Growth Portfolio
Scotia Partners Aggressive Growth Portfolio
Scotia Vision Conservative 2010 Portfolio
Scotia Vision Aggressive 2010 Portfolio
Scotia Vision Conservative 2015 Portfolio
Scotia Vision Aggressive 2015 Portfolio
Scotia Vision Conservative 2020 Portfolio
Scotia Vision Aggressive 2020 Portfolio
Scotia Vision Conservative 2030 Portfolio
Scotia Vision Aggressive 2030 Portfolio
Scotia Bond Fund
Scotia INNOVA Income Portfolio
Scotia INNOVA Balanced Income Portfolio
Scotia INNOVA Balanced Growth Portfolio
Scotia INNOVA Growth Portfolio
Scotia INNOVA Maximum Growth Portfolio

Pinnacle Short Term Income Fund
Pinnacle Income Fund
Pinnacle High Yield Income Fund
Pinnacle American Core-Plus Bond Fund
Pinnacle Global Real Estate Securities Fund
Pinnacle Strategic Balanced Fund
Pinnacle Canadian Value Equity Fund
Pinnacle Canadian Mid Cap Value Equity Fund
Pinnacle Canadian Growth Equity Fund
Pinnacle Canadian Small Cap Equity Fund
Pinnacle American Value Equity Fund
Pinnacle American Mid Cap Value Equity Fund
Pinnacle American Large Cap Growth Equity Fund
Pinnacle American Mid Cap Growth Equity Fund
Pinnacle International Equity Fund
Pinnacle International Small to Mid Cap Value Equity Fund
Pinnacle Global Equity Fund
Pinnacle Balanced Income Portfolio
Pinnacle Conservative Balanced Growth Portfolio
Pinnacle Balanced Growth Portfolio
Pinnacle Conservative Growth Portfolio
Pinnacle Growth Portfolio

2.1.14 Scotia Asset Management L.P.

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Relief from s. 71 requirement to deliver a renewal prospectus annually to mutual fund investors purchasing securities pursuant to a pre-authorized investment plan.

Applicable Legislative Provisions

Securities Act (Ontario), ss. 71, 147.

October 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
SCOTIA ASSET MANAGEMENT L.P.
(the Filer)**

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) on behalf of the publicly offered mutual funds that are managed from time to time by the Filer (the **Funds**) that the requirement in the Legislation to deliver the latest prospectus and any amendment to the prospectus together with the right not to be bound by an agreement of purchase and sale (the **Delivery Requirement**) not apply in respect of a purchase and sale of securities of the Funds pursuant to a preauthorized investment plan, including employee purchase plans, capital accumulation plans, or any other contract or arrangement for the purchase of a specified amount of securities on a regularly scheduled basis (an **Investment Plan**) (the **Delivery Requirement Relief**).

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

- (i) the Ontario Securities Commission (the **OSC**) is the principal regulator for the Application; and
- (ii) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**M1 11-102**) is intended to be relied upon in Alberta, British Columbia, Saskatchewan, Mani-

toba, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (the **Non-principal Jurisdictions**).

Interpretation

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

Representation

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

1. The Funds are, or will be, reporting issuers in one or more of the Jurisdiction and the Non-principal Jurisdictions. Securities of the Funds are or will be, offered for sale on a continuous basis pursuant to a simplified prospectus.
2. Securities of each of the Funds are or will be distributed through broker dealers or mutual fund dealers (**Distributors**) which may or may not be affiliated with the manager of the Fund.
3. Each of the Funds may offer investors the opportunity to invest in a Fund on a regular or periodic basis pursuant to an Investment Plan.
4. Under the terms of an Investment Plan, an investor instructs a Distributor to accept additional contributions on a pre-determined frequency and/or periodic basis and to apply such contributions on each scheduled investment date to additional investments in specified Funds (which instructions may be amended from time to time). The investor authorizes a Distributor to debit a specified account or otherwise makes funds available in the amount of the additional contributions. An investor may terminate the instructions at any time.
5. An investor who establishes an Investment Plan (a **Participant**) receives a copy of the current simplified prospectus relating to the applicable Funds at the time an Investment Plan is established.
6. Pursuant to the Legislation, a Distributor not acting as agent of the purchaser, who receives an order or subscription for a security of a Fund offered in a distribution to which the Delivery Requirement applies, must, unless it has previously done so, send by prepaid mail or deliver to the purchaser the latest prospectus and any amendment to the prospectus filed either before entering into an agreement of purchase and sale resulting from the order or subscription or not later than midnight on the second day, exclusive of Saturdays, Sundays and holidays, after entering into such agreement.

7. Pursuant to the Legislation, an agreement referred to in paragraph 6 is not binding on the purchaser if the Distributor receives notice of the intention of the purchaser not to be bound by the agreement of purchase and sale within a specified time period.
8. The terms of an Investment Plan are such that an investor can terminate the instructions to the Distributor at any time. Therefore, there is no agreement of purchase and sale until a scheduled investment date arrives and the instructions have not been terminated. At this point the securities are purchased.
9. A Distributor not acting as an agent for the applicable investor is required pursuant to the Legislation to mail or deliver to all Participants who purchase securities of Funds pursuant to an Investment Plan, the current simplified prospectus of the applicable Funds at the time the investor enters into the Investment Plan and thereafter, any new prospectus or amendment thereto (a **Renewal Prospectus**) filed pursuant to the Legislation.
10. There is significant cost involved in the annual printing and mailing or delivery of the Renewal Prospectus to Participants. The annual cost of production of a Renewal Prospectus is borne by the applicable Fund. In addition, mailing costs are incurred.
11. Securityholders of the Funds who are currently Participants would be sent notice (the **Notice**) advising them of the terms of the relief and that Participants will not receive any Renewal Prospectus of the applicable Funds, unless they request it. The Notice will also advise the Participants that they may request the Renewal Prospectus by calling a toll-free phone number, by e-mail or by fax, and the Manager will send the Renewal Prospectus to any Participant that requests it. Participants will receive with the Notice a request form (the **Request Form**) under which the Participant may request, at no cost to the Participant, to receive the Renewal Prospectus.
12. The Notice will advise Participants that the Renewal Prospectus and any amendments thereto may be found either on the SEDAR website or on the applicable Fund's website. The Notice will also advise Participants that they can subsequently request the current Renewal Prospectus and any amendments thereto by contacting the applicable Distributor and will provide a toll-free telephone number for this purpose. The Notice will advise Participants that they will not have a right to withdraw (a **Withdrawal Right**) from an agreement of purchase and sale in respect of purchases pursuant to an Investment Plan, but that they will have a right (a **Misrepresentation Right**) of action for damages or rescission in the event the Renewal Prospectus contains a misrepresentation, whether or not they request the Renewal Prospectus; and that they will continue to have the right to terminate the Investment Plan at any time before a scheduled investment date.
13. Future investors who choose to become Participants and invest in any Funds in respect of which this relief applies will be advised in the documents they receive in respect of their participation in the Investment Plan or in the simplified prospectus of the Funds (in the section of the prospectus that describes the Investment Plan) of the terms of the relief and that Participants will not receive a Renewal Prospectus unless they request it at the time they decide to enrol in the Investment Plan or subsequently request it from the applicable Distributor. They will also be advised that a Renewal Prospectus and any amendments thereto may be found either on the SEDAR website or on the Fund's website. Future Participants will also be advised that they will not have a Withdrawal Right in respect of purchases pursuant to an Investment Plan, other than in respect of the initial purchase and sale, but they will have a Misrepresentation Right, whether or not they request the Renewal Prospectus, and they will have the right to terminate the Investment Plan at any time before a scheduled investment date.
14. Participants will also be advised annually in writing (in an account statement sent by the Distributor or otherwise) how they can request the current Renewal Prospectus and any amendments thereto and that they have a Misrepresentation Right.
15. Affiliates of the Filer, Scotia Securities Inc. (**SSI**) and Scotia Capital Inc. (**SCI**), were granted identical relief in the Jurisdiction and the Non-Principal Jurisdictions, under an MRRS Decision Document dated March 12, 2004, by the Ontario Securities Commission as principal regulator for the decision (the **Original Decision**).
16. Pursuant to an internal reorganization effective November 1, 2009 the Filer, SSI, SCI and certain of their affiliates, the portfolio management and investment fund manager activities carried on by SSI and SCI (except for the portfolio management activities SCI carries on as an IIROC member) prior to November 1, 2009 will be transferred to and carried on by the Filer as of November 1, 2009. As a result of this reorganization, neither SSI nor SCI will, as of November 1, 2009, be relying on the relief granted under the Original Decision and the Filer will require the Delivery Requirement Relief as the Original Decision is not available to the Filer.

17. The Filer is, to the best of its knowledge, not in default of the securities legislation of any jurisdiction of Canada.

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 Delivery Requirement Relief is granted

1. in respect of purchases and sales of securities of the Funds to Participants who purchase the securities pursuant to an Investment Plan which is in existence on the date of this decision provided that:

- (i) Participants who are current security-holders of the Funds are or have been sent the Notice described in paragraph 11 above containing the information described in paragraph 12 above, together with the Request Form referred to in paragraph 11 above, or are or have been advised, in the simplified prospectus of the applicable Funds or in the documents they receive in respect of their participation in the Investment Plan, of the information described in paragraph 13 above;
- (ii) under the terms of the Investment Plan, a Participant can terminate participation in the Investment Plan at any time;
- (iii) Participants are advised annually in writing (in an account statement sent by the Distributor or otherwise) how they can request the current Renewal Prospectus and any amendments thereto and that they have a Misrepresentation Right; and
- (iv) the Misrepresentation Right in the securities legislation of a jurisdiction is maintained in respect of a Participant whether or not a Renewal Prospectus is requested or received,

and

2. in respect of purchases and sales of securities of the Funds to Participants who purchase the securities pursuant to an Investment Plan which is established after the date of this decision provided that:
- (i) Participants are advised, in the simplified prospectus of the applicable Funds or in the documents they receive in respect of their participation in the Investment Plan,

of the information described in paragraph 13 above;

- (ii) under the terms of the Investment Plan, a Participant can terminate participation in the Investment Plan at any time;
- (iii) Participants are advised annually in writing (in an account statement sent by the Distributors or otherwise) how they can request the current Renewal Prospectus and any amendments thereto and that they have a Misrepresentation Right; and
- (iv) the Misrepresentation Right in the securities legislation of a jurisdiction is maintained in respect of a Participant whether or not a Renewal Prospectus is requested or received.

The decision, as it relates to a jurisdiction, will terminate one year after the publication in final form of any legislation or rule dealing with the Delivery Requirement

This decision is effective on November 1, 2009.

"David L. Knight"
Commissioner
Ontario Securities Commission

"Mary G. Condon"
Commissioner
Ontario Securities Commission

2.1.15 Scotia Asset Management L.P. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Relief granted to portfolio manager to engage the funds it manages in principal trading of debt securities of third parties with a related dealer in the secondary market - relief conditional on IRC approval and compliance with pricing requirements.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 4.2, 19.1.
National Instrument 31-103 Registration Requirements, s. 13.5(2)(b)(i).
National Instrument 81-107 Independent Review Committee for Investment Funds, s. 6.2.

October 30, 2009

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

AND

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

AND

IN THE MATTER OF
SCOTIA ASSET MANAGEMENT L.P.
(the Filer)

AND

IN THE MATTER OF
THE MUTUAL FUNDS
listed in Schedule A and any mutual funds subject to
National Instrument 81-102 Mutual Funds
(NI 81-102) that may be established in the future
for which the Filer acts as portfolio advisor
and/or manager (the Filer Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer on behalf of each Filer Fund for relief from the prohibition in the Legislation of the Jurisdiction that the Filer, as adviser to the Filer Funds, be exempt from the requirement which prohibits a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase or sell securities of any issuer from or to the investment portfolio of a responsible person (the **Related Account Relief**).

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

- (i) the Ontario Securities Commission (the **OSC**) is the principal regulator for the Application; and
- (ii) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-02 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nunavut and Yukon (the **Non-principal Jurisdictions**).

Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions* (NI 14-101), MI 11-102, in NI 81-102 and in National Instrument 81-107 – *Independent Review Committee for Investment Funds* (NI 81-107) have the same meaning in this decision unless otherwise defined.

Representations

This decision is based on the following facts represented by an Filer in respect of the Filer and the Filer Funds:

1. The Filer is or will be the portfolio adviser and/or the manager of the Filer Funds.
2. Schedule A contains a list of all the mutual funds that are subject to NI 81-102 of which the Filer will, as of November 1, 2009, be the portfolio adviser and/or the manager.
3. An Independent Review Committee (**IRC**) has or will be constituted for each of the Filer Funds in accordance with the requirements of NI 81-107.
4. The investment strategies of a Filer Fund that relies on the Related Account Relief permit or will permit it to invest in the securities purchased, either as a principal strategy in achieving its investment objective or as a temporary strategy, pending the purchase of other securities.
5. The predecessors to the Filer, Scotia Cassels Investment Counsel Limited (**SCICL**), and Scotia Securities Inc. (**SSI**) and Scotia Capital Inc. (**SCI**) previously obtained Related Account Relief under an MRRS Decision Document dated November 1, 2007 (the **Existing Related Person Purchase Relief**) so that a Filer Fund of the Filer may purchase from or sell to a related person or company (a **Related Person**) that is a principal dealer in the Canadian debt securities market (a **Principal Dealer**) debt securities of an issuer other than the federal or a provincial government (**Non-Government Debt Securities**) or debt securities issued or fully and unconditionally guaranteed by the federal or a provincial govern-

- ment (**Government Debt Securities**) in the secondary market.
6. Related Persons of the Filer Funds are Principal Dealers in the Canadian debt securities market, both primary and secondary.
 7. The Filer has made the Application for the Related Account Relief so that a Filer Fund may continue to purchase from or sell to a Related Person of the Filer Fund Non-Government Debt Securities or Government Debt Securities in the secondary market after the Termination Date.
 8. The purchase of Non-Government Debt Securities and Government Debt Securities from a Related Person of the Filer Fund in the secondary market is subject to the prohibition on a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase or sell securities of any issuer from or to the investment portfolio of a responsible person.
 9. The representations by the Filer referred to by the decision makers in the Existing Related Person Purchase Relief, in respect of the role played by Related Persons of the Filer Fund in the Government and Non-Government Debt Securities markets remain, in all material respects, accurate as of the date of this Decision Document, particularly,
 - (a) there is a limited supply of Non-Government Debt Securities and Government Debt Securities available to the Filer Funds; and
 - (b) frequently the only source of Non-Government Debt Securities and Government Debt Securities for a Filer Fund is a Related Person of the Filer Fund.
 10. The Filer Funds require the Related Account Relief in order to pursue their investment objectives and strategies effectively.
 11. Pursuant to an internal reorganization effective November 1, 2009 involving SCICL, the Filer and certain of their affiliates, the portfolio management and investment fund manager activities carried on by SCICL, SSI and/or SCI (except for the portfolio management activities SCI carries on as an IROC member) prior to November 1, 2009 will be transferred to and carried on by the Filer as of November 1, 2009. As a result of this reorganization, neither SCICL, SSI nor SCI will, as of November 1, 2009, be relying on the relief granted under the Existing Related Person Purchase Relief and the Filer will require the Related Account Relief as the Existing Related Person Purchase Relief is not available to the Filer.

12. The Filer is, to the best of its knowledge, not in default of securities legislation of any jurisdiction of Canada.

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 Related Account Relief is granted subject to the following conditions:

- (1) the purchase or sale is consistent with, or is necessary to meet, the investment objective of the Filer Fund;
- (2) the IRC has approved the transaction in accordance with Section 5.2(2) of NI 81-107;
- (3) the Filer, as manager of the Filer Fund, complies with section 5.1 of NI 81-107 and the manager and the IRC of the Filer Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;
- (4) the bid and ask price of the security are readily available, as provided in Commentary 7 of section 6.1 of NI 81-107;
- (5) a purchase is not executed at a price which is higher than the available ask price and a sale is not executed at a price which is lower than the available bid price;
- (6) the purchase or sale is subject to "market integrity requirements" as defined in NI 81-107; and
- (7) the Filer Fund keeps the written records required by Section 6.1(2)(g) of NI 81-107.

This decision is effective on November 1, 2009.

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

SCHEDULE A

Scotia T-Bill Fund
 Scotia Premium T-Bill Fund
 Scotia Money Market Fund
 Scotia U.S. \$ Money Market Fund
 Scotia Mortgage Income Fund
 Scotia Canadian Income Fund
 Scotia Cassels Short-Mid Government Bond Fund
 Scotia Cassels Canadian Corporate Bond Fund
 Scotia U.S. \$ Bond Fund
 Scotia Global Bond Fund
 Scotia Diversified Monthly Income Fund
 Scotia Canadian Balanced Fund
 Scotia Cassels Advantaged Income Fund
 Scotia Canadian Tactical Asset Allocation Fund
 Scotia Canadian Dividend Fund
 Scotia Cassels Canadian Equity Fund
 Scotia Canadian Blue Chip Fund
 Scotia Canadian Growth Fund
 Scotia Canadian Small Cap Fund
 Scotia Resource Fund
 Scotia Cassels North American Equity Fund
 Scotia Cassels U.S. Equity Fund
 Scotia U.S. Growth Fund
 Scotia U.S. Value Fund
 Scotia International Value Fund
 Scotia Cassels International Equity Fund
 Scotia European Fund
 Scotia Pacific Rim Fund
 Scotia Latin American Fund
 Scotia Global Growth Fund
 Scotia Global Small Cap Fund
 Scotia Global Opportunities Fund
 Scotia Global Climate Change Fund
 Scotia Canadian Bond Index Fund
 Scotia Canadian Index Fund
 Scotia U.S. Index Fund
 Scotia CanAm® Index Fund
 Scotia Nasdaq Index Fund
 Scotia International Index Fund
 Scotia Selected Income & Modest Growth Portfolio
 Scotia Selected Balanced Income Growth Portfolio
 Scotia Selected Moderate Growth Portfolio
 Scotia Selected Aggressive Growth Portfolio
 Scotia Partners™ Income & Modest Growth Portfolio
 Scotia Partners Balanced Income & Growth Portfolio
 Scotia Partners Moderate Growth Portfolio
 Scotia Partners Aggressive Growth Portfolio
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 Scotia Vision Aggressive 2015 Portfolio
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 Scotia Vision Conservative 2030 Portfolio
 Scotia Vision Aggressive 2030 Portfolio
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Pinnacle Short Term Income Fund
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 Pinnacle Strategic Balanced Fund
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 Pinnacle Canadian Growth Equity Fund
 Pinnacle Canadian Small Cap Equity Fund
 Pinnacle American Value Equity Fund
 Pinnacle American Mid Cap Value Equity Fund
 Pinnacle American Large Cap Growth Equity Fund
 Pinnacle American Mid Cap Growth Equity Fund
 Pinnacle International Equity Fund
 Pinnacle International Small to Mid Cap Value Equity Fund
 Pinnacle Global Equity Fund
 Pinnacle Balanced Income Portfolio
 Pinnacle Conservative Balanced Growth Portfolio
 Pinnacle Balanced Growth Portfolio
 Pinnacle Conservative Growth Portfolio
 Pinnacle Growth Portfolio

2.1.16 Symax Lift (Holding) Co. Ltd.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – issuer granted relief from requirements of National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency to permit the auditor's report on the financial statements of a reverse take-over acquiror to contain a reservation with respect to opening inventory.

Applicable Legislative Provisions

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

December 1, 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
SYMAX LIFT (HOLDING) CO. LTD.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption (the **Exemption Sought**) from the requirement that financial statements that are required by securities legislation to be audited must be accompanied by an auditor's report that does not contain a reservation does not apply in respect of the annual financial statements of Symax Lift (Group) Limited for the years ended December 31, 2007 and 2006.

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) 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, Québec, New Brunswick, Nova Scotia, Prince Edward Island, 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 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 amalgamated and validly existing under the laws of the Province of Alberta. The Filer's head office is located in Edmonton, Alberta.
- 2. On October 5, 2009, the Filer entered into an agreement (the **Share Exchange Agreement**) with China Elevator (Group) Ltd. (**China Elevator**) wherein the Filer would acquire all of the issued and outstanding shares of China Elevator in exchange for the issuance of shares of the Filer to shareholders of China Elevator in a transaction that will be accounted for as a reverse take-over (**RTO**) where the Filer would be accounted for as the acquiree and China Elevator as the acquiror.
- 3. The common shares of the Filer were halted for trading on the Canadian National Stock Exchange on November 12, 2009, pending approval of the RTO by the Filer's shareholders and applicable regulatory authorities, as described in the press release dated November 13, 2009. The Filer has applied to the TSX Venture Exchange (the **Exchange**) for the listing of its common shares upon completion of the RTO in accordance with and subject to the policies of the Exchange applicable to a "Reverse Take-Over".
- 4. Pursuant to the Share Exchange Agreement, the Filer has changed its name to "Symax Lift (Holding) Co. Ltd.", as disclosed in the press release and material change report each dated November 16, 2009.
- 5. On October 15, 2009 (the **Default Date**), the Filer filed its information circular dated October 24, 2009 (the **Information Circular**) in connection with the RTO, which included audited consolidated financial statements of China Elevator's wholly-owned subsidiary, Symax Lift (Group) Limited (**Symax Hong Kong**), for the years ended December 31, 2008, 2007 and 2006 (the **Audited Financial Statements**). The

auditors of the Audited Financial Statements, Chang Lee LLP (the **Auditor**), provided an audit report dated September 30, 2009 with respect to the Audited Financial Statements, which does not contain a reservation for the most recently completed financial year as at December 31, 2008, but contained the following reservation (the **Inventory Reservation**) for the previous two financial years ended December 31, 2007 and 2006:

"Because we were appointed auditors of the Company [Symax Lift (Group) Limited] after January 1, 2007, we were not able to observe the counting of physical inventories as at December 31, 2006 and 2005 or satisfy ourselves concerning the inventory quantities by alternative means. Since opening and closing inventories enter into the determination of the results of operations and cash flows, we were unable to determine whether adjustments to cost of sales, income taxes, net income for the years, cash provided from operating activities and opening deficit for the years ended December 31, 2007 and 2006 might be necessary."

6. From the period since its incorporation on September 24, 2007 to June 24, 2009, China Elevator was inactive and had no assets or liabilities. On June 24, 2009, the initial subscribing shareholder of China Elevator, who was the then sole shareholder of Symax Hong Kong, transferred all of the issued and outstanding shares of Symax Hong Kong to China Elevator. Upon the transfer and exchange, Symax Hong Kong became the wholly owned subsidiary of China Elevator. As Symax Hong Kong carries on the primary business to be acquired by the Filer pursuant to the Share Exchange Agreement, the Audited Financial Statements of Symax Hong Kong were included in the Information Circular.
7. The Filer is currently, and has been since the Default Date, in default of securities legislation due to the Inventory Reservation on the December 31, 2007 and 2006 audited financial statements of Symax Hong Kong, which are included in the Information Circular.
8. The Filer acknowledges that any right of action, remedy, penalty or sanction available to any person or company or to a securities regulatory authority against the Filer from the Default Date until the date of this decision document are not terminated or altered as a result of such decision.
9. China Elevator is engaged, through Symax Hong Kong and its other subsidiaries, in the business of the manufacture, sales and service of elevators, and the business is not seasonal in nature.

