The Ontario Securities Commission

OSC Bulletin

September 17, 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)

The Ontario Securities Commission
Cadillac Fairview Tower
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20 Queen Street West
Toronto, Ontario
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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

September 17, 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
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Carol S. Perry	—	CSP
Charles Wesley Moore (Wes) Scott	—	CWMS

SCHEDULED OSC HEARINGS

September 20, 2010	**Albert Leslie James, Ezra Douse and Dominion Investments Club Inc.**
9:00 a.m.	s. 127 and 127.1
	H. Daley in attendance for Staff
	Panel: PJL
September 20, 2010	**Coventree Inc., Geoffrey Cornish and Dean Tai**
11:00 a.m.	s. 127
September 21 and 24, 2010	J. Waechter in attendance for Staff
	Panel: JEAT/MGC/PLK
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.	
September 22, 2010	**Rezwealth Financial Services Inc., Pamela Ramoutar, Chris Ramoutar, Justin Ramoutar, Tiffin Financial Corporation, Daniel Tiffin, 2150129 Ontario Inc. and Sylvan Blackett**
9:00 a.m.	s. 127(1) and (5)
	A. Heydon in attendance for Staff
	Panel: CSP
September 24, 27, 29 and October 1, 4, 13-19, 21-22, 2010	**Sulja Bros. Building Supplies, Ltd., Petar Vucicevich, Kore International Management Inc., Andrew Devries, Steven Sulja, Pranab Shah, Tracey Banumas and Sam Sulja**
10:00 a.m.	s. 127 and 127.1
	J. Feasby in attendance for Staff
	Panel: PJL/SA

September 27, September 29 – October 1, 2010 10:00 a.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 28, 2010 2:30 p.m.	**Mega–C Power Corporation, 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: JDC/KJK
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 4-8, 13-15 and December 6, 8-10, 2010 10:00 a.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 5, 2010 10:00 a.m.	**Abel Da Silva** s. 127 M. Boswell in attendance for Staff Panel: JEAT
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: JDC
October 21, 2010 12:00 p.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: JDC

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: JDC/CWMS
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 8, November 10-19, 2010 10:00 a.m.	**New Life Capital Corp., New Life Capital Investments Inc., New Life Capital Advantage Inc., New Life Capital Strategies Inc., 1660690 Ontario Ltd., L. Jeffrey Pogachar, Paola Lombardi and Alan S. Price** s. 127 M. Britton in attendance for Staff Panel: TBA
November 12, 2010 10:00 a.m.	**Imagin Diagnostic Centres Inc., Patrick J. Rooney, Cynthia Jordan, Allan McCaffrey, Michael Shumacher, Christopher Smith, Melvyn Harris and Michael Zelyony** s. 127 and 127.1 J. Feasby in attendance for Staff Panel: MGC/MCH
November 15-18, November 24-December 2, 2010 10:00 a.m.	**Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)** s. 127 and 127.1 D. Ferris in attendance for Staff Panel: TBA
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: JEAT

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	**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

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

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 **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

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 **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: TBA

TBA **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

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

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

ADJOURNED SINE DIE

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

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

1.1.2 Gregory Galanis

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

AND

IN THE MATTER OF
GREGORY GALANIS

NOTICE OF WITHDRAWAL

WHEREAS on March 18, 2008, the Ontario Securities Commission issued a Notice of Hearing and a Statement of Allegations of Staff pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, in respect of Gregory Galanis;

TAKE NOTICE that Staff of the Commission withdraw the allegations against the respondent, Gregory Galanis, as of September 14, 2010.

September 14, 2010

STAFF OF THE
ONTARIO SECURITIES COMMISSION
20 Queen Street West
PO Box 55, 19th Floor
Toronto, ON M5H 3S8

1.4 Notices from the Office of the Secretary

1.4.1 Mega–C Power Corporation et al.

FOR IMMEDIATE RELEASE
September 8, 2010

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

AND

IN THE MATTER OF
MEGA-C POWER CORPORATION,
RENE PARDO, GARY USLING,
LEWIS TAYLOR SR., LEWIS TAYLOR JR.,
JARED TAYLOR, COLIN TAYLOR AND
1248136 ONTARIO LIMITED

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

The Commission has also made public Reasons and Decisions in the above-named matter that were previously released to the parties on a Confidential basis.

1. "Confidential Reasons and Decision", dated May 18, 2007.

2. "Redacted Reasons and Decision Made Pursuant to the Confidential Reasons and Decisions Regarding the Request for Redaction", dated July 26, 2007, was previously published under the style of cause, *In the Matter of A, B, C, D, E, F, G, and H*.

3. "Confidential Reasons and Decision Regarding the Request for Redaction of the Confidential Reasons and Decision Dated May 18, 2007", dated July 26, 2007.

4. "Confidential Reasons and Decision on Motion for Particulars", dated September 7, 2007.

5. "Confidential Decision on a Motion for a Stay", dated October 1, 2008.

6. "Endorsement", dated September 9, 2009.

The Reasons and Decision dated September 7, 2010 and the public Reasons and Decisions listed above are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.2 Innovative Gifting Inc. et al.

FOR IMMEDIATE RELEASE
September 13, 2010

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

AND

IN THE MATTER OF
INNOVATIVE GIFTING INC.,
TERENCE LUSHINGTON, Z2A CORP.,
AND CHRISTINE HEWITT

TORONTO – The Commission issued an Order in the above named matter which provides that the hearing with respect to the Notice of Hearing dated March 2, 2010 and with respect to the Temporary Order is adjourned to November 4, 2010 at 3:00 p.m., at which time the confidential pre-hearing conference will be continued and dates will be fixed for the hearing on the merits in this matter.

A copy of the Order dated September 9, 2010 is available at **www.osc.gov.on.ca**.

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1.4.3 Lehman Brothers & Associates Corp. et al.

FOR IMMEDIATE RELEASE
September 13, 2010

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

AND

IN THE MATTER OF
LEHMAN BROTHERS & ASSOCIATES CORP.,
GREG MARKS, KENT EMERSON LOUNDS
AND GREGORY WILLIAM HIGGINS

TORONTO – The Commission issued an Order in the above named matter which provides that the hearing is adjourned to October 21, 2010 at 12:00 p.m. for a confidential pre-hearing conference.

A copy of the Order dated September 10, 2010 is available at **www.osc.gov.on.ca**.

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JOHN P. STEVENSON
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1.4.4 Lehman Brothers & Associates Corp. et al.

FOR IMMEDIATE RELEASE
September 13, 2010

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

AND

IN THE MATTER OF
LEHMAN BROTHERS & ASSOCIATES CORP.,
GREG MARKS, MICHAEL LEHMAN (a.k.a.
MIKE LAYMEN), KENT EMERSON LOUNDS
AND GREGORY WILLIAM HIGGINS

TORONTO – The Commission issued an Order in the above named matter which provides that:

1. Lehman is no longer subject to the terms of the Temporary Order;

2. pursuant to subsections 127 (7) and (8) of the Act that the Temporary Order is extended against the Respondents, other than Lehman, to October 22, 2010; and

3. the Hearing is adjourned to October 21, 2010, at 12 p.m.

A copy of the Order dated September 10, 2010 is available at **www.osc.gov.on.ca**.

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JOHN P. STEVENSON
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1.4.5 Global Energy Group, Ltd. et al.

FOR IMMEDIATE RELEASE
September 13, 2010

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

AND

IN THE MATTER OF
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

TORONTO – Following a motion hearing held on August 27, 2010 in the above named matter, the Commission issued an order dismissing the motion.

A copy of the Motion Order dated August 27, 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)

1.4.6 Gregory Galanis

FOR IMMEDIATE RELEASE
September 14, 2010

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

AND

IN THE MATTER OF
GREGORY GALANIS

TORONTO – Staff of the Ontario Securities Commission filed a Notice of Withdrawal in the above named matter, withdrawing the allegations against the Respondent, Gregory Galanis, as of September 14, 2010.

