The Ontario Securities Commission

OSC Bulletin

September 3, 2010

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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)

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Table of Contents

Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

September 3, 2010

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

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

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

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Margot C. Howard	—	MCH
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Paulette L. Kennedy	—	PLK
Patrick J. LeSage	—	PJL
Carol S. Perry	—	CSP
Charles Wesley Moore (Wes) Scott	—	CWMS

SCHEDULED OSC HEARINGS

September 8, 2010 9:30 a.m.	**Scott Edward Purkis** s. 127 T. Center in attendance for Staff Panel: PJL
September 8, 2010 10:00 a.m.	**TBS New Media Ltd., TBS New Media PLC, CNF Food Corp., CNF Candy Corp., Ari Jonathan Firestone and Mark Green** s. 127 H. Craig in attendance for Staff Panel: JEAT
September 8, 2010 10:30 a.m.	**Lehman Brothers & Associates Corp., Greg Marks, Michael Lehman (a.k.a. Mike Laymen), Kent Emerson Lounds and Gregory William Higgins** s. 127 H. Craig in attendance for Staff Panel: JEAT
September 13, 2010 10:00 a.m.	**Al-Tar Energy Corp., Alberta Energy Corp., Drago Gold Corp., David C. Campbell, Abel Da Silva, Eric F. O'Brien and Julian M. Sylvester** s. 127 S. Horgan in attendance for Staff Panel: JEAT/CSP

September 13, 2010 11:00 a.m. September 14, 2010 2:30 p.m. September 15, 20-21, 23-24, 27, 29 and October 1, 4, 13-19, 21-22, 2010 10:00 a.m.	**Sulja Bros. Building Supplies, Ltd., Petar Vucicevich, Kore International Management Inc., Andrew Devries, Steven Sulja, Pranab Shah, Tracey Banumas and Sam Sulja** s. 127 and 127.1 J. Feasby in attendance for Staff Panel: PJL/SA
September 13, 2010 2:30 p.m.	**Locate Technologies Inc., Tubtron Controls Corp., Bradley Corporate Services Ltd., 706166 Alberta Ltd., Lorne Drever, Harry Niles, Michael Cody and Donald Nason** s. 127 A. Heydon in attendance for Staff Panel: TBA
September 15-17, 20-21 and 24, 2010 October 4, 6-8, 13-15, 18-19, 25 and 27-29, 2010 November 1-3, 2010 December 1-3 and 8-17, 2010 10:00 a.m.	**Coventree Inc., Geoffrey Cornish and Dean Tai** s. 127 J. Waechter in attendance for Staff Panel: JEAT/MGC/PLK
September 20, 2010 9:00 a.m.	**Albert Leslie James, Ezra Douse and Dominion Investments Club Inc.** s. 127 and 127.1 H. Daley in attendance for Staff Panel: PJL
September 22, 2010 9:00 a.m.	**Rezwealth Financial Services Inc., Pamela Ramoutar, Chris Ramoutar, Justin Ramoutar, Tiffin Financial Corporation, Daniel Tiffin, 2150129 Ontario Inc. and Sylvan Blackett** s. 127(1) and (5) A. Heydon in attendance for Staff Panel: CSP
September 27, September 29 – October 1, 2010 10:00 a.m. September 28, 2010 2:30 p.m.	**Chartcandle Investments Corporation, CCI Financial, LLC, Chartcandle Inc., PSST Global Corporation, Stephen Michael Chesnowitz and Charles Pauly** s. 127 and 127.1 S. Horgan in attendance for Staff Panel: MCH/CWMS
September 28, 2010 2:30 p.m.	**Shaun Gerard McErlean, Securus Capital Inc., and Acquiesce Investments** s. 127 M. Britton in attendance for Staff Panel: MGC
September 29 – October 1, 2010 10:00 a.m.	**Wilton J. Neale, Multiple Streams of Income (MSI) Inc., and 360 Degree Financial Services Inc.** s. 127 and 127.1 H. Daley in attendance for Staff Panel: JEAT/CSP
October 4, October 6 -8, 13-15 and December 6, 8-10, 2010 10:00 a.m. October 5, 2010 1:00 p.m.	**Sextant Capital Management Inc., Sextant Capital GP Inc., Otto Spork, Robert Levack and Natalie Spork** s. 127 T. Center in attendance for Staff Panel: JDC/CSP

October 12, 2010 3:30 p.m.	**Brilliante Brasilcan Resources Corp., York Rio Resources Inc., Brian W. Aidelman, Jason Georgiadis, Richard Taylor and Victor York** s. 127 H. Craig in attendance for Staff Panel: MGC
October 13, 2010 10:00 a.m.	**Ameron Oil and Gas Ltd. and MX-IV, Ltd.** s. 127 M. Boswell in attendance for Staff Panel: TBA
October 13, 2010 10:30 a.m.	**QuantFX Asset Management Inc., Vadim Tsatskin, Lucien Shtromvaser and Rostislav Zemlinsky** s. 127 H. Craig in attendance for Staff Panel: TBA
October 21, 2010 10:00 a.m.	**Ciccone Group, Medra Corporation, 990509 Ontario Inc., Tadd Financial Inc., Cachet Wealth Management Inc., Vince Ciccone, Darryl Brubacher, Andrew J. Martin., Steve Haney, Klaudiusz Malinowski and Ben Giangrosso** s. 127 P. Foy in attendance for Staff Panel: TBA
October 25, 2010 10:00 a.m.	**Axcess Automation LLC, Axcess Fund Management, LLC, Axcess Fund, L.P., Gordon Alan Driver, David Rutledge, 6845941 Canada Inc. carrying on business as Anesis Investments, Steven M. Taylor, Berkshire Management Services Inc. carrying on business as International Communication Strategies, 1303066 Ontario Ltd. carrying on business as ACG Graphic Communications, Montecassino Management Corporation, Reynold Mainse, World Class Communications Inc. and Ronald Mainse** s. 127 Y. Chisholm in attendance for Staff Panel: CSP
October 25-29, 2010 10:00 a.m.	**IBK Capital Corp. and William F. White** s. 127 M. Vaillancourt in attendance for Staff Panel: TBA
November 4, 2010 11:00 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/SA
November 8, 2010 10:00 a.m.	**Christina Harper, Howard Rash, Michael Schaumer, Elliot Feder, Vadim Tsatskin, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Shiff** s. 127 H. Craig in attendance for Staff Panel: TBA

November 8, 2010 10:00 a.m.	**Global Energy Group, Ltd. and New Gold Limited Partnerships** s. 127 H. Craig in attendance for Staff Panel: TBA
November 22, 2010 10:00 a.m.	**Georges Benarroch, Linda Kent, Marjorie Ann Glover and Credifinance Securities Limited** s. 21.7 A. Heydon in attendance for Staff Panel: JDC/CSP
November 29, 2010 9:30 a.m.	**Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjiaints Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd., Cambridge Resources Corporation, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group** s. 127 and 127.1 H. Craig in attendance for Staff Panel: MGC
November 29, 2010 10:00 a.m.	**Paladin Capital Markets Inc., John David Culp and Claudio Fernando Maya** s. 127 C. Price in attendance for Staff Panel: TBA
December 2, 2010 9:30 a.m.	**Richvale Resource Corp., Marvin Winick, Howard Blumenfeld, Pasquale Schiavone, and Shafi Khan** s. 127(7) and 127(8) H. Craig in attendance for Staff Panel: TBA
December 15-16, 2010 10:00 a.m.	**Questrade Inc.** s. 21.7 A. Heydon in attendance for Staff Panel: JDC/CSP
January 10, 12-21 and 24, 2011 10:00 a.m.	**Carlton Ivanhoe Lewis, Mark Anthony Scott, Sedwick Hill, Leverage Pro Inc., Prosporex Investment Club Inc., Prosporex Investments Inc., Prosporex Ltd., Prosporex Inc., Prosporex Forex SPV Trust, Networth Financial Group Inc., and Networth Marketing Solutions** s. 127 and 127.1 H. Daley in attendance for Staff Panel: TBA
January 10, 12-21, January 26 – February 1, 2011 10:00 a.m.	**Maple Leaf Investment Fund Corp., Joe Henry Chau (aka: Henry Joe Chau, Shung Kai Chow and Henry Shung Kai Chow), Tulsiani Investments Inc., Sunil Tulsiani and Ravinder Tulsiani** s. 127 A. Perschy/C. Rossi in attendance for Staff Panel: TBA
January 17-21, 2011 10:00 a.m.	**Merax Resource Management Ltd. carrying on business as Crown Capital Partners, Richard Mellon and Alex Elin** s. 127 H. Craig in attendance for Staff Panel: TBA
January 31 – February 7, February 9-18, February 23, 2011 10:00 a.m.	**Anthony Ianno and Saverio Manzo** s. 127 and 127.1 A. Clark in attendance for Staff Panel: TBA

January 31, February 1-7 and 9-11, 2011 10:00 a.m.	**Nest Acquisitions and Mergers, IMG International Inc., Caroline Myriam Frayssignes, David Pelcowitz, Michael Smith, and Robert Patrick Zuk** s. 37, 127 and 127.1 C. Price in attendance for Staff Panel: TBA
February 11, 2011 10:00 a.m.	**Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva, Gurdip Singh Gahunia aka Michael Gahunia and Abraham Herbert Grossman aka Allen Grossman** s. 127(7) and 127(8) M. Boswell in attendance for Staff Panel: TBA
February 14-18, February 23-28, March 7, March 9-11, March 28-31, 2011 10:00 a.m.	**Agoracom Investor Relations Corp., Agora International Enterprises Corp., George Tsiolis and Apostolis Kondakos (a.k.a. Paul Kondakos)** s. 127 T. Center in attendance for Staff Panel: TBA
February 14-18, February 23 – March 1, 2011	**Nelson Financial Group Ltd., Nelson Investment Group Ltd., Marc D. Boutet, Stephanie Lockman Sobol, Paul Manuel Torres, H.W. Peter Knoll** s. 127 P. Foy in attendance for Staff Panel: TBA
February 25, 2011 10:00 a.m.	**Hillcorp International Services, Hillcorp Wealth Management, Suncorp Holdings, 1621852 Ontario Limited, Steven John Hill, and Danny De Melo** s. 127 A. Clark in attendance for Staff Panel: TBA
March 1-7, 9-11, 21 and 23-31, 2011 10:00 a.m.	**Paul Donald** s. 127 C. Price in attendance for Staff Panel: TBA
March 7, 2011 10:00 a.m.	**Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton** s. 127 H. Craig in attendance for Staff Panel: TBA
March 30, 2011 10:00 a.m.	**Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp., and Weizhen Tang** s. 127 and 127.1 M. Britton in attendance for Staff Panel: TBA
TBA	**Yama Abdullah Yaqeen** s. 8(2) J. Superina in attendance for Staff Panel: TBA
TBA	**Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell** s. 127 J. Waechter in attendance for Staff Panel: TBA
TBA	**Frank Dunn, Douglas Beatty, Michael Gollogly** s. 127 K. Daniels in attendance for Staff Panel: TBA

TBA

Gregory Galanis

s. 127

P. Foy in attendance for Staff

Panel: TBA

TBA

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

s. 127(1) and 127.1

J. Superina, A. Clark in attendance for Staff

Panel: TBA

TBA

Global Partners Capital, Asia Pacific Energy Inc., 1666475 Ontario Inc. operating as "Asian Pacific Energy", Alex Pidgeon, Kit Ching Pan also known as Christine Pan, Hau Wai Cheung, also known as Peter Cheung, Tony Cheung, Mike Davidson, or Peter McDonald, Gurdip Singh Gahunia also known as Michael Gahunia or Shawn Miller, Basis Marcellinius Toussaint also known as Peter Beckford, and Rafique Jiwani also known as Ralph Jay

s. 127

M. Boswell in attendance for Staff

Panel: TBA

TBA

FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun

s. 127

C. Price in attendance for Staff

Panel: TBA

TBA

MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric

s. 127 and 127(1)

D. Ferris in attendance for Staff

Panel: TBA

TBA

Imagin Diagnostic Centres Inc., Patrick J. Rooney, Cynthia Jordan, Allan McCaffrey, Michael Shumacher, Christopher Smith, Melvyn Harris and Michael Zelyony

s. 127 and 127.1

J. Feasby in attendance for Staff

Panel: TBA

TBA

Goldpoint Resources Corporation, Lino Novielli, Brian Moloney, Evanna Tomeli, Robert Black, Richard Wylie and Jack Anderson

s. 127(1) and 127(5)

M. Boswell in attendance for Staff

Panel: TBA

TBA

Goldbridge Financial Inc., Wesley Wayne Weber and Shawn C. Lesperance

s. 127

C. Johnson in attendance for Staff

Panel: TBA

TBA

Borealis International Inc., Synergy Group (2000) Inc., Integrated Business Concepts Inc., Canavista Corporate Services Inc., Canavista Financial Center Inc., Shane Smith, Andrew Lloyd, Paul Lloyd, Vince Villanti, Larry Haliday, Jean Breau, Joy Statham, David Prentice, Len Zielke, John Stephan, Ray Murphy, Alexander Poole, Derek Grigor and Earl Switenky

s. 127 and 127.1

Y. Chisholm in attendance for Staff

Panel: TBA

TBA

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

s. 127

M. Britton/J.Feasby in attendance for Staff

Panel: TBA

TBA **Uranium308 Resources Inc., Michael Friedman, George Schwartz, Peter Robinson, and Shafi Khan**

s. 127

M. Boswell in attendance for Staff

Panel: TBA

TBA **Innovative Gifting Inc., Terence Lushington, Z2A Corp., and Christine Hewitt**

s. 127

M. Boswell in attendance for Staff

Panel: TBA

TBA **Gold-Quest International, 1725587 Ontario Inc. carrying on business as Health and Harmoney, Harmoney Club Inc., Donald Iain Buchanan, Lisa Buchanan and Sandra Gale**

s. 127

H. Craig in attendance for Staff

Panel: TBA

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

s. 127(1) and (5)

J. Feasby in attendance for Staff

Panel: TBA

TBA **M P Global Financial Ltd., and Joe Feng Deng**

s. 127 (1)

M. Britton in attendance for Staff

Panel: TBA

TBA **Peter Robinson and Platinum International Investments Inc.**

s. 127

M. Boswell in attendance for Staff

Panel: TBA

TBA **Sunil Tulsiani, Tulsiani Investments Inc., Private Investment Club Inc., and Gulfland Holdings LLC**

s. 127

J. Feasby in attendance for Staff

Panel: TBA

TBA **Shane Suman and Monie Rahman**

s. 127 and 127(1)

C. Price in attendance for Staff

Panel: JEAT/PLK

TBA **York Rio Resources Inc., Brilliante Brasilcan Resources Corp., Victor York, Robert Runic, George Schwartz, Peter Robinson, Adam Sherman, Ryan Demchuk, Matthew Oliver, Gordon Valde and Scott Bassingdale**

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA **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

M. Britton in attendance for Staff

Panel: TBA

TBA. **Abel Da Silva**

s. 127

M. Boswell in attendance for Staff

Panel: TBA

TBA **Gold-Quest International, Health and Harmoney, Iain Buchanan and Lisa Buchanan**

s. 127

H. Craig in attendance for Staff

Panel: JEAT/CSP/SA

TBA

Global Energy Group, Ltd., New Gold Limited Partnerships, Christina Harper, Vadim Tsatskin, Michael Schaumer, Elliot Feder, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Shiff

s. 37, 127 and 127.1

H. Craig in attendance for Staff

Panel: TBA

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

S. B. McLaughlin

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

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

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

LandBankers International MX, S. A. De C.V.; Sierra Madre Holdings MX, S. A. De C.V.; L&B LandBanking Trust S. A. De C.V.; Brian J. Wolf Zacarias; Roger Fernando Ayuso Loyo, Alan Hemingway, Kelly Friesen, Sonja A. McAdam, Ed Moore, Kim Moore, Jason Rogers and Dave Urrutia

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

1.3 News Releases

1.3.1 OSC Requests New Members for Continuous Disclosure Advisory Committee

FOR IMMEDIATE RELEASE
September 1, 2010

OSC REQUESTS NEW MEMBERS FOR
CONTINUOUS DISCLOSURE ADVISORY COMMITTEE

TORONTO – The Ontario Securities Commission (OSC) is inviting new applications for membership on its Continuous Disclosure Advisory Committee (CDAC).

OSC staff recognize the critical importance of consulting with industry participants and other stakeholders in carrying out its mandate. Established in 2002, the CDAC advises staff on a range of projects, including the planning, implementation and communication of its review program, as well as policy and rule-making initiatives. The CDAC also serves as a forum to advise OSC staff on emerging issues, and to critically assess procedures.

The CDAC is made up of approximately 15 members who meet five times annually. Members serve two-year terms, and are selected for their extensive knowledge of continuous disclosure issues and a strong interest in related policy. The CDAC is currently chaired by OSC staff representative Kelly Gorman, a Deputy Director in the Corporate Finance Branch.

Representatives of reporting issuers, industry associations, advisors, investing organizations and any other interested persons are invited to apply in writing for membership on the CDAC. Interested parties should submit their application indicating their areas of practice and relevant experience by September 30, 2010.

Applications and questions regarding CDAC may be forwarded in writing to:

Kelly Gorman
Deputy Director, Corporate Finance
Ontario Securities Commission
416-593-8251
kgorman@osc.gov.on.ca

For media inquiries:

Wendy Dey
Director, Communications & Public Affairs
416-593-8120

Theresa Ebden
Senior Communications Specialist
416-593-8307

Robert Merrick
Senior Communications Specialist
416-593-2315

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.3.2 OSC Announces Members of Investor Advisory Panel

FOR IMMEDIATE RELEASE
August 31, 2010

OSC ANNOUNCES MEMBERS OF
INVESTOR ADVISORY PANEL

TORONTO – The Ontario Securities Commission (OSC) today named the seven members, including the Chair, of its Investor Advisory Panel. Announced earlier this year, the Panel will provide input on the work of the Commission, including rules, policies and the annual Statement of Priorities, as well as specific issues requested by the Commission.

"We believe that investor input is very important to the OSC's initiatives. The Panel will provide a voice for Ontario investors to assist the Commission in its work," said OSC Chair David Wilson. "I am pleased that the Panel is composed of people who understand the needs of investors, and that Anita Anand has agreed to act as Chair of the Panel."

Anita Anand is a leading academic in the area of securities law. She is an Associate Professor and past Associate Dean (JD Programme) at the University of Toronto Faculty of Law where she teaches securities regulation and corporate law. She is co-author of *Securities Law in Canada: Cases and Commentary* and *Securities Law: Cases, Notes and Materials*. She was also a staff contributor to the *Five Year Review Committee Final Report: Reviewing the Securities Act (Ontario)*.

"I am pleased to have the opportunity to chair the Investor Advisory Panel. The Panel looks forward to contributing the perspectives of Ontario investors to the development of rules and policies that seek to protect their interests," said Ms. Anand.

The OSC received applications from 119 individuals. The members were selected based on their experience with investor issues and public policy development, as well as specific skills to assist the Panel in responding to requests for comment issued by the OSC.

"We appreciate the great interest in the Investor Advisory Panel and have selected members with diverse backgrounds who demonstrate the ability to represent a broad range of investors in Ontario," said Mary Condon, the Panel's executive sponsor and one of the part-time Commissioners who worked on the development of the Panel.

The Investor Advisory Panel includes the following members, each of whom will serve a term of two years. It is anticipated that the Panel will hold its first meeting in September.

Nancy Averill:	Member of the board of directors of the First Nations Statistical Institute, a federal Crown corporation created to support First Nations' economic development. Former Director of Research and Methodology for the Public Policy Forum. Resides in Ottawa, Ontario.
Paul Bates:	Dean and Industry Professor in Financial Management Services at the DeGroote School of Business, McMaster University. Former Commissioner to the Ontario Securities Commission, Governor of the Toronto Stock Exchange and director of Regulation Services Inc. Current Chair of the Investor Education Fund, a non-profit organization established by the OSC.
Stan Buell:	Individual investor and leading investor advocate. Founder and President of the Small Investor Protection Association, a national non-profit organization with more than 600 members.
Lincoln Caylor:	Commercial litigator with Bennett Jones LLP, with significant advocacy and investigative experience acting for victims of securities and investment fraud. Member of the board of the Macdonald Laurier Institute, a non-partisan think tank based in Ottawa.
Steven Garmaise:	Former Associate Director of the Canadian Foundation for Advancement of Investor Rights. Close to 30 years of experience in capital markets as an analyst and director of research at several investment dealers in Canada and the U.S., and most recently as an independent investor advocate and analyst.
Michael Wissell:	Senior Vice President, Ontario Teachers' Pension Plan, responsible for the Tactical Asset Allocation department for the Ontario Teachers' Pension Plan, including equity execution and commodity and foreign exchange trading.

For media inquiries:

Wendy Dey
Director, Communications & Public Affairs
416-593-8120

Theresa Ebden
Senior Communications Specialist
416-593-8307

Robert Merrick
Senior Communications Specialist
416-593-2315

For investor inquiries:

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1-877-785-1555 (Toll Free)

1.4 Notices from the Office of the Secretary

1.4.1 Members of Investor Advisory Panel

September 1, 2010

MEMBERS OF INVESTOR ADVISORY PANEL

TORONTO – On August 31, 2010, the OSC announced that it had established an Investor Advisory Panel that will provide comments in response to public requests for comment by the Commission on proposed rules, policies, concept papers and discussion drafts. The Panel will also provide commentary on the OSC's proposed annual Statement of Priorities and will consider specific issues at the request of the Commission. The seven members of the Investor Advisory Panel, each of whom will serve a term of two years are:

- Anita Anand (Chair), Associate Professor and past Associate Dean (JD Programme), University of Toronto Faculty of Law
- Nancy Averill, Member of the board of directors of the First Nations Statistical Institute
- Paul Bates, Dean and Industry Professor in Financial Management Services, DeGroote School of Business, McMaster University
- Stan Buell, Individual investor, Founder and President of the Small Investor Protection Association
- Lincoln Caylor, Commercial litigator, Bennett Jones LLP
- Steven Garmaise, Independent investor advocate and analyst, former Associate Director, Canadian Foundation for Advancement of Investor Rights
- Michael Wissell, Senior Vice President, Tactical Asset Allocation, Ontario Teachers' Pension Plan

Additional information about the Panel and its members is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

1.4.2 Gold-Quest International et al.

FOR IMMEDIATE RELEASE
August 26, 2010

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

AND

IN THE MATTER OF
GOLD-QUEST INTERNATIONAL,
1725587 Ontario Inc. carrying on business as
HEALTH AND HARMONEY,
HARMONEY CLUB INC.,
DONALD IAIN BUCHANAN, LISA BUCHANAN AND
SANDRA GALE

TORONTO – Take notice that the sanctions hearing against Donald Iain Buchanan and Lisa Buchanan in the above named matter will resume on Friday, September 3, 2010 at 10:00 a.m. to consider additional submissions.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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1.4.3 Shaun Gerard McErlean et al.

FOR IMMEDIATE RELEASE
August 30, 2010

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

AND

IN THE MATTER OF
SHAUN GERARD MCERLEAN,
SECURUS CAPITAL INC., AND
ACQUIESCE INVESTMENTS

TORONTO – The Commission issued an order in the above named matter which provides that the Temporary Order is extended to September 29, 2010 and the matter is adjourned to September 28, 2010 at 2:30 p.m.

A copy of the Order dated August 25, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
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416-593-8307

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416-593-8314
1-877-785-1555 (Toll Free)

1.4.4 Uranium308 Resources Inc. et al.

FOR IMMEDIATE RELEASE
August 31, 2010

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

AND

IN THE MATTER OF
URANIUM308 RESOURCES INC.,
MICHAEL FRIEDMAN, GEORGE SCHWARTZ,
PETER ROBINSON, AND SHAFI KHAN

TORONTO – The Commission issued an Order in the above named matter which provides that the hearing with respect to this matter is adjourned to October 12, 2010, at 2:30 p.m. at which time the pre-hearing conference will be continued.

A copy of the Order dated August 30, 2010 is available at **www.osc.gov.on.ca**.

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1.4.5 York Rio Resources Inc. et al.

FOR IMMEDIATE RELEASE
August 31, 2010

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

AND

IN THE MATTER OF
YORK RIO RESOURCES INC.,
BRILLIANTE BRASILCAN RESOURCES CORP.,
VICTOR YORK, ROBERT RUNIC,
GEORGE SCHWARTZ, PETER ROBINSON,
ADAM SHERMAN, RYAN DEMCHUK,
MATTHEW OLIVER, GORDON VALDE AND
SCOTT BASSINGDALE

TORONTO – The Commission issued an Order in the above named matter which provides that the hearing is adjourned to October 12, 2010 at 3:30 p.m. for the purpose of continuing the pre-hearing conference.

A copy of the Order dated August 30, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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1.4.6 Brilliante Brasilcan Resources Corp. et al.

FOR IMMEDIATE RELEASE
August 31, 2010

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

AND

IN THE MATTER OF
BRILLIANTE BRASILCAN RESOURCES CORP.,
YORK RIO RESOURCES INC.,
BRIAN W. AIDELMAN, JASON GEORGIADIS,
RICHARD TAYLOR AND VICTOR YORK

TORONTO – The Commission issued an Order in the above named matter which provides that (1) pursuant to subsection 127(8) of the Act the hearing is adjourned to October 12, 2010 at 3:30 p.m.; (2) Taylor is no longer subject to the terms of the Amended Temporary Order; and (3) pursuant to subsection 127(8) of the Act the Amended Temporary Order is extended until close of business on October 13, 2010, subject to further extension by order of the Commission.

A copy of the Order dated August 30, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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1.4.7 Peter Robinson and Platinum International Investments Inc.

FOR IMMEDIATE RELEASE
August 31, 2010

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

AND

IN THE MATTER OF
PETER ROBINSON AND
PLATINUM INTERNATIONAL INVESTMENTS INC.

TORONTO – The Commission issued an Order in the above named matter which provides that the hearing with respect to this matter is adjourned to October 12, 2010, at 3:00 p.m. at which time the pre-hearing conference will be continued.

A copy of the Order dated August 30, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1-877-785-1555 (Toll Free)

1.4.8 IMAGIN Diagnostic Centres Inc. et al.

FOR IMMEDIATE RELEASE
September 1, 2010

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

AND

IN THE MATTER OF
IMAGIN DIAGNOSTIC CENTRES INC.,
PATRICK J. ROONEY, CYNTHIA JORDAN,
ALLAN McCAFFREY, MICHAEL SHUMACHER,
CHRISTOPHER SMITH, MELVYN HARRIS and
MICHAEL ZELYONY

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

A copy of the Reasons and Decision dated August 31, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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416-593-2315

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1-877-785-1555 (Toll Free)

1.4.9 Global Partners Capital et al.

FOR IMMEDIATE RELEASE
September 1, 2010

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

AND

IN THE MATTER OF
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,
BASIL MARCELLINIUS TOUSSAINT also known
as Peter Beckford, and RAFIQUE JIWANI also
known as Ralph Jay

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

A copy of the Reasons and Decision dated August 31, 2010 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 Innocap Investment Management Inc.

Headnote

Firm with two co-Chief Executive Officers (Co-CEOs), neither of whom having the authority to overrule a decision made by either individual and both exercising supervisory responsibility over compliance matters, exempted from requirement in section 11.2 of National Instrument 31-103 Registration Requirements and Exemptions to designate an individual to be the Ultimate Designated Person (UDP) – Firm authorized to designate two UDPs for so long as they keep two individuals designated as Co-CEOs.

Instruments Cited

National Instrument 31-103 Registration Requirements and Exemptions, s. 11.2.

August 24, 2010

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

AND

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

AND

IN THE MATTER OF
INNOCAP INVESTMENT MANAGEMENT INC.
(the Filer)

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 an exemption for the Filer from the requirement contained in section 11.2 of National Instrument 31-103 *Registration Requirements and Exemptions* (**NI 31-103**) to designate an individual to be the ultimate designated person (**UDP**) and instead be permitted to designate and register two individuals as UDP (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 subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island and Saskatchewan (the **Non-principal Jurisdictions**, or together with the Jurisdictions, the **Filing Jurisdictions**), and;

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

Interpretation

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

Representations

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

1. The Filer has its head office in Quebec.

2. The Filer is registered under the Legislation in the category of portfolio manager and exempt market dealer and in the category of investment fund manager in Quebec.

3. The Filer is also registered as a portfolio manager and an exempt market dealer in each of the Non-Principal Jurisdictions.

4. The Filer is not, to the best of its knowledge, in default of any requirements of securities legislation in any of the Filing Jurisdictions.

5. The Filer has appointed two individuals as Chief Executive Officer (or “co-CEO”) in 2007 who have equivalent authority. As co-CEO, they both supervise the firm activities and determine its orientations. This organizational structure is helpful for them to be able to devote the required time to their function as co-CEO while remaining sufficiently involved in the day-to-day business activities of the firm to fulfill their portfolio management supervision.

6. The co-CEOs are both responsible for the same sectors and activities. They jointly manage the budget as well as all human resource-related

matters. They both exercise supervisory responsibility over compliance matters. The Chief Compliance Officer reports all compliance matters to either co-CEOs since they both promote the compliance program, within the firm and with respect to regulatory authorities. Both of them may directly access, report and be required to take action by or to the Board of Directors. They jointly submit a quarterly report to the firms' Board of Directors for the purpose of assessing the business activities compared with the business plan and strategic orientation.

7. The co-CEOs are both required to report to National Bank Financial Group's Management Committee. Given the co-CEOs' joint responsibility with respect to the firm, the reporting obligations apply to both individuals, equally and without distinction. There is no line of reporting between them and no other executive officers. Neither of the co-CEOs has the authority to overrule a decision made by either individual or both of them. If a conflict arises, they consult each other to reach a consensus. If they are unable to obtain a consensus, their immediate superior, which is the same individual, would settle. Decision-making power, accountability and the determination of orientations are all evenly distributed in a fair and equitable manner.

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

UDP Requirement

1. NI 31-103 was implemented on September 28, 2009 (the **Implementation Date**).

2. Under paragraph 11.2(a) of NI 31-103, a registered firm is required to designate an individual to be the UDP (the **UDP Requirement**) and the UDP must be the CEO or equivalent of the registered firm.

3. Under section 16.8 of NI 31-103, there is a 3-month transition period from the Implementation Date for a registered firm to comply with the UDP Requirement.

4. Prior to the implementation of NI 31-103, there was a requirement under the *Securities Act* (Ontario) for an adviser to designate an individual, and have him or her registered, as the Ultimately Responsible Person (**URP**).

5. The URP has to be an executive officer who was a member of the senior management of the adviser and satisfies the criteria set out in Section 3.2 of the Rule 31-502 – *Proficiency Requirements for Registrants*.

6. Prior to the implementation of NI 31-103, the Filer has an individual in the position of URP for a number of years who was not one of the co-CEO.

7. Designating only one UDP for the purpose of satisfying the requirement would not adequately reflect the sharing of powers and authority between the two individuals acting as co-CEO and the organizational structure of the firm.

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 the Filer:

i) keeps two individuals designated as co-CEO.

"Mario Albert"
Superintendent, Client Services, Compensation and Distribution

2.1.2 IA Clarington Investments Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from the requirements contained in paragraphs 2.5(2)(a) and 2.5(2)(c) of National Instrument 81-102 Mutual Funds to permit mutual funds to invest up to 10% of net assets in leveraged ETFs, gold ETFs and leveraged gold ETFs traded on Canadian or US stock exchanges, subject to certain conditions.

August 2, 2010

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
IA CLARINGTON INVESTMENTS INC.
(the Filer)

AND

THE FUNDS
(as defined below)

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 an exemption (the **Exemption Sought**) relieving the existing mutual funds (**Existing Funds**) and future mutual funds (**Future Funds**) managed by the Filer that are subject to National Instrument 81-102 *Mutual Funds* (**NI 81-102**), other than money market funds as defined in NI 81-102 (the Existing Funds and the Future Funds, respectively, together, the **Funds** and individually, a **Fund**), from the prohibitions contained in paragraphs 2.5(2)(a) and (c) of NI 81-102, to permit each Fund to purchase and hold securities of:

(a) exchange-traded funds (**ETFs**) that seek to provide daily results that replicate the daily performance of a specified widely-quoted market index (the **Underlying Index**) by a multiple of 200% (**Leveraged Bull ETFs**) or an inverse multiple of 200% (**Leveraged Bear ETFs**, which together with Leveraged Bull ETFs are referred to collectively in this decision as **Leveraged ETFs**);

(b) ETFs that seek to replicate the performance of gold or the value of a specified derivative the underlying interest of which is gold on an unlevered basis (**Gold ETFs**); and

(c) ETFs that seek to provide daily results that replicate the daily performance of gold or the value of a specified derivative the underlying interest of which is gold on an unlevered basis (the **Underlying Gold Interest**), by a multiple of 200% (**Leveraged Gold ETFs**),

(Leveraged ETFs, Gold ETFs, and Leveraged Gold ETFs are referred to collectively in this decision as the **Underlying ETFs**).

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

1. the Autorité des marchés financiers is the principal regulator for this application;

2. 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, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon Territory and Nunavut; and

3. the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

INTERPRETATION

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

REPRESENTATIONS

The Filer and the Funds

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

1. The Filer is a corporation governed under the *Canada Business Corporations Act* and is registered as a portfolio manager in the provinces of Canada.

2. The Filer has its head office located in Québec, Québec.

3. Each Existing Fund is managed by the Filer and each Future Fund will be managed by the Filer.

4. Each Existing Fund is, and each Future Fund will be: (a) an open-ended mutual fund organized under the laws of a jurisdiction of Canada, (b) governed by the provisions of NI 81-102, and (c) a reporting issuer under the laws of some or all of the provinces and territories of Canada.

5. Securities of each Existing Fund are, and securities of each Future Fund will be, qualified for distribution in some or all of the provinces and territories of Canada under a simplified prospectus and annual information form prepared in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) and filed with and receipted by the securities regulators in the applicable jurisdiction(s).

6. Neither the Filer nor any of the Existing Funds are in default of securities legislation in any of the jurisdictions.

The Underlying ETFs

7. Each Leveraged ETF will be rebalanced daily to ensure that its performance and exposure to its Underlying Index will not exceed +/-200% of the corresponding daily performance of its Underlying Index.

8. Each Leveraged Gold ETF will be rebalanced daily to ensure that its performance and exposure to its Underlying Gold Interest will not exceed +200% of the corresponding daily performance of its Underlying Gold Interest.

Investment in IPUs and the Underlying ETFs

9. Each Existing Fund is, and each Future Fund will be, permitted, in accordance with its investment objectives and investment strategies, to invest in ETFs.

10. In addition to investing in ETFs that qualify as index participation units as defined in NI 81-102 (**IPUs**), the Funds propose to have the ability to invest in the Underlying ETFs, whose securities are not IPUs.

11. The amount of the loss that can result from investment by a Fund in an Underlying ETF will be limited to the amount invested by the Fund in securities of the Underlying ETF.

12. Each Fund will only purchase gold, permitted gold certificates and specified derivatives with such underlying interests (including Gold ETFs and Leveraged Gold ETFs), if immediately after the purchase, no more than 10% of the net assets of the Fund, taken at market value at the time of the purchase, would consist of such assets in aggregate.

13. The Underlying ETFs are attractive investments for the Funds, as they provide an efficient and cost effective means of achieving diversification and exposure.

14. The Filer is not currently related to any Underlying ETF, it is not the manager of an Underlying ETF and it does not currently expect to be so related in the near future.

15. An investment by a Fund in securities of an Underlying ETF will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund.

16. Absent the Exemption Sought, an investment by a Fund in an Underlying ETF that is a mutual fund would be prohibited by paragraphs 2.5(2)(a) and (c) of NI 81-102 because:

    (a) none of the Underlying ETFs are or will be subject to NI 81-101;

    (b) some of the Underlying ETFs are not, or will not be, subject to NI 81-102; and

    (c) some of the Underlying ETFs may not be qualified for distribution in each jurisdiction in which the Funds are or will be qualified for distribution.

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:

    (a) the investment by a Fund in securities of an Underlying ETF is in accordance with the fundamental investment objectives of the Fund;

    (b) a Fund does not short sell securities of an Underlying ETF;

    (c) the securities of the Underlying ETFs are traded on a stock exchange in Canada or the United States;

    (d) the securities of the Underlying ETFs are treated as specified derivatives for the purposes of Part 2 of NI 81-102;

    (e) a Fund does not purchase securities of an Underlying ETF if, immediately after the purchase, more than 10% of the net assets of the Fund in aggregate, taken at market value at the time of the purchase,

would consist of securities of the Underlying ETFs;

(f) a Fund does not enter into any transaction if, immediately after the transaction, more than 20% of the net assets of the Fund, taken at market value at the time of the transaction, would consist of, in aggregate, securities of Underlying ETFs and all securities sold short by the Fund; and

(g) the prospectus of each Fund discloses, or will disclose the next time it is renewed after the date hereof, (i) in the Investment Strategy section of the prospectus, the fact that the Fund has obtained relief to invest in the Underlying ETFs together with an explanation of what each Underlying ETF is, and (ii) the risks associated with investments in the Underlying ETFs.

"Josée Deslauriers"
Director Investment Funds and Continuous Disclosure
Autorité des marchés financiers

2.1.3 UTS Energy Corporation

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption granted from the requirement to included audited carve-out financial statements for acquired assets in information circular. The assets will comprise the primary business of a new reporting issuer.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations.

Citation: UTS Energy Corporation, Re, 2010 ABASC 390

August 18, 2010

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
UTS ENERGY CORPORATION
(UTS or 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**) exempting the Filer from the requirement under Item 14.2 of Form 51-102F5 *Information Circular* (the **Circular Form**) to provide the financial statements for the Spin-Off Assets (as defined below) for the financial years ended December 31, 2009, December 31, 2008 and December 31, 2007 and the six month periods ended June 30, 2010 and June 30, 2009 along with the management's discussion and analysis for the corresponding periods (**MD&A**) in the management information circular (the **Circular**) to be prepared by UTS and delivered to the holders (**UTS Shareholders**) of common shares of UTS (**UTS Shares**) in connection with a special meeting (**UTS Meeting**) of UTS Shareholders expected to be held in September 2010 for the purpose of considering a plan of arrangement under the *Canada Business Corporations Act* (the **CBCA**) (the **Arrangement**) resulting in the exchange of the UTS Shares for $3.08 cash from Total E&P Canada Ltd. (**Total**) and 0.1 of a common share (a **SilverBirch Share**) of SilverBirch Energy Corporation (**SilverBirch**) and the transfer from UTS to SilverBirch of the Spin-Off Assets (collectively, 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) UTS 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, 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:

UTS

1. UTS is a corporation established under the CBCA on January 26, 1977. The principal office of UTS is located in Calgary, Alberta.

2. UTS is a reporting issuer or the equivalent under the securities legislation of each of the provinces of Canada. To its knowledge, UTS is not in default of securities legislation in any jurisdiction of Canada.

3. UTS' financial year end is December 31.

4. UTS is presently engaged in the development of oil sands projects located in Alberta's Athabasca oil sands area through its ownership of the Spin-Off Assets and through an interest in another oil sands project not comprised within the Spin-Off Assets.

5. UTS is currently in the development stage and has earned no operating revenue, including in respect of the Spin-Off Assets, within any of the fiscal years ended December 31, 2009, 2008 or 2007 or for the six months ended June 30, 2010.

6. There are no "reserves" within the meaning of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (**NI 51-101**) attributable to the Spin-Off Assets and there has been no oil and gas production from the Spin-Off Assets.

7. The UTS Shares are listed on the Toronto Stock Exchange (the **TSX**) under the symbol "**UTS**".

8. Following completion of the Arrangement, the UTS Shares will be delisted from the TSX.

SilverBirch

9. SilverBirch is a corporation established under the CBCA on June 25, 2010 for the sole purpose of participating in the Arrangement.

10. SilverBirch has not carried on any active business since the date of its incorporation up to the date of this decision other than in connection with the Arrangement and related matters.

11. The principal office of SilverBirch is located in Calgary, Alberta.

12. SilverBirch's financial year end is December 31.

13. SilverBirch is a wholly-owned subsidiary of UTS which holds the one outstanding SilverBirch Share.

14. SilverBirch is not a reporting issuer in any jurisdiction and to its knowledge, is not in default of applicable securities legislation in any jurisdiction of Canada.

Total

15. Total is a corporation amalgamated under the *Business Corporations Act* (Alberta) on January 1, 2001.

16. Total is a wholly-owned subsidiary of Total S.A., a French Societe Anonyme.

17. To the knowledge of UTS, Total is not a reporting issuer in any jurisdiction of Canada nor is it in default of applicable securities legislation in any jurisdiction in Canada.

The Arrangement

18. Pursuant to the Arrangement, subject to certain conditions:

    (a) Total will acquire all of the UTS Shares for cash consideration of $3.08 per UTS Share;

    (b) UTS will transfer the Spin-Off Assets to SilverBirch and SilverBirch will assume certain liabilities relating to or arising with respect to the Spin-Off Assets pursuant to the terms of a transfer agreement to be entered into between UTS and SilverBirch; and

    (c) the UTS Shareholders will receive 0.1 of a SilverBirch Share per UTS Share.

19. Pursuant to the Arrangement, UTS will transfer to SilverBirch certain assets (the **Spin-Off Assets**) as follows:

    (a) a 50% interest in the Frontier Project, a possible commercial oil sands mining project, located in north-eastern Alberta;

    (b) a 50% interest in the Equinox Project, a possible commercial oil sands mining project located on the west side of the Athabasca River, approximately 90 kilometres north of Fort McMurray, Alberta;

    (c) a 50% working interest in an additional 209,280 acres of exploration oil sands leases located in the Athabasca oil sands region of Alberta;

    (d) a 100% working interest in 23,040 acres of undeveloped lands also in the Athabasca oil sands region of Alberta with in-situ oil sands potential; and

    (e) approximately $50 million in working capital (subject to adjustment).

20. Following the completion of the Arrangement:

    (a) UTS would become a wholly-owned subsidiary of Total; and

    (b) the Spin-Off Assets would become the principal business of SilverBirch.

21. Beneficial ownership of the SilverBirch Shares upon completion of the Arrangement will be identical to the beneficial ownership of the UTS Shares immediately prior to the Arrangement meaning the indirect interest in the Spin-Off Assets will remain unaffected by the Arrangement.

22. The beneficial owners of the SilverBirch Shares upon completion of the Arrangement will have had the benefit of UTS' continuous disclosure relating to the Spin-Off Assets since the time that they were initially acquired by UTS and accordingly, already have the benefit of existing public disclosure regarding the Spin-Off Assets and the nature of an investment therein.

23. Pursuant to UTS' constating documents, the CBCA and applicable securities laws, the UTS Shareholders will be required to approve the Arrangement at the UTS Meeting.

24. The Arrangement must be approved by not less than two-thirds of the votes cast by UTS Shareholders at the UTS Meeting. The UTS Meeting is anticipated to take place in late September 2010 and the Circular is expected to be mailed by UTS to the UTS Shareholders as early as September 8, 2010, subject to receipt of the Exemption Sought.

25. The Arrangement will be a "restructuring transaction" under National Instrument 51-102 *Continuous Disclosure Obligations* in respect of UTS and therefore would require compliance with Item 14.2 of the Circular Form.

Financial statement and MD&A requirements

26. Item 14.2 of the Circular Form requires, among other items, that the Circular contain the disclosure (including financial statements) prescribed under securities legislation and described in the form of prospectus that SilverBirch would be eligible to use immediately prior to the filing and sending of the Circular to UTS Shareholders for a distribution of SilverBirch securities. Therefore, the Circular must contain the disclosure in respect of SilverBirch prescribed by the Form 41-101F1 *Information Required in a Prospectus* (the **Prospectus Form**) and by National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**).

27. Items 8.2(1)(a) and (b) and 8.2(2) of the Prospectus Form require UTS to include the MD&A in the Circular.

28. Item 32.1(b) of the Prospectus Form requires UTS to include certain annual and interim financial statements for the Spin-Off Assets in the Circular, including, in accordance with Items 32.2 and 32.3(1) of the Prospectus Form: (i) an income statement, a statement of retained earnings and a cash flow statement relating to the Spin-Off Assets for each of the financial years ended December 31, 2009, December 31, 2008 and December 31, 2007 and for the six-month periods ended June 30, 2010 and June 30, 2009; and (ii) a balance sheet relating to the Spin-Off Assets as at December 31, 2009 and December 31, 2008 and as at June 30, 2010 and 2009 (collectively, the **Financial Statements**).

29. Subsection 4.2(1) of NI 41-101 requires that the Financial Statements required to be included in the Circular must be audited in accordance with National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*.

Alternative Disclosure

30. The Circular will include:

    (a) an audited opening balance sheet of SilverBirch as at June 30, 2010;

    (b) an audited schedule of property, plant and equipment comprised in the Spin-Off Assets as at June 30, 2010, including a breakdown of the material components; and

    (c) a pro forma balance sheet of SilverBirch as at June 30, 2010, giving effect to the acquisition of the Spin-Off Assets as at that date

    (collectively, the **Alternative Financial Statements**).

31. The Circular will include the following in respect of the Spin-Off Assets:

    (a) With respect to the oil sands leases comprised in the Spin-Off Assets, detailed disclosure, with the assistance of maps and tables where appropriate, of:

        (i) the location and nature of the oil sands leases;

        (ii) a chronology of the history and development of the Spin-Off Assets since January 1, 2007;

        (iii) a description of any arrangements with counterparties relating to the exploration and development of the oil sands leases;

        (iv) a summary of drilling conducted to date on the oil sands leases;

        (v) information about the nature of any preliminary engineering and mine planning conducted with respect to the oil sands leases; and

        (vi) a description of any regulatory activities undertaken with respect to the oil sands leases;

    (b) With respect to the two proposed oil sands projects identified to date on the oil sands leases comprised in the Spin-Off Assets, being the Frontier Project and the Equinox Project, disclosure of:

        (i) a summary of the proposed projects;

        (ii) key activities within the work program for the projects over the next eighteen months; and

        (iii) a timeline for the development of the projects, including information regarding the expected timing for submission of regulatory applications and receipt of regulatory approvals related to the Frontier Project;

    (c) a summary of the following reports prepared by Sproule Unconventional Limited (**Sproule**) in accordance with the requirements of NI 51-101 in respect of the Frontier Project and the Equinox Project:

        (i) the report dated February 8, 2010 providing Sproule's independent opinion of UTS' resources data effective December 31, 2009, based on a geological evaluation of the Frontier Project within the Norwest Corporation (**Norwest**) defined pit surfaces as of December 31, 2008 and updated to incorporate the inclusion of more recent Norwest pit slope modifications and a geological audit of the

Equinox Project based on the Norwest defined pit surfaces as at December 31, 2008 (**Sproule Report**); and

(ii) a technical review providing Sproule's independent opinion of UTS' resources data for the Frontier Project and the Equinox Project effective June 30, 2010, updating the Sproule Report to include Sproule's audit of the results of the 2009/2010 83 core hole drilling program conducted on behalf of UTS and Teck Resources Ltd. including 68 core holes drilled on the Frontier Project leases;

(d) disclosure of capital expenditures (including costs that were capitalized or charged to expense when incurred) incurred by UTS with respect to the Spin- Off Assets for the year ended December 31, 2009 and the six months ended June 30, 2010, in accordance with Item 6.6 of Form 51-101F1;

(e) disclosure of the fact there has been no production, gross revenue, royalty expenses, production costs and operating income for the Spin-Off Assets for each of the relevant financial periods;

(f) disclosure regarding SilverBirch and the Spin-Off Assets that otherwise complies with Form 41-101F1; and

(g) with respect to the working capital comprised in the Spin-Off Assets, a summary of how the working capital amount to be transferred to SilverBirch will be calculated and the intentions of SilverBirch as to the uses of the working capital by SilverBirch for 18 months

(collectively, the **Proposed Disclosure**).

32. The Alternative Financial Statements and the Proposed Disclosure will provide full, true and plain disclosure of all material facts relating to the Spin-Off Assets, and will provide information in respect of the Spin-Off Assets that is sufficient to enable an investor to make an informed investment decision regarding the Spin-Off Assets and the Arrangement generally.

33. Disclosure of the Financial Statements and MD&A is not necessary to allow UTS Shareholders to form a reasoned judgement concerning the nature and effect of the Arrangement.

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 the Circular includes the Alternative Financial Statements and the Proposed Disclosure.

“Blaine Young”
Associate Director, Corporate Finance
Alberta Securities Commission

2.1.4 Rexel

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for relief from the prospectus and registration requirements for certain trades made in connection with an employee share offering by a French issuer – The issuer cannot rely on the employee exemption in National Instrument 45-106 Prospectus and Registration Exemptions as the securities are not being offered to Canadian employees directly by the issuer but rather through special purpose entities – Canadian participants will receive disclosure documents – The special purpose entities are subject to the supervision of the local securities regulator – Canadian participants will not be induced to participate in the offering by expectation of employment or continued employment – No market for the securities of the issuer in Canada – Number of Canadian participants is de minimis – Relief granted, subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., s. 74, 25 and 54.
National Instrument 45-106 Prospectus and Registration Exemptions, s. 2.24.
National Instrument 45-102 Resale of Securities, s. 2.14

August 20, 2010

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
REXEL
(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:

1. an exemption from the prospectus requirements of the Legislation (the "**Prospectus Relief**") and the dealer registration requirements of the Legislation (the "**Registration Relief**" and, collectively with the Prospectus Relief, the "**Exemption Sought**") so that such requirements do not apply to:

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

      (i) Rexel International Classique (the "**Principal Classic Compartment**"), a compartment of Rexel Actionnariat International (the "**Fund**") which is a *fonds communs de placement d'entreprise* or "**FCPE**"); and

      (ii) Rexel International Relais 2010 (the "**Temporary Fund**", and together with the Principal Classic Compartment, the "**Compartments**"),

   made pursuant to the global employee share offering of the Filer (the "**Employee Share Offering**") to or with Qualifying Employees (as defined below) resident in the Jurisdiction and in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador and Northwest Territories (together with the Jurisdiction, the "Offering Jurisdictions") who elect to participate in the Employee Share Offering (the "**Canadian Participants**"); and

(b) trades of ordinary shares of the Filer (the "**Shares**") by the Compartments to Canadian Participants upon the redemption of Units at the request of Canadian Participants.

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

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

(d) 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, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador and Northwest Territories.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, National Instrument 45-106 *Prospectus and Registration Exemptions* 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 formed under the laws of France and its head office is located in France. It is not, and has no current intention of becoming, a reporting issuer under the Legislation or under the securities legislation of the other Offering Jurisdictions. The Shares are listed on Euronext Paris.

2. The Filer carries on business in Canada through the following affiliated companies: Rexel North America Inc. and Rexel Canada Electrical Inc. (collectively, the "**Canadian Affiliates**," together with the Filer and other affiliates of the Filer, the "**Rexel Group**"). Each of the Canadian Affiliates is directly or indirectly controlled by the Filer and is not, and has no current intention of becoming, a reporting issuer under the Legislation or under the securities legislation of the other Offering Jurisdictions. The greatest number of employees of Canadian Affiliates are employed in Ontario and in comparison with the other Offering Jurisdictions, the greatest proportion of the Filer's Canadian operations is located in Ontario.

3. As of the date hereof and after giving effect to the Employee Share Offering, Canadian residents do not and will not beneficially own more than 10% of the Shares and do not and will not represent in number more than 10% of the total number of holders of the Shares as shown on the books of the Filer (for purposes of this representation, the calculation of Shares owned by Canadian residents after giving effect to the Employee Share Offering shall include Shares which could be received by Canadian Participants upon the redemption of Units held by Canadian Participants).

4. Only persons who are employees of a member of the Rexel Group during the subscription period for the Employee Share Offering and who meet other employment criteria ("**Employees**"), and persons who have retired from an affiliate of the Filer and who continue to hold units in FCPEs in connection with previous employee share offerings by the Filer (the "**Retired Employees**," and together with the Employees, the "**Qualifying Employees**"), will be allowed to participate in the Employee Share Offering.

5. As set forth above, the Temporary Fund is and the Principal Classic Compartment is a compartment of, a *fonds communs de placement d'entreprise*, or FCPE, which is a form of collective shareholding vehicle of a type commonly used in France for the conservation or custodianship of shares held by employee investors, which must be registered with and approved by the Autorité des marchés financiers in France (the "**French AMF**") at the time of its creation. The Compartments are established for the purpose of implementing the Employee Share Offering. There is no current intention for the Compartments to become reporting issuers under the Legislation or under the securities legislation of the other Offering Jurisdictions. Only Qualifying Employees will be allowed to purchase Units and such holdings will be in an amount reflecting the number of Shares held by the Compartments on their behalf.

6. Canadian Participants will be invited to participate in the Employee Share Offering under the following terms:

   (a) Canadian Participants will subscribe for Units in the Temporary Fund, which will subscribe for Shares on behalf of the Canadian Participants at a subscription price that is equal to the average of the opening price of the Shares on the 20 trading days preceding the date of fixing of the subscription price by the management board of the Filer (the "**Reference Price**"), less a 20% discount.

   (b) The Shares will be held in the Temporary Fund and the Canadian Participant will receive Units in the Temporary Fund.

(c) After completion of the Employee Share Offering, the Temporary Fund will be merged with the Principal Classic Compartment (subject to the approval of the French AMF and the decision of the supervisory board of the Fund). Units of the Temporary Fund held by Canadian Participants will be replaced with Units of the Principal Classic Compartment on a *pro rata* basis and the Shares subscribed for under the Employee Share Offering will be held in the Principal Classic Compartment (the "**Merger**"). The term "**Classic Compartment**" used herein means, prior to the Merger, the Temporary Fund, and following the Merger, the Principal Classic Compartment.

(d) The Units will be subject to a hold period of approximately five years (the "**Lock-Up Period**"), subject to certain exceptions prescribed by French law (such as a release on death, disability or involuntary termination of employment).

(e) With respect to dividends paid on the Shares held in the Classic Compartment, Canadian Participants may choose (i) to receive a pay-out of any dividend payment, or (ii) to contribute any dividend payment to the Classic Compartment for purchase of additional Shares. To reflect this reinvestment, new Units (or fractions thereof) of the Classic Compartment will be issued to such participants.

(f) At the end of the Lock-Up Period, a Canadian Participant may:

(i) request the redemption of his or her Units in consideration for the underlying Shares or a cash payment equal to the market value of such Shares; or

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

(g) In the event of an early redemption resulting from the Canadian Participant exercising one of the exceptions to the Lock-Up Period prescribed by French law, the Canadian Participant may request the redemption of Units in consideration for the underlying Shares or a cash payment equal to the market value of such Shares.

(h) In addition, the Filer will grant the Canadian Participant the right to receive at the end of the Lock-Up Period, free of charge: (i) two Shares for each of the first 10 Units subscribed for by the Canadian Participant, and (ii) one Share for each additional Unit beginning with the 11th Unit that is subscribed for, but subject to the limitation that no further free Shares will be granted to a Canadian Participant in respect of any Units purchased to the extent that the Canadian Participant's personal investment has exceeded €750 (collectively, the "**Matching Contribution**"). The right to receive the Matching Contribution is subject to a continued employment condition (with certain exceptions) until the end of the Lock-Up Period; if this condition is satisfied, Shares granted under the Matching Contribution shall be delivered directly to the Canadian Participant or to the Classic Compartment on behalf of the Canadian Participant.

7. The Classic Compartment's portfolio will principally consist of Shares of the Filer and may, from time to time, include cash in respect of dividends paid on the Shares which may be paid out to Canadian Participants or reinvested in Shares and cash or cash equivalents pending investments in Shares or held for the purpose of Unit redemptions.

8. The manager of the Funds, BNP Paribas Asset Management SAS (the "**Management Company**") is a portfolio management company governed by the laws of France. The Management Company is registered with the French AMF to manage French investment funds. The Management Company is not, and to the best of the Filer's knowledge has no current intention of becoming, a reporting issuer under the Legislation or under the securities legislation of the other Offering Jurisdictions.

9. The Management Company's portfolio management activities in connection with the Employee Share Offering and the Classic Compartments are limited to subscribing for Shares from the Filer using amounts contributed by Qualifying Employees, and selling such Shares as necessary in order to fund redemption requests.

10. The Management Company is also responsible for preparing accounting documents and publishing periodic informational documents as provided by the rules of the Compartments and by the French AMF's regulations. The Management Company's activities do not affect the underlying value of the Shares. Canadian Participants will receive a statement indicating the number of Units they hold and the value of each Unit at least once a year.

11. Shares issued under the Employee Share Offering will be deposited in the Classic Compartment through BNP Paribas Securities Services (the "**Depositary**"), a large French commercial bank subject to French banking legislation.

12. Under French law, the Depositary must be selected by the Management Company from among a limited number of companies identified on a list maintained by the French Minister of the Economy, Finance and Industry and its

appointment must be approved by the French AMF. The Depositary carries out orders to purchase, trade and sell securities in the portfolio and takes all necessary action to allow the Classic Compartment to exercise the rights relating to the securities held in its portfolio.

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

14. The total amount that may be invested by a Canadian Participant in the Employee Share Offering cannot exceed 25% of his or her estimated gross annual remuneration for the 2010 calendar year.

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

16. It is anticipated that first trades of Shares by Canadian Participants will be effected through the facilities of, and in accordance with, the rules and regulations of Euronext Paris.

17. The Canadian Participants will receive an information package in the French or English language, at their choice, which will include materials summarizing the terms and conditions of the Employee Share Offering and describing Canadian income tax considerations relating to subscribing for and holding the Units and redeeming Units for cash or Shares at the end of the Lock-Up Period.

18. Canadian Participants may also consult the Filer's annual report and/or the French *Document de Référence* filed with the French AMF and a copy of the rules of the Classic Compartment (which are analogous to company by-laws). The Canadian Participants will also have access to the continuous disclosure materials relating to the Filer that are furnished to holders of Shares generally.

19. There are approximately 2,123 Employees and 15 Retired Employees resident in Canada, with the largest number of Employees in Ontario (880). Qualifying Employees are also located in the other Offering Jurisdictions. The total number of Employees resident in Canada represent in the aggregate less than 8% of the number of Employees worldwide.

20. The Filer and the Canadian Affiliates are not in default under the Legislation or under the securities legislation of the other Offering Jurisdictions. To the best of the Filer's knowledge, the Management Company is not in default under the Legislation or under the securities legislation of the other Offering 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 Exemption Sought is granted provided that the first trade in Shares acquired by Canadian Participants pursuant to this Decision in an Offering Jurisdiction is deemed a distribution or a primary distribution to the public under the Legislation of such Offering Jurisdiction, unless the following conditions are met:

(a) the issuer of the security

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

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

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

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

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

(c) the trade is made

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

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

“Paulette Kennedy”
Commissioner
Ontario Securities Commission

“Mary Condon”
Commissioner
Ontario Securities Commission

2.1.5 Macquarie Power & Infrastructure Income Fund

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Confidentiality – Application by an issuer for a decision that a material contract and certain portions of a material contract and a material change report previously filed and made public on SEDAR be held in confidence for an indefinite period by the Commission, to the extent permitted by law – Documents contain intimate financial, personal and other sensitive information, the disclosure of which would be seriously prejudicial to the interests of the issuer and other persons affected – Issuer subsequently filed and made public on SEDAR a redacted version of the documents in which the intimate financial, personal and other sensitive information has been omitted or marked to be unreadable – Information redacted from the redacted version of the documents do not contain information that would be material to an investor – Relief granted.

Applicable Ontario Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 140(1), 140(2).

Applicable Instruments

National Instrument 51-102 Continuous Disclosure Obligations, Part 12.

August 24, 2010

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

AND

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

AND

IN THE MATTER OF
MACQUARIE POWER & INFRASTRUCTURE
INCOME FUND
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**"), being section 140(2) of the *Securities Act* (Ontario) (the "**Act**"), that (i) the material change report of the Filer dated July 2, 2010 (the "**MCR**"), (ii) the Engineering, Procurement and Construction Agreement dated June 23, 2010 (the "**EPC Agreement**") and (iii) the Parent Guarantee Agreement dated June 23, 2010 (the "**Parent Guarantee**", and together with the MCR and EPC Agreement, the "**Original Filed Documents**"), all filed on the System for Electronic Document Analysis and Retrieval ("**SEDAR**") by the Filer on July 2, 2010 pursuant to, for the MCR, section 7.1(1)(b) of National Instrument 51-102 *Continuous Disclosure Obligations* ("**NI 51-102**") and, for the EPC Agreement and the Parent Guarantee, section 12.2(1) of NI 51-102 be marked private on SEDAR (and therefore not available to the public) for an indefinite period, to the extent permitted by law (the "**Exemption Sought**").

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

(a) the Ontario Securities Commission (the "**Principal Regulator**") 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 the provinces and territories of Canada, other than Ontario (the "**Non-Principal Passport Jurisdictions**").

Interpretation

Terms defined in National Instrument 14-101 – *Definitions* and the 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 trust existing under the laws of the Province of Ontario pursuant to an amended and restated declaration of trust dated April 16, 2004, as amended February 21, 2006.

2. The Filer's head office is located in Toronto, Ontario.

3. The Filer is a reporting issuer (or equivalent) in each of the provinces and territories of Canada and is not, to its knowledge, in default of its reporting issuer obligations under the securities legislation of Ontario or any of the Non-Principal Passport Jurisdictions.

4. On June 23, 2010, the Filer completed a transaction with SunPower Corporation ("**SunPower**") whereby a subsidiary of the Filer purchased a solar photovoltaic power project in Amherstburg, Ontario, to be designed, built and operated by SunPower on behalf of the Filer (the "**Transaction**").

5. The entering into of the Transaction was disclosed by press release issued June 23, 2010.

6. On July 2, 2010, the Filer filed the Original Filed Documents on SEDAR pursuant to, for the MCR, section 7.1(1)(b) of NI 51-102 and, for the EPC Agreement and the Parent Guarantee, section 12.2(1) of NI 51-102, together with other material contracts relating to the Transaction.

7. The MCR contains a summary description of the EPC Agreement, the Parent Guarantee and the other material contracts filed on SEDAR in connection with the Transaction.

8. Thereafter, it came to the Filer's attention that the MCR and EPC Agreement contain, and all of the terms of the Parent Guarantee are, confidential information (the "**Confidential Information**") that is intimate financial and personal or other information concerning SunPower and/or the Filer and otherwise contain commercially sensitive operational and financial information concerning SunPower and/or the Filer.