10. Except for the default noted above, the Filer is not in default of securities legislation in any jurisdiction.

11. The Auditor is a registered member of the Canadian Public Accountability Board and the Audited Financial Statements were prepared in accordance with Canadian generally accepted accounting principals and standards.

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 that decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted and is effective from the date of this decision.

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

2.1.17 Scotia Asset Management L.P. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Relief granted to portfolio manager to engage the funds it manages in purchases of debt securities of related entities in the secondary market – relief conditional on IRC approval and compliance with pricing requirements.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 4.1(2), 19.1.

National Instrument 81-107 Independent Review Committee for Investment Funds, s. 6.2.

October 30, 2009

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

AND

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

AND

**IN THE MATTER OF
SCOTIA ASSET MANAGEMENT L.P.
(the Filer)**

AND

**IN THE MATTER OF
THE MUTUAL FUNDS
listed in Schedule A and any mutual funds subject to
National Instrument 81-102 Mutual Funds
(NI 81-102) that may be established in the future
for which the Filer acts as portfolio advisor
and/or manager (the Filer Funds)**

DECISION

Background

The principal regulator in the Jurisdiction received an application (the **Application**) from the Filer on behalf of each Filer Fund under section 19.1 of NI 81-102 for relief from the requirement in Section 4.1(2) of NI 81-102 (the **Requested Section 4.1(2) Relief**) which prevents a dealer managed mutual fund from investing in a class of securities of an issuer (a **Related Person**) of which a partner, director, officer or employee of the dealer manager of the mutual fund, or a partner, director, officer or employee of an affiliate or associate of the dealer manager, is a partner, director or officer unless the partner, director, officer or employee

- (a) does not participate in the formulation of investment decisions made on behalf of the dealer managed mutual fund;
- (b) does not have access before implementation to information concerning investment decisions made on behalf of the dealer managed mutual fund; and
- (c) does not influence, other than through research, statistical and other reports generally available to clients, the investment decisions made on behalf of the dealer managed mutual fund.

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

- (i) the Ontario Securities Commission (the **OSC**) is the principal regulator for the Application; and

- (ii) 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, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut (the **Non-principal Jurisdictions**).

Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions* (**NI 14-101**), MI 11-102, NI 81-102 and in National Instrument 81-107 – *Independent Review Committee for Investment Funds* (**NI 81-107**) have the same meaning in this decision unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer in respect of the Filer and the Filer Funds.

1. The Filer is or will be the portfolio adviser and/or the manager of the Filer Funds.
2. The Filer and the Filer Funds are or will be compliant with the requirements of NI 81-07. Accordingly, each Filer Fund has or will have an independent review committee (**IRC**) established in accordance with NI 81-107.
3. The investment strategies of each Filer Fund that relies on the Requested Section 4.1(2) Relief permit or will permit it to invest in the securities purchased, either as a principal strategy in achieving its investment objective or as a temporary strategy pending the purchase of other securities.
4. Section 6.2 of NI 81-107 provides an exemption from the mutual fund conflict of interest investment restrictions for purchases of Related Person securities if the purchase is made on an exchange. It does not provide an exemption from section 4.1(2) of NI 81-102 and it does not provide an exemption for purchases of non-exchange traded securities.
5. Related Persons of the Filer are significant issuers of both exchange-traded and non-exchange-traded securities.
6. Non-exchange-traded securities that are debt securities issued by Related Persons, in addition to securities that are listed and traded on an exchange, may be appropriate investments for the Filer Funds.
7. In respect of Filer Funds of the Filer, directors, officers and employees of the Filer or of an affiliate or associate of the Filer may be directors, officers or employees of a Related Person who do not meet the exceptions in section 4.1(2) of NI 81-102 such that the Requested Section 4.1(2) Relief is required by the Filer to permit the Filer Funds to invest in securities of a Related Person.
8. Each purchase of securities of a Related Person will occur in the secondary market and not under primary distributions or treasury offerings of a Related Person.
9. Each non-exchange-traded security purchased by a Filer Fund pursuant to the Requested Section 4.1(2) Relief will be a debt security issued by a Related Person that has been given, and continues to have at the time of purchase, an “approved credit rating” by an approved credit rating organization.
10. The Filer considers that the Filer Funds should have access to such securities for the following reasons:
 - (a) There is currently and has been for several years a very limited supply of highly rated corporate debt.
 - (b) Diversification is reduced to the extent that a Filer Fund is limited with respect to investment opportunities.
 - (c) To the extent that a Filer Fund is trying to track or outperform a benchmark it is important for the Filer Fund to be able to purchase any securities included in the benchmark. Debt securities of Related Persons of the Filer are included in most of the Canadian debt indices.
11. If a Filer Fund’s purchase of non-exchange-traded securities issued by Related Persons involves an interfund trade with another fund to which NI 81-107 applies, the provisions of section 6.1.(2) of NI 81-107 will apply to such transaction.
12. The predecessors to the Filer, Scotia Cassels Investment Counsel Limited (**SCICL**), and Scotia Securities Inc. (**SSI**) and Scotia Capital Inc. (**SCI**) were granted identical relief by the Jurisdiction and the Non-Principal Jurisdictions, under an MRRS Decision Document dated May 15, 2008, by the Ontario Securities Commission as principal regulator for the decision (the **Original Decision**).
13. Pursuant to an internal reorganization effective November 1, 2009 involving SCICL, the Filer and certain of their affiliates, the portfolio management and investment fund manager activities carried on by SCICL, SSI and/or SCI

(except for the portfolio management activities SCI carries on as an IIROC member) prior to November 1, 2009 will be transferred to and carried on by the Filer as of November 1, 2009. As a result of this reorganization, neither SCICL, SSI nor SCI will, as of November 1, 2009, be relying on the relief granted under the Original Decision and the Filer will require the Requested Section 4.1(2) Relief as the Original Decision is not available to the Filer.

14. The Filer is, to the best of its knowledge, not in default of the securities legislation of the Jurisdiction or any of the Non-principal Jurisdictions.

Decision

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

The decision of the principal regulator is that the Requested Section 4.1(2) Relief is granted to permit purchases of Related Person securities in the secondary market on the conditions that:

- (a) the purchase is consistent with, or is necessary to meet, the investment objective of the Filer Fund;
- (b) the IRC of the Filer Fund has approved the transaction in accordance with Section 5.2(2) of NI 81-107;
- (c) the manager of the Filer Fund complies with section 5.1 of NI 81-107 and the manager and the IRC of the Filer Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;
- (d) if the security is an exchange-traded security, the purchase is made on an exchange on which the securities of the issuer are listed and traded;
- (e) if the security is not an exchange-traded security,
 - (a) the price payable for the security is not more than the ask price of the security;
 - (b) the ask price of the security is determined as follows:
 - (i) if the purchase occurs on a marketplace, the price payable is determined in accordance with the requirements of that marketplace; or
 - (ii) if the purchase does not occur on a marketplace,
 - (A) the Filer Fund may pay the price for the security at which an independent, arm's length seller is willing to sell the security, or
 - (B) if the Filer Fund does not purchase the security from an independent, arm's length seller, the Filer Fund must pay the price quoted publicly by an independent marketplace or obtain, immediately before the purchase, at least one quote from an independent, arm's length purchaser or seller and not pay more than that quote;
- (f) the transaction complies with any applicable "market integrity requirements";
- (g) no later than the time the Filer Fund files its annual financial statements, the Filer files with the securities regulatory authority or regulator the particulars of any such investments; and
- (h) the reporting obligation in section 4.5 of NI 81-107 applies to the Requested Section 4.1(2) Relief granted in this decision and the IRC of the Filer Fund complies with section 4.5 of NI 81-107 in connection with any instance that it becomes aware that the Filer did not comply with any of the conditions of this decision.

This decision is effective November 1, 2009.

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

SCHEDULE A

Scotia T-Bill Fund
Scotia Premium T-Bill Fund
Scotia Money Market Fund
Scotia U.S. \$ Money Market Fund
Scotia Mortgage Income Fund
Scotia Canadian Income Fund
Scotia Cassels Short-Mid Government Bond Fund
Scotia Cassels Canadian Corporate Bond Fund
Scotia U.S. \$ Bond Fund
Scotia Global Bond Fund
Scotia Diversified Monthly Income Fund
Scotia Canadian Balanced Fund
Scotia Cassels Advantaged Income Fund
Scotia Canadian Tactical Asset Allocation Fund
Scotia Canadian Dividend Fund
Scotia Cassels Canadian Equity Fund
Scotia Canadian Blue Chip Fund
Scotia Canadian Growth Fund
Scotia Canadian Small Cap Fund
Scotia Resource Fund
Scotia Cassels North American Equity Fund
Scotia Cassels U.S. Equity Fund
Scotia U.S. Growth Fund
Scotia U.S. Value Fund
Scotia International Value Fund
Scotia Cassels International Equity Fund
Scotia European Fund
Scotia Pacific Rim Fund
Scotia Latin American Fund
Scotia Global Growth Fund
Scotia Global Small Cap Fund
Scotia Global Opportunities Fund
Scotia Global Climate Change Fund
Scotia Canadian Bond Index Fund
Scotia Canadian Index Fund
Scotia U.S. Index Fund
Scotia CanAm® Index Fund
Scotia Nasdaq Index Fund
Scotia International Index Fund
Scotia Selected Income & Modest Growth Portfolio
Scotia Selected Balanced Income Growth Portfolio
Scotia Selected Moderate Growth Portfolio
Scotia Selected Aggressive Growth Portfolio
Scotia Partners™ Income & Modest Growth Portfolio
Scotia Partners Balanced Income & Growth Portfolio
Scotia Partners Moderate Growth Portfolio
Scotia Partners Aggressive Growth Portfolio
Scotia Vision Conservative 2010 Portfolio
Scotia Vision Aggressive 2010 Portfolio
Scotia Vision Conservative 2015 Portfolio
Scotia Vision Aggressive 2015 Portfolio
Scotia Vision Conservative 2020 Portfolio
Scotia Vision Aggressive 2020 Portfolio
Scotia Vision Conservative 2030 Portfolio
Scotia Vision Aggressive 2030 Portfolio
Scotia Bond Fund
Scotia INNOVA Income Portfolio
Scotia INNOVA Balanced Income Portfolio
Scotia INNOVA Balanced Growth Portfolio
Scotia INNOVA Growth Portfolio
Scotia INNOVA Maximum Growth Portfolio

Pinnacle Short Term Income Fund
Pinnacle Income Fund
Pinnacle High Yield Income Fund
Pinnacle American Core-Plus Bond Fund
Pinnacle Global Real Estate Securities Fund
Pinnacle Strategic Balanced Fund
Pinnacle Canadian Value Equity Fund
Pinnacle Canadian Mid Cap Value Equity Fund
Pinnacle Canadian Growth Equity Fund
Pinnacle Canadian Small Cap Equity Fund
Pinnacle American Value Equity Fund
Pinnacle American Mid Cap Value Equity Fund
Pinnacle American Large Cap Growth Equity Fund
Pinnacle American Mid Cap Growth Equity Fund
Pinnacle International Equity Fund
Pinnacle International Small to Mid Cap Value Equity Fund
Pinnacle Global Equity Fund
Pinnacle Balanced Income Portfolio
Pinnacle Conservative Balanced Growth Portfolio
Pinnacle Balanced Growth Portfolio
Pinnacle Conservative Growth Portfolio
Pinnacle Growth Portfolio

2.1.18 Foster's Group Limited

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – subsection 1(10) of the Securities Act – Application by Australian issuer for a decision that it is not a reporting issuer – Canadian resident shareholders beneficially own less than 2% of the issuer's outstanding shares and represent less than 2% of total number of shareholders – In the last 12 months, issuer has not conducted an offering of its securities in Canada or taken any steps that indicate that there is a market for its securities in Canada – issuer has no plans to seek a public offering or private placement of its securities in Canada – except for limited distributions of securities to certain employees of the issuer – No securities of the issuer trade on any market or exchange in Canada – issuer's securities listed on the Australian Stock Exchange – issuer is subject to reporting requirements under Australian securities law – issuer has issued a press release announcing that it has submitted an application for a decision that it is not a reporting issuer – issuer has undertaken to continue to concurrently deliver to its securityholders resident in Canada, all disclosure material it is required by Australian securities law to deliver to Australian resident securityholders – requested relief granted.

Applicable Legislative Provisions

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

December 1, 2009

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,
MANITOBA, ONTARIO, QUÉBEC, NOVA SCOTIA,
NEW BRUNSWICK, PRINCE EDWARD ISLAND,
NEWFOUNDLAND AND LABRADOR AND YUKON
(THE "JURISDICTIONS")**

AND

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

AND

**IN THE MATTER OF
FOSTER'S GROUP LIMITED
(THE "FILER")**

DECISION

Background

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

Filer is not a reporting issuer under the Legislation (the "Exemptive Relief Sought").

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

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

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

Representations

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

1. The Filer is a corporation incorporated under and regulated by the *Australian Corporations Act 2001* (the "**Australian Corporations Act**"). Prior to July 2, 2001, the name of the Filer was Foster's Brewing Group Limited, having changed its name from Elders IXL Limited in 1990. The Filer is a reporting issuer in each of the Jurisdictions;
2. The Filer's registered and head office is located at 77 Southbank Boulevard, Southbank Victoria 3006, Australia;
3. The Filer is a premium global drinks company delivering a total portfolio of beer, wine, spirits, cider and non-alcohol beverages.
4. As of August 1, 2009, the Filer had 1,927,753,029 ordinary shares (the "**Shares**") issued and outstanding worldwide and 128,947 registered holders of Shares worldwide. As of August 1, 2009, the Filer had 36,046,812 American Depositary Receipts ("**ADRs**") issued and outstanding worldwide, with each ADR representing one Share of the Filer. The only issued and outstanding class of shares of the Filer are the Shares;
5. As at November 13, 2008, the Filer had 1,921,670,803 Shares issued and outstanding worldwide and 130,782 registered holders of Shares worldwide. As at December 31, 2008, the Filer had 39,347,116 ADRs issued and outstanding worldwide, with each ADR representing one Share of the Filer;
6. Since November 13, 2008, the Filer has not conducted an offering of its securities in Canada;

7. The Shares of the Filer are listed on the Australian Securities Exchange (the “**ASX**”). The Filer is not in default of any reporting or other requirement of the ASX or the Australian Corporations Act;
8. No securities of the Filer have ever been listed, traded, or quoted on a marketplace in Canada as defined in National Instrument 21-101 *Marketplace Operation*, (“**NI 21-101**”), except the ADRs as explained in more detail below. The Filer does not intend to have any of its securities listed, traded or quoted on such a marketplace in Canada;
9. The only distributions of Shares in Canada have been to employees of the Filer and its affiliates under the employee prospectus exemption under section 2.24 of National Instrument 45-106 *Prospectus and Registration Exemptions* as part of the Filer’s employee share participation program (“**ESPP**”).
10. The ESPP, which was established in 2004, is a global program and allows eligible employees of the Filer who meet the minimum service period of 6 months to be granted ordinary shares up to a value of AUD \$1,000, subject to performance of the Filer and approval by the Filer’s board (the “**Board**”). Shares issued under the ESPP are ordinary shares receiving all benefits of share ownership such as the right to vote and the right to dividends. The ESPP provides that annual offers may be made if the Filer achieves designated financial performance targets which, unless the Board decides otherwise, requires the percentage growth in the Filer’s normalised consolidated net profit on a year on year basis to be at or greater than the percentage increase in the consumer price index over that year. Only one offer under the ESPP may be made in each financial year. Grants have been made annually, typically at the end of the year, since the ESPP was established.
11. Currently there are 43 employees in Canada that participate in the ESPP. There was no distribution of Shares under the employee share participation program in 2008. The next distribution of Shares is expected to be in December 2009. At that time, the Filer expects an increase in employee shareholders in Canada of approximately 23, meaning a total of 66 employees participating in the ESPP. Employees will be entitled to up to approximately 185 shares per employee. Consequently, the impact on the number of Shares held by Canadian employees will not result in a more significant shareholder base in Canada.
12. On April 2, 1987, the Filer entered into a deposit agreement with the Bank of New York (the “**Depository**”) pursuant to which worldwide holders of Shares were permitted to exchange such shares for ADRs evidencing American Depositary Shares which represent Shares deposited with the Depository;
13. The ADRs were listed on the International Division of the Montreal Exchange from March 16, 1989 until December 3, 1999 and on the Toronto Stock Exchange from June 15, 1989 until September 19, 2000. The ADRs currently trade over-the-counter in the United States under the symbol “**FBRWY**”;
14. The Filer filed its continuous disclosure material in Canada pursuant to the Legislation of the Jurisdictions as modified by the following orders (collectively the “**Orders**”): Ontario (June 6, 1989), Newfoundland (May 30, 1989), Nova Scotia (June 14, 1989), Prince Edward Island (June 26, 1989), New Brunswick (June 30, 1989), Manitoba (January 13, 1989), Québec (November 1, 1988), Saskatchewan (October 24, 1989), Alberta (July 20, 1989), British Columbia (August 17, 1989, June 18, 1990 and April 11, 1991), Northwest Territories (June 12, 1989 and February 20, 1990); Yukon (November 25, 1988). The Filer complied with the terms of the Orders;
15. The Orders provided that the Filer is exempt from the proxy solicitation requirements so long as Canadian residents holding securities of the Filer (“**Canadian Holders**”) receive the same notices, reports and communications (including proxy solicitations) sent to Australian resident holders that are prepared in accordance with Australian law. Canadian Holders of ADRs need not receive the proxy materials provided they receive, through the Depository, a summary of the notice of meeting and a statement requesting voting instructions;
16. Pursuant to the Orders, the Filer sends with its annual financial statements (“**Annuals**”) a statement which compares Australian GAAP with Canadian GAAP, and a statement which indicates that it has elected to prepare Annuals in accordance with Australian GAAP;
17. Pursuant to the Orders, the Filer need not file material change reports in the form required under the Legislation so long as it files contemporaneously with the Decision Makers all press releases and reports of material change required to be filed in Australia;
18. Since the March 30, 2004 effective date of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (“**NI 71-102**”), the Filer has relied on and complied with the exemptions from Canadian continuous disclosure requirements afforded to “designated foreign issuers” (as such term is defined in NI 71-102) under Part 5 of NI 71-102 and paid all related applicable filing and participation fees in each of the Jurisdictions;

19. The Filer is not in default of securities legislation in any jurisdiction in Canada;
20. The Filer analyses its share register on a regular basis by using a third party specialist firm, Orient Capital Pty Ltd. Through this process Shares registered in the names of nominee companies but beneficially owned by others are identified including those with addresses in Canada;
21. Procedures for tracing the beneficial ownership of shares of an Australian listed corporation are detailed in Chapter 6C, Part 6C.2 (the "**Tracing Provisions**") of the Australian Corporations Act;
22. Recipients of notices under the Tracing Provisions are required to reply within two business days with details regarding the beneficial ownership of shares in respect of which a notice is given. Failure to do so is an offence under the Australian Corporations Act;
23. Pursuant to the procedures detailed in the Tracing Provisions, notices were issued to each of registered holders of Shares holding the top 75 largest positions (the "**Top 75**") registered holders to identify the ultimate beneficial owners of Shares. The Top 75 registered holders represent approximately 78% of the Filer's Shares on a worldwide basis;
24. The Top 75 registered holders did not include CDS or Depository Trust Company ("**DTC**"). The searches conducted by the Filer's agents using the Tracing Provisions were designed to turn up the names of Canadian intermediaries and ultimate beneficial owners of Shares. This process did not identify any Shares held by CDS or DTC;
25. As at November 13, 2008, the Filer has concluded that, on a worldwide basis, approximately 18,873,456 Shares, or 0.98% of the outstanding Shares were beneficially owned, directly or indirectly, by persons with addresses in Canada. At the same time, there were 365 direct and indirect beneficial holders of Shares resident in Canada representing approximately 0.28% of the total number of the Filer's shareholders worldwide;

26. The particulars of Canadian Holders are as follows:

Canadian Shareholders Holding Shares Directly

Jurisdiction	Number of Holders	Number of Shares Held
Ontario	127	629,135
Quebec	61	16,689
British Columbia	59	43,564
Manitoba	21	6,209
Alberta	27	7,824
Saskatchewan	12	3,785
Newfoundland	8	2,140
New Brunswick	1	480
Nova Scotia	1	240
Total	317	710,066

Canadian Shareholders Holding Shares Indirectly

Jurisdiction	Number of Holders	Number of Shares Held
Ontario	37	15,126,552
Quebec	9	2,981,188
British Columbia	1	23,846
Alberta	1	31,804
Total	48	18,163,390

27. Accordingly, Canadian Holders (i) do not beneficially own directly or indirectly more than 2% of the total number of Shares of the Filer worldwide; and (ii) do not represent more than 2% of the total number of owners directly or indirectly of Shares of the Filer worldwide.
28. The Filer analysed the holdings of ADRs by obtaining a Depository Trust Company List and through conducting a geographic analysis, a process by which the depository employs an agent to contact brokers holding ADRs and request that the brokers identify the address of beneficial holders by province, state and territory. No other firm has analyzed the share capital of the Filer, other than Broadbridge Financial Solutions, which analyzed the ADRs;
29. As of November 13, 2008, Canadian Holders held approximately 43,000 Shares represented by ADRs (or approximately 0.002% of the 1,921,670,803 Shares of the Filer that are currently issued and outstanding worldwide).