A copy of the Notice of Withdrawal dated September 14, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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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)

1.4.7 Global Energy Group, Ltd. et al.

FOR IMMEDIATE RELEASE
September 14, 2010

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

AND

IN THE MATTER OF
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

TORONTO – The Commission issued an order in the above named matter upon hearing the submissions of Staff, Shiff, counsel for Feder, counsel for Robinson and counsel for Pasternak, Walker and Brikman, that the hearing is adjourned to November 8, 2010, at 10:00 a.m. or on such other date as provided by the Office of the Secretary and agreed to by the parties for a pre-hearing conference.

A copy of the Order dated September 1, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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1-877-785-1555 (Toll Free)

1.4.8 Christina Harper et al.

FOR IMMEDIATE RELEASE
September 14, 2010

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

AND

IN THE MATTER OF
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

TORONTO – The Commission issued an Order with certain provisions in the above named matter which provides that (1) pursuant to subsections 127 (7) and (8) of the Act, the Temporary Order is extended to November 9, 2010; and (2) the hearing in this matter is adjourned to November 8, 2010 at 10:00 a.m.

A copy of the Order dated September 1, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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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)

1.4.9 Global Energy Group, Ltd. and New Gold Limited Partnerships

FOR IMMEDIATE RELEASE
September 14, 2010

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

AND

IN THE MATTER OF
GLOBAL ENERGY GROUP, LTD. AND
NEW GOLD LIMITED PARTNERSHIPS

TORONTO – The Commission issued an Order in the above named matter which provides that, pursuant to subsection 127(8) of the Act, that the Temporary Order is extended to November 9, 2010 and that the hearing in this matter is adjourned to November 8, 2010, at 10:00 a.m. or on such other date as provided by the Secretary's Office and agreed to by the parties.

A copy of the Order dated September 1, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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Robert Merrick
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416-593-2315

For investor inquiries:

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

1.4.10 Imagin Diagnostic Centres Inc. et al.

FOR IMMEDIATE RELEASE
September 15, 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 – Following the release of the Panel's Reasons and Decision dated August 31, 2010 on the hearing on the merits, a sanctions hearing is scheduled to commence on Friday, November 12, 2010 at 10:00 a.m. in Hearing Room A, 20 Queen Street West, Toronto, in the above named matter.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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Director, Communications & Public Affairs
416-593-8120

Theresa Ebden
Senior Communications Specialist
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Robert Merrick
Senior Communications Specialist
416-593-2315

For investor inquiries:

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

1.4.11 TBS New Media Ltd. et al.

FOR IMMEDIATE RELEASE
September 15, 2010

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

AND

IN THE MATTER OF
TBS NEW MEDIA LTD., TBS NEW MEDIA PLC,
CNF FOOD CORP., CNF CANDY CORP.,
ARI JOHNATHAN FIRESTONE AND MARK GREEN

TORONTO – The Commission issued an Order which provides that the Temporary Order, as amended by the July 12 order, is extended to October 22, 2010; and the Hearing is adjourned to October 21, 2010 at 11:00 a.m. for a confidential pre-hearing conference.

A copy of the Temporary Order dated September 10, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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Director, Communications & Public Affairs
416-593-8120

Theresa Ebden
Senior Communications Specialist
416-593-8307

Robert Merrick
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416-593-2315

For investor inquiries:

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

1.4.12 TBS New Media Ltd. et al.

FOR IMMEDIATE RELEASE
September 15, 2010

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

AND

IN THE MATTER OF
TBS NEW MEDIA INC., TBS NEW MEDIA PLC,
CNF FOOD CORP., CNF CANDY CORP.,
ARI JONATHAN FIRESTONE AND MARK GREEN

TORONTO – The Commission issued an Order which provides that the hearing is adjourned to October 21, 2010 at 11:00 a.m. for a confidential pre-hearing conference.

A copy of the Order dated September 14, 2010 and the Amended Statement of Allegations of Staff of the Ontario Securities Commission dated September 9, 2010 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Canacol Energy Ltd.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from the requirement in the definition of venture issuer that an issuer not have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace or a marketplace outside of Canada and the United States of America other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations.

Citation: Canacol Energy Ltd., Re, 2010 ABASC 429

September 8, 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
CANACOL ENERGY LTD.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for relief from the requirement in the definition of venture issuer in section 1.1 of each of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**), National Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings* (**NI 52-109**), National Instrument 52-110 *Audit Committees* (**NI 52-110**) and National Instrument 58-101 *Disclosure of Corporate Governance Practices* (**NI 58-101**) that a reporting issuer not, at the relevant time, have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace or a marketplace outside of Canada and the United States of America other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc (the **Exemption Sought**).

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

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

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

In this decision,

"BVC" means the Bolsa de Valores de Colombia, the Colombian stock market; and

"TSXV" means the TSX Venture Exchange Inc.

Representations

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

1. The Filer is a corporation continued under the *Business Corporations Act* (Alberta). Its head office is located in Calgary, Alberta.

2. The Filer is an international oil and gas company involved in the production, development, appraisal and exploration of hydrocarbons. The Filer's key interests are in Colombia and Brazil, with further interests in Guyana. The Filer's asset portfolio encompasses production, development, appraisal and exploration properties.

3. The Filer is a reporting issuer in the provinces of Alberta, Ontario, British Columbia, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and is not, to its knowledge, in default of its obligations as a reporting issuer under the securities legislation of the Jurisdictions.

4. The common shares of the Filer (the **Shares**) are listed on the TSXV under the trading symbol "CNE".

5. The financial year end of the Filer is June 30.

6. On December 22, 2009, the Filer entered into an agreement with Citvalores S.A. to assist the Filer in cross listing the Shares on the BVC.

7. On July 22, 2010, the Shares began trading on the BVC.

8. The Filer listed the Shares on the BVC due to the Filer's connection to Colombia and to facilitate the sale and transfer of the Shares in Colombia.

9. The BVC is structured for venture and non-venture issuers and is comparable in size to the Alternative Investment Market of the London Stock Exchange.

10. Under BVC rules, issuers are required to make timely disclosure of material information, announce semi-annual results within 45 days after the end of the period, and year end results must be announced not later than 10 business days after the date the Filer receives director approval for such year end results. This is similar to TSXV, however, the TSXV requires quarterly results to be announced not later than 60 days after the end of the period, and year end results to be announced not later than 120 days after year end.

11. The BVC is similar to the TSXV in terms of its requirements and the Filer does not expect more rigorous continuous disclosure requirements because the Shares are listed on the BVC.

12. The information that the Filer has provided herein about the BVC is accurate as at the date of this decision.

13. Pursuant to section 1.1 of each of NI 51-102, NI 52-109, NI 52-110 and NI 58-101, a venture issuer is defined as a reporting issuer that does not, at the relevant time, have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace or a marketplace outside of Canada and the United States of America other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.

14. Absent the Exemption Sought, the Filer would no longer meet the definition of venture issuer upon listing on the BVC.

15. In all other respects, the Filer falls within the definition of venture issuer as provided by section 1.1 of each of NI 51-102, NI 52-109, NI 52-110 and NI 58-101.

16. Subsection 13.1 of NI 51-102, subsection 8.6 of NI 52-109, subsection 8.1 of NI 52-110 and subsection 3.1 of NI 58-101 provide that the regulator or securities regulatory authority may grant an exemption from such National Instruments, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

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 Filer continues to have the Shares listed on the TSXV;

(b) the BVC is not restructured in a manner that makes it unreasonable to conclude that it is still a junior market equivalent;

(c) the representations listed in paragraphs 9-12 above continue to be true; and

(d) the Filer does not have any securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace or a marketplace outside of Canada and the United States of America other than BVC, the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.

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

2.1.2 Arrowstreet Capital, Limited Partnership

Headnote

Multilateral Instrument11-102 section 4.7(1)- Exemption granted for limited time period from requirement to include 100% of amount guaranteed on Line 11 of Form 31-102 F1 – Loan and inter-corporate guarantee in place prior to National Instrument 31-103 requirements – Conditions concerning not holding client assets and increased financial reporting.