9. The Filer believes that continued public access to the Confidential Information would seriously prejudice the interests of SunPower and the Filer for the following reasons:

   a. should the Original Filed Documents remain on SEDAR, commercially sensitive information would continue to be available to the general public, including competitors of SunPower and the Filer, which would be prejudicial to SunPower and the Filer;

   b. maintaining the confidentiality of the Confidential Information is important with respect to the relations of the Filer with SunPower, with whom the Filer has an ongoing business relationship, as well as the Filer's ability to negotiate future transactions;

   c. none of the Confidential Information, either individually or in the aggregate, is necessary to understand the business of the Filer;

   d. the Confidential Information does not contain information in relation to the Filer or the securities of the Filer that would be material to an investor for purposes of making an investment decision; and

   e. the desirability of avoiding disclosure of the Confidential Information in the interests of SunPower and the Filer outweighs the desirability of adhering to the principle that material filed with the Principal Regulator be available to the public for inspection and the disclosure of the Confidential Information is not necessary in the public interest.

10. The Filer is permitted to file a redacted version of the EPC Agreement pursuant to section 12.2(3) of NI 51-102.

11. Following discussions with the Principal Regulator, on July 23, 2010 the Filer re-filed a copy of the MCR and the EPC Agreement on SEDAR with the Confidential Information in such documents redacted (the "**Redacted Filed Documents**") and staff of the Principal Regulator temporarily marked the Original Filed Documents private on SEDAR pending granting of this decision.

12. The Filer acknowledges that making the Original Filed Documents private on SEDAR does not guarantee that the Original Filed Documents are not available elsewhere in the public domain.

Decision

The Principal Regulator in the Jurisdiction 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 in the Jurisdiction under the Legislation is that the Exemption Sought is granted.

"Paulette Kennedy"
Commissioner
Ontario Securities Commission

"Wesley Scott"
Commissioner
Ontario Securities Commission

2.1.6 Sceptre Investment Counsel Limited and Fiera Capital Inc.

Headnote

Multilateral Instrument 11-102 Passport System – National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 33-109 Registration Information (NI 33-109) – relief from certain filing requirements of NI 33-109 in connection with a bulk transfer of business locations and registered and non-registered individuals under an amalgamation in accordance with section 3.4 of Companion Policy 33-109CP to NI 33-109.

Applicable Legislative Provisions

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

August 26,2010

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
SCEPTRE INVESTMENT COUNSEL LIMITED
(the Filer)

AND

IN THE MATTER OF
FIERA CAPITAL INC.
(Fiera)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision of the principal regulator under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for exemptions from the following requirements pursuant to section 7.1 of National Instrument 33-109 – Registration Information (**NI 33-109**) to accommodate the bulk transfer of the business locations of Fiera, and certain individuals associated with each business location on the National Registration Database (**NRD**) in respect of Fiera's registrations as a portfolio manager and exempt market dealer, from Fiera to the Filer (the **Bulk Transfer**) on September 1, 2010 in accordance with section 3.4 of Companion Policy 33-109CP (the **Exemptions Sought**):

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

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

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

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

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

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

(b) the 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 all of the provinces and territories of Canada other than Ontario.

Interpretation

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

Representations

This decision is based on the following facts represented by the Filer and/or Fiera, as the case may be:

The Filer

1. The Filer is a corporation governed by the *Business Corporations Act* (Ontario) (the **OBCA**). Its head office is located at 26 Wellington Street East, 12th Floor, Toronto, Ontario M5E 1W4.

2. The Filer is an investment management firm that has assets under management in excess of $6.6 billion. Its Pension and Institutional Fund Group manages investment portfolios for a broad range of clients that include corporations, governments, hospitals, charitable foundations, endowments, universities and unions. Its Wealth Management Group provides discretionary segregated account and investment fund management services for high net worth individuals and it acts as the manager for the Sceptre Mutual Funds.

3. At the date of application the Filer was registered as a portfolio manager under the securities legislation of all provinces of Canada other than Prince Edward Island, as both an exempt market dealer and an investment fund manager under the Securities Act (Ontario) and as an investment adviser with the U.S. Securities and Exchange Commission.

4. The Filer is also a reporting issuer in British Columbia, Alberta and Ontario. Its common shares are listed for trading on the Toronto Stock Exchange under the symbol "SZ".

5. The Filer is not in default of the securities legislation in any province or territory of Canada.

Fiera

6. Fiera is a corporation governed by the *Canada Business Corporations Act*. Its head office is located at 1501 Avenue McGill College, Suite 800, Montreal, Quebec, H3A 3M8.

7. Fiera is an independent, full-service, multi-product investment firm that has a unique expertise in asset allocation, equity and fixed-income management and non-traditional investment solutions. It is focussed on delivering competitive and tailored multi-style investment solutions to its clients that consist primarily of institutional investors, investment funds, religious and charitable organizations and high net-worth investors. Fiera has assets under management in excess of $22 billion.

8. Fiera is registered as a portfolio manager under the securities legislation of all provinces and territories of Canada; as an exempt market dealer under the securities legislation of Ontario and Newfoundland and Labrador; as a commodity trading manager under the Commodity Futures Act (Ontario) and as a derivatives portfolio manager under the *Derivatives Act* (Quebec).

9. Fiera is not a reporting issuer in any province or territory of Canada.

10. Fiera is not in default of the securities legislation in any province or territory of Canada.

Fiera Sceptre Inc.

11. Fiera has agreed to transfer all of its assets to the Filer in exchange for the Filer's assumption of Fiera's liabilities and the issuance of approximately 21.1 million Class B special voting shares of the Filer, and to thereby combine its business with the business that is conducted by the Filer, pursuant to a court-approved plan of arrangement under the OBCA (the **Transaction**). The Filer will be re-named "Fiera Sceptre Inc." (**Fiera Sceptre**) as part of the plan of arrangement.

12. Following completion of the Transaction, the business and operations of Fiera Sceptre will consist of the combined business and operations of Fiera and the Filer.

13. The Transaction is currently scheduled to close on September 1, 2010 (the **Closing Date**).

14. Sceptre has aligned its portfolio manager and exempt market dealer registrations with those of Fiera. It will also apply to amend its registrations to become registered as a commodity trading manager under the *Commodity Futures Act* (Ontario) and as a derivative portfolio manager under the *Derivatives Act* (Quebec) with effect as of and from the Closing Date.

15. The Bulk Transfer will facilitate the transfer of Fiera's business locations, and the transfer of certain individuals associated with such business locations in respect of Fiera's registrations as a portfolio manager and exempt market dealer, from Fiera to Sceptre on the Closing Date;

16. Given the significant number of registered individuals of Fiera, it would be difficult to transfer each individual to Fiera Sceptre in accordance with the requirements of NI 33-109 if the Exemption Sought is not granted.

17. The Exemption Sought will not be contrary to the public interest and will have no negative consequences on the ability of Fiera Sceptre to comply with all applicable regulatory requirements or the ability to satisfy any obligations in respect of the clients of Fiera and the Filer.

18. The head office of Fiera Sceptre will be relocated to Montreal, Quebec following completion of the Transaction. Following such relocation, Fiera Sceptre's new head office address will be 1501 Avenue McGill College, Suite 800, Montreal, Quebec H3A 3M8. Telephone (514) 954-3300. Fax (514) 954-5098.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that the Filer makes acceptable arrangements with CDS Inc. for the payment of the costs associated with the Bulk Transfer, and makes such payment in advance of the Bulk Transfer.

“Erez Blumberger”
Deputy Director
Compliance and Registrant Regulation
Ontario Securities Commission

2.1.7 Nayarit Gold Inc. – s. 1(10)

Headnote

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

Applicable Legislative Provisions

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

August 27, 2010

Kutkevicius Kirsh, LLP
Suite 1200, 67 Yonge Street
Toronto, Ontario
M5E 1J8

Attention: Mr. Lonnie Kirsh

Dear Sirs/Mesdames:

Re: Nayarit Gold Inc. (the Applicant) – application for a decision under the securities legislation of Ontario and Alberta (the Jurisdictions) that the Applicant is not a reporting issuer

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

As the Applicant has represented to the Decision Makers that:

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

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

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

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

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

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

2.1.8 Excel Investment Counsel Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval for a one-time trade of securities between a non-redeemable investment fund and an affiliated fund, both advised by the same portfolio manager, to implement a merger – costs of the merger to be borne by the manager – sale of securities exempt from the self-dealing prohibitions in subsection 13.5(2)(b)(iii) of National Instrument 31-103 – Registration Requirements and Exemptions.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements and Exemptions, ss. 13.5(2)(b)(iii), 15.1.

August 26, 2010

**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
EXCEL INVESTMENT COUNSEL INC. AND
EXCEL FUNDS MANAGEMENT INC.
(THE FILERS)**

AND

**EXCEL INDIA TRUST
(THE TERMINATING FUND)**

AND

**EXCEL INDIA FUND
(THE CONTINUING FUND, AND TOGETHER WITH
THE TERMINATING FUND, THE FUNDS)**

DECISION

Background

The principal regulator in the Jurisdiction (**Decision Maker**) has received an application from the Filers for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for exemptive relief from Section 13.5(2)(b)(iii) of National Instrument 31-103 – *Registration Requirements and Exemptions* (**NI 31-103**) in connection with the transfer of the investment portfolio of the Terminating Fund to the Continuing Fund in order to implement the merger (the

Merger) of the Terminating Fund into the Continuing Fund (the **Exemption Sought**).

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

(a) the Ontario Securities Commission is the principal regulator (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 all provinces and territories in Canada.

Interpretation

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

Representations

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

Excel Funds Management Inc. ("Manager")

1. The Manager is a corporation created under the laws of Ontario with its head office in Mississauga, Ontario.

2. The Manager is the investment fund manager and trustee of the Funds.

3. The Manager is not in default of securities legislation in any jurisdiction.

Excel Investment Counsel Inc. ("Portfolio Manager")

4. The Portfolio Manager is a corporation created under the laws of Ontario with its head office in Mississauga, Ontario.

5. The Portfolio Manager is registered as an adviser with the OSC in the category of portfolio manager.

6. The Portfolio Manager acts as portfolio manager to the Funds.

7. The Portfolio Manager is not in default of securities legislation in any jurisdiction.

Terminating Fund

8. The Terminating Fund was established pursuant to an amended and restated declaration of trust under the laws of Ontario.

9. The Terminating Fund is a "non-redeemable investment fund" as defined under the *Securities Act* (Ontario) and the units of the Terminating Fund are listed on the Toronto Stock Exchange ("**TSX**").

10. The Terminating Fund is a reporting issuer as defined under the applicable securities legislation of each of the provinces and territories of Canada and is not in default of securities legislation in any jurisdiction.

Continuing Fund

11. The Continuing Fund was established pursuant to a declaration of trust, as amended, under the laws of Ontario.

12. The Continuing Fund is a mutual fund for the purposes of the *Securities Act* (Ontario) and offers its Series A and Series F units pursuant to a simplified prospectus dated November 2, 2009.

13. The Continuing Fund is a reporting issuer as defined under the applicable securities legislation of each of the provinces and territories of Canada and is not in default of securities legislation in any jurisdiction.

Merger

14. The Manager intends to merge the Terminating Fund into the Continuing Fund which will involve the transfer of assets of the Terminating Fund in exchange for Series A units of the Continuing Fund. It is proposed that the Merger will occur on or about August 27, 2010.

15. The board of directors of the Manager approved the Merger and a press release and material change report in respect of the Merger were filed on SEDAR on June 16, 2010.

16. The Merger will be effected in accordance with the "permitted merger" provisions set out in the amended and restated declaration of trust of the Terminating Fund dated July 13, 2007 (the "**Terminating Fund DOT**") which stipulates that the Manager may, without obtaining unitholder approval, merge the Terminating Fund with the Continuing Fund provided that unitholders of the Terminating Fund are given the opportunity to receive the net asset value ("**NAV**") of their units in cash on the Trust's termination date.

17. No TSX approval is required for the Merger. However, the Terminating Fund will need to comply with the requirements of the TSX to delist.

18. The Funds have identical fundamental investment objectives and valuation procedures.

19. The Independent Review Committee ("IRC") of the Funds has approved the Merger as contemplated under National Instrument 81-107 – *Independent Review Committee for Investment Funds* ("**NI 81-**

107") on the basis that the Merger would achieve a fair and reasonable result for each of the Funds.

20. All costs and expenses associated with the Merger will be borne by the Manager and no sales charges, redemption fees or other fees or commissions will be payable by unitholders of the Funds in connection with the Merger.

21. The Merger will be implemented on a taxable basis in order to preserve significant tax losses at the Continuing Fund level.

22. Each unitholder in the Terminating Fund will receive prior written notice of the Merger that will describe, among other things, (i) the mechanics of the Merger, (ii) details about the Continuing Fund; (iii) the unitholder's right to receive the NAV of their units in cash on the Terminating Fund's termination date; and (iv) the unitholder's right to exchange their units of the Terminating Fund for Series A units of the Continuing Fund which pay an annual management fee of 2.5% to the Manager.

23. The Merger is expected to be implemented as follows:

    a. units of the Terminating Fund were de-listed from the TSX on July 27, 2010;

    b. on or about August 27, 2010, it is anticipated that substantially all the assets of the Terminating Fund will be transferred to the Continuing Fund in exchange for series A units of the Continuing Fund, the value of which will be equal to the NAV of the Terminating Fund transferred to the Continuing Fund calculated at the close of business on August 27, 2010;

    c. the Continuing Fund will not assume the liabilities of the Terminating Fund and the Terminating Fund will retain sufficient assets to satisfy its estimated liabilities, if any, as of the effective date of the Merger;

    d. the Terminating Fund will distribute to its unitholders a sufficient amount of its net income and net realized capital gains so that it will not be subject to tax under Part I of the *Income Tax Act* (Canada) for its current taxation year;

    e. units of the Terminating Fund held by unitholders will be redeemed and cancelled and the units of the Continuing Fund received by the Terminating Fund under the Merger will be distributed to unitholders of the Terminating Fund on a dollar-for-dollar basis in exchange for their units in the Terminating Fund; and

    f. as soon as reasonably possible following the Merger, the Terminating Fund will be wound up.

24. The Filer is a "responsible person" for purposes of NI 31-103 as a result of being the portfolio manager of the Funds.

25. The transfer of the investment portfolio of the Terminating Fund to the Continuing Fund, as a step in the Merger, may contravene s. 13.5(2)(b)(iii) of NI 31-103.

26. Therefore, in the absence of this order, the Filer would be prohibited from purchasing the investment portfolio of the Terminating Fund on behalf of the Continuing Fund in connection with the Merger.

27. In the opinion of the Filer, it would not be prejudicial to grant the Exemption Sought and would be in the best interests of the unitholders of the Terminating Funds for the following reasons:

    a. it is no longer economically practical to continue the Terminating Fund;

    b. the Continuing Fund has the potential to have a larger portfolio, as the Continuing Fund will be in continuous distribution, and may offer improved portfolio diversification opportunities;

    c. in addition to switching privileges, series A units of the Continuing Fund will have greater liquidity through daily purchases and redemptions of units than the Terminating Fund; and

    d. the Merger will eliminate the discount to NAV for the Terminating Fund's unitholders if they redeem their units of the Continuing Fund received in connection with the Merger.

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 is that the Exemption Sought is granted.

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

2.1.9 Invesco Trimark Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from sections 2.3(f) and (h), 2.5(2)(a), (b) and (c) of National Instrument 81-102 Mutual Funds to permit mutual funds to invest in gold ETFs, silver ETFs, gold/silver ETFs and silver, the Filer does not invest in leveraged ETFs and inverse ETFs, subject to a limit of 10% exposure in gold and silver, and certain conditions.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.3(f) and (h), 2.5(2)(a), (b) and (c), 19.1.

August 10, 2010

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

AND

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

AND

IN THE MATTER OF
INVESCO TRIMARK LTD.
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the existing and future mutual funds managed by the Filer that are subject to National Instrument 81-102 – *Mutual Funds* ("**NI 81-102**") other than money market funds as defined in NI 81-102 (the "**Existing Funds**" and the "**Future Funds**", respectively, together, the "**Funds**" and individually a "**Fund**") for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") exempting the Funds from the restrictions contained in sections 2.3(f), 2.3(h), 2.5(2)(a), 2.5(2)(b) and 2.5(2)(c) of NI 81-102 (the "**Exemption Sought**") to permit each Fund to purchase and hold or enter into:

(a) securities of exchange-traded funds ("**ETFs**") that seek to replicate (i) the performance of gold on an unlevered basis; or (ii) the value of a specified derivative the underlying interest of which is gold on an unlevered basis ("**Gold ETFs**");

(b) securities of ETFs that seek to replicate (i) the performance of silver on an unlevered basis; or (ii) the value of a specified derivative the underlying interest of which is silver on an unlevered basis ("**Silver ETFs**");

(c) securities of ETFs that seek to replicate (i) the performance of gold and silver on an unlevered basis; or (ii) the value of specified derivatives the underlying interests of which are gold and silver on an unlevered basis ("**Gold/Silver ETFs**"); and

(d) silver, Permitted Silver Certificates (as defined below) and specified derivatives the underlying interest of which is silver on an unlevered basis (collectively, "**Silver**")

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

(b) the Filer has provided notice that section 4.7(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, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut and Yukon (the "**Other Jurisdictions**").

Interpretation

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

Representations

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

The Funds

1. The head office of the Filer is located in Toronto, Ontario.

2. The Filer is the manager of the Existing Funds and will be the manager of the Future Funds.

3. The Filer or its affiliates is the portfolio manager of or sub-advisor to each of the Existing Funds and will be the portfolio manager of or sub-advisor to each of the Future Funds.

4. Each Existing Fund is and each Future Fund will be (a) an open-end mutual fund established under the laws of Ontario; (b) a reporting issuer under the securities laws of some or all of the provinces and territories of Canada; (c) governed by the provisions of NI 81-102; and (d) qualified for distribution in some or all provinces and territories of Canada under a simplified prospectus and annual information form prepared in accordance

with National Instrument 81-101 – *Mutual Fund Prospectus Disclosure* ("**NI 81-101**") and filed with and receipted by the securities regulators in the applicable jurisdiction(s).

5. Neither the Filer nor any of the Existing Funds is in default of securities legislation in any province or territory of Canada.

6. Each Existing Fund is and each Future Fund will be permitted in accordance with its investment objectives and investment strategies to invest in Gold ETFs, Silver ETFs and Gold/Silver ETFs (collectively, "**Underlying ETFs**") and Silver.

7. The Fund does not invest in leveraged ETFs or inverse ETFs.

8. In the absence of the Exemption Sought, an investment by the Funds in securities of the Underlying ETFs would be contrary to section 2.5(2)(a) of NI 81-102 as the securities of the Underlying ETFs are not subject to NI 81-102 and NI 81-101.

9. In the absence of the Exemption Sought, an investment by the Funds in securities of some Underlying ETFs would be contrary to section 2.5(2)(c) of NI 81-102 as the securities of some Underlying ETFs are not qualified for distribution in Canada.

10. In the absence of the Exemption Sought, an investment by the Funds in securities of some Underlying ETFs would be contrary to section 2.5(2)(b) of NI 81-102 as some Underlying ETFs invest in a fund which does not comply with the requirements of section 2.5 of NI 81-102. This fund in turn invests in gold, silver or derivatives the underlying interest of which is gold, silver or a combination thereof.

11. To obtain exposure to gold or silver indirectly, the Filer intends to use specified derivatives the underlying interest of which is gold or silver and invest in the Underlying ETFs.

12. The market for gold/silver is highly liquid, and there are no liquidity concerns that should lead to a conclusion that investments in gold/silver need to be prohibited.

13. The Funds will invest in Silver from time to time when the Filer determines that it is desirable to do so following a valuation of assets, a determination of the effect of monetary policy and economic environment on asset prices and assessing historic price movements on likely future returns.

14. In this decision, silver certificates ("**Permitted Silver Certificates**") that the Funds invest in will be certificates that represent silver that is:

    (i) available for delivery in Canada, free of charge, to or to the order of the holder of the certificate;

    (ii) of a minimum fineness of 999 parts per 1,000;

    (iii) held in Canada;

    (iv) in the form of either bars or wafers; and

    (v) if not purchased from a bank listed in Schedule I, II or III of the Bank Act (Canada), fully insured against loss and bankruptcy by an insurance company licensed under the laws of Canada or a province or territory of Canada.

15. In the absence of the Exemption Sought, an investment by the Funds in Silver would be contrary to sections 2.3(f) and 2.3(h) of NI 81-102 as those sections only stipulate gold as a permissible commodity to be held directly or as an underlying interest of a specified derivative.

16. The Underlying ETFs and Silver are attractive investments for the Funds as they provide an efficient and cost effective means of achieving diversification in addition to any investment in gold.

17. An investment by a Fund in the securities of the Underlying ETFs and/or Silver represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund.

18. Any investment by a Fund in Silver will be made in compliance with the custodian requirements in part 6 of NI 81-102.

19. If the investment in gold and/or silver (including gold, permitted gold certificates, silver, Certain Silver Certificates, Underlying ETFs and specified derivatives the underlying interest of which is gold or silver) represents a material change for any Existing Fund, the Filer will comply with the material change reporting obligations for that Fund.

20. The simplified prospectus for each of the Funds discloses (i) in the Investment Strategy section the fact that the Fund has obtained relief to invest in securities of Underlying ETFs and Silver together with an explanation of what each Underlying ETF is, and (ii) the risk associated with the Fund's investment in securities of the Underlying ETFs and/or Silver.

Decision

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

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

(a) the investment by a Fund in securities of an Underlying ETF and/or Silver is in accordance with the fundamental investment objectives of the Fund;

(b) a Fund does not short sell securities of an Underlying ETF;

(c) the securities of the Underlying ETFs are traded on a stock exchange in Canada or the United States;

(d) the securities of the Underlying ETFs are treated as specified derivatives for purposes of Part 2 of NI 81-102; and

(e) a Fund does not purchase gold, permitted gold certificates, silver, Permitted Silver Certificates, Underlying ETFs or enter into specified derivatives the underlying interest of which is gold or silver if, immediately after the transaction, more than 10% of the net assets of the Fund, taken at market value at the time of the transaction, would consist of gold, permitted gold certificates, silver, Permitted Silver Certificates, Underlying ETFs and underlying market exposure of specified derivatives linked to gold or silver.

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

2.1.10 Equal Energy Corp., formerly Equal Energy Holdings Ltd., formerly Enterra Energy Corp. – s. 1(10)

Headnote

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

Ontario Statutes

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

Citation: Equal Energy Corp., Re, 2010 ABASC 414

August 26, 2010

Stikeman Elliott LLP
4300 Bankers Hall West
888 - 3 Street SW
Calgary, AB T2P 5C5

Attention: Benjamin Hudson

Dear Sir:

Re: Equal Energy Corp., formerly Equal Energy Holdings Ltd., formerly Enterra Energy Corp. (the Applicant) - Application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (the Jurisdictions) that the Applicant is not a reporting issuer

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

As the Applicant has represented to the Decision Makers that:

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

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

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

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

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

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

2.1.11 Sprott Asset Management L.P.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from s. 4.1(2) of NI 81-102 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 and closed-end 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).

August 27, 2010

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
SPROTT ASSET MANAGEMENT L.P.
(the Filer)

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 Filer and on behalf of the existing mutual funds and future mutual funds of which the Filer is the investment fund manager or the portfolio manager and 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 (the **Exemption Sought**):

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

(i) does not participate in the formulation of investment decisions made on behalf of the dealer managed mutual fund;

(ii) does not have access before implementation to information concerning investment decisions made on behalf of the dealer managed mutual fund; and

(iii) 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;

in order to permit an NI 81-102 Fund to purchase certain exchange-traded securities of a Related Issuer in the secondary market (the **Related Issuer Relief**);

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 a Pooled Fund (as defined herein) or a Closed-end Fund (as defined herein) (the **Inter-fund Trade Relief**).

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 Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland & 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.

The following additional terms shall have the following meanings:

Closed-end Funds means the existing or future non-redeemable investment funds that are reporting issuers and managed by the Filer.

Pooled Funds means the existing mutual fund or future mutual funds that are not reporting issuers to which NI 81-102 does not apply and that are managed by the Filer.

Funds means the NI 81-102 Funds, the Pooled Funds, and the Closed-end Funds.

Representations

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

The Filer

1. The Filer is a limited partnership established under the laws of the Province of Ontario and is registered as an adviser in the category of portfolio manager in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia and Newfoundland and Labrador and as an exempt market dealer in Ontario. The Filer is not in default of securities legislation in any province or territory of Canada.

2. The Filer is, or will be, the manager and/or portfolio adviser for the NI 81-102 Funds, the Pooled Funds, and the Closed-end Funds.

Relationships Among the Sprott Entities

3. The general partner of the Filer, Sprott Asset Management GP Inc., is an indirect wholly-owned subsidiary of Sprott Inc., which is the sole limited partner of the Filer.

4. Sprott Private Wealth L.P. is a “specified dealer”. The general partner of Sprott Private Wealth L.P.

is Sprott Private Wealth GP Inc., which is also an indirect wholly-owned subsidiary of Sprott Inc.

5. Sprott Inc., a corporation established under the laws of the Province of Ontario and the common shares of which are listed on the Toronto Stock Exchange (the **TSX**) under the symbol "SII", owns 99.99% of the voting securities of the Filer and of Sprott Private Wealth L.P.

6. Because of the relationship between the Filer and Sprott Private Wealth L.P., the Filer is a "dealer manager" as such term is defined in NI 81-102 and accordingly, the NI 81-102 Funds are "dealer managed mutual funds" as such term is defined in NI 81-102.

7. Sprott Resource Corporation (**SRC**) is a corporation established under the laws of Canada and the common shares of which are listed on the TSX under the symbol "SCP".

8. Eric Sprott, the Chief Executive Officer and a director of the general partner of the Filer, is the Chief Executive Officer and a director of Sprott Inc. Several other executive officers of the Filer (or the general partner of the Filer) are also executive officers of Sprott Inc. In addition, Eric Sprott is a director of SRC. Being one of the portfolio managers of the Filer, Eric Sprott does not meet the conditions in section 4.1(2) of NI 81-102.

9. The Filer anticipates that in the future, an officer or director of the Filer (or the general partner of the Filer) may also be an officer or director of Sprott Inc., SRC, and/or a Closed-end Fund (or the general partner of a Closed-end Fund or of the manager or portfolio adviser of the Closed-end Funds), and that such officer or director will also not meet the conditions in section 4.1(2) of NI 81-102.

10. The Filer is the trustee of certain of the Pooled Funds organized as trusts, and therefore such Pooled Funds would be deemed to be associates of the Filer. The Filer anticipates that in the future, the structure for future Pooled Funds may also result in certain future Pooled Funds being associates of the Filer.

The NI 81-102 Funds, the Pooled Funds, and the Closed-end Funds

11. Each of the NI 81-102 Funds is, or will be, an open-ended mutual fund trust established under the laws of the Province of Ontario, or a mutual fund corporation established under the laws of the Province of Ontario or of Canada. Each of the NI 81-102 Funds is, or will be, a reporting issuer in Ontario and/or at least one of the other provinces and territories of Canada.

12. Each of the Pooled Funds is, or will be, a limited partnership or a trust. One or more Pooled Funds is or will be an associate or affiliate of the manager, portfolio adviser or trustee of the NI 81-102 Funds because of the relationships described above.

13. Each of the Closed-end Funds will be a trust established under the laws of the Province of Ontario, or a corporation established under the laws of the Province of Ontario or of Canada, or a limited partnership established under the laws of the Province of Ontario, and will be a reporting issuer in Ontario and/or at least one of the other provinces and territories of Canada. Certain Closed-end Funds may be Related Issuers of the NI 81-102 Funds in that one or more of the directors, officers or employees of the Filer (or the general partner of the Filer) will also be directors, officers or employees of the Closed-end Funds (or the general partner of the Closed-end Fund or of the manager or portfolio adviser of the Closed-end Fund).

Investments of the NI 81-102 Funds in Related Issuers

14. Securities of Sprott Inc., SRC or the Closed-end Funds may be appropriate securities for the investment portfolios of the NI 81-102 Funds. While section 6.2 of NI 81-107 permits the NI 81-102 Funds to invest in exchange-traded securities of Related Issuers in the secondary market, section 6.2 of NI 81-107 does not provide relief from section 4.1(2) of NI 81-102.

15. Each NI 81-102 Fund's investment in securities of Sprott Inc., SRC, or the Closed-end Funds will be in accordance with the NI 81-102 Fund's investment objectives, and will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the NI 81-102 Fund.

16. Each purchase of securities of Sprott Inc., SRC, or the Closed-end Funds by an NI 81-102 Fund will occur in the secondary market and not under primary distributions or treasury offerings of such issuers.

Inter-fund Trades involving the NI 81-102 Funds

17. The Filer wishes to effect purchases or sales of debt securities between (i) the NI 81-102 Funds and the Pooled Funds and (ii) the NI 81-102 Funds and the Closed-end Funds (**Inter-fund Trades**).

18. Section 4.3(2) of NI 81-102 permits an NI 81-102 Fund to purchase debt securities from or sell debt securities to an entity that would otherwise be prohibited by section 4.2 of NI 81-102 if certain conditions are met. One of the conditions of section 4.3(2) is that the NI 81-102 Fund is

purchasing from, or selling to, another mutual fund to which NI 81-107 applies.

19. The Filer cannot rely on section 4.3(2) of NI 81-102 to permit an NI 81-102 Fund to purchase debt securities from or sell debt securities to a Pooled Fund because the Pooled Funds are not subject to NI 81-107.

20. The Filer cannot rely on section 4.3(2) of NI 81-102 to permit an NI 81-102 Fund to purchase debt securities from or sell debt securities to a Closed-end Fund because a Closed-end Fund is not a "mutual fund" as defined in securities legislation.

Fund Governance for the NI 81-102 Funds, the Pooled Funds, and the Closed-end Funds

21. The Filer has established an independent review committee (**IRC**) in respect of the existing NI 81-102 Funds in accordance with the requirements of NI 81-107 and will establish an IRC for each future NI 81-102 Fund in accordance with the requirements of NI 81-107.

22. The Filer has established an IRC in respect of the existing Closed-end Funds in accordance with the requirements of NI 81-107, and will establish an IRC for each future Closed-end Fund in accordance with the requirements of NI 81-107.

23. Related Issuer purchases and Inter-fund Trades by the NI 81-102 Funds will be referred to the IRC of the NI 81-102 Funds as contemplated by section 5.2(1) of NI 81-107. The IRC of the NI 81-102 Funds will not approve such purchase or sale transactions unless it has made the determinations set out in section 5.2(2) of NI 81-107.

24. Inter-fund Trades by the Closed-end Funds will be referred to the IRC of the Closed-end Funds as contemplated by section 5.2(1) of NI 81-107. The IRC of the Closed-end Funds will not approve such purchase or sale transactions unless it has made the determinations set out in section 5.2(2) of NI 81-107.

25. The Filer will establish an IRC in respect of the Pooled Funds. The IRC of the Pooled Funds will be composed 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. The mandate of the IRC of the Pooled Funds will include approving Inter-fund Trades. The IRC of the Pooled Funds will not approve Inter-fund Trades unless the IRC has made the determination set out in section 5.2(2) of NI 81-107.

26. Each Inter-fund Trade will be consistent with the investment objective of the Funds engaged in the trade.

27. If the IRC of a Fund becomes aware of an instance where the Filer, as investment fund manager of the Fund, did not comply with the terms of this decision, or a condition imposed by the IRC in its approval, the IRC of such Fund will, as soon as practicable, notify in writing the securities regulatory authority or regulator in the jurisdiction under which the Fund is organized.

28. The Inter-fund Trades will comply with all of the conditions in sub-section 6.1(2)(b) to (g) of NI 81-107.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that the following conditions are met.

1. In respect of the Related Issuer Relief:

   (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, the Filer files with the securities regulatory authority or regulator the particulars of any such investments; and

2. In respect of the Inter-fund Trade Relief:

   (a) the IRC of the Funds involved in the Inter-fund Trade has approved the transaction in accordance with the terms of section 5.2(2) of NI 81-107; and

   (b) at the time of an Inter-fund Trade, the transaction complies with all of the conditions in subsection 6.1(2)(b) to (g) of NI 81-107.

"Vera Nunes"
Assistant Manager, Investment Funds

2.1.12 Uranium One Inc. and Joint Stock Company Kazakh-Russian-Kyrgyz Joint Venture with Foreign Investments Zarechnoye

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency, sections 3.2(a) and 9.1 – An issuer wants relief from the requirement that financial statements required by securities legislation to be audited must be accompanied by an auditor's report that does not contain a reservation – The auditors were not in attendance at the physical inventory taking and not able to satisfy themselves by other auditing procedures as to the opening inventory quantities; the issuer's most recent financial statements will include balance sheet and statements of operations and retained earnings and cash flows as comparatives and the audit report will not contain a reservation.

Applicable Legislative Provisions

National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency, ss. 3.2(a), 9.1.

August 3, 2010

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
URANIUM ONE INC.
(the Filer)

AND

JOINT STOCK COMPANY
KAZAKH-RUSSIAN-KYRGYZ JOINT VENTURE
WITH FOREIGN INVESTMENTS ZARECHNOYE
(Zarechnoye)

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) that the requirement that an auditor's report must not contain a reservation does not apply to the financial statements of Zarechnoye for the financial year ended December 31, 2007 (the Exemption Sought).

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 section 4.7(1) of Multilateral Instrument 11-102 – *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador and Prince Edward Island, 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 as is used in this decision, unless otherwise defined.

Representations

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

1. the Filer is a company continued under the laws of Canada; the Filer's head office is located in Vancouver, British Columbia;

2. the Filer is engaged, through its subsidiaries and joint ventures, in the mining and production of uranium and in the acquisition, exploration and development of uranium properties, primarily in Kazakhstan;

3. the Filer is a reporting issuer each of the provinces of Canada, and is not in default of its reporting issuer obligations in any jurisdiction;

4. the Filer's common shares are listed on the Toronto Stock Exchange under the symbol "UUU";

The Acquisition

5. as disclosed in a press release dated June 8, 2010 and a material change report dated June 11, 2009, the Filer and Joint Stock Company Atomredmetzoloto (ARMZ), and its wholly-owned subsidiaries, Effective Energy N.V. (Effective Energy) and Joint Stock Company Uranium Mining Company (UMC), entered into an agreement (the Purchase and Subscription Agreement) under which, among other things, the Filer agreed to acquire (the Acquisition) a 49.67% interest in Joint Stock Company Kazakh-Russian-Kyrgyz Joint Venture with Foreign Investments Zarechnoye;

6. Zarechnoye is a joint stock company formed under the laws of the Republic of Kazakhstan; Zarechnoye owns and operates the Zarechnoye Uranium Mine in Kazakhstan; Zarechnoye is not now, nor was it at any relevant time, a reporting issuer in any jurisdiction of Canada or the equivalent in any other jurisdiction;

7. the Acquisition will be a "related party transaction" for the Filer, within the meaning of section 1.1 of Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* (MI 61-101), since ARMZ owns more than 10% of the issued and outstanding common shares of the Filer;

8. as a result, the Filer is required under section 5.6 of MI 61-101 to obtain approval of the Acquisition from the shareholders of the Filer in accordance with Part 8 of MI 61-101 (the Minority Approval);

9. the Filer has called a special meeting of its shareholders to be held on August 31, 2010 at which it will seek the Minority Approval (the Special Meeting); in connection with the Special Meeting, the Filer will be preparing a management information circular in accordance with Form 51-102F5 – *Information Circular* (the Circular) and delivering the Circular to shareholders;

10. under item 14.2 of Form 51-102F5, the Filer is required to include in the Circular prospectus-level disclosure as described in Form 41-101F1 – *Information Required in a Prospectus* (Form 41-101F1) as mandated under National Instrument 41-101 – *General Prospectus Requirements* (NI 41-101) which includes the annual consolidated financial statements of Zarechnoye for each of the years ended December 31, 2009, 2008, and 2007 (the Historical Financial Statements);

11. under section 4.2 of NI 41-101, the Historical Financial Statements are required to be audited in accordance with National Instrument 52-107 – *Acceptable Accounting Principles and Auditing Standards* (NI 52-107);

12. under section 3.2 of NI 52-107, 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;

13. Zarechnoye is a "foreign issuer" for the purposes of NI 52-107;

14. as permitted by NI 52-107, the Historical Financial Statements have been prepared in accordance with International Financial Reporting Standards (IFRS) and audited in accordance with International Standards on Auditing as issued by the International Audit and Assurance Standards Board (ISA);

15. the financial statements for the year ended December 31, 2007 (the 2007 Financial Statements), were audited by Tabys-Audit LLP in Kazakhstan (Tabys); the financial statements for the years ended December 31, 2009 and December 31, 2008, were audited by Deloitte, LLP;

16. Tabys was appointed as auditor of Zarechnoye in January 2008 and was not able to verify Zarechnoye's inventory balances as at December 31, 2007 nor to satisfy itself concerning those inventory balances by alternative means;

17. since opening inventory balances enter into the determination of the results of the cost of sales, net income and cash flows for the year ended December 31, 2007, Tabys was not able to determine whether adjustments to the cost of sales, net income and cash flows for the year ended December 31, 2007 might have been necessary (the Audit Reservation); and

18. the audited financial statements for the years ended December 31, 2009 and December 31, 2008 do not contain any reservations.

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 included in the Circular audited financial statements for the years ended December 31, 2009 and 2008 that are accompanied by an auditor's report that does not contain a reservation;

(b) the 2007 Financial Statements are accompanied by an auditor's report from Tabys that contains or is accompanied by a statement by Tabys that:

(i) describes any material differences in the form and content of the auditor's report as compared to an auditor's report prepared in accordance with Canadian GAAS; and

(ii) indicates that an auditor's report prepared in accordance with Canadian GAAS would not contain a reservation other than the Audit Reservation; and

(c) the Circular otherwise complies with the requirements of Form 51-102F5.

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

2.1.13 National Bank Financial Inc.

Headnote

Passport relief from NI 31-103 s.11.2 requirement for the Chief Executive Officer (CEO) or one of certain other individuals to be designated Ultimate Designated Person (UDP), and s. 11.3 requirement for a single individual to be designated Chief Compliance Officer (CCO) for a registered firm. Co-CEOs, each responsible for a separate operating division of the firm to be designated as UDP. Two individuals to be designated as CCO, one for each operating division in view of kind and scale of operations.

August 24, 2010

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

AND

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

AND

IN THE MATTER OF
NATIONAL BANK FINANCIAL INC.
(the Filer)

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 an exemption for the Filer from the requirement contained in section 11.2 of National Instrument 31-103 *Registration Requirements and Exemptions* (**NI 31-103**) to designate an individual to be the ultimate designated person (**UDP)** and the requirement contained in section 11.3 of NI 31-103 to designate an individual to be the chief compliance officer (**CCO**) and instead be permitted to designate and register two individuals as UDP and two individuals as CCO in respect of two distinct lines of securities business of the Filer (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 subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in all of the jurisdictions in Canada outside of Quebec and Ontario (the **Non-principal Jurisdictions**, or together with the Jurisdictions, the **Filing Jurisdictions**); and

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

Interpretation

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

Representations

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

1. The Filer has its head office in Quebec.

2. The Filer is registered under the Legislation in the category of investment dealer, is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**).

3. The Filer is also registered as an investment dealer in each of the Non-Principal Jurisdictions.

4. The Filer is not, to the best of its knowledge, in default of any requirements of securities legislation in any of the Filing Jurisdictions.

5. The Filer's business structure is organized as follows:

   a) The Filer has two distinct lines of securities business (each a **Division**) based on the nature of the client served – an **Institutional Division** and a **Retail Division**.

   b) The Institutional Division of the Filer forms part of the **Financial Markets** group of National Bank Financial Group. The Institutional Division consists of Fixed Income, Institutional Equities, Corporate and Investment Banking and certain Derivatives and Proprietary Trading businesses.

   c) The rest of the Financial Markets group includes other Derivatives and Proprietary Trading activities, Specialty Finance and US merchant Banking. These activities are conducted through other affiliates of the Filer who are not members of IIROC (and do not need to be because of the nature of their specific activities).

   d) The Financial Markets group includes two support units, being Corporate Development and Governance and Business Strategy Management.

   e) The Retail Division of the Filer forms part of the **Wealth Management** group of National Bank Financial Group. The Retail Division conducts its activities principally in Quebec. The Retail Division provides discretionary managed and non-discretionary advisory and other wealth management related services to retail clients.

   f) The Wealth Management group also includes the retail investment dealer activities conducted by National Bank Financial Ltd., whose principal jurisdiction is Ontario and is registered to do business in each of the other provinces and territories of Canada, except Quebec and New Brunswick. The Wealth Management group also includes NBCN Inc., which undertakes carrying broker activities for a number of third party IIROC member firms and National Bank Direct Brokerage Inc, which offers discount brokerage services to clients who may carry out their transactions via Internet, automated telephone system or deal with representatives at the customer contact centre. In addition, the Wealth Management group includes other activities conducted by affiliates of the Filer who are not members of IIROC (and do not need to be because of the nature of their specific activities). The Wealth Management group is also supported by Corporate Development and Governance.

   g) The Institutional Division and the Retail Division each have separate and distinct senior management structures. Although they are part of the same corporate entity (i.e. the Filer), each Division is functionally a stand-alone operation within their parent bank's group of financial services companies and each Division Heads has the title of co-President and co-Chief Executive Officer (**co-CEO**) of the Filer.

   h) As co-CEO's, both Division Heads are a Chief Executive Officer (**CEO**) in respect of the Division for which the Division Head is responsible. Each Division Head reports independently to the CEO of National Bank Financial Group and each has access to the Filer's Board of Directors.

   i) Each of the Division Heads has final authority to effect decisions in respect of their Division (subject to the Board of Directors of the Filer).

   j) There is a separate compliance department with its own CCO for each of the Institutional Division and the Retail Division and each CCO has access to their Division Head and regularly provides reports to the Board of Directors of the Filer.

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

UDP Requirement

1. NI 31-103 was implemented on September 28, 2009 (the **Implementation Date**).

2. Under paragraph 11.2(a) of NI 31-103, a registered firm is required to designate an individual to be the UDP (the **UDP Requirement**) and the UDP must be the CEO or equivalent of the registered firm.

3. Under section 16.8 of NI 31-103, there is a 3-month transition period from the implementation Date for a registered firm to comply with the UDP Requirement.

4. Prior to the implementation of NI 31-103, there was no requirement under the securities legislation of any Filing Jurisdiction for an investment dealer to designate an individual, and have him or her registered, as the UDP.

5. Prior to the implementation of NI 31-103, under IIROC Rules, there was a requirement for a member to have a UDP which had to be one of the member's senior management. IIROC Rule 38 required a member to appoint a senior management person to the UDP position but did not require the person to be the CEO.

6. Prior to the implementation of NI 31-103, the Filer was permitted by IIROC to have its Executive Vice President, Corporate Development and Governance in the position of UDP. This individual had been the UDP for a number of years.

7. Designating only one of the Division Heads for purposes of satisfying the UDP Requirement would not be consistent with the policy objectives it is intended to achieve because the Division Heads are effectively CEOs of their respective Divisions.

CCO Requirement

1. Under section 11.3 of NI 31-103, a registered firm is required to designate an individual to be the CCO (the **CCO Requirement**).

2. Under subsection 16.9(1) of NI 31-103, there is a 3-month transition period from the Implementation Date for a registered firm to comply with the CCO Requirement.

3. Prior to the implementation of NI 31-103, there was a requirement under the securities legislation of many of the Filing Jurisdictions to designate a registered partner or officer as the "compliance officer" who was responsible for discharging the obligations of the registered dealer under the applicable securities legislation.

4. Prior to the implementation of NI 31-103, under IIROC Rules, there was a requirement for a member to appoint a senior officer to the position of Chief Compliance Officer (as defined under IIROC Rules).

5. Prior to the Implementation Date, the Filer had only one individual appointed as Chief Compliance Officer for both the Institutional Division and the Retail Division. However, the Filer has recently reorganized its compliance structure and decided to have two CCOs, one for the Institutional Division and one for the Retail Division.

6. In section 5.2 of Companion Policy 31-103CP *Registration Requirements and Exemptions*, the Canadian Securities Administrators indicate that:

> "Firms must designate one CCO. However, in large firms, the scale and kind of activities carried out by different operating divisions may warrant the designation of more than one CCO. We will consider applications, on a case-by-case basis, for different individuals to act as the CCO of a firm's operating divisions."

7. Under paragraph 7(d) of IIROC Rule 38 *Compliance and Supervision*, IIROC indicates that:

> "Where a Dealer Member is organized into two or more separate business units or divisions, a Dealer Member may, with approval of the Corporation, designate a Chief Compliance Officer for each separate business unit or division."

8. Designating only one of the CCOs for purposes of satisfying the CCO Requirement would not be consistent with the policy objectives it is intended to achieve because the Divisions are independent operations that are distinct from one another in kind and conducted on a very large scale.

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 to the Filer provided that:

i) each Division shall have its own UDP, who shall be its Division Head; and

ii) each Division shall have its own CCO.

“Mario Albert”
Superintendent, Client Services, Compensation and Distribution

2.1.14 Porter Aviation Holdings Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – application for an order that the issuer is not a reporting issuer under applicable securities laws – requested relief granted.

Applicable Legislative Provisions

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

August 27, 2010

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

AND

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

AND

IN THE MATTER OF
PORTER AVIATION HOLDINGS INC.
(THE FILER)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Makers) have 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 (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 the *Business Corporations Ac*t (Ontario) and its head office is located at Billy Bishop Toronto City Airport, Toronto, Ontario, M5V 1A1.

2. The Filer is a reporting issuer in each of the Jurisdictions. It became a reporting issuer in the Jurisdictions upon the issuance of a receipt for a prospectus dated May 21, 2010 (the Prospectus).

3. After receiving the receipt for the Prospectus, the Filer withdrew the public offering of its securities contemplated thereby, as announced in its news release dated June 1, 2010.

4. No securities have been, or will be, distributed pursuant to the Prospectus.

5. No securities of the Filer are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.

6. The Filer is not in default of any of its obligations under the securities legislation of the Jurisdictions as a reporting issuer.

7. Each of the System for Electronic Document Analysis and Retrieval (SEDAR) and System for Electronic Disclosure by Insiders (SEDI) profiles of the Filer are up to date and there are no outstanding fees under the Legislation required to be paid by the Filer.

8. The Filer is authorized to issue an unlimited number of common shares, an unlimited number of Class A preferred shares, an unlimited number of Class A-1 preferred shares, an unlimited number of Class X variable voting shares, an unlimited number of Class X-1 variable voting shares, an unlimited number of Class B special shares, an unlimited number of Class B-2 special shares and an unlimited number of senior preferred shares of which 8,112,292 common shares, 21,612,766 Class A preferred shares, 4,263,861 Class A-1 preferred shares, 5,131,915 Class X variable voting shares, 736,139 Class X-1 variable voting shares and 3,000,000 senior preferred shares are currently issued and outstanding. There are no Class B special shares or Class B-2 special shares currently issued and outstanding. There an aggregate of 2,870,000 options to purchase Class B special shares outstanding.

9. The Filer currently has the same securityholders as it had prior to filing the Prospectus and the outstanding securities of the Filer have not changed since it filed the Prospectus except that:

(a) 325,000 options to purchase Class B special shares held by six former employees of the Filer have expired in accordance with the terms of such options, and (b) on August 8, 2010 the Filer issued 3,000,000 senior preferred shares to existing shareholders of the Filer for aggregate gross proceeds of $15,000,000.

10. Except as provided for in paragraph 9 above, to the knowledge of the Filer, no trading of its securities has occurred since it filed the Prospectus.

11. The outstanding securities of the Filer are beneficially owned, directly or indirectly, by 62 securityholders, with five shareholders and 57 optionholders (who are not also shareholders).

12. Based on the latest addresses shown on the books of the Filer, the outstanding securities of the Filer are beneficially owned, directly or indirectly, by less than 15 securityholders in each of the Jurisdictions, except in Ontario, where the Filer has 49 securityholders (being three shareholders and 46 optionholders). Of the remaining 13 securityholders, based on the latest addresses shown on the books of the Filer, there are four optionholders in Quebec, one optionholder in Nova Scotia, one optionholder in British Columbia, one optionholder in Newfoundland and Labrador and six securityholders in the United States (being two shareholders and four optionholders).

13. The Filer has delivered a notice (the Notice) to its 62 securityholders that it had filed an application with the Jurisdictions for a decision that it is not a reporting issuer. The Notice was also filed on SEDAR on August 19, 2010.

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.

"Paulette Kennedy"
Commissioner
Ontario Securities Commission

"Mary Condon"
Commissioner
Ontario Securities Commission

2.1.15 Sceptre Investment Counsel Limited et al.

Headnote

NP 11-203 – Approval granted for change of manager of a mutual fund – subsection 5.5(1)(a) of National Instrument 81-102 Mutual Funds – change of manager – unitholders have received timely and adequate disclosure regarding the change of manager and the change is not detrimental to unitholders or the public interest.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 5.5(1)(a), 5.7, 19.1.

August 26, 2010

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
SCEPTRE INVESTMENT COUNSEL LIMITED
(the Filer)

AND

THE SCEPTRE MUTUAL FUNDS LISTED
ON SCHEDULE A
(the Sceptre Funds)

AND

IN THE MATTER OF
FIERA CAPITAL INC.
(Fiera)

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 approval of a change in the manager of the Sceptre Funds pursuant to paragraph 5.5(1)(a) of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) (the **Approval Sought**).

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 subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied on in all of the provinces and territories of Canada other than Ontario.

Interpretation

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

Representations

This decision is based on the following facts represented by the Filer and/or Fiera, as the case may be:

1. The Filer is a corporation governed by the *Business Corporations Act* (Ontario) (the **OBCA**). It is a reporting issuer in British Columbia, Alberta and Ontario and its common shares are listed for trading on the Toronto Stock Exchange (the **TSX**). Its head office is located in Toronto, Ontario.

2. The Filer is an investment management firm that has assets under management in excess of $6.6 billion. Its Pension and Institutional Fund Group manages investment portfolios for a broad range of clients that include corporations, governments, hospitals, charitable foundations, endowments, universities and unions. Its Wealth Management Group provides discretionary segregated account and investment fund management services for high net worth individuals and it acts as the manager for the Sceptre Funds.

3. The Filer is registered as a portfolio manager under the securities legislation of all provinces of Canada other than Prince Edward Island, as both an exempt market dealer and an investment fund manager under the Legislation and as an investment adviser with the U.S. Securities and Exchange Commission.

4. The Sceptre Funds are qualified for distribution in all provinces and territories of Canada pursuant to a simplified prospectus and an annual information form that have been prepared and filed in accordance with applicable Canadian securities regulatory requirements including NI 81-102. The Sceptre Funds are also subject to, among other laws and regulations, National Instrument 81-106 *Investment Fund Continuous Disclosure* and National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**). The Sceptre Funds account for approximately $947 million of the assets under management by the Filer.

5. Neither the Filer nor any of the Sceptre Funds is in default of securities legislation in any province or territory of Canada.

6. Fiera is a corporation governed by the *Canada Business Corporations Act*. Its head office is located in Montreal, Québec.

7. Fiera is an independent, full-service, multi-product investment firm that has a unique expertise in asset allocation, equity and fixed-income management and non-traditional investment solutions. It is focused on delivering competitive and tailored multi-style investment solutions to its clients that consist primarily of institutional investors, investment funds, religious and charitable organizations and high net-worth investors. Fiera has assets under management in excess of $22 billion.

8. Fiera is registered as a portfolio manager under the securities legislation of all provinces and territories of Canada, as an exempt market dealer under the securities legislation of the Jurisdiction and Newfoundland and Labrador, as a commodity trading manager under the *Commodity Futures Act* (Ontario) (the **CFA**), and as a derivatives portfolio manager under the *Derivatives Act* (Quebec).

9. Fiera is not in default of securities legislation in any province or territory of Canada.

10. The Filer and Fiera have entered into a definitive Transaction Agreement dated June 16, 2010 pursuant to which Fiera has agreed to transfer substantially all of its assets to the Filer in exchange for the Filer's assumption of substantially all of Fiera's liabilities and the issuance by the Filer to Fiera of approximately 21.1 million Class B special voting shares of the Filer (the **Class B Shares**) pursuant to a court-approved plan of arrangement under the OBCA (the **Transaction**).

11. The Transaction is subject to court approval and the approval of at least two-thirds of the votes cast by the common shareholders of the Filer that are represented in person or by proxy at the meeting of the common shareholders that is to be held on August 24, 2010 (the **Shareholder Meeting**). It must also be approved by at least a simple majority of the votes cast by "minority" shareholders at the Shareholder Meeting, as determined in accordance with applicable securities laws and stock exchange rules.

12. In addition to such approvals, completion of the Transaction will constitute a change in the manager of the Sceptre Funds rather than a change in control of the Filer for purposes of NI 81-102. As a result, the change in the manager and trustee of each Sceptre Fund is subject to the

prior approval of the unitholders of the Sceptre Fund. Meetings of the unitholders of the Sceptre Funds were therefore held on August 20, 2010 (the **Unitholder Meetings**) to consider, and if thought advisable, to pass resolutions approving of the change in manager and trustee. During the Unitholder Meetings, a resolution approving of the change in manager and trustee of each Sceptre Fund was passed by the unitholders of the Sceptre Funds.

13. The Transaction is scheduled to close on August 31, 2010. The material steps that will be taken to complete the Transaction on closing comprise the following:

    (a) the articles of the Filer will be amended to(i) change the name of the Filer to Fiera Sceptre Inc. (**Fiera Sceptre**); (ii) create new Class A subordinate voting shares (the **Class A Shares**) that will be listed on the TSX in substitution for the common shares of the Filer (the **Common Shares**); (iii) create the new Class B Shares; (iv) change the number of directors of the Filer from a minimum of three and a maximum of fifteen to nine;

    (b) holders of Common Shares will exchange each outstanding Common Share for one Class A Share (resulting in the issuance of approximately 14 million Class A Shares) and a cash payment of $0.60;

    (c) the articles of Fiera Sceptre will be amended to cancel the Common Shares as a class of shares authorized to be issued by Fiera Sceptre; and

    (d) Fiera Sceptre will acquire all of the assets and other property beneficially owned by Fiera (other than certain excluded assets) in exchange for the assumption by Fiera Sceptre of Fiera's liabilities (other than certain excluded non-client liabilities) and the issuance to Fiera of approximately 21.1 million Class B Shares representing 60% of the total number of Class A Shares and Class B Shares to be outstanding at closing.

14. Upon completion of the Transaction, Fiera Sceptre will continue to be the same legal entity as the Filer with certain changes in its capital structure, shareholder base, management and business operations resulting from the combination of the businesses of the Filer and Fiera. These changes are described in the management information circular in relation to the Shareholder Meeting and the management information circular in relation to the Unitholder Meetings, both dated July 23, 2010. Fiera will own 60%, or approximately 21.1 million, of the 35.1 million outstanding Class A Shares and Class B Shares of Fiera Sceptre, which it will hold through Fiera Sceptre LP, a limited partnership that is to be established by Fiera or any of its affiliates prior to closing of the Transaction.

15. The business and operations of Fiera Sceptre will consist primarily of the combined business and operations of the Filer and Fiera. As a result of these combined operations, Fiera Sceptre will be a publicly traded, independent money manager with assets under management in excess of approximately $30 billion.

16. The Transaction will have no adverse impact upon the financial stability of Fiera Sceptre.

17. Following completion of the Transaction, as part of its post-acquisition integration process, Fiera Sceptre will conduct a comprehensive review of its combined business operations which will include a consideration of possible changes to the various businesses that are currently conducted by the Filer and Fiera. As part of this review, Fiera Sceptre will consider alternatives for achieving enhanced performance and growth for the Sceptre Funds. While this could result in future changes to the Sceptre Funds, management has not made any decisions respecting changes that might be made to the combined operations of the Filer and Fiera, including any changes that might be made in respect of the Sceptre Funds, and it will not do so until it has completed its review of the combined operations following completion of the Transaction. Any changes that are made post closing will be disclosed and communicated to unitholders of the Sceptre Funds, as required, and unitholders of each Sceptre Fund will have an opportunity to consider and approve any changes to a Sceptre Fund that require unitholder approval.

18. The Filer has referred the proposed change in the manager and trustee of the Sceptre Funds that will occur upon completion of the Transaction to the Independent Review Committee (**IRC**) of the Sceptre Funds for its review and the IRC has advised the Filer that in the IRC's determination, after reasonable inquiry, the proposed change in the manager and trustee of the Sceptre Funds does not create any potential conflict of interest issues as between the Filer and the Funds that have not been adequately addressed.

19. The Funds will not bear any of the costs and expenses associated with the change in the manager and trustee of the Sceptre Funds. Such costs and expenses will be borne by the Filer.

20. A news release with respect to the Transaction was issued by the Filer on June 16, 2010 and by the Sceptre Funds on July 2, 2010. Related

material change reports were filed on June 23, 2010 by the Filer and on July 2, 2010 by the Sceptre Funds. Amendments to the simplified prospectus and annual information form for the Sceptre Funds dated August 26, 2009 were filed on July 2, 2010.

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 Approval Sought is granted.

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

SCHEDULE A

The Sceptre Mutual Funds

Sceptre Income & Growth Fund
Sceptre Bond Fund
Sceptre High Income Fund
Sceptre Canadian Equity Fund
Sceptre Equity Growth Fund
Sceptre U.S. Equity Fund
Sceptre Global Equity Fund
Sceptre Money Market Fund
Sceptre Large Cap Canadian Equity Fund

2.1.16 Corriente Resources Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – application for an order that the issuer is not a reporting issuer under applicable securities laws – The securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market – requested relief granted.

Applicable Legislative Provisions

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

August 18, 2010

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO AND QUÉBEC
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
CORRIENTE RESOURCES INC.
(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) that the Filer is not a reporting issuer in the Jurisdictions (the Exemptive Relief Sought).

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

(a) the British Columbia 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

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

Representations

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

1. the Filer is a British Columbia company that was incorporated on February 16, 1983 and is governed by the *Business Corporations Act* (British Columbia); its head office is located at Suite 520 – 800 West Pender Street, Vancouver, British Columbia, V6C 2V6;

2. the Filer is a reporting issuer in each of the Jurisdictions;

3. the Filer's authorized capital consists of an unlimited number of common shares without par value;

4. CRCC-Tongguan Investment (Canada) Co., Ltd. (the Offeror) was incorporated under the laws of British Columbia on December 30, 2009, and is a wholly-owned direct subsidiary of CRCC-Tongguan Investment Co., Ltd, which in turn is a jointly-owned direct subsidiary of Tongling Nonferrous Metals Group Holdings Co., Ltd. (Tongling) and China Railway Construction Corporation Limited (CRCC);

5. Tongling, a state-owned corporation existing under the laws of the People's Republic of China, is an integrated mining conglomerate; CRCC, a state-controlled, public corporation existing under the laws of the People's Republic of China, is a large integrated construction enterprise;

6. on May 31, 2010, the Offeror acquired 76,478,495 common shares (Common Shares) of the Filer representing 96.9% of the issued and outstanding Common Shares of the Filer pursuant to its offer dated February 1, 2010, as amended by the Notice of Extension dated March 25, 2010 and by the Notice of Extension dated April 26, 2010 (the Offer) to purchase all of the issued and outstanding Common Shares at a price of Cdn.$8.60 per Common Share;

7. as at May 31, 2010, all outstanding options to purchase Common Shares of the Filer had been exercised in full,

cancelled or irrevocably released, surrendered or waived;

8. on August 4, 2010, the Offeror completed a compulsory acquisition of all the Common Shares of the Filer not tendered under the Offer in accordance with the provisions of section 300 of the *Business Corporations Act* (British Columbia) (the Compulsory Acquisition), and the Filer became a wholly-owned subsidiary of the Offeror;

9. the outstanding securities of the Filer are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada;

10. the Filer is not in default of any of its obligations under the Legislation as a reporting issuer, except that it may not have filed by August 16, 2010 its interim financial statements and related management's discussion and analysis for the interim period ended June 30, 2010 (the "Interim Filings"), as required under National Instrument 51-102 *Continuous Disclosure Obligations*, and the certificates of Interim Filings as required under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*;

11. the Filer's Common Shares were listed and posted for trading on the Toronto Stock Exchange under the symbol "CTQ"; the Filer's Common Shares were delisted from trading on the Toronto Stock Exchange effective as of the close of business on August 4, 2010;

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

13. the Filer has no current intention to seek public financing by way of offering of securities;

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

15. the Filer did not voluntarily surrender its status as a reporting issuer in British Columbia pursuant to BC Instrument 11-102 *Voluntary Surrender of Reporting Issuer Status* (the BC Instrument) in order to avoid the 10-day waiting period under the BC Instrument;

16. the Filer may not be eligible to use the simplified procedure under CSA Staff Notice 12-307 *Applications for a decision that an Issuer is not a Reporting Issuer* because it is a reporting issuer in British Columbia and because it may be in default of certain filing obligations under the Legislation as described in paragraph 10 above;

17. the Filer, upon the grant of the Exemptive Relief Sought, will no longer be a reporting issuer or the equivalent in any jurisdiction in Canada.

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 Exemptive Relief Sought is granted.

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

2.1.17 Potash Corporation of Saskatchewan Inc.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency, s. 3.1 and 9.1 – A reporting issuer wants to early adopt IFRS for purposes of preparing its financial statements – The issuer has assessed the readiness of its staff, board, audit committee, auditors and investors; the issuer provided detailed disclosure regarding its early adoption of IFRS as set out in CSA Staff Notice 52-320 Disclosure of Expected Changes in Accounting Polices Relating to Changeover to International Financial Reporting Standard; 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.

Applicable Legislative Provisions

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

August 6, 2010

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

AND

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

AND

IN THE MATTER OF
POTASH CORPORATION OF
SASKATCHEWAN INC.
(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**) 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 generally accepted accounting principles (**Canadian GAAP**) (the **Requested Relief**), for so long as the Filer prepares the financial statements in accordance with International Financial Reporting Standards (**IFRS**) as issued by the International Accounting Standards Board (**IASB**) (**IFRS-IASB**).

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

a. the Saskatchewan Financial Services Commission is the principal regulator for this application;

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

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 organized under the *Canada Business Corporations Act*. The head office of the Filer is located at Suite 500, 122 – 1st Avenue South, Saskatoon, Saskatchewan S7K 7G3.