30. There are approximately 23 direct and indirect beneficial Canadian Holders of Shares represented by ADRs representing 0.018% of the total number of holders of Shares of the Filer worldwide;
31. Accordingly, if the 43,000 ADRs held by Canadian residents were exchanged for Shares, Canadian Holders would (i) still not beneficially own directly or indirectly more than 2% of the total number of Shares of the Filer worldwide; and (ii) still not represent more than 2% of the total number of owners directly or indirectly of the Shares of the Filer worldwide;
32. The Filer is subject to the reporting requirements of the ASX and the Australian Corporations Act (the “**Australian Reporting Requirements**”). The Australian Reporting Requirements are similar in nature and scope to the reporting requirements under National Instrument 51-102 *Continuous Disclosure Obligations*;
33. The Filer delivers to Canadian Holders all disclosure material required by Australian Reporting Requirements to be delivered to shareholders. The disclosure material is also either on the website of the Australian Securities and Investments Commission (“**ASIC**”) or the ASX (as the case may be) at www.asic.gov.au and www.asx.com.au, respectively, or directly by conducting searches from ASIC or the ASX. The annual and half-yearly reports of the Filer and its media releases are also available for viewing or to download on the Filer’s website – www.fostersgroup.com (or www.fosters.com.au);
34. The Filer’s annual report, which incorporates the principal annual financial statements, notes to the financial statements and a directors’ report about the statement and notes, is sent to shareholders including the Canadian Holders who have indicated in writing that they prefer to receive such material. Under the Australian Reporting Requirements, the Filer is not required to provide copies of the annual report to all shareholders, only to those shareholders who have requested such material;
35. The Filer is subject to, and in compliance with, the ASX Listing Rules and its policies, including the reporting obligations pursuant thereto which are substantially similar to those imposed on reporting issuers under the Legislation;
36. Pursuant to the Australian Reporting Requirements, Canadian Holders:
 - (a) are able to receive Annual Reports (including financial statements), upon written request;
 - (b) will receive notices of meetings accompanied by explanatory memoranda;
 - (c) will receive take-over documentation (including bid offers and responses); and
 - (d) will receive details of share issues, share buy-backs, rights issues and option issues, if permitted by Canadian law;
37. Canadian Holders would have the same civil remedies under Australian law as securityholders resident in Australia in the event of a misrepresentation in the continuous disclosure documents of the Filer;
38. In the last twelve (12) months, the Filer has not conducted an offering of its securities in Canada or taken any other steps that indicate there is a market for its securities in Canada. The Filer has no plans to seek a public offering of its securities in Canada.
39. The Filer does not intend to make any further distributions of securities in Canada with the exception of such distributions as may be required by employment arrangements of certain employees in Canada as described in paragraph 9;
40. The Filer has undertaken in favour of each of the Decision Makers that it will continue to concurrently deliver to its securityholders resident in Canada, all disclosure material it is required by Australian Reporting Requirements to deliver to Australian resident security holders; and
41. The Filer issued a press release in Canada on January 14, 2009 indicating that it has applied to securities regulatory authorities for a decision that it is not a reporting issuer in Canada, and that if that decision is made, the issuer will no longer be a reporting issuer in any jurisdiction in Canada;

Decision

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

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

“Carol S. Perry”

“Mary Condon”

2.1.19 Royal Bank of Canada and RBC Covered Bond Guarantor Limited Partnership

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Application for relief from disclosure requirements prescribed by Items 12 and 13.4(e)(i) or (ii) of Form 44-101F1 Short Form Prospectus and the related continuous disclosure requirements contemplated by Section 4.2(a)(ix) of NI 44-101 Short Form Prospectus Distributions in connection with a covered bond programme – Financial statements of the guarantor or the summary of deconsolidated financial information about the guarantor and the filer prescribed by Item 12 and Item 13.4(e)(i) or (ii) of Form 44-101F1 will not contain any information that could be material to an investor which has not otherwise been disclosed – Investor reports will contain information that is more adapted to the structure of the offering and more relevant to investors – Investor reports will be filed on SEDAR, incorporated by reference in the pricing supplements and be available on the filer's website – Relief granted subject to conditions, including condition that guarantor have no liabilities or claims outstanding other than those in connection with the CB Programme and condition that exempted financial disclosure would not contain any information that could be material to an investor which has not been otherwise disclosed.

Applicable Legislative Provisions

Securities Act (Quebec), s. 263.

National Instrument 44-101 Short Form Prospectus Distributions, s. 4.2(a)(ix).

Form 44-101F1 Short Form Prospectus, items 12 and 13.4(e)(i) or (ii).

Translation

October 30, 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 ROYAL BANK OF CANADA (THE FILER) AND RBC COVERED BOND GUARANTOR LIMITED PARTNERSHIP (Guarantor LP)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for exemptions from the disclosure requirements prescribed by Items 12 and 13.4(e)(i) or (ii) of *Form 44-101F1 Short Form Prospectus* (Form 44-101F1) and the related continuous disclosure requirements contemplated by Section 4.2(a)(ix) of the *Regulation 44-101 respecting Short Form Prospectus Distributions* (Regulation 44-101) in connection with the CB Programme (as defined below) (the Exemption Sought). 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, Saskatchewan, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Nunavut, Northwest Territories 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 *Regulation 14-101 respecting Definitions* 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 Schedule I bank under the *Bank Act* (Canada) and a reporting issuer or the equivalent in each province and territory of Canada. The head office of the Filer is located in Montréal, Québec.
2. Guarantor LP is a limited partnership formed and existing under the *Limited Partnerships Act* (Ontario) and is not a reporting issuer or the equivalent in each province and territory of Canada. The head office of Guarantor LP is in Toronto, Ontario.
3. Neither the Filer nor Guarantor LP is in default under securities legislation in any province or territory of Canada.
4. The Filer filed a short form base shelf prospectus which was receipted September 23, 2009 (the

Base Shelf) which qualifies the distribution of first preferred shares, unsubordinated debt securities and subordinated debt securities of the Filer.

5. The Filer has filed a shelf prospectus supplement dated October 29, 2009 to the Base Shelf pursuant to Part 8 of *Regulation 44-102 respecting Shelf Distributions* (Regulation 44-102) to establish a continuous distribution programme for unsubordinated debt securities of the Filer referred to as covered bonds (Covered Bonds) in each of the provinces and territories of Canada and a shelf prospectus supplement dated October 29, 2009 with relevant disclosure from a base prospectus (the European Prospectus) in respect of the Filer's Global Covered Bond Programme (the CB Programme) and to offer Covered Bonds in Canada pursuant to applicable pricing supplements to be filed at the relevant time pursuant to Part 8 of Regulation 44-102. The European Prospectus was filed on October 31, 2008 with the United Kingdom's Financial Services Authority, and has been amended and supplemented by a Supplementary Prospectus dated December 11, 2008 and a Supplementary Prospectus dated March 2, 2009. Covered Bonds are currently offered by the Filer in the European Economic Area under the European Prospectus.
6. Covered Bonds are direct, unsecured and unsubordinated obligations of the Filer. The Covered Bonds are not "asset backed securities" or "specified derivatives", as such terms are defined, respectively, in *Regulation 51-102 respecting Continuous Disclosure Obligations* and Regulation 44-102.
7. The Filer's obligations in respect of the Covered Bonds are unconditionally and irrevocably guaranteed by Guarantor LP (the Guarantee), which is an indirect subsidiary of the Filer established specifically for the purpose of the CB Programme.
8. Guarantor LP collateralizes the Guarantee through the purchase, initially, of Bank originated Canadian residential mortgage loans (the Cover Pool) and has granted a security interest in all such Cover Pool assets to a bond trustee under the CB Programme for the benefit of the bondholders. The Cover Pool assets stay on the consolidated balance sheet of the Filer.
9. Guarantor LP is restricted from carrying on any business other than in respect of acquiring the Cover Pool assets (together with their related security), investing in substitute assets for the Cover Pool, providing the Guarantee and activities ancillary thereto.
10. The mortgage assets held in the Cover Pool for the CB Programme are the same whether the Covered Bonds are issued in Canada, in Europe

or in any other jurisdictions. Such mortgage assets represented approximately 2% of the total consolidated assets of the Filer as at July 31, 2009. The Filer may not issue Covered Bonds in an amount exceeding 4 % of its total consolidated assets, pursuant to requirements imposed by the Office of the Superintendent of Financial Institutions of Canada.

11. The Cover Pool serves as a credit enhancement and provides additional comfort to bondholders in their expectation to be repaid if the Filer were to default on its obligation under the CB Programme. The composition of the Cover Pool may change over time, subject to certain minimum asset coverage requirements designed to ensure that sufficient over-collateralization is maintained by Guarantor LP to provide full repayment of the Covered Bonds.
12. The Filer will file on SEDAR, will incorporate by reference to pricing supplements, and will make available to bondholders and prospective investors on its website the RBC Covered Bond Program Monthly Investor Reports (the Investor Reports) which detail, among other things, the assets of the Guarantor LP, including the Cover Pool and information on the asset coverage test, which is conducted at least monthly to ensure that the minimum asset coverage requirements are met.
13. The asset coverage test data included in the Investor Reports, which compares the amount of Covered Bonds outstanding with the amount of mortgage assets held in the Cover Pool, is designed specifically to help investors assess whether sufficient assets are held by Guarantor LP to repay bondholders if a Filer's event of default under the CB Programme occurs.
14. From and after the date of this Decision, the Investor Reports will include disclosure to the effect that Guarantor LP has no liabilities or claims outstanding against it, other than those in connection with the CB Programme.
15. The bondholders' recourse prior to a Filer's event of default under the CB Programme is to the Filer. If a Filer's event of default under the CB Programme occurs, in addition to the recourse to the Filer, Guarantor LP will assume the orderly payment of the Filer's obligations under the Covered Bonds and the Covered Bonds will accelerate against the Filer.
16. If a Filer's event of default under the CB Programme is followed by a Guarantor LP's event of default under the CB Programme, the Cover Pool may be orderly liquidated within a one year period to repay bondholders.

17. If a Filer's event of default under the CB Programme occurs, any payment owed to the Filer by Guarantor LP under the guarantee portion of an intercompany loan entered into between Guarantor LP and the Filer initially to finance the purchase of the assets held in the Cover Pool will be paid after the full payment of the amount of Covered Bonds outstanding. The guarantee portion of the intercompany loan is equal to the amount of Cover Pool assets necessary to meet the asset coverage test.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that:

1. Guarantor LP has no liabilities or claims outstanding against it other than those in connection with the CB Programme.
2. Financial statements of Guarantor LP or summary financial information that would otherwise be required by Items 12 and 13.4(e)(i) or (ii) of Form 44-101F1 and the related continuous disclosure requirements contemplated by Section 4.2(a)(ix) of Regulation 44-101 do not, and will not, contain any information that could be material to an investor which has not been otherwise disclosed by the Filer or Guarantor LP.

"Patrick Théorêt"
Manager, Corporate Finance

2.1.20 Scotia Asset Management L.P. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Relief granted to existing mutual funds subject to NI 81-102 and future mutual funds subject to NI 81-102 for which a bank-owned fund manager acts as portfolio advisor and/or manager, to permit applicant funds to purchase long-term debt securities of a related entity under primary offerings of the related entity – relief subject to conditions including IRC approval, pricing requirements and limits on the amount of the primary offering applicant funds can purchase.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 4.1(2), 19.1.
National Instrument 81-107 Independent Review Committee for Investment Funds, s. 6.2.

October 30, 2009

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

AND

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

AND

IN THE MATTER OF
SCOTIA ASSET MANAGEMENT L.P.
(the Filer)

AND

IN THE MATTER OF
THE MUTUAL FUNDS
subject to National Instrument 81 102 Mutual Funds
(NI 81-102) for which the filer currently acts as
portfolio adviser and/or manager and any mutual
funds subject to NI 81-102 that may be established
in the future for which the filer acts as portfolio
adviser and/or manager
(the Filer Funds)

DECISION

Background

The principal regulator in the Jurisdiction received an application (the **Application**) from the Filer on behalf of each Filer Fund under Section 19.1 of NI 81-102 for relief from the requirement in Section 4.1(2) of NI 81-102 (the **Requested Section 4.1(2) Relief**) which prevents a dealer managed mutual fund from investing in a class of securities of an issuer (a **Related Person**) of which a partner,

director, officer or employee of the dealer manager of the mutual fund, or a partner, director, officer or employee of an affiliate or associate of the dealer manager, is a partner, director or officer unless the partner, director, officer or employee:

- (a) does not participate in the formulation of investment decisions made on behalf of the dealer managed mutual fund;
- (b) does not have access before implementation to information concerning investment decisions made on behalf of the dealer managed mutual fund; and
- (c) does not influence, other than through research, statistical and other reports generally available to clients, the investment decisions made on behalf of the dealer managed mutual fund.

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

- (i) the Ontario Securities Commission (the **OSC**) is the principal regulator for the Application; and
- (ii) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon (the **Non-principal Jurisdictions**).

Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions*, in MI 11-102, in NI 81-102 and in National Instrument 81-107 – *Independent Review Committee for Investment Funds* (NI 81-107) have the same meaning in this decision unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer in respect of the Filer and the Filer Funds.

- 1. The Filer is or will be the portfolio adviser and/or the manager of the Filer Funds.
- 2. The Filer and the Filer Funds are or will be compliant with the requirements of NI 81-107. Accordingly, each Filer Fund has or will have an independent review committee (**IRC**) established in accordance with NI 81-107.
- 3. The investment strategies of each Filer Fund that relies on the Requested Section 4.1(2) Relief permit or will permit it to invest in the securities purchased.

- 4. Related Persons of the Filer are significant issuers of securities.
- 5. Section 6.2 of NI 81-107 provides an exemption from the mutual fund conflict of interest investment restrictions for exchange-traded securities, such as common shares. It does not provide relief from Section 4.1(2) of NI 81-102 to permit a Filer Fund to purchase non-exchange-traded securities issued by Related Persons. Some securities of Related Persons, such as debt securities, of the Filer are not listed and traded.
- 6. Related Persons (in particular those that are Canadian banks) are issuers of highly rated commercial paper and other debt instruments. The Filer consider that the Filer Funds should have access to such securities for the following reasons:
 - (a) There is currently and has been for several years a very limited supply of highly rated corporate debt.
 - (b) Diversification is reduced to the extent that a Filer Fund is limited with respect to investment opportunities.
 - (c) To the extent that a Filer Fund is trying to track or outperform a benchmark it is important for the Filer Fund to be able to purchase any securities included in the benchmark. Debt securities of Related Persons of the Filer are included in most of the Canadian debt indices.
- 7. The Filer is seeking the Requested Section 4.1(2) Relief to permit the Filer Funds to purchase and hold non-exchange traded securities that are debt securities, other than asset backed commercial paper securities, with a term to maturity of 365 days or more, issued by a Related Person in a Primary Offering.
- 8. Each non-exchange traded security purchased by a Filer Fund pursuant to the Requested Section 4.1(2) Relief will be a debt security, other than an asset backed commercial paper security, with a term to maturity of 365 days or more, issued by a Related Person that has been given and continues to have, at the time of purchase, an "approved credit rating" by an approved credit rating organization.
- 9. The predecessors to the Filer, Scotia Cassels Investment Counsel Limited (**SCICL**), and Scotia Securities Inc. (**SSI**) and Scotia Capital Inc. (**SCI**) were granted identical relief by the Jurisdiction and the Non-Principal Jurisdictions, under a Passport Decision Document dated January 6, 2009, by the Ontario Securities Commission as principal regulator for the decision (the **Original Decision**).

10. Pursuant to an internal reorganization effective November 1, 2009 involving SCICL, the Filer and certain of their affiliates, the portfolio management and investment fund manager activities carried on by SCICL, SSI and/or SCI (except for the portfolio management activities SCI carries on as an IROC member) prior to November 1, 2009 will be transferred to and carried on by the Filer as of November 1, 2009. As a result of this reorganization, neither SCICL, SSI nor SCI will, as of November 1, 2009, be relying on the relief granted under the Original Decision and the Filer will require the Requested Section 4.1(2) Relief as the Original Decision is not available to the Filer.
11. The Filer is, to the best of its knowledge, not in default of the securities legislation of the Jurisdiction or any of the Non-principal Jurisdictions.

Decision

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

The decision of the principal regulator is that the Requested Section 4.1(2) Relief is granted to permit the Filer to purchase and hold non-exchange traded debt securities, other than asset backed commercial paper securities, with a term to maturity of 365 days or more, issued by a Related Person in a Primary Offering on behalf of the Filer Funds on the conditions that:

- (a) the purchase or holding is consistent with, or is necessary to meet, the investment objective of the Filer Fund;
- (b) at the time of the purchase the IRC of the Filer Fund has approved the transaction in accordance with Section 5.2(2) of NI 81-107;
- (c) the manager of the Filer Fund complies with section 5.1 of NI 81-107 and the manager and the IRC of the Filer Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;
- (d) the size of the Primary Offering is at least \$100 million;
- (e) at least 2 purchasers who are independent, arm's-length purchasers, which may include "independent underwriters" within the meaning of National Instrument 33-105 – *Underwriting Conflicts*, collectively purchase at least 20% of the Primary Offering;

- (f) no Filer Fund shall participate in the Primary Offering if following its purchase the Filer Fund would have more than 5% of its net assets invested in non-exchange traded debt securities of the Related Person;
- (g) no Filer Fund shall participate in the Primary Offering if following its purchase the Filer Fund together with related Filer Funds will hold more than 20% of the securities issued in the Primary Offering;
- (h) the price paid for the securities by a Filer Fund in the Primary Offering shall be no higher than the lowest price paid by any of the arm's length purchasers who participate in the Primary Offering; and
- (i) no later than the time the Filer Fund files its annual financial statements, the Filer files with the securities regulatory authority or regulator the particulars of any such investments.

This decision will expire on the coming into force of any securities legislation relating to fund purchases of Related Person debt securities in a Primary Offering.

This decision is effective on November 1, 2009

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

2.1.21 Scotia Asset Management L.P. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Relief granted to portfolio manager to engage the funds it manages in principal trading of debt securities of third parties with a related dealer in the secondary market – relief conditional on IRC approval and compliance with pricing requirements.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 4.2, 19.1.
National Instrument 31-103 Registration Requirements, s. 13.5(2)(b)(i).
National Instrument 81-107 Independent Review Committee for Investment Funds, s. 6.2.

October 30, 2009

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

AND

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

AND

**IN THE MATTER OF
SCOTIA ASSET MANAGEMENT L.P.
(the Filer)**

AND

**IN THE MATTER OF
THE MUTUAL FUNDS
listed in Schedule A and any mutual funds subject to
National Instrument 81-102 - Mutual Funds
(NI 81-102) that may be established in the future
for which the Filer acts as portfolio advisor and/or
manager (the Filer Funds)**

DECISION

Background

The principal regulator in the Jurisdiction received an application (the **Application**) from the Filer on behalf of each Filer Fund under section 19.1 of NI 81-102 for relief from the requirement in Section 4.2 of NI 81-102 (the **Requested Section 4.2 Relief**) which prevents a mutual fund from purchasing a security from or selling a security to any of the following persons or companies:

1. The manager, portfolio adviser or trustee of the mutual fund;

2. A partner, director or officer of the mutual fund or of the manager, portfolio adviser or trustee of the mutual fund;
3. An associate or affiliate of a person or company referred to in paragraph 1 or 2;
4. A person or company, having fewer than 100 securityholders of record, of which a partner, director or officer of the mutual fund or a partner, director or officer of the manager or portfolio adviser of the mutual fund is a partner, director, officer or securityholder,

if such persons or companies (each a **Related Person**) are acting as principal.

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

- (a) the Ontario Securities Commission (the **OSC**) 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* (**M1 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut (the **Non-principal Jurisdictions**).

Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions* (**NI 14-101**), in NI 81-102 and in National Instrument 81-107 – *Independent Review Committee for Investment Funds* (**NI 81-107**) have the same meaning in this decision unless otherwise defined.

In this Decision Document the term Related Person of the Filer Funds will be used to refer to a Related Person of a Filer Fund that is a principal dealer (**Principal Dealer**) in the Canadian debt securities market.

Representations

This decision is based on the following facts represented by the Filer in respect of the Filer and the Filer Funds:

1. The Filer is or will be the portfolio adviser and/or the manager of the Filer Funds.
2. Schedule A contains a list of all the mutual funds that are subject to NI 81-102 of which the Filer will be, as of November 1, 2009, the portfolio adviser and/or the manager.
3. An Independent Review Committee (**IRC**) has or will be constituted for each of the Filer Funds in accordance with the requirements of NI 81-107.

4. The investment strategies of each Filer Fund that relies on the Requested Section 4.2 Relief permit or will permit it to invest in the securities purchased, either as a principal strategy in achieving its investment objective or as a temporary strategy, pending the purchase of other securities.
5. Related Persons of the Filer Funds are Principal Dealers in the Canadian debt securities market, both primary and secondary.
6. Section 4.3 of NI 81-102 which provides certain relief from Section 4.2(1) does not provide an exemption from Section 4.2(1) for transactions in debt securities issued or fully and unconditionally guaranteed by the federal or a provincial government (**Government Debt Securities**) or debt securities of an issuer other than the federal or a provincial government (**Non-Government Debt Securities**) that are either not the subject of public quotations or not inter-fund trades that comply with Section 6.1(2) of NI 81-107.
7. The Filer has made the Application for the Requested Section 4.2 Relief so that a Filer Fund may continue to purchase from or sell to a Related Person that is a Principal Dealer, Non-Government Debt Securities or Government Debt Securities in the secondary market.
8. The purchase of debt securities from a Related Person in the secondary market is subject to Section 4.2 of NI 81-102.
9. The Filer considers that the Filer Funds should have access to the Government Debt Securities and Non-Government Debt Securities for the following reasons,
 - (a) there is a limited supply of Non-Government Debt Securities and Government Debt Securities available to the Filer Funds; and
 - (b) frequently the only source of Non-Government Debt Securities and Government Debt Securities for a Filer Fund is a Related Person of the Filer Fund.
10. The Filer Funds require the Requested Section 4.2 Relief in order to continue to pursue their investment objectives and strategies effectively.
11. The Filer is, to the best of its knowledge, not in default of the securities legislation of the Jurisdiction or any of the Non-principal Jurisdictions.

Decision

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

The decision of the principal regulator is that the Requested Section 4.2 Relief is granted subject to the following conditions:

- (a) the purchase or sale is consistent with, or is necessary to meet, the investment objective of the Filer Fund;
- (b) the IRC has approved the transaction in accordance with Section 5.2(2) of NI 81-107;
- (c) the Filer, as manager of the Filer Fund, complies with section 5.1 of NI 81-107 and the manager and the IRC of the Filer Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;
- (d) the bid and ask price of the security are readily available, as provided in Commentary 7 of section 6.1 of NI 81-107;
- (e) a purchase is not executed at a price which is higher than the available ask price and a sale is not executed at a price which is lower than the available bid price;
- (f) the purchase or sale is subject to "market integrity requirements" as defined in NI 81-107; and
- (g) the Filer Fund keeps the written records required by Section 6.1(2)(g) of NI 81-107.

This decision is effective November 1, 2009.