Applicable Legislative Provisions

Multilateral Instrument 11-102, s. 4.7(1).
National Instrument 31-103, ss. 12.1, 15.1.

September 8, 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
ARROWSTREET CAPITAL, LIMITED PARTNERSHIP
(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), in particular, under section 15.1 of National Instrument 31-103 *Registration Requirements and Exemptions* (NI 31-103), that the requirement for a registered firm to deduct 100% of the total amount of any guarantee that it has provided when calculating its excess working capital in Form 31-103F1 *Calculation of Excess Working Capital* pursuant to section 12.1 of NI 31-103 (the 100% Guarantee Deduction Requirement) does not apply to the Filer (the Exemption Sought).

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

(a) the Ontario Securities Commission is the Principal Regulator for this decision; and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, British Columbia, Nova Scotia and Quebec (the Non-Principal Jurisdictions, and, together with the Jurisdiction, the Passport Jurisdictions).

Interpretation

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

Representations

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

The Filer

1. The Filer is a private limited partnership formed under the laws of the Commonwealth of Massachusetts on June 16, 1999;

2. the Filer's head office is located in Boston, Massachusetts, United States of America (U.S.);

3. the Filer is a wholly-owned subsidiary, directly and indirectly, of Arrowstreet Capital Holding LLC (Holding). Holding is a limited liability company that was formed under the laws of the State of Delaware for the sole purpose of holding an ownership interest in the Filer;

4. the same individuals comprise the mind and management of the Filer and Holding;

5. the Filer's principal business activity and purpose is to engage in the investment advisory and investment management business. The Filer generates the majority of its revenue by providing advisory services to customers in the U.S., Canada and other countries. Fees for such services comprise asset based management advisory fees and, in some cases, incentive/performance fees;

6. in the U.S., the Filer is registered as an investment adviser with the U.S. Securities and Exchange Commission, registered as a commodity trading advisor with the U.S. Commodity Futures Trading Commission, and is a member of the U.S. National Futures Association to provide discretionary investment advisory services to sophisticated institutional investors and investment funds;

7. in Canada, the Filer is registered as an unrestricted portfolio manager and commodity trading manager in Ontario, registered as a portfolio manager, subject to terms and conditions, in Alberta (for securities and exchange contracts) and Nova Scotia, and relying on the international adviser registration exemption in section 8.26 of NI 31-103 in British Columbia and

Quebec, respectively, to provide advisory services to clients resident in the Passport Jurisdictions;

8. as at the date of this decision, the highest number of the Filer's Canadian clients reside in Ontario;

The Guarantee

9. in May 2006, a syndicate of lenders having ING Capital LLC as lead agent, made a commercial loan to the Filer's parent company, Holding (the Commercial Loan), so that the ownership interests of all non-management owners of the Filer could be redeemed;

10. as of June 30, 2010, the outstanding principal amount of the Commercial Loan was approximately U.S.$34.6 million;

11. the Commercial Loan will be fully repaid by Holding on December 31, 2012;

12. payments by Holding on the Commercial Loan are funded from the Filer's operations;

13. every quarter, the Filer provides Holding with approximately U.S.$3.5 million to pay down the principal amount of the Commercial Loan;

14. to date, Holding has never failed to pay all amounts owing in respect of the Commercial Loan, and Holding does not anticipate having any difficulty in continuing to pay all such amounts until the Commercial Loan is paid in full by Holding on December 31, 2012;

15. the Filer has guaranteed payment by Holding of the Commercial Loan (the Guarantee);

16. to date, the Filer has never had to make a payment under the Guarantee;

17. the Guarantee will automatically terminate on December 31, 2012 when the Commercial Loan is fully repaid by Holding;

18. if required to make payments under the Guarantee, Holding and Filer would expect to be able to make other arrangements to repay the Commercial Loan within two calendar quarters;

19. under separate cover, the Filer has provided the Principal Regulator with a copy of its audited financial statements for the year ended December 31, 2009 in which both the Commercial Loan and the Guarantee are described in the notes; and

20. the Filer is currently not in default of any of its obligations under the securities legislation of the Passport 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 as long as:

(a) When calculating its excess working capital in Form 31-103F1, the Filer will deduct the Canadian equivalent of U.S.$7 million on line 11 which is the aggregate amount that the Filer must provide to Holding for Holding to pay down the principal amount of the Commercial Loan for two quarters and as at the date hereof, is roughly equal to 20% of the total amount of the Guarantee;

(b) as a supplement to the Filer satisfying its financial reporting obligations in Part 12, Division 4, of NI 31-103, the Filer will also provide to the Principal Regulator, on a confidential and quarterly basis until December 31, 2012: (i) a copy of each of the Filer's and Holding's unaudited financial statements; (ii) the Filer's unaudited excess working capital calculation in Form 31-103F1 showing excess working capital greater than zero following a deduction of the Canadian equivalent of U.S.$7 million on line 11; and (iii) a written certification that the Filer is not aware of any circumstance which may result in the accelerated payment of the Commercial Loan by Holding, or any payment by the Filer under the Guarantee;

(c) the Filer will immediately notify the Principal Regulator if it becomes aware that the accelerated payment of the Commercial Loan by Holding, or any payment by the Filer under the Guarantee, may or will occur;

(d) the Filer continues to be a wholly-owned subsidiary of Holding; and

(e) the Filer does not hold any client assets;

provided that this decision will have no further force and effect after December 31, 2012.

"Erez Blumberger"
Deputy Director
Registrant Regulation
Ontario Securities Commission

2.1.3 Qtrade Fund Management Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Mutual funds – Approval of fund mergers under Section 5.5(1)(b) of National Instrument 81-102 Mutual Funds – A mutual fund manager seeks approval of proposed fund mergers under the approval requirements in NI 81-102 – The continuing fund's investment objectives will either be substantially similar to those of the terminating fund, or include a component of the fundamental investment objective of the terminating fund in the continuing funds' objectives; the funds' independent review committee approved the merger; unitholders will vote on the proposed mergers; tailored prospectus of continuing funds sent to investors of terminating funds instead of a simplified prospectus; mergers not a "qualifying exchange" or a tax-deferrred transaction under Income Tax Act; unitholders can redeem their investment after the merger with similar redemption fees.

Mutual funds – Approval of change of custodian under Section 5.5(1)(c) of National Instrument 81-102 Mutual Funds – A mutual fund manager seeks approval of a change of custodian under the approval requirements in NI 81-102 – The change of custodian is in connection with a change or proposed change of the mutual fund manager; the proposed custodial arrangements will comply with Part 6 of NI 81-102; independent review committee has provided a positive recommendation; the change of custodian will be beneficial to unitholders and the fund.