2. The Filer is a reporting issuer in the Jurisdictions and the Passport Jurisdictions. The Filer is also a foreign private issuer in the United States. The Filer is not (to its knowledge) in default of its reporting issuer obligations under the Legislation or the securities legislation of the Jurisdictions and the Passport Jurisdictions.

3. The Filer is also a registrant with the Securities and Exchange Commission (the **SEC**) in the United States and is subject to the requirements of the United States Securities Exchange Act of 1934 (the **1934 Act**).

4. The Filer's securities are listed on the Toronto Stock Exchange (the **TSX**) and the New York Stock Exchange under the trading symbol "POT".

5. The Filer currently prepares its financial statements in accordance with Canadian GAAP. However, the Filer has a wholly-owned subsidiary located in Trinidad which prepares its financial statements in accordance with IFRS, as well as significant investments located in Jordan and

Chile which either prepare financial statements in accordance with IFRS or are in the process of converting to IFRS-IASB. In addition, the Filer is required to reconcile its Canadian GAAP financial statements to generally accepted accounting principles in the United States (**US GAAP**) to comply with its SEC filing obligations. The Filer can use IFRS-IASB for its SEC filings.

6. 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.

7. 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 like the Filer must use Canadian GAAP with the exception that an SEC registrant may use US GAAP. Under NI 52-107, only foreign issuers may use IFRS-IASB.

8. CSA Staff Notice 52-321 – *Early Adoption of International Financial Reporting Standards, Use of US GAAP and Reference to IFRS-IASB*, acknowledges that some issuers may wish to prepare their financial statements in accordance with IFRS-IASB for periods beginning prior to January 1, 2011 and indicates that CSA staff are 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. This position was reaffirmed in CSA Staff Notice 52-324 – *Issues Relating to Changeover to International Financial Reporting Standards*.

9. Subject to obtaining the Requested Relief and the Filer's continued ability to prepare its financial statements in accordance with IFRS-IASB in its SEC filings, the Filer intends to prepare its financial statements in accordance with IFRS-IASB for periods beginning on or after January 1, 2010.

10. The Filer believes that the adoption of IFRS-IASB would be in the best interests of the Filer and users of its financial information for a number of reasons, including the following: (a) its has the potential to simplify its financial statements for users by possibly eliminating the requirement to provide reconciliations to US GAAP; and (b) use of a single set of accounting principles throughout the Filer's subsidiaries and significant investees would reduce the cost and complexity of the Filer's financial statement preparation process.

11. The Filer has devised and is implementing a comprehensive IFRS-IASB conversion plan and progress on the conversion plan is monitored on a regular basis.

12. The Filer has carefully assessed the readiness of its staff, board of directors, audit committee, auditors, investors and other market participants for the adoption by 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 or after January 1, 2010.

13. The Filer has considered the implications 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.

14. The Filer disclosed 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 year ended December 31, 2009 and for the quarter ended March 31, 2010, including:

    a. the key elements and timing of the Filer's changeover plan;

    b. the accounting policy and implementation decisions that Filer has made or will have to make;

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

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

15. The Filer will update the information set out in paragraph 14 including quantitative information (to the extent such information is available) regarding the impact of adopting IFRS-IASB on the key line items in the Filer's interim financial statements for the periods ending June 30, 2010 and September 30, 2010, as applicable.

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 Decisions Makers under the Legislation is that the Requested Relief is granted provided that:

1. the Filer prepares its annual financial statements for years beginning on or after January 1, 2010 in accordance with IFRS-IASB;

2. 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, at or prior to the time of filing its first IFRS-IASB financial statement, 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;

3. the Filer provides the communication set out in paragraphs 14 and 15; and

4. 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.

"Dave Wild"
Chair
Saskatchewan Financial Services Commission

2.1.18 La Mancha Resources Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – A mining issuer wants to disclose a preliminary assessment that includes inferred resources, but that is not done "at an early stage of the project", as required by National Instrument 43-101 Standards of Disclosure for Mineral Projects – The issuer will include, in its disclosure of the preliminary assessment, appropriate and proximate cautionary language – The issuer will file a technical report supporting the preliminary assessment and disclosing all material information about the mineral project in compliance with, and within the time required under, National Instrument 43-101.

Applicable Legislative Provisions

National Instrument 43-101 Standards of Disclosure for Mineral Projects, ss. 1.1, 9.1.

August 27, 2010

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
LA MANCHA RESOURCES INC.
(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 under the securities legislation of the Jurisdictions (the Legislation) for a decision by the Decision Makers pursuant to the securities legislation of the provinces of the Jurisdictions granting relief under section 9.1 of NI 43-101, in relation to an economic analysis, that includes inferred resources, of the potential viability of the New Project (as defined below) from the requirement in the definition of "preliminary assessment" in NI 43-101 that the economic analysis of the potential viability of mineral resources be "taken at an early stage of the project" (the Relief Requested).

Under National Policy 11-203 – *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 section 4.7(1) of Multilateral Instrument 11-102 – *Passport System* (MI 11-102) is intended to be relied upon in Alberta; 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 as is used in this decision, unless otherwise defined.

Representations

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

1. the Filer is a company incorporated under the *Business Corporations Act* (British Columbia) and has its registered office in Vancouver, British Columbia;

2. the Filer is engaged principally in the business of mining, exploration and production of gold;

3. the Filer is a reporting issuer in the provinces of British Columbia, Alberta and Ontario, and its securities trade on the Toronto Stock Exchange;

4. the Filer acquired its 40% equity interest in Ariab Mining Company (AMC) in October 2006; the mining operations of AMC are located in the Red Sea State of northeast Sudan (the Ariab Gold Property); the Sudanese government and a private French company hold a 56% and 4% equity interest in AMC, respectively;

5. in the early 1980's exploration was conducted in the Red Sea Hills area of Sudan and volcanogenic massive sulphides (VMS) and gold deposits were discovered in the area; in 1990 a feasibility study examined 10 known gold deposits in the district within a circular area measuring 25 km in diameter; due to low metal prices at that time and into the 1990's, the 1990 feasibility study provided for a development plan which focussed on the oxide gold only (the Current Gold Project);

6. mine production began in 1991 and has yielded over 2.2 million ounces of gold to date using open-pit mining techniques and heap leaching, carbon adsorption processing;

7. a total of twelve deposits have been mined by AMC; nine of these deposits are now exhausted; only three deposits remain in production; at present, gold from the oxidized part of the massive sulphides is nearly depleted, and the existing pits are floored by massive sulphides; the remaining mine life (oxides) is expected to be three years;

8. as the majority of the oxide gold deposits have been mined, the VMS in the base of the pits have been exposed (the VMS Deposit);

9. two technical reports were produced in 2009 to estimate the resources of two pits in the VMS Deposit; the data generated by these two technical reports led the Filer and AMC to launch a study on processing these VMS and to extend the exploration and the resource definition on other known VMS targets; supergene enrichment zones were identified that had not been previously recognized;

10. in addition, a scoping study (the Scoping Study) has been commissioned with respect to processing the gold content in the tailings resulting from the earlier mining of the oxide deposits and the tailings resulting from the remaining mining of these deposits (the Gold Tailings Deposit);

11. the VMS Deposit and the Gold Tailings Deposit are collectively referred to as (the New Project);

12. the exploitation of the VMS Deposit will start by extending the open pits to a lower level which will require the implementation of underground mining techniques; ore will be directed to a copper concentrator, using grinding and flotation methods to produce a copper-zinc-gold concentrate to be refined elsewhere; flotation tailings will be processed in a Carbon-In-Leach (CIL) plant to produce gold bars (the New Extraction Process); this New Extraction Process will be also used to extract gold from the tailings comprising the Gold Tailings Deposit;

13. to run this new plant for the New Project, AMC will need to construct a water pipeline from the Nile to fulfill the water requirements of the New Extraction Process and a power line to service the New Extraction Process;

14. recent drilling and exploration work in the VMS Deposit has resulted in scientific and technical information with respect to inferred resources in the deposit; the gold content in the Gold Tailings Deposit has been categorized mostly as indicated and measured resources; all this is material information to the Filer as the revenue generated from the New Project has the potential to double the present revenues of the Filer's operations;

15. AMEC plc, the Filer's independent technical consultant, is in the process of preparing a preliminary assessment that includes an analysis of the potential economic viability of developing the VMS Deposit using

inferred resources (the Preliminary Assessment); as an addendum to and part of this Preliminary Assessment, the Scoping Study is being prepared by Sedgman Metals Engineering Services Limited; it will examine the potential economic viability of the New Extraction Process in relation to the tailings from the Gold Tailings Deposit using indicated and measured resources;

16. the Filer proposes to file a technical report under NI 43-101 with respect to both the Preliminary Assessment and the Scoping Study (the Technical Report);

17. financing will be required to carry out the development of the New Project and it is essential to obtaining such financing that the Preliminary Assessment including the Scoping Study be carried out and disclosed;

18. on April 23, 2010, the Canadian Securities Administrators published a request for comments on the proposed repeal and replacement of NI 43-101, which among other things, included a proposed change to the definition of "preliminary assessment", as currently found in NI 43-101, to remove the requirement that an economic analysis of the potential viability of mineral resources be "taken at an early stage of the project";

19. the New Project constitutes a significant change in AMC's operations for the reasons stated in representations 12 and 13 and for the following reasons:

    (i) the main metal produced from the New Project will change from gold to copper (56% of AMC revenues will then come from copper, 43% from gold, 1% from zinc); and

    (ii) AMC will be required to re-examine its current methods of shipping, marketing and reposition its operations to include the sale of copper concentrate rather than gold bullion;

20. the Filer has determined that although the inferred resources in the New Project are of a speculative nature, the resources as they are presently categorized should be the subject of an early stage economic analysis;

21. the development of the New Project is material information and should be publicly disclosed;

22. disclosure of the Preliminary Assessment is essential to obtaining financing for the development of the New Project;

23. the Filer is not in default of securities legislation in any jurisdiction except for technical defaults under NI 43-101 in relation to the preparation and filing of two technical reports in October 2009 and December 2009, respectively, on sulphide mineral resources in two deposits comprising part of the Ariab Gold Property consisting of a failure (i) to disclose material information with respect to all mineral resources and mineral reserves in the Ariab Gold Property and (ii) to file fully compliant qualified person consents; the Filer will correct these defaults through the filing of the Technical Report; and

24. the Filer accepts that any preliminary assessment or economic analysis based on inferred resources would include the disclosure required by sections 2.3(3) and 3.4(e) of NI 43-101;

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 Relief Requested is granted provided that:

(a) the Technical Report will (i) provide a summary of the scientific and technical information concerning the mineral exploration, development and production activities on the Ariab Gold Property, including the Current Gold Project and the New Project, that is material to the Filer and, subject to the Relief Requested, consistent with the requirements of NI 43-101 and the instructions to Form 43-101F1 relating to technical reports, and (ii) address the impact of the Preliminary Assessment (economic analysis) on the existing mineral reserves and economic studies on the Ariab Gold Property;

(b) the disclosure of the Preliminary Assessment will (i) comply with the provisions of sections 2.3(3)(b) and 3.4(e) of NI 43-101 and (ii) describe its impact on the results of the current feasibility study in respect of the Ariab Gold Property; and

(c) the Technical Report will be filed not later than 45 days after the dissemination of the news release disclosing the Preliminary Assessment.

"Noreen Bent"
Acting Director, Corporate Finance
British Columbia Securities Commission

2.1.19 NorthWest Healthcare Properties Real Estate Investment Trust

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from dealer registration and prospectus requirements to allow a trust to issue trust units to existing holders of exchangeable limited partnership units (LP units) of a partnership pursuant to a distribution reinvestment plan (DRIP) of the trust. The trust controls the partnership. Distributions made in respect of exchangeable LP units to be applied to the purchase of trust units under the DRIP. Relief required since exemptions for DRIPs in National Instrument 45-106 Prospectus and Registration Exemptions and National Instrument 31-103 Registration Requirements and Exemptions are not available for use. Exchangeable LP units are intended to be, to the greatest extent possible, the economic equivalent of trust units. Holders of exchangeable LP units are entitled to receive distributions paid by the partnership that are equivalent to distributions paid by the trust on trust units. Exchangeable LP units are exchangeable into trust units at any time.

Relief also granted to allow DRIP participants that are holders of exchangeable LP units to make optional cash payments to purchase additional trust units if that feature is added to DRIP. First trade relief granted for trust units acquired under the decision, subject to certain conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74(1).

August 27, 2010

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
NORTHWEST HEALTHCARE PROPERTIES
REAL ESTATE INVESTMENT TRUST
(the "Filer")

DECISION

Background

The securities regulatory authority or regulator (the "**Decision Maker**") in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the "**Legislation**") for an exemption from the requirements contained in the Legislation to be registered to trade in a security (the "**Registration Requirement**") and to file a preliminary prospectus and a prospectus and obtain receipts therefor (the "**Prospectus Requirement**") in respect of any trade of trust units of the Filer ("**REIT Units**") by the Filer (or by a trustee, custodian or administrator acting for or on behalf of the Filer) to holders of Exchangeable LP Units (as defined below) of NHP Holdings Limited Partnership (the "**Partnership**") pursuant to a distribution reinvestment plan of the Filer (the "**DRIP**") under which distributions out of earnings, surplus, capital or other sources payable by the Partnership in respect of the Exchangeable LP Units are applied to the purchase of REIT Units (the "**Requested Relief**").

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

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 an unincorporated, open-ended real estate investment trust established under the laws of the Province of Ontario. The Filer was established pursuant to a declaration of trust dated January 1, 2010, as amended.

2. The Filer's head office is located at 284 King Street East, Suite 100, Toronto, Ontario M5A 1K4.

3. The Filer is a reporting issuer (or the equivalent thereof) in each of the Jurisdictions and, to its knowledge, is currently not in default of any applicable requirements under the securities legislation thereunder.

4. The Filer is authorized to issue an unlimited number of REIT Units and an unlimited number of special voting units ("**Special Voting Units**"). As at July 16, 2010, the Filer had 18,750,000 REIT

Units and 7,749,772 Special Voting Units issued and outstanding.

5. The REIT Units are listed and posted for trading on the Toronto Stock Exchange (the "**TSX**") under the trading symbol "NWH.UN".

6. The Partnership is a limited partnership formed under the laws of the Province of Ontario and is governed by the limited partnership agreement of the Partnership dated March 22, 2010 (the "**LP Agreement**"). The Partnership's head office is located at 284 King Street East, Suite 100, Toronto, Ontario M5A 1K4.

7. The Partnership is not a reporting issuer (or the equivalent thereof) in any jurisdiction and none of its securities are listed or posted for trading on any stock exchange or other market.

8. The Partnership is authorized to issue an unlimited number of Class A limited partnership units ("**Class A Units**"), of which 18,750,000 Class A Units are issued and outstanding and held by the Filer, and exchangeable Class B limited partnership units ("**Exchangeable LP Units**"). The Exchangeable LP Units were issued in connection with the Filer's initial public offering on March 25, 2010 (the "**IPO**") to NorthWest Operating Trust ("**NW Trust**"), the entity that indirectly sold the initial properties to the Filer in connection with the IPO. The Exchangeable LP Units are intended to be, to the greatest extent practicable, the economic equivalent of the REIT Units. Holders are entitled to receive distributions equal to those paid by the Filer to holders of REIT Units. The Exchangeable LP Units are not transferable but are exchangeable into REIT Units and each is accompanied by a Special Voting Unit that entitles the holder to receive notice of, attend and to vote together with the holders of REIT Units at all meetings of voting unitholders. As of the date hereof, there are 7,749,772 Exchangeable LP Units issued and outstanding.

9. The principal activity of the Partnership is to own income-producing real estate assets.

10. The Filer holds approximately 70% of the limited partnership units of the Partnership with the balance (the Exchangeable LP Units) held by NW Trust.

11. The Filer intends to make monthly cash distributions on the 15th day of a given month to persons who are holders of REIT Units ("**Unitholders**") at the close of business on the last business day of the immediately preceding calendar month. Similarly, the LP Agreement provides that the Partnership will make identical monthly cash distributions on the same terms and conditions to persons who are holders of Exchangeable LP Units.

12. The Filer proposes to establish the DRIP to permit Unitholders and holders of Exchangeable LP Units ("**LP Unitholders**"), other than such holders who are not eligible to participate under the laws of their jurisdiction of residency, at their discretion, to automatically reinvest cash distributions paid on their REIT Units into REIT Units or cash distributions paid on their Exchangeable LP Units into REIT Units as an alternative to receiving cash distributions.

13. Following enrolment in the DRIP by a Unitholder or LP Unitholder (a "**DRIP Participant**"), distributions in respect of REIT Units or Exchangeable LP Units enrolled in the DRIP will be automatically paid to the agent responsible for the administration of the DRIP (the "**DRIP Agent**") and applied to the purchase of REIT Units directly from the Filer.

14. The purchase price for a REIT Unit (or fraction thereof) acquired under the DRIP will be the weighted average of the daily closing prices of REIT Units on the TSX for the five (5) trading days immediately preceding the applicable distribution payment date. In addition, DRIP Participants will be entitled to receive a further distribution of REIT Units equal in value to 3% of each distribution that is reinvested under the DRIP.

15. No commissions, service charges or brokerage fees will be payable by DRIP Participants in connection with the issuance of REIT Units under the DRIP. The DRIP Agent's fees for administering the DRIP will be paid by the Filer out of its assets.

16. DRIP Participants may terminate their participation in the DRIP by providing written notice to the DRIP Agent no later than a specified time on the day that is five (5) business days prior to the applicable record date. If received after such time, such notice will have effect for the next following distribution. After such termination is processed, distributions by the Filer or the Partnership, as the case may be, will thereafter be payable to such Unitholder or LP Unitholder in cash or otherwise in the form declared by the Filer or the Partnership, as the case may be.

17. Pursuant to the terms of the DRIP, the Filer will reserve the right to amend, suspend or terminate the DRIP at any time in its sole discretion, subject to prior approval by the TSX. DRIP Participants will be sent written notice of an amendment, suspension or termination of the DRIP in accordance with its terms.

18. Though it is not presently contemplated that the DRIP will provide for an optional cash payment feature which allows holders of REIT Units or Exchangeable LP Units to purchase additional REIT Units by making optional cash payments

within certain established limits (the "**Cash Payment Option**"), such a Cash Payment Option could be implemented in the future. If implemented as part of the DRIP in the future, such a Cash Payment Option will be of a customary nature and the Filer will retain the right to determine from time to time whether the Cash Payment Option will be available.

19. The Filer would be unable to rely on the exemptions from the Registration Requirement and the Prospectus Requirement contained in the Legislation with respect to reinvestment plans (the "**DRIP Exemptions**") for the purposes of distributing REIT Units under the DRIP to LP Unitholders enrolled in the DRIP since such exemptions permit distributions made in respect of an issuer's securities to be applied only to the purchase of the same issuer's securities. Furthermore, a person who acquires a REIT Unit under the DRIP other than in reliance on the DRIP Exemptions (or a prospectus) would not be able to rely on the exemption from the Prospectus Requirement contained in the Legislation with respect to the first trade or resale of such REIT Unit.

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 is that the Requested Relief is granted provided that:

(a) at the time of the trade, the Partnership continues to be controlled by the Filer and the Filer is the beneficial owner of all the issued and outstanding voting securities of the Partnership;

(b) the ability to purchase REIT Units under the DRIP in respect of (a) distributions out of earnings, surplus, capital or other sources payable by the Partnership and (b) any Cash Payment Option, is available to every LP Unitholder in Canada;

(c) should the DRIP include a Cash Payment Option at any time, the Requested Relief will only apply if (a) the aggregate number of REIT Units purchased by DRIP Participants pursuant to the Cash Payment Option in any one financial year of the Filer does not exceed a maximum of 2% of the number of REIT Units issued and outstanding at the beginning of the financial year and (b) the REIT Units trade on a marketplace (as defined in National Instrument 21-101 *Marketplace Operation*); and

(d) the first trade of any REIT Units acquired under this decision in the Jurisdiction shall be deemed to be a distribution unless the conditions in subsection 2.6(3) of National Instrument 45-102 – Resale of Securities are satisfied at the time of such first trade.

"Paulette Kennedy"
Commissioner

"Mary Condon"
Commissioner

2.1.20 CanDeal.ca Inc. and Tradeweb LLC

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Application to revoke and replace exemption order to update order to reflect recent changes to the regulation of international dealers.

Applicable Legislative Provisions

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

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

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

AND

IN THE MATTER OF
CANDEAL.CA INC. (CANDEAL) AND
TRADEWEB LLC (TRADEWEB),
COLLECTIVELY, THE FILERS

DECISION

Background

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

(a) a decision dated April 2, 2008 (the "**2008 Decision**") be revoked and replaced by a new decision set forth herein which has been amended to reflect the elimination of the registration category of international dealer that existed in Ontario and Newfoundland and Labrador upon the coming into force of National Instrument 31-103 *Registration Requirements and Exemptions* ("**NI 31-103**") on September 28, 2009; and

(b) the relief granted to the Filers in the 2008 Decision be continued under this new decision (collectively, the "**Exemptive Relief Sought**").

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

(c) the Ontario Securities Commission (the "**OSC**") is the principal regulator for this application, and

(d) 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.

In this decision:

1. Approved Customers means Permitted Dealer Participants and other sophisticated institutions, other than individuals, that (a) are customers of the Permitted Dealer Participants; (b) are enabled by a Permitted Dealer Participant to use the TradeWeb System; and (c) meet the definition of "Institutional Investor" as defined in Schedule A to this Decision,

2. ATS means alternative trading system,

3. Non-Canadian Fixed-Income Securities means (i) U.S. government securities, including U.S. Treasury securities, STRIPS, and discount notes; securities issued by U.S. governmental agencies, including Ginnie Mae securities; securities issued by government sponsored enterprises, including Fannie Mae, Freddie Mac, Sallie Mae, and Federal Home Loan Bank System securities; and securities issued by the International Bank for Reconstruction and Development (the World Bank), the Inter-American Development Bank, the Asian Development Bank, the European Investment Bank and supranational issuers; (ii) debt securities issued by governments in the European Economics Area and Asia; (iii) corporate debt securities including U.S. and non-U.S. investment grade and non-investment grade corporate bonds denominated in U.S. dollars and Euros; (iv) debt securities of Canadian issuers issued outside of Canada and denominated in other than Canadian dollars; (v) European mortgage bonds (Pfandbriefe/covered bonds) issued by European private mortgage banks and public sector credit institutions for the purpose of funding mortgage loans; (vi) money market instruments, including commercial paper, deposits, certificates of deposits, bills and short government securities denominated in U.S. dollars, Euros, Swiss Francs, British Pounds, Japanese Yen, Swedish Krona, and Danish Krone; and (vii) convertible bonds,

4. Derivative Instruments means contracts for differences, including interest rate swap contracts and credit default swap contracts,

5. Permitted Dealer Participants means brokers and investment dealers who agree under contractual arrangements with CanDeal and TradeWeb that their use of the TradeWeb System will comply with applicable securities laws, and

6. TradeWeb System means the TradeWeb electronic trading system which facilitates orders in fixed-income securities and derivative instruments in the U.S. and other jurisdictions.

Representations

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

1. CanDeal's head office is located in Ontario. CanDeal is registered as an investment dealer in each of the Jurisdictions and is a member of the Investment Industry Regulatory Organization of Canada ("**IIROC**").

2. CanDeal operates an ATS in Canada which permits institutional customers to access multi-dealer online fixed income trading.

3. IIROC acts as CanDeal's regulation services provider with respect to trading in respect of Canadian fixed income instruments.

4. TradeWeb is a Delaware limited liability company and is regulated as an ATS in the U.S. TradeWeb is registered as a broker-dealer with the United States Securities and Exchange Commission ("**SEC**") and is a member of the Financial Regulatory Authority ("**FINRA**").

5. TradeWeb operates the TradeWeb System.

6. The TradeWeb System facilitates trading in U.S. government securities, non-U.S. sovereign debt securities, corporate debt securities (including convertible bonds), money market instruments and Derivative Instruments. Through TradeWeb, Canadian customers are permitted to trade as and when available in non-U.S. dollar denominated fixed income securities that are offered by European dealers over the TradeWeb system through TradeWeb Europe Ltd., a company licensed by the U.K. Financial Services Authority ("**U.K. F.S.A.**"). Specifically, the TradeWeb system will facilitate trading in Non-Canadian Fixed-Income Securities and Derivative Instruments.

7. The TradeWeb system will be available in Canada to Approved Customers through CanDeal.

8. TradeWeb and CanDeal have entered into a technology and services agreement whereby (i) TradeWeb, utilizing CanDeal as the "client-facing entity", offers trading in Non-Canadian Fixed-Income Securities and Derivative Instruments to Approved Customers, (ii) utilizing TradeWeb, CanDeal makes Canadian fixed-income securities

available in foreign jurisdictions, and (iii) the CanDeal platform has been migrated to and maintained on the TradeWeb network.

9. In addition to the Canadian customer's contractual relationship with CanDeal, Canadian customers that access TradeWeb's services will have the benefit of U.S. and U.K. law protections available to TradeWeb customers by virtue of TradeWeb's status as a registered broker-dealer and a member of FINRA in the U.S. and TradeWeb Europe Ltd.'s status as an authorized investment firm with the U.K. F.S.A. with permission to operate a multi-lateral trading facility.

10. TradeWeb's participating U.S. and European-based liquidity providers which propose to transact ("**Liquidity Providers**") with Canadian customers may or may not be registered as dealers in any of the Jurisdictions. TradeWeb will not act as a Liquidity Provider on the CanDeal marketplace and will only licence the use of its technology to CanDeal. If not registered as a dealer in a Jurisdiction, a Liquidity Provider will rely on the registration exemption for international dealers contained in section 8.18 of NI 31-103 ("**International Dealer Exemption**") in such Jurisdiction and transact only with "permitted clients" within the meaning of NI 31-103.

11. In *Re National Instrument 31-103 Registration Requirements and Exemptions, Miller Tabak Roberts Securities, LLC and Certain Other International Dealers* (2009), 32 O.S.C.B. 8032 (the "**Related Exemption Order**"), the International Dealer Exemption and the related transition period for notice to existing clients contained in section 16.18 of NI 31-103 ("**Prescribed Notice**") was modified to provide the following transitional relief:

    (a) for a period of one year, persons or companies that were registered international dealers immediately before the coming into force of NI 31-103 ("**Former International Dealers**") will continue to be permitted to trade debt securities that are not foreign securities outside of their distribution, and

    (b) for a period of six months, Former International Dealers will be permitted to carry on business in reliance on the exemption in section 8.18 of NI 31-103 without having delivered the Prescribed Notice to their existing clients.

12. TradeWeb and its Liquidity Providers which are relying on the International Dealer Exemption may also rely on the modifications to the International Dealer Exemption in the Related Exemption Order as forming part of the current regulation of Former International Dealers in the Jurisdictions.

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 Makers in each of Alberta, Manitoba, Ontario, Nova Scotia, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon grant relief to the Filers from the requirement to pay applicable fees in connection with the Application.

The relief granted to the Filers in the 2008 Decision shall be continued in this decision as follows:

    (a) relief from the requirement that TradeWeb become registered as a dealer and become a member of a self-regulatory entity before carrying on business as an ATS;

    (b) relief from restrictions in the Legislation that prohibit CanDeal, Liquidity Providers and TradeWeb, acting through CanDeal, from offering trading in Non-Canadian fixed income securities;

    (c) relief from restrictions in the Legislation, if any, that may prohibit CanDeal and TradeWeb, acting through CanDeal, from offering trading in Derivative Instruments; and

    (d) relief from the requirement that TradeWeb enter into agreements meeting certain conditions with both regulation service providers and its customers before offering trading in Non-Canadian fixed income securities and Derivative Instruments.

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

1. TradeWeb will only offer trading in Non-Canadian Fixed-Income Securities and Derivative Instruments to Canadian customers through CanDeal.

2. CanDeal and TradeWeb will only offer trading in Non-Canadian Fixed-Income Securities and Derivative Instruments to Approved Customers.

3. CanDeal will remain an authorized ATS pursuant to the Legislation.

4. CanDeal will remain registered as an investment dealer in each of the Jurisdictions and a member of the IIROC.

5. Liquidity Providers trading with customers in a Jurisdiction and TradeWeb will rely on and comply with the International Dealer Exemption and/or any Related Exemption Order in such Jurisdiction if not registered as a dealer in such Jurisdiction. For greater certainty, Liquidity Providers will only transact with "permitted clients" for the purposes of NI 31-103 and notwithstanding the expiry of the Related Exemption Order, Liquidity Providers will continue to be permitted to trade debt securities that are not foreign securities outside of their distribution.

6. CanDeal will certify in a quarterly filing with the Decision Makers that all trades with Canadian customers in a Jurisdiction were executed through Liquidity Providers which were registered or relying on the International Dealer Exemption and/or any Related Exemption Order in such Jurisdiction.

7. TradeWeb will remain registered with the SEC and a member in good standing of FINRA.

8. TradeWeb Europe Ltd. will remain an authorized investment firm with the U.K. F.S.A. with permission to operate a multi-lateral trading facility.

9. TradeWeb and CanDeal will immediately notify the Decision Makers if any proceedings of a material or non-administrative nature have been filed or regulatory action has been taken against TradeWeb by any foreign regulator.

10. The TradeWeb account agreement sets out the contractual relationship with TradeWeb governing trading services and also with CanDeal in an addendum. The addendum is signed by the customer and describes the relationship between CanDeal and TradeWeb. The addendum also discloses that TradeWeb LLC is a non-Canadian resident company and that proceedings and enforcement against it may be more difficult than if it were resident in Canada. CanDeal's Canadian customers that access TradeWeb's services will have recourse against CanDeal as an authorized ATS, registered investment dealer and IIROC member.

11. New CanDeal customers receive an addendum that sets out the contractual relationship between TradeWeb and CanDeal.

12. Canadian unlisted debt securities that are introduced on TradeWeb will be subject to all applicable Canadian transparency requirements.

13. The arrangements between TradeWeb and CanDeal will remain in all material respects as described to the Decision Makers. Subsequent material changes are subject to prior approval of each of the Decision Makers, except the Decision Makers in British Columbia, Alberta, Manitoba, Saskatchewan and the Northwest Territories.

14. TradeWeb will not subcontract or delegate the performance of its obligations to CanDeal without prior approval of each of the Decision Makers, except the Decision Makers in British Columbia, Alberta, Manitoba, Saskatchewan and the Northwest Territories.

15. TradeWeb will provide all required documents as requested by the Decision Makers and the IIROC as the applicable regulation services provider.

Dated this 26th day of August, 2010

"Susan Greenglass"
Director
Ontario Securities Commission

Schedule A

In this Decision, "Institutional Investor" means:

(a) a bank listed in Schedule I or II of the *Bank Act* (Canada), or an authorized foreign bank listed in Schedule III of that Act;

(b) the Business Development Bank incorporated under the *Business Development Bank Act* (Canada);

(c) a loan corporation, trust company, trust corporation, savings company or loan and investment society registered under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in any province or territory of Canada;

(d) a co-operative credit society, credit union central, federation of caisses populaires, credit union or league, or regional caisse populaire, or an association under the *Cooperative Credit Associations Act* (Canada), in each case, located in Canada;

(e) a company licensed to do business as an insurance company in a province or territory of Canada;

(f) a subsidiary of any company referred to in paragraph (a), (b), (c), (d) or (e), where the company owns all of the voting shares of the subsidiary;

(g) a financial services cooperative within the meaning of the *Act respecting Financial Services Cooperatives* (Quebec);

(h) the Caisse centrale Desjardins du Québec established under the *Act respecting the Mouvement des Caisses Desjardins* (Quebec);

(i) a person or company registered under the securities legislation of the applicable province or territory of Canada as an adviser or dealer, other than a limited market dealer;

(j) the government of Canada or of any jurisdiction, or any crown corporation, instrumentality or agency of a Canadian federal, provincial or territorial government;

(k) any Canadian municipality or any Canadian provincial or territorial capital city;

(l) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any instrumentality or agency thereof;

(m) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial pension commission or similar regulatory authority;

(n) a registered charity under the *Income Tax Act* (Canada);

(o) a company, limited partnership, limited liability partnership, trust or estate, other than a mutual fund or non-redeemable investment fund, that had net assets of at least C$5,000,000 as reflected in its most recently prepared financial statements;

(p) a person or company, other than an individual, that is recognized or designated by a Canadian securities regulatory authority as an "accredited investor" or by the Autorité des marchés financiers as a "sophisticated purchaser";

(q) a mutual fund or non-redeemable investment fund that, in the applicable province of Canada, distributes its securities only to persons or companies that are accredited investors;

(r) a mutual fund or non-redeemable investment fund that, in the applicable province of Canada, distributes its securities under a prospectus for which a receipt has been granted;

(s) an account that is fully managed by a registered portfolio manager or an entity listed in paragraphs (a), (c), (d) or (e);

(t) an entity organized outside of Canada that is analogous to any of the entities referred to in paragraphs (a) through (f) and paragraph (m) in form and function; and

(u) a person or company in respect of which all of the owners of interests, direct or indirect, legal or beneficial, are persons or companies that are Institutional Investors; provided that:

(i) two or more persons who are the joint registered holders of one or more securities of the issuer shall be counted as one beneficial owner of those securities; and

(ii) a corporation, partnership, trust or other entity shall be counted as one beneficial owner of securities of the issuer unless the entity has been created or is being used primarily for the purpose of acquiring or holding securities of the issuer, in which event each beneficial owner of an equity interest in the entity or each beneficiary of the entity, as the case may be, shall be counted as a separate beneficial owner of those securities of the issuer.

2.2 Orders

2.2.1 Invesco Trimark Ltd. et al. – s. 80 of the CFA

Headnote

Section 80 of the Commodity Futures Act (Ontario) – Relief from the adviser registration requirements of subsection 22(1)(b) of the CFA granted to sub-adviser not ordinarily resident in Ontario in respect of advice regarding trades in commodity futures contracts and commodity futures options, subject to certain terms and conditions. Relief mirrors exemption available in section 7.3 of OSC Rule 35-502 – Non-Resident Advisers 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
INVESCO TRIMARK LTD.,
INVESCO ADVISERS, INC.,
AND INVESCO ASSET MANAGEMENT LIMITED

ORDER
(Section 80 of the CFA)

UPON the application (the **Application**) of Invesco Trimark Ltd. (the **Principal Adviser**), and Invesco Advisers, Inc. and Invesco Asset Management Limited (each a **Sub-Adviser** and collectively, the **Sub-Advisers**) to the Ontario Securities Commission (the **Commission**) for an order, pursuant to section 80 of the CFA, that the Sub-Advisers and any individuals engaging in, or holding themselves out as engaging in, the business of advising others when acting on behalf of the respective Sub-Adviser in respect of the Proposed Advisory Services (as defined below) be exempt, for a period of five years, from the adviser registration requirements of paragraph 22(1)(b) of the CFA when acting as an adviser for the Principal Adviser in respect of the Funds (as defined below) in respect of commodity futures contracts and commodity futures options (collectively, the **Contracts**) traded on commodity futures exchanges and cleared through clearing corporations;

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

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

1. The Principal Adviser is a corporation established under the laws of the Province of Ontario and its principal business office is in Toronto, Ontario.

2. The Principal Adviser is registered with the securities regulator or regulatory authority in all of the provinces of Canada as an adviser in the category of portfolio manager; with the Commission and with the Securities Commission of Newfoundland and Labrador as a dealer in the category of exempt market dealer; and with the Commission as an adviser in the category of commodity trading manager.

3. The Principal Adviser is registered as an investment adviser and as a transfer agent with the U.S. Securities and Exchange Commission and as an investment adviser with the Irish Financial Services Regulatory Authority.

4. The Principal Adviser is an indirect wholly-owned subsidiary of Invesco Ltd., a publicly-traded company listed on the New York Stock Exchange. As such, the Principal Adviser leverages the global expertise of investment professionals at its affiliates worldwide.

5. The Principal Adviser is the investment manager of (i) investment funds, the securities of which are qualified by prospectus for distribution to the public in Ontario and the other provinces and territories of Canada (the **Investment Funds**), (ii) pooled funds, the securities of which are sold on a private placement basis in Ontario and the other

provinces and territories of Canada to accredited investors pursuant to prospectus and registration exemptions contained in National Instrument 45-106 *Prospectus and Registration Exemptions* (the **Pooled Funds**), (iii) managed accounts of institutional clients who have entered into investment management agreements with the Principal Adviser (the **Managed Accounts**) and (iv) other Investment Funds, Pooled Funds and Managed Accounts that may be established in the future for which the Principal Adviser engages the respective Sub-Adviser to provide advisory services (the **Future Funds**) (each of the Investment Funds, Pooled Funds, Managed Accounts and Future Funds are referred to individually as a **Fund** and collectively as the **Funds**).

6. The Funds may, as part of their investment program, invest in Contracts.

7. The Principal Adviser intends to offer the portfolio management services of the respective Sub-Adviser to the respective Funds that choose to have exposure to capital markets and Contracts in which the respective Sub-Adviser has experience and expertise.

8. The Funds are or will be formed in Ontario where the Principal Adviser is registered as an adviser in the category of commodity trading manager.

9. Invesco Advisers, Inc. is a corporation formed under the laws of the State of Delaware, United States of America. The head office of Invesco Advisers, Inc. is located in Atlanta, Georgia in the United States of America.

10. Invesco Advisers, Inc. is currently registered as an investment adviser with the U. S. Securities and Exchange Commission and is exempted from registration as a commodity trading adviser or commodity pool operator with the U.S. Commodity Futures Trading Commission (the **CFTC**). Invesco Advisers, Inc. is also registered as an adviser in the category of portfolio manager (international adviser, or equivalent) with the Commission, the New Brunswick Securities Commission and the Manitoba Securities Commission.

11. Invesco Asset Management Limited is a corporation formed under the laws of England and Wales. The head office of Invesco Asset Management Limited is located in London, England.

12. Invesco Asset Management Limited is an authorised person for the purposes of the *Financial Services & Markets Act 2000* and is authorised and regulated to carry on investment business in the United Kingdom by virtue of its authorisation by the Financial Services Authority. Invesco Asset Management Limited is also currently registered as an investment adviser with the U.S. Securities and Exchange Commission and is exempted from registration as a commodity trading adviser or commodity pool operator with the CFTC.

13. Each respective 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 Funds pursuant to the applicable legislation of its principal jurisdiction.

14. The Sub-Advisers are not residents of any province or territory of Canada.

15. Each Sub-Adviser is an affiliate of the Principal Adviser; for this purpose, an “affiliate” means any entity that is controlled by Invesco Ltd., or other ultimate parent company of the Principal Adviser, as the case may be, and “control” and any derivation thereof, means the possession, directly or indirectly, of the power to direct or significantly influence the management and policies/business or affairs of an entity whether through ownership of voting securities or otherwise.

16. The Principal Adviser may, pursuant to a written investment management agreement with each Fund, act as an adviser to the Fund in respect of:

    (a) securities, as defined in the *Securities Act* (Ontario) (the **Act**); and

    (b) Contracts, as defined in the CFA

    by exercising discretionary authority to purchase or sell securities and Contracts on behalf of the Funds in respect of the investment portfolio of the Funds.

17. In connection with the Principal Adviser acting as an adviser to the Funds in respect of the purchase or sale of securities and Contracts, the Principal Adviser will, pursuant to a written agreement made between the Principal Adviser and each Sub-Adviser, retain the respective Sub-Adviser to act as an adviser to the Funds (the **Proposed Advisory Services**) by exercising discretionary authority on behalf of the Principal Adviser, in respect of all or a portion of all of the assets of the respective investment portfolio of the Funds, including discretionary authority to buy or sell Contracts for the Funds, provided that:

(a) in each case, the Contracts must be cleared through an acceptable clearing corporation; and

(b) such investments are consistent with the investment objectives and strategies of the Funds.

18. The written agreement between the Principal Adviser and each Sub-Adviser will set out the obligations and duties of each party in connection with the Proposed Advisory Services and will permit the Principal Adviser to exercise the degree of supervision and control it is required to exercise over each Sub-Adviser in respect of the Proposed Advisory Services.

19. The Principal Adviser will deliver to the Funds all applicable reports and statements required under applicable securities and derivatives legislation.

20. If there is any direct contact between a Fund and a Sub-Adviser in connection with the Proposed Advisory Services, a representative of the Principal Adviser, duly registered in accordance with Ontario commodity futures law, will be present at all times either in person or by telephone.

21. Paragraph 22(1)(b) of the CFA prohibits a person or company from acting as an adviser unless the person or company is registered as an adviser under the CFA, or is registered as a representative, a partner or an officer of a registered adviser and is acting on behalf of a registered adviser.

22. By providing the Proposed Advisory Services, each Sub-Adviser and any individuals acting on behalf of the respective Sub-Adviser in respect of the Proposed Advisory Services will be engaging in, or holding themselves out as engaging in, the business of advising others in respect of the Contracts and, in the absence of being granted the requested relief, would be required to register as an adviser, or a representative of an adviser, as the case may be, under the CFA.

23. 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 that is similar to the exemption from the adviser registration requirement in section 25(3) of the Act which is provided under section 7.3 of OSC Rule 35-502 *Non-Resident Advisers* (**OSC Rule 35-502**).

24. The relationship among the Principal Adviser, the Sub-Advisers and the Funds satisfies the requirements of section 7.3 of OSC Rule 35-502.

25. As would be required under section 7.3 of OSC Rule 35-502:

(a) the duties and obligations of each respective Sub-Adviser will be set out in a written agreement with the Principal Adviser;

(b) the Principal Adviser will contractually agree with the Funds to be responsible for any loss that arises out of the failure of the respective Sub-Adviser:

(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 Funds; 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 Funds from its responsibility for any loss that arises out of the failure of the respective Sub-Adviser to meet the Assumed Obligations.

26. The Sub-Advisers will only provide the Proposed Advisory Services as long as the Principal Adviser is, and remains, registered under the CFA as an adviser in the category of commodity trading manager.

27. The prospectus or similar offering document for each Investment Fund or Pooled Fund or other Investment Funds or Pooled Funds that may be established in the future and for which the Principal Adviser engages the respective Sub-Adviser to provide the Proposed Advisory Services will include the following disclosure:

(a) a statement that the Principal Adviser is responsible for any loss that arises out of the failure of the respective Sub-Adviser to meet the Assumed Obligations; and

(b) a statement that there may be difficulty in enforcing any legal rights against the respective Sub-Adviser (or any individuals engaging in, or holding themselves out as engaging in, the business of advising others when acting on behalf of the respective Sub-Adviser in respect of the Proposed Advisory Services) because the respective

Sub-Adviser is resident outside of Canada and all or substantially all of its assets are situated outside of Canada.

28. Prior to purchasing any securities of one or more of the Funds directly from the Principal Adviser or entering into an investment management agreement with the Principal Adviser for a Managed Account, all investors 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 respective Sub-Adviser to meet the Assumed Obligations; and

(b) a statement that there may be difficulty in enforcing any legal rights against the respective Sub-Adviser (or any individuals engaging in, or holding themselves out as engaging in, the business of advising others when acting on behalf of the respective Sub-Adviser in respect of the Proposed Advisory Services) because the respective Sub-Adviser is resident outside of Canada and all or substantially all of its assets are situated outside of Canada.

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

IT IS ORDERED, pursuant to section 80 of the CFA, that the Sub-Advisers and any individuals engaging in, or holding themselves out as engaging in, the business of advising others when acting on behalf of the respective Sub-Adviser in respect of the Proposed Advisory Services are exempt from the adviser registration requirement in paragraph 22(1)(b) of the CFA in respect of the Proposed 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 respective Sub-Adviser and any individuals engaging in, or holding themselves out as engaging in, the business of advising others when acting on behalf of the respective Sub-Adviser in respect of the Proposed Advisory Services are appropriately registered or licensed, or are entitled to rely on appropriate exemptions from such registrations or licences, to provide advice for the Funds pursuant to the applicable legislation of their principal jurisdiction;

(c) the obligations and duties of each respective Sub-Adviser are set out in a written agreement with the Principal Adviser;

(d) the Principal Adviser has contractually agreed with the respective Fund to be responsible for any loss that arises out of any failure of the respective Sub-Adviser to meet the Assumed Obligations;

(e) the Principal Adviser cannot be relieved by a Fund or its securityholders from its responsibility for any loss that arises out of the failure of the respective Sub-Adviser to meet the Assumed Obligations;

(f) the prospectus or similar offering document for each Investment Fund or Pooled Fund or other Investment Funds or Pooled Funds that may be established in the future and for which the Principal Adviser engages the respective Sub-Adviser to provide the Proposed Advisory Services will include the following disclosure:

(i) a statement that the Principal Adviser is responsible for any loss that arises out of the failure of the respective Sub-Adviser to meet the Assumed Obligations; and

(ii) a statement that there may be difficulty in enforcing any legal rights against the respective Sub-Adviser (or any individuals engaging in, or holding themselves out as engaging in, the business of advising others on behalf of the respective Sub-Adviser in respect of the Proposed Advisory Services) because the respective Sub-Adviser is resident outside of Canada and all or substantially all of its assets are situated outside of Canada; and

(g) prior to purchasing any securities of one or more of the Funds directly from the Principal Adviser or entering into an investment management agreement with the Principal Adviser for a Managed Account or other Managed Accounts that may be established in the future, all investors 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 respective Sub-Adviser to meet the Assumed Obligations; and

(ii) a statement that there may be difficulty in enforcing any legal rights against the respective Sub-Adviser (or any individuals engaging in, or holding themselves out as engaging in, the business of advising others on behalf of the respective Sub-Adviser in respect of the Proposed Advisory Services) because the respective Sub-Adviser is resident outside of Canada and all or substantially all of its assets are situated outside of Canada.

August 24, 2010

"Wes M. Scott"
Commissioner
Ontario Securities Commission

"Mary G. Condon"
Commissioner
Ontario Securities Commission

2.2.2 Zoloto Resources Ltd. – s. 144

Headnote

Section 144 – Application for partial revocation of cease trade order – partial revocation of cease trade order granted to harmonize requirements with requirements in issuer's principal jurisdiction, subject to conditions.

Applicable Legislative Provisions

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

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

AND

IN THE MATTER OF
ZOLOTO RESOURCES LTD.
(the "Issuer")

ORDER
(Section 144)

WHEREAS the Issuer is subject to a cease trade order dated May 19, 2009 made pursuant to subsection 127(1) and subsection 127(5) of the Act ordering that trading in securities of the Issuer cease (the "**CTO**");

AND WHEREAS Canaccord Financial Inc. (the "**Applicant**") has made an application to the Ontario Securities Commission (the "**Commission**") pursuant to section 144 of the Act for a partial revocation of the Cease Trade Order;

AND WHEREAS Applicant has represented to the Commission that:

1. According to the Issuer's SEDAR profile, the Issuer is a corporation governed by the laws of Alberta. Its head office is located in Vancouver, British Columbia.

2. According to a press release issued by the Issuer on January 27, 2010, the Issuer currently has 145,485,300 common shares issued and outstanding.

3. According to the Issuer's SEDAR profile, the Issuer is a reporting issuer in the provinces of British Columbia, Alberta and Ontario.

4. The Issuer's common shares are listed on the TSX Venture Exchange under the symbol 'ZR'. The Issuer's common shares also trade in the United States on an 'over the counter' basis and are quoted on the 'pink sheets' electronic quotation system maintained by Pink OTC Markets Inc. under the symbol 'ZRSCF'.

5. On May 19, 2009, the Commission issued the CTO due to the Issuer's failure to file continuous disclosure materials required by Ontario securities law. The CTO prohibits all trading in and all acquisitions of securities of the Issuer, whether direct or indirect.

6. Similar cease trade orders were also issued against the Issuer by the British Columbia Securities Commission (the "**BC CTO**") and the Alberta Securities Commission on May 4, 2009 and August 9, 2009, respectively.

7. The BC CTO provides that, notwithstanding that order, a beneficial shareholder of the Issuer who was not, at the date of the BC CTO, an insider or control person of the Issuer, may sell securities of the Issuer acquired prior to the date of the BC CTO if (i) the sale is made through a market outside of Canada, (ii) the sale is made through an investment dealer registered in British Columbia and (iii) the investment dealer maintains a record of the sales made under this provision (the "**BC CTO Exemption**"). The CTO does not contain an equivalent exemption permitting sales of securities acquired prior to the date of the CTO.

8. Canaccord Genuity Corp. ("**CGC**") is a corporation governed by the *Business Corporations Act* (Ontario). It carries on the business of a full-service investment dealer in Canada.

9. CGC is registered as an investment dealer in all provinces and territories of Canada. It is also a member of the Investment Industry Regulatory Organization of Canada (**IIROC**) and the TSX Venture Exchange, a participating organization of the TSX and an approved participant of the Montreal Exchange.

10. Canaccord Genuity Inc. ("**CGI**") is a corporation governed by the laws of Delaware. It carries on the business of a broker dealer in the United States.

11. CGI is registered as a broker dealer with the Securities Exchange Commission and is a member of the Financial Industry Regulatory Authority (**FINRA**).

12. CGC and CGI are both wholly-owned subsidiaries of Canaccord Financial Inc ("**CFI**"). CFI is a reporting issuer in all provinces and territories of Canada. Its common shares are listed for trading on the Toronto Stock Exchange and AIM, a market operated by the London Stock Exchange.

13. Capital Research and Management Inc. ("**Cap Re**") is an investment advisor headquartered in California.

14. On April 26, 2010, Cap Re sold 851,200 common shares of the Issuer (the "**Transferred Shares**")

through CGI's San Francisco office in an over the counter trade through the pink sheets in the United States at a price of approximately US$0.01 per share (the "**Cap Re Trade**").

15. Cap Re sold the Transferred Shares on behalf of two investment funds that it manages – American Funds Insurances Series Global Small Capitalization Fund, a Maryland corporation (192,900 shares) and SMALLCAP World Fund, Inc., a Massachusetts trust (658,300 shares).

16. The Transferred Shares were acquired by Cap Re on behalf of these funds in 2007 and 2008 (ie., prior to the date of the CTO).

17. The Transferred Shares were sold to three different United States broker dealers – Knight Equity Markets, LLC., a broker dealer headquartered in New Jersey, Puma Capital, LLC a broker dealer headquartered in New York and Precision Securities LLC, a broker dealer headquartered in San Diego (collectively, the "**Purchasing Dealers**"). None of the Purchasing Dealers is registered as an investment dealer in Canada.

18. The Purchasing Dealers were not required to, and did not, disclose the identity of the beneficial purchasers of the Transferred Shares to Canaccord Genuity, but at no time, either prior to the Cap Re Trade or subsequently, has Canaccord Genuity had reason to believe that the beneficial purchasers were resident in Canada.

19. The shares are represented by certificates registered in the name of Cap Re's Canadian custodian, "Roytor & Co." in Toronto, Ontario. Canaccord Genuity believes that the share certificate was registered in the name of a Canadian custodian because, prior to the imposition of the CTO, the primary trading market for the shares was the TSX Venture Exchange.

20. Under the applicable settlement rules in the United States, the Cap Re Trade was required to settle on April 29, 2010. Cap Re was unable to deliver the Transferred Shares to CGI's clearing broker (the "**Clearing Broker**") on the settlement date because the certificate representing the Transferred Shares contained a legend restricting transfer of the shares in the United States that had to be removed before delivery could occur. Pursuant to the Regulation SHO under the United States Securities and Exchange Act, in these circumstances the selling broker dealer is required to rectify the "fail to deliver" within 35 days of the trade (the "**Close Out Date**"). With respect to the Cap Re Trade, the Close Out Date was June 3, 2010.

21. Almost all of the time between the date of the Cap Re Trade and the Close Out Date was taken up with obtaining the necessary documentation from the Issuer for the removal of the restrictive legend on the certificate representing the Transferred Shares. That process was not completed until late in the day, Vancouver time, on June 3, 2010 and at that time the certificate was presented for transfer to the Issuer's transfer agent in Vancouver, Computershare Trust Company of Canada ("**Computershare**").

22. On June 4, 2010, Computershare advised CGI that, in its view, the CTO precludes Computershare from registering a transfer from a registered holder with an address in Ontario. Until Computershare registers the transfer of the Transferred Shares, CGI cannot complete delivery of the Transferred Shares to the Clearing Broker.

23. As a result of the delay in removing the restrictive legend on the certificate representing the Transferred Shares and Computershare's refusal to process the transfer of the Transferred Shares, CGI was unable to deliver the Transferred Shares to the Clearing Broker before the Close Out Date.

24. Since CGI did not deliver the Transferred Shares before the Close Out Date, on June 3, 2010, the Clearing Broker issued a 'buy-in notice' (the "**Buy-In Notice**"). Under the Buy-In Notice, the Clearing Broker will attempt to complete delivery of the Transferred Shares by buying an equivalent number of shares on the open market and delivering those to the purchaser in lieu of the Transferred Shares. CGI is liable for the cost of these purchases, even if they exceed the price at which the trade was competed.

25. The Clearing Broker purchased 20,000 Issuer common shares in the United States under the Buy-In Notice on June 3, 2010. The Buy-In Notice has been reissued to take effect at 3:00 p.m., Eastern time, on June 7, 2010 but it is possible that the Clearing Broker could invoke the original Buy-In Notice as early as 9:30 am, Eastern time, on that day.

26. The Issuer common shares are very thinly traded over the pink sheets. For example, over the past 30 trading days, excluding the buy-in trade referred to above, only 40,000 shares have traded. To the knowledge of CGI, the last reported offer to sell shares (at very small quantities) was $0.30 per share. Therefore, if the Clearing Broker attempts to execute the Buy-In Notice to purchase the remaining 831,200 Issuer common shares that remain to be delivered in respect of the Cap Re Trade, it would grossly distort the market in the United States for the Issuer's common shares, driving the price to artificially high levels. This would make the buy-in extremely expensive for CGI and would result in 'windfall' profits for sellers, who will effectively be in a position to name their price for the stock.

27. CGI intends to review its internal processes and procedures relating to the execution of the Cap Re Trade and consider implementing additional processes and procedures to ensure that trades in securities of an entity that is a reporting issuer in Canada are not affected by any Canadian cease trade orders. CGI has undertaken to the OSC that it will report the results of its review and any proposed process and procedure changes to the OSC within 60 days of the date of this application.

28. Canaccord Genuity has advised the British Columbia Securities Commission (the "**BCSC**") of the circumstances giving rise to this application and has provided a copy of this application to the BCSC.

29. The BCSC has advised Canaccord Genuity that the BC CTO does not apply to the Cap Re Trade.

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

AND WHEREAS the Director being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED, pursuant to section 144 of the Act, that the Cease Trade Order be and is hereby partially revoked solely to permit trades in securities of the Issuer (including, for greater certainty, acts in furtherance of trades in securities of the Issuer) that are necessary for and are in connection with the delivery of the Transferred Shares to the Clearing Broker, provided that:

(a) the beneficial owner of the Transferred Shares was not, as at the date of the Cap Re Trade, an insider or control person of the Issuer;

(b) the Cap Re Trade was made through a market outside of Canada and through CGI, a broker dealer registered with the United States Securities and Exchange Commission;

(c) CGI maintains a record of the details of the sales made under this Order and agrees to make such record available for review on request by the Ontario Securities Commission; and

(d) this Order will terminate on the earlier of (i) completion of the delivery of the Transferred Shares to the Clearing Broker and (ii) 120 days from the date hereof.

DATED at Toronto this 7th day of June, 2010.

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

2.2.3 Interactive Brokers Canada Inc. – s. 74(1)

Headnote

Application by investment dealer (Applicant) for relief from prospectus requirement in connection with distribution of foreign exchange contracts to permit investors resident in Ontario to enter into foreign exchange transactions with Applicant, subject to four-year sunset clause and other terms and conditions – Applicant acts as both market intermediary and as principal or counterparty to forex transaction with client – Applicant registered in Ontario as investment dealer and a member of the Investment Industry Regulatory Organization of Canada (IIROC) – Applicant complies with IIROC Rules and IIROC acceptable practices applicable to offerings of forex contracts – Applicant seeking relief to permit Applicant to offer forex contracts to investors in Ontario on the basis of clear and plain language risk disclosure document rather than a prospectus – risk disclosure document contains disclosure substantially similar to risk disclosure document required for recognized options in OSC Rule 91-502 Trades in Recognized Options, the regime for OTC derivatives contemplated by former proposed OSC Rule 91-504 OTC Derivatives (which was not adopted), and the Quebec Derivatives Act – Relief consistent with relief contemplated by OSC Staff Notice 91-702 Offerings of contracts for difference and foreign exchange contracts to investors in Ontario (OSC SN 91-702) – Relief granted, subject to terms and conditions contained in OSC SN 91-702.

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

AND

IN THE MATTER OF
INTERACTIVE BROKERS CANADA INC.

ORDER
(Subsection 74(1) of the Act)

UPON the application (the **Application**) of Interactive Brokers Canada Inc. (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order, pursuant to subsection 74(1) of the Act, that the Applicant and its respective officers, directors and representatives be exempt from the prospectus requirement in section 53 of the Act in respect of the distribution of foreign exchange contracts to permit investors resident in Ontario to enter into foreign exchange transactions with the Applicant (referred to herein as **IB Forex transactions**) (the **Requested Relief**) subject to the terms and conditions below;

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

AND UPON the Applicant having represented to the Commission that:

Interactive Brokers Group

1. The Applicant is a member of the Interactive Brokers Group (**Interactive Brokers**), a leading global electronic brokerage group. Interactive Brokers provides its customers with direct, high-speed access to trade in more than 80 equity and derivatives exchanges and a growing number of Electronic Communication Networks (**ECNs**).

2. The parent company of the Applicant is IBG LLC which was founded by its Chairman and CEO Thomas Peterffy. In May 2007, Interactive Brokers Group, Inc. sold 40,000,000 shares in a public offering which represented approximately 10% interest in IBG LLC. Interactive Brokers Group, Inc. is currently listed on NASDAQ under the symbol IBKR. As of April 13, 2010, the number of shares outstanding was 41,217,000 and the market value was US$677,607,480.

3. Over the last 32 years, Interactive Brokers has grown internally to become one of the premier securities firms with over $4 billion in equity capital. Interactive Brokers' global headquarters are in Greenwich Connecticut, and it has about 800 employees in its offices in the USA, Switzerland, Canada, Hong Kong, UK, Australia, India, Hungary, Russia and Estonia. Members of the Interactive Broker Group are regulated by the US SEC, FINRA, NYSE, SFA and other regulatory agencies around the world.

4. In its broker dealer agency business, Interactive Brokers provides direct access ("on line") trade execution and clearing services to institutional and professional traders for a wide variety of electronically traded products including stocks, options, futures, forex, bonds and funds worldwide. IBG LLC and its affiliates execute approximately 1,000,000 trades per day.

5. The Applicant is a wholly-owned subsidiary of IBG LLC. On December 19, 2008, Standard & Poor's Ratings Services raised its counterparty rating on IBG LLC to 'BBB+' from 'BBB'. On March 4, 2010, Standard & Poor's Ratings Services issued a new Counterparty Credit Rating of BBB+ / Stable for IBG LLC. The Applicant is not aware of any other ratings that have been issued in respect of IBG LLC and/or any of its U.S. or Canadian affiliates.

Interactive Brokers Canada Inc.

6. The Applicant is a corporation incorporated under the laws of Canada with its principal office in Montréal, Quebec. The Applicant is registered as a dealer in the category of investment dealer in all provinces, a futures commission merchant in Ontario and Manitoba and is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**) (formerly the **Investment Dealers' Association** or **IDA**).

7. The Applicant is required by IIROC to maintain a certain level of capital to address the business risks associated with its activities. The capital reporting required by IIROC (as per the calculation in the Joint Regulatory Financial Questionnaire (the **JRFQ**) and the Monthly Financial Reports to IIROC) is based predominantly on the generation of financial statements and calculations as to ensure capital adequacy. The Applicant as an IIROC member is required to have a specified minimum capital which includes having any additional capital required with regards to margin requirements and other risks. This risk calculation is summarized as a risk adjusted capital calculation which is submitted in the firm's JRFQ and required to be kept positive at all times.

8. As a member of IIROC, the Applicant is only permitted to enter into IB Forex transactions pursuant to IIROC Rules. The Applicant is not, to the best of its knowledge, in default of any IIROC Rules. In addition, IIROC has communicated to its members certain additional expectations as to acceptable business practices (**IIROC acceptable practices**) as articulated in IIROC's "Regulatory Analysis of Contracts for Differences (CFDs)" published by IIROC on June 6, 2007 (the **IIROC CFD Paper**), as amended on September 12, 2007, for any IIROC member proposing to offer CFDs or foreign exchange contracts to investors. To the best of its knowledge, the Applicant is in compliance with IIROC acceptable practices for its distribution of foreign exchange contracts. The Applicant will continue to offer IB Forex transactions in accordance with IIROC acceptable practices as may be established from time to time.

9. The financial statements of the Applicant are publicly-available and posted on its website at: www.interactivebrokers.ca. The financial statements are audited statements in accordance with IIROC Rule 300 Audit Requirements and are filed with IIROC on an annual basis as required by IIROC Rules and Regulations. Interim financial statements are not required to be provided; however, as disclosed in the application, the firm is required to file a monthly financial report (**MFRs**) with IIROC to confirm that it has maintained its requisite risk adjusted capital. Pursuant to IIROC Rule 1400, each IIROC member is required to make available to its clients, on request, a statement of its financial condition. While the IIROC Rules and Regulations stated that the information must be provided to clients upon their request, the Applicant has chosen to publish this information on their website in order to provide transparency of its financial position to their clients and nonclients.

10. The current offering of IB Forex transactions by the Applicant is by way of a bilateral arrangement in that the Applicant acts as both the market

intermediary and the principal or counterparty to transactions with the client.

11. In Québec, the Applicant currently offers IB Forex transactions to both accredited and non-accredited investors (referred to herein as retail investors), pursuant to the provisions of the *Derivatives Act* (Québec)(the **QDA**) and the conditions contained in the Order dated March 13, 2009 issued by the *Autorité des marchés financiers* (the **AMF**) (the **AMF Order**). The AMF Order exempts the Applicant from the qualifying requirement set forth in section 82 of the QDA relating to the creation or marketing of over-the-counter derivatives, including IB Forex transactions, offered to the public, subject to certain terms and conditions.