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

SCHEDULE A

Scotia T-Bill Fund
 Scotia Premium T-Bill Fund
 Scotia Money Market Fund
 Scotia U.S. \$ Money Market Fund
 Scotia Mortgage Income Fund
 Scotia Canadian Income Fund
 Scotia Cassels Short-Mid Government Bond Fund
 Scotia Cassels Canadian Corporate Bond Fund
 Scotia U.S. \$ Bond Fund
 Scotia Global Bond Fund
 Scotia Diversified Monthly Income Fund
 Scotia Canadian Balanced Fund
 Scotia Cassels Advantaged Income Fund
 Scotia Canadian Tactical Asset Allocation Fund
 Scotia Canadian Dividend Fund
 Scotia Cassels Canadian Equity Fund
 Scotia Canadian Blue Chip Fund
 Scotia Canadian Growth Fund
 Scotia Canadian Small Cap Fund
 Scotia Resource Fund
 Scotia Cassels North American Equity Fund
 Scotia Cassels U.S. Equity Fund
 Scotia U.S. Growth Fund
 Scotia U.S. Value Fund
 Scotia International Value Fund
 Scotia Cassels International Equity Fund
 Scotia European Fund
 Scotia Pacific Rim Fund
 Scotia Latin American Fund
 Scotia Global Growth Fund
 Scotia Global Small Cap Fund
 Scotia Global Opportunities Fund
 Scotia Global Climate Change Fund
 Scotia Canadian Bond Index Fund
 Scotia Canadian Index Fund
 Scotia U.S. Index Fund
 Scotia CanAm® Index Fund
 Scotia Nasdaq Index Fund
 Scotia International Index Fund
 Scotia Selected Income & Modest Growth Portfolio
 Scotia Selected Balanced Income Growth Portfolio
 Scotia Selected Moderate Growth Portfolio
 Scotia Selected Aggressive Growth Portfolio
 Scotia Partners™ Income & Modest Growth Portfolio
 Scotia Partners Balanced Income & Growth Portfolio
 Scotia Partners Moderate Growth Portfolio
 Scotia Partners Aggressive Growth Portfolio
 Scotia Vision Conservative 2010 Portfolio
 Scotia Vision Aggressive 2010 Portfolio
 Scotia Vision Conservative 2015 Portfolio
 Scotia Vision Aggressive 2015 Portfolio
 Scotia Vision Conservative 2020 Portfolio
 Scotia Vision Aggressive 2020 Portfolio
 Scotia Vision Conservative 2030 Portfolio
 Scotia Vision Aggressive 2030 Portfolio
 Scotia Bond Fund
 Scotia INNOVA Income Portfolio
 Scotia INNOVA Balanced Income Portfolio
 Scotia INNOVA Balanced Growth Portfolio
 Scotia INNOVA Growth Portfolio
 Scotia INNOVA Maximum Growth Portfolio

Pinnacle Short Term Income Fund
 Pinnacle Income Fund
 Pinnacle High Yield Income Fund
 Pinnacle American Core-Plus Bond Fund
 Pinnacle Global Real Estate Securities Fund
 Pinnacle Strategic Balanced Fund
 Pinnacle Canadian Value Equity Fund
 Pinnacle Canadian Mid Cap Value Equity Fund
 Pinnacle Canadian Growth Equity Fund
 Pinnacle Canadian Small Cap Equity Fund
 Pinnacle American Value Equity Fund
 Pinnacle American Mid Cap Value Equity Fund
 Pinnacle American Large Cap Growth Equity Fund
 Pinnacle American Mid Cap Growth Equity Fund
 Pinnacle International Equity Fund
 Pinnacle International Small to Mid Cap Value Equity Fund
 Pinnacle Global Equity Fund
 Pinnacle Balanced Income Portfolio
 Pinnacle Conservative Balanced Growth Portfolio
 Pinnacle Balanced Growth Portfolio
 Pinnacle Conservative Growth Portfolio
 Pinnacle Growth Portfolio

2.1.22 2210190 Ontario Inc. (to be renamed Scotia Securities Inc. effective November 1, 2009)

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Relief granted from the requirements of section 11.1(1)(b) and section 11.2(1)(b) of NI 81-102 to permit commingling of cash received for the purchase or redemption of mutual fund securities with cash received for the purchase and sale of other securities or instruments the principal distributor of mutual funds and potential principal distributor or participating dealer of third party funds, is permitted to sell, subject to certain conditions.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 11.1(1)(b), 11.2(1)(b), and 19.1.

October 30, 2009

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

AND

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

AND

**IN THE MATTER OF
2210190 ONTARIO INC.
(to be renamed Scotia Securities Inc. effective
November 1, 2009) (the Filer)**

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision (the **Requested Relief**) under section 19.1 of National Instrument 81-102 *Mutual Funds* (the **Legislation**) for an exemption from the provisions of paragraph 11.1(1)(b) and paragraph 11.2(1)(b) of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) that prohibit a principal distributor and other service providers, or a participating dealer and other service providers, from commingling cash received for the purchase or from the redemption of mutual fund securities (**Mutual Fund Trust Monies**) with cash received for the purchase or from the sale of guaranteed investment certificates (GICs) and other securities or instruments which the Filer is permitted to sell (**Non-Mutual Fund Trust Monies**) (the **Commingling Prohibitions**).

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* (**M1 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon (the **Non-principal Jurisdictions**).

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning in this decision unless otherwise defined. The following additional terms shall have the following meanings:

Client Trust Accounts means the trust accounts into which Mutual Fund Trust Monies and Non-Mutual Fund Trust Monies are deposited.

Scotia Funds means the mutual funds for which the Filer acts as manager and principal distributor.

MFDA means the Mutual Fund Dealers Association of Canada.

Representations

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

1. The Filer is a corporation established under the laws of the Province of Ontario. The Filer's name will change to Scotia Securities Inc. effective November 1, 2009.
2. The Filer is registered as a dealer in the category of mutual fund dealer (or the equivalent) in the Jurisdiction and each of the Non-principal Jurisdictions, and is a member of the MFDA.
3. Each of the Scotia Funds is an open-end mutual fund trust established or continued under the laws of the Province of Ontario. Units of the Scotia Funds are qualified for distribution to the public under a simplified prospectus and annual information form filed in the Jurisdiction and each of the Non-principal Jurisdictions.
4. The Filer will, as of November 1, 2009, act as the principal distributor of the Scotia Funds.
5. The Filer may in the future act as a principal distributor or participating dealer for other mutual funds. Securities of these future mutual funds will be qualified for distribution to the public under a simplified prospectus and annual information form filed in the Jurisdiction or one or more of the Non-principal Jurisdictions. In addition, in the future, the Filer may receive cash for the purchase or

- from the sale of GICs and other securities or instruments that the Filer is permitted to trade or sell.
6. As a member of the MFDA, the Filer is subject to the rules of the MFDA (**MFDA Rules**) on an ongoing basis, particularly those with respect to the handling and segregation of client cash. As a member of the MFDA, the Filer is expected to comply with all MFDA Rules and requirements.
7. The Filer operates accounts primarily in "nominee name".
8. The Filer maintains Client Trust Accounts with its affiliate, The Bank of Nova Scotia (BNS), into which all Mutual Fund Trust Monies concerning the Scotia Funds or other mutual funds for which the Filer acts as principal distributor or participating dealer and all Non-Mutual Fund Trust Monies are or will be paid and from which redemption proceeds or assets to be distributed are or will be paid.
9. Client Trust Accounts are and will be maintained in compliance with section 11.3 of NI 81-102.
10. The Client Trust Accounts are and will be each designated as "trust accounts" by the financial institution at which they are held.
11. The Filer does not believe that the interests of its clients will be prejudiced in any way by the commingling of Mutual Fund Trust Monies with Non-Mutual Fund Trust Monies in the Client Trust Accounts.
12. The Commingling Prohibitions prevent the Filer from commingling Mutual Fund Trust Monies with Non-Mutual Fund Trust Monies. Prior to June 23, 2006, section 3.3.2(e) of the MFDA Rules (**MFDA Commingling Prohibition**) also prohibited the commingling of Mutual Fund Trust Monies with Non-Mutual Fund Trust Monies. On June 23, 2006, the MFDA granted relief from the MFDA Commingling Prohibition to Scotia Securities Inc. (**Old SSI**), the predecessor to the Filer, subject to Old SSI obtaining similar relief from the Commingling Prohibitions from the Jurisdiction and the Non-principal Jurisdictions which Old SSI obtained on November 7, 2006.
13. The Filer currently has systems in place to be able to account for all of the monies it receives into and all of the monies that are to be paid out of its Client Trust Accounts in order to meet the policy objectives of sections 11.1 and 11.2 of NI 81-102. The Filer believes that its systems are sufficient to enable the Filer to account for all of the monies it receives into and all of the monies that are to be paid out of its Client Trust Accounts.
14. The Filer will maintain proper records with respect to client cash in a commingled account, and will ensure that all Client Trust Accounts are reconciled, and that Mutual Fund Trust Monies and Non-Mutual Fund Trust Monies are properly accounted for daily.
15. Except for the Commingling Prohibitions and any other provision from which, the Filer obtains an exemption from the relevant decision maker, the Filer will comply with all requirements prescribed in Part 11 of NI 81-102 with respect to the handling and segregation of client cash.
16. Effective July 1, 2005, the MFDA Investor Protection Corporation (**MFDA IPC**) commenced offering coverage, within defined limits to customers of MFDA members against losses suffered due to the insolvency of MFDA members. The Filer does not believe that the Requested Relief will affect coverage provided by the MFDA IPC.
17. The predecessor to the Filer, Old SSI, was granted identical relief in the Jurisdiction and the Non-principal Jurisdictions, under an MRRS Decision Document dated November 7, 2006, by the Ontario Securities Commission as principal regulator for the decision (the **Original Decision**).
18. Pursuant to an internal reorganization effective November 1, 2009 involving Old SSI, the Filer and certain of their affiliates, the investment fund manager activities carried on by Old SSI prior to November 1, 2009 will be transferred to and carried on by Scotia Asset Management L.P. and the dealing activities will be transferred to and carried on by the Filer as of November 1, 2009. As a result of this reorganization, Old SSI will, as of November 1, 2009, not be relying on the relief granted under the Original Decision and the Filer will require the Requested Relief as the Original Decision is not available to the Filer.
19. In the absence of the Requested Relief, the commingling of Mutual Fund Trust Monies with Non-Mutual Fund Trust Monies would contravene the Commingling Prohibitions.
20. The Filer is, to the best of its knowledge, not in default of the securities legislation of the Jurisdiction or any of the Non-principal Jurisdictions.

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 this decision, as it relates to the Jurisdiction or to a Non-

principal Jurisdiction, will terminate upon the coming into force of any change in the MFDA IPC rules which would reduce the coverage provided by the MFDA IPC relating to Mutual Fund Trust Monies and Non-Mutual Fund Trust Monies held in the Client Trust Accounts.

This decision is effective November 1, 2009.

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

2.1.23 Software Growth Inc.

Headnote

NP 11-203 – application for an order that the issuer is not a reporting issuer for purposes of Ontario securities law – 100% of the common shares of the Applicant represented at the special meeting of shareholders voted to authorize the voluntary dissolution of the issuer – issuer currently in the process of voluntary dissolution – outstanding securities are beneficially owned, directly or indirectly by more than 15 security holders in Ontario and more than 51 security holders in Canada – requested relief granted.

Applicable Legislative Provisions

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

December 1, 2009

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, ALBERTA AND BRITISH COLUMBIA
(THE "JURISDICTIONS")**

AND

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

AND

**IN THE MATTER OF
SOFTWARE GROWTH INC.
(the "Filer")**

DECISION

Background

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

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

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

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

Representations

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

1. the Filer was incorporated on February 20, 2006 pursuant to the provisions of the *Business Corporations Act* (Ontario);
2. the Filer's head office address is located at 20 Holly Street, Toronto, Ontario M4B 3S1;
3. the Filer is not eligible to use the simplified procedure of CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* and B.C. Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* as it has more than 50 shareholders in Canada;
4. the Filer currently has 3,250,000 common shares issued and outstanding held by approximately 159 shareholders;
5. at an annual and special meeting of shareholders of the Filer held on August 19, 2009, holders of 100% of the common shares of the Filer represented at the meeting voted in favour of a special resolution to voluntarily dissolve the Filer;
6. the Filer has no active business, has satisfied all of its liabilities and distributed all of its assets and proposes to dissolve in accordance with the Exchange Bulletin and as approved by the shareholders of the Filer;
7. effective September 1, 2009, the securities of the Filer have been delisted for trading on the Exchange. As such, no securities of the Filer will be traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;
8. all issued and outstanding securities of the Filer will be cancelled upon the dissolution of the Filer;
9. the Filer will not be a reporting issuer or the equivalent in any jurisdiction immediately following the granting of the Requested Relief; and
10. the Filer is not in default of any of its obligations under the Legislation as a reporting issuer.

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 Maker under the Legislation is that the Requested Relief is granted.

"Margot C. Howard"
Commissioner
Ontario Securities Commission

"Paulette Kennedy"
Commissioner
Ontario Securities Commission

2.1.24 Barclays Global Investors Canada Limited and Barclays Global Investors, N.A.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from s. 4.1(2) of NI 81-102, following the acquisition of the manager by another organization, to permit mutual funds to purchase securities of related entities on secondary market – Relief also granted from self-dealing provisions in s. 4.2 of NI 81-102 to permit funds to conduct inter-fund trades with pooled funds – Relief subject to conditions including IRC approval and pricing requirements – inter-fund transfers will comply with conditions in s. 6.1(2) of NI 81-107.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 4.1(2), 4.2(1), 4.3, 19.1.

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

November 24, 2009

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO

AND

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

AND

IN THE MATTER OF
BARCLAYS GLOBAL INVESTORS CANADA LIMITED
(BGICL) AND
BARCLAYS GLOBAL INVESTORS, N.A. (BGINA)
(each, a Filer and, collectively, the Filers)

AND

IN THE MATTER OF
THE NI 81-102 FUNDS (as defined below)

DECISION

Background

The securities regulatory authority or regulator in Ontario received an Application (the **Application**) on behalf of the Filers and on behalf of the existing mutual funds and future mutual funds of which BGICL is the investment fund manager to which National Instrument 81-102 – *Mutual Funds* (**NI 81-102**) applies (each, an **NI 81-102 Fund** and, collectively, the **NI 81-102 Funds**) for a decision under section 19.1 of NI 81-102 providing the following relief:

Transactions in Securities of Related Issuers

- (a) from the requirement in section 4.1(2) of NI 81-102 that prohibits a dealer managed mutual fund from knowingly making an investment in a class of securities of an issuer (a **Related Issuer**) of which a partner, director, officer or employee of the dealer manager of the mutual fund, or a partner, director, officer or employee of an affiliate or associate of the dealer manager, is a partner, director or officer, unless the partner, director, officer or employee
 - (A) does not participate in the formulation of investment decisions made on behalf of the dealer managed mutual fund;
 - (B) does not have access before implementation to information concerning investment decisions made on behalf of the dealer managed mutual fund; and

- (C) does not influence, other than through research, statistical and other reports generally available to clients, the investment decisions made on behalf of the dealer managed mutual fund;

(the foregoing individuals being referred to as **Access Persons**)

in order to permit an NI 81-102 Fund to purchase certain exchange-traded securities and non exchange-traded debt securities of a Related Issuer in the secondary market;

Transactions with Related Parties

- (b) from the requirement in section 4.2(1) of NI 81-102 that prohibits a mutual fund from purchasing a security from or selling a security to any of the following acting as principal:
- (i) the manager, portfolio adviser or trustee of the mutual fund;
 - (ii) a partner, director or officer of the mutual fund or of the manager, portfolio adviser or trustee of the mutual fund;
 - (iii) an associate or affiliate of a person or company referred to in (i) or (ii);
 - (iv) a person or company, having fewer than 100 security holders of record, of which a partner, director or officer of the mutual fund or of the manager or portfolio adviser of the mutual fund, is a partner, director, officer or security holder;

in order to permit an NI 81-102 Fund to purchase debt securities from or sell debt securities to an existing mutual fund or a future mutual fund to which NI 81-102 does not apply, of which BGICL is the investment fund manager (each, a **Pooled Fund** and, collectively, the **Pooled Funds**),

(collectively, the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

- (a) the Ontario Securities Commission is the principal regulator for the Application; and
- (b) the Filers have provided notice that Section 4.7(1) of Multilateral Instrument 11-102 – *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland & Labrador, Northwest Territories, Yukon and Nunavut (the **Passport Jurisdictions**).

Interpretation

Terms defined in MI 11-102, National Instrument 14-101 – *Definitions*, NI 81-102 and National Instrument 81-107 – *Independent Review Committee for Investment Funds* (**NI 81-107**) 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:

General

1. The head office of BGICL is located in Toronto, Ontario. The head office of BGINA is located in San Francisco, California.
2. BGICL is registered as a portfolio manager in Ontario and in each of the Passport Jurisdictions (together, the **Jurisdictions**), as a commodity trading manager in Ontario and as an exempt market dealer in Ontario and in Newfoundland and Labrador. BGICL expects that, in due course, it will be registered as an exempt market dealer in each of the Jurisdictions and as an investment fund manager in Ontario and in one or more Passport Jurisdictions as necessary.
3. BGINA is registered as a portfolio manager in Ontario (operating under OSC Rule 35-502 conditions for international advisers). BGINA expects that, in due course, it will rely on the international adviser exemption in NI 31-103 or obtain registration as a portfolio manager in one or more Jurisdictions as necessary.

4. BGICL is, or will be, the investment fund manager of each of the NI 81-102 Funds and the Pooled Funds (each, a **Fund**, and collectively, the **Funds**), each of which is, or will be, organized under the laws of Ontario.
5. Each of the existing NI 81-102 Funds is a reporting issuer in each of the Jurisdictions and is listed on the Toronto Stock Exchange.
6. None of the Pooled Funds are, or will be, a reporting issuer in any of the Jurisdictions.
7. One or more of the Funds is, or will be, an index fund, the investment objective of which is to replicate the performance of an index.
8. BGICL or BGINA is, or will be, the portfolio manager of each of the Funds.
9. BGINA is, or may be, the sub-adviser of each of the Funds of which BGICL is the portfolio manager.
10. Each of BGICL and BGINA is currently, indirectly, a subsidiary of Barclays Bank PLC (**Barclays Bank**) which is wholly-owned by Barclays PLC (**Barclays**).
11. Barclays Bank has entered into an agreement to sell (the **Transaction**) its interest in the Barclays Global Investors asset management business, including the iShares business, which includes selling all of its securities of BGICL and BGINA, directly or indirectly, to BlackRock, Inc. (**BlackRock**).
12. Following the closing of the Transaction it has been announced that:
 - (i) BlackRock will hold, directly or indirectly, all of the outstanding securities of BGICL and BGINA;
 - (ii) Barclays will hold, indirectly through its indirect holding in BlackRock, approximately 4.9% of the outstanding voting securities of BGICL and BGINA and 19.9% of the outstanding securities of BGICL and BGINA;
 - (iii) Merrill Lynch & Co., Inc. (**Merrill**) will hold, indirectly through its holding in BlackRock, approximately 3.4% of the outstanding voting securities of BGICL and BGINA and approximately 34.2% of the outstanding securities of BGICL and BGINA;
 - (iv) Bank of America (**BofA**) will hold, indirectly, through its holding in Merrill, the same interest as Merrill in BGICL and BGINA;
 - (v) The PNC Financial Services Group, Inc. (**PNC**) will hold, indirectly through its holding in BlackRock, approximately 32.8% of the outstanding voting securities of BGICL and BGINA and approximately 24.6% of the outstanding securities of BGICL and BGINA; and
 - (vi) the public, BlackRock employees and other investors will hold, indirectly through their holdings in BlackRock, the remaining outstanding voting securities and outstanding securities of BGICL and BGINA.
13. Each of BlackRock, BofA, PNC and Barclays is a reporting issuer in the United States, the equity securities of which are listed on the New York Stock Exchange, and, in the case of Barclays, the London Stock Exchange.

Transactions in Securities of Related Issuers

14. Following the closing of the Transaction, BlackRock will be a principal shareholder of dealers including Barclays Global Investors Services and Barclays Global Investors Fund Distribution Company, which are dealers in the United States. As a result, BGICL and BGINA will each be a dealer manager and the NI 81-102 Funds will be dealer managed mutual funds, within the meaning in NI 81-102.
15. A director, officer or employee of BGICL or BGINA who is an Access Person may be a director or officer of BlackRock or another affiliate and a director, officer or employee of BlackRock or another affiliate who is an Access Person may be a director or officer of other issuers, including Barclays Bank, Barclays, PNC, BofA or Merrill which will result in BlackRock and such others being Related Issuers.
16. Currently, one or more directors of BlackRock is a director or officer of other related entities including PNC and BofA and following the closing of the Transaction, one or more directors of BlackRock will be a director or officer of Barclays. The directors and officers of such other issuers may be Access Persons as a result of the structure of the investment management activities of the Filers, BlackRock and its related entities, which will result in such other issuers being Related Issuers.

17. The NI 81-102 Funds are permitted to invest in exchange-traded securities of Related Issuers in the secondary market pursuant to section 6.2 of NI 81-107. However, section 6.2 of NI 81-107 does not provide relief from section 4.1(2) of NI 81-102 and it does not provide an exemption for purchases of non-exchange-traded debt securities.
18. The investment strategies of an NI 81-102 Fund that relies on the Exemption Sought permit or will permit the NI 81-102 Fund to invest in the securities purchased, either as a principal strategy in achieving its investment objective or as a temporary strategy pending the purchase of other securities.
19. Some of the Related Issuers are, or may be, issuers of non-exchange-traded debt securities that have an “approved credit rating” within the meaning of NI 81-102. The Filers consider that the NI 81-102 Funds should have access to such securities for the following reasons:
 - (a) There is currently and has been for several years a very limited supply of such securities; to limit the supply available to the NI 81-102 Funds even further by removing debt issued by a Related Issuer puts the NI 81-102 Funds at a competitive disadvantage and may increase the cost a fund pays for available securities.
 - (b) Diversification is reduced to the extent that an NI 81-102 Fund is limited with respect to investment opportunities.
 - (c) To the extent that an NI 81-102 Fund is trying to track or outperform a benchmark, it is important for the NI 81-102 Fund to be able to purchase any securities included in the benchmark; debt securities of the Related Issuers may be included in a number of debt indices.
20. BGICL and BGINA are seeking the Exemption Sought because it may be appropriate for the NI 81-102 Funds to invest in non-exchange-traded debt and exchange-traded securities of BlackRock, PNC, BofA, Barclays or other Related Issuers.
21. In respect of the Funds which are index funds, the Exemption Sought is required because non-exchange-traded debt and exchange-traded securities of BlackRock, PNC, BofA, Barclays or other Related Issuers may be included in an index which an NI 81-102 Fund seeks to replicate.
22. Each purchase of non-exchange-traded debt securities of a Related Issuer will occur in the secondary market and not under primary distributions or treasury offerings of a Related Issuer.
23. Each non-exchange-traded debt security of a Related Issuer purchased by an NI 81-102 Fund will have, at the time of the purchase, an “approved credit rating” by an “approved credit rating organization” within the meaning of those terms in NI 81-102.
24. If an NI 81-102 Fund’s purchase of non-exchange-traded debt securities issued by a Related Issuer involves an inter-fund trade with another fund to which NI 81-107 applies, the provisions of section 6.1(2) of NI 81-107 will apply to such transaction.