Applicable Legislative Provisions

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

August 26, 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
QTRADE FUND MANAGEMENT INC.
(the Filer)

AND

QFM MONEY MARKET FUND
QFM FIXED INCOME FUND
(together, the Terminating Funds)

AND

MERITAS MONEY MARKET FUND
MERITAS CANADIAN BOND FUND
MERITAS BALANCED PORTFOLIO
(formerly Meritas Balanced Portfolio Fund)
MERITAS GROWTH & INCOME PORTFOLIO
(formerly Meritas Balanced Growth Portfolio Fund)
MERITAS MONTHLY DIVIDEND AND INCOME FUND
MERITAS JANTZI SOCIAL INDEX® FUND
MERITAS U.S. EQUITY FUND
MERITAS INTERNATIONAL EQUITY FUND
(collectively, the Meritas Funds)

DECISION

Background

1 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) granting

(a) approval under subsection 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* (NI 81-102) to merge the QFM Money Market Fund into the Meritas Money Market Fund and the QFM Fixed Income Fund into the Meritas Canadian Bond Fund (the Mergers) (the Merger Approval), and

(b) approval under subsection 5.5(1)(c) of NI-81-102 for the change of custodian (the Custodian Change) of each of the Meritas Funds from CIBC Mellon Global Securities Services Company to Canadian Western Trust Company (the Custodian Change Approval),

(collectively, the Approvals 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 and Quebec in connection with the Merger Approval, and in each of the provinces and territories of Canada other than British Columbia and Ontario in connection with the Custodian Change Approval, and

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

Interpretation

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

Representations

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

The Filer

1. the Filer is incorporated pursuant to the *Canada Business Corporations Act* with its head office located in Vancouver, British Columbia; the Filer is responsible for all of the day-to-day management and administration for each of the Terminating Funds and the Meritas Funds (collectively, the Funds) as their manager, portfolio adviser and trustee; the Filer is not in default of securities legislation in any of the provinces and territories of Canada;

The Funds

2. the Terminating Funds are open-ended unit trusts established under the laws of the Province of British Columbia pursuant to a declaration of trust dated January 27, 2005, as amended February 20, 2006; the securities of the Terminating Funds are qualified for continuous distribution in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario under an amended and restated simplified prospectus dated April 1, 2010, as amended May 10, 2010, and in Quebec under a simplified prospectus dated April 1, 2010, as amended May 10, 2010;

3. the Meritas Funds, including the Meritas Money Market Fund and the Meritas Canadian Bond Fund (the Continuing Funds) are all open-ended unit trusts established under the laws of the Province of Ontario pursuant to declarations of trust dated March 21, 2001 (Meritas Jantzi Social Index® Fund, Meritas U.S. Equity Fund, Meritas International Equity Fund and the Continuing Funds), January 29, 2004, as amended July 29, 2010 (Meritas Balanced Portfolio), November 9, 2005 (Meritas Monthly Dividend and Income Fund) and February 24, 2010, as amended July 29, 2010 (Meritas Growth & Income Portfolio); the securities of the Meritas Funds are qualified for continuous distribution in each province and territory of Canada under a simplified prospectus dated April 8, 2010, as amended May 10, 2010;

4. each of the Funds is a reporting issuer under applicable Canadian securities legislation and subject to the requirements of NI 81-102; each of the Funds is not on the list of defaulting reporting issuers maintained under applicable Canadian securities legislation and is not in default of applicable securities legislation in any jurisdiction;

5. each of the Funds adheres to the standard investment restrictions and practices contained in NI 81-102;

6. each of the Funds calculates the net asset values for its units on a daily basis in accordance with the principles established in NI 81-102 on each day on which the Toronto Stock Exchange is open for trading;

The Mergers

7. the merging Funds have complied with Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure* in connection with the making of the decision to proceed with the Mergers by the board of directors of the Filer; copies of the press release, material change report and amendments to the simplified prospectuses of the Funds in respect of the Mergers have been filed on SEDAR under project numbers 01573549, 01573571, 01578579, 01578580, 01450597 and 01578606;

8. subject to receipt of required unitholder and regulator or securities regulatory authority approvals, the Mergers will be effective on or about October 12, 2010;

9. the fundamental investment objectives and strategies of each of the Continuing Funds are similar to those of their corresponding Terminating Fund, but not substantially similar, as the Continuing Funds adhere to the "Criteria for Socially Responsible Investing" and participate in "Direct Community Development Investments" initiatives as outlined in their simplified prospectuses and the Terminating Funds do not adhere to similar criteria nor participate in similar initiatives;

10. the fee structures of each of the Continuing Funds are substantially similar to the fee structures of their corresponding Terminating Fund;

11. the Filer believes that the Mergers will be beneficial to the merging Funds and their unitholders for the following reasons:

    (a) unitholders of the merging Funds will enjoy increased economies of scale and lower fund operating expenses as unitholders of the larger combined Continuing Funds;

    (b) each Continuing Fund will have a larger net asset value, allowing for greater portfolio diversification opportunities than with the existing smaller merging Funds;

    (c) each Continuing Fund, as a result of its increased size, will benefit from a more significant profile in the marketplace; and

    (d) the Mergers will eliminate the administrative and regulatory costs of operating each merging Fund separately;

12. the Filer referred the proposed Mergers to the independent review committee of the Funds (the IRC) for its recommendation, and after reasonable inquiry, the IRC concluded that the Mergers do not create any conflict issues that have not been adequately addressed and determined that the Mergers achieve a fair and reasonable result for the Funds; the IRC has provided its positive recommendation of the proposed Mergers;

13. the result of each Merger will be that unitholders in each Terminating Fund will cease to be unitholders of a series of the Terminating Fund and will become unitholders of an equivalent class of the applicable Continuing Fund;

14. the portfolios and other assets of each Terminating Fund are currently, or will be at the effective date of the Mergers, acceptable to the portfolio adviser and consistent with the fundamental investment objectives of the applicable Continuing Fund;

15. the Filer anticipates that on the effective date of the Merger of the QFM Money Market Fund and the Meritas Money Market Fund, the net asset value of the QFM Money Market Fund will be larger than the net asset value of the Meritas Money Market Fund; specifically, as at May 10, 2010, the net asset value of the QFM Money Market Fund was approximately $8.8 million and the net asset value of the Meritas Money Market Fund was approximately $4.3 million; however, the Filer has concluded that the Money Market Fund Merger

will not represent a material change to the Meritas Money Market Fund requiring unitholder approval pursuant to subsection 5.1(g) of NI 81-102;

16. unitholders of the Terminating Funds will be asked to approve the proposed Mergers as required by subsection 5.1(f) and section 5.2 of NI 81-102 at meetings of unitholders of the Terminating Funds to be held on or about September 29, 2010 in accordance with section 5.4 of NI 81-102;

17. the management information circular and written notice of unitholder meeting (together, the Merger Materials) required to be sent to unitholders of the Terminating Funds under section 5.4 of NI 81-102 will contain or be accompanied by materials that contain all the information and documents necessary for the unitholders to consider the Merger, including

    (a) a full description of the applicable Merger including the procedures for implementing it and consequences of the proposed Merger, including its fees consequences and its tax consequences for the Terminating Fund and for investors in the Terminating Fund;

    (b) the proposed implementation date, a full description of the applicable Continuing Fund including Part A and Part B of the simplified prospectus of the applicable Continuing Fund, a full description of the similarities and differences between the Terminating Funds and the Continuing Funds and a summary of the IRC's decision with respect to the applicable proposed Merger; and

    (c) a prominent statement that unitholders may obtain, free of charge, a copy of the annual information form and the most recent annual and interim financial statements that have been made public of the applicable Continuing Fund by calling the Filer's toll-free telephone number, by visiting the Filer's website or by visiting the SEDAR website at www.sedar.com;

18. the Merger Materials provide sufficient information about the Mergers to permit investors to have made an informed decision about the Mergers;

19. upon receipt of a request from a unitholder of a Terminating Fund for the annual information form or financial statements of the applicable Continuing Fund, the Filer will make best efforts to fulfill the request before the unitholder meeting held to approve the applicable Merger;

20. the Funds will bear none of the costs and expenses associated with the Mergers, including all brokerage expenses incurred in respect of any required sale of portfolio assets of the Terminating Funds; these costs and expenses will be borne by the Filer;

21. the unitholders of a Terminating Fund will continue to have the right to redeem their units of the Terminating Fund up to the close of business on the last business day before the effective date of the Mergers;

22. no sales charges will be payable in connection with the purchase by the Terminating Funds of units of the Continuing Funds;

23. as soon as reasonably possible following the Mergers, the Terminating Funds will be wound up;

24. the Filer has concluded that pre-approval of the Mergers under section 5.6 of NI 81-102 is not available for the following reasons:

    (a) the fundamental investment objectives of the merging Funds are not, or may be considered not to be, substantially similar, and so the pre-approval criteria set out in subsection 5.6(1)(a)(ii) of NI 81-102 is not satisfied;