12. The Applicant has previously offered IB Forex transactions to investors, including retail investors, in Ontario on the basis of a good faith determination that the IB Forex transactions did not constitute securities for the purposes of Ontario securities law. Consequently, such offerings were made in compliance with applicable IIROC Rules and other IIROC acceptable practices but were not made under a prospectus or an exemption from the prospectus requirement of Ontario securities law. In October 2009, OSC staff published OSC Staff Notice 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors* (**OSC SN 91-702**). The Applicant has considered the guidance in OSC SN 91-702 and wishes to continue to offer IB Forex transactions to investors, including retail investors, in Ontario on the basis of the exemptive relief contemplated by OSC SN 91-702.

13. Similarly, the Applicant wishes to continue to offer IB Forex transactions to investors, including retail investors, in Ontario on a similar basis as in Québec and on substantially the same terms and conditions as articulated in the QDA and in the AMF Order. For the Interim Period (defined below), the Applicant is seeking the Requested Relief in connection with the offering in Ontario.

IB Forex

14. Interactive Brokers provides two vehicles for the exchange of currencies: (i) *IDEALPRO* which allows a customer trade in foreign exchange and (ii) *IDEAL* which allows a customer to convert their balances from one currency to another (forex conversions).

15. For the purposes of this application, IB Forex transactions include those transactions entered into on *IDEALPRO* and the forex conversions that are conducted through *IDEAL*.

16. IB Forex transactions are over-the-counter (**OTC**) and are not transferable.

17. The ability to lever an investment is one of the principal features of foreign exchange contracts and transactions. Leverage allows clients to magnify investment returns (or losses) by reducing the initial capital outlay required to achieve the same market exposure that would be obtained by investing directly in the underlying currency. Leverage is only permissible on *IDEALPRO* network.

18. IIROC Rules and IIROC acceptable practices set out detailed requirements and expectations relating to leverage and margin for offerings of foreign exchange contracts. The degree of leverage may be amended in accordance with IIROC Rules and IIROC acceptable practices as may be established from time to time.

19. Pursuant to Section 13.12 *Restriction on lending to clients* of National Instrument 31-103 *Registration Requirements* which came into force as of September 28, 2009, only those firms that are registered as investment dealers (a condition of which is to be a member of IIROC) may lend money, extend credit or provide margin to a client.

Online Trading Platform

20. Interactive Brokers has developed a module of Interactive Brokers' TWS on-line trading platform to specifically allow IB Forex transactions called FXTrader® (**FXTrader**), that offers clients direct access to interbank prices and dealing for orders as small as 25,000 USD (or equivalent), and up to 10 million USD, or more. FXTrader provides best-execution functionality and a transparent pricing structure. The Applicant offers trading in 13 currencies (USD, EUR, CHF, GBP, SEK, NOK, JPY, AUD, NZD, HKD, CAD, MXN, and special conversion functionality in KRW) with market spreads as small as 1/2 PIP. The tight spreads and substantial liquidity are a result of combining quotation streams from 12 of the world's largest foreign exchange dealers which provide, directly or indirectly, more than half of the momentary capital available in the global interbank market.

21. FXTrader provides an optimized trading interface, with Interactive Broker-designed tools to trade the forex markets. The price display emphasizes the critical portion of the bid/ask, and conveys price movement at a glance by showing an increasing price in green and decreasing price in orange. Each currency pair occupies its own "cell," complete with market data and order information, where a client can create, transmit and cancel orders with a single click. Overall order, trade and portfolio information is displayed along the top of the currency pairs grid.

22. Key features of the FXTrader platform includes:

- Interbank-quality spreads allow clients to trade the best bid and ask from multiple liquidity providers with spreads as low as ½ pip;
- The ability to review order details and margin implications before a client transmits;
- Instantaneous transmission to transmit a clients orders with one click on the bid or ask;
- FXTrader supports over 15 risk-mitigation order types including trailing stop limits, brackets, limit if touched, OCA (one cancels all) and IOC (immediate or cancel);
- The functionality of the Order Book icon which appears when the small-order book has a better price available for the currency pair; and
- The ability of a client to customize the trading cell display to show position, average cost and profit and loss date.

23. Clients conduct IB Forex transactions through IB Canada's on-line trading platform, FXTrader®. The Applicant's on-line platform is similar to those developed for on-line brokerages and day-trading in that the client trades without other communication with, or advice from, the dealer. The FXTrader® is not a "marketplace" as defined in National Instrument 21-101 *Marketplace Operation* since a marketplace is any facility that brings together multiple buyers and sellers by matching orders in fungible contracts in a nondiscretionary manner. FXTrader® does not bring together multiple buyers and sellers; rather it offers clients direct access to interbank prices.

IB Forex Transactions in Ontario

24. Foreign exchange contracts and similar OTC derivative transactions, including IB Forex transactions, when offered to investors in Ontario, may be considered to be "securities" under the Act.

25. Investors wishing to enter into IB Forex transactions must open an account with the Applicant

26. Prior to a client's first IB Forex transaction and as part of the account opening process, the Applicant will provide the client with a separate risk disclosure document that clearly explains, in plain language, the transaction and the risks associated with the transaction (the risk disclosure document). The risk disclosure document includes the required risk disclosure set forth in Schedule A to the Regulations to the QDA and leverage risk disclosure required under IIROC Rules. The risk disclosure document contains disclosure that is substantially similar to the risk disclosure statement required for recognized options in OSC Rule 91-502 *Trades in Recognized Options* (which provides both registration and prospectus exemptions) (**OSC Rule 91-502**) and the regime for OTC derivatives contemplated by OSC SN 91-702 and proposed OSC Rule 91-504 *OTC Derivatives* (which was not adopted) (**Proposed Rule 91-504**). The Applicant will ensure that, prior to a client's first trade in an IB Forex transaction, a complete copy of the risk disclosure document provided to that client has been delivered, or has previously been delivered, to the Commission.

27. Prior to the client's first IB Forex transaction and as part of the account opening process, the Applicant will obtain a written or electronic acknowledgement from the client confirming that the client has received, read and understood the risk disclosure document. Such acknowledgment will be separate and prominent from other acknowledgements provided by the client as part of the account opening process.

28. As customary in the industry, and due to the fact that this information is subject to factors beyond the control of the Applicant (such as changes in IIROC Rules), information such as the margin or leverage rates would not be disclosed in the risk disclosure document but are part of a client's account opening package and are available on both the Applicant's website and the on-line trading platform.

29. The role of the Applicant is limited to acting as an execution-only dealer. In connection with its role as execution-only dealer, the Applicant is, among other things, responsible for marketing, trade execution, administration of account opening and investor approval (including know-your-client diligence and suitability confirmations) for all Canadian clients.

30. IIROC Rules exempt member firms that provide execution-only services such as discount brokerages from the obligation to determine whether each trade is suitable for the client. However, IIROC has exercised its discretion to impose additional requirements on members proposing to trade in foreign exchange contracts and requires that:

    (a) Applicable risk disclosure documents and client suitability waivers provided must be in a form acceptable to IIROC.

    (b) The firm's policies and procedures, amongst other things, must assess the depth of investment knowledge and

trading experience of the client to assess whether the product is appropriate for the client before an account is approved to be opened. IIROC has also imposed its proficiency requirements for futures trading on the Applicant's registered salespeople, who conduct the know your client and initial product suitability analysis, as well as their supervisory trading officer.

(c) Cumulative loss limits for each client's account must be established (this is a measure normally applied by IIROC in connection with futures trading accounts).

31. The IB Forex transactions are offered in compliance with applicable IIROC Rules and other IIROC acceptable practices.

Rationale for the Requested Relief

32. The Requested Relief, if granted, would substantially harmonize the Commission's position on the offering of foreign exchange contracts to investors in Ontario with how those products are offered to investors in Quebec under the QDA. The QDA provides a legislative framework to govern derivatives activities within the province. Among other things, the QDA requires such products to be offered to investors through an IIROC member and the distribution of a standardized risk disclosure document rather than a prospectus in order to distribute foreign exchange contracts to investors resident in Quebec.

33. The Requested Relief, if granted, would be consistent with the guidelines articulated by OSC SN 91-702. OSC SN 91-702 provides guidance with regards to the distributions of contracts for difference (**CFDs**), foreign exchange contracts (**forex** or **FX contracts**) and similar OTC derivative products to investors in Ontario.

34. The Commission has previously recognized that the prospectus requirement may not be well suited for the distribution of certain derivative products to investors in Ontario, and that alternative requirements, including requirements based on clear and plain language risk disclosure, may be better suited for certain derivatives. Both OSC Rule 91-502 and OSC Rule 91-503 *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario* (**OSC Rule 91-503**) provide for a prospectus exemption for the trading of derivative products to clients. The Requested Relief is consistent with the principles and requirements of OSC Rule 91-502, OSC Rule 91-503 and Proposed Rule 91-504.

35. The Applicant also submits that the Requested Relief, if granted, would harmonize the Commission's position on the offering of foreign exchange contracts with certain other foreign jurisdictions that have concluded that a clear, plain language risk disclosure document is appropriate for retail clients seeking to trade in foreign exchange contracts.

36. The Applicant is of the view that requiring compliance with the prospectus requirements in order to enter into IB Forex transactions with clients in Ontario would not be appropriate since the disclosure of a great deal of the information required under the prospectus and under the reporting issuer regime is not material to a client seeking to enter into an IB Forex transaction. The information to be given to such a client should principally focus on enhancing the client's appreciation of product risk including counterparty risk. In addition, most IB Forex transactions are of short duration (positions are generally opened and closed on the same day and are in any event marked to market and cash settled daily).

37. The Applicant is regulated by IIROC which has a robust compliance regime including specific requirements to address market, capital and operational risks.

38. The Applicant submits that the regulatory regimes developed by the AMF and IIROC for foreign exchange contracts, including IB Forex transactions, adequately addresses issues relating to the potential risk to the client of the Applicant acting as counterparty. In view of these regulatory regimes, investors would receive little or no additional benefit from requiring the Applicant to also comply with the prospectus requirement.

39. The Requested Relief is conditional on the Applicant being registered as an investment dealer with the Commission and maintaining its membership with IIROC and that all IB Forex transactions be conducted pursuant to IIROC Rules and in accordance with IIROC acceptable practices.

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

IT IS ORDERED, pursuant to subsection 74(1) of the Act, that for the duration of the Interim Period (as defined below) the Requested Relief is granted, provided that:

(a) all IB Forex transactions with residents in Ontario shall be distributed through the Applicant;

(b) the Applicant remains registered as a dealer in the category of investment dealer with the Commission and a member of IIROC;

(c) all IB Forex transactions with clients resident in Ontario shall be conducted pursuant to IIROC Rules imposed on members seeking to trade in foreign exchange contracts and in accordance with IIROC acceptable practices, as amended from time to time;

(d) all IB Forex transactions with clients resident in Ontario be conducted pursuant to the rules and regulations of the QDA and the AMF, as amended from time to time, unless and to the extent there is a conflict between i) the rules and regulations of the QDA and the AMF, and ii) the requirements of Ontario securities law, the IIROC Rules and IIROC acceptable practices, in which case the latter shall prevail;

(e) prior to a client first entering into an IB Forex transaction, the Applicant has provided to the client the risk disclosure document described in paragraph 26 and have delivered, or have previously delivered, a copy of the risk disclosure document provided to that client to the Commission;

(f) prior to a client's first IB Forex transaction and as part of the account opening process, the Applicant has obtained a written or electronic acknowledgement from the client, as described in paragraph 27, confirming that the client has received, read and understood the risk disclosure document;

(g) the Applicant has furnished to the Commission the name and principal occupation of its officers or directors, together with either the personal information form and authorization of indirect collection, use and disclosure of personal information provided for in National Instrument 41-101 *General Prospectus Requirements* or the registration information form for an individual provided for in Form 33-109F4 of National Instrument 33-109 *Registration Information Requirements* completed by any officer or director;

(h) the Applicant shall promptly inform the Commission in writing of any material change affecting the Applicant, being any change in the business, activities, operations or financial results or condition of the Applicant that may reasonably be perceived by a counterparty to a derivative to be material;

(i) the Applicant shall promptly inform the Commission in writing if a self-regulatory organization or any other regulatory authority or organization initiates proceedings or renders a judgment related to disciplinary matters against the Applicant concerning the conduct of activities with respect to IB Forex transactions;

(j) within 90 days following the end of its financial year, the Applicant shall submit to the Commission the audited annual financial statements of the Applicant and a statement presenting the number of IB Forex transactions concluded with Ontario residents during the most recent financial year; and

(k) the Requested Relief shall immediately expire upon the earliest of

(i) four years from the date that this Order is issued;

(ii) the issuance of an order or decision by a court, the AMF or other similar regulatory body that suspends or terminates the ability of the Applicant to offer foreign exchange contracts to clients in Quebec; and

(iii) the coming into force in Ontario of legislation or a rule regarding the distribution of OTC derivatives to investors in Ontario (the Interim Period).

August 20, 2010

"Mary Condon"
Commissioner
Ontario Securities Commission

"Paulette Kennedy"
Commissioner
Ontario Securities Commission

2.2.4 Shaun Gerard McErlean et al. – s. 127(1), 127(7)

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

AND

**IN THE MATTER OF
SHAUN GERARD MCERLEAN,
SECURUS CAPITAL INC., AND
ACQUIESCE INVESTMENTS**

**ORDER
Section 127(1) & 127(7)**

WHEREAS on the 12th day of August, 2010, pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), the Ontario Securities Commission (the "Commission") made the following order against Shaun Gerard McErlean ("McErlean"), Acquiesce Investments ("Acquiesce") and Securus Capital Inc. ("Securus") (collectively the "Respondents");

AND WHEREAS on the 12th day of August, 2010, pursuant to subsection 127(6) of the Act, the Commission ordered that the following temporary order shall expire on the 15th day after its making unless extended by order of the Commission;

AND WHEREAS by Commission order dated August 12, 2010, the Commission made the following temporary order (the "Temporary Order"):

1. pursuant to clause 2 of subsection 127(1) of the Act, that trading of securities by the Respondents shall cease; and

2. pursuant to clause 3 of subsection 127(1) of the Act, that the exemptions contained in Ontario securities law do not apply to the Respondents;

AND WHEREAS the Commission held a hearing on August 25, 2010;

AND WHEREAS none of the Respondents appeared at the hearing and the Commission is satisfied that the Respondents received adequate notice of the hearing;

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

IT IS ORDERED that the Temporary Order be extended to September 29, 2010 and this matter be adjourned to September 28, 2010 at 2:30 p.m.

DATED at Toronto this 25th day of August, 2010.

"Mary G. Condon"

2.2.5 Enquest Energy Service Corp. – s. 144

Headnote

Section 144 – application for variation of cease trade order – issuer cease traded due to failure to file with the Commission annual and interim financial statements – issuer has applied for a variation of the cease trade order to permit the issuer to proceed with a restructuring transaction through asset sale and share acquisitions by arm's-length investor – arm's-length investor is an accredited investor – transaction subject to shareholder approval – all parties to transaction will receive copy of cease trade order and partial revocation – partial revocation granted subject to conditions.

Applicable Legislative Provisions

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

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

AND

**IN THE MATTER OF
ENQUEST ENERGY SERVICE CORP.**

**PARTIAL REVOCATION ORDER
(Section 144)**

WHEREAS the securities of EnQuest Energy Services Corp. ("**EnQuest**" or the "**Applicant**") are subject to a cease trade order issued by a Director of the Ontario Securities Commission (the "**Commission**") on May 25, 2010 (the "**Cease Trade Order**");

AND WHEREAS the Applicant has applied to the Commission pursuant to section 144 of the Act for a partial revocation of the Cease Trade Order to permit the Applicant to proceed with a proposed transaction to re-capitalize the Applicant for the purposes of filing the continuous disclosure materials referred to in the Order;

AND WHEREAS the Applicant has represented to the Commission that:

1. EnQuest is a corporation formed by amalgamation under the laws of the Province of Alberta. The registered office of the Applicant is located in Calgary, Alberta.

2. EnQuest is a reporting issuer in all provinces of Canada except Prince Edward Island, Nova Scotia and Québec.

3. EnQuest's authorized share structure consists of an unlimited number of Common Shares and an unlimited number of preferred shares, issuable in series, of which 16,575,163 Common Shares are

issued and outstanding as fully paid and non-assessable.

4. EnQuest's common shares (the "**Common Shares**") are listed on the TSX Venture Exchange under the symbol "ENQ". However, trading in the Common Shares was halted on April 6, 2010 and remains suspended.

5. The Cease Trade Order was issued as a result of EnQuest's failure to file its annual audited financial statements (the "**Financial Statements**"), management discussion and analysis, and certification of annual or interim filings for the fiscal year ended December 31, 2009, and subsequent interim continuous disclosure documents, within the required time period by securities legislation (collectively, the "**Continuous Disclosure Documents**").

6. The delay in filing the Continuous Disclosure Documents arose as a consequence of financial hardship and of actions taken by the Applicant's principal lender, following which the Applicant was unable to pay the fees of various service providers, including its auditors (the "**Auditors**").

7. The Applicant is also subject to a cease trade order issued by the British Columbia Securities Commission ("**BCSC**") dated May 11, 2010, the Manitoba Securities Commission ("**MSC**") dated June 18, 2010 and the Alberta Securities Commission ("**ASC**") dated May 7, 2010, for failure to file its Continuous Disclosure Documents.

8. The Applicant is concurrently applying to the ASC, the MSC and BCSC for a partial revocation of the cease trade orders issued in each such jurisdiction.

9. EnQuest has entered into agreements with TransForce Inc. ("**TransForce**") and certain of its subsidiaries in order to effect a transaction (the "**Transaction**"). The Transaction consists of the sale of substantially all of the assets owned by certain wholly-owned subsidiaries of EnQuest (the "**Assets**") to Hemphill Trucking, Inc., a wholly-owned subsidiary of TransForce (the "**Asset Sale**") and the concurrent acquisition by TransForce of 19% of the Common Shares, with an option granted to TransForce to acquire the remaining 81% of the Common Shares at any time during the subsequent three year period (the "**Share Acquisition**").

10. The Asset Sale will be completed pursuant to: (i) an asset purchase agreement dated June 1, 2010 among Speedy Heavy Hauling, Inc., Summit Crane & Rigging, Inc., Northern Truck & Crane, Inc. and Tubular Transportation Inc., all being wholly-owned subsidiaries of the EnQuest, as sellers, and Hemphill Trucking, Inc., being a wholly-owned subsidiary of TransForce, as buyer, for a purchase price of USD$29,744,500, subject to certain adjustments; and (ii) a real property purchase agreement between Speedy Heavy Hauling, Inc., as seller, and Hemphill Trucking Inc., as buyer, for a purchase price of USD$2,255,500. The total purchase price for the Asset Sale is USD$32,000,000.

11. The Transaction was negotiated at arm's length between EnQuest and TransForce.

12. In connection with the Asset Sale, various creditors of EnQuest have agreed to take less than one hundred percent of the value owed to such creditors. In the absence of such agreements, the assets of EnQuest would not be sufficient to meet its obligations to creditors and other liabilities, and actions taken by EnQuest's creditors could force a cessation of operations of EnQuest, and a complete loss of shareholder value. The Share Acquisition provides EnQuest Shareholders with a cash payment for Common Shares that would otherwise have little or no value.

13. EnQuest and TransForce have also agreed to provide TransForce with an equity position in EnQuest and to concurrently proceed with the acquisition, by TransForce or a subsidiary of TransForce, of 19% of the Common Shares for cash consideration of $0.16 per Common Share, with an option granted to TransForce to acquire the remaining 81% of the Common Shares for cash consideration of $0.01 per Common Share. All EnQuest Shareholders receive identical consideration under the Share Acquisition for each Common Share held by such EnQuest Shareholder. The Asset Sale and the Share Acquisition have been negotiated as part of the same Transaction and the completion of one is conditional upon the completion of the other.

14. The proceeds of the Asset Sale will be used by EnQuest to pay its creditors, including its principal lender, in an amount less than that which is currently owed to such creditors, and also to pay: (i) legal and other advisors fees incurred to date including the Auditors' fees; (ii) fees and expenses including late filing fees for the filing of the Continuous Disclosure Documents; (iii) anticipated fees and expenses related to the application for a full revocation of the Cease Trade Order; (iv) current accounts payable; and (v) general corporate overhead.

15. The Transaction is conditional on the EnQuest Shareholders approving each of the Asset Sale and the Share Acquisition and the holders of options to purchase Common Shares ("**EnQuest Optionholders**") approving the Share Acquisitions, in each case, by not less than two-thirds (66 2/3%) of the votes cast by EnQuest

Shareholders and, in the case of the Share Acquisitions, approval of the Alberta Court of Queens' Bench (the "**Court**"). In the event that the EnQuest Shareholders and EnQuest Optionholders do not provide the required approval of the Transaction or other closing conditions are not satisfied, the Transaction will not proceed and EnQuest will pursue alternative strategies to address its financial difficulties, including bankruptcy and or insolvency proceedings.

16. The Transaction is in the best interests of the EnQuest Shareholders because it provides them with a cash payment for the Common Shares that would otherwise have no intrinsic value. Because the liabilities of EnQuest exceed its assets, the Common Shares presently have no intrinsic value. The preparation of the Financial Statements would provide no incremental benefit to Shareholders because they would only serve to reconfirm this fact, while at the same time, imposing additional costs and Transaction non-completion risk on EnQuest and the EnQuest Shareholders.

17. No payments made to management of EnQuest will constitute a "collateral benefit" as that term is defined in Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions*.

18. Pursuant to the Transaction, a "trade" (as such term is defined in the *Securities Act* (Alberta) would occur in Alberta and in all other jurisdictions in which present EnQuest Shareholders reside. All such trades shall be exempt from the requirement to file a prospectus by virtue of the Transaction being an "arrangement that is under a statutory procedure" pursuant to section 2.11 of National Instrument 45-106 *Prospectus and Registration Exemption*s.

19. On completion of the Transaction, EnQuest intends to apply to the ASC, BCSC, MSC and OSC for a full revocation order and reasonably anticipates having sufficient resources to bring its continuous disclosure record and fees up to date.

20. The Transaction involves a trade of securities and therefore cannot be concluded without obtaining a partial revocation of the Cease Trade Order.

21. Prior to completion of the Transaction, EnQuest will provide to all parties to the Transaction:

    (a) a copy of the Cease Trade Order as an attachment to the information circular mailed in connection with the Transaction (the "**Circular**");

    (b) a copy of the Partial Revocation Order, as an attachment to the Circular (if granted prior to the mailing of the Circular), or otherwise to be filed on SEDAR; and

    (c) written notice advising that all securities of EnQuest will remain subject to the Cease Trade Order until such time as each of the ASC, the BCSC, the MSC and the OSC issues a full revocation order.

22. EnQuest will obtain and provide to the ASC, BCSC, MSC and OSC a signed and dated acknowledgment as part of the Letter of Transmittal mailed to, and executed by, EnQuest Shareholders from all participants in the Transaction stating that the issuance of the Partial Revocation does not guarantee the issuance of a full revocation order in the future.

23. If obtained, EnQuest will provide to the ASC, BCSC, MSC and OSC the final order of the Court approving the Transaction.

AND WHEREAS considering the application and the recommendation of the staff of the Commission;

AND WHEREAS the Commission is satisfied that it would not be prejudicial to the public interest to grant the partial revocation of the Cease Trade Order;

IT IS ORDERED, pursuant to section 144 of the Act, that the Cease Trade Order is partially revoked solely to permit trades in securities of the Applicant in connection with the Transaction, provided that:

(a) Prior to completion of the Transaction, EnQuest will provide to all parties to the Transaction:

    (i) a copy of the Cease Trade Order as an attachment to Circular;

    (ii) a copy of the Partial Revocation Order, as an attachment to the Circular (if granted prior to the mailing of the Circular), or otherwise to be filed on SEDAR; and

    (iii) written notice advising that all securities of EnQuest will remain subject to the Cease Trade Order until such time as each of the ASC, the BCSC, the MSC and the OSC issues a full revocation order;

(b) EnQuest will obtain and provide to the ASC, BCSC, MSC and OSC a signed and dated acknowledgment as part of the Letter of Transmittal mailed to, and executed by, EnQuest Shareholders from

all participants in the Transaction stating that the issuance of the Partial Revocation does not guarantee the issuance of a full revocation order in the future; and

(c) If obtained, EnQuest will provide to the ASC, BCSC, MSC and OSC the final order of the Court approving the Transaction.

DATED at Toronto this 10th day of August, 2010.

"Michael Brown"
Assistant Manager, Corporate Finance Branch

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

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

AND

IN THE MATTER OF
URANIUM308 RESOURCES INC.,
MICHAEL FRIEDMAN, GEORGE SCHWARTZ,
PETER ROBINSON, AND SHAFI KHAN
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. ("U308 Inc.") shall cease and that all trading in Uranium308 Resources Inc. securities shall cease; that all trading in securities by Uranium308 Resources Plc. ("U308 Plc.") shall cease and that all trading in Uranium308 Resources Plc. securities shall cease; that all trading in securities by Innovative Gifting Inc. ("IGI") shall cease; and, that Michael Friedman ("Friedman"), Peter Robinson ("Robinson"), George Schwartz ("Schwartz"), and Alan Marsh Shuman ("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, July 10, November 30, 2009 and on February 3, 2010, hearings were held before the Commission and the Commission ordered that the Temporary Order be extended;

AND WHEREAS on February 3, 2010, the Commission ordered that the Temporary Order be extended until March 8, 2010 and the hearing with respect to the matter be adjourned to March 5, 2010;

AND WHEREAS on March 2, 2010, the Commission issued a Notice of Hearing to consider, inter alia, whether to make orders, pursuant to sections 37, 127,

and 127.1, against U308 Inc., Friedman, Schwartz, Robinson and Shafi Khan ("Khan") (collectively the "Respondents");

AND WHEREAS on March 2, 2010, Staff of the Commission issued a Statement of Allegations against the Respondents;

AND WHEREAS Staff served the Respondents with the Notice of Hearing dated March 2, 2010 and Staff's Statement of Allegations dated March 2, 2010. Service by Staff was evidenced by the Affidavit of Service of Joanne Wadden, sworn on March 4, 2010, which was filed with the Commission;

AND WHEREAS on March 5, 2010, the Commission ordered that the Temporary Order be extended until April 13, 2010 and the hearing with respect to the matter be adjourned to April 12, 2010;

AND WHEREAS on March 5, 2010, counsel for Staff advised the Commission that Staff were not seeking to extend the Temporary Order against Shuman and the Commission did not extend the Temporary Order against Shuman;

AND WHEREAS on April 12, 2010, counsel for Staff, Khan, and counsel for Friedman appeared before the Commission. Counsel for Robinson was not present but he had provided information to counsel for Staff which was relayed to the Commission. Schwartz was also not present but he had provided information to counsel for Staff which was relayed to the Commission;

AND WHEREAS on April 12, 2010, counsel for Staff requested the extension of the Temporary Order as against U308 Inc., Friedman, Schwartz, Robinson, and U308 Plc.;

AND WHEREAS on April 12, 2010, counsel for Staff provided counsel for Friedman and Khan with Staff's initial disclosure in this matter. Counsel for Staff advised the Commission that Staff's initial disclosure was also prepared and available for the other respondents to pick up from Staff;

AND WHEREAS on April 12, 2010, the Commission was of the opinion that it was in the public interest to order that, pursuant to subsection 127(8) of the Act, the Temporary Order is extended as against U308 Inc., Friedman, Schwartz, Robinson, and U308 Plc. to July 2, 2010 and that the hearing with respect to the Notice of Hearing dated March 2, 2010 and with respect to the Temporary Order is adjourned to June 30, 2010, at 10:00 a.m. at which time a pre-hearing conference will be held;

AND WHEREAS on June 30, 2010, the Commission was of the opinion that it was in the public interest to order that, pursuant to subsection 127(8) of the Act, the Temporary Order is extended as against U308 Inc., Friedman, Schwartz, Robinson, and U308 Plc. until the completion of the hearing on the merits in this matter;

AND WHEREAS on June 30, 2010, the pre-hearing conference was commenced and the parties present made submissions to the Commission;

AND WHEREAS on June 30, 2010, the Commission adjourned the pre-hearing conference to continue on July 22, 2010 at 10 a.m.;

AND WHEREAS on July 22, 2010, the pre-hearing conference continued and Khan and Schwartz were present at the pre-hearing conference. A student-at-law with the office of counsel for Robinson was also present. Counsel for Friedman and U308 Inc. was not able to attend on July 22, 2010, but Staff advised the Commission of the reason for his non-attendance;

AND WHEREAS on July 22, 2010, the Commission was of the opinion that it was in the public interest to order that the hearing with respect to this matter be adjourned to August 30, 2010, at 10 a.m. at which time the pre-hearing conference would be continued;

AND WHEREAS on August 30, 2010, the pre-hearing conference continued and the following persons were in attendance: Khan; counsel for Robinson; and counsel for Friedman and U308 Inc. Schwartz was not able to attend but Staff advised the Commission of the reason for his non-attendance. The parties present made submissions to the Commission;

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

IT IS ORDERED that the hearing with respect to this matter is adjourned to October 12, 2010, at 2:30 p.m. at which time the pre-hearing conference will be continued.

DATED at Toronto this 30th day of August, 2010.

"Mary G. Condon"

2.2.7 York Rio Resources Inc. et al. – s. 127

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

AND

IN THE MATTER OF
YORK RIO RESOURCES INC.,
BRILLIANTE BRASILCAN RESOURCES CORP.,
VICTOR YORK, ROBERT RUNIC,
GEORGE SCHWARTZ, PETER ROBINSON,
ADAM SHERMAN, RYAN DEMCHUK,
MATTHEW OLIVER, GORDON VALDE AND
SCOTT BASSINGDALE

ORDER
(Section 127 of the Securities Act)

WHEREAS on March 2, 2010, the Commission issued a Notice of Hearing pursuant to sections 37, 127 and 127.1 of the Act accompanied by a Statement of Allegations dated March 2, 2010, issued by Staff of the Commission ("Staff") with respect to York Rio Resources Inc. ("York Rio"), Brilliante Brasilcan Resources Corp. ("Brilliante"), Victor York ("York"), Robert Runic ("Runic"), George Schwartz ("Schwartz"), Peter Robinson ("Robinson"), Adam Sherman ("Sherman"), Ryan Demchuk ("Demchuk"), Matthew Oliver ("Oliver"), Gordon Valde ("Valde") and Scott Bassingdale ("Bassingdale"), (collectively, the "Respondents");

AND WHEREAS on March 3, 2010, the Commission ordered that the hearing be adjourned until April 12, 2010;

AND WHEREAS on April 12, 2010, Staff informed the Commission that all parties had either been served with notice of the hearing or that service had been attempted on all parties;

AND WHEREAS on April 12, 2010, counsel for Staff, Demchuk and counsel for York appeared;

AND WHEREAS on April 12, 2010, Staff informed the Commission that counsel for Sherman, counsel for Robinson and counsel for Oliver had contacted Staff and indicated that they could not attend the hearing on April 12, 2010 but could attend at a later date;

AND WHEREAS on April 12, 2010, the Commission heard submissions from counsel for Staff, Demchuk and counsel for York;

AND WHEREAS on April 13, 2010, the hearing was adjourned to June 10, 2010;

AND WHEREAS on June 10, 2010, Staff appeared before the Commission and informed the Commission that all parties had either been served with notice of the hearing or that service had been previously attempted on all parties;

AND WHEREAS on June 10, 2010, upon hearing submissions from Staff, the hearing was adjourned to July 21, 2010;

AND WHEREAS on July 21, 2010, Staff appeared before the Commission and informed the Commission that all parties had either been served with notice of today's hearing or that service had been previously attempted on all parties;

AND WHEREAS on July 21, 2010, the hearing was adjourned to August 30, 2010 for the purpose of conducting a pre-hearing conference;

AND WHEREAS on August 30, 2010, Staff appeared before the Commission and informed the Commission that all parties had either been served with notice of today's pre-hearing conference or that service had been previously attempted on all parties;

AND WHEREAS on August 30, 2010, Staff, York and counsel for Robinson and Sherman appeared before the Commission and the pre-hearing conference was commenced;

IT IS ORDERED THAT the hearing is adjourned to October 12, 2010 at 3:30 p.m. for the purpose of continuing the pre-hearing conference.

DATED at Toronto this 30th day of August, 2010.

"Mary G. Condon"

2.2.8 Brilliante Brasilcan Resources Corp. et al. – ss. 127(1), 127(2), 127(8)

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

AND

**IN THE MATTER OF
BRILLIANTE BRASILCAN RESOURCES CORP.,
YORK RIO RESOURCES INC.,
BRIAN W. AIDELMAN, JASON GEORGIADIS,
RICHARD TAYLOR AND VICTOR YORK**

**ORDER
(Subsections 127(1), (2) and (8))**

WHEREAS on October 21, 2008, the Ontario Securities Commission ("Commission") ordered pursuant to subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that all trading in the securities of Brilliante Brasilcan Resources Corp. ("Brilliante") shall cease and that Brilliante, York Rio Resources Inc. ("York Rio") and their representatives, including Brian W. Aidelman ("Aidelman"), Jason Georgiadis ("Georgiadis"), Richard Taylor ("Taylor"), and Victor York ("York") shall cease trading in all securities (the "Temporary Order");

AND WHEREAS on October 21, 2008, the Commission further ordered pursuant to subsection 127(6) of the Act that the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission;

AND WHEREAS the Commission issued a Notice of Hearing on October 23, 2008 to consider, among other things, whether to extend the Temporary Order;

AND WHEREAS on November 4, 2008, the Commission adjourned the hearing to November 14, 2008 at 10:00 a.m. and further extended the Temporary Order until the close of business on November 14, 2008;

AND WHEREAS on November 14, 2008, the Commission amended the Temporary Order (the "Amended Temporary Order") to permit each of York, Aidelman, Georgiadis and Taylor to trade securities for the account of his registered retirement savings plans (as defined in the *Income Tax Act* (Canada)) in which he and/or his spouse have sole legal and beneficial ownership, provided that:

(i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund which is a reporting issuer;

(ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question;

(iii) he carries out any permitted trading through a registered dealer (which dealer must be given a copy of this order) and through accounts opened in his name only; and

(iv) he shall provide Staff with the particulars of the accounts (before any trading in the accounts under this order occurs) including the name of the registered dealer through which the trading will occur and the account numbers, and he shall instruct the registered dealer to provide copies of all trade confirmation notices with respect to the accounts directly to Staff at the same time that such notices are provided to him;

AND WHEREAS on November 14, 2008, the Commission adjourned the hearing to March 3, 2009 at 2:30 p.m. and further extended the Amended Temporary Order until March 4, 2009;

AND WHEREAS on March 3, 2009, the Commission adjourned the hearing to September 3, 2009 at 10:00 a.m. and further extended the Amended Temporary Order until September 4, 2009;

AND WHEREAS on September 3, 2009, the Commission adjourned the hearing to March 3, 2010 at 10:00 a.m. and further extended the Amended Temporary Order, until March 4, 2010;

AND WHEREAS on March 3, 2010, the Commission adjourned the hearing to April 12, 2010 at 9:00 a.m. and further extended the Amended Temporary Order, until April 13, 2010;

AND WHEREAS on April 13, 2010, the Commission adjourned the hearing to June 10, 2010 at 2:00 p.m. and further extended the Amended Temporary Order, until June 11, 2010;

AND WHEREAS on June 10, 2010, the Commission adjourned the hearing to July 21, 2010 at 2:00 p.m. and further extended the Amended Temporary Order, until July 22, 2010;

AND WHEREAS on July 21, 2010, the Commission adjourned the hearing to August 30, 2010 at 11:00 a.m. and further extended the Amended Temporary Order, until August 31, 2010;

AND WHEREAS on August 30, 2010, a hearing was held to consider the extension of the Amended Temporary Order;

AND WHEREAS the Commission is satisfied that reasonable steps have been taken by Staff to give all

Respondents notice of the hearing and all Respondents, other than Taylor, have been duly served with such notice;

AND WHEREAS Staff has informed the Commission that they are of the belief that "Richard Taylor" is an alias used by a person associated with Brilliante and York Rio;

AND WHEREAS Staff is no longer seeking to extend the Amended Temporary Order against Taylor;

AND WHEREAS the Commission is of the opinion that the time required to conclude a hearing could be prejudicial to the public interest;

AND WHEREAS satisfactory information has not been provided by the Respondents to the Commission;

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

IT IS ORDERED pursuant to subsection 127(8) of the Act that the hearing is adjourned to October 12, 2010 at 3:30 p.m.;

IT IS FURTHER ORDERED that Taylor is no longer subject to the terms of the Amended Temporary Order;

IT IS FURTHER ORDERED pursuant to subsection 127(8) of the Act that the Amended Temporary Order is extended until close of business on October 13, 2010, subject to further extension by order of the Commission.

DATED at Toronto this 30th day of August, 2010.

"Mary G. Condon"

2.2.9 Peter Robinson and Platinum International Investments Inc.

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

AND

IN THE MATTER OF
PETER ROBINSON AND
PLATINUM INTERNATIONAL INVESTMENTS INC.

ORDER

WHEREAS on December 18, 2009, the Secretary of the Commission issued a Notice of Hearing, pursuant to sections 37, 127 and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), for a hearing to commence at the offices of the Commission at 20 Queen Street West, on Monday, January 11th, 2010 at 11 a.m., or as soon thereafter as the hearing can be held;

WHEREAS the Notice of Hearing provides for the Commission to consider, among other things, whether, in the opinion of the Commission, it is in the public interest, pursuant to s. 127(5) of the Act, to issue a temporary order that:

> The respondents, Platinum International Investments Inc. ("Platinum") and Peter Robinson ("Robinson") (collectively the "Respondents") shall cease trading in any securities;

AND WHEREAS Staff served the Respondents with copies of the Notice of Hearing and Staff's Statement of Allegations dated December 17, 2009, as evidenced by the Affidavit of Kathleen McMillan sworn on January 11, 2009, and filed with the Commission;

AND WHEREAS Staff served the Respondents with a copy of the Affidavit of Lori Toledano, affirmed on January 8, 2010, as evidenced by the Affidavit of Service of Kathleen McMillan sworn on January 8, 2010;

AND WHEREAS on January 11, 2010, Staff of the Commission and Robinson appeared before the Commission and made submissions. Robinson appeared in his personal capacity and as the sole registered director of Platinum. During the hearing on January 11, 2010, Robinson advised the Commission that he consented to the issuance of a temporary cease trade order against himself and against Platinum;

AND WHEREAS on January 11, 2010, Robinson requested an adjournment of the hearing in order to retain counsel;

AND WHEREAS on January 11, 2010, the panel of the Commission considered the Affidavit of Lori Toledano and the submissions made by Staff and Robinson;

AND WHEREAS on January 11, 2010, the panel of the Commission ordered, pursuant to section 127 (5) of the Act, that Robinson and Platinum cease trading in any securities (the "Temporary Cease Trade Order") and that the Temporary Cease Trade Order is extended, pursuant to section 127(8) of the Act, until February 4, 2010;

AND WHEREAS on January 11, 2010, the panel of the Commission ordered that the hearing with respect to this matter be adjourned to February 3, 2010, at 9:00 a.m.;

AND WHEREAS on February 3, March 5, 2010 and April 12, 2010, hearings were held before the Commission and the Commission ordered that the Temporary Cease Trade Order be extended and that the hearing be adjourned for the purpose of having a pre-hearing conference on June 10, 2010;

AND WHEREAS on June 10, 2010, the pre-hearing conference was commenced and Staff and counsel for Platinum and Robinson attended before the Commission and made submissions, including requesting that the hearing be adjourned to June 30, 2010 at 11:00 a.m. at which time the pre-hearing conference would be continued;

AND WHEREAS on June 10, 2010, the Commission ordered that hearing be adjourned to June 30, 2010 at 11:00 a.m. at which time the pre-hearing conference would be continued;

AND WHEREAS on June 30, 2010, Staff and counsel for Platinum and Robinson attended before the Commission for the continuation of the pre-hearing conference, made submissions to the Commission, and requested that the pre-hearing conference be continued on July 22, 2010 at 11:00 a.m.;

AND WHEREAS on June 30, 2010, the Commission ordered that the hearing be adjourned to July 22, 2010 at 11:00 a.m. at which time the pre-hearing conference would be continued;

AND WHEREAS on July 22, 2010, Staff and a student-at-law in the office of counsel for Platinum and Robinson attended before the Commission for the continuation of the pre-hearing conference, made submissions to the Commission, and requested that the pre-hearing conference be continued on August 30, 2010 at 10:30 a.m.;

AND WHEREAS on July 22, 2010, the panel of the Commission was of the opinion that it was in the public interest to order that the hearing with respect to this matter be adjourned to August 30, 2010, at 10:30 a.m. at which time the pre-hearing conference would be continued;

AND WHEREAS on August 30, 2010, Staff and counsel for Platinum and Robinson attended before the Commission for the continuation of the pre-hearing conference, made submissions to the Commission, and requested that the pre-hearing conference be continued on October 12, 2010 at 3:00 p.m.;

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

IT IS ORDERED that the hearing with respect to this matter is adjourned to October 12, 2010, at 3:00 p.m. at which time the pre-hearing conference will be continued.

DATED at Toronto this 30th day of August, 2010.

"Mary G. Condon"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 IMAGIN Diagnostic Centres Inc. et al.

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

AND

IN THE MATTER OF
IMAGIN DIAGNOSTIC CENTRES INC.,
PATRICK J. ROONEY, CYNTHIA JORDAN,
ALLAN McCAFFREY, MICHAEL SHUMACHER,
CHRISTOPHER SMITH, MELVYN HARRIS and
MICHAEL ZELYONY

REASONS AND DECISION

Hearing:	May 19, 20 and 21, 2009 June 16, 17, 18 and 19, 2009 September 8, 9, and 10, 2009 November 11, 2009		
Decision:	August 31, 2010		
Panel:	Mary G. Condon	–	Commissioner and Chair of the Panel
	Margot C. Howard	–	Commissioner
Appearances:	Jon Feasby	–	For the Ontario Securities Commission
	Patrick J. Rooney	–	For himself and IMAGIN Diagnostic Centres Inc.

TABLE OF CONTENTS

REASONS AND DECISION

A. OVERVIEW

1. History of the Proceeding

[1] This was a hearing before the Ontario Securities Commission (the "Commission") pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether IMAGIN Diagnostic Centres Inc. ("IMAGIN") and Patrick J. Rooney ("Mr. Rooney") (collectively, the "Respondents") breached subsection 25(1)(a) of the Act and engaged in conduct contrary to the public interest.

[2] This proceeding was commenced by a Statement of Allegations dated September 27, 2007 and a Notice of Hearing dated September 28, 2007. The Statement of Allegations and Notice of Hearing list the following respondents: IMAGIN, Mr. Rooney, Cynthia Jordan ("Ms. Jordan"), Allan McCaffrey ("Mr. McCaffrey"), Michael Shumacher ("Mr. Shumacher"), Christopher Smith ("Mr. Smith"), Melvyn Harris ("Mr. Harris") and Michael Zelyony ("Mr. Zelyony"). Prior to the hearing on the merits, Ms. Jordan, Mr. McCaffrey, Mr. Shumacher, Mr. Smith and Mr. Zelyony settled with the Commission (collectively, the "Settling Respondents") (*Re IMAGIN et al.* (2009), 32 O.S.C.B. 1441 (oral reasons)). Mr. Harris passed away prior to the commencement of the merits hearing and Staff of the Commission ("Staff") did not proceed with the allegations against this individual.

[3] This case involves allegations by Staff that during the period from early 2003 to early 2006, IMAGIN was engaged in the business of trading its securities in Ontario. Staff alleges that IMAGIN acted as a market intermediary and was required to be registered pursuant to subsection 25(1)(a) of the Act. According to Staff, IMAGIN raised approximately $14 million from the sale of its securities to Canadian investors and approximately $3.5 million of this amount was raised from Ontario investors. Staff also alleges that at the material time, Mr. Rooney was the directing mind and management of IMAGIN, that all of IMAGIN's activities took place under Mr. Rooney's close supervision and direction, and that Mr. Rooney oversaw the sales of IMAGIN securities by IMAGIN employees.

[4] The Respondents take the position that their conduct did not breach subsection 25(1)(a) of the Act because IMAGIN was not acting as a market intermediary, selling securities was not its primary activity and there were registration exemptions available to the Respondents.

[5] During the course of this proceeding, Mr. Rooney represented himself and IMAGIN. We heard the evidence in this matter on May 19, 20 and 21, 2009; June 16, 17, 18 and 19, 2009; and September 8, 9, and 10, 2009. Staff called six witnesses to provide evidence: Tom Anderson, a senior investigator with the Commission, and the five Settling Respondents. Mr. Rooney testified on his own behalf. Closing submissions on the merits were heard on November 11, 2009. Staff and the Respondents provided oral and written submissions.

[6] For the reasons set out below, we conclude that IMAGIN and Mr. Rooney breached subsection 25(1)(a) of the Act and engaged in conduct contrary to the public interest.

2. The Respondents

[7] IMAGIN was incorporated pursuant to the laws of Ontario under the original name of Scanquest Imaging Centres Inc. ("Scanquest") on December 3, 2002. On January 27, 2003, Scanquest was renamed IMAGIN Diagnostic Centres Inc. On April 1, 2004, IMAGIN was continued as a company incorporated pursuant to the laws of Canada.

[8] During the material time, IMAGIN's head office and operations were located in Toronto at a series of different addresses. In February 2006, IMAGIN's operations were moved to Vancouver.

[9] IMAGIN's business was to advance the use of Positron Emission Tomography ("PET") technology in cancer diagnosis in Canada. Staff's allegations do not relate to the cancer diagnosis technology aspect of IMAGIN's business or the use of proceeds derived from the distribution of IMAGIN's securities. Staff's allegations relate only to registration issues.

[10] Mr. Rooney was a Managing Director of Corporate Development of IMAGIN. In their written submissions at paragraph 4, the Respondents state that "Rooney was in fact a defacto [*sic*] officer of IMAGIN and since February of 2007 the sole director and CEO of IMAGIN".

[11] The Settling Respondents were involved with IMAGIN as follows: Ms. Jordan was the President of IMAGIN; Mr. Shumacher, Mr. Smith and Mr. Zelyony were Managing Directors of Corporate Development and Mr. McCaffrey was the Executive Director of Corporate Development and managed the sales team at IMAGIN.

3. The Allegations

[12] In the Statement of Allegations, Staff alleges at paragraph 17 that:

> By trading in securities without registration, the actions of Imagin, Rooney, Jordan, McCaffrey, Shumacher, Smith, Harris and Zelyony were contrary to s. 25 of the Act and to the public interest.

[13] In this matter we are concerned with the conduct of Mr. Rooney and IMAGIN who are the remaining Respondents.

[14] In addition, Staff alleges that Mr. Rooney was a *de facto* officer and director of IMAGIN who authorized, permitted or acquiesced in IMAGIN's breaches of Ontario securities law under section 129.2 of the Act. At the hearing on the merits, Staff took the position that Mr. Rooney was in control and was the directing mind and management of IMAGIN. Staff alleges at paragraph 14 of the Statement of Allegations that:

> At all material times, Rooney controlled Imagin and oversaw the sales of its securities by its employees including McCaffrey, Shumacher, Smith, Harris, Zelyony and other members of the Corporate Development group.

B. ISSUES

[15] This case raises the following issues for our consideration:

1. Did the Respondents breach subsection 25(1)(a) of the Act?
   - i. Did the Respondents trade IMAGIN securities?
   - ii. Were the Respondents registered under the Act?
   - iii. Were there any exemptions available to the Respondents to facilitate their trading without registration?
2. Pursuant to section 129.2 of the Act, was Mr. Rooney a *de facto* officer and director of IMAGIN who authorized, permitted or acquiesced in IMAGIN's breaches of Ontario securities law?

[16] We need to assess each of these issues by examining the evidence in this matter and determining whether on a balance of probabilities "…it is more likely than not that the event occurred" (***F.H. v. McDougall***, [2008] 3 S.C.R. 41 at para. 44). As stated by the Supreme Court of Canada, "…evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test" (***F.H. v. McDougall***, ***supra*** at para. 46).

C. ANALYSIS

1. Did the Respondents Breach Subsection 25(1)(a) of the Act?

[17] Subsection 25(1)(a) of the Act states the following:

> No person or company shall,
>
> (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;
>
> […]
>
> and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the

> registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[18] Accordingly, the elements of a breach of subsection 25(1)(a) of the Act are findings that:

1. a respondent traded, which includes any act in furtherance of a trade of a security as defined in the Act; and

2. the person or company was unregistered at the time of the trade.

[19] In the sections below, we will first address the law regarding the definition of a trade and acts in furtherance of trades. We will also examine the elements required for a breach of subsection 25(1)(a) of the Act and the evidence that supports a finding of a breach of subsection 25(1)(a) of the Act. In addition, we will also address the rationale for a registration requirement, whether the Respondents were registered and whether there were any registration exemptions available to the Respondents.

i. Did the Respondents Trade IMAGIN Securities?

a. The Law – Trades and Acts in Furtherance of Trades

[20] As stated above, for a breach of subsection 25(1)(a) of the Act, a trade in securities is required. In this case there was no dispute regarding the existence of a security. The dispute is whether the Respondents engaged in trading without proper registration. Under subsection 1(1) of the Act, "trade" includes:

> (a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in clause (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith,
>
> (b) any participation as a trader in any transaction in a security through the facilities of any stock exchange or quotation and trade reporting system,
>
> (c) any receipt by a registrant of an order to buy or sell a security,
>
> (d) any transfer, pledge or encumbrancing of securities of an issuer from the holdings of any person or company or combination of persons or companies described in clause (c) of the definition of "distribution" for the purpose of giving collateral for a debt made in good faith, and
>
> (e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.
>
> [Emphasis added]

[21] For the purposes of the present case, we are concerned with the definitions of a "trade" set out in paragraphs (a) and (e).

[22] The Commission has interpreted the term "trade" in many previous decisions. The Commission has established that trading is a broad concept that includes any sale or disposition of a security for valuable consideration, including any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of such a sale or disposition. This interpretation has also been confirmed by the Ontario courts in their acknowledgement that "[r]egarding "trade", the legislature has chosen to define the term and they have chosen to define it broadly in order to encompass almost every conceivable transaction in securities" (*R v. Allan Sussman* (1993), 16 O.S.C.B. 1209 (Ont. Ct.) at 1230).

[23] The inclusion of the word "indirectly" in the definition of "acts in furtherance" (cited above in paragraph (e) of the definition of a trade) reflects an express intention on the part of the Legislature to capture conduct which seeks to avoid the registration requirement by doing indirectly that which is prohibited directly.

[24] Any act in furtherance of a trade that occurs in Ontario constitutes trading in securities under the definition in the Act (*Re Lett* (2004), 27 O.S.C.B. 3215 at para. 64). Whether an act is in furtherance of a trade is a question of fact, to be determined in each case, based on whether there is a sufficiently proximate connection to the trade (*Re Costello* (2003), 26 O.S.C.B. 1617 at para. 47).

[25] The Commission has found that a variety of activities constitute acts in furtherance of trades. For example, the Commission has found that accepting money from investors and depositing investor cheques for the purchase of shares in a

bank account constitute acts in furtherance of trades (*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 ("*Limelight*") at para. 133). Other examples of activities that have been considered acts in furtherance of trades by the Commission include, but are not limited to:

(a) providing potential investors with subscription agreements to execute;

(b) distributing promotional materials concerning potential investments;

(c) issuing and signing share certificates;

(d) preparing and disseminating of materials describing investment programs;

(e) preparing and disseminating of forms of agreements for signature by investors;

(f) conducting information sessions with groups of investors; and

(g) meeting with individual investors.

(*Re Momentas Corporation* (2006), 29 O.S.C.B. 7408 ("*Momentas*") at para. 80)

[26] Activities such as preparing a market can constitute an act in furtherance of a trade within the meaning of the Act, even where no specific sales have occurred as a result of the conduct (*Re Guard* (1996), 19 O.S.C.B. 3737 at para. 77).

b. Discussion

Overview of the Parties' Positions

[27] A basic element in dispute in this hearing is whether IMAGIN and its employees were trading in IMAGIN securities. Staff takes the position that IMAGIN traded in securities and that the Respondents admitted to this in the course of the proceeding. Staff submits that the evidence also establishes that Mr. Rooney directly engaged in acts in furtherance of trades sufficient to ground liability without reliance on section 129.2 of the Act. In the alternative, Staff argues Mr. Rooney can be held liable for IMAGIN's breaches of the Act under section 129.2 (we deal with the issue of section 129.2 of the Act separately in Part 2 of our Reasons).

[28] Although at certain points during the proceeding, the Respondents admitted that they did engage in trading, at other points the Respondents changed their view and stated that they were not engaged in trading.

[29] Specifically, at the hearing, the Respondents submitted in their opening statement that IMAGIN employees:

> …would have the title and functionality of managing directors of corporate development. Those titles would allow them to seek a level of respect with business owners and would allow the managing directors to receive commitments on the sale and issuance of treasury shares.
>
> We will contend, of course, those aren't trades, and that's common practice in the brokerage business. [Emphasis added]
>
> (Transcript, May 19, 2009, 83:21-84:3)

[30] Since the Respondents dispute that their issuing of shares from treasury constituted trading, in the sections below we address the Respondents' admissions and the evidence regarding trading in securities in this matter.

The Testimony of the Settling Respondents

[31] As a preliminary matter, we note that the Respondents encouraged the Panel not to rely on the settlement agreements concluded by the Settling Respondents and their testimony. The Respondents state at paragraph 49 of their written reply submissions:

> The OSC did not produce one witness in their case other than witnesses that have made statements contrary to their written signed settlement agreements wherein they attested that settlements were made on a voluntary basis and then recanted that position. The Respondents contend that the testimony of the OSC witnesses must be discarded since they were intimidated to give testimony favorable to the OSC Staff.

[32] We note that the Respondents do not take issue with the agreed facts listed in the settlement agreements. They take issue with the conclusion about the conduct in the settlement agreements that IMAGIN was a market intermediary. The Respondents also take the position that all of the Settling Respondents were forced to testify against them as part of their settlement agreements, and as a result, the Respondents argue that we should reject the testimony of the Settling Respondents. The Respondents also submit that the Settling Respondents never wanted to settle and they allege that Staff coerced the Settling Respondents into settlement agreements.

[33] We note that none of the settlement agreements or orders approving the settlement agreements contain any conditions or requirements to testify at the hearing on the merits. All of the Settling Respondents appeared at the hearing on the merits in conformity with summonses issued pursuant to the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22.

[34] We find that the Settling Respondents were credible witnesses with respect to their description of IMAGIN's day-to-day operations (see: *Springer v. Aird & Berlis LLP* (2009), 96 O.R. (3d) 325 (Sup. Ct.) at paras. 13 to 17). The Settling Respondents gave their testimony under oath at the hearing and they understood that they were required to tell the truth when testifying and agreed to tell the truth when they took that oath.

[35] The Settling Respondents were credible witnesses. The testimony of each settling respondent was consistent with that of the other Settling Respondents and with the testimony provided by Mr. Rooney. Their testimony was also consistent with the evidence put forth by Staff. The only difference was that Staff and the Respondents interpreted the same evidence differently as it relates to the definition of a market intermediary.

[36] Our decision is based on the evidence presented to us at this hearing. We did not rely on the settlement agreements themselves in coming to our determination of this matter. In our view, it is not for this Panel to examine the circumstances surrounding the negotiation of the settlement agreements or to reopen the settlement agreements. We relied on the testimony of the Settling Respondents in relation to their role and job description at IMAGIN, Mr. Rooney's role at IMAGIN and IMAGIN's daily operations. In addition, the documentary evidence as to the job descriptions of various employees corroborates the testimony of the Settling Respondents.

IMAGIN Engaged in Trading of its own Securities

[37] The evidence called by Staff and provided by Mr. Rooney demonstrates that trades by IMAGIN in its own securities took place.

[38] Between early 2003 and July 2006, IMAGIN distributed its securities raising an amount totaling over $14 million from Canadian investors from the sale of its common and preferred shares, and specifically $3.5 million came from Ontario investors. Mr. Rooney's testimony clarified that these facts are not in dispute:

> Q. Do you take any issue with the suggestion that Imagin raised $14 million from the sale of securities between 2003 and July 13, 2006?
>
> A. No.
>
> Q. So you agree with that?
>
> A. Yes.
>
> Q. And you agree that three-and-a-half million of that was from Ontario investors?
>
> A. Yes.
>
> (Transcript, September 9, 2009, 109:14-23)

[39] Mr. Rooney made submissions on behalf of the Respondents admitting to certain conduct. Specifically, Mr. Rooney stated that IMAGIN sold securities to accredited investors. This admission was made at the hearing on the merits on September 10, 2009:

> I was conceding that we did obviously have an effort where we sold securities or our own stock from the treasury to accredited investors. However, I told you that we found those people for another purpose.
>
> (Transcript, Sept. 10, 2009, 27:7-11)

Issuing Shares from Treasury Constitutes a Trade in Securities

[40] The definition of a distribution in subsection 1(1) encompasses "a trade in securities of an issuer that have not been previously issued".

[41] As stated above in paragraph 29 of our Reasons, the Respondents take the position that they were not trading, because IMAGIN shares were issued from treasury.

[42] The Respondents are of the view that selling shares from treasury is not trading as defined by the Act because it is the corporation making the commitment to sell securities as opposed to shareholders of that corporation trading with other purchasers. In their closing submissions, the Respondents emphasized that:

> Imagin started in 2003, and you sold only your issuer's securities, that's all they sold, from treasury.
>
> In 2009 not one, not one, shareholder has ever sold one share - not insiders, nobody. Zero. So that has to tell you that it wasn't for distribution. …
>
> (Transcript, Nov. 11, 2009, 90:19-25)

[43] Moreover, in their written reply submissions at paragraph 58, the Respondents state that:

> …The rules of the OSC use the word "trade" to mean issue, buy, sell, purchase etc. What the regulators did is introduce the concept that a company can trade if they don't deal with securities as if they are like inventory. The point however is that treasury shares are not inventory they are sold from the treasury and represent the evidence of store of value of a company's future. …

[44] The evidence shows that IMAGIN sold securities and the Respondents admit to the sale of securities as discussed above. As established by the definition of a trade set out in subsection 1(1) of the Act, any sale or disposition of a security for valuable consideration constitutes a trade. In this case, it is not disputed that investors paid for IMAGIN securities.

[45] We disagree with Mr. Rooney's submission that a distribution of securities from treasury is not a trade. A distribution of securities is a subset of the broader category of "trade" in subsection 1(1) of the Act, but the plain language of the statute makes it clear that distributions are trades. As a result, we find that IMAGIN securities were traded and that the evidence demonstrates that these securities were sold to investors to raise a total of $14 million, of which $3.5 million was sold to Ontario residents.

Mr. Rooney Engaged in Acts in Furtherance of Trades

[46] In addition, Mr. Rooney's individual actions also establish that he was involved in acts in furtherance of trades of IMAGIN's securities. Many of Mr. Rooney's actions made it possible for IMAGIN to actively sell its securities and helped to prepare a market for the sale of IMAGIN securities. Specifically, Mr. Rooney:

- was responsible for hiring members of IMAGIN's sales team. For example, Mr. McCaffrey testified that Mr. Rooney hired him to work at IMAGIN as Executive Director of Corporate Development (Transcript, May 21, 2009, 14:23 to 15:16).
- was very involved as a manager in IMAGIN's day-to-day business and remained "… completely aware of what was going on in the sales department at all times" (Transcript, May 21, 2009, 40:3-11).
- conducted weekly meetings at which he instructed the sales team, provided updates on IMAGIN and its operations and provided them with fresh material to discuss with potential purchasers of IMAGIN's securities. For example, Mr. Shumacher testified that Mr. Rooney "… would explain developments, good and bad. And he also had a vast amount of experience on Wall Street, and he would – he would be very much in an advisory capacity as far as […] the sale of the securities was concerned in the beginning" (Transcript, June 16, 2009, 39:5-11).
- drafted materials that were sent to investors or issued to the public on behalf of IMAGIN such as subscription agreements (Transcript, May 21, 2009, 25:15 to 26:9).
- met with investors (Transcript, June 16, 2009, 86:9 to 87:16).

[47] Mr. Rooney submits that weekly meetings held at IMAGIN were focused on cancer diagnostic technology developments as they related to IMAGIN and were therefore not acts in furtherance of trades. However, we find that keeping sales persons informed about the company whose securities they are selling is consistent with regular practices in the industry

and likely necessary to sell securities of a company. Mr. Rooney's actions as a whole were directed towards promoting IMAGIN and providing education about IMAGIN's activities in order to solicit sales of IMAGIN securities.

c. Findings

[48] Therefore, we find that through the work of its representatives, IMAGIN engaged in acts in furtherance of trades of IMAGIN securities and actual sales of IMAGIN securities raising a total of $14 million, of which $3.5 million was sold to Ontario residents.

[49] We also find that Mr. Rooney engaged in acts in furtherance of trades of IMAGIN securities by supervising, assisting and managing IMAGIN's sales team in preparing a market for the sale of IMAGIN securities. Therefore, we find that Mr. Rooney engaged in acts in furtherance of trades.

ii. Were the Respondents Registered Under the Act?

a. The Law and Policy with Respect to Registration

[50] The Commission's mandate set out in section 1.1 of the Act is:

(a) to provide protection to investors from unfair, improper or fraudulent practices; and

(b) to foster fair and efficient capital markets and confidence in capital markets.

[51] As explained by the Supreme Court of Canada in *Brosseau v. Alberta*, [1989] 1 S.C.R. 301, securities laws "…in general can be said to be aimed at regulating the market and protecting the general public" (at para. 35).

[52] Registration requirements are one of the means for achieving the purposes of the Act. As set out in section 2.1 of the Act:

> 2.1 The primary means of achieving the purposes of this Act are:
>
> i. requirements for timely, accurate and efficient disclosure of information;
>
> ii. restrictions on fraudulent or unfair market practices and procedures; and
>
> iii. requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

[53] In order for there to be fairness and confidence in Ontario's capital markets it is critical that brokers, dealers and other market participants who are in the business of selling or promoting securities meet the minimum registration, qualification and conduct requirements of the Act.

[54] There are different registration categories for dealer entities and individuals and different types of market activities. These registration requirements play a key role in Ontario securities law. They impose requirements of proficiency, good character and ethical standards on those people and companies trading in and advising on securities. As the Commission stated in *Limelight*, *supra* at para. 135:

> Registration serves as an important gate-keeping mechanism ensuring that only properly qualified and suitable individuals are permitted to be registrants and to trade with or on behalf of the public. Through the registration process, the Commission attempts to ensure that those who trade in securities meet the applicable proficiency requirements, are of good character, satisfy the appropriate ethical standards and comply with the Act.