Transactions with Related Parties

25. The Pooled Funds are associates of BGICL.
26. BGICL or BGINA may wish to cause an NI 81-102 Fund to purchase securities from or sell securities to an NI 81-102 Fund or a Pooled Fund.
27. Sections 4.3(1) and 4.3(2) of NI 81-102 permit an NI 81-102 Fund to purchase exchange-traded securities from or sell exchange-traded securities to an NI 81-102 Fund or a Pooled Fund and to purchase debt securities from or sell debt securities to an NI 81-102 Fund, provided the terms of Sections 4.3(1) and 4.3(2) are complied with.
28. BGICL and BGINA cannot rely on section 4.3(2) of NI 81-102 to permit an NI 81-102 Fund to purchase non-exchange-traded debt securities from or sell non-exchange-traded debt securities to a Pooled Fund because the Pooled Funds are not subject to NI 81-107.
29. BGICL has established, or will establish, an independent review committee (**IRC**) in respect of each NI 81-102 Fund in accordance with the requirements of NI 81-107.
30. BGICL will establish an IRC (the members of which may also be members of the IRC of the NI 81-102 Funds) in respect of the Pooled Funds which rely on the Exemption Sought.

31. The IRC of the Pooled Funds will be composed by BGICL in accordance with Section 3.7 of NI 81-107 and will be expected to comply with the standard of care set out in Section 3.9 of NI 81-107.
32. The mandate of the IRC of a Pooled Fund will include:
 - (i) approving purchases and sales of securities between the Pooled Fund and an NI 81-102 Fund; and
 - (ii) approving purchases of securities issued by a Related Issuer;on behalf of the Pooled Fund.
33. The IRC of the Pooled Funds will not provide any of the approvals referred to in paragraph 32 unless it has made the determination set out in Section 5.2(2) of NI 81-107.
34. Purchases and sales of securities involving an NI 81-102 Fund will be referred to the IRC of the NI 81-102 Fund under section 5.2(1) of NI 81-107 and will be subject to the requirements of section 5.2(2) of NI 81-107.
35. Each purchase and sale of securities between two Funds will be consistent with the investment objective of the NI 81-102 Fund or the Pooled Fund, as the case may be.
36. If the IRC of an NI 81-102 Fund or a Pooled Fund becomes aware of an instance where BGICL, as investment fund manager of the NI 81-102 Fund or Pooled Fund, did not comply with the terms of this decision, or a condition imposed by the IRC in its approval, the IRC of the NI 81-102 Fund or the Pooled Fund will, as soon as practicable, notify in writing the securities regulatory authority or regulator in the Jurisdiction under which the NI 81-102 Fund or Pooled Fund is organized.

Decision

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

The Decision of the principal regulator is that the Exemption Sought is granted on the following conditions:

- (a) In respect of the relief from section 4.1(2) of NI 81-102:
 - (i) in respect of the purchase by an NI 81-102 Fund of exchange-traded securities of a Related Issuer in the secondary market:
 - (A) the purchase or holding is consistent with, or is necessary to meet, the investment objective of the NI 81-102 Fund;
 - (B) the IRC of the NI 81-102 Fund has approved the transaction in accordance with Section 5.2(2) of NI 81-107;
 - (C) the purchase is made on an exchange on which the securities are listed and traded; and
 - (D) no later than the time the NI 81-102 Fund files its annual financial statements, BGICL files with the securities regulatory authority or regulator the particulars of any such investments; and
 - (ii) in respect of the purchase by an NI 81-102 Fund of non exchange-traded debt securities of a Related Issuer in the secondary market:
 - (A) the purchase or holding is consistent with, or is necessary to meet, the investment objective of the Fund;
 - (B) the applicable IRC of the Fund has approved the transaction in accordance with section 5.2(2) of NI 81-107;
 - (C) BGICL complies with section 5.1 of NI 81-107 and BGICL and the applicable IRC of the Fund comply with section 5.4 of NI 81-107 for any standing instructions the applicable IRC provides in connection with the transaction;

- (D) the price payable for the security is not more than the ask price of the security;
 - (E) the ask price of the security is determined as follows:
 - (1) if the purchase occurs on a marketplace, the price payable is determined in accordance with the requirements of that marketplace; or
 - (2) if the purchase does not occur on a marketplace,
 - A. the Fund may pay the price for the security at which an independent, arm's-length seller is willing to sell the security, or
 - B. if the Fund does not purchase the security from an independent, arm's-length seller, consistent with Commentary 7 of Section 6.1 of NI 81-107, the Fund must pay the price quoted publicly by an independent marketplace or obtain, immediately before the purchase, at least one quote from an independent, arm's-length purchaser or seller and not pay more than that quote;
 - (F) the transaction complies with any applicable "market integrity requirements" as defined in NI 81-107; and
 - (G) no later than the time the Fund files its annual financial statements, BGICL files with the securities regulatory authority or regulator the particulars of any such investments.
- (b) In respect of the relief from section 4.2(1) of NI 81-102:
- (A) the IRC of the NI 81-102 Fund has approved the transaction in respect of the NI 81-102 Fund in accordance with the terms of section 5.2(2) of NI 81-107;
 - (B) the IRC of the Pooled Fund has approved the transaction in respect of the Pooled Fund in accordance with the terms of section 5.2(2) of NI 81-107; and
 - (C) the transaction complies with paragraphs (c) to (g) of section 6.1(2) of NI 81-107.

"Rhonda Goldberg"
Manager, Investment Funds
Ontario Securities Commission

2.2 Orders

2.2.1 Batterymarch Financial Management, Inc. et al. – s. 80 of the CSA

Headnote

Section 80 of the Commodity Futures Act (Ontario) – Relief from the adviser registration requirements of subsection 22(1)(b) of the CFA granted to sub-advisers not ordinarily resident in Ontario in respect of advice regarding trades in commodity futures contracts and commodity futures options traded on commodity futures exchanges and cleared through clearing corporations, subject to certain terms and conditions. Relief mirrors exemption available in section 7.3 of OSC Rule 35-502 Non Resident Advisers (Rule 35-502) made under the Securities Act (Ontario).

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 22(1)(b), 80.

Securities Act, R.S.O. 1990, c. S.5, as am. – Rule 35-502 Non Resident Advisers.

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

AND

**IN THE MATTER OF
BATTERYMARCH FINANCIAL MANAGEMENT,
INC., BRANDYWINE GLOBAL INVESTMENT
MANAGEMENT, LLC, CLEARBRIDGE ADVISORS,
LLC, CONGRUUX INVESTMENT MANAGEMENT,
ESEMPLIA EMERGING MARKETS, GLOBAL
CURRENTS INVESTMENT MANAGEMENT, LLC,
LEGG MASON CAPITAL MANAGEMENT, INC.,
LEGG MASON GLOBAL ASSET ALLOCATION,
LLC, LEGG MASON INTERNATIONAL EQUITIES
LIMITED, PRIVATE CAPITAL MANAGEMENT, L.P.,
PERMAL INVESTMENT MANAGEMENT
SERVICES LIMITED**

AND

ROYCE & ASSOCIATES, LLC

**ORDER
(Section 80 of the CFA)**

UPON the application (the **Application**) of Legg Mason Canada Inc. (the **Principal Adviser**), Batterymarch Financial Management, Inc., Brandywine Global Investment Management, LLC, Clearbridge Advisors, LLC, Congruix Investment Management, Esemplia Emerging Markets, Global Currents Investment Management, LLC, Legg Mason Capital Management, Inc., Legg Mason Global Asset Allocation, LLC, Legg Mason International Equities Limited, Private Capital Management, L.P., Permal Investment Management Services Limited and Royce &

Associates, LLC (collectively, the **Foreign Sub-Advisers**) to the Ontario Securities Commission (the **Commission**) for an order pursuant to section 80 of the CFA, that the Foreign Sub-Advisers (including their respective directors, officers, representatives and employees acting as advisers on their behalf) be exempt, for a period of five years, from the adviser registration requirement in paragraph 22(1)(b) of the CFA in respect of acting as an adviser for the Principal Adviser for the benefit of the Clients (as defined below) regarding commodity futures contracts and commodity futures options traded on commodity futures exchanges (**Contracts**) and cleared through clearing corporations;

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

AND UPON the Principal Adviser and the Foreign Sub-Advisers having represented to the Commission that:

1. The Principal Adviser is a corporation incorporated under the laws of Ontario and its principal business office is in Toronto, Ontario.
2. The Principal Adviser is currently registered as:
 - (a) an adviser in the categories of investment counsel and portfolio manager and a dealer in the category of exempt market dealer under the *Securities Act* (Ontario) (**OSA**); and
 - (b) an adviser in the category of commodity trading manager under the CFA.
3. The principal business office of each of the Foreign Sub-Advisers is in the United States, England or Singapore. Specifically:
 - (a) Batterymarch Financial Management, Inc. is a corporation organized under the laws of the State of Maryland and is resident in the United States of America. Batterymarch Financial Management, Inc. is registered as an investment adviser with the United States Securities and Exchange Commission.
 - (b) Brandywine Global Investment Management, LLC is a limited liability company organized under the laws of the State of Delaware and is resident in the United States of America. Brandywine Global Investment Management, LLC is registered as an investment adviser with the United States Securities and Exchange Commission.
 - (c) Clearbridge Advisors, LLC is a limited liability company organized under the laws of the State of Delaware and is resident in the United States of America. Clearbridge Advisors, LLC is registered

- as an investment adviser with the United States Securities and Exchange Commission.
- (d) Congruix Investment Management is a registered business of Legg Mason Asset Management (Singapore) Pte. Limited. Congruix Investment Management is registered as an investment adviser with the Monetary Authority of Singapore.
 - (e) Esemplia Emerging Markets is the trade name used for Legg Mason International Equities Limited, which is registered as an investment adviser with the Financial Services Authority in England.
 - (f) Global Currents Investment Management, LLC is a limited liability company organized under the laws of the State of Delaware and is resident in the United States of America. Global Currents Investment Management, LLC is registered as an investment adviser with the United States Securities and Exchange Commission.
 - (g) Legg Mason Capital Management, Inc. is a corporation organized under the laws of the State of Maryland and is resident in the United States of America. Legg Mason Capital Management, Inc. is registered as an investment adviser with the United States Securities and Exchange Commission.
 - (h) Legg Mason Global Asset Allocation, LLC is a limited liability company organized under the laws of the State of Delaware and is resident in the United States of America. Legg Mason Global Asset Allocation, LLC is registered as an investment adviser with the United States Securities and Exchange Commission.
 - (i) Legg Mason International Equities Limited is organized under the laws of the United Kingdom and is resident in England. Legg Mason International Equities Limited is registered as an investment adviser with the Financial Services Authority in England.
 - (j) Permal Investment Management Services Limited is a corporation resident in the United States of America. Permal Investment Management Services Limited is registered as an investment adviser with the United States Securities and Exchange Commission.
 - (k) Private Capital Management, L.P. is a limited partnership organized under the laws of the State of Delaware and is resident in the United States of America. Private Capital Management, L.P. is registered as an investment adviser with the United States Securities and Exchange Commission.
 - (l) Royce & Associates, LLC is a limited liability company organized under the laws of the State of Delaware and is resident in the United States of America. Royce & Associates, LLC is registered as an investment adviser with the United States Securities and Exchange Commission.
4. None of the Foreign Sub-Advisers are registered with the Commission, other than Batterymarch Financial Management, Inc. and Private Capital Management, L.P., each of which were formerly registered under the OSA as an adviser in the category of international adviser (investment counsel and portfolio manager) and are currently registered as an adviser in the category of Portfolio Manager with terms and conditions restricting it to conducting its advising activities in accordance with Ontario Securities Commission Rule 35-502 *Non-Resident Advisers (Rule 35-502)* for a one-year period ending September 28, 2010. None of the Foreign Sub-Advisers are registered in any capacity under the CFA.
 5. The Principal Adviser acts as an adviser to high net worth individuals or institutional clients, including pooled funds managed by the Principal Adviser, (each a **Client** and collectively the **Clients**).
 6. The Clients may, as part of their investment program, invest in Contracts.
 7. The Principal Adviser may, pursuant to a written agreement with each Client:
 - (a) act as an adviser (as defined in the OSA) to the Client in respect of trading securities; and
 - (b) act as an adviser (as defined in the CFA) to the Client in respect of trading Contracts by exercising discretionary authority in respect of the investment portfolio of the Client, with discretionary authority to purchase or sell on behalf of the Client:
 - (i) securities; and
 - (ii) Contracts.
 8. Pursuant to a written agreement which sets out the duties and obligations of each Foreign Sub-Adviser, the Principal Adviser has appointed or will

- appoint a Foreign Sub-Adviser as a Foreign Sub-Adviser to the Principal Adviser in respect of the purchase or sale of Contracts for the Clients for which such Foreign Sub-Adviser has been appointed a Foreign Sub-Adviser and may appoint a Foreign Sub-Adviser as a Foreign Sub-Adviser to the Principal Adviser in respect of the purchase or sale of Contracts for other similar clients who become Clients in the future.
9. In connection with the Principal Adviser acting as an adviser to the Clients in respect of the purchase or sale of Contracts, the Principal Adviser may, from time to time, pursuant to a written agreement made between the Principal Adviser and the Foreign Sub-Advisers, retain the Foreign Sub-Advisers to act as an adviser to it (the **Commodity Advisory Services**) by exercising discretionary authority on behalf of the Principal Adviser, in respect of the investment portfolio of the Clients, with discretionary authority to buy or sell Contracts for the Clients, provided that:
- (a) in each case, the Contract must be cleared through an acceptable clearing corporation; and
 - (b) in no case will any trading in Contracts constitute the primary focus or investment objective of the Client.
10. Paragraph 22(1)(b) of the CFA prohibits a person or company from acting as an adviser unless the person or company is registered as an adviser under the CFA, or is registered as a partner or an officer of a registered adviser and is acting on behalf of a registered adviser. Under the CFA, "adviser" means a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to trading in "contracts", and "contracts" means commodity futures contracts and commodity futures options.
11. By providing the Commodity Advisory Services, the Foreign Sub-Adviser will be acting as an adviser with respect to commodity futures contracts and commodity futures options and, in the absence of being granted the requested relief, would be required to register as an adviser under the CFA.
12. There is presently no rule under the CFA that provides an exemption from the adviser registration requirement in paragraph 22(1)(b) of the CFA for a person or company acting as an adviser in respect of commodity futures contracts and commodity futures options that is similar to the exemption from the adviser registration requirement in subsection 25(3) of the OSA for acting as an adviser (as defined in the OSA) in respect of securities that is provided under section 7.3 of Rule 35-502.
13. The relationship among the Principal Adviser, the Foreign Sub-Advisers and the Clients satisfies the requirements of section 7.3 of Rule 35-502.
14. As would be required under section 7.3 of Rule 35-502:
- (a) the duties and obligations of the Foreign Sub-Advisers will be set out in a written agreement with the Principal Adviser;
 - (b) the Principal Adviser will contractually agree with the Clients to be responsible for any loss that arises out of the failure of the Foreign Sub-Advisers:
 - (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Principal Adviser and the Clients; or
 - (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances (together with (i), the **Assumed Obligations**); and
 - (c) the Principal Adviser cannot be relieved by the Clients from its responsibility for any loss that arises out of the failure of the Foreign Sub-Advisers to meet the Assumed Obligations.
15. The Foreign Sub-Advisers are not residents of any province or territory of Canada.
16. The Foreign Sub-Advisers are, or will be, appropriately registered or licensed or are, or will be, entitled to rely on appropriate exemptions from such registrations or licences, to provide advice for the Clients pursuant to the applicable legislation of their principal jurisdictions.
17. Prior to purchasing any securities for one or more of the Clients, all investors in the Clients who are Ontario residents will receive written disclosure that includes:
- (a) a statement that the Principal Adviser is responsible for any loss that arises out of the failure of the Foreign Sub-Adviser to meet the Assumed Obligations; and
 - (b) a statement that there may be difficulty in enforcing any legal rights against the Foreign Sub-Adviser (or the individual representatives of the Foreign Sub-Adviser) advising the relevant Client, because such entity is resident outside of Canada and all or substantially all of its assets are situated outside of Canada.

18. On March 28, 2006, the Commission granted some of the Foreign Sub-Advisers an exemption from the requirements of paragraph 22(1)(b) of the CFA in respect of the Commodity Advisory Services which has now expired.

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

IT IS ORDERED, pursuant to section 80 of the CFA, that the Foreign Sub-Advisers (including their respective directors, officers, representatives and employees acting as advisers on their behalf) are exempt from the adviser registration requirement in paragraph 22(1)(b) of the CFA, in respect of the Commodity Advisory Services provided to the Principal Adviser, for a period of five years, provided that at the relevant time that such activities are engaged in:

- (a) the Principal Adviser is registered under the CFA as an adviser in the category of commodity trading manager;
- (b) each Foreign Sub-Adviser is appropriately registered or licensed, or is entitled to rely on appropriate exemptions from such registrations or licences, to provide advice for the Clients pursuant to the applicable legislation of its principal jurisdiction;
- (c) the duties and obligations of each Foreign Sub-Adviser are set out in a written agreement with the Principal Adviser;
- (d) the Principal Adviser has contractually agreed with the respective Clients to be responsible for any loss that arises out of any failure of a Foreign Sub-Adviser to meet the Assumed Obligations;
- (e) the Principal Adviser cannot be relieved by a Client or its securityholders from its responsibility for any loss that arises out of the failure of a Foreign Sub-Adviser to meet the Assumed Obligations;
- (f) prior to purchasing any securities in a Client, all investors in the Client who are Ontario residents will receive written disclosure that includes:
 - (i) a statement that the Principal Adviser is responsible for any loss that arises out of the failure of the Foreign Sub-Adviser to meet the Assumed Obligations; and
 - (ii) a statement that there may be difficulty in enforcing any legal rights against the Foreign Sub-Adviser (or the individual representatives of the Foreign Sub-Adviser) for the Client, because such entity is resident outside of Canada and

all or substantially all of its assets are situated outside of Canada.

November 23, 2009

"Carol S. Perry"
Commissioner
Ontario Securities Commission

"Mary G. Condon"
Commissioner
Ontario Securities Commission

2.2.2 Paladin Capital Markets Inc. et al. – ss. 127(1), 127(7) and 127(8)

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

AND

**IN THE MATTER OF
PALADIN CAPITAL MARKETS INC.,
JOHN DAVID CULP AND
CLAUDIO FERNANDO MAYA**

**ORDER
Sections 127(1), 127(7) and 127(8)**

WHEREAS on June 2, 2009, the Ontario Securities Commission (the "Commission") issued a temporary order (the "Temporary Order") pursuant to sections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering that:

1. Under s. 127(1)1 of the Act, the registration of Paladin and Culp be suspended;
2. Under s. 127(1)2 of the Act, all trading in any securities by the Respondents cease;
3. Under s. 127(1)2 of the Act, all trading in securities of Paladin cease; and
4. Under s. 127(1)3 of the Act, all exemptions contained in Ontario securities law do not apply to the Respondents;

AND WHEREAS on June 2, 2009, the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

AND WHEREAS on June 4, 2009 the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on June 15, 2009 at 10:00 a.m.;

AND WHEREAS the Commission held a hearing on June 15, 2009 to consider whether to extend the Temporary Order;

AND WHEREAS counsel for Staff, Maya and Culp, on his own behalf and for Paladin, appeared at the hearing held on June 15, 2009;

AND WHEREAS Culp, on his own behalf and for Paladin, consented to the extension of the Temporary Order to September 30, 2009;

AND WHEREAS Maya consented to the extension of the Temporary Order to September 30, 2009, subject to his right to contest the Temporary Order by hearing on July 2, 2009 at 2:30 p.m.;

AND WHEREAS on July 2, 2009, the Commission heard submissions from Staff and Maya as to the continuation of the Temporary Order against Maya;

AND WHEREAS on July 2, 2009, with reasons issued on July 10, 2009, the Commission was not satisfied that Maya had provided satisfactory information not to extend the temporary order;

AND WHEREAS the Commission held a hearing on September 29, 2009 to consider whether to extend the Temporary Order;

AND WHEREAS Maya and Culp, on his own behalf and for Paladin, and counsel for Staff, appeared at the hearing held on September 29, 2009;

AND WHEREAS the parties consented to the extension of the Temporary Order to December 1, 2009;

AND WHEREAS the Commission held a hearing on November 30, 2009 to consider whether to extend the Temporary Order;

AND WHEREAS counsel for Staff and Culp, on his own behalf and for Paladin, appeared at the hearing held on November 30, 2009;

AND WHEREAS counsel for Staff spoke to and provided an email in respect of Maya's consent to an extension to the Temporary Order for a further two months;

AND WHEREAS at the hearing on November 30, 2009, Culp on his own behalf and for Paladin, and counsel for Staff consented to the extension of the Temporary Order to February 3, 2010;

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

AND WHEREAS by Commission order made August 31, 2009, pursuant to section 3.5(3) of the Act, any one of W. David Wilson, James E. A. Turner, David L. Knight, Carol S. Perry, Patrick J. LeSage, James D. Carnwath and Mary G. Condon, acting alone is authorized to exercise the powers of the Commission under the Act, subject to subsection 3.5(4) of the Act, to make orders under section 127 of the Act;

IT IS ORDERED that

1. pursuant to sections 127(7) and 127(8), the Temporary Order is extended until February 3, 2010; and
2. the hearing is adjourned to February 2, 2010 at 2:30 p.m.

Dated at Toronto this 30th day of November 2009

"David L. Knight"
Commissioner

2.2.3 Irwin Boock et al. – ss. 127, 127.1

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

AND

**IN THE MATTER OF
IRWIN BOOCK, STANTON DEFREITAS, JASON
WONG, SAUDIA ALLIE, ALENA DUBINSKY, ALEX
KHODJAINTS, 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**

**ORDER
(Section 127 and 127.1)**

WHEREAS on October 16, 2008, the Commission commenced the within proceeding by issuing a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act");

AND WHEREAS the hearing was adjourned from time to time until April 22, 2009 when the Commission ordered that the hearing of this matter on the merits was to be held on Monday, October 19, 2009 through to Friday, November 13, 2009, excluding Wednesday, November 11, 2009, commencing each day at 10:00 a.m. at the offices of the Commission on the 17th floor, 20 Queen Street West in Toronto;

AND WHEREAS on October 14, 2009 counsel for Stanton DeFreitas attended before the Commission and requested that the hearing scheduled to commence on October 19, 2009 be adjourned for the purpose of bringing a motion to obtain further disclosure from Staff of the Commission;

AND WHEREAS on October 14, 2009 counsel for Staff of the Commission attended as did counsel for Irwin Boock and counsel for Jason Wong;

AND WHEREAS on October 14, 2009 none of the other Respondents attended before the Commission nor did counsel for any of the other Respondents;

AND WHEREAS on October 14, 2009 counsel for Staff of the Commission did not oppose the adjournment request of counsel for Stanton DeFreitas, nor did counsel for Irwin Boock and counsel for Jason Wong;

AND WHEREAS the temporary orders made by the Commission on April 22, 2009 remain in place until the completion of the hearing on the merits of this matter;

AND WHEREAS on October 15th, 2009, the Commission ordered that the hearing of this matter on the merits which was to commence on Monday, October 19, 2009 be vacated and that the hearing be adjourned until December 1, 2009, or such other date as determined by the parties and the Secretary's office, for the purpose of setting dates for the hearing of this matter on the merits;

AND WHEREAS the parties require until December 10, 2009 to ascertain when to set dates for the hearing of this matter on the merits;

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

IT IS ORDERED THAT the date for the hearing is adjourned until December 10, 2009 at 11:30 a.m. or such other date as determined by the parties and the Secretary's office, for the purpose of setting dates for the hearing of this matter on the merits.