    (b) the Mergers will be completed on a taxable basis and not as a "qualifying exchange" or as a tax deferred transaction, and so the pre-approval criteria set out in subsection 5.6(1)(b) of NI 81-102 may not be satisfied; and

    (c) the Merger Materials will not include the current simplified prospectus and the most recent annual and interim financial statements that have been made public for the Continuing Funds, and so the pre-approval criteria set out in subsection 5.6(1)(f)(ii) of NI 81-102 would not be satisfied;

25. the Filer has complied, and will continue to comply, with all applicable legal and regulatory requirements in effecting the Mergers, including obtaining all requisite unitholder approvals for the Mergers;

The Custodian Change

26. the Funds complied with Part 11 of National Instrument 81-106 Investment Fund Continuous Disclosure when deciding to proceed with the Custodian Change; copies of the press release, material change report and amendments to the simplified prospectuses of the Funds in respect of the Custodian Change have been filed on SEDAR under project numbers 01573549, 01573571, 01578579, 01578580, 01450597 and 01578606;

27. the Filer believes the Custodian Change will be beneficial to the Meritas Funds and their unitholders as it will reduce fund operating expenses for each of the Meritas Funds;

28. the Filer referred the proposed Custodian Change to the IRC for its recommendation; and after reasonable inquiry, the IRC determined that the Custodian Change achieves a fair and reasonable result for the Funds and provided its positive recommendation of the proposed Custodian Change;

29. the current custodian of the Meritas Funds is CIBC Mellon Global Securities Services Company (CIBC Mellon); CIBC Mellon has provided the Filer with a custodian compliance report in accordance with subsection 6.7(2) of NI 81-102 which has been filed on SEDAR;

30. the proposed Custodian Change will be in compliance with Part 6 of NI 81-102; the proposed custodian is Canadian Western Trust Company (CWTC) which is currently the custodian of the QFM mutual funds managed by the Filer; CWTC has provided the Filer with a custodian compliance report in accordance with subsection 6.7(2) of NI 81-102 which has been filed on SEDAR; the Filer believes that adding the Meritas Funds to that custodial arrangement will have no adverse impact on continued compliance with Part 6 of NI 81-102; and

31. the Filer has complied, and will continue to comply, with all applicable legal and regulatory requirements in effecting the Custodian Change.

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 Approvals Sought are granted provided that:

(a) the Merger Materials sent to unitholders of a Terminating Fund in connection with a Merger provide sufficient information about the Merger to permit unitholders to make an informed decision about the Merger;

(b) the Merger Materials sent to unitholders of a Terminating Fund in connection with a Merger include a tailored document comprised of

(i) Part A of the current simplified prospectus of the applicable Continuing Fund; and

(ii) Part B of the current simplified prospectus of the applicable Continuing Fund;

(c) the Merger Materials sent to unitholders of a Terminating Fund in connection with a Merger prominently discloses that unitholders may obtain, free of charge, the most recent annual and interim financial statements that have been made public of the applicable Continuing Fund by calling the Filer's toll-free telephone number, by visiting the Filer's website or by visiting the SEDAR website at www.sedar.com;

(d) upon request by a unitholder of a Terminating Fund for the financial statements of the applicable Continuing Fund, the Filer will make best efforts to fulfill the request in a timely manner so that the unitholder can make an informed decision regarding the applicable Merger; and

(e) each applicable Terminating Fund and the applicable Continuing Fund with respect to a Merger has an unqualified audit report in respect of their last completed financial period.

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

2.1.4 CI Investments Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from section 12.1 of National Instrument 31-103 Registration Requirements and Exemptions – Registrant exempted from including full amount of guarantee on Line 11 of Form 31-103F1 Calculation of Excess Working Capital – Registrant guaranteed debt of parent company prior to the implementation of NI 31-103 – Among the conditions and restrictions on the exemption are requirements that an alternate amount be included on Line 11 of Form 31-103F1, the registrant continues to be the wholly-owned subsidiary of the debtor, and client assets are custodied with a third party custodian.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements and Exemptions, ss. 12.1, 15.1, 16.11.

September 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
CI INVESTMENTS INC.
(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 an exemption under section 15.1 of NI 31-103 from the requirement in section 12.1 of NI 31-103 that the Filer calculate its excess working capital using Form 31-103F1 by deducting the Guarantees (as that term is defined herein) as required by Line 11 of Form 31-103F1 (the Exemption Sought).

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

(a) the OSC is the principal regulator for this application; and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in all of the provinces and territories of Canada (other than the Jurisdiction).

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.

The following terms shall have the following meanings:

(a) "**CIX**" means CI Financial Corp.

(b) "**CIX Credit Facility**" means the revolving credit facility of CIX with The Bank of Nova Scotia, which currently permits CIX to draw down amounts to a maximum of $250 million, and includes any increase, replacement or renewal of the CIX Credit Facility during the period that the CIX Debentures are outstanding.

(c) "**CIX Debentures**" means an aggregate of $550 million principal amount of debentures issued by CIX comprised of $100 million principal amount of floating rate debentures due December 16, 2011; $250 million principal amount of 3.30% debentures due December 17, 2012; and $200 million principal amount of 4.19% debentures due December 16, 2014.

(d) "**CIX Debt**" means the indebtedness of CIX under:

(i) the CIX Credit Facility; and

(ii) the CIX Debentures.

(e) "**Guarantees**" means the full and unconditional guarantees by the Filer of the CIX Debt.

(f) "**NI 31-103**" means National Instrument 31-103 *Registration Requirements and Exemptions*.

(g) "**OSC**" means the Ontario Securities Commission.

Representations

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

1. The Filer is a corporation established under the laws of Ontario with its head office located in Toronto, Ontario.

2. The Filer is registered with the OSC as an adviser (portfolio manager), exempt market dealer, commodity trading counsel and commodity trading manager. The Filer is also registered as an adviser (portfolio manager) in each of the other provinces of Canada. The Filer may in the future become registered in the territories of Canada.

3. The Filer also acts as an investment fund manager within the meaning of NI 31-103 and therefore will apply to the OSC for registration in that capacity as required by the Legislation before the end of the transition period established by NI 31-103.

4. The Filer is not a reporting issuer in any jurisdiction of Canada and is not, to its knowledge, in default of securities regulation in any jurisdiction of Canada.

5. The Filer is one of Canada's leading investment fund managers. In its capacity as investment fund manager, as of July 31, 2010, the Filer manages approximately 172 publicly distributed mutual funds and 21 closed – end investment funds, as well as 335 segregated funds. The Filer's managed funds are known collectively as the CI Funds. The Filer's assets under management as of July 31, 2010 were $67.1 billion. All of the Filer's assets under management are held by third party custodians as required by applicable securities legislation.

6. The Filer is a wholly-owned subsidiary of CIX, which is a reporting issuer in each province of Canada and whose common shares are listed on the Toronto Stock Exchange. CIX has a market capitalization of over $5.5 billion. CIX is a financially robust public company, with relatively little indebtedness. The CIX Debentures are favourably rated by DBRS Limited and Standard & Poor's credit rating agencies. CIX is not, and has never been in breach of any of its financial covenants.

7. The Bank of Nova Scotia owns 104.6 million common shares of CIX, which represents 36.3 percent of the outstanding shares. As such, The Bank of Nova Scotia is the largest shareholder of CIX.

8. The Filer generates approximately 95 percent of the revenues of CIX and the market capitalization of CIX is directly related to the value of the Filer.

9. CIX and the Filer have common management and the Board of Directors of the Filer is comprised of members of the CIX senior executive team. There is a commonality of purpose between the two organizations and management has a fiduciary responsibility to ensure that both entities are operated in the best interests of all stakeholders.