[55] Therefore, the requirement that individuals and companies be registered to trade and advise in securities is an essential element of the regulatory framework put in place to achieve the purposes of the Act.

b. Discussion

[56] The evidence before us in this matter reveals that neither of the Respondents were registered in any capacity with the Commission. All of the Settling Respondents testified that when the conduct at issue took place, they were not registered with the Commission. Mr. Rooney also admitted to this during the hearing when he was questioned on this issue by Staff:

Q. And you agree that Imagin never filed a prospectus?

A. Correct.

Q. You also agree that Imagin has never been registered with the Commission?

A. Yes.

Q. And that you yourself are not now and nor have you ever been registered with the Commission?

A. That's correct.

Q. And that during the time of 2003 to 2007, none of your employees at Imagin were registered either?

A. That is correct.

(Transcript, September 9, 2009, 109:24 to 110:12)

[57] In addition, Staff provided section 139 certificates which provide a statement as to "the registration or non-registration of any person or company" (subsection 139(a) of the Act). These section 139 certificates, which were prepared by the Assistant Manager of Registrant Regulation at the Commission, confirmed that there is no record of the Respondents ever being registered under the Act.

c. Findings

[58] We find that none of the Respondents in this matter was registered in any capacity with the Commission.

[59] The next section will now examine whether there were any exemptions available to the Respondents to relieve them from the registration requirements under the Act while trading in securities.

iii. Were There Any Exemptions Available to the Respondents?

a. The Law – Availability of Exemptions

The Onus is on the Respondents to Prove They Qualified for an Exemption

[60] As specified in subsection 25(1)(a) of the Act cited above, no person or company shall "trade in a security" unless the person or company "is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer".

[61] However, there are numerous exemptions from the registration requirement. Many of these exemptions for registration also have parallels in the exemptions from the prospectus requirement. Some exemptions are explicitly set out in securities legislation or rules, while other exemptions are granted on a discretionary basis by the Commission.

[62] Once Staff has shown that the Respondents have traded without registration, the onus shifts to the Respondents to establish that one or more exemptions from the registration requirements was available to them (*Limelight*, *supra* at para. 142 and *Re Ochnik* (2006), 29 O.S.C.B. 3929 at para. 67).

[63] During the time when the majority of the conduct in this matter took place, from early 2003 to July 2006, Rule 45-501 *Exempt Distributions* ("Rule 45-501") was in place. This rule provided general exemptions from the registration and prospectus requirements found in sections 25 and 53 of the Act.

[64] Rule 45-501, as it existed during the time when the conduct in this matter occurred, provided different exemptions from registration for issuers themselves as opposed to purchasers of an issuer's securities. In other words, some exemptions were available based on the identity or characteristics of the seller, while other exemptions were available based on the identity or characteristics of the purchaser. The structure of the rule makes it clear that because a registration exemption was available for a sale to a particular purchaser does not by definition mean that the issuer may avail itself of that exemption in all circumstances. As we will see below, certain types of issuers were precluded from using these exemptions to sell their securities (i.e. where the issuer was a market intermediary).

[65] The exemptions which are relevant to the present matter are the accredited investor exemption and the closely-held issuer exemption. These are the exemptions that the Respondents purport to rely on to sell securities of IMAGIN.

[66] The accredited investor exemption is found at section 2.3 of Rule 45-501. Specifically, this section states:

> Sections 25 and 53 of the Act do not apply to a trade in a security if the purchaser is an accredited investor and purchases as principal.

[67] As set out in Rule 45-501, the accredited investor exemption was a frequently used exemption for private placements. Accredited investors do not have the protection of prospectus or registration requirements imposed on sellers when they are purchasing securities.

[68] The term accredited investor (as it existed at the time when the conduct in this matter took place, which is set out in section 1.1 of Rule 45-501), to whom securities may be lawfully distributed without the registration and prospectus requirements, encompasses the following types of buyers: (1) designated institutions, (2) governments (3) persons or companies who meet income or asset tests or who are recognized by the Commission as accredited investors, (4) a promoter of an issuer or a spouse, parent or grandchild, or child of an officer, director or promoter, and (5) control persons of the issuer itself or of affiliates of the issuer. The type of accredited investor whom IMAGIN solicited and to whom it sold securities to was the third type mentioned above.

[69] The closely-held issuer exemption (as it existed at the time when the conduct in this matter took place), was found at section 2.1 of Rule 45-501 and the term closely-held issuer is defined in section 1.1 of Rule 45-501. This exemption was available if the securities of an issuer were beneficially owned, directly or indirectly, by not more than 35 persons or companies (with some other limited exceptions). The rationale for this exemption was that a closely-held issuer may raise capital from a limited class of investors without the cost burden of preparing a prospectus. Accordingly, there was an exemption from the prospectus and registration requirements for closely-held issuers.

Removal of Exemptions for Market Intermediaries

[70] While Rule 45-501 provided the exemptions identified above from sections 25 and 53 of the Act when securities are being traded, it also removed those exemptions in certain circumstances.

[71] In particular, section 3.4 of Rule 45-501 specified that exemptions were not available to market intermediaries:

> **3.4 Removal of Registration Exemptions for Market Intermediaries**
>
> (1) The exemptions from the registration requirement in sections 2.1, 2.2, 2.3, 2.5, 2.6, 2.7, 2.8, 2.9, 2.12, 2.13, 2.14, 2.15 and 2.16 are not available to a market intermediary.
>
> (2) A limited market dealer may act as a market intermediary in respect of a trade referred to in subsection (1).

[72] The core of the allegations made by Staff is that IMAGIN was acting as a market intermediary, and as such, did not have the enumerated registration exemptions available to it when it sold IMAGIN securities to accredited investors.

[73] When the conduct in this matter took place, early 2003 to July 2006, the definition of a market intermediary was set out in section 204 of the Regulation to the Act. It states:

> "market intermediary" means a person or company that engages or holds himself, herself or itself out as engaging in Ontario in the business of trading in securities as principal or agent, other than trading in securities purchased by the person or company for his, her or its own account for investment only and not with a view to resale or distribution, and, without limiting the generality of the foregoing, includes a person or company that engages or holds himself, herself or itself out as engaging in the business of,
>
> (a) entering into agreements or arrangements with underwriters or issuers, in connection with distributions of securities, to purchase or sell such securities,
>
> (b) participating in distributions of securities as a selling group member,
>
> (c) making a market in securities, or

(d) trading in securities with accounts fully managed by the person or company as agent or trustee,

whether or not the person or company engages in trading in securities purchased for investment only.

[74] According to this definition, a person is a market intermediary if he, she or it was engaged in or held himself, herself or itself out as engaging in the business of trading in securities in Ontario as principal or agent. As a result, such an issuer (seller of securities) does not have an available exemption, even though the purchasers of the securities that are sold may qualify as accredited investors.

[75] The removal of the registration exemption for market intermediaries is important because the Commission wants to ensure that entities in the business of trading securities repeatedly are subject to ongoing registration requirements.

b. Discussion

Overview of the Parties' Positions

[76] Staff takes the position that IMAGIN was conducting itself as a market intermediary and therefore did not have access to the accredited investor exemption and/or closely-held issuer exemption for the sale of securities.

[77] Staff does not dispute the admission that IMAGIN dealt with accredited investors. Staff contends that the accredited investor exemption from registration was not available to IMAGIN because it was a market intermediary, in that it retained employees whose primary job function was to actively solicit investors for the purpose of selling securities to them.

[78] According to Staff, IMAGIN was captured by the definition of a market intermediary as set out in section 204 of the Regulation and interpreted in *Momentas* and section 3.2 of the Commission's Companion Policy 45-106 CP ("45-106 CP").

[79] Staff submits that in order to determine whether an issuer fulfills the criteria of a market intermediary, the Commission must find that the issuer's "core business" dealt with the distribution of its securities. Accordingly, Staff submits it is necessary to look at how the issuer markets and sells its securities, and how the marketing and selling of securities fits into the overall activities of the issuer.

[80] Staff acknowledges that IMAGIN may have some aspects of its business that did not involve the distribution of securities (such as IMAGIN's cancer diagnostic technology related activities), however, Staff emphasizes that IMAGIN was focused on selling securities as a core part of its activities, and consequently IMAGIN was a market intermediary and could not access the accredited investor exemption to distribute securities to accredited investors without being registered as a Limited Market Dealer ("LMD").

[81] The Respondents take the position that IMAGIN was not a market intermediary, and they disagree with Staff's characterization that their core business was selling securities. The Respondents submit in paragraph 58 of their written reply submissions that "Raising capital is not a business unless you are an agent raising it for someone else". According to the Respondents, since they were issuing shares from treasury, they were not raising money on behalf of another person/entity and therefore they were not acting as a market intermediary.

[82] In particular, the Respondents attempt to distinguish themselves from the facts at issue in the *Momentas* case by stating that they did not operate a brokerage house and therefore they cannot be categorized as market intermediaries. The Respondents point out that they operated a company which promoted cancer awareness and cancer diagnosis technology. According to the Respondents, cancer education and awareness was the main job focus of the employees at IMAGIN, not the sale of IMAGIN securities.

[83] Specifically, the Respondents submit that IMAGIN was not involved in the business of selling securities, instead IMAGIN was involved in cancer patient acquisition and cancer education. In their written submissions at paragraph 80, the Respondents take the position that:

> …There were many more call centre people than salesmen and the qualifiers knew nothing about selling securities. They all had a substantial knowledge base about cancer and cancer diagnosis. They would later learn about cardiac disease, diagnosis and prevention and then about Alzheimer's and dementia diagnosis using PET. But never were they taught about securities. The call centre was the front line of the cancer awareness, navigation and advocacy campaigns. …

[84] Further, in their written reply submissions at paragraph 62, the Respondents state that "Neither IMAGIN or its employees were in the business of trading in securities".

[85] The Respondents also take the position that they had a registration exemption because they issued shares from treasury and this was not for investment purposes and not for resale. In their written submissions at paragraph 101, the Respondents emphasize that "As of 2009, not one IMAGIN shareholder has ever "re-sold" one IMAGIN share". Further, in their written reply submissions at paragraph 57, the Respondents argue that there is an:

> …exception which allows an entity not to be deemed a market intermediary [which] states "other than trading in securities purchased for (the entity's) own account for investment only and not with a view to resale or distribution". This position defines an activity which standing alone would not position an entity into a characterization as a market intermediary.

[86] Further, the Respondents argue that they were under the impression that they were acting properly since the Commission accepted their private placement filings and fees.

[87] In the alternative, the Respondents argue that even if they had to register, the requirement to register as an LMD was inappropriate. The Respondents contend that LMDs had reputation and compliance problems and that registering as an LMD or working with an LMD would hinder IMAGIN's capital raising activities. Specifically, the Respondents state at paragraphs 12 and 14 of their written submissions that:

> IMAGIN made a conscious decision not to become an LMD because the rules were not designed such that it was practical and did not appear to be the intent that a private start-up company should become an LMD in order to raise capital. An outside LMD is okay to help but finding a qualified, compliant LMD in Ontario was like finding a needle in a haystack. Besides under 45-501 exemption [sic], an LMD is redundant and perhaps a major negative.
>
> …
>
> It was determined at an early stage after the founding of IMAGIN that rules [sic] as they related to IMAGIN becoming an LMD would eliminate the ability of IMAGIN to rely on the accredited investor exemption. It is unacceptable [sic] and unnatural structure for everybody in a start-up to work for an LMD. That structure would eliminate the ability of any start-up to arise [sic] capital with disclosure of a corporate structure as an LMD first and an operating company second.

IMAGIN is a Market Intermediary

[88] In our view, IMAGIN fell into the category of a market intermediary. Therefore, it was unable to benefit from the accredited investor exemption and closely-held issuer exemption (and other exemptions provided in section 3.4 of Rule 45-501) to distribute its securities without being registered.

[89] The definition of a market intermediary has a number of components. There is an exception contained within the definition which allows an entity not to be deemed a market intermediary in circumstances where there is "trading in securities purchased by the person or company for his, her or its own account for investment only and not with a view to resale or distribution…". The Respondents argue that they were not captured by the definition of a market intermediary based on these words. We note that this exception from the definition of a market intermediary applies only in circumstances where the entity purchases securities not when they sell them. As a result, the Respondents, who sold securities, cannot use this exception.

[90] In order to come to our conclusion that IMAGIN was acting as a market intermediary at the relevant time, we assessed the extent to which IMAGIN was "engaging in Ontario in the business of trading in securities as principal" (section 204 of the Regulation to the Act) of its own securities.

[91] We reviewed the case law referred to us by the parties in their oral and written submissions. Both Staff and the Respondents referred us to the *Momentas* case. The Commission has interpreted the definition of a market intermediary (in section 204 of the Regulation to the Act) in the *Momentas* case and concluded that where an issuer retains an employee primarily for the purpose of soliciting purchasers for the issuer's securities, both the issuer and the employee are considered to be in the business of selling securities and as such both are market intermediaries.

[92] The facts were as follows in *Momentas*: through the sale of its Convertible Debentures, and in acting as a "professional trader" of equities and foreign currencies using funds raised from investors through the sale of its Convertible Debentures, Momentas acted as a market intermediary, and was required to be registered pursuant to subsection 25(1)(a) of the Act. Momentas employed and paid its staff to sell its own securities, and this made Momentas a market intermediary regardless of its other businesses.

[93] Momentas had an internal department employing a significant number of employees for raising capital. As stated in *Re Momentas* (2005), 28 O.S.C.B. 6493 ("*Momentas TCTO*") at paragraph 33:

> It has hired and remunerated a significant number of employees (approximately 70% of its workforce) for the sole purpose of raising capital. It is carrying on, internally, the business of raising funds, rather than relying on the efforts of others in the business of raising funds. This alone is sufficient to constitute Momentas a market intermediary.

[94] In order to determine if IMAGIN was captured by the definition of a market intermediary, we assessed how IMAGIN was organized and the role played by the selling of securities in that business. This approach requires an examination of the totality of the evidence provided to us in relation to the issuer to determine how the business of the issuer was organized.

[95] In our view, some indicators that are very helpful to illustrate the business functions of an issuer include: the number of employees engaged in a certain activity, the amount of time spent on a certain activity, the job descriptions of employees and the way employees are compensated for their work.

[96] The way IMAGIN structured its activities demonstrates that employees were instructed to contact companies and individuals to solicit investment in IMAGIN shares. We received in evidence a document entitled "Employee List and Job Descriptions" which provided helpful insight. The "Employee List and Job Descriptions" states that as of February 23, 2006, IMAGIN had 23 employees. Ten of these employees were listed as working full-time in the "Shareholder Relations and Patient Acquisition Department". According to the job description document provided in evidence, one of the tasks of these employees was described as follows:

> …this department currently qualifies primarily business owners and CEO's as accredited and/or eligible investors for individuals outside of Ontario.

[97] The "Employee List and Job Descriptions" also states that IMAGIN had five individuals working in the "Corporate Development Department". It also provides a job description for each individual in that department and states that Mr. Rooney, Mr. Smith, Mr. Zelynony and Mr. Harris had the title "Managing Director of Corporate Development" and Mr. Schumacher had the title "Supervisor of Shareholder Relations Dept" and Mr. McCaffrey had the title "Executive Director of Corporate Development".

[98] Taking into consideration the role and job description of the "Shareholder Relations and Patient Acquisition Department" employees and the "Corporate Development" employees, the evidence demonstrates that 15 out of 23 employees of IMAGIN's Toronto staff were employed to assist in the sale of IMAGIN securities.

[99] The evidence demonstrates that certain steps were involved in the process of selling securities: first, qualifiers cold-called potential investors, then sales persons requalified potential investors contacted by the qualifiers, then sales persons would sell IMAGIN securities to the investors. Afterwards, other sales persons would follow up with IMAGIN investors to sell them additional IMAGIN securities. We heard detailed evidence about the different steps in this process. In addition, we note that in documents produced for the Government of Canada, IMAGIN described the occupation of departing members of its sales staff as "Sales Person".

[100] The testimony of the Settling Respondents demonstrates that IMAGIN's distribution of securities was accomplished using a cold-call system of telephone solicitation executed by qualifiers and a sales team. For the majority of the relevant time, this team operated out of IMAGIN's Toronto offices until moving to Vancouver in February 2006. It is evident from the testimony of the Settling Respondents that this was a systematic process put into place to solicit sales of IMAGIN securities (to new and existing IMAGIN shareholders) and this was their main job function.

[101] Qualifiers would use purchased lists such as infoCANDA.ca and Scott Directories which contained names of companies, information regarding the size of companies, individual names and phone numbers to contact potential investors. Mr. Shumacher testified that when he took on the qualifying management role in June 2005, there were approximately 14 qualifiers, and later this number dropped to about seven qualifiers. These qualifiers would determine: (1) whether investors were accredited investors, and if so, (2) whether they were interested in purchasing IMAGIN securities. Potential investors who met both criteria were advised by the qualifier that a sales person would contact them. Mr. Shumacher testified that he was asked to manage the qualifying room in June 2005.

[102] Sales persons would then follow up, requalify the investors and attempt to complete a sale of IMAGIN securities. Four employees were given the title of "Managing Director of Corporate Development". These employees would take over where the qualifiers left off, and would sell IMAGIN securities to interested accredited investors.

[103] Further, as we heard from the testimony of Mr. Zelyony, some of the "Managing Directors of Corporate Development" conducted further sales to existing investors. This formed an important component of the work Mr. Zelyony did for IMAGIN. His testimony stated:

Q. Did you conduct any transactions with any of these existing shareholders?

A. With some I did.

Q. And how frequently would that happen?

A. Like I've said before, it wasn't a frequency because there would be a week where – no selling. But, you know, it's hard to give a number, how frequently. I was there for a year, so there was months you know, where there was –

Q. Okay.

A. Yeah.

Q. Let me put the question to you in different terms. If you could – if you could give us a percentage of your time that you spent dealing with the sale of Imagin securities.

A. I believe the percentage – like I said before when I spoke to you, it's hard to pinpoint a specific percentage, but I think 70/30 would be fair to say, and that 70, I would say, dealing with shareholders. Would be difficult – I would struggle to say it's all selling, all selling.

Q. Some of it would be providing them with information about –

A. Correct.

Q. – the company's activities, and sometimes that would lead to the sale of shares.

A. Could, yes.

Q. All right. And you spent approximately 70 percent of your time doing that.

A. I would say that.

(Transcript, June 18, 2009, 12:12 to 13:16)

[104] We see from Mr. Zelyony's testimony that although selling was not the only activity taking place, for a portion of time, "Managing Directors of Corporate Development" focused on providing information about the company to existing shareholders not only to keep them abreast of IMAGIN's activities in cancer diagnostic technologies but also with the objective that this continuing dialogue with current IMAGIN shareholders would result in further sales of IMAGIN securities.

[105] We were provided with evidence that the main focus of employee activity was completing sales of IMAGIN securities. We heard testimony that the sales persons did not want to "waste their time" with individuals who were not eligible to purchase IMAGIN securities. For example, Mr. Shumacher testified that:

> So the salesmen would want to make sure that they were not going to waste a whole lot of time on someone that ultimately would end up being not accredited.
>
> So the salesmen would want to find out themselves. They'd want to make sure themselves that that person was accredited. …
>
> (Transcript, June 16, 2009, 147:11-17)
>
> …but typically, salesmen would want to make sure that they weren't wasting their time on somebody who was interested – potentially interested in buying stock but was not accredited.
>
> (Transcript, June 16, 2009, 148:1-4)

[106] In the sales team, certain individuals were classified as "openers" because they solicited the original purchase of IMAGIN shares. Other individuals on the sales team were classified as "up-sellers" because they were involved with soliciting additional purchases of IMAGIN shares from existing shareholders. This process was explained by Mr. Shumacher in his testimony as follows:

Q. Okay. Now, did Mr. Smith and Mr. Harris and Mr. Zelyony and Mr. McCaffrey have the same kind of role, or did they fill different functions in the sales?

A. Different functions. Mr. McCaffrey and Mr. Zelyony, they were involved in what's called up-selling.

Q. Okay.

A. So they spoke to existing Imagin shareholders.

Q. Okay. With what intention?

A. Well, with the intention of selling more stock if they were – if the individuals were so disposed, but also – but also in disseminating information about what was going on with the company. Whether these individuals were going to buy more stock or not, there was a communications function that was involved as well.

Q. You indicated Mr. McCaffrey and Zelyony were what you referred to as up-sellers. What about Mr. Smith and Mr. Harris?

A. No. They were not up-sellers. They continued to open accounts.

Q. Would you call them openers?

A. Yes – yeah, I would. I would.

(Transcript, June 16, 2009, 32:16 to 33:15)

[107] Mr. McCaffrey, who held the title of "Executive Director of Corporate Development", confirmed in this testimony that he was "in charge of sales" (Transcript, May 21, 2009, 14:11-13) and supervised the sales team at IMAGIN.

[108] Staff also submits that some of IMAGIN's remaining eight employees were administrative staff who helped and supported the qualifiers and sales team and IMAGIN's overall marketing and selling activities. We find that this submission is supported by the documentary evidence. For example, some of IMAGIN's administrative support staff signed Compliance Records relating to the sale of IMAGIN securities and their names were listed as "Compliance Officers". In addition, we heard testimony from Mr. Rooney and the Settling Respondents that the administrative Staff assisted with preparing documents for IMAGIN relating to its securities.

[109] The Respondents submitted that when qualifiers and sales persons called potential investors and/or existing investors, they called to inform them about relevant cancer issues and not to sell securities to them. For example, at paragraph 25 of the Respondents' written submissions, the Respondents state that:

> "Cancer was first". Mr. Zelyony testified that cancer diagnosis was the most important element of what salesmen at IMAGIN sold.

[110] The Respondents characterized the cold-calls by IMAGIN employees as "cancer patient acquisition" and not sales and/or trades of IMAGIN securities. According to the Respondents, IMAGIN's employees were engaged in "cancer awareness" and were knowledgable about cancer and that was their job. As stated by the Respondents at the hearing:

> … our call centre people knew and know nothing about the sale of securities. You will hear – but we will contend they're very educated and knowledgeable about cancer diagnosis.
>
> (Transcript, May 19, 2009, 83:15-18)

[111] Staff on the other hand take the position that IMAGIN employees cold-called individuals and companies to speak to them about cancer and cancer diagnostic technology in order to create an interest in IMAGIN's business so as to subsequently sell IMAGIN securities.

[112] We note that the evidence in this matter shows that until November 2005, IMAGIN employees never followed up with people who were interested in learning about cancer diagnostic technologies but not interested in investing. This demonstrates that IMAGIN's employees were paying attention to people with an interest in investing in IMAGIN securities.

[113] We agree with Staff's submission that IMAGIN's "cancer awareness campaign" was a campaign that prepared a market for the sale of IMAGIN's securities. This is evident from Mr. Shumacher's testimony:

> When I started, I was involved in the selling of securities. The thing is that I would say that we had a massive education process in front of us at the time because the vast majority of people in Canada did not know what PET was, and I think that many of us felt that while the selling of securities was the means to the end, that we had to educate the public…
>
> (Transcript, June 16, 2009, 21:15-21)

[114] At marketing meetings led by Mr. Rooney, IMAGIN employees discussed company updates to gain in-depth knowledge of IMAGIN's work related to cancer diagnostic technology. Mr. Rooney submits that the sales persons knew "… nothing about the sale of securities. … but … they're very educated and knowledgeable about cancer diagnosis" (Transcript, May 19, 2009, 83:15-18) and as a result the core business of IMAGIN was cancer diagnostic technology and not selling securities. However, knowing about cancer diagnostic techniques is consistent with qualifiers and sales persons marketing and selling their product, that is, IMAGIN securities. Successful sellers know and understand their products well, and by being trained in the use of cancer diagnostic technology, IMAGIN qualifiers and sales persons were able to successfully target potential investors, educate them about IMAGIN and sell them IMAGIN securities.

[115] In our view, providing educational information about IMAGIN to individuals furthered or promoted the sale of IMAGIN's securities. This is evident from Mr. McCaffrey's answers to Staff's questions during direct examination:

> Q. If one of those salespeople or if you called an investor and made a presentation to that investor and did not ultimately made a sale, were you compensated in any way for that presentation?
>
> A. No. No. The process of sales required educating people about what we were doing, about what the company was about, about building a company that could bring PET scanning into Canada. Most Canadians did not know what a PET scan was.
>
> Q. They wouldn't buy the securities unless you explained all that to them in advance.
>
> A. I don't know why they would.
>
> (Transcript, May 21, 2009, 24:16 to 25:3)

[116] In addition, IMAGIN's compensation structure demonstrates that IMAGIN employees were remunerated based on the sale of IMAGIN securities.

[117] Until November 2005, members of IMAGIN's sales team were compensated on the basis of a commission of 10% of the total value of the securities they sold. This was confirmed by documentary and oral evidence regarding the incomes earned by the Settling Respondents. For example, Mr. Smith testified that his income was "…commission based. It was 10 percent. So 10 percent of whatever the total was that the client invested" (Transcript, June 18, 2009, 135:12-14). This was also confirmed by the testimony of Mr. Zelyony and Mr. McCaffrey. However, Mr. McCaffrey also explained that some time later (December of 2006), there was a change in his remuneration and that he was compensated on a salary basis of $5,000 per week from then on.

[118] The Respondents submit that the payment of a 10% Commission was a coincidence and that in any event, the commission payment structure at IMAGIN was changed in November 2005. However, we find that the evidence demonstrates that although the remuneration structure was changed, the remuneration still compensated employees based on their sales performance, and the salary was a draw from future commissions. This is evident from Mr. Shumacher's answers to Staff's questions about his compensation after November 2005:

> Q. Okay. Now, did that – that commission structure, was that true all along for the sales staff, or did that ever change?
>
> A. Well, there were some changes made after the rules changed. November '05, there was some rejigging of the structure.
>
> Q. Can you explain what you mean by rejigging?
>
> A. Well, what happened was that the salespeople receive an amount – a standard amount. I think there were – there were two – if I remember correctly, there were two amounts

> decided upon, depending on what the salesperson's history was, and that is the amount they would receive on a weekly basis. And there would be adjustments made based on their sales record after that.
>
> Q. And did that result in a significant pay difference from when people were working on commission?
>
> A. No, I wouldn't say so. I guess the only real exception to that would be for those salesmen who weren't producing, because for a period of time, they would be paid not on the basis of a commission, but just paid a standard amount.
>
> Q. And would their pay in weeks where they didn't sell much in the way of securities –
>
> A. No, they would be paid – weeks they sold no securities, they would still get that standard amount.
>
> Q. And – okay. Was that a salary, or was that something they would have to pay back later out of –
>
> A. Yeah, I mean, I would – the way I understood it, I would characterize it as a draw.
>
> Q. But what do you mean by a draw?
>
> A. A draw meaning a draw against future sales.
>
> (Transcript, June 16, 2009, 35:1 to 36:11)

[119] Based on the evidence regarding compensation at IMAGIN, we find that the commission compensation structure demonstrates that there was an incentive for IMAGIN employees to sell IMAGIN securities. Especially, up until November 2005, if sales persons did not sell, then they were not paid, and after November 2005, the testimony at the hearing reveals that salary was treated as a draw against future sales. The evidence also shows that IMAGIN sales persons were not compensated for calls where they talked about cancer and did not achieve a sale of securities.

[120] To summarize, the evidence shows that IMAGIN was organized to distribute securities. We recognize that selling securities may not have been the only job function of IMAGIN employees, and they may not have engaged in selling IMAGIN securities 100% of the time. However, taken as a whole, there was a team of employees at IMAGIN that was involved in a systematic process to market and solicit sales in IMAGIN securities. As long as there is a predominant function at an entity to distribute securities in an organized fashion (even though the entity might also have other business purposes at the same time), that entity is captured by the definition of a market intermediary.

[121] As a result, we find that IMAGIN is captured by the definition of a market intermediary because it was "engaging in Ontario in the business of trading in securities as principal" (section 204 of the Regulation to the Act).

Further Arguments Concerning the Definition of an Accredited Investor

[122] The Respondents argue that they were not market intermediaries because they only sold IMAGIN securities to accredited investors. According to the Respondents, accredited investors do not form part of the public. They submit that Rule 45-501 created the category of accredited investors to hive them off from the general public. Specifically, the Respondents' written submissions on the merits at paragraph 60 state that:

> At no time has IMAGIN ever distributed securities to the public. The rules of the OSC are clear that accredited investors are not considered members of the public. The definition of the parties that qualify as accredited investors as laid out in Part 1 – Definitions in 45-501 and list 28 defined categories itemized by (a) to (z) plus (aa). 28 entities as Accredited investors, each entity is clearly not a member of the public.

[123] The Respondents take the position that since they never dealt with the public, they did not have to be registered and they could rely on the accredited investor exemption. The Respondents referred to 45-106 CP, which was introduced on September 14, 2005 (towards the end of the period at issue in this matter). The Respondents refer to section 3.2 of 45-106 CP, which addresses market intermediaries and states:

> ...
>
> The Ontario Securities Commission takes the position that if an issuer retains an employee whose primary job function is to actively solicit members of the public for the purposes of selling the issuer's securities; the issuer and its employee are in the business of selling securities. Further, if an issuer and its employees are deemed to be in the business of selling securities the Ontario Securities Commission considers both the issuer and its employees to be market intermediaries.

[124] Staff disagrees with IMAGIN's position that accredited investors are not part of the public. In particular, Staff points out at paragraph 58 of their written reply submissions that "There is simply nothing in the Act to support the Respondents' contention that an accredited investor is not a member of the public". However, Staff argues that even if accredited investors were considered not to be part of the public, section 3.4 of Rule 45-501 (as it existed when the conduct in this matter took place) specified that exemptions (such as the accredited investor exemption found at section 2.3 of Rule 45-501) did not apply to market intermediaries.

[125] We have reviewed the wording of the Act and Rule 45-501, which were the relevant legal provisions in force during the period of time when the conduct in this matter took place. In the four corners of the Act and Rule 45-501, there is no definitive statement that provides that accredited investors are not part of the public. In any event, we emphasize that under the Act and Rule 45-501, businesses that fall into the category of market intermediary may not use the accredited investor exemption to distribute securities without registration.

Limited Market Dealers

[126] Subsection 3.4(2) of Rule 45-501 created another exception to the prohibition on a market intermediary using the enumerated exemptions. An issuer could access the exemptions (including the accredited investor exemption), if they were registered as an LMD.

[127] However, IMAGIN was not registered as an LMD and the Respondents deliberately chose not to register as an LMD. As stated in their written submissions at paragraph 12:

> IMAGIN made a conscious decision not to become an LMD because the rules were not designed such that it was practical and did not appear to be the intent that a private start-up company should become an LMD in order to raise capital. An outside LMD is okay to help but finding a qualified, compliant LMD in Ontario was like finding a needle in a haystack. Besides under 45-501 exemption [sic], an LMD is redundant and perhaps a major negative.

[128] Further, at paragraph 14 of their written submissions the Respondents state:

> It is unacceptable and unnatural structure for everybody in a start-up to work for an LMD. That structure would eliminate the ability of any start-up to arise [*sic*] capital with disclosure of a corporate structure as an LMD first and an operating company second.

[129] Subsection 3.4(2) of Rule 45-501 created a mandatory requirement that market intermediaries needed to register as an LMD if they wanted to access the exemptions in Rule 45-501. This is consistent with the overall policy objective that those engaged in repeated trading of securities be registered in some capacity with the Commission.

[130] The Respondents cannot unilaterally decide that the LMD registration requirement should not have applied to them because it would hinder their ability to raise capital. Individuals who want to conduct business in Ontario's capital markets need to abide by the mandatory laws and rules put in place to govern Ontario's capital markets.

[131] As a result, we find that if IMAGIN, as a market intermediary, wanted access to the exemptions in Rule 45-501, it had to comply with subsection 3.4(2) of Rule 45-501 and register as an LMD. The Respondents' submission that LMDs did not have a good reputation is not an acceptable defence for not following the law.

c. Findings

[132] Based on the analysis in paragraphs 88 to 121 of our Reasons, we find that IMAGIN was a market intermediary. By examining the business of IMAGIN, we find that the majority of employees at IMAGIN were engaged in some aspect of selling securities to the public and their compensation was in the form of commission based on their sale of IMAGIN securities. Since during the relevant time, IMAGIN was a market intermediary, it could not access the accredited investor or closely-held issuer exemptions pursuant to section 3.4 of Rule 45-501.

2. Pursuant to section 129.2 of the Act, was Mr. Rooney a *de facto* Officer and Director of IMAGIN who Authorized, Permitted or Acquiesced in IMAGIN's Breaches of Ontario Securities Law?

i. The Law

[133] According to section 129.2 of the Act, a director or officer is deemed to be liable for a breach of securities law by the issuer where the director or officer authorized, permitted or acquiesced in the issuer's non-compliance with the Act. Specifically, section 129.2 states:

> 129.2 For the purposes of this Act, if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario securities law, whether or not any proceeding has been commenced against the company or person under Ontario securities law or any order has been made against the company or person under section 127.

[134] In subsection 1(1) of the Act, a "director" is defined as "a director of a company or an individual performing a similar function or occupying a similar position for any person" and an "officer" is defined as:

(a) a chair or vice-chair of the board of directors, a chief executive officer, a chief operating officer, a chief financial officer, a president, a vice-president, a secretary, an assistant secretary, a treasurer, an assistant treasurer and a general manager,

(b) every individual who is designated as an officer under a by-law or similar authority of the registrant or issuer, and

(c) every individual who performs functions similar to those normally performed by an individual referred to in clause (a) or (b).

[135] A *de facto* director has been characterized by the case law as "one who intermeddles and who assumes office without going through the legal formalities of appointment" (*Canadian Aero Service Ltd. v. O'Malley* (1969), 61 C.P.R. 1 (Ont. H.C.)).

[136] The test for determining if a person is a *de facto* director or officer was referred to by the Alberta Securities Commission in the case *Re World Stock Exchange* (2000), 9 A.S.C.S. 658 (Alta. Sec. Com.):

> In each case, it is the entirety of the alleged director's involvement that must be considered in the context of the company's activities. No individual factors are necessarily determinative. The test is whether, under the particular circumstances, the alleged director is an integral part of the mind and management of the company.
>
> (*Re World Stock Exchange*, *supra* cited in *R. v. Boyle*, [2001] Carswell Alta. 1143 (Prov. Ct.) at para. 98)

[137] *Re World Stock Exchange* also lists several factors that have been identified as relevant to the determination of whether an individual is a *de facto* officer or director such as:

(a) appointing nominees as directors;

(b) being responsible for the supervision, direction, control and operations of the company;

(c) running the company from their office;

(d) having signing authority over the company's bank account(s);

(e) negotiating on behalf of the company;

(f) being the company's sole representative on a trip organized to solicit investments;

(g) substantially reorganizing and managing the company;

(h) selecting the name of the company;

(i) arranging a public offering; and/or

(j) making all significant business decisions.

[138] Essentially, the term *de facto* officers and directors is meant to capture persons who have avoided liability by arranging for others to be named under the formal title of officer and/or director. All the while, it is the *de facto* officer and/or director who maintains control over the affairs of the company and exercises the powers of a director and/or officer.

[139] The language of section 129.2 also uses the terms "authorize", "permit" and "acquiesce". "Acquiesce" means to agree or consent quietly without protest. "Authorize" means to give official approval or permission, to give power or authority or to give justification. "Permit" means to allow, consent, tolerate, give permission or authorize permission particularly in writing.

ii. Discussion

[140] Staff takes the position that Mr. Rooney is responsible under section 129.2 of the Act as a *de facto* officer and director who authorized, permitted or acquiesced in IMAGIN's breaches of the Act.

[141] In their written submissions the Respondents admit that Mr. Rooney was in charge at IMAGIN and that he was a *de facto* officer and director. Specifically, the Respondents' written submissions state:

> The Respondents start by conceding that Rooney was in fact a defacto [*sic*] officer of IMAGIN and since February of 2007 the sole director and CEO of IMAGIN.
>
> (Respondents' written submissions at para. 4)
>
> Patrick Rooney grew over time to become the most prominent "directing mind and visionary" behind every aspect of IMAGIN's business including the sale of its securities to accredited angel investors.
>
> (Respondents' written submissions at para. 42)

[142] In addition, we note that in paragraphs 35 and 75 of the Respondents' written submissions, Mr. Rooney is referred to as the "mind and management of IMAGIN" and in paragraph 65, Mr. Rooney is referred to as the CEO of IMAGIN. Also, in paragraphs 145 and 250 of the Respondents' written submissions, it states that Mr. Rooney was a *de facto* officer and director of IMAGIN.

[143] Further, the evidence in this matter overwhelmingly demonstrates that Mr. Rooney was a *de facto* officer and director of IMAGIN and this evidence fulfills the factors listed for a *de facto* officer and director set out in *Re World Stock Exchange*.

[144] First of all, Mr. Rooney appointed nominees and directors. For example, Mr. Rooney appointed Ms. Jordan as the signing authority of IMAGIN. While Ms. Jordan held the title of CEO of IMAGIN, it is clear she was not the mind and management behind the company. This is evident from the following testimony of Mr. Shumacher:

> Q. What sort of role did you observe [Ms. Jordan] in as the CEO?
>
> A. Well, in my view, it was a somewhat cursory one. It's not the way – it's not what I would envisage a typical CEO doing. I mean, she signed – she signed the cheques. When press releases went out, quotes were attributed to her. There may have been some – and she did attend – she did attend some IMAGIN functions.
>
> There may have been things that she did behind the scenes that I wasn't – that I wasn't aware of. I'll just say the general perception certainly was always that Mr. Rooney was the one who was in charge.
>
> (Transcript, June 16, 2009, 41:4-15)

[145] Mr. Schumacher's testimony was also consistent with the testimony given by the other Settling Respondents on this issue.

[146] Ms. Jordan's testimony revealed that she often did not have knowledge of what was happening at IMAGIN and did not have knowledge of statements that were attributed to her in press releases regarding IMAGIN's business activities.

[147] In fact, Mr. Rooney was the directing mind and management of IMAGIN and responsible for the supervision, direction, control and operation of IMAGIN. For example, Mr. Shumacher described Mr. Rooney's role as follows:

> Well, Mr. Rooney was the visionary. He was the individual who – whose concept this was, that the company was fulfilling. So I would describe him as performing the duties that you would expect from a CEO.
>
> (Transcript, June 16, 2009, 27:17-21)
>
> [Mr. Rooney was] Very hands-on. Wanted to know what was going on in every function and department of the company, although I would say that with respect to the sales and qualifying operation, although he was keenly interested in what was going on, and the view was always he was the ultimate one in authority, that he delegated much of that responsibility in terms of sales and qualifying to Allan McCaffrey.
>
> (Transcript, June 16, 2009, 28:18-25)

[148] Further, Mr. Smith testified that "Pat Rooney was definitely the directing mind" (Transcript, June 18, 2009, 137:24-25), and Mr. McCaffrey testified that Mr. Rooney was "very involved in the day-to-day affairs of the company" (Transcript, May 21, 2009, 40:7-8) and "was completely aware of what was going on in the sales department at all times" (Transcript, May 21, 2009, 40:10-11).

[149] Mr. McCaffrey's testimony also confirmed that Mr. Rooney had the ultimate authority at IMAGIN:

> Q. So who did Mr. Rooney report to?
>
> A. Himself.
>
> Q. Did Mr. Rooney ever report to you about anything in terms of –
>
> A. I think the word "report" is wrong. We discussed situations and aspects of the business.
>
> Q. Who had the higher authority in the company, you or Mr. Rooney?
>
> A. Mr. Rooney.
>
> (Transcript, May 21, 2009, 36:3-12)

[150] Based on this evidence, we reject Mr. Rooney's submission that he and Ms. Jordan were equal partners. The testimony of the individuals who worked at IMAGIN established that Mr. Rooney was in charge at IMAGIN and had control of IMAGIN's activities.

[151] Mr. Rooney also had control of the company's finances, and in fact it was Mr. Rooney who delegated his signing authority to Ms. Jordan, his nominee CEO. As explained in Mr. Shumacher's testimony during the hearing:

> … [Mr. Rooney] exercised control over the finances. I don't believe during my time there that he actually had signing authority as far as the cheques were concerned, but he did exercise control.
>
> (Transcript, June 16, 2009, 28:1-4)

[152] In addition, Mr. Rooney granted stock options to employees under his own authority. Mr. McCaffrey testified that his options were issued on Mr. Rooney's authority (Transcript, May 21, 2009, 45:1-4).

[153] Mr. Rooney also negotiated on behalf of IMAGIN. This is evident from Mr. Rooney's answers during Staff's cross-examination:

> Q. Mr. Rooney, you've throughout our evidence in this proceeding talked about many, many transactions and you've referred to them as deals you made on behalf of Imagin, whether it's buying other companies, buying shares of other companies, joint ventures, buying facilities, building facilities. I'm speaking in generalities but I think you understand what I'm talking about.
>
> A. Right.
>
> Q. It was you who went out and arranged them. You said that was your job to find those deals?

A. That was my job. That's what the director of corporate development does, whether it's for General Motors or anybody else. They make the deals and the CEO usually makes speeches, …

(Transcript, Sept. 9 2009, 90:4-19)

[154] Mr. Rooney also testified that he was responsible for substantially reorganizing and moving the company to Vancouver:

Q. And in February 2006 you moved the sales office to Vancouver, didn't you?

A. Well, I moved the entire company. I re-filed, at some point re-filed as a federal company. …

(Transcript, Sept. 10 2009, 18:11-15)

[155] Overall, the testimony in this matter demonstrates that Mr. Rooney authorized, permitted and acquiesced in many of IMAGIN's activities relating to IMAGIN's finances. All the Settling Respondents confirmed during their testimony that Mr. Rooney was in charge of significant business decisions for IMAGIN (such as moving the office) and was the directing mind and management behind IMAGIN's activities. Mr. Rooney was recognized as the ultimate authority by everyone at IMAGIN.

[156] As set out in paragraphs 46 and 47 of our Reasons, Mr. Rooney was completely aware of and keenly interested in the sale of IMAGIN securities, and he was very involved with the promotion, solicitation and sale of IMAGIN securities. He authorized, permitted and acquiesced in the conduct of IMAGIN's employees to solicit and sell IMAGIN securities. In addition, Mr. Rooney also supervised, assisted and managed IMAGIN's sales team.

iii. Findings

[157] We find that Mr. Rooney made, or was substantially involved in, every major decision of IMAGIN, and as such, he was clearly the centre of the corporate personality of IMAGIN and its controlling mind. Much of the executive authority for the operation of IMAGIN was effectively delegated to Mr. Rooney.

[158] Therefore, pursuant to section 129.2 of the Act, Mr. Rooney was a *de facto* officer and director of IMAGIN who authorized, permitted and acquiesced in IMAGIN's conduct and is liable for IMAGIN's breaches of Ontario securities law.

D. CONCLUSION

[159] For the reasons stated above we find that:

1. IMAGIN and Mr. Rooney breached subsection 25(1)(a) of the Act because they:
   i. engaged in trading and acts in furtherance of trades;
   ii. were not registered; and
   iii. did not qualify for any of the registration exemptions under the Act.
2. Mr. Rooney was a *de facto* officer and director of IMAGIN who authorized, permitted and acquiesced in IMAGIN's breaches of Ontario securities law pursuant to section 129.2 of the Act.

[160] The parties are directed to contact the Office of the Secretary within the next 10 days to set a date for a sanctions hearing, failing which a date will be set by the Office of the Secretary.

Dated at Toronto this 31st day of August, 2010.

"Mary G. Condon"

"Margot C. Howard"

3.1.2 Global Partners Capital et al. – s. 127

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

AND

IN THE MATTER OF
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 alsoknown as Michael Gahunia or Shawn Miller,
BASIL MARCELLINIUS TOUSSAINT also known as Peter Beckford, and
RAFIQUE JIWANI alsoknown as Ralph Jay

REASONS AND DECISION
(Section 127 of the Act)

Hearing:	May 25, 28 and 29, 2009 June 1 and 2, 2009		
Decision:	August 31, 2010		
Panel:	Suresh Thakrar	–	Commissioner and Chair of the Panel
	Paulette L. Kennedy	–	Commissioner
Counsel:	Matthew Boswell	–	For Staff of the Commission
	Aaron Rosseau	–	For Kit Ching Pan and Hau Wai Cheung
			No one appeared for the other respondents.

TABLE OF CONTENTS

REASONS AND DECISION

I. BACKGROUND

A. OVERVIEW

[1] This was a hearing on the merits before the Ontario Securities Commission (the "**Commission**") pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") to consider whether Global Partners Capital ("**GPC**"), Asia Pacific Energy, Inc. ("**Asia Pacific**"), 1666475 Ontario Inc., operating as "Asian Pacific Energy" ("**1666475**"), Alex Pidgeon ("**Pidgeon**"), Kit Ching Pan, also known as Christine Pan ("**Pan**"), Hau Wai Cheung, also known as Peter Cheung, Tony Cheung, Mike Davidson, or Peter McDonald ("**Cheung**"), Gurdip Singh Gahunia, also known as Michael Gahunia or Shawn Miller ("**Gahunia**"), Basil Toussaint, also known as Peter Beckford ("**Toussaint**") and Rafique Jiwani, also known as Ralph Jay ("**Jiwani**") (collectively, the "**Respondents**") breached the Act and acted contrary to the public interest.

[2] On September 4, 2008, a Statement of Allegations was filed by Staff of the Commission ("**Staff**") and a Notice of Hearing was issued by the Commission. Staff alleges that between February 2006 and October 2007 (the "**Material Time**"), the Respondents were involved in a scheme to market and issue securities of Asia Pacific. Asia Pacific securities were sold to over 110 investors, raising a total of over US $2.2 million. The investors were primarily located in the United States, but there were also investors in the United Kingdom, the Caribbean, New Zealand, Singapore and Ontario.

[3] Staff alleges that the Respondents were involved in fraudulent and misleading activities related to the issuance of these securities, for which registration and prospectus requirements were not met, and for which the Respondents did not claim any exemptions under Ontario securities laws relating to the sale and distribution of securities. Staff alleges illegal representations and undertakings were made to investors with the intention of effecting trades in Asia Pacific securities. Staff further alleges that the Respondents' conduct was contrary to the public interest.

B. HISTORY OF PROCEEDINGS

[4] A temporary cease trade order in this matter was issued on October 11, 2007 against GPC, Cheung, Pan, Gahunia and another corporation that is not a respondent in this matter. This temporary order was extended to the conclusion of the hearing on the merits. After the Statement of Allegations was issued by Staff, another order was issued by the Commission on October 1, 2008, allowing the temporary order against the non-respondent corporation to lapse.

[5] On May 25, 28, and 29 and June 1, 2009, we heard evidence on the merits in this matter, and on June 2, 2009, we heard closing submissions from Staff. None of the Respondents was present or represented by counsel, other than Pan and Cheung, whose counsel appeared on June 1, 2009 to make certain admissions on their behalf.

[6] We also received written submissions from Staff on July 3, 2009. None of the Respondents provided any written submissions.

[7] The following are our reasons and decision on the merits in this matter.

C. THE RESPONDENTS

1. Corporate Respondents and other Entities

[8] GPC is an unincorporated business that operated in the Toronto, Ontario area. It was created to market shares in Asia Pacific to individual investors.

[9] Asia Pacific was incorporated in Nevada on December 19, 2005. There is no record that Asia Pacific was ever registered under Ontario securities laws, or that it was a reporting issuer in Ontario.

[10] 1666475 was incorporated in Ontario on July 13, 2005 and operated out of the Toronto area as "Asian Pacific Energy". 1666475 has never been registered under Ontario securities laws.

[11] GPC, Asia Pacific, and 1666475 are collectively referred to as the "**Corporate Respondents**".

2. Individual Respondents

[12] Pidgeon was the President, Secretary and Treasurer, and a director of Asia Pacific, according to documents filed with the State of Nevada, as of June 19, 2007. Prior to this, as of February 21, 2007, Pidgeon was listed as Asia Pacific's Secretary. In account-opening documentation for three Asia Pacific bank accounts in the United States, Pidgeon was alternatively described as President, Secretary and Member of Asia Pacific.

[13] Pan (also known as Christine Pan) was the President and sole director of 1666475. Pan is Cheung's wife.

[14] Cheung (also known as Peter Cheung, Tony Cheung, Mike Davidson, or Peter McDonald, according to Staff) was the President and sole director of Asia Pacific, as of February 21, 2007. Cheung is Pan's husband.

[15] Gahunia (also known as Shawn Miller and Mike Gahunia) was a salesperson and manager of GPC.

[16] Toussaint (also known as Peter Beckford) was a salesperson and manager of GPC.

[17] Jiwani was a manager of GPC.

[18] Staff alleges that Pan, Cheung, Gahunia, Toussaint and Jiwani were also *de facto* directors and officers of GPC.

[19] Pidgeon, Pan, Cheung, Gahunia, Toussaint, and Jiwani are collectively referred to as the "**Individual Respondents**".

[20] None of the Individual Respondents was registered in any capacity with the Commission.

D. THE ALLEGATIONS

[21] Staff alleges that:

(a) Between and including February 2006 and October 2007, the Respondents engaged or participated in acts, practices or courses of conduct relating to Asia Pacific securities that the Respondents knew or reasonably ought to have known perpetrated a fraud on persons or companies, contrary to section 126.1(b) of the Act and contrary to the public interest;

(b) Between and including February 2006 and October 2007, the Respondents traded in securities of Asia Pacific without being registered to trade in securities, contrary to section 25(1)(a) of the Act and contrary to the public interest;

(c) Between and including February 2006 and October 2007, the Respondents traded in securities of Asia Pacific when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director, contrary to section 53(1) of the Act and contrary to the public interest;

(d) Between and including February 2006 and October 2007, Cheung, Gahunia, and Toussaint, with the intention of effecting a trade in securities of Asia Pacific, made representations that the Asia Pacific securities would be repurchased or that the purchase price would be refunded, contrary to section 38(1) of the Act and contrary to the public interest;

(e) Between and including February 2006 and October 2007, Cheung, Gahunia, and Toussaint gave undertakings, with the intention of effecting a trade in securities of Asia Pacific, as to the future value or price of the securities of Asia Pacific, contrary to section 38(2) of the Act and contrary to the public interest;

(f) Between and including February 2006 and October 2007, Cheung, Gahunia, and Toussaint made representations without the written permission of the Director, with the intention of effecting a trade in securities of Asia Pacific, that such securities would be listed on a stock exchange or quoted on any quotation and trade reporting system, contrary to section 38(3) of the Act and contrary to the public interest;

(g) Between and including February 2006 and October 2007, Pan, Cheung, Gahunia, Toussaint, and Jiwani, being directors or officers of GPC, did authorize, permit or acquiesce in the commission of the violations of sections 126.1, 25, 53, and 38 of the Act, set out above, by GPC or by the employees, agents or representatives of GPC, which constitute offences under subsection 122(1)(c) of the Act, contrary to section 122(3) of the Act and contrary to the public interest;

(h) Between and including February 2006 and October 2007, Pidgeon and Cheung, being directors or officers of Asia Pacific, did authorize, permit, or acquiesce in the commission of the violations of sections 126.1, 25, and 53 of the Act, set out above, by Asia Pacific or by the employees, agents or representatives of Asia Pacific, which constitute offences under subsection 122(1)(c) of the Act, contrary to section 122(3) of the Act and contrary to the public interest;

(i) Between and including February 2006 and October 2007, Pan and Cheung, being directors or officers of 1666475, did authorize, permit or acquiesce in the commission of the violations of sections 126.1, 25, and 53 of the Act, set out above, by 1666475 or by the employees, agents, or representatives of 1666475, which

constitute offences under subsection 122(1)(c) of the Act, contrary to section 122(3) of the Act and contrary to the public interest;

(j) On or about November 1, 2007, Toussaint made statements to Staff appointed to make an investigation or examination under the Act, during an examination conducted by Staff, that he was not involved in the sales of securities of Asia Pacific, that, in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue, contrary to section 122(1)(a) of the Act and contrary to the public interest; and

(k) On or about January 28, 2008, Gahunia made a statement to Staff appointed to make an investigation or examination under the Act, during an examination conducted by Staff, that he never used the name Sean Miller at the GPC office, that, in a material respect and at the time and in the light of the circumstances under which it was made, was misleading or untrue and did thereby commit an offence, contrary to section 122(1)(a) of the Act and contrary to the public interest.

[22] Following the hearing, Staff acknowledged in their written submissions that there was insufficient evidence as against Cheung for allegations (d), (e), (f), and (i), listed above. Accordingly, we deem these four allegations withdrawn against Cheung.

II. PRELIMINARY ISSUES

A. FAILURE OF THE RESPONDENTS TO APPEAR

[23] None of the Respondents appeared personally at the hearing and none presented evidence or made submissions. Cheung and Pan appeared through counsel once, who made admissions on their behalf.

[24] The *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**") permits the Commission to proceed in the absence of any party who has been given adequate notice. Subsection 7(1) of the SPPA states:

> **Effect of non-attendance at hearing after due notice**
>
> 7. (1) Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

[25] Similarly, the Commission's *Rules of Procedure* (2009), 32 O.S.C.B. 1991 state under Rule 7.1 – Failure to Participate:

> If a Notice of Hearing has been served on any party and the party does not attend the hearing, the Panel may proceed in the party's absence and that party is not entitled to any further notice in the proceeding.

[26] At the outset of the hearing, Staff filed a brief of documents dated May 22, 2009 that set out the service and attempted service by Staff on the Respondents. We are satisfied that Staff took all reasonable steps to provide the Respondents with adequate notice of this proceeding, and as such, we were entitled to proceed with the hearing on the merits in their absence, in accordance with subsection 7(1) of the SPPA.

B. THE APPROPRIATE STANDARD OF PROOF

[27] The standard of proof for proceedings before the Commission is proof on a balance of probabilities. This standard was recently affirmed by the Supreme Court of Canada in its decision in *F.H. v. McDougall*, [2008] 3 S.C.R. 41. The Supreme Court explained at paragraphs 45-49 of the judgement:

> … I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.
>
> Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. …
>
> …
>
> In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[28] This is the standard we have applied in this proceeding.

[29] Accordingly, we will decide this matter on a balance of probabilities, and we must be satisfied that there is sufficiently clear, convincing and cogent evidence to support our findings. We find that the evidence before us is clear, convincing and cogent and provides a sufficient basis for our findings, below. We are satisfied that the acts, events and conduct described in these reasons are more likely than not to have occurred.

C. THE USE OF HEARSAY EVIDENCE

[30] Staff relies on evidence from their investigation and also seeks to admit hearsay evidence including the compelled examinations of individuals, including some Respondents, interviewed in the course of Staff's investigation into this matter.

[31] The SPPA permits the Commission to use its discretion to allow hearsay evidence in an administrative proceeding. Subsection 15(1) states:

> **What is admissible in evidence at a hearing**
>
> 15. (1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
>
> (a) any oral testimony; and
>
> (b) any document or thing,
>
> relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

[32] In *Re Sunwide Finance Inc.* (2009), 32 O.S.C.B. 4671 ("***Sunwide***"), the Commission made the following findings regarding the admissibility of hearsay evidence in a hearing before the Commission at paragraph 22:

> Although hearsay evidence is admissible under the SPPA, the weight to be accorded to such evidence must be determined by the panel. Care must be taken to avoid placing undue reliance on uncorroborated evidence that lacks sufficient indicia of reliability (*Starson v. Swayze*, [2003] 1 S.C.R. 722 at para. 115). In the circumstances, we admitted the hearsay evidence tendered by Staff, subject to our consideration of the weight to be given to that evidence.

[33] *Sunwide* further states at paragraph 24:

> One of the concerns with respect to the introduction of hearsay evidence is that it may infringe on the rights of a party to cross-examine a witness or to introduce contradictory evidence. This engages the rules of procedural fairness. In the case before us, none of the Respondents appeared before us, were represented or present to object to the use of the hearsay evidence, to cross-examine on it or to introduce contradictory evidence of their own. As a result, the Respondents have waived their right to do so.

[34] We note that Staff relies on the compelled testimony of four of the Respondents (Toussaint, Cheung, Gahunia, and Jiwani) and five non-respondents. The non-respondents include four GPC employees, Oliver MacIntosh ("**MacIntosh**"), Marcela Manriquez ("**Manriquez**"), Gordon McQuarrie ("**McQuarrie**") and Natalia Rotondo ("**Rotondo**"), and one individual hired to provide telephone and IT services to GPC. We note that this testimony was given under oath during Staff's investigation of this matter, pursuant to section 13 of the Act.

[35] Staff submits that statements made by the Individual Respondents are only to be used as evidence against the particular Respondent that is making the statement. We agree with Staff's submission regarding the use of a Respondent's compelled testimony.

[36] As in *Sunwide*, the Respondents in this case did not appear and were not present to object to the use of hearsay evidence, to cross-examine on it, or to introduce contradictory evidence. They have therefore waived their right to do so.

[37] We were presented with documentary evidence introduced by Staff that was consistent with the hearsay evidence presented at the hearing, including evidence from compelled examinations that Staff is seeking to admit.

[38] In the circumstances, we admitted the hearsay evidence tendered by Staff, subject to our consideration of the weight to be given to that evidence.

[39] We find that, taken as a whole, the totality of the evidence is corroborative and consistent.

D. ONTARIO JURISDICTION

[40] The majority of investors involved in this matter were located outside of Ontario, primarily in the United States. However, we find there is a sufficient nexus to Ontario for the Commission to have jurisdiction over the conduct of the Respondents.

[41] The Supreme Court of Canada ruled in *Gregory & Co. v. Quebec (Securities Commission)*, [1961] S.C.R. 584 that the fact that the securities would be for the account of customers outside of Quebec did not support a conclusion that the appellant was not trading in securities in Quebec.

[42] In *Re Lett* (2004), 27 O.S.C.B. 3215 at paragraph 69, the Commission found that it still had jurisdiction to find a breach of section 25(1)(a), despite the fact that none of the investors resided in Ontario. The Commission determined it was sufficient that the acts in furtherance of trades that the respondents engaged in took place in Ontario.

[43] There is sufficient evidence for us to conclude that there is a significant connection to Ontario, and that the Commission has jurisdiction. Although the issuer, Asia Pacific, was a Nevada corporation, its representatives were located in Ontario; GPC operated out of Ontario; 1666475 is an Ontario corporation; the Individual Respondents other than Pidgeon resided in Ontario during the Material Time; marketing was done from locations in the Greater Toronto Area; copies of subscription agreements were ultimately sent to Ontario; share certificates were mailed from Ontario; and investor funds were ultimately transferred to bank accounts located in Ontario. Therefore, we find that the Commission has jurisdiction over the conduct of the Respondents in this matter.

III. ISSUES

[44] Staff's allegations raise the following issues in this matter:

(a) Did the Respondents trade in securities, contrary to subsection 25(1)(a) of the Act?

(b) Did the Respondents engage in distributions of securities, contrary to subsection 53(1) of the Act?

(c) Were any registration or prospectus exemptions available to the Respondents?

(d) Did Gahunia and Toussaint make prohibited representations to repurchase securities, contrary to subsection 38(1) of the Act?

(e) Did Gahunia and Toussaint make prohibited undertakings regarding the future value or price of securities, contrary to subsection 38(2) of the Act?

(f) Did Gahunia and Toussaint make prohibited representations regarding the future listing of securities, contrary to subsection 38(3) of the Act?

(g) Did the Respondents, directly or indirectly, engage or participate in acts, practices or a course of conduct relating to securities of Asia Pacific that they knew or ought to have known would perpetrate a fraud, contrary to section 126.1(b) of the Act?

(h) Did Pan, Cheung, Gahunia, Toussaint, and Jiwani, as directors or officers of GPC; Pidgeon and Cheung as directors or officers of Asia Pacific; and Pan and Cheung as a directors or officers of 1666475, authorize, permit or acquiesce in contraventions of the Act by the respective Corporate Respondents, contrary to subsection 122(3) of the Act?

(i) Did Toussaint and Gahunia make misleading or untrue statements to Staff during its investigation, contrary to subsection 122(1)(a) of the Act?

(j) Was the Respondents' conduct contrary to the public interest and harmful to the integrity of Ontario's capital markets?

IV. EVIDENCE

A. EVIDENCE TENDERED AT THE HEARING

[45] Staff submitted 27 exhibits of documentary evidence, which were referred to during the hearing by Staff investigators and investor witnesses.

[46] Staff also called 10 witnesses during the hearing – two Staff investigators and eight Asia Pacific investors.

[47] The Staff investigators, Gregory Gard ("**Gard**") and Donald Panchuk ("**Panchuk**"), testified about Staff's investigation. The investigation began when Staff received information from the Texas State Securities Board and included an initial pretext visit to GPC's office in Toronto on September 5, 2007, and a formal inspection on October 11, 2007.

[48] Gard and Panchuk also testified regarding evidence obtained through the investigation of the Respondents, such as information on the GPC and Asia Pacific websites, bank account history for the Corporate Respondents, and information from telephone and courier accounts held by the Corporate Respondents. They also testified about documents obtained from GPC offices during Staff's investigation, including subscription agreement forms, call scripts, and payroll documentation.

[49] Eight investors testified at the hearing; six by video conference, and two in person. The investors testified about how Asia Pacific shares were marketed to them and identified documents that included subscription agreements, share certificates, correspondence from Asia Pacific and GPC, Asia Pacific press releases and investment brochures, and copies of cheques and confirmations of wire transfers made to Asia Pacific. To protect their privacy, we have anonymized the names of all the investors. We have requested that Staff also provide a redacted version of the record to protect the privacy interests of investors.

[50] Staff also obtained responses from 70 of 114 investors they contacted as part of their investigation regarding their investments in Asia Pacific. In addition to providing basic information on their investments in response to Staff's questionnaire (dates of investments, amounts invested, etc.), investors also provided Staff with copies of correspondence between themselves and GPC or Asia Pacific representatives and marketing materials that they were provided in relation to their investments in Asia Pacific shares. Included in the evidence is documentation relating to 23 of these investors who did not testify. Evidence from these investors has also been anonymized to protect their privacy.

[51] Staff also relied on statements made by nine individuals in their compelled examination, as noted at paragraph 34. Despite their efforts, Panchuk testified that Staff was not able to examine Pan or Pidgeon.