DATED at Toronto this 30th day of November, 2009.

"Mary G. Condon"

2.2.4 Uranium308 Resources Inc. et al. – s. 127

**FOR IMMEDIATE RELEASE
December 1, 2009**

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

AND

**IN THE MATTER OF
URANIUM308 RESOURCES INC.,
URANIUM308 RESOURCES PLC.,
MICHAEL FRIEDMAN, GEORGE SCHWARTZ,
PETER ROBINSON, ALAN MARSH SHUMAN, AND
INNOVATIVE GIFTING INC.**

**ORDER
(Section 127)**

WHEREAS on February 20, 2009, the Ontario Securities Commission (the "Commission") issued a temporary cease trade order pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering: that all trading in securities by Uranium308 Resources Inc. shall cease and that all trading in Uranium308 Resources Inc. securities shall cease; that all trading in securities by Uranium308 Resources Plc. shall cease and that all trading in Uranium308 Resources Plc. securities shall cease; that all trading in securities by Innovative Gifting Inc. shall cease; and, that Michael Friedman, Peter Robinson, George Schwartz, and Alan Marsh Shuman cease trading in all securities (the "Temporary Order");

AND WHEREAS, on February 20, 2009, the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

AND WHEREAS on February 23, 2009 the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on March 6, 2009 at 10:00 a.m.;

AND WHEREAS the Notice of Hearing set out that the Hearing was to consider, *inter alia*, whether, in the opinion of the Commission, it was in the public interest, pursuant to subsections 127 (7) and (8) of the Act, to extend the Temporary Order until the conclusion of the hearing, or until such further time as considered necessary by the Commission;

AND WHEREAS on March 6, 2009, a hearing was held before the Commission and Michael Friedman ("Friedman") and Innovative Gifting Inc. ("IGI") were represented by counsel and counsel advised the Commission that they were not opposed to the extension of the Temporary Order;

AND WHEREAS on March 6, 2009, Uranium308 Resources Inc., Uranium308 Resources Plc., Alan Marsh

Shuman ("Shuman"), Peter Robinson ("Robinson"), and George Schwartz ("Schwartz") did not appear before the Commission to oppose Staff of the Commission's ("Staff") request for the extension of the Temporary Order;

AND WHEREAS on March 6, 2009, the Commission was satisfied that Staff had taken reasonable efforts to serve all of the respondents with copies of the Temporary Order, the Notice of Hearing, and the Evidence Brief of Staff as evidenced by the Affidavit of Kathleen McMillan, sworn on March 5, 2009, and filed with the Commission;

AND WHEREAS on March 6, 2009, the panel considered the evidence and submissions before it and the Commission was of the opinion that: in the absence of a continuing cease-trade order, the length of time required to conclude a hearing could be prejudicial to the public interest; and, it was in the public interest to extend the Temporary Order;

AND WHEREAS on March 6, 2009, the Commission ordered, pursuant to subsection 127(8) of the Act, that the Temporary Order was extended to July 13, 2009 and that the hearing in this matter was adjourned to July 10, 2009, at 10:00 a.m. (the "March Order");

AND WHEREAS on July 10, 2009, a hearing was held before the Commission and Friedman and IGI were represented by counsel;

AND WHEREAS the Commission was satisfied that Staff served the March Order on all of the respondents as evidenced by the Affidavit of Kathleen McMillan, sworn on July 8, 2009, and filed with the Commission;

AND WHEREAS on July 10, 2009, Staff advised the Commission that Staff were seeking the extension of the Temporary Order until the end of November, 2009;

AND WHEREAS on July 10, 2009, counsel for Friedman advised the Commission that Friedman was not opposed to the extension of the Temporary Order. Counsel for IGI advised the Commission that IGI was opposed to the extension requested;

AND WHEREAS on July 10, 2009, Uranium308 Resources Inc., Uranium308 Resources Plc., Shuman, Robinson, and Schwartz did not appear before the Commission to oppose Staff's request for the extension of the Temporary Order;

AND WHEREAS on July 10, 2009, counsel for Staff advised the Commission that Schwartz and Jim Adams, the former President of Uranium308 Resources Plc., had advised Staff that they were not opposed to Staff's request for the extension of the Temporary Order;

AND WHEREAS the panel of the Commission considered the evidence and submissions before it;

AND WHEREAS on July 10, 2009, the Commission was of the opinion that it was in the public interest to extend the Temporary Order;

AND WHEREAS on July 10, 2009, the Commission ordered, pursuant to subsection 127(8) of the Act, that the Temporary Order was extended to 11:59 p.m. on November 30, 2009; and, that the hearing in this matter was adjourned to November 30, 2009, at 2:00 p.m. or such other time as advised by the Office of the Secretary of the Commission;

AND WHEREAS on November 30, 2009, a hearing was held before the Commission;

AND WHEREAS on November 30, 2009, the Commission was satisfied that Staff had served all of the respondents with Staff's materials for the November 30, 2009 hearing, as evidenced by the Affidavit of Natasha Quamina, sworn on November 30, 2009, which was filed with the Commission;

AND WHEREAS on November 30, 2009, Staff advised the Commission that Staff were seeking the extension of the Temporary Order until the end of January or early February, 2010;

AND WHEREAS on November 30, 2009, counsel for Friedman attended before the Commission and advised the Commission that Friedman was not opposed to the extension of the Temporary Order;

AND WHEREAS on November 30, 2009, counsel for Staff advised the Commission that Schwartz, IGI, and Uranium308 Resources Plc. were not opposed to the extension of the Temporary Order;

AND WHEREAS on November 30, 2009, Uranium308 Resources Inc., Shuman and Robinson did not appear before the Commission to oppose Staff's request for the extension of the Temporary Order;

AND WHEREAS the panel of the Commission considered the evidence and submissions before it;

AND WHEREAS the Commission is of the opinion that it is in the public interest to extend the Temporary Order;

IT IS HEREBY ORDERED, pursuant to subsection 127(8) of the Act that the Temporary Order is extended to February 4, 2010; and,

IT IS FURTHER ORDERED that the hearing in this matter is adjourned to February 3, 2010 at 10:00 a.m. or such other time as advised by the Office of the Secretary of the Commission.

DATED at Toronto this 30th day of November, 2009.

"David L. Knight"

2.2.5 Paul Iannicca – s. 127

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

AND

IN THE MATTER OF PAUL IANNICCA

ORDER

(Section 127 of the Securities Act)

WHEREAS on March 13, 2009, the Commission issued a Notice of Hearing pursuant to sections 127 and 127.1 of the Act accompanied by a Statement of Allegations dated March 12, 2009, issued by Staff of the Commission ("Staff") with respect to Paul Iannicca ("Iannicca");

AND WHEREAS on March 13, 2009, counsel for Iannicca was served with the Notice of Hearing and Statement of Allegations;

AND WHEREAS on March 20, 2009, upon hearing submissions from counsel for Staff, the hearing was adjourned to May 26, 2009;

AND WHEREAS on May 26, 2009, the hearing was adjourned until June 25, 2009 for the purpose of having a pre-hearing conference;

AND WHEREAS on June 25, 2009, the hearing was adjourned until August 18, 2009 for any other purpose that the parties may advise the Office of the Secretary;

AND WHEREAS on August 18, 2009, counsel for Iannicca did not attend, but counsel for Staff informed the panel that both parties agreed to the adjournment of this hearing to October 7, 2009;

AND WHEREAS on August 18, 2009, upon hearing submissions from counsel for Staff, the hearing was adjourned to October 7, 2009;

AND WHEREAS on October 7, 2009, upon hearing submissions from counsel for Staff, the hearing was adjourned to a date to be agreed upon between the parties;

AND WHEREAS on October 16, 2009, upon receiving scheduling information from the parties, the hearing was adjourned until December 2, 2009;

AND WHEREAS the Secretary's office was subsequently informed that counsel for the Respondent cannot attend for a hearing on December 2, 2009;

AND WHEREAS all parties have requested that the hearing be adjourned until January 7, 2010 at 10:00 a.m.

IT IS ORDERED THAT the hearing is adjourned to January 7, 2010 at 10:00 a.m. or such other date as is agreed by the parties and determined by the Office of the Secretary.

DATED at Toronto this 1st day of December, 2009

“David L. Knight”

2.2.6 Ontario Teachers’ Pension Plan Board and LLX Logistica S.A.

Headnote

Subsection 74(1) – Application for exemption from prospectus requirement in connection with first trade of shares of issuer through exchange or market outside of Canada or to person or company outside of Canada – issuer not a reporting issuer in any jurisdiction in Canada – conditions of the exemption in section 2.14 of National Instrument 45-102 Resale of Securities not satisfied as residents of Canada (including Applicant) own more than 10% of the total number of shares – relief restricted to securities acquired prior to date of decision – relief granted subject to conditions, including condition that residents of Canada, excluding the Applicant, do not hold more than 10 percent of the outstanding securities or represent more than 10 percent of the number of securityholders and condition that the first trade be made through an exchange or market outside of Canada or to a person or company outside of Canada

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53, 74(1).
National Instrument 45-102 Resale of Securities, s. 2.14.

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

AND

IN THE MATTER OF ONTARIO TEACHERS’ PENSION PLAN BOARD AND LLX LOGISTICA S.A.

ORDER

Background

The principal securities regulator (the **Decision Maker**) in Ontario (the **Jurisdiction**) has received an application from the Ontario Teachers’ Pension Plan Board (the **Applicant**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption under section 74(1) of the Legislation from the prospectus requirements contained at section 53 of the Legislation in connection with the first trades of Common Shares (as defined below) in LLX Logistica S.A. (**LLX**) acquired by the Applicant prior to the date of the decision (the **Requested Relief**).

Interpretation

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

Representations

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

1. The Applicant is an independent corporation established on December 31, 1989 by the *Teachers' Pension Act* (Ontario) to administer and manage a pension plan established for the benefit of the Province of Ontario's primary and secondary school teachers and to pay members of the pension plan their respective benefits under the plan. The head office of the Applicant is located at 5650 Yonge Street, Toronto, Ontario, Canada.
2. LLX is a corporation incorporated, existing and in good standing under the laws of Brazil, with shares listed on the Novo Mercado of the São Paulo Stock Exchange (the **Bovespa**). LLX also has a global depositary receipt (**GDR**) program administered by The Bank of New York Mellon as depositary bank. Each GDR represents one LLX Common Share. The LLX GDRs trade on the over-the-counter market.
3. LLX is in the business of providing Brazil with logistics skills and infrastructure, particularly in the port sector, through two large-capacity private port terminals. The head office of LLX is located at Praia do Flamengo, No. 66, 13th floor, Rio de Janeiro, Brazil.
4. On January 17, 2008, the Applicant purchased 905,530 nominative preferred shares (the **Preferred Shares**) from LLX. After giving effect to this purchase, the share capital of LLX consisted of R\$2,185,093,333, divided into 6,023,531 shares of which 903,530 Preferred Shares and 5,120,001 other shares were outstanding. The shares were sold to the Applicant in a private placement transaction in which the Applicant qualified as an accredited investor in reliance on the registration and prospectus exemptions contained in National Instrument 45-106 *Prospectus and Registration Exemptions*.
5. On June 19, 2008, the Preferred Shares were converted to common shares (**Common Shares**). On the same date, the Common Shares were split at a rate of 59.4940978 to 1 (the **Conversion and Split**). The Conversion and Split resulted in a capital base of R\$5,129,036.30, divided into 358,364,542 Common Shares, which were distributed to shareholders in proportion to the ownership interest each of them held before the Conversion and Split, resulting in the Applicant owning 53,754,702 Common Shares. On July 28, 2008, after LLX's spin off from MMX Mineracao e Metallicos S.A. (**MMX**), LLX's shares began to be traded in the New Market segment of the Bovespa. As part of this transaction, the Applicant received a distribution of 15,192,000 shares of

LLX (**Distribution**), which was in proportion to the Applicant's 5% ownership interest in MMX.

6. To the best of the Applicant's knowledge, based on a Certificate from LLX, on March 16, 2009, the Board of Directors of LLX approved an increase of LLX's capital stock by means of the issuance of 333,333,335 new Common Shares of LLX (**Capital Increase**), resulting in a capital base of R\$675,227,907.30 divided into 691,869,077 Common Shares. Such Capital Increase has been ratified by the Board of Directors of LLX on May 28, 2009. 0.3% of these Common Shares are represented by GDRs.
7. Immediately following the Conversion and Split, Distribution and Capital Increase, the Applicant held 113,713,982 Common Shares, representing approximately 16.4357% of the total number of issued and outstanding Common Shares. On August 28, 2009, the Applicant purchased an additional 10,405,324 Common Shares of LLX from another shareholder in a secondary market trade. As such, the Applicant currently holds 17.9397% or 124,119,306 of the total number of issued and outstanding Common Shares. The Applicant has not held, and does not currently hold, any GDRs.
8. Canadian resident investors, other than the Applicant, currently hold less than 0.00005% of the total number of outstanding Common Shares, and less than 2.3% of the total number of outstanding GDRs. Including the Applicant, Canadian resident investors currently hold approximately 17.9398% of the total number of outstanding Common Shares, and less than 2.3% of the total number of outstanding GDRs.
9. Canadian-resident investors, other than the Applicant, currently represent less than 0.00005% of the total number of holders of Common Shares, and less than 2.3% of the total number of holders of GDRs. Including the Applicant, Canadian-resident investors currently represent approximately 0.00005% of the total number of holders of Common Shares, and less than 2.3% of the total number of holders of GDRs.
10. LLX is not a reporting issuer or its equivalent in the Province of Ontario or any other province or territory of Canada, nor are any of its securities listed or posted for trading on any exchange, or market, located in Canada. LLX has no present intention of becoming listed in Canada or of becoming a reporting issuer under the Act or under any other Canadian securities laws, and no market for the Common Shares exists in Canada and none is expected to develop.
11. In the absence of the exemption requested hereby, the first trade of Common Shares held by

the Applicant will be deemed to be a distribution and subject to section 53 of the Act.

12. The prospectus exemptions in sections 2.5 and 2.6 of National Instrument 45-102 *Resale of Securities* (**NI 45-102**) will not be applicable in this situation because LLX is not a reporting issuer or its equivalent in the Province of Ontario or any other province or territory of Canada.
13. The prospectus exemption in section 2.14 of NI 45-102 would be applicable in this situation, but will not be available to the Applicant (or any other holder of Common Shares in Canada) with respect to its first trade of Common Shares because residents of Canada, including the Applicant, currently own more than 10% of the outstanding Common Shares.

DATED at Toronto this 13th day of November, 2009

"David L. Knight"
Commissioner
Ontario Securities Commission

"Carol S. Perry"
Commissioner
Ontario Securities Commission

Decision

This Order evidences the decision of the Decision Maker (the Decision).

The Decision Maker is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met.

The Decision of the Decision Maker under the Legislation is that the Requested Relief is granted provided that:

- i) at the date of the trade, LLX is not a reporting issuer in any jurisdiction of Canada where that concept exists;
- ii) the trade is executed through the facilities of the Bovespa or any other exchange or market outside Canada or to a person or company outside of Canada; and
- iii) at the distribution date of such shares, after giving effect to the issue of the shares and any other shares of the same class or series that were issued at the same time as or as part of the same distribution as the shares, residents of Canada (excluding the Applicant):
 - a. did not own directly or indirectly more than 10 percent of the outstanding shares of the class or series, and
 - b. did not represent in number more than 10 percent of the total number of owners directly or indirectly of shares of the class or series.

2.2.7 Toronto-Dominion Bank and TD Capital Trust IV

Headnote

Application by bank (the Bank) and capital trust subsidiary (the Trust) for an order granting the Trust relief from the requirement in OSC Rule 13-502 Fees (the Fees Rule) to pay participation fees – Bank has paid, and will continue to pay, participation fees applicable to it under s. 2.2 of the Fees Rule, and Bank will include capitalization of Trust in its fee calculation – relief analogous to relief for "subsidiary entities" contained in s. 2.6(2) of the Fees Rule – Trust may not, from a technical accounting perspective, be considered to be a "subsidiary entity" of the Bank for Canadian GAAP purposes and may not be entitled to rely on the exemption in s. 2.6(2) of the Fees Rule – Trust and Bank satisfy conditions of exemption in s. 2.6(2) but for definition of "subsidiary entity" – Trust exempt from requirement to pay participation fees, subject to conditions.

Applicable Legislative Provisions

OSC Rule 13-502 Fees, s. 2.6(2).

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

AND

IN THE MATTER OF THE TORONTO-DOMINION BANK AND TD CAPITAL TRUST IV

ORDER

WHEREAS the Ontario Securities Commission (the "**Commission**") has received an application from The Toronto-Dominion Bank (the "**Bank**") and TD Capital Trust IV (the "**Trust**") for an order, pursuant to section 6.1 of Ontario Securities Commission Rule 13-502 *Fees* (the "**Fees Rule**"), that the requirement to pay a participation fee under section 2.2 of the Fees Rule shall not apply to the Trust, subject to certain terms and conditions;

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

1. The Trust is a trust established under the laws of the Province of Ontario pursuant to an amended and restated declaration of trust dated as of January 26, 2009, as may be amended, restated or supplemented from time to time.
2. The Trust's head and registered office is located in Toronto, Ontario.
3. The Trust has a financial year end of December 31.
4. The Trust is a reporting issuer in each of the provinces and territories of Canada (the

"**Reporting Jurisdictions**"). The Trust is not, to the best of its knowledge, in default of any requirement of the securities legislation in the Reporting Jurisdictions.

5. Pursuant to an amended and restated administration agreement dated as of January 26, 2009, between Montreal Trust Company of Canada, as trustee of the Trust (the "**Trustee**") and the Bank, the Trustee has delegated to the Bank certain of its duties in relation to the administration of the Trust. The Bank, as administrative agent, provides 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 administers the day-to-day operations of the Trust.
6. The outstanding securities of the Trust consist of: (i) 9.523% TD Capital Trust IV Notes – Series 1 Due June 30, 2108 (the "**TD CaTS IV – Series 1**"), (ii) 10.00% TD Capital Trust IV Notes – Series 2 Due June 30, 2108 (the "**TD CaTS IV – Series 2**"), (iii) 6.631% TD Capital Trust IV Notes – Series 3 Due June 30, 2108 (the "**TD CaTS IV – Series 3**"), and collectively with the TD CaTS IV – Series 1 and TD CaTS IV – Series 2, the "**TD CaTS IV Notes**", and (iv) 2,500 voting trust units (the "Voting Trust Units", and collectively with the TD CaTS IV Notes, the "**Trust Securities**"). All of the Voting Trust Units, which are the only voting securities of the Trust, are held by the Bank.
7. No Trust Securities are currently listed on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.
8. The Trust has been established for the purpose of effecting offerings of Trust Securities in order to provide the Bank with a cost effective means of raising capital for Canadian bank regulatory purposes by means of: (i) creating and selling the Trust Securities; and (ii) acquiring and holding assets (collectively, the "**Trust Assets**"), which consist primarily of one or more senior unsecured deposit notes of the Bank ("**Deposit Notes**"). The Trust Assets will generate income for distribution to holders of Trust Securities. The Trust does not and will not carry on any operating activity other than in connection with offerings of Trust Securities and in connection with the Trust Assets.
9. Pursuant to a decision dated May 14, 2009 (the "**Continuous Disclosure Exemption Decision**") granted to the Trust by the Commission, as principal regulator, on behalf of itself and the securities regulatory authorities of the Reporting Jurisdictions under the passport system contemplated by Multilateral Instrument 11-102 *Passport System*, the Trust has been granted an exemption from the requirements contained in the securities legislation of the Province of Ontario (the "**Legislation**") to:

- (a)
 - (i) file interim financial statements and audited annual financial statements and deliver same to the security holders of the Trust, pursuant to sections 4.1, 4.3 and 4.6 of National Instrument 51-102 *Continuous Disclosure Obligations* ("**NI 51-102**");
 - (ii) file interim and annual management's discussion and analysis and deliver same to the security holders of the Trust pursuant to sections 5.1 and 5.6 of NI 51-102;
 - (iii) file an annual information form pursuant to section 6.1 of NI 51-102; and
 - (iv) comply with any other provisions of NI 51-102;
 - (collectively, the "**Continuous Disclosure Obligations**"); and
 - (b) file interim and annual certificates pursuant to Parts 4, 5 and 6 of National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the "**Certification Obligations**").
 10. As a result of granting the Continuous Disclosure Exemption Decision, the Trust is exempt from the Continuous Disclosure Obligations and Certification Obligations, subject to certain terms and conditions, and, except as set out in the Continuous Disclosure Exemption Decision, no continuous disclosure documents concerning only the Trust will be filed with the Commission.
 11. The Trust was established by the Bank in order to comply with the regulatory requirements of the Office of the Superintendent of Financial Institutions ("**OSFI**") relating to the issuance of innovative capital instruments (as contained in OSFI's Principles Governing Inclusion of Innovative Instruments in Tier 1 Capital).
 12. OSFI maintains strict guidelines and standards (the "**OSFI Guidelines**") with respect to the capital adequacy requirements of federally regulated financial institutions, including the Bank, and, in particular, specifies minimum required amounts of capital to be maintained by such institutions. Tier 1 capital consists of common shareholders' equity, qualifying non-cumulative perpetual preferred shares, qualifying innovative instruments and qualifying non-controlling interests arising on consolidation from Tier 1 capital instruments. Innovative instruments, such as the TD CaTS IV Notes, must satisfy the detailed requirements of the OSFI Guidelines to be included in the Tier 1 capital of the Bank, including the requirement that such instruments be issued by a special purpose vehicle (such as the Trust), whose primary purpose is to raise innovative Tier 1 capital. OSFI approved the inclusion of the TD CaTS IV Notes as Tier 1 capital of the Bank. If the Bank could issue the TD CaTS IV Notes directly, this capital would be included in the calculation of the participation fee payable by the Bank.
 13. The Trust is a "Class 2 reporting issuer" under the Fees Rule and would be required (but for this Order) to pay participation fees under such rule.
 14. The Bank, as a legal matter, controls the Trust through its ownership of the Voting Trust Units issued by the Trust. The Bank has paid, and will continue to pay, participation fees applicable to it under section 2.2 of the Fees Rule.
 15. The Fees Rule includes an exemption for "subsidiary entities" in subsection 2.6(2) of the Fees Rule. The Bank and the Trust meet all of the substantive requirements to rely on the exemption in subsection 2.6(2) of the Fees Rule, but for the requirement in subsection 2.6(2)(b) that the accounting standards to which the parent's financial statements are prepared under Ontario securities law require the consolidation of the parent and the subsidiary entity. The Fees Rule defines "subsidiary entity" by reference to the accounting definition under Canadian GAAP, rather than by reference to a legal definition based on control.
 16. On November 1, 2004, the Canadian Institute of Chartered Accountants adopted Guideline 15, Consolidation of Variable Interest Entities (the "**VIE Guideline**"). According to the VIE Guideline, the Bank may not consolidate the Trust because the assets of the Trust consist primarily of the Deposit Notes, liabilities of the Bank. As a result, the Trust is not, from a technical accounting perspective, entitled to rely on the exemption in subsection 2.6(2) of the Fees Rule.
- THE ORDER** of the Commission under the Fees Rule is that the requirement to pay a participation fee under section 2.2 of the Fees Rule shall not apply to the Trust, for so long as:
- (a) the Bank and the Trust continue to satisfy all of the conditions contained in the Continuous Disclosure Exemption Decision; and
 - (b) the capitalization of the Trust represented by the TD CaTS IV Notes and any additional securities of the Trust that may be issued, from time to time, by the Trust is included in the participation fee calculation applicable to the Bank and

the Bank has paid the participation fee
calculated on this basis.