10. As the major operating subsidiary of CIX, the Filer is a guarantor of the CIX Debt under the Guarantees.

11. CIX had previously obtained all of its required debt financing through a secured credit facility with certain Canadian chartered banks, which had been in place since December 2003. By 2008, this credit facility permitted CIX to borrow up to $1.25 billion. The Filer was an unconditional guarantor of this credit facility, which fact was disclosed in its financial statements (via the note disclosure required by Canadian Generally Accepted Accounting Principles) filed with

the OSC to maintain its registration status. Under the mandated pre-NI 31-103 working capital requirements, the Filer's working capital was unaffected by this guarantee.

12. CIX restructured its long-term debt in December 2009, primarily to reduce its financing costs. During 2009, CIX reduced the amount that could be borrowed under the facility referred to above and in December replaced it with the CIX Debt. The CIX Debt consists of:

    (a) The CIX Credit Facility. As of July 31, 2010 CIX had drawn down $121 million under the CIX Credit Facility. The CIX Credit Facility contains covenants that require CIX and its subsidiaries to maintain debt to EBITDA of no more than 2.5:1 and assets under management of not less than $35 billion, calculated based on a rolling thirty day average. CIX is, and always has been in compliance with these covenants. CIX currently has debt to EBITDA of approximately 1:1 and over $67 billion in assets under management. On August 9, 2010, CIX renewed the CIX Credit Facility for a further 364 days.

    (b) The CIX Debentures. On December 16, 2009, CIX completed its first public offering of the CIX Debentures. The proceeds of this offering were used to pay down a portion of CIX's then existing long-term debt. As of July 31, 2010, the CIX Debentures are rated as BBB+ with a "Stable Outlook" by Standard & Poor's and as A (low) with a "Stable" trend by DBRS Limited. CIX is not in default and never has been in default of any of the financial covenants in favour of the holders of the CIX Debentures.

13. The Filer guaranteed the CIX Debentures at the request of CIX who had been advised that in order to obtain the most advantageous financial terms the CIX Debentures should rank *pari passu* to the CIX Credit Facility. The Guarantee was not provided in response to a suggestion that CIX's primary obligation required any support.

14. The Filer currently calculates its working capital as required by the Legislation and the equivalent sections in the other provincial securities regulations and maintains the required working capital.

15. NI 31-103 came into force on September 28, 2009, but provided all existing registrants with a year's transition before registrants must comply with the new working capital requirements and method of calculation required by Form 31-103F1. Under section 12.1 of NI 31-103, as of September 28, 2010, the Filer will be required to maintain minimum capital of at least $100,000 (the highest capital requirement due to its activities as an investment fund manager), and will be required to calculate its excess working capital in accordance with Form 31-103F1. As a result of the Guarantees, Line 11 of Form 31-103F1 would require the Filer to deduct the entire amount of the CIX Debt from its adjusted working capital otherwise calculated.

16. It is not commercially practical for the Filer to maintain the excess working capital otherwise required by Form 31-103F1, nor is it commercially practical for the Filer to cease to be a guarantor of CIX Debt. There is no reasonable indication that CIX will not be able to meet its financial obligations as they become due in the foreseeable future and CIX has agreed with the Filer to use all commercially reasonable efforts to refinance the CIX Debt in order to avoid any lender calling upon the Filer to pay under the Guarantees. Accordingly, it is very unlikely that the Filer will be called to perform under the Guarantees.

17. CIX is confident that even in the event that financial markets were to suffer a significant downturn, the Filer, when combined with CIX's other operations, will generate more than sufficient cash to service the CIX Debt and repay it as it comes due. In any event, CIX expects that, if it were necessary to restructure the CIX Debt, it could complete any necessary restructuring within a 3 month period.

18. The total amount of the CIX Debt is less than 10 percent of CIX's enterprise value and less than 12 percent of its market capitalization.

19. The total aggregate CIX Debt guaranteed by the Filer under the Guarantees will not, at any one time, exceed $800 million. The Filer's Guarantee of the CIX Debentures will end once the last of the CIX Debentures are repaid on or before December 16, 2014. Once the CIX Debentures are repaid, CIX expects that it will be able to negotiate with its lenders to have the Guarantee removed from the CIX Credit Facility as soon as possible thereafter and in any event by June 30, 2015.

20. The Filer will not guarantee any indebtedness other than the CIX Debt without calculating its excess working capital in accordance with Form 31-103F1 with respect to that additional guarantee or obtaining additional regulatory approval in respect of the guarantee and its excess working capital.

21. The Exemption Sought is necessary to permit the Filer to continue to be a registrant with the OSC and the other securities commissions in Canada and to maintain its principal business as a sponsor and manager of investment funds.

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 so long as:

(a) The Filer maintains excess working capital required by NI 31-103 and calculated in accordance with Form 31-103F1, substituting the following deduction for the deduction otherwise required by Line 11 of Form 31-103F1 in respect of the Guarantees, being the greater of:

(i) The amount that CIX will accrue for payment of interest on the CIX Debentures, and if applicable, for payment of interest and principal on the CIX Credit Facility, during the next calendar quarter immediately following any calculation of excess working capital and

(ii) The amount of any contingent liability that the Filer would be required to record in its financial statements in respect of the Guarantees under Canadian Generally Accepted Accounting Principles and/or International Financial Reporting Standards.

(b) The Filer provides the OSC with a covenant from CIX in favour of the Director of the OSC that CIX will provide the Director with:

(i) A copy of each compliance certificate that CIX provides its lender(s) under the CIX Credit Facility, which as of the date of this Decision is provided at the end of each calendar quarter and

(ii) Notice as soon as commercially practicable, if CIX fails to meet any of its financial covenants under the CIX Debt or if any event occurs that could reasonably be expected to give rise to an event of default under any of its financing arrangements related to the CIX Debt.

(c) The total aggregate CIX Debt guaranteed by the Filer under the Guarantees does not, at any one time, exceed $800 million.

(d) The Filer continues to be a wholly – owned subsidiary of CIX.

(e) CIX continues to provide quarterly financial statements to the OSC, as required under securities legislation and the Filer provides quarterly financial statements to the OSC, as required under securities legislation once the Filer is registered as an investment fund manager.

(f) Assets under management by the Filer continue to be held by a third party custodian.

This Decision will have no further force and effect after June 30, 2015.

“Erez Blumberger”
Deputy Director, Registrant Regulation

2.1.5 Sunstone Investment Management Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted to permit an entity to serve as custodian or sub-custodian of investment funds – relief was necessary because the filer's financial statements are not publicly disclosed.

Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, s. 14.2(1)(c)(i).

September 14, 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
SUNSTONE INVESTMENT MANAGEMENT INC.
(Sunstone)

AND

NBCN INC.
(NBCN)
(together, the Filers)

AND

IN THE MATTER OF
MORGUARD SUNSTONE REAL ESTATE INCOME FUND
(the Fund)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from section 14.2(1)(c)(i) of National Instrument 41-101 **General Prospectus Requirements** (NI 41-101) that would enable the Fund and other funds subject to NI 41-101 that may in the future wish to engage NBCN to serve as custodian or sub-custodian (the Additional Funds) to enter into arrangements with NBCN to act as custodian or sub-custodian, as applicable pursuant to Part 14 of NI 41-101 (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 Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in all other provinces of Canada except Ontario; and

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

Interpretation

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

Representations

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

1. NBCN is incorporated under the laws of Canada and is an indirect subsidiary of the National Bank of Canada, a bank listed in Schedule I of the *Bank Act* (Canada) (a Schedule I Bank); NBCN is a member of Investment Industry Regulatory Organization of Canada (IIROC) and is registered as an investment dealer (or equivalent) with the securities regulatory authorities in each province and territory of Canada; NBCN's head office is in Toronto, Ontario; the financial results of NBCN are consolidated with those of the National Bank of Canada and, as such, are not reported separately to the public;

2. NBCN is subject to regulatory oversight and regulatory capital requirements and accordingly files with the applicable regulators audited financial statements on a regular basis; NBCN's most recent audited financial statements for the financial year ended October 31, 2009, indicate shareholders' equity in excess of $10 million;