[52] None of the Respondents appeared at the hearing to dispute Staff's evidence, nor made any submissions, except that counsel for Pan and Cheung appeared to make certain admissions on their behalf.

B. DOCUMENTS SUBMITTED BY JIWANI AND CHEUNG

[53] Staff informed us that Jiwani voluntarily provided five boxes of documents, which contained lead sheets, subscription agreements, letters, sales records, press releases, phone lists, payroll records, administrative documents and sales scripts.

[54] Included in these documents were administrative papers indicating that certain aliases were used by individuals working at GPC and Asia Pacific. Also amongst these documents are payroll records that are consistent with the evidence of investors regarding which individuals they dealt with when making their investment.

[55] Staff also advise that Cheung voluntarily provided three boxes of documents through his counsel, which consisted primarily of subscription agreements, lead sheets, payroll records, invoices, letters, and emails. In addition, the documents provided by Cheung included copies of Asia Pacific promotional materials identical to the ones received by investors, copies of scripts, and print-outs of emails between Pan, Cheung, Jiwani, and Gahunia.

[56] Documents from Cheung also included copies of payroll records and evidence of payments to sales representatives, including Toussaint, Gahunia, and Jiwani. The documents indicate that Toussaint received payments through his company, Titan VC, and that Gahunia received payments through his company, Netgrowth Enterprises. The documents from Cheung also contain information on how commissions were divided between various individuals.

[57] Documents from Jiwani and Cheung include evidence of the calculation of payments to Jiwani, Gahunia, and Toussaint, which correspond with the investments made by specific Asia Pacific investors.

[58] These documents were consistent with each other and with other evidence presented at the hearing, including evidence from investors.

C. ADMISSIONS BY CHEUNG AND PAN

[59] Counsel for Pan and Cheung briefly appeared on June 1, 2009 and admitted on their behalf to the following allegations brought by Staff:

- Asia Pacific securities were sold to over 110 investors, and those investors sent over US $2,200,000 to Asia Pacific (Statement of Allegations, at para. 18).
- After agreeing to invest, investors received a subscription agreement from Asia Pacific. The subscription agreement set out the quantity, unit price, and the total amount of the investment. Investors were instructed to make cheques payable to Asia Pacific and to send the subscription agreements and cheques to an address in Dallas, Texas, United States. The address in Dallas was a virtual office run by Regus/HQ Business Centres. Some investors were also given instructions on how to send their funds to Asia Pacific via wire transfer and did so. (Statement of Allegations, at para. 19)
- Investors received a share certificate signed by Cheung for common shares in Asia Pacific (Statement of Allegations, at para. 20).
- The investor funds were deposited into one of three Asia Pacific bank accounts in the United States (the "US Bank Accounts"). These accounts were all controlled by Pidgeon. (Statement of Allegations, at para. 21)
- Between and including March 2006 and October 2007, over US $2,000,000 was transferred from the US Bank Accounts to a U.S. dollar bank account in Canada, held by 1666475. Pan was the sole signatory on this account. (Statement of Allegations, at para. 23)
- Over US $1,000,000 was transferred from the 1666475 U.S. dollar account to a Canadian dollar account in Canada held by 1666475. Pan was the sole signatory on this account. (Statement of Allegations, at para. 24)
- $150,000 of investor funds, rather than the approximately $300,000 alleged by Staff, was used to pay credit card bills for Pan from the 1666475 Canadian account (Statement of Allegations, at para. 27). Pan and Cheung claim this money was used for expenses relating to the business activities of the corporate entities.

[60] Counsel for Pan and Cheung also communicated that Pan and Cheung expressed a great deal of regret about what happened.

V. THE ASIA PACIFIC INVESTMENT SCHEME

A. OVERVIEW OF THE INVESTMENT SCHEME

[61] This matter deals with an investment scheme that involved selling previously unissued shares of Asia Pacific to the public at a price of US $1.00 per share.

[62] Staff described the investment scheme as an out-and-out scam, designed to take money from unsuspecting and perhaps too trusting individuals and to put it into the pockets of the Respondents. Staff submits that investors were dealing with a boiler room in Ontario that was pumping out worthless share certificates to unsuspecting individuals.

[63] The evidence shows that the investment scheme had characteristic traits of a "boiler room" operation. Characteristics common in boiler room schemes include:

- creating companies falsely purporting to be engaged in legitimate business;
- establishing websites containing fabricated information to promote and give legitimacy to the company and its securities;
- creating infrastructure to support the fraudulent scheme (e.g. virtual offices, bank account, phone lines, couriers, etc.);
- developing and using sales/promotion/marketing pitches which involved call scripts, high pressure sales tactics, promises of high returns, and increased future value;
- issuing press releases containing false and/or misleading information to give legitimacy to the scheme, to show signs of progress and development, and to entice potential investors to invest and current investors to invest more; and
- transferring funds from investors to accounts controlled by the respondents or related individuals.

[64] These boiler room characteristics were present in the investment scheme in this case. Specifically, 1666475 was incorporated in Ontario on July 13, 2005; Asia Pacific was incorporated in Nevada, United States on December 19, 2005; and GPC was an unincorporated entity that was held out to be an American venture capital company raising funds for Asia Pacific by selling its shares to investors.

[65] Asia Pacific and GPC websites were set up and were accessible to the public as of January 27, 2006 and February 3, 2006, respectively. Bank accounts for Asia Pacific and 1666475 were opened in the U.S. and Canada around February 2006.

[66] Office space in Toronto, mail drop-off boxes in Texas, telephone accounts in the U.S. and Canada, and courier accounts were also established commencing February 2006.

[67] Once the infrastructure was set up, representatives of GPC and Asia Pacific solicited potential investors to purchase shares of Asia Pacific. These representatives made statements to investors as to the future value of Asia Pacific shares. Investors were also referred to the websites, press releases, and promotional materials which contained fraudulent and/or misleading information during the Material Time.

B. ALIASES USED BY INDIVIDUAL RESPONDENTS

[68] The investment scheme was facilitated by the use of aliases by several Respondents when dealing with investors and potential investors.

[69] Staff alleges that the Respondents used the following aliases:

- Pan also went by “Christine Pan”;
- Cheung was also known as “Peter Cheung”, “Tony Cheung”, “Mike Davidson”, and “Peter McDonald”;
- Gahunia used the aliases “Michael Gahunia” and “Shawn Miller” (sometimes spelled as “Sean Miller”);
- Toussaint used the alias “Peter Beckford”; and
- Jiwani used the alias “Ralph Jay”.

[70] MacIntosh and Manriquez both stated in their compelled examinations that people used aliases on the phone at GPC.

[71] Based on the evidence, we find that the Respondents used these aliases, as described below.

(a) Pan

[72] Staff alleges that Pan also went by “Christine Pan”.

[73] We note that the banking service agreements and signature card for TD Canada Trust accounts held by 1666475 list Christine Kit Ching Pan as the President, with a noted address that matches Pan’s residential address during the Material Time in Richmond Hill, Ontario.

[74] Based on Pan’s admissions, set out in paragraph 59, above, regarding her level of involvement in the investment scheme, and based on other documentary evidence provided to us, there is sufficient evidence for us to find that Pan used the alias Christine Pan in communications with GPC employees and for other purposes relating to selling Asia Pacific securities to investors.

(b) Cheung

[75] Cheung informed Staff in his compelled examination that he also uses the names Peter Cheung and Tony Cheung. Our findings in these Reasons and Decision are not based on any evidence that Cheung operated under any other aliases, including Mike Davidson and Peter McDonald.

(c) Gahunia

[76] Gahunia told Staff in his compelled examination that his legal name is Gurdip Singh Gahunia. He also stated that he never used a name other than Michael Gahunia for business purposes and that he never used the name Sean Miller at the GPC office.

[77] However, a GPC phone listing for its management, sales and qualifiers lists two names for sales people, including "Mike Gahunia / Sean Miller". It appears that the second name is the one used when dealing with the public.

[78] Asia Pacific payroll and sales commission documentation and cheques also link Gahunia to this alias. For example, we were presented with evidence that indicates that Shawn Miller sold Investor 9 5,000 shares of Asia Pacific for US $5,000 on November 10, 2006. A subscription agreement and invoice for this amount were provided to Investor 9, and his payment of $5,000 was deposited in a US Bank Account on November 17, 2006. The payroll and commission record prepared for the November 20 to November 24, 2006 period lists the sale of the shares, identified by the same invoice number, and a resulting sales commission of 22%, or US $1,100, payable to Netgrowth Enterprises. This and other commissions for Shawn Miller for the period of November 20, 2006 to November 24, 2006 were paid from a 1666475 bank account and deposited into a bank account in the name of Netgrowth Enterprises on November 24, 2006. The Banking Service Agreement and signature card for the Netgrowth Enterprises account list Gahunia as the sole owner of Netgrowth Enterprises. In addition, an Asia Pacific letter listing payment instructions for employees notes "Net Growth Enterprises" as the payee on cheques for Gahunia.

[79] We find there is sufficient evidence to conclude that Gahunia used the alias Shawn (sometimes spelled "Sean") Miller ("Miller") while working at GPC.

(d) Toussaint

[80] Toussaint told Staff under oath in his compelled examination that while he did a bit of qualifying, introducing people to the product, and helped run the GPC office, he did not sell securities to people.

[81] We were presented with sufficient evidence, however, to conclude that Toussaint used the alias Peter Beckford as a GPC sales agent for Asia Pacific securities. The GPC phone list had an entry for "Basil Toussaint / Peter Beckford" and there were Asia Pacific payroll records for a salesman identified as "Basil (Peter Beckford)". On March 20, 2006, Investor 14 made a US $10,000 wire transfer to the Chase Bank Account. In a sales commission statement for the period of March 16, 2006 to March 31, 2006, a 22% commission for a US $10,000 sale to Investor 14 is attributed to the salesman "Basil (Peter Beckford)" with the company "Titan VC". The total amount payable to Titan VC for this pay period noted on the sales commission statement is $3,574, which included the US $2,250 commission from the sale to Investor 14. Banking records indicate that Titan VC received $3,574 on March 31, 2006 from the 1666475 CDN$ Account. In addition, an Asia Pacific letter listing payment instructions for employees notes "Titan VC" as the payee on cheques for Toussaint. Sales commission payments for sales made by Peter Beckford were paid from the 1666475 bank accounts to Titan VC.

[82] We therefore find that Toussaint used the alias Peter Beckford ("Beckford") in his work with GPC and Asia Pacific.

(e) Jiwani

[83] Staff identifies Jiwani as being also known as Ralph Jay. In his compelled examination by Staff, Jiwani stated that "Ralph J." was the anglicised name that he has used for the past 30 years. He said that it was not an official name, but it is something always used in his franchise consulting business. We are sufficiently convinced that Jiwani used the alias Ralph Jay, or "Ralph J.".

C. FUNDS RAISED FROM INVESTORS

[84] Staff did not locate a shareholder list for Asia Pacific, but through various sources of information, including banking, payroll and courier records, Staff identified 114 individuals and companies who were sold Asia Pacific shares. Staff's investigation revealed that the investors were primarily located in the United States, but there were also investors in the United Kingdom, the Caribbean, New Zealand, Singapore, and Ontario.

[85] Panchuk testified about the funds raised from investors. Staff presented evidence of various documents, including bank account transaction records for the US Bank Accounts and Canadian bank accounts held by 1666475, Canadian banking records for the various Respondents, cheques and wire transfers, payroll records, sales activity records, credit card transaction records and courier records. As there were no accounting or financial records, Panchuk testified as to how Staff reconciled the various documents to identify the funds raised from investors, and to determine the flow and disbursement of the investor funds.

[86] The evidence shows that over US $2.2 million was raised from Asia Pacific investors. This was corroborated by Pan and Cheung in their admissions. Specifically, shares of Asia Pacific were sold to at least 114 individuals and companies during the Material Time.

[87] Eight investor witnesses testified that they made the following investments in Asia Pacific:

- Investor 1 invested a total of US $20,000 to purchase 20,000 shares on two different occasions during the Material Time. He invested US $10,000 in December 2006 and another US $10,000 in August 2007.

- Investor 2 invested US $20,000 in December 2006 to buy 20,000 shares of Asia Pacific. He and his wife, Investor 3, invested an additional US $50,000 in 2007 to buy 50,000 shares of Asia Pacific. The couple cashed in their retirement savings and used lines of credit attached to the equity of their home to purchase shares in Asia Pacific. Investor 2 testified that they were going to be debt-free in a couple of years, but that now they owe more money on their home than it is worth; he testified that they had been left in "very bad shape", primarily as a result of their investments in Asia Pacific.

- Investor 4 testified that the first time he and his wife invested was when he initially purchased 60,000 shares of Asia Pacific in 2006. He then purchased another 40,000 shares in September 2007, for a total investment in Asia Pacific shares of US $100,000. He testified that he and his wife funded these investments using the equity on their home, cashing in retirement funds, taking a cash advance on a credit card and borrowing from their bank. Investor 4 also testified that his investment in Asia Pacific has left him and his wife in very bad financial shape.

- Investor 5 testified that he purchased 15,000 shares of Asia Pacific for US $15,000 in June 2006, using a cash advance on his credit card to obtain the funds. The next month, he purchased a further 15,000 shares, using money from his mother's matured Certificate of Deposit. Investor 5 invested a total of US $30,000.

- Investor 6 testified that she bought 2,000 shares of Asia Pacific for US $2,000 in August 2007, using her Canada Savings Bond for the investment.

- Investor 7 testified that she invested twice in Asia Pacific, investing a total of US $4,000 for 4,000 shares.

- Investor 8 purchased 17,500 shares of Asia Pacific in April 2006, and purchased another 17,500 shares in May 2006, for a total of US $35,000.

[88] Overall, 70 investors who responded to questionnaires sent by Staff documented their Asia Pacific share purchases.

[89] Investors who purchased shares in Asia Pacific sent their payment (in the form of cheques, direct deposits or wire transfers) to one of the three US Bank Accounts, which in total received over US $2.2 million:

- Approximately US $1,127,000 of investor funds was deposited in an account at Compass Bank (the "**Compass Bank Account**");

- Approximately US $222,000 was deposited in an account at Marshall & Illsley Bank (the "**M & I Bank Account**"); and

- Approximately US $935,000 was deposited in an account at JPMorgan Chase Bank (the "**Chase Bank Account**").

[90] Panchuk testified that the investments made in Asia Pacific securities would be worthless today, as a result of a reverse merger Asia Pacific made with China Bio Life Enterprises, Inc. on October 29, 2007, wherein Asia Pacific shares were exchanged. None of the investors who purchased Asia Pacific shares during the Material Time were included in the new shareholder list as detailed at paragraph 278.

[91] Within a few days of being deposited into the US Bank Accounts, almost all of the investor funds were transferred to a 1666475 bank account in Canada. Subsequently, part of these funds were distributed to other respondents, related entities, and others as described below.

D. DISBURSEMENT OF INVESTORS' FUNDS

[92] The evidence shows that in total, over US $2.1 million was transferred from the US Bank Accounts to a US dollar account in the name of 1666475 at TD Canada Trust in Ontario (the "**1666475 US$ Account**"). From this account, approximately US $1,090,000 of these investor funds were transferred to a Canadian dollar account in the name of 1666475 at TD Canada Trust in Ontario (the "**1666475 CDN$ Account**"). Collectively, these accounts are referred to as the "**1666475 Bank Accounts**".

[93] To summarize, based on the evidence presented to us, some of the funds raised from Asia Pacific investors were distributed from the 1666475 Bank Accounts directly or by transfers through other accounts to Individual Respondents, related entities and others as shown below:

- US $400,000 was paid to a subsidiary of Empire Oil & Gas NL that was involved in drilling oil wells in Australia. This money, sent in May, 2006, appears to be the one investment Asia Pacific made. According to

Empire Oil and Gas NL, Asia Pacific entered into a farmin agreement to earn 20% interest in part of a permit identified as EP-435 by funding 40% of the cost of the drilling of one exploration well, named Dune-1, which turned out to be a dry hole (the "**Empire Oil Investment**");

- Gahunia received payments of US $328,914 and $19,673 through his company, Netgrowth Enterprise. Evidence showed that these payments were primarily made in connection with his sales of Asia Pacific shares to investors;

- Toussaint received US $90,142 and $13,612 from accounts held by 1666475 paid through Titan VC. Evidence showed that these payments were primarily made in connection with his sales of Asia Pacific shares to investors;

- Jiwani received US $110,686 and $20,746 from these accounts. Evidence showed that Jiwani got a salary in connection with his management role with GPC and Asia Pacific and also received a 5% commission on sales of Asia Pacific shares plus additional override payments related to sales of Asia Pacific shares to investors;

- Payments of $302,576, including direct payments to credit cards, or indirect transfers of funds to other accounts held by Pan, were used to pay off at least nine credit cards held by Pan and related entities (the "**Pan Credit Cards**"). Expenditures on these credit cards largely included personal charges such as airline tickets to numerous locations, hotel stays, restaurants, and purchases from various stores (Toys R Us, Winners, Shoppers Drug Mart, Lexus of Richmond Hill, Club Monaco, Gucci, Royal De Versailles, Rogers, Blue Mountain, Sassafraz, Sony Store, Eastbiz.com, HQ Global Workplaces, the Keg, etc.). Expenditures also included payments for telephone and courier services. We also note that Cheung was a secondary card holder for some of the Pan Credit Cards;

- Funds were also used to pay expenses related to the activities of the investment scheme: $193,198 in rent; $51,015 for courier and utilities expenses; US $30,460 to purchase lead lists; and $71,389 for IT services;

- A US $25,000 refund was made to one investor to rectify a double payment; and

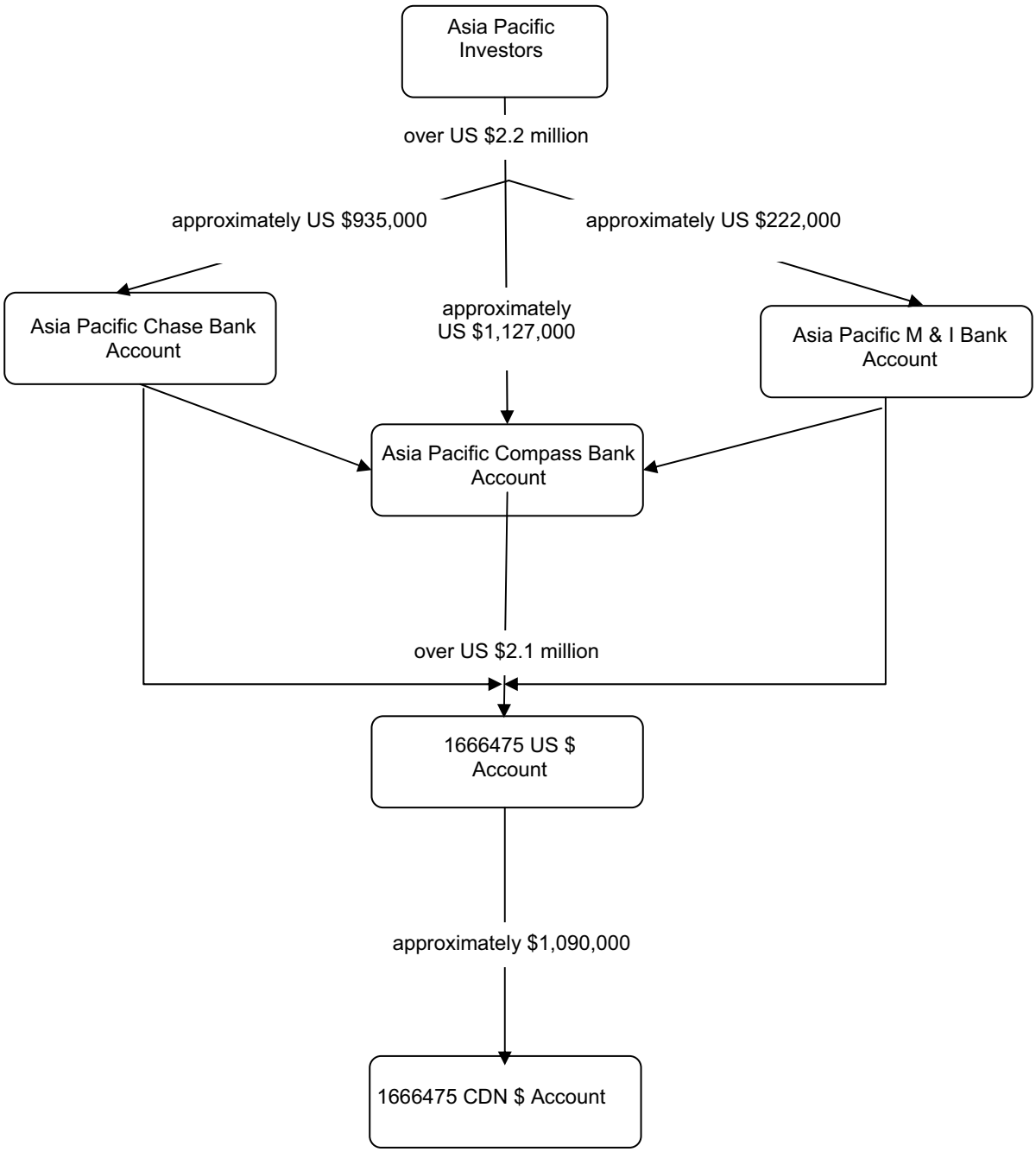
- The remaining investor funds transferred to the 1666475 Bank Accounts are not accounted for.

[94] Pidgeon also received a total of US $92,972, directly from the US Bank Accounts.

[95] With the exception of the Empire Oil Investment, we were not presented with evidence of any legitimate business expenses relating to any of Asia Pacific's purported business activities.

[96] The flow of investors' funds through the bank accounts held by Asia Pacific and 1666475 and the disbursements from the 1666475 Bank Accounts are illustrated in the two charts on the following pages:

FLOW OF INVESTOR FUNDS IN THE INVESTMENT SCHEME



DISBURSEMENTS FROM 1666475 BANK ACCOUNTS		
Recipient	**US $**	**CDN $**
Gahunia (via Netgrowth Enterprises)	US $328,914	$19,673
Toussaint (via Titan VC)	US $90,142	$13,612
Jiwani	US $110,686	$20,746
Pan Credit Cards		$302,576
Operating Expenses	US $30,460 – Purchase of lead lists	$193,198 – Rent $ 51,015 – Courier, Utilities $ 71,389 – IT services $315,602
Other	US $400,000 – Empire Oil Investment US $25,000 – Investor Refund	

VI. ANALYSIS

A. DID THE RESPONDENTS TRADE IN SECURITIES CONTRARY TO SUBSECTIONS 25(1)(A)?

[97] Staff submits that the Respondents traded in securities without being registered and without having issued a prospectus or preliminary prospectus.

1. The Law

[98] Subsection 25(1)(a) of the Act prohibits trading in securities without being registered:

> **25. (1) Registration for trading** – No person or company shall,
>
> (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;
>
> …

[99] Past decisions of the Commission have established that the registration requirements under section 25 are an essential element of the Commission's regulatory framework (*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 ("***Limelight***"); *Re First Global Ventures S.A.* (2007), 30 O.S.C.B. 10473). They impose requirements of proficiency, good character and ethical standards on the individuals and companies trading in and advising on securities. Registration serves an important gatekeeping purpose, ensuring that only those who are properly qualified and suitable trade on behalf of the public:

> Through the registration process, the Commission attempts to ensure that those who trade in securities meet the applicable proficiency requirements, are of good character, satisfy the appropriate ethical standards and comply with the Act.
>
> (*Limelight*, *supra* at para. 135)

[100] For a breach of subsection 25(1)(a) there must be a trade in securities. The Act defines "trade" in subsection 1(1):

> **"trade"** or **"trading"** includes,
>
> (a) any sale or disposition of a security for valuable consideration whether the terms of payment be on margin, instalment or otherwise …;

…

(e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of the foregoing.

[101] To satisfy the requirements for a trade under the Act, any act in furtherance of a trade is sufficient to trigger a breach of subsection 25(1)(a) (*Re Lett*, *supra* at para. 64). The Commission has previously determined that there is no bright line test for what constitutes an act in furtherance of a trade. When assessing whether a particular activity was in furtherance of a trade, the Panel should determine whether the activity in each case had a sufficiently proximate connection to an actual trade (*Re Costello* (2003), 26 O.S.C.B. 1617 at para. 47).

[102] The Commission has found that the absence of solicitation or direct contact with investors is not determinative of whether an act in furtherance of a trade has occurred (*Re Lett*, *supra* at para. 51).

[103] Acts that the Commission has determined to be in furtherance of trades include:

- preparing a market or accepting funds for the purpose of an investment (*Re Allen* (2005), 28 O.S.C.B. 8541 at para. 85);
- accepting investment funds from investors (*Re Lett*, *supra* at para. 49);
- providing subscription agreements for signature to investors, conducting information sessions with groups of investors, and accepting money (*Re Momentas Corp.* (2006), 29 O.S.C.B. 7408 at para. 80); and
- setting up a website that offers securities to investors over the internet (*Re First Federal Capital (Canada) Corp.* (2004), 27 O.S.C.B. 1603 at para 45).

[104] Other Canadian securities regulators have similarly found the following to be acts in furtherance of trades:

- providing a website with content that is designed to excite the reader about the company's prospects or where the material on the website is considered an advertisement or solicitation for investors to purchase shares (*Re American Technology Exploration Corp.* (1998), L.N.B.C.S.C. 1);
- issuing and signing share certificates (*Del Bianco v. Alberta (Securities Commission)*, [2004] A.J. No. 1222 (C.A.) at para. 9); and
- instructing solicitors in connection with the issuance and exchange of shares (*Del Bianco v. Alberta (Securities Commission)*, *supra* at para. 9).

[105] The primary focus of a consideration of whether a respondent's conduct amounts to an act in furtherance of a trade should be the effect of the conduct on investors and potential investors. The Commission should adopt a contextual approach, assessing the totality of the conduct and the setting in which the conduct occurred (*Re Momentas Corp.*, *supra* at para. 77).

2. Analysis

[106] The following are our findings regarding breaches of subsection 25(1)(a) of the Act based on the evidence presented at the hearing.

[107] None of the Respondents was ever registered with the Commission in any capacity, and as discussed starting at paragraph 175, no registration exemptions were available to the Respondents.

(a) GPC

[108] We find that GPC traded in securities of Asia Pacific contrary to subsection 25(1)(a).

[109] Potential investors were solicited during the Material Time by GPC representatives via telephone and emails. During its investigation, Staff obtained sales lists from the GPC offices listing investor names, salesmen, qualifiers (GPC employees who made the initial calls soliciting investors), and amounts invested.

[110] Staff investigators also found copies of call scripts for Asia Pacific. Additional copies of sales scripts, along with closing pitch information were included in the documents Jiwani and Cheung voluntarily provided to Staff. After an introduction that includes introducing oneself as the senior portfolio manager for GPC, the script directs the caller to say the following to potential investors:

> … We're doing the next **PRE IPO** called ASIA PACIFIC ENERGY at 1 DOLLAR a share. You know the NASDAQ. ASIA PACIFIC is going to be a blockbuster and it's on the ground floor at 1 DOLLAR a share. I said the ground floor level and the news isn't even public knowledge yet. …
>
> [emphasis in original]

[111] At the hearing, we heard from investors who were solicited by employees or representatives of GPC. For example, Investor 1 testified that he was contacted by Steve Smith, Director of the Equity Finance Division of GPC, and by "Miller". Investor 1 invested on two occasions for a total investment of US $20,000.

[112] Investors received account application and agreement forms, subscription agreements, letters of intent and wiring instructions from GPC representatives.

[113] In their compelled examinations, GPC employees provided evidence to Staff that GPC made trades in securities and acted in furtherance of trades:

- MacIntosh, a qualifier, told Staff he made between 200 and 350 calls per day marketing the Asia Pacific stock at $1.00 per share. He would tell people they were trying to make Asia Pacific go public and testified that he thought he got one or two bonuses from investor leads that he generated.
- Rotondo stated that she would send out packages of documents to investors, changing the number of shares, the client name and the amount invested. These information packages were sent by e-mail, fax and mail to GPC investors.
- Manriquez informed Staff that she would create invoices for shares to be sent to GPC clients.
- McQuarrie, who was another qualifier, told Staff that he received two bonuses for leads that turned into sales for GPC. He also told Staff that there would be contact sheets for potential clients on his desk when he arrived each morning. He said he would call people about Asia Pacific and offer to send them more information on the stock that sold at $1.00 per share.

[114] In addition to the above, there was also evidence of GPC's trades and acts in furtherance of trades made through its management and employees, Cheung, Gahunia, Toussaint, and Jiwani, described in detail below.

[115] Based on the evidence presented, we conclude that GPC traded in securities of Asia Pacific during the Material Time, contrary to subsection 25(1)(a) of the Act. GPC and its representatives were not registered in any capacity with the Commission, and no registration exemptions were available.

(b) Asia Pacific

[116] We find that Asia Pacific traded in its securities contrary to subsection 25(1)(a) of the Act.

[117] Pan and Cheung admit that Asia Pacific securities were sold to over 110 investors and that Asia Pacific received over US $2.2 million of investor funds.

[118] Pan and Cheung also admit that investors received subscription agreements from Asia Pacific that set out the quantity, unit price and total amount of the investment. They also admit that investors were instructed to send the agreements to an address for Asia Pacific in Dallas with either a cheque payable to Asia Pacific or a wire transfer of the funds. This is corroborated by copies of cheques, wire transfer documentation and subscription agreements that were provided by investors and entered in evidence.

[119] Investors who were sold shares in Asia Pacific sent the funds for their purchases of securities to the US Bank Accounts held in Asia Pacific's name.

[120] Pan and Cheung further admit that investors received share certificates signed by Cheung for their investment in common shares of Asia Pacific. During the hearing, copies of Asia Pacific share certificates held by over 15 investors were entered into evidence, and investor witnesses confirmed that these certificates had been sent to them for their investment in Asia Pacific.

[121] Pan and Cheung also made admissions regarding Asia Pacific's participation in the trades. They admit that the Dallas office of the company was a virtual office and that over US $2 million was transferred from the US Bank Accounts to the 1666475 US$ Account.

[122] A form letter, purportedly sent by Travis Armstrong, the Vice President of Investor Relations for Asia Pacific, was sent to investors once their funds were received by Asia Pacific. The letter thanks the investor for the share purchase and verifies that investors will be contacted once Asia Pacific goes public. It confirms that if Asia Pacific's IPO opening price is less than US $1.50 per share, investors will have the option of redeeming their shares at US $1.25 per share.

[123] Various Asia Pacific marketing and sales materials were entered into evidence. They contained information to excite, solicit and induce investors. For example:

- Potential investors were sent an Asia Pacific Investor Portfolio brochure and were referred to the Asia Pacific website, both of which portrayed Asia Pacific very positively as a company with great opportunities for investors. For example, they state:

    - We are currently focusing our efforts in two major projects, thereby creating a unique synergy in vital areas such as; strong company alliances, collective research and development strategy, and a forcast [sic] for optimum drilling results.

    - … our primary goal is to provide anticipated above average returns for qualified investors' participation.

    - By focusing on cutting-edge technology, we thereby expedite the process of ensuring a highly profitable end-product. This revolutionary breakthrough translates into a timely and potentially very lucrative opportunity for our investers [sic].

    - **Our strategically researched properties have an estimated Seventeen Million Barrels of recoverable reserves – ready to be drilled.**

      [emphasis in original]

- Asia Pacific sales scripts that were used by qualifiers and agents when marketing the investment over the telephone submitted in evidence state the following:

    - Currently I have an excellent opportunity with an American Oil & Gas company called Asia Pacific Energy, and **I believe that this project will do even better than Energy Finders did**.

      [emphasis in original]

[124] Investors provided Staff with copies of Asia Pacific subscription agreements that were sent to them for varying amounts of money between $2,000 and $59,000 per investment. Many of these investors invested in Asia Pacific on more than one occasion, and those who testified at the hearing confirmed that they subscribed for the number of shares listed in the agreements.

[125] Two investors who testified at the hearing, received an email from Pidgeon, as the President of Asia Pacific confirming a new trading symbol for the company had been approved and granted. This email states that new share certificates will be forwarded to the investor.

[126] Based on the evidence presented, we conclude that Asia Pacific traded in its securities during the Material Time, contrary to subsection 25(1)(a) of the Act. Asia Pacific and its representatives were not registered with the Commission in any capacity, and no registration exemptions were available.

(c) 166647

[127] We find that 1666475 traded in securities of Asia Pacific in breach of subsection 25(1)(a) of the Act.

[128] We were presented with evidence that over US $2.1 million of Asia Pacific investor funds were transferred from the US Bank Accounts to the 1666475 US$ Account. Pan and Cheung also admitted that during the Material Time, over US $2,000,000 was transferred from the US Bank Accounts to a 1666475 U.S. dollar bank account in Canada.

[129] In addition to the connection to investors' funds, 1666475 was also involved in the investment scheme. It leased the office premises at 11 Sims Crescent in Richmond Hill, which was used by GPC, and which appears to have been used solely for the purposes of marketing and selling shares in Asia Pacific.

[130] 1666475 used investor funds to pay commissions for the sales of Asia Pacific shares, rent for the GPC premises, courier services, and other charges related to the investment scheme.

[131] GPC employees were also paid from 1666475 Bank Accounts. McQuarrie told Staff during his compelled examination that he was paid for his work at GPC from a TD Canada Trust account in the name of Asian Pacific Energy, the name that 1666475 operated as.

[132] Based on the evidence presented, we conclude that 1666475 traded in Asia Pacific securities during the Material Time, contrary to subsection 25(1)(a) of the Act. 1666475 was not registered with the Commission in any capacity and no registration exemptions were available.

(d) Pidgeon

[133] We find that Pidgeon traded in securities of Asia Pacific in breach of subsection 25(1)(a) of the Act.

[134] Pidgeon opened accounts for Asia Pacific at three different banks in the United States:

- M & I Bank Account, opened on February 14, 2007: bank documents show an Asia Pacific address in Las Vegas, Nevada and list Pidgeon as the President of Asia Pacific.
- Compass Bank Account, opened on February 23, 2007: bank documents show Asia Pacific's address in Cove Creek, Phoenix, Arizona (the same address as Pidgeon's residence), and list Pidgeon as the Secretary of Asia Pacific.
- Chase Bank Account, opened on February 18, 2006: banking registration documents show an address for Asia Pacific in Las Vegas, Nevada and list Pidgeon as "Member" of Asia Pacific.

[135] Pidgeon was the sole signatory on all three US Bank Accounts into which all investor funds were deposited and authorized the disbursement of investor funds to the 1666475 US$ Account.

[136] In an email to Staff, Pidgeon denied that he was a director of Asia Pacific, stating: "I am NOT president or a director of any company named Asia Pacific Energy or any variation of that name in any jurisdiction in any country." He did, however, admit to involvement in Asia Pacific's banking. Pidgeon claimed that, on instruction from Pan, he wired funds to a TD account in Ontario and made a few other transfers and bill payments, as directed by Pan. Contrary to the evidence above, Pidgeon states in the email that his sole duty at Asia Pacific was to manage the bank accounts, and that he never spoke with any customers, but did everything on instruction from Pan: "My sole job duty was to manage the bank account."

[137] Pidgeon received US $92,972 of investor funds from the US Bank Accounts.

[138] Based on the evidence presented, we conclude that Pidgeon traded in Asia Pacific securities during the Material Time, contrary to subsection 25(1)(a) of the Act. He was not registered with the Commission in any capacity, and no exemptions were available.

(e) Pan

[139] We find that Pan traded in securities of Asia Pacific in breach of subsection 25(1)(a) of the Act.

[140] Pan opened the two 1666475 Bank Accounts, which received investor funds. She was also the sole signatory on these accounts.

[141] Pan admitted at the hearing that Asia Pacific securities were sold to over 110 investors for over US $2.2 million. Pan also admitted that she was the sole signatory on the 1666475 US$ Account that received more than US $2 million from the US Bank Accounts into which investors' funds were deposited.

[142] Of this, $302,576 were used by Pan to pay the Pan Credit Cards, which included personal expenses and payments for GPC and Asia Pacific expenses such as telephones and mailbox rentals related to the investment scheme. Pan admits only to $150,000 being used to pay credit card bills.

[143] Pan signed the lease agreement for the GPC office premises on behalf of 1666475.

[144] Pan also held and paid for a number of phone numbers, one of which was the phone number used by Asia Pacific on its letterhead.

[145] Evidence of email correspondence between Pan and GPC employees discussing administrative issues for GPC and Asia Pacific was also submitted. They include emails between Pan and Jiwani regarding issues with getting money from clients after the subscription agreements had been sent out, an email originally from Miller forwarded by Jiwani to Pan listing share sales, and an email from Jiwani to Pan regarding the mailing of issued certificates.

[146] Based on the evidence presented, we conclude that Pan traded in Asia Pacific securities during the Material Time, contrary to subsection 25(1)(a) of the Act. She was not registered with the Commission in any capacity and no registration exemptions were available.

(f) Cheung

[147] We find that Cheung traded in Asia Pacific securities in breach of subsection 25(1)(a) of the Act.

[148] Cheung admitted that over 110 investors were sold shares in Asia Pacific and that he signed the share certificates issued to investor for their investment in shares of Asia Pacific.

[149] During his compelled examination, Cheung stated that he hired an individual named John to design the website for GPC, he was involved in paying for the design and maintenance of the website and he arranged for equipment contracts (phone system, internet services, etc.) used in the investment scheme at the Toronto GPC premises.

[150] Based on the evidence presented, we conclude that Cheung traded in securities of Asia Pacific during the Material Time, contrary to subsection 25(1)(a) of the Act. He was not registered with the Commission in any capacity and no registration exemptions were available.

(g) Gahunia

[151] We find that Gahunia traded in Asia Pacific securities in breach of subsection 25(1)(a) of the Act.

[152] Gahunia solicited investors in Asia Pacific securities using the alias Miller. Specifically:

- Investor 1 testified that “Miller” was very persuasive and wanted him to buy more shares, sending him a request for additional participation in August of 2007. He testified that after to his first investment of US $10,000, he made a further investment of US $10,000;
- Subscription agreements and letters of intent were sent by “Miller” to several investors including Investor 1, and two other investors who did not testify at the hearing;
- Investor 2 testified that “Miller” told him that there would be a guaranteed payout of $9 to $11 per share. He testified that “… He [Miller] seemed very honest and took the time to talk with me and assured me things were right and legitimate. So we decided to go with it”. After his initial purchase of 20,000 shares, Investor 2 together with his wife purchased 50,000 more shares of Asia Pacific for US $50,000;
- “Miller” sent an Asia Pacific information package to Investor 10; and
- “Miller” sent an Asia Pacific press release to at least one investor.

[153] A copy of a GPC telephone sales script for Miller was submitted in evidence. The script identifies the caller as Miller and it is clear from the language of the script that it was used for soliciting additional investments from existing Asia Pacific investors.

[154] Evidence was also presented of email correspondence from “Miller” to Jiwani listing sales of Asia Pacific shares.

[155] During Gahunia’s compelled examination by Staff, he stated that his job was initially sales and then branched off into supervision and management. He told Staff that he provided training to the qualifiers, ensuring that they learned and followed the sales script verbatim. Gahunia also testified that he believed that he called individuals who had previously invested when numbers were low, and believed these people to be accredited investors.

[156] Gahunia, through his company Netgrowth Enterprises, received US $328,914 and $19,673 of investor funds. Evidence shows that these payments were primarily commission payments for his sales of Asia Pacific shares.

[157] Having previously concluded that Miller was an alias for Gahunia, and based on the evidence presented, we conclude that Gahunia traded in securities of Asia Pacific during the Material Time, contrary to subsection 25(1)(a). Gahunia was not registered in any capacity with the Commission, and no registration exemptions were available.

(h) Toussaint

[158] We find that Toussaint traded in Asia Pacific securities in breach of subsection 25(1)(a) of the Act.

[159] Toussaint solicited Asia Pacific investors using the alias Beckford. Specifically:

- Investor 4 testified that in September 2007, "Beckford" convinced him to buy an additional 40,000 shares of Asia Pacific for US $40,000 on top of his initial investment of US $60,000 in May 2007;
- Subscription agreements, letters of intent, and wiring instructions were sent by "Beckford" to Investor 5 and Investor 10;
- Investor 6 testified that "Beckford" called her and offered her an investment opportunity for a minimum investment of 2,000 shares at US $1.00 per share and that she would receive US $1.25 per share no matter when she sold the shares. Investor 6 invested $2,000 in Asia Pacific shares; and
- Investor 7 testified that after her initial purchase of 2,000 shares of Asia Pacific, she did not receive her share certificate. She called her contact on and off requesting the documents. She eventually spoke with "Beckford" on the phone, who convinced her to purchase another 2,000 shares in Asia Pacific. She testified that:

> … And when I called again, I got Mr. Beckford. …
>
> So he also was very progressive in encouraging me to invest, and he said I would not lose. … He asked me if I was going to invest any more. I said, well, yes, I think I will invest another 2,000. And he said, well, when I send it, they will send me the package of paper all in one.
>
> So I sent it. I sent another 2,000. …
>
> (Hearing Transcript, June 2, 2009 at pp. 25-26.)

[160] Toussaint, through his company, Titan VC, received payments totalling US $90,142 and $13,612 of investor funds. Documents submitted in evidence show that these payments were primarily commission payments for his sales of Asia Pacific shares.

[161] Having previously concluded that Beckford was an alias for Toussaint, and based on the evidence presented, we find that Toussaint traded in securities of Asia Pacific during the Material Time, contrary to subsection 25(1)(a) of the Act. Toussaint was not registered with the Commission in any capacity and no registration exemptions were available.

(i) Jiwani

[162] We find that Jiwani traded in Asia Pacific securities in breach of subsection 25(1)(a) of the Act.

[163] Evidence shows email correspondence from Jiwani to Pan and Cheung regarding receiving money from clients, share sales, and issuing share certificates. Jiwani's involvement in the day to day management of GPC is established through these emails. For example:

- In an email dated November 17, 2006, Jiwani writes to Pan

> I've put ads. in the Star (Sat. and Tues.) again on the Visa Card for $622.00, OK ? We need 5 more Salesmen to be full again.
>
> In spite of all the problems we've had we are building a strong team and I am very optimistic about next year
>
> Monday we start loading!

- In an email dated November 30, 2006, he writes to Pan regarding subscribing to Canada News Wire:

> Christine, please call Mike and let him explain in detail why we need to subscribe to this news service for our press releases with a cost of about $150 on our Credit Card. It is more than well worth it !

[164] Additionally, in his voluntary examination by Staff, Jiwani stated that he was running the GPC offices during the Material Time and that his job with GPC could be characterized as a coordinator.

[165] In the compelled portion of his examination by Staff, Jiwani provided the following information:

- Jiwani directed someone to create a brochure and assisted in the creation of GPC's website;
- He told Pan in an email dated November 17, 2006 that they would start "loading" the following week. Jiwani explained to Staff that "loading" referred to any sales to an investor beyond the first sale to him or her;
- If share certificates had not been sent out by four to six weeks after an investment was made, Jiwani would notify Pan, reminding her to send them out; and
- Jiwani was paid 5 percent commission on all sales, and an override payment based on 25% of total sales less the total commissions paid out on sales of Asia Pacific shares.

[166] Jiwani received US $110,686 and CAN $20,746 of investor funds.

[167] Based on the evidence presented, we conclude that Jiwani traded in securities of Asia Pacific during the Material Time, contrary to subsection 25(1)(a) of the Act. He was not registered with the Commission in any capacity and no registration exemptions were available.

3. Findings

[168] Based on the evidence discussed above, we conclude that all of the Respondents breached subsection 25(1)(a) of the Act by trading in securities of Asia Pacific. None of the Respondents was registered and there were no registration exemptions available to them, as discussed starting at paragraph 175.

B. DID THE RESPONDENTS ENGAGE IN DISTRIBUTIONS OF SECURITIES WITHOUT A PROSPECTUS, CONTRARY TO SUBSECTIONS 53(1)?

1. The Law

[169] Subsection 53(1) of the Act prohibits distributions of securities where no prospectus has been filed. It states:

> **53. (1) Prospectus required** – No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director.

[170] Subsection 1(1) of the Act defines "distribution" as follows:

> **"distribution"**, where used in relation to trading in securities, means:
>
> (a) a trade in securities of an issuer that have not been previously issued; …

Therefore, for a breach of subsection 53(1), there must be a trade in securities of an issuer that have not been previously issued, and no filing of the preliminary prospectus and prospectus with the Commission.

[171] The prospectus requirement is essential in protecting investors. In *Jones v. F.H. Deacon Hodgson Inc.* (1986), 9 O.S.C.B. 5579 (H.C.), the court stated: "There can be no question but that the filing of a prospectus and its acceptance by the Commission is fundamental to the protection of the investing public who are contemplating purchase of the shares". The prospectus requirement is integral to ensuring that prospective investors have sufficient information to ascertain the risk level of their investment and to make informed investment decisions (*First Global*, *supra* at para. 145).

2. Analysis & Findings

[172] We concluded in the previous section that all the Respondents traded in securities of Asia Pacific.

[173] No prospectus or preliminary prospectus was ever filed with the Commission by Asia Pacific. There is no evidence that any investors were provided with a copy of an Asia Pacific prospectus.

[174] All the Respondents traded in securities of Asia Pacific, which we find had not been previously issued. We therefore conclude that all the Respondents breached subsection 53(1).

C. WERE ANY REGISTRATION OR PROSPECTUS EXEMPTIONS AVAILABLE?

1. The Law

[175] National Instrument 45-106 – *Prospectus and Registration Exemptions* ("**NI 45-106**") provides exemptions to the registration and prospectus requirements of the Act if certain conditions are met.

[176] Section 2.3 of NI 45-106 provides an exemption to the subsection 25(1)(a) and subsection 53(1) requirements for trades in a security if the purchaser is an "accredited investor" and is purchasing the security as principal.

[177] "Accredited investor" is defined in section 1.1 of NI 45-106:

> **"accredited investor"** means
>
> …
>
> (j) an individual who, either alone or with a spouse, beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds $1,000,000,
>
> (k) an individual whose net income before taxes exceeded $200 000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded $300 000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year,
>
> (l) an individual who, either alone or with a spouse, has net assets of at least $5,000,000,
>
> …

[178] The Commission noted in *Limelight*, *supra* at paragraph 142 that once Staff has shown that the respondents have traded without registration and distributed securities without a prospectus, the onus shifts to the Respondents to prove an exemption was available to them in the circumstances.

2. Analysis

[179] The Asia Pacific Lead Information form submitted in evidence has check-boxes for "accredited investor" and "non-accredited investor". However, the evidence does not show that investors were confirmed as being accredited before they invested in Asia Pacific. McQuarrie, a GPC qualifier, stated in his compelled examination that he never asked investors if they were accredited or not.

[180] We were presented with evidence that indicates that investors were not accredited investors. One Ontario investor in particular, Investor 6, told Staff in her examination that the subject never came up in her discussions with Asia Pacific representatives:

> Q. Did Mr. Beckford or anyone from Asia Pacific ask you about your experience investing in the stock market?
>
> A. Not that I can recall. Not that I can recall.
>
> Q. Any questions about your personal income, your net worth?
>
> A. No.
>
> Q. Anything of that nature?
>
> A. No.
>
> (Examination of Investor 6 by Staff, April 11, 2008 at pp. 12-13.)

[181] We note that Investor 2 testified that his annual income at the time of the hearing was US $50,000, which includes income from his disability pension. Staff provided us with a letter sent from Investor 4 and his wife, in which they write the following:

> We have had to use equity loans and retirement money loans just to pay the interest on our $100,000.00 because we foolishly believed that we would be "very happy with our investment" any day now. Bottom line, we are pretty much broke now.

[182] The Respondents submitted no evidence and made no argument on the availability of the accredited investor exemption. We therefore find no reason to conclude that this exemption was available.

[183] Staff submits that even if Asia Pacific investors were accredited investors, the registration exemption would not be available because Asia Pacific was a "market intermediary".

[184] Pursuant to section 3.9 of NI 45-106, the accredited investor exemption is not available to market intermediaries:

> 3.9 (1) Subject to subsection (2), in Ontario and Newfoundland and Labrador, the exemptions from the dealer registration requirements under the following sections are not available for a market intermediary except for a trade in a securities with a registered dealer that is an affiliate of the market intermediary:
>
> …

[185] *Re Lett*, *supra* provides further guidance on this issue at paragraph 65:

> Having regard to section 206(1) of the Regulations, if we find that the Respondents were market intermediaries as defined in section 204(1) of the Regulations, the Respondents are not exempt from having to be registered. In order to make this finding, it is necessary for us to find that the Respondents were engaged in or held themselves out as engaging in Ontario in the business of trading in securities as principal or agent.

[186] Further, as stated in *Re Allen*, *supra* at paragraph 86:

> The registration requirements of the Act do not apply to a trade in a security if the purchaser is an accredited investor and purchases as principal through a person who is a registered market intermediary. Hence, an unregistered trader of securities cannot avoid the registration requirements simply by trading in securities to accredited investors …

[187] In *Re Momentas Corp.* (2006), 29 O.S.C.B. 1603 at paragraphs 61 and 62, the Commission noted that the following characteristics were indicative of being a market intermediary: the respondent had no other source of revenue other than the sale of its securities, and individual respondents received substantial compensation from the proceeds of the offering.

[188] In this case, virtually all the funds coming into Asia Pacific were from the sale of its securities, and the Respondents were substantially compensated from the proceeds of the sale of Asia Pacific securities. Asia Pacific was therefore a market intermediary, and as such the accredited investor exemption would not be available in the circumstances.

3. Findings

[189] Investors such as Investor 2, Investor 4, and Investor 6 are the type of investors the registration and prospectus requirements are meant to protect. Rather than having been provided with adequate disclosure through a prospectus, the Asia Pacific investors were given false and misleading information about what would be done with the funds they invested.

[190] Under section 6.1 of NI 45-106, issuers must file reports of any exempt distributions with the Commission within 10 days of the distribution. There is no evidence of any such filings in this case.

[191] Given the evidence, we find that the Respondents did not meet the burden of showing that the accredited investor exemption was available. In addition, we note that the exemption would not be applicable in this case, regardless, since Asia Pacific acted as a market intermediary.

[192] We conclude that no exemptions to the registration or prospectus requirements under Ontario securities law were available to the Respondents.

D. DID GAHUNIA AND TOUSSAINT MAKE PROHIBITED REPRESENTATIONS THAT SECURITIES WOULD BE REPURCHASED OR REFUNDED, CONTRARY TO SUBSECTION 38(1) OF THE ACT?

1. The Law

[193] Subsection 38(1) of the Act states:

> **38. (1) Representations prohibited** – No person or company, with the intention of effecting a trade in a security, other than a security that carries an obligation of the issuer to redeem or purchase, or a right of the owner to require redemption or purchase, shall make any representation, written or oral, that he, she or it or any person or company,
>
> (a) will resell or repurchase; or
>
> (b) will refund all or any of the purchase price of,
>
> such security.

[194] For a breach of subsection 38(1), the Panel must be satisfied on the evidence that Gahunia or Toussaint represented to investors that the shares sold to them would be repurchased or refunded for the purpose of effecting a trade in a security.

2. Analysis

[195] Staff submits that both Gahunia and Toussaint made representations to Asia Pacific investors that their shares would be repurchased if the share price did not reach a specific level.

[196] Documentary evidence and investor testimony confirm that investors were consistently told that Asia Pacific would repurchase all shares sold to the investor at a fixed price of US $1.25 per share if the initial listing price of Asia Pacific shares at the time of the IPO was less than US $1.50. Investor witnesses testified as to the representations made by Gahunia (as Miller) and Toussaint (as Beckford) that the investors could redeem Asia Pacific shares purchased if the share price did not reach a certain level at the time of its IPO.

[197] Given our analysis regarding breaches of subsections 25(1)(a) and 53(1), it is clear that all communications with potential investors and investors were for the explicit purpose of enticing them to invest or re-invest in Asia Pacific securities. We are satisfied that any representations given by Gahunia and Toussaint to investors were with the intention of effecting a trade in Asia Pacific shares.

(a) Gahunia

[198] Investor 4 provided a copy of a letter he received by fax from Asia Pacific dated May 16, 2007, which states:

> As per your phone conversation with Shawn Miller, I hereby confirm on behalf of the company that should our IPO's opening price be less than $1.50 per share, you will have the option to, instead of exchanging your share certificates, redeem all of your shares at a fixed rate of $1.25 per share. This option will be available to you until the end of the first trading day.
>
> This offer only applies to *60,000* shares.

[199] Investor 4 testified that "Miller" told him his shares could be redeemed for US $1.25 per share if Asia Pacific's IPO's opening price was less than US $1.50 per share:

> Q. Okay. And in the third paragraph, sir, the letter seems to set out that – reference a phone conversation you had with Shawn Miller?
>
> A. Yes, sir.
>
> Q. And it also says that you will have the option to redeem all of your shares at a fixed rate of $1.25 per share if the IPO's opening price is less than $1.50?
>
> A. That is correct.
>
> Q. And is that something you were told by Mr. Miller on the telephone?

A. Yes, sir. We couldn't get it wrong. If the deal isn't made, it's still going to make $0.25 on every dollar that I put in.

Q. And this letter refers to 60,000 shares?

A. That's correct.

Q. And at this point, you had agreed, I take it, to purchase 60,000 shares?

A. Yes, sir.

(Hearing Transcript, June 1, 2009 at p. 68)

Investor 4 purchased 60,000 shares of Asia Pacific at US $1.00 per share for US $60,000 on May 17, 2007.

[200] Similar representations, that shares could be redeemed for US $1.25 each if the opening IPO price was less than US $1.50 per share, were made to other investors.

- Investor 1 testified that "Miller" talked to him regarding Asia Pacific's IPO opening share price.
- In an email, "Miller" instructed Investor 8 to notify him if he wishes to redeem his shares at US $1.25.
- A letter from Asia Pacific to Investor 9 similarly confirms that "Miller" promised that investor that he could redeem his shares at US $1.25 at the time of the IPO.

(b) Toussaint

[201] Toussaint made similar representations to investors that their Asia Pacific shares could be redeemed for US $1.25 per share at the time of the IPO, if the opening price was less than US $1.50 per share.

[202] Investor 5 provided a copy of a letter he received from Asia Pacific, which confirmed that, as per his conversation with "Beckford", his Asia Pacific shares could be redeemed at a fixed rate of US $1.25 per share if the IPO's opening price was less than US $1.50 per share. At the hearing, Investor 5 confirmed that this letter accurately reflects what "Beckford" told him about his Asia Pacific shares.

[203] We were also presented with evidence that at least two additional investors received virtually identical letters, confirming that as per their conversations with "Beckford", their shares in Asia Pacific could be redeemed if the above conditions were met.

3. Findings

[204] We are satisfied on the evidence that Gahunia and Toussaint, using their aliases, made repeated representations to investor who purchased Asia Pacific shares at US $1.00 per share, that their shares would be repurchased by Asia Pacific at a fixed rate of US $1.25 per share if Asia Pacific's IPO's opening price was less than US $1.50 per share.

[205] The Asia Pacific securities sold to investors were common shares in Asia Pacific. Evidence shows that the shares did not carry any obligation on Asia Pacific to redeem or purchase these shares. They also did not provide a right for shareholders to require their redemption or purchase.

[206] We have no doubt that, in this context, these representations by Gahunia and Toussaint were purely for the purposes of effecting trades in Asia Pacific shares, contrary to subsection 38(1) of the Act.

[207] In our view, these representations, repeatedly made to investors by Gahunia and Toussaint, were purely made to entice investors to invest or re-invest, which we consider to be high pressure sales tactics. We find this to be contrary to the public interest.

E. DID GAHUNIA AND TOUSSAINT MAKE PROHIBITED UNDERTAKINGS REGARDING THE FUTURE VALUE OR PRICE OF SECURITIES, CONTRARY TO SUBSECTION 38(2) OF THE ACT?

1. The Law

[208] Subsection 38(2) of the Act states:

> **38. (2) Future value** – No person or company, with the intention of effecting a trade in a security, shall give any undertaking, written or oral, relating to the future value or price of such security.

[209] Unlike subsection 38(1) of the Act, subsection 38(2) requires that an undertaking be made relating to the future value or price of a security. A simple representation is not sufficient to trigger a violation of this subsection.

[210] The Commission addressed this issue in Limelight, relying on the decision in *Re National Gaming Corp.* (2000), 9 A.S.C.S. 3570 ("***National Gaming***"). The Alberta Securities Commission (the "**ASC**") stated:

> … an undertaking is a promise, assurance or guarantee of a future price or value of securities that can be reasonably interpreted as providing the purchaser with a contractual right against the person giving the undertaking it, for any reason, the value or price is not achieved.
>
> (*National Gaming*, *supra* at 16)

[211] In this decision, the ASC also stated:

> In interpreting subsection 70(3)(a), we are mindful of the fact that predictions relating to the future value or price of securities are commonplace in the securities industry, and are not prohibited by the Act. …
>
> (*National Gaming*, *supra* at 16)

[212] *Limelight* states that an undertaking is more than a "mere representation":

> In our view, a mere representation as to future value is not an "undertaking" within the meaning of subsection 38(2) of the Act. Prohibiting all representations as to the future value of securities would ignore the reality of the marketplace.
>
> (*Limelight*, *supra* at para. 170)

[213] The Commission has also found that an undertaking within the meaning of subsection 38(2) can be something less than a legally enforceable obligation. The Commission determined that it should not take an overly technical approach to the interpretation of subsection 38(2), and that it should consider all of the surrounding circumstances and the Commission's regulatory objectives in interpreting the meaning of that section (*Limelight*, *supra* at paras. 164, 167, and 169).

[214] Relying on the ASC's decision in *National Gaming*, the Commission specifically stated that "in determining whether a representation amounted to an undertaking, the context of the statement must be considered, and the "undertaking" must be given a "functional interpretation" in keeping with the objective of protecting investors" (*Limelight*, *supra* at para. 167). Accordingly, the Commission agreed with the ASC's decision on this point.

[215] In an earlier decision, the Commission found that assurances and guarantees regarding the future value or price of a security did constitute an undertaking for the purposes of subsection 38(2). In *Re Aatra Resources Ltd.*, the Commission found that the following express representations regarding the future price of shares were undertakings that breached the Act:

> I would assure you, I will practically guarantee you that within the week you will see the stock … anywhere from twenty cents ($0.20) to fifty cents ($0.50) higher.
>
> (*Re Aatra Resources Ltd.* (1990), 13 O.S.C.B. 5109 at para. 34).

[216] The primary purpose of section 38 of the Act is investor protection. Undertaking as to the future value or price of a security are often made to vulnerable and unsophisticated investors, and subsection 38(2) aims to prevent a trade in a security through assurances of future value or price of the security.

[217] To find that these respondents breached subsection 38(2), we must therefore be satisfied that they gave investors what would be understood to be promises, guarantees or assurances regarding the future value or price of Asia Pacific securities. In doing so, we must consider the surrounding circumstances and the context in which undertakings were made to investors or potential investors.

2. Analysis

[218] Staff submits that the evidence before the Panel establishes that Gahunia and Toussaint made prohibited undertakings regarding the future price of Asia Pacific shares. Staff submits that the clearest evidence of these undertakings are Gahunia's

and Toussaint's communications to investors that they would be able to redeem their shares at US $1.25 if the IPO price was less than US $1.50.

(a) Gahunia

[219] Investor 1 testified that "Miller" made undertakings as to the future price of Asia Pacific shares. In his letter to Staff and during his testimony, Investor 1 stated that "Miller" told him that the initial opening price of Asia Pacific shares at the IPO would be $16 per share. According to Investor 1, "Miller" told him that in the worst case scenario, he would make $2,500 on a $10,000 investment based on the redemption of shares at US $1.25. Investor 1 testified that after investing $10,000 on December 12, 2006, he called Asia Pacific to follow up on his investment. In his letter to Staff, Investor 1 writes the following:

> Upon receiving the certificate for the first 10,000 shares I waited for follow-up status. … It was shortly after this going back and forth over several weeks that Shawn Miller called.
>
> Shawn was interested in making me feel comfortable with where things were at. Finally after several months [Shawn] called one day in May of 2007 to let me know that things were coming together and that the price being negotiated was at a level where investors stood to make a great deal of money since the price being asked per share was over $11 dollars and appeared that the initial opening per share for the IPO would be in the $16 dollar per share area. He went on to say that there were still some shares available at the initial investment amount of $1 per share and that he was calling initial shareholders to offer them the opportunity to purchase the remaining outstanding shares that needed to be sold at the initial price of $1 per share as that was the agreement that had been made for the share price for shares offered before the company took the IPO public.
>
> I indicated to Shawn that I was concerned and wanted to see some equity flowing back to me on the initial purchase of $10,000 before I made any additional investment. … Several months went by and I heard nothing. In early August I started calling since I began to wonder where things were at. It took about a week of my calling before I received a call back from Shawn. … He gave me an update and closed by asking whether I might be in a situation to follow through on the investment that he and I had talked about in June of 2007. I indicated that I was surprised that there were still shares available since I thought that in June things were just about wrapped up. … The other reason for his call was that he had received word that by the end of the week the deal would be finalized and that there still had a hold on the shares that we had discussed back in June of 2007. I told him again that I was concerned that I had not received any equity on the dollars that I had already invested. His response to me was that the, worse case scenario would be that I would make $.25 per share on my investment as outlined in the letters that I had received … Over the course of the next two days I ultimately decided to invest another $10,000 for 10,000 shares at $1 per share. In the process of making this decision, I spoke with Shawn several times and was assured that I would not be disappointed and that this was a very sound investment and that "worse case scenario" I would make $2,500 on a $10,000 investment in the next two weeks.

[220] Investor 1 also received a fax from Asia Pacific on June 26, 2007, which states:

> … As per your phone conversation with Shawn Miller, I hereby confirm on behalf of the company that should our IPO's opening price be less than $1.50 per share, you will have the option to, instead of exchanging your share certificates, redeem all of your shares at a fixed rate of $1.25 per share. This option will be available to you until the end of the first trading day.
>
> This offer only applies to the *10,000* shares.

[221] Based on these assurances, Investor 1 purchased a further 10,000 shares on June 26, 2007.