DATED this 26th day of November, 2009.

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

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
Shermag Inc.	20 Nov 09	02 Dec 09	02 Dec 09	
ART Advanced Research Technologies Inc.	26 Nov 09	08 Dec 09		
Komunik Corporation	27 Nov 09	09 Dec 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

NO REPORT FOR THIS WEEK

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
Spylogics International Corp.	02 June 09	15 June 09	15 June 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	18 Nov 09		

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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 SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

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

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price (\$)	No of Securities Distributed
11/06/2009	2	6990371 Canada Inc. - Units	150,000.00	N/A
11/12/2009	15	Advantel Minerals (Canada) Ltd. - Units	107,500.00	430,000.00
11/13/2009	13	AIM Health Group Inc. - Debentures	3,500,000.00	N/A
10/26/2009	1	American Capital Agency Corp. - Common Shares	2,117,892.00	5,000,000.00
11/10/2009	4	Ancestry.com Inc. - Common Shares	1,633,000.00	4,074,074.00
10/27/2009	51	Antioquia Gold Inc. - Units	1,785,500.00	7,142,000.00
11/10/2009	24	Ascendancy #3 Limited Partnership - Units	2,110,000.00	2,110.00
11/12/2009	58	Atlanta Gold Inc. - Common Shares	2,655,720.00	22,130,998.00
11/11/2009	50	Balkan Resources Inc. - Common Shares	706,603.48	35,330,175.00
11/03/2009 to 11/13/2009	29	Bancorp Balanced Mortgage Fund Ltd. II - Preferred Shares	1,061,754.00	1,061,754.00
11/04/2009	9	Barrett Developments PLC - Common Shares	1,728,114.08	981,883.00
11/20/2009	3	Bayfield Ventures Corp. - Common Shares	22,400.00	40,000.00
11/12/2009	1	BelAir Networks Inc. - Warrants	1.00	N/A
11/11/2009	12	Birch Hill Equity Partners IV, L.P. - Limited Partnership Interest	257,800,000.00	N/A
11/11/2009	2	Birch Hill Equity Partners (Entrepreneurs) IV, LP - Limited Partnership Interest	1,500,000.00	N/A
10/30/2009	1	Bluesun Inc. - Common Shares	1,447,236.00	699,148.00
11/13/2009	1	Bontan Corporation Inc. - Warrants	0.00	N/A
11/09/2009	10	Bralorne Gold Mines Ltd. - Units	1,425,690.00	N/A
11/09/2009	8	Brett Resources Inc. - Common Shares	48,800.00	50,000.00
11/12/2009 to 11/20/2009	8	BTI Systems Inc. - Debentures	2,604,076.61	N/A
11/06/2009	3	Canarc Resource Corp. - Common Shares	25,000.00	160,250.00
11/10/2009	4	Clairvest Equity Partners IV Limited Partnership - Units	13,000,000.00	13,000.00
11/16/2009	1	Claude Resources Inc. - Flow-Through Shares	1,700,000.00	N/A

Notice of Exempt Financings

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price (\$)	No of Securities Distributed
11/16/2009	3	Claude Resources Inc. - Units	3,600,000.00	5,000,000.00
11/13/2009	24	Copper Reef Mining Corporation - Units	848,300.00	N/A
10/29/2009	2	CounterPath Corporation - Units	2,000,000.00	3,333,334.00
11/13/2009	9	Crown Realty II Limited Partnership - Limited Partnership Units	61,500,000.00	61,500,000.00
11/09/2009	6	Daymak Inc. - Common Shares	440,000.00	N/A
11/16/2009	61	DB Mortgage Investment Corporation #1 - Common Shares	9,087,428.00	9,254.00
06/24/2009	2	Dejour Enterprises Ltd. - Common Shares	2,650,000.00	8,030,303.00
11/13/2009 to 11/16/2009	2	Development Notes Limited Partnership - Units	213,591.00	N/A
11/09/2009	2	Diagnos Inc. - Common Shares	1,200,000.00	6,000,000.00
11/16/2009	1	Divestco Inc. - Debentures	3,750,000.00	N/A
11/13/2009	56	EACOM Timber Corporation - Units	3,000,000.00	10,000,000.00
10/28/2009	23	Eagle Peak Resources Inc. - Common Shares	252,000.00	N/A
11/18/2009	1	Edgeworth Mortgage Investment Corporation - Preferred Shares	150,000.00	N/A
11/16/2009	2	Entertainment Properties Trust - Common Shares	4,151,574.00	6,325,000.00
11/10/2009	6	EquiGenesis 2009-II Preferred Investment LP - Limited Partnership Units	11,664,185.00	322.75
11/09/2009	2	E.I. du Pont de Nemours and Company - Note	4,222,404.00	N/A
11/10/2009	1	Fire River Gold Corp. - Units	72,000.00	240,000.00
11/12/2009	2	First Leaside Fund - Trust Units	10,000.00	10,000.00
11/12/2009 to 11/16/2009	3	First Leaside Fund - Trust Units	12,074.00	12,074.00
11/12/2009	1	First Leaside Fund - Trust Units	105,180.00	100,000.00
11/12/2009 to 11/16/2009	3	First Leaside Premier Limited Partnership - Units	186,634.80	177,795.00
11/12/2009	1	First Leaside Progressive Limited Partnership - Units	200,000.00	200,000.00
11/12/2009 to 11/16/2009	2	First Leaside Wealth Management Inc. - Preferred Shares	115,000.00	115,000.00
11/01/2009	1	Flatiron Market Neutral LP - Units	490,000.00	403.92
10/28/2009	24	Forent Energy Ltd. - Common Shares	3,206,609.95	N/A
11/12/2009	196	Gleichen Resources Ltd. - Common Shares	241,500,000.00	241,500,000.00
11/12/2009	153	GMP Securities Inc. - Common Shares	87,114,671.27	8,875,697.00

Notice of Exempt Financings

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price (\$)	No of Securities Distributed
11/09/2009	9	Gold Bullion Development Corp. - Units	301,000.00	N/A
11/13/2009	1	Halo resources Ltd. - Units	125,000.00	2,500,000.00
10/29/2009	2	iCo Therapeutics Inc. - Common Shares	2,880,000.00	6,000,000.00
11/09/2009 to 11/15/2009	29	IGW Real Estate Investment Trust - Trust Units	1,100,171.50	1,101,980.00
11/12/2009	3	InCana Investments Inc. - Units	100,000.00	2,000,000.00
11/12/2009	6	Ivanhoe Nickel & Platinum Ltd. - Units	28,080,468.00	N/A
11/10/2009	18	JNR Resources Inc. - Common Shares	1,810,000.00	7,240,000.00
11/15/2009	8	Kingwest Avenue Portfolio - Units	31,337.95	5,978.90
11/15/2009	3	Kingwest Canadian Equity Portfolio - Units	250,000.00	24,750.27
11/15/2009	2	Kingwest High Income Portfolio - Units	205,000.00	41,000.00
11/15/2009	3	Kingwest US Equity Portfolio - Units	87,738.88	7,520.58
11/06/2009	1	Ladybug Teknologies Inc. - Debentures	350,000.00	N/A
11/13/2009	44	McConachie Development Investment Corporation - Units	1,073,060.00	107,306.00
11/13/2009	51	Midland Exploration Inc. - Common Shares	2,797,690.00	N/A
11/09/2009 to 11/10/2009	112	Midlands Minerals Corporation - Units	3,191,250.00	N/A
11/10/2009	144	Mira Resources Corp. - Receipts	15,385,000.00	50,000,000.00
11/09/2009	18	Mobidia Technology Inc. - Preferred Shares	438,348.90	398,463.00
11/13/2009	10	Moncasa Capital Corporation - Units	190,790.00	190,790.00
11/13/2009	2	Moutnain Lake Resources Inc. - Flow-Through Shares	450,000.00	N/A
10/28/2009	2	Nechako Minerals Corp. - Units	75,000.00	375,000.00
11/09/2009	1	Neilas (Shepherd Road) Limited Partnership - Limited Partnership Units	100,000.00	N/A
11/16/2009	21	Nelson Financial Group Ltd. - Notes	1,494,717.56	N/A
11/10/2009	10	Pacific Rubiales Energy Corp. - Notes	473,310,000.00	N/A
11/10/2009	21	Perseus Mining Limited - Receipts	34,164,000.00	N/A
11/06/2009 to 11/13/2009	50	Quetzal Energy Ltd. - Units	1,588,277.50	12,706,220.00
11/10/2009	2	Range Royalty Limited Partnership - Limited Partnership Units	760,625.00	60,850.00
11/10/2009	4	Range Royalty Trust - Trust Units	169,187.50	13,535.00
11/10/2009	4	Rise Innovation Inc. - Common Shares	113,000.00	113,000.00

Notice of Exempt Financings

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price (\$)	No of Securities Distributed
11/06/2009	119	Sea Dragon Energy Inc. - Units	15,000,000.00	60,000,000.00
11/16/2009	4	Seafield Resources Ltd. - Units	118,750.00	950,000.00
10/28/2009	56	SNS Silver Corp. - Units	692,500.00	6,925,000.00
11/17/2009	1	Societe d' exploration miniere Vior inc. - Flow-Through Shares	149,999.98	1,153,846.00
11/12/2009	3	Sparton Resources Inc. - Common Shares	23,450.00	335,000.00
11/13/2009	3	Swift Resources Inc. - Flow-Through Shares	500,000.00	N/A
11/10/2009	1	TenXC Wireless Inc. - Debentures	631,080.00	N/A
11/10/2009	2	TenXC Wireless (Delaware) Inc. - Debentures	631,080.00	N/A
11/02/2009	8	The Investment Partners Fund - Trust Units	792,320.24	53,117.03
11/13/2009	22	Timbercreek Mortgage Investment Corporation - Common Shares	2,470,020.00	N/A
11/10/2009	722	Tourmaline Oil Corp. - Common Shares	208,404,360.00	11,793,624.00
11/10/2009	3	Toys "R" Us Property Company II, LLC - Notes	9,071,919.62	N/A
11/10/2009	1	Triumph Group Inc. - Notes	103,654.89	N/A
03/19/2009 to 10/27/2009	83	UBS (LUX) Money Market Fund - Units	50,305,238.26	26,137.00
06/02/2009 to 10/30/2009	16	UBS (LUX) Money Market Fund - Units	2,048,319.72	1,582.30
03/24/2009 to 10/29/2009	11	UBS (LUX) Money Market Fund - Units	6,585,600.63	5,432.95
04/01/2009 to 10/09/2009	7	UBS (LUX) Money Market Fund - Units	2,179,128.30	1,274.53
03/03/2009 to 10/30/2009	164	UBS (LUX) Money Market Fund - Units	71,006,580.85	41,285.74
11/16/2009	62	Uracan Resources Ltd. - Units	5,094,699.60	16,982,332.00
11/16/2009	17	Verena Minerals Corporation - Units	2,540,000.00	12,700,000.00
10/31/2009	65	Vertex Fund - Trust Units	8,157,956.87	N/A
11/10/2009	19	Walton AZ Monte Verde Investment Corporation - Common Shares	320,300.00	32,030.00
11/17/2009	20	Walton AZ Monte Verde Investment Corporation - Common Shares	450,580.00	45,058.00
11/10/2009	4	Walton AZ Monte Verde Limited Partnership - Limited Partnership Units	389,209.16	37,277.00
11/13/2009	22	Walton AZ Verona Investment Corporation - Common Shares	371,130.00	37,113.00
11/13/2009	3	Walton AZ Verona Limited Partnership - Units	455,284.56	43,278.00

Notice of Exempt Financings

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price (\$)	No of Securities Distributed
04/13/2009	14	Walton GA Arcade Meadows Limited Partnership 2 - Limited Partnership Units	1,869,815.50	152,638.00
11/13/2009	32	Walton TX Austin Land Investment Corporation - Common Shares	807,170.00	80,717.00
11/13/2009	11	Zelos Therapeutics Inc. - Notes	1,982,203.58	N/A
11/13/2009	4	Zelos Therapeutics Inc. - Notes	1,392,796.42	N/A

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:

Abacus Mining & Exploration Corp
Principal Regulator - British Columbia

Type and Date:

Preliminary Short Form Prospectus dated November 25, 2009

NP 11-202 Receipt dated November 26, 2009

Offering Price and Description:

\$* - * Units and * Flow-Through Shares Price: \$0.25 per Unit \$0.30 per Flow-Through Share

Underwriter(s) or Distributor(s):

Haywood Securities Inc.
Canaccord Capital Corporation

Promoter(s):

-

Project #1506136

Issuer Name:

Angiotech Pharmaceuticals, Inc.
Principal Regulator - British Columbia

Type and Date:

Preliminary Shelf Prospectus dated December 1, 2009

NP 11-202 Receipt dated December 1, 2009

Offering Price and Description:

US\$250,000,000.00:

Common Shares
Class I Preference Shares
Warrants
Debt Securities
Units

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #1510794

Issuer Name:

Angle Energy Inc.
Principal Regulator - Alberta

Type and Date:

Preliminary Short Form Prospectus dated November 26, 2009

NP 11-202 Receipt dated November 26, 2009

Offering Price and Description:

\$40,072,500.00 - 6,850,000 Common Shares Price: \$5.85 per Common Share

Underwriter(s) or Distributor(s):

FirstEnergy Capital Corp.
Acumen Capital Finance Partners Limited
CIBC World Markets Inc.
Cormark Securities Inc.
Dundee Securities Corporation
Haywood Securities Inc.
Macquarie Capital Markets Canada Ltd.
National Bank Financial Inc.

Promoter(s):

-

Project #1505734

Issuer Name:

Asian Resource Global Strategies Inc.
Principal Regulator - Ontario

Type and Date:

Preliminary Long Form Prospectus dated November 27, 2009

NP 11-202 Receipt dated November 30, 2009

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #1508365

Issuer Name:

Avion Gold Corporation
Principal Regulator - Ontario

Type and Date:

Preliminary Short Form Prospectus dated November 26, 2009

NP 11-202 Receipt dated November 26, 2009

Offering Price and Description:

\$20,000,000.00 - 50,000,000 Common Shares Price: \$0.40 per Common Share

Underwriter(s) or Distributor(s):

Cormark Securities Inc.
Canaccord Capital Corporation
Wellington West Capital Markets Inc.
Macquarie Capital Markets Canada Ltd.

Promoter(s):

-

Project #1505555

Issuer Name:

Baffinland Iron Mines Corporation
Principal Regulator - Ontario

Type and Date:

Preliminary Short Form Prospectus dated November 24, 2009

NP 11-202 Receipt dated November 25, 2009

Offering Price and Description:

\$10,000,320.00 - 20,834,000 Units Price: \$0.48 per Unit

Underwriter(s) or Distributor(s):

GMP Securities L.P.
CIBC World Markets Inc.
Raymond James Ltd.
Desjardins Securities Inc.
Jennings Capital Inc.
National Bank Financial Inc.

Promoter(s):

-

Project #1504674

Issuer Name:

Canadian Energy Convertible Debenture Fund
Principal Regulator - Ontario

Type and Date:

Preliminary Long Form Prospectus dated November 26, 2009

NP 11-202 Receipt dated November 27, 2009

Offering Price and Description:

Maximum \$75,000,000.00 (7,500,000 Units) Price: \$10.00 per Unit Minimum Purchase: 200 Units

Underwriter(s) or Distributor(s):

CIBC World Markets Inc.

Promoter(s):

First Asset Investment Management Inc.

Project #1506392

Issuer Name:

Cathay Forest Products Corp.
Principal Regulator - Ontario

Type and Date:

Preliminary Short Form Prospectus dated November 27, 2009

NP 11-202 Receipt dated November 27, 2009

Offering Price and Description:

\$15,250,000.00 - 25,000,000 Common Shares Price: \$0.61 per Common Share

Underwriter(s) or Distributor(s):

Dundee Securities Corporation
Canaccord Capital Corporation
Octagon Capital Corporation
Research Capital Corporation

Promoter(s):

-

Project #1506706

Issuer Name:

Compton Petroleum Corporation
Principal Regulator - Alberta

Type and Date:

Preliminary Base Shelf Prospectus dated November 25, 2009

NP 11-202 Receipt dated November 25, 2009

Offering Price and Description:

\$750,000,000.00:
Common Shares
Subscription Receipts
Warrants
Rights
Options

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #1504941

Issuer Name:

Enbridge Income Fund
Principal Regulator - Alberta

Type and Date:

Preliminary Base Shelf Prospectus dated December 1, 2009

NP 11-202 Receipt dated December 1, 2009

Offering Price and Description:

\$500,000,000.00:
Trust Units
Medium Term Notes

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #1511028

Issuer Name:

Freehold Royalty Trust
Principal Regulator - Alberta

Type and Date:

Preliminary Short Form Prospectus dated November 25, 2009

NP 11-202 Receipt dated November 25, 2009

Offering Price and Description:

\$100,368,750.00 - 6,625,000 Trust Units Price: \$15.15 per Trust Unit

Underwriter(s) or Distributor(s):

CIBC World Markets Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.

Promoter(s):

-

Project #1504747

Issuer Name:

Gleichen Resources Ltd.
Principal Regulator - British Columbia

Type and Date:

Preliminary Long Form Prospectus dated November 23, 2009

NP 11-202 Receipt dated November 25, 2009

Offering Price and Description:

\$241,500,000.00 - 241,500,000 Common Shares and 60,375,000 Common Share Purchase Warrants on Exercise of 241,500,000 Special Warrants Price: \$1.00 per Special Warrant

Underwriter(s) or Distributor(s):

Macquarie Capital Markets Canada Ltd.
BMO Nesbitt Burns Inc.
GMP Securities L.P.
Dundee Securities Corporation
Scotia Capital Inc.
Jones, Gable & Company Limited

Promoter(s):

-

Project #1504716

Issuer Name:

GoGold Resources Inc.
Principal Regulator - Nova Scotia

Type and Date:

Preliminary CPC Prospectus dated November 27, 2009

NP 11-202 Receipt dated November 27, 2009

Offering Price and Description:

\$500,000.00 - 5,000,000 Common Shares Price: \$0.10 per Common Share

Underwriter(s) or Distributor(s):

Blackmont Capital Inc.

Promoter(s):

Terence F. Coughlan

Project #1507366

Issuer Name:

IBC Advanced Alloys Corp.
Principal Regulator - British Columbia

Type and Date:

Preliminary Short Form Prospectus dated November 26, 2009

NP 11-202 Receipt dated November 27, 2009

Offering Price and Description:

\$8,000,000.00 - *Units Price: \$* per Unit

Underwriter(s) or Distributor(s):

Pope & Company Ltd.

Promoter(s):

-

Project #1505771

Issuer Name:

Labopharm Inc.
Principal Regulator - Quebec

Type and Date:

Preliminary Shelf Prospectus dated November 27, 2009

NP 11-202 Receipt dated November 27, 2009

Offering Price and Description:

\$100 Million:

Common Shares
Preferred Shares
Warrants
Units

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #1507304

Issuer Name:

Lazard Strategic Global Convertible Bond Trust
Principal Regulator - Ontario

Type and Date:

Preliminary Long Form Prospectus dated November 25, 2009

NP 11-202 Receipt dated November 26, 2009

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

Navina Capital Corp.

Project #1504880

Issuer Name:

Manulife Yield Opportunities Class
Manulife Yield Opportunities Fund
Principal Regulator - Ontario

Type and Date:

Preliminary Simplified Prospectuses dated November 30, 2009

NP 11-202 Receipt dated November 30, 2009

Offering Price and Description:

OFFERING ADVISOR SERIES, SERIES F, SERIES I AND
SERIES O SECURITIES

Underwriter(s) or Distributor(s):

Elliott & Page Limited

Promoter(s):

Elliott & Page Limited

Project #1508856

Issuer Name:

Mountain Province Diamonds Inc.
Principal Regulator - Ontario

Type and Date:

Amended and Restated Preliminary Short Form Prospectus
dated November 26, 2009

NP 11-202 Receipt dated November 26, 2009

Offering Price and Description:

\$9,001,800.00 - 3,334,000 – Units Price: \$2.70 per Unit

Underwriter(s) or Distributor(s):

Paradigm Capital Inc.

Salman Partners Inc.

Scotia Capital Inc.

Promoter(s):

-

Project #1503758

Issuer Name:

NEMASKA EXPLORATION INC.
Principal Regulator - Quebec

Type and Date:

Preliminary Long Form Prospectus dated November 23, 2009

NP 11-202 Receipt dated November 25, 2009

Offering Price and Description:

\$4,000,000.00 - Minimum 3,037 A Units and 1,926 B
Units; \$9,000,000.00 - Maximum 6,063 A Units and 5,874
B Units Price: \$1,000 per A Unit; \$500 per B Unit

Underwriter(s) or Distributor(s):

CTI Capital Securities Inc.