3. the Fund is an investment trust established under the laws of the Province of British Columbia pursuant to a declaration of trust; Sunstone is incorporated under the laws of British Columbia; Sunstone is the manager of the Fund; Sunstone and the Fund have their head offices located in Vancouver, British Columbia; the Fund filed its preliminary prospectus on April 20, 2010, in each of the provinces of Canada; the Fund is not on the defaulting issuers list maintained by the BCSC as at August 23, 2010;

4. the Filers are not in default of securities legislation in any jurisdiction;

5. NBCN is currently the custodian of the Fund; with respect to the Fund, the National Bank of Canada has assumed responsibility for all of the custodial obligations of NBCN through a guarantee of these obligations; NBCN relies on meeting the requirements in 14.2(1)(c)(ii) to be a custodian for the Fund;

6. NBCN has the systems and resources required to act as a custodian or sub-custodian for funds under NI 41-101;

7. NBCN does not meet the requirements of section 14.2(1)(c)(i) of NI 41-101, as it does not have audited financial statements that have been made public; NBCN otherwise meets all other requirements of NI 41-101 in order to act as a custodian or sub-custodian of funds under NI 41-101; subject to the relief, Sunstone will appoint NBCN as a custodian or sub-custodian of the Fund to hold portfolio assets of the Fund under the requirements of 14.2(1)(c)(i);

8. NBCN wishes to have the flexibility to act as a custodian or a sub-custodian for any Additional Funds, without having to make separate applications for relief; and

9. NBCN will give the Fund a copy of its audited summary statement of consolidated financial position in respect of the financial year ended October 31, 2009 and will continue to give to the Fund and the Additional Funds (including their custodians, as applicable) an audited financial summary upon request to allow those entities to continue to conclude that, if NBCN had audited financial statements that were made public, NBCN would be qualified under NI 41-101 to act as a custodian or sub-custodian, as the case may be.

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 relief terminates 10 days following the date that:

(i) a Schedule I Bank ceases to own or control NBCN directly or indirectly; or

(ii) the shareholders' equity of NBCN declines below $10 million;

(b) the custodian or sub-custodian agreement, as applicable, between the Fund or any Additional Funds and NBCN includes a provision requiring NBCN to provide a copy of its audited summary statement of consolidated financial position in respect of its most recently completed financial year to the Fund or any Additional Funds (including their custodians, as applicable) upon request; and

(c) the compliance report required by section 14.6(2) of NI 41-101 to be delivered on behalf of the Fund or any Additional Funds, as applicable, includes a statement that:

(i) NBCN is acting as custodian or sub-custodian of the Fund or any Additional Funds, as applicable, under a passport decision of the British Columbia Securities Commission and a decision of the Ontario Securities Commission; and

(ii) circumstances described in clause (a) above do not exist as at the date of the compliance report.

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

2.1.6 Rare Element Resources Ltd.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency, s. 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 will provide detailed disclosure regarding its early adoption of IFRS as set out in CSA Staff Notice 52-320 in a news release or in restated and re-filed MD&A for its most recent interim period to be disseminated or re-filed within seven days of the decision; the issuer will restate and re-file any financial statements prepared in accordance with Canadian GAAP for interim periods for the fiscal year in which they intend to adopt IFRS together with related interim MD&A and certificates required by NI 52-109.

Applicable Legislative Provisions

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

September 13, 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
RARE ELEMENT RESOURCES LTD.
(the Filer)

DECISION

Background

1 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 GAAP (the Exemption Sought), in order that the Filer may prepare financial statements for periods beginning on or after July 1, 2010 in accordance with Part I of the Handbook, that is International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IFRS-IASB) .

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 – *Passport System* (MI 11-102) is intended to be relied upon in Alberta (the Passport Jurisdiction), and

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

Interpretation

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

Representations

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

1. the Filer was incorporated on June 3, 1999 under the *Company Act* (British Columbia) as "Spartacus Capital Inc."; on July 25, 2003, the Filer changed its name to "Rare Element Resources Ltd."; the Filer is now a corporation under the *Business Corporations Act* (British Columbia);

2. the head office of the Filer is located at Suite 410 – 325 Howe Street, Vancouver, British Columbia V6C 1Z7;

3. the Filer is a mineral exploration company whose major asset is its 100% owned Bear Lodge Project in Wyoming; the Bear Lodge Project is held through its wholly-owned subsidiary Paso Rico (USA) Inc.; the Filer does not have any operating revenue as it is still in the exploration phase;

4. the Filer is a reporting issuer in the Jurisdictions and the Passport Jurisdiction;

5. the Filer is not in default of securities legislation of any jurisdiction;

6. the Filer's common shares are listed on the TSX Venture Exchange under the symbol "RES" and has a "Blue Sky" exemption in the United States due to its listing with Standard & Poors and trades on the US "pink sheets" market under the symbol "RRLMF"; the Filer is also a foreign private issuer (a Form 20-F filer) for United States and Securities Exchange Commission (the SEC) requirements; the Filer has applied for a listing with an exchange in the United States;

7. the Filer's financial year end is June 30; the transition date to IFRS-IASB will be July 1, 2009;

8. the Filer currently prepares its financial statements in accordance with Canadian generally accepted accounting principles (Canadian GAAP); the Filer is also required to reconcile its financial statements into generally accepted accounting principles in the United States (US GAAP) to comply with its US filing obligations;

9. the Filer has not previously prepared financial statements that contain an explicit and unreserved statement of compliance with IFRS;

10. 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;

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

12. in CSA Staff Notice 52-321 – *Early Adoption of International Financial Reporting Standards, Use of US GAAP and Reference to IFRS-IASB*, staff of the Canadian Securities Administrators recognized that some issuers may wish to prepare their financial statements in accordance with IFRS-IASB for periods beginning prior to January 1, 2011 and indicated that staff were prepared to recommend exemptive relief on a case by case basis to permit a domestic issuer to do so, despite section 3.1 of NI 52-107;

13. the Filer believes that adoption of IFRS-IASB will eliminate complexity and cost from the Filer's financial statement preparation process because the Filer will not be required to reconcile its numbers to US GAAP to comply with its US filing obligations;

14. the Filer has implemented a comprehensive IFRS-IASB conversion plan, including getting its staff to attend training, examining the internal control over financial reporting and disclosure controls and procedures surrounding the adoption of IFRS-IASB, and reviewing the related working papers and skeleton IFRS-IASB financial statements for the period beginning July 1, 2010;

15. the board of directors of the Filer has approved early adoption of IFRS-IASB;

16. the Filer has carefully assessed the readiness of its staff, board of directors, audit committee, auditors, investors and other market participants for the adoption of the Filer of IFRS-IASB for financial periods

beginning on and after July 1, 2010 and has concluded that the Filer will be adequately prepared for the Filer's adoption of IFRS-IASB for periods beginning on July 1, 2010;

17. the Filer has considered the implication of adopting IFRS-IASB for financial periods beginning on or after July 1, 2010 on its obligations under securities legislation including, but not limited to, those relating to CEO and CFO certificates, business acquisition reports, offering documents, and previously released material forward-looking information;

18. the Filer has communicated its intention to early adopt IFRS-IASB with its external auditors, DeVisser Gray LLP, Chartered Accountants (DeVisser Gray); DeVisser Gray has significant experience with companies that have already transitioned to IFRS-IASB or have been reporting under IFRS-IASB;

19. the Filer will communicate its IFRS-IASB implementation plans to investors as contemplated by CSA Staff Notice 52-320 – *Disclosure of Expected Changes in Accounting Policies Relating to Changeover to International Financial Reporting Standards* by disclosing relevant information about its changeover to IFRS-IASB in a news release not more than seven days after the date of the decision approving such early adoption application, including:

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

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

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

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

    (e) the impact of adopting IFRS-IASB on the key line items in the Filer's interim financial statements for the period ending September 30, 2009 and June 30, 2010.