[222] Investor 9 also provided Staff with a copy of a similar letter from Asia Pacific dated November 10, 2006, confirming his phone conversation with "Miller" and offering assurances that his shares would be redeemed at US $1.25 per share if the IPO share price was below US $1.50. Investor 9 purchased 5,000 shares at US $1.00 per share on November 10, 2006 and a further 20,000 shares at the same price on March 19, 2007. On September 18, 2007, Investor 9 wrote an email to "Miller", which states:

> … I invested in Asia because of your recommendation. I felt skeptical about the investment and was about to back out of the deal. You assured me that my money was safe with Asia Pacific, You also promised me that my money was secured and I would receive at least all my money back, plus a minimum of 25 percent of the amount invested … I am 87 years ald [sic] and cannot afford to lose

> my investment, therefore I need some assurance that my money is secure and not scamed [sic] in some crooked deal.

[223] On the same day, "Miller" replied to Investor 9 via email, in which he provides the following assurances:

> … You have a very firm commitment that your investment is secure, not only with the $1.25 redemption feature backed by APEI, but also by our proven track record with the projects we've been involved in. I can assure you that this is no "scam or crooked deal" …

[224] Based on the evidence presented, we are convinced that Gahunia, using his alias, gave assurances to investors relating to the future value or price of Asia Pacific securities.

(b) Toussaint

[225] Investor 6, an Ontario resident also received a letter from Asia Pacific dated August 27, 2007, that was similar to the ones investors received regarding their conversations with "Miller". This letter confirms her phone conversation with "Beckford" and offers confirmation that Asia Pacific would redeem her shares at US $1.25 per share if the IPO's opening price was less than US $1.50. Investor 6 purchased 2,000 shares at US $1.00 per share on August 31, 2007 for $2,181 (or, US $2,000). Investor 6 also testified that "Beckford" assured her the future price would be US $1.25 per share, calling her investment in Asia Pacific a win-win situation:

> Q. So what else did you and Mr. Beckford discuss during that conversation?
>
> A. Briefly, he told me what my aunt said. You know, it had something to do with oil. You know, you had to buy a minimum of 2,000 shares. It would be $2,000. No matter when I sold it, I would make $1.25 per share on whatever I bought. And it was a win-win situation.
>
> (Hearing Transcript, June 2, 2009 at p. 9-10)

[226] Investor 5 provided a copy of a letter dated July 11, 2006 that he received from Asia Pacific which states:

> As per your phone conversation with Peter Beckford, I hereby confirm on behalf of the company that should our IPO's opening price be less than $1.50 per share, you will have the option to, instead of exchanging your share certificates, redeem all of your shares at a fixed rate of $1.25 per share. This option will be available to you until the end of the first trading day.
>
> This offer applies to the *15,000* shares purchased by Wednesday, July 12, 2006.

[227] Investor 5 made a second investment of 15,000 shares for US $15,000 on July 12, 2006.

[228] Based on the evidence presented, we are convinced that Toussaint, using his alias, gave assurances to investor relating to the future value or price of Asia Pacific securities.

3. Findings

[229] The evidence shows that both Gahunia and Toussaint made statements and provided assurances to investors that, in the worst case scenario, they could redeem their Asia Pacific shares at a fixed rate of US $1.25 per share, if the opening price of Asia Pacific's IPO was less than US $1.50 per share. These assurances were then confirmed by follow-up letters sent by Asia Pacific to investors.

[230] Gahunia and Toussaint basically guaranteed investors a minimum return on their investment of US $0.25 per share, or 25% on their investment in Asia Pacific at US $1.00 per share and evidence from investor testimony indicates that these undertakings were given to close the sale of Asia Pacific shares.

[231] We consider these guarantees to be assurances regarding the future value or price of the securities. Taking into consideration the context in which these assurances were given, we consider these assurances to be undertakings within the meaning of subsection 38(2) of the Act.

[232] We conclude that these undertakings given by Gahunia and Toussaint, using their aliases, were made purely for the purpose of effecting trades in Asia Pacific shares, and were therefore contrary to subsection 38(2) of the Act.

[233] In our view, these undertakings to investors regarding minimum, worst case scenario, future value or price of Asia Pacific securities, repeatedly made by Gahunia and Toussaint, were made to entice investors to invest or re-invest. We consider these undertakings to be high pressure sales tactics, which we find to be contrary to the public interest.

F. DID GAHUNIA AND TOUSSAINT MAKE PROHIBITED REPRESENTATIONS REGARDING THE FUTURE LISTING OF SECURITIES, CONTRARY TO SUBSECTION 38(3) OF THE ACT?

1. The Law

[234] Subsection 38(3) of the Act states:

> **38. (3) Listing** – Subject to the regulations, no person or company, with the intention of effecting a trade in a security, shall, except with the written permission of the Director, make any representation, written or oral, that such security will be listed on any stock exchange or quoted on any quotation and trade reporting system, or that application has been or will be made to list such security upon any stock exchange or quote such security on any quotation and trade reporting system, unless,
>
> (a) application has been made to list or quote the securities being traded, and securities of the same issuer are currently listed on any stock exchange or quoted on any quotation and trade reporting system; or
>
> (b) the stock exchange or quotation and trade reporting system has granted approval to the listing or quoting of the securities, conditional or otherwise, or has consented to, or indicated that it does not object to the representation.
>
> …

[235] For a breach of section 38(3), the Panel must be satisfied on the evidence that these respondents represented to investors that shares in Asia Pacific would be listed on a stock exchange for the purpose of effecting a trade in Asia Pacific shares.

2. Analysis and Finding

[236] Although investors were told that Asia Pacific was a pre-IPO opportunity, as evidenced by the excerpts from witness testimony and letters sent by Asia Pacific noted above, we did not see evidence that any specific representation was made to investors that Asia Pacific would be listed on an exchange.

[237] Based on the evidence before us, we are not satisfied on a balance of probabilities that Gahunia or Toussaint represented that Asia Pacific would be listed on a stock exchange.

G. DID THE RESPONDENTS ENGAGE IN ACTS, PRACTICES OR COURSES OF CONDUCT RELATING TO SECURITIES THAT THEY KNEW OR REASONABLY OUGHT TO HAVE KNOWN PERPETRATED A FRAUD, CONTRARY TO SECTION 126.1(B) OF THE ACT?

1. The Law

[238] The basis for an allegation of fraud involving securities is found under section 126.1(b) of the Act, which states:

> **126.1 Fraud and market manipulation** – A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives of securities that the person or company knows or reasonably ought to know,
>
> …
>
> (b) perpetrates a fraud on any person or company.

[239] "Fraud" is not a defined term in the Act, and due to the recent introduction of the fraud provision, there are few cases interpreting section 126.1(b). In *Re Al-Tar Energy Corp.* (2010), 33 O.S.C.B. 5535 ("***Al-Tar***"), the Commission adopted the British Columbia Court of Appeal's interpretation of the substantially identical fraud provision in the British Columbia Securities Act, R.S.B.C. 1996, c. 418, as amended in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 ("***Anderson***"), leave to appeal denied by the Supreme Court ([2004] S.C.C.A. No. 81).

[240] The British Columbia Court of Appeal approach to the legal test for securities fraud as set out in *Anderson* was adopted in *Re Capital Alternatives Inc.*, 2007 ABASC 79, which was affirmed in *Alberta (Securities Commission) v. Brost*, [2008] A.J. No. 1071 (C.A.).

[241] The decision in Anderson reviews the legal test for criminal fraud found in *R. v. Théroux*, [1993] 2 S.C.R. 5 ("***Théroux***"). In *Théroux*, Justice McLachlin (as she then was) summarized the elements of fraud at paragraph 27:

> … the *actus reus* of the offence of fraud will be established by proof of:
>
> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
>
> 2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.
>
> Correspondingly, the *mens rea* of fraud is established by proof of:
>
> 1. subjective knowledge of the prohibited act; and
>
> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

[242] The British Columbia Securities Act fraud provision is substantially similar to section 126.1(b) of the Act. The British Columbia Court of Appeal, in addressing the application of the fraud provision in Anderson at paragraph 26, states that:

> … s. 57(b) does not dispense with proof of fraud, including proof of a guilty mind. … Section 57(b) simply widens the prohibition against participation in transactions to include participants who know or ought to know that a fraud is being perpetrated *by others*, as well as those who participate in perpetrating the fraud. It does not eliminate proof of fraud, including proof of subjective knowledge of the facts constituting the dishonest act, by someone involved in the transactions.

[243] The British Columbia Court of Appeal's decision in *Anderson* also addressed the standard of proof for securities fraud in the regulatory context:

> Fraud is a very serious allegation which carries a stigma and requires a high standard of proof. While proof in a civil or regulatory case does not have to meet the criminal law standard of proof beyond a reasonable doubt, it does require evidence that is clear and convincing proof of the elements of fraud, including the mental element.
>
> (*Anderson*, *supra* at paragraph 29.)

[244] Our interpretation of subsection 126.1(b) of the Act is consistent with the decisions referred to above and the Commission's decision in *Al-Tar*.

[245] For a corporation, it is sufficient to show that its directing minds knew that the acts of the corporation perpetrated a fraud to prove a breach of section 126.1(b).

2. Analysis

[246] Staff alleges that the Respondents participated in acts, practices or courses of conduct relating to Asia Pacific securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies, in breach of section 126.1(b) of the Act.

[247] We note that this is an early case on the application of section 126.1(b) by the Commission. Although we received submissions from Staff, the Respondents made no submissions on the interpretation of section 126.1, or their liability under the section.

[248] Fraud is "one of the most egregious securities regulatory violations" and is both "an affront to the individual investors directly targeted" and "decreases confidence in the fairness and efficiency of the entire capital market system" (*Re Capital Alternatives Inc.* (2007), A.B.A.S.C. 79 at para. 308 citing D. Johnston & K. D. Rockwell, *Canadian Securities Regulation*, 4th ed., Markham: LexisNexis, 2007 at 420).

(a) GPC

[249] We find that GPC engaged in acts of deceit, falsehood and other fraudulent conduct that deprived Asia Pacific investors of their funds.

[250] The GPC website, www.globalpartnerscapital.com, contained false and deceitful information that was intended to mislead investors into believing that GPC was a legitimate, established company. The GPC website claimed:

- Global Partners Capital specializes in investing in emerging energy companies, enterprise services, technology companies, and communications companies operating primarily in the U.S., Canada and China. We help shape the future of these emerging segments by investing in market-leading companies with world-class management teams.

  With offices in Dallas Texas, Toronto Canada and Beijing China, GPC currently manages over $340 million in capital ….

- GPC was founded in 1998 on the premise that the convergence of energy, communications, internet and media, in all its forms, would transform the market, feeding the entrepreneurial spirit and driving the creation of market leading companies. We have assembled an exceptional investment team with a unique combination of operating, financial and marketing expertise.

- Our investment team combines a range of disciplines including general management, marketing and corporate finance with extensive industry knowledge and private equity expertise.

- Our success is grounded in our ability to identify market trends and fast growing industry categories for compelling investment opportunities with outstanding management teams.

- Once targeted companies have been identified, we continue to evaluate and assess the investment opportunity. GPC's deal team is balanced by a review team, which acts as a counterpoint, questioning assumptions and addressing the major risks inherent in each potential investment. Each year we review over 500 deals. …

[251] In their investigation, Staff did not locate any evidence of assets, operations or investments to support GPC's claims made on its website.

[252] We find that the website contained information about GPC's business activities that was largely fabricated. We were not provided with any evidence to substantiate any of the claims on the GPC website. We are satisfied that the statements about GPC's activities were false and misleading:

- GPC did not invest in any of the sectors, industries or countries mentioned on the website.

- GPC did not have an office in Las Vegas, Beijing or Dallas.

- GPC did not manage any capital.

- There is no evidence to support the claim that GPC had an investment team with extensive industry knowledge and private equity expertise or a deal team. Evidence shows that almost all GPC employees were telemarketers (qualifiers and sales representatives) who were engaged in activities purely focused on selling Asia Pacific shares, which we found breached subsection 25(1)(a) of the Act, as set forth in our reasons, above.

- GPC was not founded in 1998 for the purposes described on the website. Rather, as Cheung stated in his interview with Staff, GPC was created only for the Asia Pacific project.

[253] The GPC website also made claims about the projects that Asia Pacific was involved in. In the section titled Portfolios (Investment _ Success _ Profits), it stated that Asia Pacific was concentrating on two oil and gas projects with drilling locations in Western Australia and that over 17 million barrels of reserves were ready to be drilled. This information was false and misleading. Asia Pacific was not involved in multiple oil and gas projects, as claimed on the website. Asia Pacific's only involvement in oil and gas projects was its failed Empire Oil Investment in one well. Cheung would have been aware of the fact that Asia Pacific was not involved in any oil and gas projects after the initial Empire Oil Investment in May 2006.

[254] Investors were told about the success of earlier pre-IPO investment opportunities by GPC representatives, as evidenced by sales scripts found in the GPC offices and testimony provided by investors. There was no evidence to support these claims. These claims of successful previous investments by GPC were false.

[255] Investors were misled as to the nature and location of GPC. For example:

- Versions of the website from July 20, 2007 and August 24, 2007 list different addresses for GPC, one in Las Vegas, Nevada, and the other in Richmond Hill, Ontario.
- Investor 1 testified that he was contacted by someone who identified himself as the Director of the Equity Finance division of GPC and who was calling from Las Vegas.
- GPC employees told Staff in their compelled examinations that they would tell people they were calling from Dallas, Texas, when they were in fact calling from Toronto.
- GPC used couriers to conceal the true location of their offices from investors. The courier accounts were used to move investor documents and cheques between the virtual office in Dallas, the office in Ontario and Pidgeon in Las Vegas, who deposited the cheques into Asia Pacific bank accounts in the U.S.

[256] GPC representatives used aliases when dealing with investors, as discussed earlier.

[257] Investor 11 was sent letters purportedly sent by John Thompson and Randolph Hastings Jr., as Senior Portfolio Manager and President of GPC that stated Asia Pacific would be listed on the NASDAQ on June 12, 2007 without fail, the minimum listing price would be US $3.00 and he could sell his shares for a minimum of $3.00 per share up to the listing date. There was no Thompson or Hastings working for GPC nor were there plans to list Asia Pacific shares on the NASDAQ.

[258] GPC is an unincorporated business that operated in Toronto, Ontario. It had no board of directors and no operating assets. GPC was held out to be a separate corporation that marketed pre-IPO investment opportunities to potential investors, but in reality it was merely an extension of the investment scheme, in our opinion, established to sell Asia Pacific securities.

[259] GPC engaged in fraudulent activities for the purposes of obtaining investment funds through the sale of Asia Pacific shares.

[260] Cheung and Pan were the directing minds of GPC. Both were aware of the fraudulent nature of the activities of GPC and, as discussed later, both also perpetrated a fraud on investors in Asia Pacific securities. Based on the evidence reviewed above, and on their admissions at the hearing, we find that they both knew that GPC was not engaged in any legitimate business and that it was created purely to support the investment scheme. They knew its business was dishonestly raising funds from investors through the sale of Asia Pacific shares. We have no doubt that Pan and Cheung were aware of the role of GPC in the investment scheme, the significant number of shares of Asia Pacific sold to investors by GPC representatives, and the related fraudulent activities that they knew would put investors' funds and pecuniary interests at risk. We are therefore convinced that GPC acted through Pan and Cheung, who were its directing minds.

[261] Investor testimony confirmed that investors relied on the false and fabricated information communicated to them when they were deciding whether to invest or re-invest in Asia Pacific securities.

[262] GPC's fraudulent acts, discussed above, deprived investors of the funds that they were induced by deceit to invest in the Asia Pacific securities. As a result of these acts, investors lost their investments of over US $2.2 million. Based on the evidence, we find that GPC's directing minds knew of the fraudulent nature of its actions.

[263] Accordingly, we conclude that GPC perpetrated a fraud on investors in Asia Pacific securities and contravened section 126.1(b) of the Act.

(b) Asia Pacific

[264] We find that Asia Pacific engaged in acts of deceit, falsehood and other fraudulent conduct that deprived investors of their funds.

[265] The Asia Pacific website, www.asiapacificenergyinc.com, contained false and deceitful information about the company, including:

- "**Asia Pacific Energy** is a privately held American Oil & Gas Exploration Company. We are currently focusing our efforts in two major projects, thereby creating a unique synergy in vital areas such as; strong company

alliances, collective research and development strategy, and a forcast for optimum drilling results. Ultimately, our primary goal is to provide anticipated above average returns for our qualified investors' participation."

- "By focusing on cutting-edge drilling technology, we thereby expedite the process of ensuring a highly profitable end-product. … **Our strategically researched properties have an estimated Seventeen Million Barrels of recoverable reserves – ready to be drilled.**"

- A cached version of the website from August 2, 2007 claimed that Randolph Hastings Jr. and J. Allen White were the principals of Asia Pacific. The website states:

> Mr. Randolph Hastings, Jr., B.A., M.A., has more than 15 years of experience in overseeing successful oil & gas projects throughout North America and Australia. Mr. Hastings will focus on the overall management and implementation of the drilling operations

With respect to White, the website claims:

> Throughout his professional career of more than 25 years, Mr. white [*sic*] has been at the forefront of oil & gas exploration … Mr. White oversees and manages all activities of Asia Pacific Energy Inc. in the exploration for natural gas and oil.

- The website also provided detailed information under the heading "Projects" on two projects, The Carnarvon Basin Project EP-435 ("EP-435") and The Perth Basin Project EP-426 ("EP-426"). The information on these two Australian drilling projects located included details on regional geology, stratigraphy, geological maps, reservoir, hydrocarbon potential, seismic interpretation, and prospects for each project.

- For EP-426, the website states:

> The Moiary Prospect has 160 hectares of anticlinal closure with a vertical relief of 15 metres at the F Sand and 45 metres at the Top Coaly Unit. **Estimated recoverable reserves for the F, J and L Sands of the Cattamarra Coal Measures are a total of 7.5 million barrels of oil – ready to be drilled.**

- For EP-435, the website states that:

> **The main prospects in EP-435, the Pindan, Dune and Parror Hill East have total estimated recoverable reserves of 10 million barrels – ready to be drilled.**
>
> [emphasis in original]

[266] In their investigation, Staff did not locate any evidence of assets, properties, or investments, with the exception of the failed Empire Oil Investment.

[267] We were not provided with any evidence that substantiated any of the claims on the Asia Pacific website. On the contrary, we find that the website investors were directed to, and which they relied on when making investments, contained false and deceitful statements so as to mislead investors about Asia Pacific and its business, management, assets and investments:

- Through their investigation, Staff did not find any evidence of Asia Pacific focusing on cutting-edge drilling technology, and no research was generated by Asia Pacific with respect to any properties.

- There was no evidence to support the claim that Randolph Hasting Jr. or J. Allen White were involved in Asia Pacific operations in any capacity

- There is also no evidence that Asia Pacific was involved in the EP-426 project. Evidence shows that the description of this project on the Asia Pacific website was identical to excerpts from a report written for the Empire Oil Company (WA) Limited in August 2005.

- Asia Pacific had a limited short-term involvement in the drilling of one exploration well for the EP-435 project, but had no other involvement in that project.

[268] The Empire Oil Investment was Asia Pacific's only investment. It involved the drilling of one exploration well that turned out to be dry. Empire Oil & Gas NL had the following to say in a letter sent to Staff investigators:

> The Empire Oil & Gas N.L. Farmin transaction with Asia Pacific Energy Inc. have been [*sic*] disclosed to the ASX [Australian Stock Exchange] regarding Asia Pacific's involvement in drilling Dune-1 in EP 435 … Asia Pacific Energy Inc. contributed to the cost of drilling one exploration well, Dune-1 in EP 435. Such Dune-1 Farmin has been completely disclosed to the ASX.
>
> Subsequent to the drilling of Dune-1, a dry hole, Asia Pacific chose not to participate of the EP 435 Joint Venture and consequently has no interest in EP 435. Asia Pacific Energy Inc. did not participate in the next well drilled in the EP 435 Permit, Parrot Hill-2. Asia Pacific currently has no interests in any of Empire's petroleum permits. To date there have not been any further business transactions between Empire Oil & Gas N.L. and Asia Pacific Energy Inc.

[269] A stock exchange release by Empire Oil & Gas NL indicates that Asia Pacific entered into a farmin agreement with them on May 9, 2006, and that disclosure to the ASX regarding the drilling of a Dune-1 well was made on June 9, 2006. In an ASX announcement dated June 16, 2006, another investor in EP-435 announced that Dune-1 drilling was completed on June 12, 2006 with no commercial hydrocarbons present in the well – in other words, the well was a dry hole. Cheung, a directing mind of Asia Pacific, confirmed this in his compelled examination, where he told Staff that Asia Pacific only participated in one project in Australia: "… we were not really happy … because we got nothing … We lost 400,000". There is no evidence that this information was shared with investors in Asia Pacific nor that Asia Pacific's involvement in this project only lasted about two months.

[270] Asia Pacific's press releases, purportedly issued by Asia Pacific through Canada Newswire were provided to numerous investors. These press releases also contained false and deceitful statements about the company. For example:

- A press release dated Dallas, July 17, [2006] purportedly signed by Randolph Hastings, Jr., Director, on behalf of the Board, included the following false statements:
  - "Asia Pacific Energy Inc. (the "Company") is pleased to report that as of July 1, 2006 the Company has successfully concluded an Agency Agreement with Canton Oil Transporter Inc. (COTI) on its Pindan and Parrot Hill East prospect wells in EP-435 Carnavon Basin Project.

    Canton Oil Transporter Inc. is a wholly owned subsidiary of China Oil and Gas Inc."
  - "Under the terms of the contract China Oil & Gas Inc. (COGI) will purchase all existing and forth coming inventory at the specified prospect well sites in year one of the term & will be subject to an agreed royalty payment in years two, three, four and five of the contract for the distribution which will give Asia Pacific Energy Inc. (APEI) a small fiduciary interest in Canton Oil Transporter Inc. (COTI). In addition, Asia Pacific Energy Inc. gives COGI the option to purchase its Dune Well contract within a two year period expiring on July 1, 2008."
  - "This Agency Agreement with China Oil & Gas Inc. (COGI) allows Asia Pacific Energy Inc. (APEI) the ability to advance its efforts in moving forward with the exploration & development of its current and future acquisitions."
  - "Mr. Hastings, Director of Asia Pacific Energy Inc. extends his thanks to the Management team of Global Partners Capital (GPC) and China Oil & Gas Inc. (COGI) for their cooperation & professionalism in the preparation of the Agreements."
- A press release dated Perth, Australia, November 14, 2006 and purportedly signed by Randolph Hastings, Jr. included the following false statements:
  - "Asia Pacific Energy Inc. (APEI) announced that it has received a friendly offer for the company (APEI) and their properties under development in the Carnavon Basin area of Western Australia. The offer, by an established Oil & Gas producer based in Australia, represents a significant premium over the previous offer of $ 5.50/share. Asia Pacific Energy Inc. (APEI) current offering price is now under final evaluation."
  - "An agreement has been reached to settle the outstanding native land claim. This settlement outlines the payment of 1-2% royalty of petroleum produced at the wellhead, for a period of not less than 15 years from the start of production on the 6,716,000 acres in the Carnavon Basin."
  - "Asia Pacific Energy Inc. (APEI) has entered into a Farmin Agreement with Australian-Canadian Oil Royalties Ltd (ACOR) for the development of an additional site under permit # ATP-582-P."

- A press release dated January 22, 2007 at Perth, Australia and Dallas, Texas included the following false statements:

    - "Asia Pacific Energy Inc.(APEI) announced that it has received a friendly offer for the company (APEI) and their properties under development in the Carnarvon and the Perth Basin area of Queensland, West Australia. The offer, by an established Oil & Gas producer based in Australia, represents a significant premium over the previous offer of $ 1.75 / share (Nov. 14,2007). Asia Pacific Energy Inc. (APEI) current offering price is now under final evaluation."

    - "Mr. Randolph Hastings, Jr., President of Asia Pacific Energy Inc.(APEI) extends his thanks to the management team of Global Partners Capital (GPC) and China Oil & Gas …"

    - The press release also gives statement with respect to ACOR, COTI and native land claims, similar to ones described in the previous paragraphs.

[271] All of the transactions mentioned in Asia Pacific's press releases were fabrications. There were no agency agreements, friendly offers, or outstanding native land claims as described in the releases. Asia Pacific did not own any properties under development or prospect wells. It was not involved with Randolph Hastings, Jr. Further, it appears that these releases were purported to be issued from Dallas and Perth, in an attempt to mislead investors about the scope of Asia Pacific's business activities.

[272] The press releases of November 14, 2006 and January 22, 2007 both deceptively reference Asia Pacific's properties under development in the EP-435 Carnarvon Basin and EP-426 Perth Basin projects. This information was fabricated so as to deceive Asia Pacific investors. As discussed above, the only investment that Asia Pacific made was an exploration well that was found to be dry just over a month after Asia Pacific entered into a farmin agreement on May 9, 2006.

[273] With respect to the November 14, 2006 press release about a farmin agreement with ACOR, ACOR, which is a company based in Texas, informed Staff via email that, "A Farmin Agreement was made with Asia Pacific, only to be dropped due to their lack of funding. We have not heard from them since". It would appear that investors were not advised of this.

[274] In addition to these press releases, investors were provided with an elaborately prepared colour brochure entitled Asia Pacific Energy Investor Portfolio, which contained false information that was very similar to what was posted on the Asia Pacific website.

[275] Investors were also provided letters and emails, sent by Asia Pacific. These communications also contained false information, including, for example:

- A letter sent by Asia Pacific to Investor 12 stating that its last private placement went from $0.50 per share to $11 per share and that it is more confident about the next projects it is involved in.

- Investors were sent correspondence supposedly from Travis Armstrong, who was an executive at Asia Pacific, promising them that there would be an IPO and they would have the option to redeem their shares at a fixed price. Rotondo told Staff in her compelled interview that she would send out a letter from Travis Armstrong to investors, although she did not know who Travis Armstrong was.

- Letters confirming assurances of share redemption at a fixed price at the Asia Pacific IPO, as discussed in our analysis above.

[276] Reviewing Asia Pacific's business activities as a whole, we find that the following evidence also confirms that Asia Pacific had no legitimate business purpose, and that the company's only purpose was to dishonestly raise funds from investors:

- Asia Pacific representatives used aliases when dealing with investors.

- The US Bank Accounts were open only for a short time. Investor funds were deposited into these accounts and within a few days of this deposit, almost all these funds were transferred out to 1666475 in Ontario. 1666475, which was controlled by Pan, did not have any legitimate business reasons for receiving these investor funds from Asia Pacific.

- The address of a virtual office was listed as an Asia Pacific office location. Asia Pacific used a virtual office address, phone lines and couriers to depict it as a Texas-based organisation to investors who were mostly U.S. residents.

- Asia Pacific had no operating assets.

- Asia Pacific did not maintain a shareholder list, its shares did not have a CUSIP number, and it did not have a transfer agent.

[277] Investors were influenced by the false and deceitful information provided to them via the Asia Pacific website, press releases, promotional materials, and other communications when they made their decisions to invest in Asia Pacific shares. We are convinced that investors relied on this information and were misled as to the nature of their investment in Asia Pacific securities. For example:

- Investor 2 testified that his research on Randolph Hastings Jr. and the projects Asia Pacific claimed to be involved in played a role in his decision to invest in Asia Pacific:

> Q. And you told us you went and looked at the web site. What were you looking for when you went and looked at their web site, sir?
>
> A. Well, I wanted to see if it was real, and in the web site, they had mentioned Randolph Hastings Jr. And I did a search on him, and he was a very clean guy and honest and seemed like he was on the ball with this kind of stuff, and I searched out the Perth Basin and the companies that were involved in it, and it was pretty much exactly as they said.
>
> (Hearing Transcript, June 1, 2009 at pp. 39-40.)

- Investor 5 testified that he was told at one point that Beckford was in Australia because they were expanding their involvement to a second oil field there:

> They did tell me the investment was expanding to a wider oil field, and that is why Mr. Beckford was in Australia. There was a second oil field that was found next to the one they were drilling on or exploring on, and Asia Pacific was in the process of trying to obtain that land.
>
> (Hearing Transcript, June 1, 2009 at p. 94.)

[278] We also note that the evidence shows that Asia Pacific was involved in a reverse merger with China Bio Life Enterprises, Inc., executed on October 29, 2007 (the "**Merger Agreement**"). As a result of this merger, there was a 200 to 1 reverse stock split. A representative of the transfer agent for the new corporation advised Staff that he had received no instructions with regard to changing share certificates. Staff's review of the shareholders list for the newly merged entity found that the new shareholder list did not include any of the shareholders that were sold securities of Asia Pacific during the Material Time. As a result, all Asia Pacific investors lost any claim to the corporate entity.

[279] Cheung was a directing mind of Asia Pacific. As stated in our analysis of GPC's fraudulent conduct, Cheung was aware of the fraudulent activities of the entire investment scheme. Based on the evidence reviewed above, we find that Cheung knew that Asia Pacific was not engaged in a legitimate business as described on its website, in its press releases and in its promotional material. He knew that Asia Pacific was fraudulently selling its shares. The fraudulent acts appear to be the only business purpose of Asia Pacific.

[280] Pidgeon played an important role in the investment scheme selling Asia Pacific securities. Specifically, he was listed as a director and officer of Asia Pacific in the corporate filings, and he set up the US Bank Accounts, which made it possible for Asia Pacific to accept and transfer investment funds. As sole signatory on the US Bank Accounts, he authorized the transfer of Asia Pacific funds from investors to 1666475 accounts, when there was no legitimate business reason for these transfers. Pidgeon also signed the Merger Agreement as President, Director of Asia Pacific. We therefore find that Pidgeon was a directing mind of Asia Pacific and knew or reasonably ought to have known that Asia Pacific was perpetrating a fraud in relation to the Asia Pacific securities.

[281] Cheung knew of and Pidgeon knew or ought to have known of these fraudulent activities that they both would have known would put investors' funds and pecuniary interests at risk.

[282] We therefore conclude that Asia Pacific acted through Cheung and Pidgeon, who were its directing minds.

[283] We are convinced that investors relied on the false and deceitful information communicated to them about Asia Pacific's business activities on its website, in press releases, in other promotional material and through its representatives when they were deciding to invest or re-invest in Asia Pacific securities. Except for the Empire Oil Investment, the investor funds were not utilised for any expenses relating to the activities Asia Pacific investors were led to believe the company was engaged in.

[284] Asia Pacific's fraudulent acts, discussed above, deprived investors of the funds that they were induced by deceit to invest in Asia Pacific securities. As a result of these acts, investors lost their investments of over US $2.2 million. Based on the evidence, we find that Asia Pacific's directing minds knew or reasonably ought to have known of the fraudulent nature of its actions.

[285] Accordingly, we conclude that Asia Pacific perpetrated a fraud on investors in Asia Pacific securities and contravened section 126.1(b) of the Act.

(c) 166647

[286] We find that 1666475 engaged in acts of deceit, falsehood and other fraudulent conduct that deprived Asia Pacific investors of their funds.

[287] The evidence shows that 1666475 had a significant role in the investment scheme and the resulting fraud on Asia Pacific investors.

[288] Over US $2.1 million of Asia Pacific investor funds were transferred from the US Bank Accounts to the 1666475 US$ Account during the Material Time. The 1666475 Bank Accounts were then used to channel investor funds through the investment scheme, as described at paragraphs 92 and 93. For example, the following payments were made:

- the Empire Oil Investment of $400,000;
- sales commission and/or salary payments made directly or indirectly to GPC employees, including Gahunia, Toussaint, and Jiwani;
- payments on the Pan Credit Cards, which included significant personal expenses; and
- expenses related to the investment scheme, including rent, IT, courier and utilities payments.

[289] Evidence submitted indicates that of the over US $2.1 million of investor funds transferred to 1666475, over US $985,000 and over $670,000 were used to make the payments described in the paragraph above. Of these payments, over half were used to pay Individual Respondents and to make payments to the Pan Credit Cards. The remaining investor funds transferred into the 1666475 Bank Accounts have not been accounted for.

[290] Pan had knowledge of all the activities of 1666475. She incorporated 1666475 and was its sole director. She opened the 1666475 Bank Accounts, and was the sole signatory on these accounts. She was aware of the investor funds being transferred from the US Bank Accounts to the 1666475 US$ Account. All payments made from the 1666475 Bank Accounts were authorized by her. Pan was the directing mind of 1666475.

[291] Based on the evidence and on Pan's admissions at the hearing, we are convinced that Pan was aware of the role of 1666475 in the investment scheme, that 1666475 was not engaged in any legitimate business, and of the fact that 1666475 was a party to the fraudulent acts that would put the Asia Pacific investors' funds and pecuniary interests at risk. Pan knew or reasonably ought to have known that much of these funds were not being used for the business purposes that were communicated to investors

[292] We conclude that 1666475 acted through Pan, its directing mind.

[293] 1666475's fraudulent acts, discussed above, deprived investors of the funds that they were induced by deceit to invest in the Asia Pacific securities. As a result of these acts, investors lost their investments of over US $2.2 million. Based on the evidence, we find that 1666475's directing mind knew of the fraudulent nature of its actions.

[294] Accordingly, we conclude that 1666475 perpetrated a fraud on investors in Asia Pacific securities and contravened section 126.1(b) of the Act.

(d) Pidgeon

[295] We find that Pidgeon engaged in acts of deceit, falsehood and other fraudulent conduct that deprived Asia Pacific investors of their funds.

[296] Staff submits that despite their efforts, they have not been able to examine Pidgeon, a resident of the U.S. However, on February 14, 2009, Staff received an email from Pidgeon, in which he made the following statements:

- It has come to my attention that you have me listed as President and Director of this company. I am NOT president or a director of any company named Asia Pacific Energy or any variation of that name in any jurisdiction in any country.

- In February of 2006 I was hired … to be the Manager of Asia Pacific Energy Inc. of Nevada. My sole job duty was to manage the bank account. …

- Other than make deposits and withdrawals to pay some bills I was instructed to send wires from the Company account to the company bank account in the Province of Ontario, a TD account.

- I was paid a starting amount of $500 a month for most months with an increase in the last 4-5 months due to the increase in work.

- I never spoke with any customers. I do not remember ever signing any documents other than the initial bank account forms or wire transfer requests …

[297] However, we were presented with evidence contrary to these statements. As set out at paragraphs 399 to 401, Pidgeon was listed as President and Secretary of Asia Pacific in different corporate filings made with the State of Nevada. He is also alternatively listed as President, Secretary, Member and/or Director of Asia Pacific in various banking documents that he signed.

[298] Although Pidgeon's role differed from the other Individual Respondents, we find that he certainly played an important role in the investment scheme. Pidgeon opened the US Bank Accounts and was the sole signatory on those accounts.

[299] It appears that Pidgeon mainly dealt with investor funds that were deposited into the US Bank Accounts. As a sole signatory on the US Bank Accounts, he authorized, on a consistent and regular basis during the Material Time, transfers of investor funds from the US Bank Accounts to an account held by 1666475 in Canada, which total over US $2.1 million. We find there was no legitimate business reason for these transfers of investor funds.

[300] We note that Pidgeon also signed the Merger Agreement on behalf of Asia Pacific, as discussed at paragraph 278. This indicates he had signing authority for Asia Pacific that extended beyond the US Bank Accounts.

[301] Evidence also shows Pidgeon authorized significantly higher payments to himself from Asia Pacific than he indicated in his email to Staff. Evidence shows withdrawals by Pidgeon from the US Bank Accounts, into which investor funds were deposited, totalled US $92,972.

[302] Pidgeon knew or reasonably ought to have known that setting up the three different US Bank Accounts; the transfers of funds deposited into the US Bank Accounts to the 1666475 US$ Account in Canada within a few days of the funds being deposited by investors; and the courier arrangements for transferring documents to and from Toronto were all done in an effort to facilitate the deception of investors, so that they would believe they were dealing with a legitimate business based in the U.S. In fact, investors testified that they thought they were dealing with an oil and gas business out of Dallas, Texas.

[303] We are convinced that Pidgeon knew or reasonably ought to have known that over US $2.2 million of investor funds raised by Asia Pacific were not being used for legitimate business purposes, or in the manner in which investors were led to believe they would be used.

[304] Based on the evidence, we are also convinced that Pidgeon was aware of the fact that Asia Pacific was engaging in fraudulent acts that would put the Asia Pacific investors' funds and pecuniary interests at risk and deprive the investors.

[305] Pidgeon's fraudulent acts, discussed above, deprived investors of the funds that they were induced by deceit to invest in Asia Pacific securities. As a result of these acts, investors lost their investments of over US $2.2 million. Based on the evidence, we find that Pidgeon knew or reasonably ought to have known of the fraudulent nature of his actions.

[306] Accordingly, we conclude that Pidgeon perpetrated a fraud on investors in Asia Pacific securities and contravened section 126.1(b) of the Act.

(e) Pan

[307] We find that Pan engaged in acts of deceit, falsehood, and other fraudulent conduct that deprived Asia Pacific investors of their funds.

[308] Pan made the following admissions, as detailed at paragraph 59, above:

- Asia Pacific securities were sold to over 110 investors, and those investors sent over US $2,200,000 to Asia Pacific.

- Asia Pacific investors were instructed to send subscription agreements and cheques to a virtual office in Dallas, Texas. Some investors were instructed to send their funds by wire transfers, and did so.

- Between and including March 2006 and October 2007, over US $2 million was transferred from the Asia Pacific US Bank Accounts, which investor funds were deposited to a U.S. dollar bank account in Canada, held by 1666475. Over US $1 million was transferred from the 1666475 U.S. dollar account to a Canadian dollar account in Canada held by 1666475. Pan was the sole signatory on both the 1666475 bank accounts.

- $150,000 of investor funds was used to pay credit card bills for Pan from the 1666475 Canadian account. However, Pan and Cheung claim this money was used for expenses relating to the business activities of the corporate entities.

[309] Pan played a key role in providing the infrastructure for the investment scheme, as set out at paragraphs 140 to 144.

[310] Pan, as the sole director of 1666475 and the sole signatory on its bank accounts, authorized the payments from those accounts that were made using Asia Pacific investor funds. As noted at paragraph 93 some of the investor funds transferred into the 1666475 Bank Accounts have not been accounted for.

[311] Funds from the 1666475 Bank Accounts were also used to pay charges totalling $302,576 on the Pan Credit Cards. Pan admits to only $150,000 being used for payments to the Pan Credit Cards. However, based on the evidence, we find that $302,576 from the 1666475 Bank Accounts were used for payments on the Pan Credit Cards. Pan further claims that the credit card expenses related to business operations, but, as noted at paragraph 93, many of these credit card expenditures were for personal expenses.

[312] We have established that Pan was a directing mind of GPC and the directing mind of 1666475, and that she admitted to key facts about the investment scheme. Pan knew that investor funds were not being used for legitimate business purposes, as investors thought they would be when they purchased Asia Pacific securities. On the contrary, Pan used some of their funds to pay for personal expenses. Her use of investor funds for what cannot be described as legitimate business purposes amounts to fraudulent conduct. We are convinced that Pan was aware that her acts would put Asia Pacific investors' funds and pecuniary interests at risk and would deprive these investors.

[313] Based on the evidence, we are convinced that Pan was aware of the fact that GPC and 1666475 were engaging in fraudulent acts that would put the Asia Pacific investors' funds and pecuniary interests at risk and deprive the investors.

[314] Pan's fraudulent acts, discussed above, deprived investors of the funds that they were induced by deceit to invest in the Asia Pacific securities. As a result of these acts, investors lost their investments of over US $2.2 million. Based on the evidence, we find that Pan knew of the fraudulent nature of her actions.

[315] Accordingly, we conclude that Pan perpetrated a fraud on investors in Asia Pacific securities and contravened section 126.1(b) of the Act.

(f) Cheung

[316] We find that Cheung engaged in acts of deceit, falsehood and other fraudulent conduct that deprived Asia Pacific investors of their funds.

[317] Cheung also made the admissions noted at paragraph 59. These admissions, together with the evidence reviewed above, confirms that he was aware of key elements of the investment scheme.

[318] As set out in paragraph 149, Cheung also played an integral role in setting up the infrastructure for the Asia Pacific investment scheme.

[319] Staff provided evidence that Cheung was aware that fraudulent information was being provided to investors. Staff's investigation turned up a website for Vaulkan Resources registered to Tony Cheung (an alias) that had virtually identical content to the Asia Pacific website, including details of the projects it was purportedly involved in.

[320] Cheung also provided evidence of his involvement in the investment scheme and his awareness of the fraudulent nature of the scheme in his compelled examination by Staff:

- he admitted that Randolph Hastings Jr. and J. Allen White were not the principals of Asia Pacific, contrary to information provided to investors and to the public;
- he told Staff that he tried to hire Randolph Hastings Jr., but that he would have nothing to do Asia Pacific. He admitted that Randolph Hastings Jr. was never employed by Asia Pacific, nor was he a director;
- he admitted that he left information on the website that indicated that they were involved in ongoing exploration activity in Australia to make the existing clients happier, because he did not want them asking for their money back;
- he stated that Asia Pacific only participated in one project in Australia, the Empire Oil Investment, in which they invested US $400,000.
- he also admitted that the phone number on the Asia Pacific letterhead had a Dallas area code so that people would believe GPC represented Asia Pacific.
- he said that GPC was only created for this investment scheme;
- he stated that he ordered a package of share certificates from a business agent so he could sign them himself and sell shares to investors; and
- he said that he purchased lead lists.

[321] We have established that Cheung was a directing mind of GPC and Asia Pacific, and based on the evidence, we are convinced that Cheung was aware of the fact that GPC and Asia Pacific were engaging in fraudulent acts. Cheung also admitted to key facts about the investment scheme and, based on the evidence, we are convinced that Cheung was aware of the fraudulent nature of his acts relating to the investment scheme. He would have known that his actions would put Asia Pacific investors' funds and pecuniary interests at risk and deprive the investors.

[322] Cheung's fraudulent acts, discussed above, deprived investors of the funds that they were induced by deceit to invest in the Asia Pacific securities. As a result of these acts, investors lost their investments of over US $2.2 million. Based on the evidence, we find that Cheung knew of the fraudulent nature of his actions.

[323] Accordingly, we conclude that Cheung perpetrated a fraud on investors in Asia Pacific securities and contravened section 126.1(b) of the Act.

(g) Gahunia

[324] We find that Gahunia engaged in acts of deceit, falsehood and other fraudulent conduct that deprived Asia Pacific investors of their funds.

[325] As set forth in paragraph 152, Gahunia played an integral role in soliciting investors in Asia Pacific securities. As part of the scheme to solicit investors, Gahunia used the alias Miller (as described in paragraphs 76 to 79. He deceived investors about his identity.

[326] Gahunia described his role at GPC to Staff as initially being in sales, and then branching off into management. Copies of documentation provided by investors whose correspondence from "Miller" identifies him as holding different offices, including:

- Senior Vice President, Corporate Relations, GPC;
- Senior Executive, Corporate Accounts, GPC;
- Senior Executive, Corporate Accounts, Asia Pacific; and
- Investor Relations, Senior Executive, Asia Pacific.

[327] We conclude that the evidence shows that Gahunia, using the alias Miller, held himself out to investors as holding different positions within GPC and Asia Pacific. We consider this was to deceive investors as to his true role in the scheme to sell Asia Pacific securities.

[328] Letters to investors which identified Miller as holding the above titles are purported to be sent from an address in Dallas, Texas. As stated above, the Texas address was used to deceive investors about the actual location of the Asia Pacific and GPC business.

[329] Investors testified at the hearing as to the information they received from Gahunia, acting under the alias Miller:

- Investor 4 testified that "Miller" told him in May 2007 that there were two wells that were being drilled:

  Q. And can you tell us about your first telephone conversation with Mr. Miller? What was he telling you?

  A. Once again, it was about the old basins river, the Persian [Perthian] oil basins, how they had two wells and that they were getting close to starting to drill on them, and once they did start drilling, they would be able to get the deal rolling, and then we'll get a great return on our investment

  (Hearing Transcript, June 1, 2009 at 67)

- An email from "Miller" dated September 13, 2007 to Investor 4 assures the investor that he is well protected and that, with a further investment, he has poised himself for an optimum position to profit immediately.

- An email from "Miller" dated September 19, 2006 to Investor 8 attaches a press release dated July 17th announcing Asia Pacific's alleged agency agreement with Canton Oil and calling it crucial information.

[330] As established above, Gahunia made representations to Asia Pacific investors that they would have an option to redeem their shares at a fixed price and provided undertakings about the future value of Asia Pacific shares in a worst case scenario. In our view, we consider these actions to be fraudulent in nature and acts of deceit made to mislead investors and entice them to purchase Asia Pacific securities.

[331] Evidence shows that in general the information conveyed to investors by Gahunia was false and deceitful. We find that investors relied on this information about GPC, Asia Pacific and its business activities when they decided to invest or re-invest in Asia Pacific securities.

[332] As a result of his conduct and his role in the investment scheme, Gahunia received US $328,914 and $19,673 of investor funds.

[333] Based on the evidence, we are convinced that Gahunia was aware of the fact that the information, representations and undertakings he was providing to investors were false and deceitful. He reasonably ought to have known that his actions would put Asia Pacific investors' funds and pecuniary interests at risk and deprive the investors.

[334] Gahunia's fraudulent acts, discussed above, deprived investors of the funds that they were induced by deceit to invest in the Asia Pacific securities. As a result of these acts, investors lost their investments of over US $2.2 million. Based on the evidence, we find that Gahunia knew or reasonably ought to have known of the fraudulent nature of his actions.

[335] Accordingly, we conclude that Gahunia perpetrated a fraud on investors in Asia Pacific securities and contravened section 126.1(b) of the Act.

(h) Toussaint

[336] We find that Toussaint engaged in acts of deceit, falsehood and other fraudulent conduct that deprived Asia Pacific investors of their funds.

[337] As set forth in paragraph 159, Toussaint played an integral role in soliciting investors in Asia Pacific securities. As part of the scheme to solicit investors, Toussaint used the alias Beckford (as described in paragraphs 80 to 82. He deceived investors about his identity in communications with Asia Pacific investors.

[338] Toussaint told Staff that his job at GPC involved a bit of qualifying, introducing people to the product and helping to run the GPC office, but that he did not sell securities. Copies of documentation provided by investors whose correspondence from "Beckford" identifies him as holding different offices, including:

- Senior Portfolio Manager, GPC;

- Senior Executive, Asia Pacific; and

- Vice President, Investor Allocations, Asia Pacific.

[339] We conclude that the evidence shows that Toussaint, using the alias Beckford, held himself out as holding different positions within GPC and Asia Pacific. We consider this was to deceive investors as to his true role in the scheme to sell Asia Pacific securities.

[340] Letters which identified Beckford as holding the above titles are purported to be sent from an address in Dallas, Texas. As stated above, the Texas address was provided to investors in an effort to deceive them about the actual location of the Asia Pacific and GPC business.

[341] Investors testified about the information they received from Toussaint, under the alias Beckford, that have since been shown to be false and deceitful:

- Investor 2 stated at the hearing that he was told that Beckford handled the finances for Asia Pacific after Miller left. He testified that "Beckford" told him that Asia Pacific was being bought out by China Oil and claimed to be was located in Dallas.

- Investor 4, testified that "Beckford" convinced him to invest an additional US $40,000 so that he would be a top priority for repayment.

[342] Beckford is listed as the Asia Pacific representative to be contacted in a project update sent to Investor 13. The press release sent with this update claims that a friendly offer had been received for the company for over $5.50 per share, that an agreement over an outstanding native land claim had been reached, and that Asia Pacific was developing land with significant reserves.

[343] As established above, Toussaint made representations to Asia Pacific investors that they would have an option to redeem their shares at a fixed price and provided undertakings about the future value of Asia Pacific shares in a worst case scenario. In our view, we consider these actions to be fraudulent in nature and acts of deceit made to mislead investors and entice them to purchase Asia Pacific securities.

[344] Evidence shows that in general the information conveyed to investors by Toussaint was false and deceitful. We find that investors relied on this information about GPC, Asia Pacific and its business activities when they decided to invest or re-invest in Asia Pacific securities.

[345] As a result of his conduct and his role in the investment scheme, Toussaint received US $132,380 and $14,917 of investor funds.

[346] Based on the evidence, we are convinced that Toussaint was aware of the fact that the information, representations and undertakings he was providing to investors were false and deceitful. He reasonably ought to have known that his actions would put Asia Pacific investors' funds and pecuniary interests at risk and deprive the investors.

[347] Toussaint's fraudulent acts, discussed above, deprived investors of the funds that they were induced by deceit to invest in the Asia Pacific securities. As a result of these acts, investors lost their investments of over US $2.2 million. Based on the evidence, we find that Toussaint knew or reasonably ought to have known of the fraudulent nature of his actions.

[348] Accordingly, we conclude that Toussaint perpetrated a fraud on investors in Asia Pacific securities and contravened section 126.1(b) of the Act.

(i) Jiwani

[349] We find that Jiwani engaged in acts of deceit, falsehood and other fraudulent conduct that deprived Asia Pacific investors of their funds.

[350] Although Jiwani's role differed from the other Individual Respondents, we find that he was certainly involved in the investment scheme.

[351] In what began as a voluntary examination by Staff, Jiwani described his contribution to the set-up of the investment scheme:

- He [Cheung] says, "… you set up the system for me and I'll give you 5 percent of the whole thing."

  > So it was set up that I was – it was like a franchise except it was going to be a brandchise. Basically a franchise consultant, that was my expertise.
  >
  > …

> So I called the chaps up and I got them 500 bucks a week … I said, "This is great, I've got a team put together …"
>
> (Examination of Jiwani by Staff, May 21, 2008 at p. 19)

- And he [Cheung] had all kinds of projects he was looking at. I was particularly interested in the oil and gas projects because that's what these chaps have done before and I thought this would be easy for them to sell.

  (Examination of Jiwani by Staff, May 21, 2008 at p. 21)

- So from my phone showing that I'm busy that I'm trying to, you know, coordinate things over here. I called up people to sort of do the various functions. We need a qualifier, so we got a chap to do – well, one of my friends was basically getting in touch with the people, the staff. … The two things that were happening at that point was they were preparing, we had to prepare a very good brochure. You know, we had to do a web site and a brochure.

  (Examination of Jiwani by Staff, May 21, 2008 at p. 22)

- And I went through this whole process over the month from my computer, looking at charts they'd drum up, the picture that they were going to put on the front of the brochure, the contents of the whole brochure.

  (Examination of Jiwani by Staff, May 21, 2008 at p. 23)

[352] Jiwani also stated that he directed employees to perform various functions to get the operations rolling:

- Since I've given them all 500 a week you know, again, there was no work being done. I told the other guy, "Look, unless you're helping out and doing, you know, the qualifying on the phone et cetera, I am not going to pay you …"

  (Examination of Jiwani by Staff, May 21, 2008 at pp. 25-26)

- I said to Mike, "You know, here's the situation, I want you to develop a system" … I explained to him how franchising and brandchising work. That he would take care of the hiring, training et cetera, et cetera, put together what needs to be put together, Only what needed to be done because by this time we had the web site ready, we had the brochures ready. I had gone to the printer, you know made sure that all the printing was right.

  (Examination of Jiwani by Staff, May 21, 2008 at p. 26-27)

[353] In describing his role, Jiwani stated:

> Q. Can you describe your role in one word?
>
> A. One word. Coordinator, I guess.
>
> Q. Coordinator?
>
> A. I think manager – you know, people said I was the manager. If anything, I may have been an office manager.
>
> (Examination of Jiwani by Staff, May 21, 2008 at p. 24)

[354] When questioned about the sales done by GPC, Jiwani told Staff during the compelled portion of his examination:

> Initially it was about, I think we did about [$]60- to 70,000 a month initially, something like that. Gradually, you know, as the people got more and more experience after, the sales went up. … I asked for updates on what sales were written up, what invoices were – this, I worked out of my home, you know. I wanted an update everyday at the end of the day to see who wrote up what sales, when was the money coming in. At the end of the week, you know, I had access to the bank account, which I sent you. I looked at the money that had come in. I called up and I said, "Okay,

> here's the payroll we have for this week." I did the summation of who had sales come in so that payments were taken care of.
>
> (Examination of Jiwani by Staff, May 21, 2008 at p. 55-56)

[355] We were presented further evidence of Jiwani's day-to-day role in the operation of the investment scheme in a December 6, 2006 email, where he writes to Pan:

> We need to cancel the [Investor X] by keep the [Investor Y] on as Mike assures me he will come in with the balance in Jan. But, no Certificate for him till it's all paid.
>
> Also, Mike has spoken to [Investor Z] re having the funds in account for the cheque written and been assured the money will be there. Besides, Mike has another client's cheque for $10K received in Dallas and more monies due in over the next few days.
>
> …
>
> We need 50 more Canada Post US Envelopes as we only have 5 left
>
> …
>
> We also have "Loads" of another $30,000 being held back till the clients can see the press release we sent them in a proper publication such as the one we requested to you. This publication has nothing to do with any regulatory board and acts simply as a News Service.
>
> …
>
> We have 8 sales people and 13 qualifiers currently. We'll be advertising for Sales people 1st week of January to take that number up to 16 in Sales.

[356] Jiwani explained loading in his compelled examination:

> … to the best of my understanding, loading is when somebody has bought shares. When they receive the certificate and they feel comfortable about the whole thing, they check the company out, you know, they've done their due diligence, we are still in touch with them, it is building up, it is a second sale. It's a second sale.
>
> (Examination of Jiwani by Staff, May 21, 2008 at p. 70-71)

[357] Jiwani played an integral role in the fraudulent investment scheme, as discussed in the analysis above and at paragraphs 163 to 165.

[358] Jiwani acknowledged his involvement in setting up the investment scheme. Furthermore, he was involved on a daily basis getting updates on sales. This and his access to bank account information indicates that he must also have been aware of the scale and materiality of the funds being raised from investors.

[359] Jiwani knew or ought to have known that designing the promotional brochures, which were false and fabricated, publishing false press releases and holding back "loads" until a press release was properly published all deceived investors and enticed them to invest or re-invest in Asia Pacific securities. He reasonably ought to have known that his actions would put Asia Pacific investors' funds and pecuniary interests at risk and deprive the investors.

[360] As a result of his conduct and his role in the investment scheme, Jiwani received US $110,380 and $14,917 of investor funds, which included 5% of all sales of Asia Pacific shares.

[361] Jiwani's fraudulent acts, discussed above, deprived investors of the funds that they were induced by deceit to invest in the Asia Pacific securities. As a result of these acts, investors lost their investments of over US $2.2 million. Based on the evidence, we find that Jiwani knew or reasonably ought to have known of the fraudulent nature of his actions.

[362] Accordingly, we conclude that Jiwani perpetrated a fraud on investors in Asia Pacific securities and contravened section 126.1(b) of the Act.

3. Finding

[363] We find that Asia Pacific, GPC and 1666475 were solely created to defraud investors in Asia Pacific securities. We also find that the Respondents knew or reasonably ought to have known of this given the nature of their roles as integral players in the fraudulent investment scheme. The scale and magnitude of the impact on investors was significant at over US $2.2 million. We find that investors were deceived by the Respondents about the true nature of the investment they were making and as a result they have been deprived of the funds they invested in the scheme.

[364] We conclude that the Respondents perpetrated a fraud and breached section 126.1(b) of the Act.

H. DID THE INDIVIDUAL RESPONDENTS, AS DIRECTORS AND/OR OFFICERS OF THE CORPORATE RESPONDENTS AUTHORIZE, PERMIT OR ACQUIESCE IN THE BREACHES OF ONTARIO SECURITIES LAW BY THE CORPORATE RESPONDENTS, CONTRARY TO SUBSECTION 122(3) OF THE ACT?

1. The Law

[365] Subsection 122(3) of the Act assigns liability to directors or officers who authorize, permit or acquiesce in commission of an offence by a company under subsection 122(1)(c).

[366] Subsection 122(3) of the Act states:

> **122. (3) Directors and officers** – Every director or officer of a company or of a person other than an individual who authorizes, permits or acquiesces in the commission of an offence under subsection (1) by the company or person, whether or not a charge has been laid or a finding of guilt has been made against the company or person in respect of the offence under subsection (1), is guilty of an offence and is liable on conviction to a fine of not more than $5 million or to imprisonment for a term of not more than five years less a day, or to both.

[367] Directors and officers are defined in the Act under subsection 1(1) as follows:

> **"director"** means a director of a company or an individual performing a similar function or occupying a similar position for any person;
>
> …
>
> **"officer"**, with respect to an issuer or a registrant, means
>
> (a) a chair or vice-chair of the board of directors, a chief executive officer, a chief operating officer, a chief financial officer, a president, a vice-president, a secretary, an assistant secretary, a treasurer, an assistant treasurer and a general manager,
>
> (b) every individual who is designated as an officer under a by-law or similar authority of the registrant or issuer, and
>
> (c) every individual who performs functions similar to those normally performed by an individual referred to in clause (a) or (b); …

[368] The language of subsection 122(3) requires that the officer or director "authorize", "permit" or acquiesce" in the commission of the offence. "Acquiesce" means to agree or consent quietly without protest. "Authorize" means to give official approval or permission, to give power or authority or to give justification. "Permit" means to allow, consent, tolerate, give permission or authorize permission particularly in writing.

[369] Individuals who are not directors or officers of a corporation, but are *de facto* directors or officers of an entity, performing functions similar to the functions of officers and/or directors as contemplated in the definitions found in subsection 1(1), can nonetheless be found liable for breaches of securities law they permitted, authorized or acquiesced in under subsection 122(3).

2. Analysis

[370] In addition to their breaches of Ontario securities law in their individual capacities, Staff alleges that, pursuant to subsection 122(3), the Individual Respondents are liable for breaches of securities laws by the Corporate Respondents in their capacity as directors and/or officers of the Corporate Respondents.

i. GPC

[371] Staff alleges that during the Material Time, Pan, Cheung, Gahunia, Toussaint and Jiwani, being directors or officers of GPC, authorized, permitted or acquiesced in the commission of violations of the Act by GPC which constitute offences under subsection 122(1)(c) of the Act, contrary to section 122(3) of the Act and contrary to the public interest.

[372] We have already established that GPC contravened subsections 25(1)(a), 53(1) and 126.1(b) of the Act.

[373] Given that GPC is an unincorporated entity, Staff submits that Pan, Cheung, Gahunia, Toussaint and Jiwani are liable for GPC's breaches of securities laws, since they were de facto directors and officers of GPC and authorized, permitted or acquiesced in its breaches of Ontario securities law.

(a) Pan

[374] We find that Pan authorized, permitted or acquiesced in GPC's breaches of Ontario securities law.

[375] Evidence shows that Pan acted in a capacity as a director or officer of GPC. For example,

- she was responsible for paying individual respondents, GPC employees and others with funds from the 1666475 Bank Accounts, over which she had sole signing authority;
- she signed the lease agreement for the GPC premises on behalf of 1666475;
- she admitted to arranging for the payment of GPC operating expenses through the Pan Credit Cards; and
- she set up courier accounts to facilitate moving investor documents and cheques to and from the GPC premises.

[376] Evidence of email correspondence between Pan and Jiwani show she was aware of the investment scheme and directly involved in the fraudulent business of GPC that resulted in its breaches of Ontario securities law:

- she corresponded with Jiwani regarding difficulties with receiving money from investors after they had sent in signed subscription agreements;
- she received an email from Jiwani that listed sales in Asia Pacific securities; and
- she corresponded with Jiwani regarding mailing issued share certificates to investors.

[377] We find that Pan was a *de facto* director or officer of GPC and that she authorized, permitted or acquiesced in GPC's contraventions of Ontario securities law.

(b) Cheung

[378] We find that Cheung authorized, permitted or acquiesced in GPC's breaches of Ontario securities law.

[379] Cheung was a directing mind of the Asia Pacific investment scheme. In this context, he determined the distribution plan for the proceeds of sales of Asia Pacific shares sold through GPC, and told Staff in his compelled examination that 30% was to be allocated for sales commissions, 10 to 20% went to running the company, and the remainder of the funds raised (about 50%) went to Asia Pacific.

[380] Cheung told Staff that GPC was only created for the Asia Pacific project. This confirms that Cheung knew about the full extent of GPC's activities and its role in the investment scheme, and that he had a central role in the fraudulent distribution of Asia Pacific securities facilitated by GPC.

[381] Evidence shows he was aware of the investment scheme and directly involved in the fraudulent business of GPC that resulted in its breaches of Ontario securities law:

- he was responsible for the creation and maintenance of the website;
- he arranged for equipment contracts for the Toronto premises for GPC;
- he was copied on emails regarding administrative issues within the structure; and

- along with Pan, he was the contact person for Jiwani regarding issues with receiving investment funds from investors after GPC had sold them Asia Pacific shares.

[382] We find that Cheung was a *de facto* director or officer of GPC and that he authorized, permitted or acquiesced in GPC's contraventions of Ontario securities law.

(c) Gahunia

[383] Evidence indicates that Gahunia was a sales agent and office manager at GPC:

- Rotondo told Staff that Gahunia and Toussaint managed the office and that Gahunia told him that the Texas phone number was part of the company and she should answer those calls.
- Gahunia claims he was hired initially to do sales, and then branched off into a more supervisory and management position, and that he and Toussaint managed the office after Jiwani left.
- Gard testified that during Staff's inspection of the GPC premises, he was advised that Toussaint and Gahunia were the bosses.

[384] Based on the evidence presented by Staff, we are not satisfied that Gahunia was a *de facto* director or officer of GPC.

(d) Toussaint

[385] Evidence that indicates that Toussaint was a sales agent and manager at the GPC office:

- MacIntosh told Staff that Toussaint was the manager and a boss.
- Rotondo said Toussaint and Gahunia were in charge of the office.
- Manriquez stated Toussaint ran the York St. office and hired her.
- McQuarrie also said Toussaint was in charge of the office.
- as mentioned above, Gard testified that he was advised that Toussaint and Gahunia were the bosses at the GPC office.
- Toussaint claimed in his interview that he was hired as a consultant to market Asia Pacific and make sure the paperwork came in and identified himself to Staff as the person looking after the premises during their on-site investigation.

[386] Based on the evidence presented by Staff, we are not satisfied that Toussaint was a de facto director or officer of GPC.

(e) Jiwani

[387] We find that Jiwani authorized, permitted or acquiesced in GPC's breaches of Ontario securities law.

[388] Jiwani played an integral role in the fraudulent investment scheme facilitated through GPC, as described above in section G of the Analysis. For example, paragraph 351 details Jiwani's contribution to setting up the scheme.

[389] Jiwani also played a significant operational role at GPC. For example:

- Paragraph 352 describes how he directed employees at GPC to perform various functions.
- Paragraphs 354 and 355 detail his role at GPC and his day-to-day responsibilities, including receiving daily sales review updates listing trades in Asia Pacific shares.