Promoter(s):

M. Guy Bourassa

Project #1504214

Issuer Name:

Nuukfjord Gold Ltd.
Principal Regulator - British Columbia

Type and Date:

Preliminary Long Form Prospectus dated November 27, 2009

NP 11-202 Receipt dated November 27, 2009

Offering Price and Description:

\$15,000,000.00 - 20,000,000 Shares Price: \$0.75 per
Share

Underwriter(s) or Distributor(s):

Wolverton Securities Ltd.

Promoter(s):

Bryan Slusarchuk

Project #1507842

Issuer Name:

PC Gold Inc.
Principal Regulator - Ontario

Type and Date:

Amended and Restated Preliminary Short Form Prospectus
dated November 26, 2009

NP 11-202 Receipt dated November 26, 2009

Offering Price and Description:

\$5,000,000.00 - Minimum * Units and * Flow Through
Common Shares; \$10,000,000.00 - Maximum * Units and
* Flow Through Common Shares Price: \$0.70 per Unit
\$0.80 per Flow Through Common Share

Underwriter(s) or Distributor(s):

Canaccord Capital Corporation

Raymond James Ltd.

Research Capital Corporation

Promoter(s):

Kevin M. Keough

Project #1499845

Issuer Name:

RBC Private U.S. Large Cap Equity Currency Neutral Pool
RBC Private U.S. Value Equity Currency Neutral Pool
Principal Regulator - Ontario

Type and Date:

Preliminary Simplified Prospectuses dated November 30, 2009

NP 11-202 Receipt dated November 30, 2009

Offering Price and Description:

Series O Units

Underwriter(s) or Distributor(s):

RBC Asset Management Inc.

Promoter(s):

RBC Asset Management Inc.

Project #1508532

Issuer Name:

Sceptre Ventures Inc.
Principal Regulator - British Columbia

Type and Date:

Preliminary CPC Prospectus dated November 28, 2009
NP 11-202 Receipt dated December 1, 2009

Offering Price and Description:

\$270,000.00 - 2,700,000 Common Shares Price: \$0.01 per
Common Share

Underwriter(s) or Distributor(s):

Canaccord Capital Corporation

Promoter(s):

Erin Airtton Chutter

Project #1510318

Issuer Name:

SENSIO Technologies Inc.
Principal Regulator - Quebec

Type and Date:

Preliminary Short Form Prospectus dated December 1,
2009

NP 11-202 Receipt dated December 1, 2009

Offering Price and Description:

\$8,710,000.00 -3,350,000 Common Shares Price: \$2.60
per Common Share

Underwriter(s) or Distributor(s):

Clarus Securities Inc.
Haywood Securities Inc.
Union Securities Ltd.

Promoter(s):

-

Project #1510963

Issuer Name:

Sino-Forest Corporation
Principal Regulator - Ontario

Type and Date:

Preliminary Short Form Prospectus dated December 1,
2009

NP 11-202 Receipt dated December 1, 2009

Offering Price and Description:

\$ * - * Common Shares

Underwriter(s) or Distributor(s):

Credit Suisse Securities (Canada) Inc.
TD Securities Inc.
Dundee Securities Corporation
RBC Dominion Securities Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
Merrill Lynch Canada Inc.
Canaccord Capital Corporation
Maison Placements Canada Inc.

Promoter(s):

-

Project #1510777

Issuer Name:

Softchoice Corporation
Principal Regulator - Ontario

Type and Date:

Preliminary Short Form Prospectus dated November 26,
2009

NP 11-202 Receipt dated November 26, 2009

Offering Price and Description:

\$17,437,500.00 - 2,250,000 Common Shares Price: \$7.75
per Common Share

Underwriter(s) or Distributor(s):

GMP Securities L.P.
Cormark Securities Inc.
Paradigm Capital Inc.
Raymond James Ltd.

Promoter(s):

-

Project #1505492

Issuer Name:

U.S. Geothermal Inc.
Principal Regulator - British Columbia

Type and Date:

Preliminary Short Form Prospectus dated November 25,
2009

NP 11-202 Receipt dated November 27, 2009

Offering Price and Description:

\$10,935,000.00 - 8,100,000 Units (each Unit consisting of
one Common Share and one-half of one Share Purchase
Warrant) and 243,000 Agents' Special Warrants) Price:
\$1.35 per Unit

Underwriter(s) or Distributor(s):

Dundee Securities Corporation
Clarus Securities Inc.
Toll Cross Securities Inc.

Promoter(s):

-

Project #1505869

Issuer Name:

WEX Pharmaceuticals Inc.
Principal Regulator - British Columbia

Type and Date:

Preliminary Short Form Prospectus dated November 27,
2009

NP 11-202 Receipt dated November 27, 2009

Offering Price and Description:

\$34,512,813.00 - Maximum 176,988,785 rights to
subscribe for up to 265,483,177 restricted voting shares
Price: \$0.13 per restricted voting share

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #1506704

Issuer Name:

Ananda Capital Corp.
Principal Regulator - British Columbia

Type and Date:

Final CPC Prospectus dated November 20, 2009
NP 11-202 Receipt dated November 26, 2009

Offering Price and Description:

\$240,000.00 (1,200,000 COMMON SHARES) Price: \$0.20 per Common Share

Underwriter(s) or Distributor(s):

Haywood Securities Inc.

Promoter(s):

Ionic Capital Corp.

Project #1488560

Issuer Name:

Black Diamond Income Fund
Principal Regulator - Alberta

Type and Date:

Final Short Form Prospectus dated November 30, 2009
NP 11-202 Receipt dated November 30, 2009

Offering Price and Description:

\$25,000,048.00 - 1,644,740 Trust Units \$15.20 per Trust Unit

Underwriter(s) or Distributor(s):

Raymond James Ltd.
BMO Nesbitt Burns Inc.
Acumen Capital Finance Partners Limited
FirstEnergy Capital Corp.
Peters & Co. Limited
Blackmont Capital Inc.
Clarus Securities Inc.

Promoter(s):

-

Project #1502549

Issuer Name:

CNH Capital Canada Wholesale Trust
Principal Regulator - Ontario

Type and Date:

Final Short Form Prospectus dated November 25, 2009
NP 11-202 Receipt dated November 25, 2009

Offering Price and Description:

\$300,000,000.00 Floating Rate Class A Wholesale Receivables-Backed Notes, Series CW2009-1 - Series CW2009-1 Notes to be dated on or about November 30, 2009; and Scheduled Final Payment Date for Notes: December 15, 2012

Underwriter(s) or Distributor(s):

RBC Dominion Securities Inc.

Promoter(s):

CNH Capital Canada Ltd.

Project #1501515

Issuer Name:

Series A, D, E, F and I Units (unless otherwise indicated) of:

Counsel Conservative Portfolio
Counsel Regular Pay Portfolio
Counsel Balanced Portfolio
Counsel Growth Portfolio
Counsel All Equity Portfolio
Counsel Money Market (Series A, C and I Units and now offering Series D Units)
Counsel Fixed Income (Series A, D and I Units and now offering Series E and F Units)
Counsel Canadian Dividend (also Series P Units)
Counsel Canadian Value (also Series P Units)
Counsel Canadian Growth (also Series P Units)
Counsel U.S. Value (also Series P Units)
Counsel U.S. Growth (also Series P Units)
Counsel International Value (also Series P Units)
Counsel International Growth (also Series P Units)
Counsel Global Real Estate (also Series P Units)
Counsel Global Small Cap (Series A, D, I and P Units and now offering Series E and F Units)
Counsel Income Managed Portfolio
Counsel Managed Portfolio
Counsel World Managed Portfolio
Counsel Select Canada (Series A, D and I Units)
Counsel Select America (Series A, D and I Units)
Counsel Select International (Series A, D and I Units)
Principal Regulator - Ontario

Type and Date:

Amendment #1 dated November 19, 2009 to the Simplified Prospectuses and Annual Information Forms dated October 22, 2009

NP 11-202 Receipt dated November 26, 2009

Offering Price and Description:

Series A, D, E, F, I and P Units @ Net Asset Value

Underwriter(s) or Distributor(s):

-

Promoter(s):

Counsel Portfolio Services Inc.

Project #1474788

Issuer Name:

Fortune Minerals Limited
Principal Regulator - Ontario

Type and Date:

Final Short Form Prospectus dated November 25, 2009
NP 11-202 Receipt dated November 25, 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:

Class A, C, I and O Units (unless otherwise noted) of:
Frontiers Canadian Short Term Income Pool (offers only Class A Units)
Frontiers Canadian Fixed Income Pool
Frontiers Canadian Monthly Income Pool
Frontiers Canadian Equity Pool
Frontiers U.S. Equity Pool
Frontiers International Equity Pool
Frontiers Emerging Markets Equity Pool
Frontiers Global Bond Pool
Principal Regulator - Ontario

Type and Date:

Final Simplified Prospectuses dated November 30, 2009
NP 11-202 Receipt dated December 1, 2009

Offering Price and Description:

Class A, C, I and O Units @ Net Asset Value

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #1490313

Issuer Name:

Horizons AlphaPro Income Plus Fund
(formerly, Horizons AlphaPro Inflation/Deflation Protection Fund)
(Class A and Class F Units)
Principal Regulator - Ontario

Type and Date:

Final Long Form Prospectus dated November 26, 2009
NP 11-202 Receipt dated November 30, 2009

Offering Price and Description:

Maximum Offering: \$100,000,000 Class A Units and Class F Units (10,000,000 Class A Units and Class F Units);
Minimum Offering: \$200,000,000 Class A Units and Class F Units (2,000,000 Class A Units and Class F Units) Each Class A Unit consists of one Class A trust unit and one Class A trust unit purchase warrant Each Class F Unit consists of one Class F trust unit and one Class F trust unit purchase warrant
Price: \$10.00 per Class A Unit and \$10.00 per Class F Unit

Underwriter(s) or Distributor(s):

CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
Scotia Capital Inc.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Wellington West Capital Markets Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Dundee Securities Corporation
GMP Securities L.P.
MGI Securities Inc.
Blackmont Capital Inc.
Research Capital Corporation

Promoter(s):

-

Project #1482112

Issuer Name:

Lazard Global Convertible Bond Fund
Principal Regulator - Ontario

Type and Date:

Final Long Form Prospectus dated November 25, 2009
NP 11-202 Receipt dated November 25, 2009

Offering Price and Description:

\$150,000,000.00 (15,000,000 Units) Maximum @ \$10.00
per Unit; and \$20,000,000.00 (2,000,000 Units) Minimum
@ \$10.00 per Unit

Underwriter(s) or Distributor(s):

BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital 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.
GMP Securities L.P.
Manulife Securities Incorporated
Research Capital Corporation

Promoter(s):

Navina Capital Corp.

Project #1484233

Issuer Name:

Lazard Strategic Global Convertible Bond Trust
Principal Regulator - Ontario

Type and Date:

Final Long Form Prospectus dated November 26, 2009
NP 11-202 Receipt dated November 27, 2009

Offering Price and Description:

\$10.00 (One Unit @ \$10.00 per unit)

Underwriter(s) or Distributor(s):

-

Promoter(s):

Navina Capital Corp.

Project #1504880

Issuer Name:

Prospero Silver Corp.
Principal Regulator - British Columbia

Type and Date:

Final Long Form Prospectus dated November 27, 2009
NP 11-202 Receipt dated November 27, 2009

Offering Price and Description:

\$1,800,000.00 - 5,142,856 Units Per Unit \$0.35

Underwriter(s) or Distributor(s):

Canaccord Capital Corporation

Promoter(s):

William Murray
Tawn Albinson

Project #1482237

Issuer Name:

Ridgewood Canadian Investment Grade Bond Fund
Principal Regulator - Ontario

Type and Date:

Final Long Form Prospectus dated November 27, 2009
NP 11-202 Receipt dated November 30, 2009

Offering Price and Description:

Maximum \$100,000,008.00 - (Maximum 8,333,334 Units)

Underwriter(s) or Distributor(s):

TD Securities Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Wellington West Capital Markets Inc.
Blackmont Capital Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Dundee Securities Corporation
Manulife Securities Incorporation

Promoter(s):

Ridgewood Capital Asset Management Inc.

Project #1491436

Issuer Name:

Rogers Communications Inc.

Type and Date:

Final Base Shelf Prospectus dated November 30, 2009
Receipted on November 30, 2009

Offering Price and Description:

US\$4,000,000,000.00 - Debt Securities

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #1502633

Issuer Name:

Rogers Communications Inc.
Principal Regulator - Ontario

Type and Date:

Final Base Shelf Prospectus dated November 30, 2009
NP 11-202 Receipt dated November 30, 2009

Offering Price and Description:

\$4,000,000,000.00: Debt Securities

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #1502639

Issuer Name:

Series A, E, F, I, J and O Securities of:
Symmetry Equity Class (also Series G, T6, T8 and W)*
Symmetry One Growth Portfolio (also Series F8, T6 and T8)*
Symmetry One Moderate Growth Portfolio (also Series F8, T6 and T8)*
Symmetry One Balanced Portfolio (also Series F8, T6 and T8)*
Symmetry One Conservative Portfolio (also Series E6, F8, J6, T6 and T8)*
Symmetry Fixed Income Class (also Series T6, T8 and W)*
Symmetry One Registered Growth Portfolio (also Series G)
Symmetry One Registered Moderate Growth Portfolio (also Series G)
Symmetry One Registered Balanced Portfolio (also Series G)
Symmetry One Registered Conservative Portfolio (also Series G)
Symmetry Registered Fixed Income Pool (also Series W)
*(Each is a class of Mackenzie Financial Capital Corporation)

Principal Regulator - Ontario

Type and Date:

Final Simplified Prospectuses dated November 20, 2009
NP 11-202 Receipt dated November 27, 2009

Offering Price and Description:

Series A, E, E6, F, F8, G, I, J, J6, O, T6, T8, and W Series Securities @ Net Asset Value

Underwriter(s) or Distributor(s):

-

Promoter(s):

MACKENZIE FINANCIAL CORPORATION

Project #1486415

Issuer Name:

Lazard Strategic Global Convertible Bond Trust
Principal Jurisdiction - Ontario

Type and Date:

Preliminary Long Form Non-Offering Prospectus dated
October 19, 2009

Withdrawn on November 26, 2009

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

Navina Capital Corp.

Project #1486842

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender of Registration	Soutterham Capital Limited	Exempt Market Dealer	November 25, 2009
Voluntary Surrender of Registration	Harding Loevner LLC	International Adviser	November 25, 2009
Voluntary Surrender of Registration	Maxum Capital Markets Inc.	Exempt Market Dealer	November 26, 2009
Voluntary Surrender of Registration	PKF Hill Securities Inc.	Exempt Market Dealer	November 26, 2009
Voluntary Surrender of Registration	Goodman Institutional Investments Inc.	Exempt Market Dealer	November 30, 2009
Voluntary Surrender of Registration	Pinnacle Associates, Ltd.	International Adviser (converted to Portfolio Manager)	November 30, 2009

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 MFDA Issues Notice of Settlement Hearing Regarding Mark Kricievski

NEWS RELEASE
For immediate release

MFDA ISSUES NOTICE OF SETTLEMENT HEARING REGARDING MARK KRICEVSKI

November 25, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada (“MFDA”) today announced that it has issued a Notice of Settlement Hearing regarding the presentation, review and consideration of a proposed settlement agreement by a Hearing Panel of the MFDA’s Central Regional Council.

The settlement agreement will be between staff of the MFDA and Mark Kricievski (the “Respondent”) and involves matters for which the Respondent may be disciplined by a Hearing Panel pursuant to MFDA By-laws. The proposed settlement agreement concerns allegations that the Respondent:

- (a) engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member;
- (b) contravened the directions of the Member with respect to the referral or sale of an investment product; and
- (c) sent misleading sales communications to clients of the Member which were not previously approved by the Member.

The settlement hearing is scheduled to commence at 10:00 a.m. (Eastern) on December 7, 2009 in the Hearing Room in the MFDA offices located at 121 King Street West, Suite 1000, Toronto, Ontario. The hearing will be open to the public, except as may be required for the protection of confidential matters. A copy of the Notice of Settlement Hearing is available on the MFDA website at www.mfda.ca.

The 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:
Shaun Devlin
Vice-President, Enforcement
416-943-4672 or sdevlin@mfda.ca

13.1.2 MFDA Reschedules Hearing on the Merits in the Matter of Paul Anthony Henry

NEWS RELEASE
For immediate release

MFDA RESCHEDULES HEARING ON THE MERITS IN THE MATTER OF PAUL ANTHONY HENRY

November 25, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada (“MFDA”) commenced a disciplinary proceeding against Paul Anthony Henry by Notice of Hearing dated June 25, 2009.

The hearing of this matter on its merits, previously scheduled to take place on January 22, 2010, has been rescheduled to March 29, 2010 at 10:00 a.m. (Eastern), or as soon thereafter as the hearing can be held, in the hearing room located at the offices of the MFDA at 121 King Street West, Suite 1000, Toronto, Ontario. The hearing will be open to the public, except as may be required for the protection of confidential matters.

A copy of the Notice of 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 Wynnycky
Hearings Coordinator
416-945-5146 or mwynnyckyj@mfda.ca

13.1.3 MFDA Hearing Panel Approves Settlement Agreement with IOCT Financial Inc. and Michelle Bolhuis

NEWS RELEASE
For immediate release

**MFDA HEARING PANEL APPROVES
SETTLEMENT AGREEMENT WITH
IOCT FINANCIAL INC. AND MICHELLE BOLHUIS**

November 27, 2009 (Toronto, Ontario) – A Settlement Hearing in the matter of IOCT Financial Inc. ("IOCT") and Michelle Anne Bolhuis ("Bolhuis") (together, IOCT and Bolhuis are referred to as the "Respondents") was held today in Toronto, Ontario before a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (the "MFDA").

The Hearing Panel accepted the Settlement Agreement between the Respondents and MFDA Staff. The following is a summary of the Orders made by the Hearing Panel:

- IOCT membership in the MFDA, including all of the rights and privileges associated therewith, shall be terminated;
- Bolhuis shall be prohibited from conducting securities related business while in the employ of, or sponsored by, any MFDA Member for a period of three (3) years;
- Bolhuis has paid a fine in the amount of \$10,000;
- Bolhuis has paid costs in the amount of \$5,000; and
- Bolhuis to pay a fine of \$10,000 on or before March 1, 2010, failing which, without further notice, be permanently prohibited from conducting securities related business while in the employ of, or sponsored by, any MFDA Member.

The Hearing Panel will issue written reasons for its decision in due course. A copy of the Settlement Agreement 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:
Shaun Devlin
Vice-President, Enforcement
416-943-4672 or sdevlin@mfda.ca

13.1.4 MFDA Issues Notice of Settlement Hearing Regarding Ben A. Kaley

NEWS RELEASE
For immediate release

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

November 30, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") today announced that it has issued a Notice of Settlement Hearing regarding the presentation, review and consideration of a proposed settlement agreement by a Hearing Panel of the MFDA's Atlantic Regional Council.

The settlement agreement will be between staff of the MFDA and Ben Alden Kaley (the "Respondent") and involves matters for which the Respondent may be disciplined by a Hearing Panel pursuant to MFDA By-laws.

The subject matter of the proposed settlement agreement concerns allegations that the Respondent:

- (a) engaged in securities related business that was not carried on for the account of and through the facilities of the Member, contrary to MFDA Rule 1.1.1(a); and
- (b) had and continued in another gainful occupation that was not properly disclosed to and approved by the Member, contrary to MFDA Rule 1.2.1(d).

The settlement hearing is scheduled to commence at 10:00 a.m. (Atlantic), or as soon thereafter as the hearing can be held, on December 3, 2009 in the Hearing Room located at the Crowne Plaza Fredericton, 659 Queen Street, Fredericton, New Brunswick. The hearing will be open to the public except as may be required for the protection of confidential matters. A copy of the Notice of Settlement Hearing is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 144 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 Hearing Panel Issues Decision and Reasons with Respect to Motion in the Matter of Gary A. Price

NEWS RELEASE
For immediate release

MFDA HEARING PANEL ISSUES DECISION AND REASONS WITH RESPECT TO MOTION IN THE MATTER OF GARY A. PRICE

December 1, 2009 (Toronto, Ontario) – A Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (“MFDA”) has issued its Decision and Reasons in connection with a motion heard in Toronto, Ontario on October 13, 2009 in the matter of Gary Alan Price.

The motion, brought by MFDA Staff, was for an Order that:

- (a) the *Decision and Reasons (Misconduct)* dated June 12, 2009 in this matter be declared null and void and removed from the MFDA website;
- (b) the Hearing Panel in this matter be struck; and
- (c) the disciplinary proceedings against Mr. Price be remitted for a new hearing before a reconstituted Hearing Panel.

The motion was heard on October 13, 2009 and the Hearing Panel advised that it would make its decision and issue reasons in due course. In its Decision and Reasons, published today, the Hearing Panel advised that “the Decision and Reasons filed by this Panel ... on June 12, 2009, is hereby set aside.” As a consequence, the penalty phase of this hearing will not take place.

A copy of the Decision and Reasons (Motion to Declare Decision on Misconduct Null and Void) 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 144 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:

Shaun Devlin
Vice-President, Enforcement
416-943-4672 or sdevlin@mfda.ca

13.1.6 MFDA Hearing Panel Issues Reasons for Decision with Respect to Martin Horvath Disciplinary Hearing

NEWS RELEASE
For immediate release

MFDA HEARING PANEL ISSUES REASONS FOR DECISION WITH RESPECT TO MARTIN HORVATH DISCIPLINARY HEARING

December 1, 2009 (Toronto, Ontario) – A Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (“MFDA”) has issued its Reasons for Decision in connection with the disciplinary hearing held in Toronto, Ontario on October 22, 2009 in the matter of Martin Horvath.

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 144 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:

Shaun Devlin
Vice-President, Enforcement
416-943-4672 or sdevlin@mfda.ca

**13.1.7 MFDA Hearing Panel Reserves Judgment in
Donald Cunningham Settlement Hearing**

NEWS RELEASE
For immediate release

**MFDA HEARING PANEL RESERVES JUDGMENT
IN DONALD CUNNINGHAM SETTLEMENT HEARING**

December 1, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada (“MFDA”) commenced a disciplinary proceeding in respect of Donald James Cunningham by Notice of Hearing dated March 3, 2009. On November 20, 2009, the MFDA issued a Notice of Settlement Hearing announcing that a settlement hearing would be held in this matter on December 1, 2009.

A settlement hearing was held today in Toronto, Ontario before a Hearing Panel of the MFDA’s Central Regional Council. The Hearing Panel reserved its decision to either accept or reject the settlement agreement between MFDA Staff and Mr. Cunningham. The Hearing Panel advised that it will make its decision and issue written reasons for its decision in due course.

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

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 144 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Marco Wynnycky
Hearings Coordinator
416-945-5146 or mwynnyckyj@mfda.ca

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