[390] Jiwani describes his function at GPC as a coordinator or office manager.

[391] Staff provided copies of email correspondence between Jiwani, Pan and Cheung regarding administrative and management issues surrounding the sale of Asia Pacific shares at GPC.

[392] Jiwani received 5% of all GPC sales of Asia Pacific shares, plus an override payment, based on excess commissions not paid out to salespeople. The evidence indicates that Jiwani had a senior role at GPC.

[393] We find that Jiwani was a *de facto* director or officer of GPC and that he authorized, permitted or acquiesced in GPC's contraventions of Ontario securities law.

ii. Asia Pacific

[394] Staff alleges that Pidgeon and Cheung, being directors or officers of Asia Pacific, authorized, permitted or acquiesced in the commission of the violations of the Act by Asia Pacific which constitute offences under subsection 122(1)(c) of the Act, contrary to subsection 122(3) of the Act and contrary to the public interest.

[395] We have already established that Asia Pacific contravened subsections 25(1)(a), 53(1) and 126.1(b) of the Act.

[396] Pidgeon and Cheung were at different times directors and officers of Asia Pacific.

(a) Pidgeon

[397] We find that Pidgeon authorized, permitted or acquiesced in Asia Pacific's breaches of Ontario securities law.

[398] In his email to Staff, Pidgeon claimed that he was not the president or director of Asia Pacific, and that his only role on behalf of the corporation was to follow banking instructions from Pan and to sign the original bank account forms. However, the evidence indicates otherwise.

[399] Pidgeon is listed as holding director and officer positions in the Annual List of Directors and Officers filed in June 2007. Filings with the Secretary of State, State of Nevada made by Asia Pacific and/or its agent that show that as of February 21, 2007, Pidgeon was Asia Pacific's Secretary and as of June 19, 2007, Pidgeon was Asia Pacific's President.

[400] He signed and executed the Merger Agreement on October 29, 2007, where he is identified as the President and Director of Asia Pacific.

[401] Pidgeon signed the M & I Bank Account forms as President, the Compass Bank Account forms as Secretary, and the Chase Bank Account forms as Member of Asia Pacific. Pidgeon was the sole signatory on the US Bank Accounts. In this capacity, he authorized the transfers of investor funds from these accounts to 1666475.

[402] As a director and officer of the corporation, Pidgeon is assumed to know the general business of Asia Pacific. We were not presented with any evidence to contradict this assumption. Asia Pacific's entire operation was fraudulent and breached Ontario securities laws. We have established that Pidgeon played an important role in the investment scheme.

[403] Through his involvement as a director and officer of Asia Pacific we conclude that Pidgeon authorized, permitted or acquiesced in Asia Pacific's contraventions of Ontario securities law.

(b) Cheung

[404] We find that Cheung authorized, permitted or acquiesced in Asia Pacific's breaches of Ontario securities law.

[405] The Annual List of Directors and Officers listed Cheung as Asia Pacific's President, Secretary, Treasurer, and Director in May 2006 and February 2007. Cheung incorporated Asia Pacific as a Nevada corporation and confirmed with Staff that he was the President of Asia Pacific from February 2006 to March 2007.

[406] The evidence of Cheung's involvement in the sales of Asia Pacific shares is described in detail in the preceding sections. The evidence indicates that Cheung was aware at a management/officer level of the sales of Asia Pacific shares made by GPC employees and that he was, in fact, a directing mind of the entire fraudulent investment scheme.

[407] As a director and officer of Asia Pacific, we find that Cheung authorized, permitted or acquiesced in Asia Pacific's contraventions of Ontario securities law.

iii. 1666475

[408] Staff alleges that Pan, being a director and officer of 1666475, authorized, permitted and acquiesced in the commission of the violations of the Act by 1666475 which constitute offences under subsection 122(1)(c) of the Act, contrary to subsection 122(3) of the Act and contrary to the public interest.

[409] We have already established that 1666475 contravened subsections 25(1)(a), 53(1) and 126.1(b) of the Act.

(a) Pan

[410] We find that Pan authorized, permitted or acquiesced in 1666475's breaches of Ontario securities law.

[411] Pan was the sole director and officer of 1666475 and was the sole signatory on both the 1666475 Bank Accounts.

[412] We were presented with evidence of Pan's involvement in sales of Asia Pacific securities through her role as director of 1666475. She signed the lease of the GPC premises on behalf of 1666475. Additionally, over US $2.1 million of investors' funds were transferred from the US Bank Accounts to the 1666475 US$ Account. Individual Respondents, GPC employees and others were paid from the 1666475 Bank Accounts and funds from these accounts were also used to make payments on the Pan Credit Cards.

[413] As a director and officer of 1666475, we find that Pan authorized, permitted or acquiesced in 1666475's contraventions of Ontario securities law.

3. Finding

[414] In their capacities as *de facto* directors or officers of GPC, Pan, Cheung and Jiwani authorized, permitted or acquiesced in GPC's breaches of Ontario securities law and accordingly, they are liable for the contraventions by GPC, pursuant to subsection 122(3) of the Act.

[415] As directors and officers of Asia Pacific, Pan and Pidgeon authorized, permitted or acquiesced in Asia Pacific's breaches of Ontario securities law and accordingly, they are liable for the contraventions by Asia Pacific, pursuant to subsection 122(3) of the Act.

[416] As a director and officer of 1666475, Pan authorized, permitted or acquiesced in 1666475's breaches of securities law and accordingly, she is liable for the contraventions by 1666475, pursuant to subsection 122(3) of the Act.

I. DID GAHUNIA AND TOUSSAINT MAKE STATEMENTS TO STAFF DURING THEIR INVESTIGATION THAT WERE MATERIALLY MISLEADING OR UNTRUE?

1. The Law

[417] Subsection 122(1)(a) of the Act states:

> **122. (1) Offences, general** – Every person or company that,
>
> (a) makes a statement in any material, evidence or information submitted to the Commission, a Director, any person acting under the authority of the Commission or the Executive Director or any person appointed to make an investigation or examination under this Act that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading;
>
> …
>
> is guilty of an offence ...

2. Analysis

[418] Staff alleges that both Gahunia and Toussaint made statements during compelled examinations conducted by Staff that were misleading or untrue in a material respect, and amounted to an offence contrary to subsection 122(1)(a).

(a) Gahunia

[419] Staff alleges that Gahunia used the alias Miller to sell securities in Asia Pacific, and materially misled investigative Staff when he told them that he never used this name at GPC. Gahunia told Staff in his compelled examination that he never used the name Miller, or any name other than Michael Gahunia, at the GPC office.

[420] We have established, as set out at paragraphs 76 to 79,that Gahunia did use the alias Miller at GPC when selling Asia Pacific securities.

(b) Toussaint

[421] Staff alleges that Toussaint contravened subsection 122(1)(a) of the Act by stating in his compelled examination that he did not sell Asia Pacific securities, but merely introduced people to the product. Staff submits that Toussaint used the alias Beckford and sold securities of Asia Pacific to investors.

[422] We have established that Toussaint used the alias Beckford, as set out in paragraphs 80 to 82, and using this alias sold Asia Pacific securities, as described at paragraph 159.

3. Finding

We therefore conclude that both Gahunia and Toussaint made misleading and untrue statements to Staff in an effort to hide their violations of Ontario securities law, contrary to subsection 122(1)(a).

J. WAS THE CONDUCT OF THE RESPONDENTS CONTRARY TO THE PUBLIC INTEREST?

1. The Law

[423] Section 1.1 of the Act states that the Commission's mandate is to:

(a) provide protection to investors from unfair, improper or fraudulent practices; and

(b) foster fair and efficient capital markets and confidence in those capital markets.

[424] Section 2.1 of the Act states that the Commission must consider fundamental principles in pursuing these purposes. The relevant parts of section 2.1 of the Act state:

i. requirements for timely, accurate and efficient disclosure of information;

ii. restrictions on fraudulent and unfair market practices and procedures; and

iii. requirements for the maintenance of high standards of fairness and business conduct to ensure honest and responsible conduct by market participants.

2. Analysis

[425] Staff alleges that the conduct of the Respondents is contrary to the public interest.

[426] The Respondents breached key provisions of Ontario securities law which are intended to protect investors. All Respondents traded in securities without registration (contrary to subsection 25(1)(a)) and engaged in distribution of securities without satisfying the distribution requirements under the Act (contrary to subsection 53(1)). The Respondents actions with respect to these breaches were contrary to the public interest because registration and distribution requirements are essential to protect investors and ensure the integrity of the capital markets. Through their conduct, the Respondents failed to maintain the required high standards of fairness and business conduct.

[427] The investment scheme was characterized by high pressure sales tactics. In *Re First Global Ventures S.A.*, *supra* at paragraph 158, the Commission made the following comment with respect to high pressure sales tactics:

> High pressure sales tactics encompass a broad range of activity that has the effect of persuading individuals to invest inappropriately. A key characteristic of high pressure sales tactics is that these tactics put individuals in a position where they are pressured to make a decision quickly because the investment opportunity may disappear. High pressure sales tactics include, but are not limited to, selling tactics designed to induce, and having the effect of inducing, clients to purchase securities inappropriate to their situation on the basis of inadequate investment information and/or misinformation as to the issuers of the securities, the value of the securities, and the prospects of the issuer and the securities. Comments that give the impression that shares are attractive and quick action is needed because an investment opportunity will expire in a short time frame and repeatedly calling investors to get them to make an investment decision quickly based on misleading information also qualify as high pressure sales tactics.

[428] These high pressure sales tactics were used in this case. Investors were called (often by individuals using aliases) to invest in Asia Pacific. Undertakings regarding the future value of securities and representations that the securities would be repurchased were made to entice them to invest or re-invest. Investors testified that they were influenced by such statements

when making their decision to invest in Asia Pacific. We find that these kinds of high pressure sales tactics are improper and unacceptable and contrary to the public interest.

[429] In addition, through aliases assumed for their trading activities in the investment scheme, Gahunia and Toussaint repeatedly made prohibited representations that securities could be redeemed or repurchased and gave undertakings regarding the future value or price of Asia Pacific securities. These representations and undertakings were purely given to entice investors to invest or re-invest in Asia Pacific securities. This egregious conduct was also contrary to the public interest.

[430] Gahunia and Toussaint also misled Staff during their investigation, by making misleading and untrue statements in an attempt to hide their involvement in the sale of Asia Pacific securities. This conduct was contrary to the public interest.

[431] All of the Respondents also engaged in fraud, in breach of section 126.1(b) of the Act.

[432] The investment scheme as a whole was fraudulent.

[433] Based on the evidence, it does not appear that Asia Pacific and GPC carried on a legitimate business, as communicated to investors. Their promotional material, websites and press releases contained false and misleading information about fictitious activities.

[434] The purpose of these fraudulent activities was to deceive and mislead investors in Asia Pacific securities into believing they were dealing with an established, reputable, U.S.-based company, to give the investment scheme legitimacy and to entice investors to invest or re-invest. A virtual office was established and several addresses were provided to investors to give the appearance that they were investing in a legitimate U.S-based business.

[435] Over US $2.2 million was raised from investors who deposited their funds into the US Bank Accounts. Investor funds were transferred to the 1666475 Bank Accounts and used to pay Individual Respondents significant commissions and to pay for credit card expenses, many of which were of a personal nature. The Respondents received the following:

- Pidgeon received US $92,972 from the US Bank Accounts;
- Pan's credit cards were paid off using $302,576 from the 1666475 Bank Accounts;
- Gahunia received US $328,914 and $19,673 from the 1666475 Bank Accounts, paid through his company;
- Toussaint received US $90,142 and $13,612 from the 1666475 Bank Accounts, paid through his company; and
- Jiwani received US $110,686 and $20,746 from the 1666475 Bank Accounts.

[436] This matter deals with egregious conduct involving significant contraventions of the Act, including fraud. The fraudulent activities of the Respondents caused significant harm to investors and investors were deprived of their funds, which amounted to over US $2.2 million.

3. Finding

[437] The Commission's mandate is to protect investors from improper and fraudulent practices. As we described above, this matter involved several serious contraventions of the Act on a repeated basis, including fraud. We find that the investment scheme was created to perpetrate a fraud and misappropriate investor funds in an egregious manner. In this regard, the investment scheme and the conduct of the Respondents undermine the integrity of and the confidence in the Ontario capital markets, which is contrary to the public interest.

[438] We therefore conclude that all the Respondents engaged in conduct contrary to the public interest.

VII. CONCLUSION

[439] In conclusion, we make the following findings against the Respondents.

- GPC breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and acted contrary to the public interest.
- Asia Pacific breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and acted contrary to the public interest.

- 1666475 breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and acted contrary to the public interest.

- Pidgeon breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and acted contrary to the public interest. Additionally, as a director and officer of Asia Pacific, he authorized, permitted and acquiesced in Asia Pacific's breaches of subsections 25(1)(a), 53(1) and 126.1(a), contrary to subsection 122(3) of the Act.

- Cheung breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and acted contrary to the public interest. Additionally, as a *de facto* director and officer of GPC he authorized, permitted and acquiesced in GPC's breaches of subsections 25(1)(a), 53(1) and 126.1(a) of the Act, contrary to subsection 122(3) of the Act. As a director and officer of Asia Pacific, he authorized, permitted and acquiesced in Asia Pacific's breaches of subsections 25(1)(a), 53(1) and 126.1(a) of the Act, contrary to subsection 122(3) of the Act.

- Pan breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and acted contrary to the public interest. Additionally, as a *de facto* director and officer of GPC she authorized, permitted and acquiesced in GPC's of subsections 25(1)(a), 53(1) and 126.1(a) of the Act, contrary to subsection 122(3) of the Act. As a director and officer of 1666475, she authorized, permitted and acquiesced in 1666475's breaches of subsections 25(1)(a), 53(1) and 126.1(a) of the Act, contrary to subsection 122(3) of the Act.

- Gahunia breached subsections 25(1)(a), 53(1), 38(1), 38(2), 126.1(b) and 122(1)(a) of the Act and acted contrary to the public interest.

- Toussaint breached subsections 25(1)(a), 53(1), 38(1), 38(2), 126.1(b) and 122(1)(a) of the Act and acted contrary to the public interest.

- Jiwani breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and acted contrary to the public interest. Additionally, as a *de facto* director and officer of GPC he authorized, permitted and acquiesced in GPC's breaches of subsections 25(1)(a), 53(1) and 126.1(a) of the Act, contrary to subsection 122(3) of the Act.

[440] To protect the personal information of all investors, we have required that Staff provide a redacted version of the record.

[441] The parties are directed to contact the Office of the Secretary within 20 days to set a date for a sanctions and costs hearing, failing which a date will be set by the Office of the Secretary.

DATED at Toronto on the 31st day of August, 2010.

"Suresh Thakrar"

"Paulette L. Kennedy"

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
Ascalade Communications Inc.	30-Aug-10	10-Sep-10		
Kenartha Oil and Gas Company Limited	26-Aug-10	07-Sep-10		

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

THERE ARE NO ITEMS 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
Coalcorp Mining Inc.	07 Oct 09	19 Oct 09	19 Oct 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 SecuritiesScource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

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

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
01/01/2009 to 12/31/2009	2	AFC North American Fund (Cayman Islands) L.P. - Units	12,107,435.00	N/A
08/16/2010	24	Afri-Can Marine Minerals Corporation - Units	1,200,000.00	15,000,000.00
08/12/2010	15	AM Gold Inc. - Units	444,749.90	1,287,714.00
08/16/2010	1	American Tower Corporation - Notes	20,775,040.00	1.00
08/05/2010	10	Arcus Development Group Inc. - Flow-Through Shares	1,000,000.00	3,750,000.00
07/14/2010	2	Arius3D Corp. - Debentures	245,750.00	1.00
07/21/2010	1	Armada Data Corporation - Common Shares	90,000.00	290,323.00
08/12/2010	24	Auxo Management LLC - Units	560,000.00	840,000.00
08/12/2010	1	Axela Inc. - Debentures	250,500.00	1.00
08/06/2010	10	Bactech Environment Corporation - Units	1,999,750.01	26,663,333.00
08/13/2010	1	Bank of Montreal - Debentures	2,080,400.00	1.00
08/23/2010	5	BCGold Corp. - Flow-Through Units	820,200.00	6,835,000.00
08/15/2010	5	Bending Lake Iron Group Limited - Common Shares	7,500.00	5,000.00
08/12/2010	1	Bison Income Trust II - Units	1,000,000.00	100,000.00
07/30/2010	1	Blue Ballon Health Services Incorporated - Common Shares	299,902.05	609.00
08/12/2010	26	Canadian Horizons First Mortgage Investment Corporation - Preferred Shares	767,085.00	767,085.00
07/16/2010	1	Canso Credit Trust - Trust Units	132,831,296.60	13,283,129.66
08/12/2010	17	CareVest Blended Mortgage Investment Corporation - Preferred Shares	1,352,000.00	1,351,000.00
08/12/2010	23	CareVest Capital Blended Mortgage Investment Corp. - Preferred Shares	1,018,886.00	1,018,886.00
08/12/2010	15	CareVest First Mortgage Investment Corporation - Preferred Shares	411,930.00	411,930.00
07/13/2010 to 07/19/2010	12	Castle Resources Inc. - Units	1,520,500.00	6,050,000.00
08/18/2010	2	Continental Airlines, Inc. - Notes	2,543,350.00	2.00
04/01/2009 to 03/31/2010	2	Counsel Canadian Dividend - Trust Units	85,961,427.24	7,025,698.66

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
04/01/2009 to 03/31/2010	5	Counsel Canadian Growth - Trust Units	34,208,531.56	2,643,217.43
04/01/2009 to 03/31/2010	5	Counsel Canadian Value - Trust Units	34,872,607.79	2,756,969.49
04/01/2009 to 03/31/2010	4	Counsel Fixed Income - Trust Units	96,919,052.09	7,882,749.02
04/01/2009 to 03/31/2010	5	Counsel Global Real Estate - Trust Units	9,188,947.07	763,980.28
04/01/2009 to 03/31/2010	5	Counsel Global Small Cap - Trust Units	27,944,849.49	3,107,275.63
04/01/2009 to 03/31/2010	8	Counsel International Growth - Trust Units	19,189,667.14	1,543,702.00
04/01/2009 to 03/31/2010	8	Counsel International Value - Trust Units	15,188,036.00	1,411,847.51
04/01/2009 to 03/31/2010	5	Counsel Select America - Trust Units	3,510,492.32	524,800.02
04/01/2009 to 03/31/2010	7	Counsel U.S. Growth - Trust Units	17,521,503.82	1,616,537.78
04/01/2009 to 03/31/2010	7	Counsel U.S. Value - Trust Units	18,472,380.52	1,479,478.73
06/25/2010	43	Delta Minerals Corporation - Common Shares	4,359,800.00	4,359,800.00
08/16/2010	1	Development Notes Limited Partnership - Units	45,000.00	45,000.00
08/10/2010	1	Ellerslie GT-SDM Limited Partnership - Units	25,000.00	1.00
08/10/2010	1	Empresa Nacional del Petroleo - Notes	2,054,803.00	1.00
08/03/2010	13	Exodos Life Sciences Limited Partnership - Units	759,929.16	743,207.00
01/01/2010 to 03/31/2010	29	FAM Balanced Fund - Units	26,718,264.00	N/A
01/01/2010 to 03/31/2010	66	FAM Registered Balanced Fund - Units	16,024,062.00	N/A
08/16/2010 to 08/17/2010	2	First Leaside Expansion Limited Partnership - Units	125,000.00	125,000.00
08/11/2010	1	First Leaside Fund - Units	0.00	10,000.00
08/13/2010 to 08/16/2010	4	First Leaside Mortgage Fund - Trust Units	210,000.00	210,000.00
08/11/2010 to 08/17/2010	2	First Leaside Ultimate Limited Partnership - Units	208,878.05	201,074.00
08/17/2010	1	First Leaside Universal Limited Partnership - Units	100,000.00	100,000.00
08/11/2010	4	First Leaside Wealth Management Inc. - Preferred Shares	211,026.00	211,026.00
06/22/2010	1	GMO Developed World Equity Investment Fund PLC - Units	79,458.80	3,323.81

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
07/13/2010	1	GMO Emerging Markets Fund- IV - Units	1,889,974.87	62,490.91
07/13/2010	1	GMO Emerging Markets Fund- IV - Units	2,131,068.94	70,462.55
06/28/2010	1	GMO Global Equity Allocation Fund - III in USD - Units	5,180,756.25	695,473.54
06/17/2010 to 06/30/2010	1	GMO International Core Equity Fund-IV - Units	1,152,755.80	45,366.20
07/15/2010 to 07/16/2010	1	GMO International Core Equity Fund-IV - Units	648,109.00	24,641.14
07/07/2010 to 07/14/2010	1	GMO International Intrinsic Value Fund-II - Units	82,373.00	4,169.00
06/28/2010	1	GMO International Opportunities Equity Allocation Fund- III - Units	2,071,600.00	164,473.68
06/30/2010	1	GMO International Opportunities Equity Allocation Fund-III - Units	34,886.10	2,791.25
07/12/2010	1	Gold Canyon Resources Inc. - Common Shares	27,000.00	100,000.00
08/11/2010	1	Grupo Aeroportuario del Sureste, S.A.B. de C.V. - Common Shares	2,340,000.00	43,612,930.00
08/04/2010	1	Halo Resources Ltd. - Common Shares	9,000.00	300,000.00
08/12/2010	2	Halo Resources Ltd. - Common Shares	30,000.00	1,000,000.00
08/18/2010	1	Heart Force Medical Inc. - Common Shares	301,000.00	430,000.00
08/26/2009 to 04/12/2010	7	HSBC Canadian Dollar Liquidity Fund - Units	104,400,169.82	101,567,010.00
08/13/2010 to 08/20/2010	15	IGW Real Estate Investment Trust - Units	1,659,255.35	1,659,195.00
08/03/2010 to 08/06/2010	16	IGW Real Estate Investment Trust - Units	632,473.17	N/A
07/28/2010	8	InterRent Real Estate Investment Trust - Units	1,161,538.95	812,265.00
08/03/2010	2	Investment Partners Fund Management Ltd. - Trust Units	60,000.00	3,495.40
08/18/2010	5	iStopOver Inc. - Debentures	1,026,883.58	5.00
08/05/2010	5	Kilo Goldmines Ltd. - Units	1,037,060.00	5,185,300.00
06/29/2010 to 08/17/2010	3	KmX Corp. - Debentures	940,640.00	3.00
08/06/2010	1	Knightscove Media Corp. - Common Shares	170,600.00	1,706,000.00
08/10/2010	19	Lateegra Gold Corp. - Units	537,000.00	1,790,000.00
08/06/2010	15	Liquidation World Home Office - Common Shares	10,000,250.00	11,765,000.00
08/11/2010	1	Lord Lansdowne Holdings Inc. - Units	150,000.60	60.00
08/10/2010	6	Medifocus Inc. - Common Shares	187,499.91	2,449,997.00

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
08/16/2010	1	Merrill Lynch Canada Finance Company - Notes	11,564,115.00	1.00
08/19/2010	7	Miocene Metals Limited - Units	195,000.00	780,000.00
08/12/2010	1	MultiPlan, Inc. - Notes	26,085,000.00	25,000.00
08/13/2010	1	New Enterprise Stone & Lime Co; Inc. - Notes	1,040,200.00	1,000.00
05/31/2010	1	Newport Global Equity Fund - Units	15,000.00	261.00
05/27/2010 to 06/04/2010	28	Newport Canadian Equity Fund - Units	569,300.00	4,638.91
04/30/2010	5	Newport Diversified Hedge Fund - Units	202,579.90	3,253.40
05/31/2010 to 06/04/2010	29	Newport Fixed Income Fund - Units	521,270.38	4,926.70
04/05/2010 to 04/14/2010	107	Newport Yield Fund - Units	2,423,033.32	21,453.53
07/30/2010	5	Offshore Group Investment Limited - Notes	6,252,865.29	5.00
08/09/2010	2	Pacific Coast Nickel Corp. - Units	250,000.00	5,000,000.00
03/18/2010	2	Pacific & Western Credit Corp. - Common Shares	160,000.00	6,400.00
03/18/2010	2	Pacific & Western Credit Corp. - Preferred Shares	160,000.00	6,400.00
08/11/2010	1	Peabody Energy Corporation - Notes	261,400.00	250.00
01/18/2010 to 03/31/2010	4	Quadrexx Asset Management Inc. - Units	125,000.00	25.00
04/09/2010	41	Quorum Oil and Gas Technology Fund Limited - Preferred Shares	4,931,800.00	493,180.00
07/27/2010	1	Radiant Energy Corporation - Debentures	125,000.00	1.00
07/29/2010	4	Regal Entertainment Group - Notes	7,540,000.00	4.00
08/03/2010	4	Ring of Fire Resources Inc. - Flow-Through Shares	750,000.00	8,333,333.00
08/03/2010	2	Ring of Fire Resources Inc. - Flow-Through Shares	35,000.00	388,888.00
07/16/2010	12	Shield Gold Inc. - Flow-Through Units	160,000.00	2,600,000.00
08/17/2010	1	Solar Income Fund Developments Inc. - Units	25,000.00	25.00
12/23/2009 to 12/30/2009	2	St. Eugene Mining Corporation Limited - Common Shares	1,813,240.00	17,666,000.00
08/17/2010	2	Tembec Industries Inc. - Notes	39,939,516.00	2.00
05/03/2010	7	The Investment Partners Fund - Trust Units	559,070.25	34,224.04
07/29/2010	4	Trez Capital Corporation - N/A	650,000.00	1.00
02/15/2010	1	Trueclaim Resources Inc - Common Shares	47,500.00	500,000.00

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
02/10/2010	1	Trueclaim Resources Inc - Common Shares	9,000.00	50,000.00
06/30/2010	68	Vertex Fund - Trust Units	5,040,047.19	N/A
05/31/2010	81	Vertex Fund - Units	7,481,329.66	N/A
03/31/2010	6	Vertex Managed Value Portfolio - Trust Units	5,324,189.61	N/A
06/30/2010	4	Vertex Managed Value Portfolio - Trust Units	204,680.00	N/A
06/30/2010	1	Western Wind Energy Corp. - Units	1,131,680.00	1,028,800.00
08/13/2010 to 08/16/2010	5	Wimberly Fund - Trust Units	206,682.00	206,682.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Bengal Energy Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated August 30, 2010
NP 11-202 Receipt dated August 30, 2010
Offering Price and Description:
Minimum Offering: $8,000,000.00 or 8,000,000 Common Shares; Maximum Offering: $12,000,000.00 or 12,000,000 Common Shares Price: $1.00 per Common Share
Underwriter(s) or Distributor(s):
Wellington West Capital Markets Inc.
Macquarie Capital Markets Canada Ltd.
PI Financial Inc.
Toll Cross Securities Inc.
Promoter(s):
-
Project #1628330

Issuer Name:
Boralex Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated August 31, 2010
NP 11-202 Receipt dated
Offering Price and Description:
$95,000,000.00 - 6.75% Extendible Convertible Unsecured Subordinated Debentures Price: $100 per Debenture
Underwriter(s) or Distributor(s):
TD Securities Inc.
CIBC World Markets Inc.
National Bank Securities Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Canaccord Genuity Corp.
Desjardins Securities Inc.
GMP Securities L.P.
Macquarie Capital Markets Canada Ltd.
Cormark Securities Inc.
Promoter(s):
-
Project #1631496

Issuer Name:
Canadian Energy Services & Technology Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated August 30, 2010
NP 11-202 Receipt dated August 30, 2010
Offering Price and Description:
2,905,000 Common Shares Issuable upon Exercise of 2,905,000 Subscription Receipts
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
Stifel Nicolaus Canada Inc.
FirstEnergy Capital Corp.
RBC Dominion Securities Inc.
Wellington West Capital Markets Inc.
HSBC Securities (Canada) Inc.
Paradigm Capital Inc.
Promoter(s):
-
Project #1629526

Issuer Name:
CMP 2010 II Resource Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated August 27, 2010
NP 11-202 Receipt dated August 30, 2010
Offering Price and Description:
$50,000,000.00 (maximum) 50,000 Limited Partnership Units Price per Unit: $1,000 Minimum Subscription: $5,000 (Five Units)
Underwriter(s) or Distributor(s):
Dundee Securities Corporation
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Genuity Corp.
Desjardins Securities Inc.
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Macquarie Capital Markets Canada Ltd.
Raymond James Ltd.
Wellington West Capital Markets Inc.
Promoter(s):
CMP 2010 II Corporation
Goodman & Company, Investment Counsel Ltd.
Project #1628441

Issuer Name:
DirectCash Income Fund
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated August 30, 2010
NP 11-202 Receipt dated August 30, 2010
Offering Price and Description:
$25,002,500.00 - 1,370,000 Trust Units Price: $18.25 per Trust Unit
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Acumen Capital Financial Partners Limited
Promoter(s):
-
Project #1629820

Issuer Name:
Excel EM Debt Fund
Excel EM Tax-Efficient Income Fund
Excel Emerging Markets Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated August 30, 2010
NP 11-202 Receipt dated August 31, 2010
Offering Price and Description:
Series A and F Units
Underwriter(s) or Distributor(s):
Excel Funds Management Inc.
Promoter(s):
Excel Funds Management Inc.
Project #1629161

Issuer Name:
First Capital Realty Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated August 27, 2010
NP 11-202 Receipt dated August 30, 2010
Offering Price and Description:
$500,000,000.00:
Common Shares
Warrants to Purchase Common Shares
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1627696

Issuer Name:
GMIncome & Growth Fund
Principal Regulator - Alberta
Type and Date:
Preliminary Long Form Prospectus dated August 27, 2010
NP 11-202 Receipt dated August 27, 2010
Offering Price and Description:
$* (maximum) (maximum – * Combined Units) Price: $12.00 per Combined Unit Minimum Purchase: 100 Combined Units
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
GMP Securities L.P.
Canaccord Genuity Corp.
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Macquarie Private Wealth Inc.
Manulife Securities Incorporated
Wellington West Capital Markets Inc.
Middlefield Capital Corporation
Worldsource Securities Inc.
Promoter(s):
Middlefield Limited
Project #1627757

Issuer Name:
Innergex Renewable Energy Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated August 27, 2010
NP 11-202 Receipt dated August 27, 2010
Offering Price and Description:
$85,000,000.00 - 3,400,000 Cumulative Rate Reset Preferred Shares, Series A Price: $25.00 per Series A Share to yield initially 5.00% per annum
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
TD Securities Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Desjardins Securities Inc.
Laurentian Bank Securities Inc.
Cormark Securities Inc.
Jacob Securities Inc.
NCP Northland Capital Partners Inc.
Promoter(s):
-
Project #1626296

Issuer Name:
Leo Acquisitions Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated August 30, 2010
NP 11-202 Receipt dated August 31, 2010
Offering Price and Description:
Minimum Offering: $200,000.00 or 2,000,000 Common Shares; Maximum Offering: $800,000.00 or 8,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Union Securities Ltd.
Promoter(s):
-
Project #1629905

Issuer Name:
Manulife Financial Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated August 30, 2010
NP 11-202 Receipt dated August 30, 2010
Offering Price and Description:
$10,000,000,000.00:
Debt Securities
Class A Shares
Class B Shares
Class 1 Shares
Common Shares
Subscription Receipts
Warrants
Share Purchase Contracts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1628767

Issuer Name:
O'Leary Hard Asset Income Fund
Principal Regulator - Quebec
Type and Date:
Preliminary Long Form Prospectus dated August 30, 2010
NP 11-202 Receipt dated August 31, 2010
Offering Price and Description:
$ * - * Units Price: $12.00 per Unit - Minimum Purchase: 100 Units
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
Scotia Capital Inc.
Macquarie Private Wealth Inc.
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Wellington West Capital Markets Inc.
Canaccord Genuity Corp.
Dundee Securities Corporation
Mackie Research Capital Corporation
Desjardins Securities Corporation
Manulife Securities Incorporated
MGI Securities Inc.
Promoter(s):
O'Leary Funds Management LP
Project #1631300

Issuer Name:
Oil Optimization Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Long Form Prospectus dated August 26, 2010
NP 11-202 Receipt dated August 26, 2010
Offering Price and Description:
Minimum Offering: $3,000,000.00 (20,000,000 Common Shares); Maximum Offering: $5,000,000.00 (33,333,333 Common Shares) Price: $0.15 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Union Securities Ltd.
Promoter(s):
David Little
Project #1625193

Issuer Name:
Pathway Quebec Mining 2010-II Flow-Through Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated August 24, 2010
NP 11-202 Receipt dated August 27, 2010
Offering Price and Description:
$15,000,000.00 (Maximum Offering); $5,000,000.00 (Minimum Offering) - A Maximum of 1,500,000 and a Minimum of 500,000 Limited Partnership Units Minimum Subscription: 250 Limited Partnership Units
Subscription Price: $10.00 per Limited Partnership Unit
Underwriter(s) or Distributor(s):
Wellington West Capital Inc.
Desjardins Securities Inc.
HSBC Securities (Canada) Inc.
Industrial Alliance Securities Inc.
BMO Nesbitt Burns Inc.
Canaccord Genuity Corp.
Dundee Securities Corporation
Laurentian Bank Securities Inc.
Promoter(s):
Pathway Quebec Mining 2010-II Inc.
Project #1627084

Issuer Name:
Pinecrest Energy Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated August 30, 2010
NP 11-202 Receipt dated August 30, 2010
Offering Price and Description:
$35,000,000.00 - 25,000,000 Offered Shares Price: $1.40 per Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Cormark Securities Inc.
GMP Securities L.P.
Peters & Co. Limited
Paradigm Capital Inc.
Promoter(s):
-
Project #1629908

Issuer Name:
RBC High Yield Bond Fund
RBC Monthly Income Bond Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated August 31, 2010
NP 11-202 Receipt dated August 31, 2010
Offering Price and Description:
Series A, Advisor Series, Series D, Series F and Series O Units
Underwriter(s) or Distributor(s):
Royal Mutual Funds Inc.
RBC Direct Investing Inc.
Royal Mutual Funds Inc./RBC Direct Investing Inc.
Promoter(s):
RBC Asset Management Inc.,
Project #1631348

Issuer Name:
Spartan Exploration Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated August 27, 2010
NP 11-202 Receipt dated August 27, 2010
Offering Price and Description:
$14,999,550.00 - 5,263,000 Offered Shares Price: $2.85 per Offered Share
Underwriter(s) or Distributor(s):
Clarus Securities Inc.
GMP Securities L.P.
Mackie Research Capital Corporation
Stonecap Securities Inc.
Promoter(s):
-
Project #1627287

Issuer Name:
Star Portfolio Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated August 31, 2010
NP 11-202 Receipt dated August 31, 2010
Offering Price and Description:
$* Maximum - * Units of Star Yield Managers Class $12.00 per Unit Each Unit consists of one Star Yield Managers Class Share and one Warrant.
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Promoter(s):
BMO Nesbitt Burns Inc.
Project #1631489

Issuer Name:
Total Capital Canada Ltd.
Total Capital S.A
Principal Regulator - Alberta
Type and Date:
Preliminary Base Shelf Prospectus dated August 27, 2010
NP 11-202 Receipt dated August 30, 2010
Offering Price and Description:
$4,000,000,000.00 - Medium Term Notes (Unsecured)
Unconditionally guaranteed as to payment of
all amounts payable thereunder by TOTAL S.A.
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Societe Generale Securities Inc.
CitigGroup Global Markets Canada Inc.
HSBC securities (Canada) Inc.
Merrill Lynch Canada Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
-
Project #1629898/1630082

Issuer Name:
Union Gas Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated August 30, 2010
NP 11-202 Receipt dated August 30, 2010
Offering Price and Description:
$500,000,000.00 - MEDIUM TERM NOTE DEBENTURES (UNSECURED)
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
-
Project #1628817

Issuer Name:
Westcoast Energy Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Base Shelf Prospectus dated August 27, 2010
NP 11-202 Receipt dated August 30, 2010
Offering Price and Description:
$1,500,000,000.00 - MEDIUM TERM NOTE DEBENTURES (UNSECURED)
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
-
Project #1628043

Issuer Name:
Alexis Minerals Corporation
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated August 25, 2010
NP 11-202 Receipt dated August 26, 2010
Offering Price and Description:
Maximum Offering: $12,500,000.00 or 83,333,333 Units; Minimum Offering: $8,850,000.00 or 59,000,000 Units PRICE: $0.15 per Unit
Underwriter(s) or Distributor(s):
Industrial Alliance Securities Inc.
NCP Northland Capital Partners Inc.
Promoter(s):
-
Project #1606426

Issuer Name:
Dynamic Global Energy Class (Series A, F, I, IP, O, OP and T securities)
Dynamic Energy Income Fund (Series A, F, I, IP, O, OP and T securities)
Principal Regulator - Ontario
Type and Date:
Amendment #5 dated August 20, 2010 to the Annual Information Form dated December 23, 2009
NP 11-202 Receipt dated August 25, 2010
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Goodman & Company Investment Counsel Ltd.
Promoter(s):
Goodman & Company Investment Counsel Ltd.
Project #1501539

Issuer Name:
Series A units, Series F units and Series I units (unless otherwise indicated) of:
NEI Money Market Fund (Series A and Series I units)
NEI Canadian Bond Fund
Ethical Balanced Fund
Ethical Canadian Dividend Fund
Ethical Growth Fund
Ethical Special Equity Fund
Ethical American Multi-Strategy Fund
Ethical Global Dividend Fund
Ethical Global Equity Fund
Ethical International Equity Fund
Ethical Select Conservative Portfolio
Ethical Select Canadian Balanced Portfolio
Ethical Select Canadian Growth Portfolio
Ethical Select Global Balanced Portfolio
Ethical Select Global Growth Portfolio
Northwest Canadian Dividend Fund
Northwest Canadian Equity Fund
Northwest Growth and Income Fund
Northwest Global Equity Fund
Northwest U.S. Equity Fund
Northwest EAFE Fund
Northwest Specialty High Yield Bond Fund
Northwest Specialty Global High Yield Bond Fund
Northwest Specialty Equity Fund
Northwest Specialty Growth Fund Inc. (Series A, Series F and Series I shares)
Northwest Specialty Innovations Fund
Northwest Select Conservative Portfolio
Northwest Select Canadian Balanced Portfolio
Northwest Select Canadian Growth Portfolio
Northwest Select Global Balanced Portfolio (Series A and Series F units)
Northwest Select Global Growth Portfolio (Series A and Series F units)
Northwest Select Global Maximum Growth Portfolio
Principal Regulator - Ontario
Type and Date:
Amended and Restated Simplified Prospectuses and Annual Information Form dated August 23, 2010 (the amended prospectus) amending and restating the Simplified Prospectuses and Annual Information Form dated June 28, 2010
NP 11-202 Receipt dated August 27, 2010
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Credential Asset Management Inc.
Promoter(s):
Northwest & Ethical Investments L.P.,
Project #1586951

Issuer Name:
Golden Credit Card Trust
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated August 30, 2010
NP 11-202 Receipt dated August 31, 2010
Offering Price and Description:
Up to $10,000,000,000.00 - Credit Card Receivables Backed Notes
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Promoter(s):
Royal Bank of Canada
Project #1622707

Issuer Name:
LAB Research Inc.
Principal Regulator - Quebec
Type and Date:
Final Base Shelf Prospectus dated August 30, 2010
NP 11-202 Receipt dated August 30, 2010
Offering Price and Description:
$25,000,000.00:
Common Shares
Preferred Shares
Debt Securities
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1601736

Issuer Name:
Lions Bay Capital Inc.
Principal Regulator - British Columbia
Type and Date:
Final CPC Prospectus dated August 26, 2010
NP 11-202 Receipt dated August 26, 2010
Offering Price and Description:
$200,000.00 - 1,000,000 Common Shares PRICE: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
Richard Douglas Wilson
Project #1604933

Issuer Name:
MacMillan Minerals Inc.
Type and Date:
Final Non-Offering Long Form Prospectus dated August 23, 2010
Receipted on August 26, 2010
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1542185

Issuer Name:
Advisor Series (formerly Mutual Fund Units) and Series F Securities (except as noted) of:
Manulife Global Wealth Management Fund
(formerly AIC Global Wealth Management Fund)
(also available in Series T5 and Series T8 Securities)
Manulife Canadian Stock Fund
(formerly AIC Canadian Equity Fund)
Manulife American Small to Mid Cap Fund
(formerly AIC American Small to Mid Cap Fund)
Manulife Balanced Fund
(formerly AIC Canadian Balanced Fund)
Manulife Global Balanced Fund
(formerly AIC Global Balanced Fund)
Manulife Dividend Income Fund
(formerly AIC Dividend Income Fund)
Manulife Global Fixed Income Fund
(formerly AIC Global Fixed Income Fund)
Manulife Global Bond Fund
(formerly AIC Global Bond Fund)
Manulife Canadian Money Market Fund
(formerly AIC Money Market Fund)
Manulife Leaders Income Portfolio
(formerly Value Leaders Income Portfolio)
(also available in Series I and Series T4 Securities)
Manulife U.S. Money Market Fund
(formerly AIC U.S. Money Market Fund)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated August 19, 2010 to the Simplified Prospectuses and Annual Information Form dated April 1, 2010
NP 11-202 Receipt dated August 27, 2010
Offering Price and Description:
Advisor Series (formerly Mutual Fund Units), Series F, Series T5, Series T8, Series I and Series T4 Securities @ Net Asset Value
Underwriter(s) or Distributor(s):
Manulife Asset Management Limited
Elliott & Page Limited
Promoter(s):
-
Project #1546179

Issuer Name:
Manulife Value Class
(formerly AIC Value Corporate Class)
Manulife Canadian Money Market Class
(formerly AIC Money Market Corporate Class)
(Advisor Series Shares and Series F Shares)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated August 19, 2010 to the Simplified Prospectuses and Annual Information Form dated April 1, 2010
NP 11-202 Receipt dated August 25, 2010
Offering Price and Description:
Advisor Series Shares and Series F Shares @ Net Asset Value
Underwriter(s) or Distributor(s):
Manulife Asset Management Limited
Promoter(s):
Elliott and Page Limited
Project #1534851

Issuer Name:
Northwest Tactical Yield Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus and Annual Information Form dated August 23, 2010
NP 11-202 Receipt dated August 27, 2010
Offering Price and Description:
Series A units, Series I units, Series F units, and Series T Units
Underwriter(s) or Distributor(s):
Credential Asset Management Inc.
Promoter(s):
Northwest & Ethical Investments L.P
Project #1609838

Issuer Name:
Class A Units and Class O Units (unless otherwise indicated) of:
Sceptre Income & Growth Fund (Class D Units and Class F Units are also available)
Sceptre Bond Fund (Class D Units are also available)
Sceptre High Income Fund (Class D Units and Class F Units are also available)
Sceptre Canadian Equity Fund (Class D Units and Class F Units are also available)
Sceptre Equity Growth Fund (Class D Units and Class F Units are also available)
Sceptre U.S. Equity Fund (available in Class O Units only)
Sceptre Global Equity Fund (Class D Units are also available)
Sceptre Money Market Fund
Sceptre Large Cap Canadian Equity Fund (available in Class O Units only)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated August 26, 2010
NP 11-202 Receipt dated August 26, 2010
Offering Price and Description:
Class A, Class O, Class D and Class F Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1607956

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Primevest Capital Corp.	Exempt Market Dealer	August 26, 2010
Change of Category	Sun Life Global Investments (Canada) Inc.	From: Portfolio Manager To: Portfolio Manager and Investment Fund Manager under the *Securities Act* and commodity Trading Manager under the *Commodity Futures Act*.	August 27, 2010
New Registration	Centurion Apartment REIT Management Inc.	Exempt Market Dealer	August 30, 2010
Name Change	From: Elliott & Page Limited / Elliott & Page Limitee To: Manulife Asset Management Limited/ Gestion D'Actif Manuvie Limitée	Mutual Fund Dealer, Exempt Market Dealer, Portfolio Manager & Commodity Trading Manager	August 19, 2010
Change in Registration Category	K.J. Harrison & Partners Inc.	From: Investment Dealer To: Investment Dealer and Investment Fund Manager	August 31, 2010

Change of Category	Sceptre Investment Counsel Limited	From: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager under the *Securities Act* and Commodity Trading Manager under the *Commodity Futures Act.*	August 31, 2010
Name Change	From: Pyramis Canada ULC To: Pyramis Global Advisors (Canada) ULC	Portfolio Manager and Commodity Trading Manager	August 10, 2010
Change of Category	Integra Capital Limited	From: Exempt Market Dealer and Portfolio Manager under the *Securities Act* and Commodity Trading Manager under the *Commodities Futures Act.* To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager under the *Securities Act* and Commodity Trading Manager under the *Commodities Futures Act*	September 1, 2010
New Registration	Higgins Investment Group Inc.	Portfolio Manager and Exempt Market Dealer	September 1, 2010

Chapter 13

SROs, Marketplaces and Clearing Agencies

13.2 Marketplaces

13.2.1 Chi-X Canada – Notice of Proposed Changes and Request for Feedback

CHI-X CANADA ATS
NOTICE OF PROPOSED CHANGES AND REQUEST FOR FEEDBACK

Chi-X Canada ATS Limited has announced its plans to implement the changes described below in October 2010. It is publishing this Notice of Proposed Changes in accordance with OSC Staff Notice 21-703 – *Transparency of the Operations of Stock Exchanges and Alternative Trading Systems*. Pursuant to OSC Staff Notice 21-703, market participants are invited to provide the Commission with feedback on the proposed changes.

Feedback on the proposed changes should be in writing and submitted by Monday, October 4, 2010 to:

Market Regulation Branch
Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Fax (416) 595-8940
Email: marketregulation@osc.gov.on.ca

And to:

Matthew Thompson
Chi-X Canada ATS
130 King Street West, Suite 2105
Toronto, ON M5X 1E3
Email: matthew.thompson@chi-xcanada.com

Comments received will be made public on the OSC website. Upon completion of the review by OSC staff, and in the absence of any regulatory concerns, notice will be published to confirm the completion of Commission staff's review and to outline the intended implementation date of the changes.

CHI-X CANADA ATS
NOTICE OF PROPOSED CHANGES

Chi-X Canada ATS Limited ("Chi-X Canada") has announced its plans to implement the changes described below in October 2010. It is publishing this Notice of Proposed Changes in accordance with OSC Staff Notice 21-703 – *Transparency of the operations of Stock Exchanges and Alternative Trading Systems*.

Description of Proposed Changes and Reasons for Changes

Chi-X Canada is introducing the ability for Subscribers to designate orders as attributed on an order-by-order basis. Subscribers will be given the choice to have information about their Subscriber ID be displayed on orders entered and trades that occur. Whereas Subscriber orders on most Canadian marketplaces are attributed by default, Chi-X Canada will provide Subscribers this option. The change was introduced to provide Subscribers with greater choice in how they trade.

Impact of the Changes

Chi-X Canada will continue to support an anonymous order book while also providing Subscribers greater choice for order entry.

Consultations

Chi-X has consulted with industry participants who supported the proposed change.

Existence of Proposed Change in the Market

Currently all lit marketplaces in Canada operate as attributed markets. Subscribers are able to trade anonymously by opting out of attribution through the use of Broker ID #001.

Any questions regarding these changes should be addressed to Matthew Thompson, Chi-X Canada: matthew.thompson@chi-xcanada.com, T: 416 304-6376.

13.2.2 OMEGA ATS – Notice of Proposed Changes and Request for Feedback

OMEGA ATS
NOTICE OF PROPOSED CHANGES AND REQUEST FOR FEEDBACK

Omega ATS has announced its plans to implement the changes described below in Q4 2010. It is publishing this Notice of Proposed Changes in accordance with the requirements set out in OSC Staff Notice 21-703 – *Transparency of the Operations of Stock Exchanges and Alternative Trading Systems*. Pursuant to OSC Staff Notice 21-703, market participants are invited to provide the Commission with feedback on the proposed changes.

Feedback on the proposed changes should be in writing and submitted by Monday, October 4, 2010 to:

Market Regulation Branch
Ontario Securities commission
Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Fax (416) 595-8940
Email: marketregulation@osc.gov.on.ca

And to:

Michael Bignell
President and Chief Compliance Officer
Omega ATS
100 Lombard Street, Suite 101
Toronto, ON M5C 1M3
Email: michael.bignell@omegaats.com

Comments received will be made public on the OSC website. Upon completion of the review by OSC staff, and in the absence of any regulatory concerns, notice will be published to confirm the completion of Commission staff's review and to outline the intended implementation date of the changes.

OMEGA ATS
NOTICE OF PROPOSED CHANGES

Omega ATS has announced its plans to implement the changes described below in Q4 2010 unless otherwise noted.

If you should have any questions concerning the information below please contact Michael Bignell, President & CCO of Omega, at Michael.bignell@omegaats.com or by phone at 416-646-2427.

Description of Proposed Changes

Omega ATS proposes to introduce cross functionality to our marketplace. Subscribers will be able to select from a variety of crosses, Intentional By-Pass Cross, Internal By-Pass Cross, Basis Cross, and VWAP Cross. Basis Cross and VWAP Cross are designed for more advanced trading strategies. Basis and VWAP crosses are not required to print within the CBBO, and will not update the national last sale price. Omega ATS also proposes to introduce Pegged Orders which allow subscribers to continuously track the CBBO with a choice of Primary, Market, or Mid-Point parameter peg with or without offset up to an ultimate limit price.

- **Intentional By-Pass Cross** – A trade that occurs when two accounts of the same Subscriber buy and sell the same security at an agreed price and volume. Crosses on Omega will receive time priority at the price, similar to the practices of other Canadian marketplaces. All crosses on Omega will be by-pass crosses, meaning they do not interact with hidden liquidity. Intentional by-pass crosses must be flagged by the user with the Intentional By-Pass Cross marker, or Omega will reject the order. Since it is a Subscriber's responsibility to displace better priced liquidity in the context of the CBBO prior to putting up a by-pass cross outside the context of the current market, an Intentional By-Pass Cross outside the bid ask spread will not be interfered with by better-price liquidity.

- **Internal By-Pass Cross** – A trade identical to the Intentional By-Pass Cross except the originating orders from the Subscriber will be between managed accounts that have the same beneficial owner. An internal by-pass cross marker will be automatically attached to the trade-print by Omega.

- **Basis Cross** – A trade whereby a basket of securities or an index participation unit is transacted at prices achieved through the execution of related exchange-traded derivative instruments which may include index futures, index options and index participation units in an amount that will correspond to an equivalent market exposure. A Basis Cross will not be subject to any interference.

- **VWAP Cross** – A transaction for the purpose of executing a trade at a volume-weighted average price of a security traded for a continuous period on or during a trading day on Canadian exchanges or alternative trading systems.

- **Pegged Order** – The order will allow subscribers to peg orders to the near, mid or far-side of the market as determined by the CBBO, eliminating the optional limit price which is the maximum match price for a buy or the minimum match price of a sell order. Pegged order matching logic is based strictly on price-time priority and will match as if they were limit orders at that price. Subscribers will have the option of specifying an offset on the order that will increase or decrease the price of the order from the appropriate peg level: near, mid or far. Subscribers that do not have algorithmic tools to manage offset peg orders should only offset in the opposite direction from the far side of the market or only offset by $0.01 to avoid the potential of a trade-through.

In addition to the new order types, Omega ATS proposes to introduce trading in select unlisted Government of Canada Debt securities and Canadian corporate (public corporations), listed and unlisted debt securities as well as trading in securities listed on the NYSE, NASDAQ and AMEX stock exchanges. Omega will not accommodate trading in any issue that is not eligible on CDS. Debt securities trading through Omega will only include securities issued in Canada. Omega will not include any foreign issues or any debt securities that were issued pursuant to the reliance of accredited investor exemptions. There will be no order type additions or changes to the market structure of Omega to accommodate trading in these securities as all functionality is pre-existing on Omega ATS. Settlements will be conducted through CDS on a trade for trade basis on all additional securities being added to Omega except where the security traded is eligible for CNS. Prices of executed trades for debt securities will have the accrued interest added therefore one net figure will be reported to CDS for matching and settlement purposes.

Expected Impact of Changes

Intentional By-Pass and Internal By-Pass crosses will allow subscribers to move large volume blocks between accounts without being subject to interference from other orders, visible or hidden, posted on the book. Orders will match exactly as intended for the number of shares input. Since Omega only accepts By-Pass for Intentional and Internal cross types, the order must be marked accordingly, or the cross is rejected.

Allowing specialty cross types such as Basis Cross and VWAP Cross, provides a facility to display the execution of large specialized transactions without being subject to interference. This will also enhance marketplace transparency.

Omega ATS's pegged order allows a passive market presence on the book regardless of price (to the limit price) without driving the market.

Trades of over the counter debt securities through Omega ATS will allow wider access to pricing information and will greatly enhance market transparency. Trading in NYSE, NASDAQ and AMEX listed equities, expected to commence sometime in Q4 2010, will provide a Canadian conduit for trading in these securities and will be transacted in Canadian Dollars. Trades in securities from these exchanges are not traditionally conducted in Canadian dollars, by adding the ability to do so subscribers may directly trade US listed securities directly on Omega for an assortment of Canadian registered plan, cash or margin accounts without having to perform an additional foreign exchange transaction.

Consultations

Omega ATS management and consultants, composed of market veterans, have had multiple conversations with various subscribers and buy side participants who have expressed interest in seeing more functionality and broader selection of the securities traded on Omega.

Proposed Changes Currently in the Canadian Marketplace

Similar order types to the ones being introduced by Omega are currently available in the Canadian capital markets. Three Canadian ATS' have similar functionality with slightly different behavior including the possibility of interference on Intentional and internal by-pass crosses. Behavior of VWAP & Basis crosses have similar behaviors as all other marketplaces.

There are currently systems in the marketplace that provide a platform for trading Government of Canada and corporate debt securities, two are ATSs that exclusively trade debt instruments. Despite the ATSs available, trading in these types of securities remains mainly over the counter. There are Canadian stock exchanges that currently trade some corporate debt securities for corporations that are listed on their exchange and some government issued debt securities.

Securities listed on US Exchanges trade on a multitude of ATS in their home country but no Canadian ATS currently provides a facility to trade US listed securities in Canada.

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Chapter 25

Other Information

25.1 Consents

25.1.1 JJR VI Acquisition Corp. – s. 4(b) of the Regulation

Headnote

Consent given to an offering corporation under the *Business Corporations Act* (Ontario) to continue under the laws of the Cayman Islands.

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 181.
Securities Act, R.S.O. 1990, c. S.5, as am.

IN THE MATTER OF
R.S.O. 1990, REGULATION 289/00,
AS AMENDED (the "Regulation")
MADE UNDER THE
BUSINESS CORPORATIONS ACT (ONTARIO),
R.S.O. 1990 c. B.16, AS AMENDED (the "OBCA")

AND

IN THE MATTER OF
JJR VI ACQUISITION CORP.

CONSENT
(Subsection 4(b) of the Regulation)

UPON the application of JJR VI Acquisition Corp. (the "**Applicant**") to the Ontario Securities Commission (the "**Commission**") requesting the consent of the Commission for the Applicant to continue (the "**Continuance**") in another jurisdiction pursuant to subsection 4(b) of the Regulation;

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant was incorporated pursuant to the *Business Corporations Act* (Ontario) (the "**OBCA**") by certificate of incorporation effective on December 21, 2009 under the name J6 Acquisition Corp. On January 4, 2010 the Applicant changed its name to JJR VI Acquisition Corp.

2. The Applicant's head office is located at 5 Hazelton Avenue, Suite 300, Toronto, Ontario, M5R 2E1.

3. The authorized share capital of the Applicant consists of an unlimited number of common shares (the "**Common Shares**"), of which 10,700,000 Common Shares are issued and outstanding as at the date hereof.

4. The Common Shares of the Applicant are listed for trading on the TSX Venture Exchange (the "**Exchange**") under the symbol "JVI.P".

4. The Applicant is an offering corporation under the provisions of the OBCA and is a reporting issuer within the meaning of the *Securities Act,* R.S.O. 1990, c. S.5, as amended (the "**Act**"**)**, and within the meaning of the *Securities Act* (British Columbia), R.S.B.C. 1996, c. 418 (the "**BCSA**") and the *Securities Act* (Alberta), R.S.A. 2000, c. S-4 (the "**ASA**"). The Applicant is not a reporting issuer in any other jurisdiction of Canada.

6. The Applicant proposes to make an application to the Director pursuant to Section 181 of the OBCA (the "**Application for Continuance**") for authorization to continue under the laws of the Cayman Islands.

7. Pursuant to subsection 4(b) of the Regulation, where a corporation is an offering corporation under the OBCA, the Application for Continuance must be accompanied by a consent of the Commission.

8. The Applicant is not in default under any provision of the Act or the regulations or rules made the Act, and is not in default under the BCSA or the ASA.

9. The Applicant is not in default of any of the rules, regulations or policies of the Exchange.

10. The Applicant is not a party to any proceeding nor, to the best of its knowledge, information and belief, any pending proceeding under the Act, BCSA or the ASA.

11. The Application for Continuance is being made in connection with a proposed business combination structured as a 'three cornered' amalgamation (the "**Proposed Transaction**") involving the Applicant, American Insurance Acquisition Inc., a corporation incorporated under the laws of Delaware ("**AIA**") and a wholly-owned subsidiary of the Applicant ("**Subco**") to be incorporated under the laws of Delaware, pursuant to which the Applicant will acquire all of the issued and outstanding shares of AIA, and AIA and Subco will amalgamate as a wholly-owned subsidiary of the Applicant ("**Amalco**").

12. The holders of Common Shares of the Applicant authorized the Continuance of the Applicant at a special meeting of shareholders (the "**Meeting**") held on August 20, 2010. The special resolution authorizing the Continuance was approved at the Meeting by 99.90% of the votes cast.

13. The management information circular of the Applicant, dated July 23, 2010, describing the Continuance (the "**Information Circular**"), provided to all the shareholders of the Applicant in connection with the Meeting, included full disclosure of the reasons for, and the implications of, the proposed Continuance, included a summary of the material differences between the *Canada Business Corporations Act* and the laws of the Cayman Islands and advised the shareholders of their dissent rights in connection with the Continuance, pursuant to section 185 of the OBCA.

14. The material rights, duties and obligations of a corporation governed by the laws of the Cayman Islands are substantially similar to those of a corporation governed by the OBCA.

15. The Applicant intends to remain a reporting issuer in Ontario and in the other jurisdictions where it is a reporting issuer after the Proposed Transaction.

16. As the Applicant does not intend to maintain a corporate office in Canada subsequent to the Continuance, the Applicant has provided an undertaking (the "**Undertaking**") to the Commission that it will complete and file an "Issuer Form of Submission to Jurisdiction and Appointment of Agent for Service of Process" in the form of Schedule "A" thereto (the "**Submission to Jurisdiction Form**") with the Commission through the System for Electronic Document Analysis and Retrieval (SEDAR) promptly following the effective date of the Continuance. The Undertaking also provides that the Applicant will maintain and update the information contained in the Submission to Jurisdiction Form, or furnish a new Submission to Jurisdiction Form, in accordance with the provisions contained therein. The form of Undertaking provided to the Commission is attached as Appendix "A".

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

THE COMMISSION HEREBY CONSENTS to the continuance of the Applicant as a corporation under the laws of the Cayman Islands.

DATED this 27th day of August, 2010.

"Mary G. Condon"
Commissioner
Ontario Securities Commission

"Paulette L. Kennedy"
Commissioner
Ontario Securities Commission

APPENDIX "A"

UNDERTAKING

To: Ontario Securities Commission (the "Commission")

RE: JJR VI Acquisition Corp. (the "Applicant") - Application dated August 3, 2010 for a Consent to continuance to the Cayman Islands (the "Continuance") pursuant to clause 4(b) of Ontario Regulation 289/00 made under the Business Corporations Act, R.S.O. 1990, c. B. 16

The Applicant hereby undertakes that it will complete and file an "Issuer Form of Submission to Jurisdiction and Appointment of Agent for Service of Process" in the form of Schedule "A" hereto (the "Submission to Jurisdiction Form") with the Commission through the System for Electronic Document Analysis and Retrieval (SEDAR) promptly following the effective date of the Continuance.

The Applicant hereby further undertakes that it will maintain and update the information contained in the Submission to Jurisdiction Form, or furnish a new Submission to Jurisdiction Form, in accordance with the provisions contained therein.

Dated: August 20, 2010

JJR VI ACQUISITION CORP.

"Jordan Kupinsky"
Name: Jordan Kupinsky
Title: Director

SCHEDULE "A"

ISSUER FORM OF SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

1. Name of issuer (the "Issuer"):

_____

2. Jurisdiction of incorporation, or equivalent, of Issuer:

_____

3. Address of principal place of business of Issuer:

_____

4. Description of securities (the "Securities"):

_____

5. Name of agent for service of process (the "Agent"):

_____

6. Address for service of process of Agent in Canada (which address may be anywhere in Canada):

_____

7. The Issuer designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served with a notice, pleading, subpoena, summons or other process in an action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the "Proceeding") arising out of, relating to or concerning the obligations of the Issuer as a reporting issuer and irrevocably waives any right to raise as a defence in any such Proceeding an alleged lack of jurisdiction to bring such Proceeding.

8. The Issuer irrevocably and unconditionally submits to the non-exclusive jurisdiction of:

   (a) the judicial, quasi-judicial and administrative tribunals of each of the provinces and territories of Canada in which the Securities have been distributed; and

   (b) any administrative proceeding in any such province or territory,

   in any Proceeding arising out of or related to or concerning the obligations of the Issuer as a reporting issuer.

9. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file a new Submission to Jurisdiction and Appointment of Agent for Service of Process in this form or as otherwise prescribed by securities law at least 30 days before termination, for any reason, of this Submission to Jurisdiction and Appointment of Agent for Service of Process.

10. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file an amended Submission to Jurisdiction and Appointment of Agent for Service of Process at least 30 days before a change in the name or address of the Agent.

11. This Submission to Jurisdiction and Appointment of Agent for Service of Process shall be governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

Dated: _____ _____

Signature of Signing Officer of Issuer

Print name and title of person signing

AGENT

The undersigned accepts the appointment as agent for service of process of [insert name of Issuer] under the terms and conditions of the preceding Submission to Jurisdiction and Appointment of Agent for Service of Process.

Dated: _____

_____
Signature of Agent

Print name of person signing and, if Agent is not an individual, the title of the person

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Index