Decision

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

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

(a) the Filer prepares its financial statements for financial periods ending on or after July 1, 2010 in accordance with IFRS-IASB;

(b) the Filer provides all of the communication and information as described and in the manner set out in paragraph 19 above and updates the information set out in paragraph 19 above in its annual management's discussion and analysis including, to the extent known, quantitative information regarding the impact of adopting IFRS-IASB on key line items in the Filer's annual financial statements for the year ending June 30, 2010;

(c) 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; and

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

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

2.2 Orders

2.2.1 Innovative Gifting 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
INNOVATIVE GIFTING INC.,
TERENCE LUSHINGTON, Z2A CORP.,
and CHRISTINE HEWITT

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, *inter alia*, that all trading in securities by Innovative Gifting Inc. ("IGI") shall cease (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 and 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 127, and 127.1 of the Act, against IGI, Terence Lushington ("Lushington"), Z2A Corp. ("Z2A"), and Christine Hewitt ("Hewitt") (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 the same date. 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 April 12, 2010, counsel for Staff, counsel for IGI and Lushington, and counsel for Z2A and Hewitt, appeared before the Commission and made submissions;

AND WHEREAS on April 12, 2010, counsel for Staff requested an extension of the Temporary Order as against IGI;

AND WHEREAS on April 12, 2010, counsel for IGI and Lushington consented to the extension of the Temporary Order as against IGI;

AND WHEREAS on April 12, 2010, counsel for Staff provided counsel for the Respondents with Staff's initial disclosure in this matter;

AND WHEREAS on April 13, 2010, the Commission issued an order that: (1) the Temporary Order be extended as against IGI until July 22, 2010; and (2) the hearing with respect to the Notice of Hearing dated March 2, 2010 and with respect to the Temporary Order be adjourned to July 21, 2010 at 10:00 a.m., at which time a pre-hearing conference will be held;

AND WHEREAS on July 21, 2010, a pre-hearing conference was commenced and counsel for Staff, counsel for IGI and Lushington, and counsel for Z2A and Hewitt, appeared before the Commission and made submissions;

AND WHEREAS on July 21, 2010, counsel for Staff requested an extension of the Temporary Order as against IGI, and counsel for IGI and Lushington consented to the extension of the Temporary Order as against IGI;

AND WHEREAS on July 21, 2010, the Commission issued an order that: (1) the Temporary Order be extended as against IGI until September 10, 2010; and (2) the hearing with respect to the Notice of Hearing dated March 2, 2010 and with respect to the Temporary Order be adjourned to September 9, 2010 at 10:00 a.m., at which time the pre-hearing conference will be continued;

AND WHEREAS on September 9, 2010, the pre-hearing conference was continued and counsel for Staff and counsel for IGI and Lushington appeared before the Commission and made submissions. Counsel for Z2A and

Hewitt did not attend but counsel for Staff advised the Commission of counsel's submissions;

AND WHEREAS on September 9, 2010, all counsel submitted that the hearing be adjourned and counsel for Staff requested an extension of the Temporary Order as against IGI and counsel for IGI and Lushington consented to the extension of the Temporary Order as against IGI;

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 Temporary Order is extended as against IGI until November 5, 2010; and

IT IS FURTHER ORDERED that the hearing with respect to the Notice of Hearing dated March 2, 2010 and with respect to the Temporary Order is adjourned to November 4, 2010 at 3:00 p.m., at which time the confidential pre-hearing conference will be continued and dates will be fixed for the hearing on the merits in this matter.

DATED at Toronto this 9th day of September, 2010.

"James E. A. Turner"

2.2.2 Lehman Brothers & Associates Corp. et al. – s. 127

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

AND

LEHMAN BROTHERS & ASSOCIATES CORP.,
GREG MARKS, KENT EMERSON LOUNDS
AND GREGORY WILLIAM HIGGINS

ORDER
(Section 127 of the Securities Act)

WHEREAS on September 3, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 37, 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") accompanied by a Statement of Allegations dated September 3, 2010 issued by Staff of the Commission ("Staff") with respect to Lehman Brothers & Associates Corp. ("Lehman Corp."), Greg Marks ("Marks"), Kent Emerson Lounds ("Lounds') and Gregory William Higgins ("Higgins"), collectively the "Respondents";

AND WHEREAS the Notice of Hearing stated that a hearing would be held at the offices of the Commission on September 8, 2010;

AND WHEREAS on September 8, 2010, Staff confirmed that the Commission had received the affidavit of Charlene Rochman sworn September 7, 2010 which indicated that service of the Notice of Hearing and Statement of Allegations was attempted on Lounds and Higgins personally, electronically, through their counsel or at their last known address and that Staff were unable to effect proper service on Marks and Lehman Corp. because Staff have been unable to determine a valid address for those respondents;

AND WHEREAS on September 8, 2010, Staff attended the hearing and no one appeared on behalf of the Respondents;

AND WHEREAS on September 8, 2010, Staff requested that the hearing be adjourned and a pre-hearing conference scheduled;

AND WHEREAS Staff advised the Commission that counsel for Higgins consented to the adjournment;

IT IS ORDERED that the hearing is adjourned to October 21, 2010 at 12:00 p.m. for a confidential pre-hearing conference.

DATED at Toronto this 10th day of September, 2010.

"James E. A. Turner"

2.2.3 Lehman Brothers & Associates Corp. et al. – ss. 127(1), 127(5)

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

AND

**IN THE MATTER OF
LEHMAN BROTHERS & ASSOCIATES CORP.,
GREG MARKS, MICHAEL LEHMAN (a.k.a.
MIKE LAYMEN), KENT EMERSON LOUNDS
AND GREGORY WILLIAM HIGGINS**

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

WHEREAS on June 29, 2010, the Ontario Securities Commission (the "Commission") issued a temporary order (the "Temporary 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 the following:

(i) that Lehman Brothers & Associates Corp. ("Lehman Corp."), Greg Marks ("Marks"), Michael (Mike) Lehman (a.k.a. Mike Laymen) ("Lehman"), Kent Emerson Lounds ("Lounds") and Gregory William Higgins ("Higgins"), collectively the "Respondents", cease trading in all securities; and

(ii) that any exemptions contained in Ontario securities law do not apply to the Respondents;

AND WHEREAS on June 29, 2010, 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 July 6, 2010, the Commission issued a notice of hearing to consider, among other things, the extension of the Temporary Order, to be held on July 12, 2010 at 10:30 a.m. (the "Notice of Hearing");

AND WHEREAS the Notice of Hearing set out that the hearing (the "Hearing") is to consider, amongst other things, whether in the opinion of the Commission it is 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 July 12, 2010, a hearing was held before the Commission which counsel for Staff of the Commission ("Staff") attended but no one attended on behalf of the Respondents;

AND WHEREAS on July 12, 2010, Staff provided the Commission with the Affidavit of Dale Victoria Grybauskas, sworn on July 9, 2010, describing the attempts of Staff to serve the Respondents with copies of the Temporary Order, the Notice of Hearing and the Affidavit of Stephen Carpenter;

AND WHEREAS on July 12, 2010, the Commission was satisfied that Staff had properly served or attempted to serve the Respondents with copies of the Temporary Order, the Notice of Hearing and the Affidavit of Stephen Carpenter;

AND WHEREAS on July 12, 2010, counsel for Staff informed the Commission that counsel for Higgins could not attend the hearing but was content that the Temporary Order be extended;

AND WHEREAS on July 12, 2010, the Commission considered the evidence and submissions before it and the Commission was of the opinion that satisfactory information was not provided to it by the Respondents and that it was in the public interest to extend the Temporary Order;

AND WHEREAS on July 12, 2010, the Commission extended the Temporary Order to September 9, 2010;

AND WHEREAS on September 3, 2010, the Office of the Secretary issued a notice of hearing accompanied by a Statement of Allegations setting the matter down to be heard on September 8, 2010 at 10:30 a.m.;

AND WHEREAS on September 8, 2010, a hearing was held before the Commission which counsel for Staff attended but no one attended on behalf of the Respondents;

AND WHEREAS on September 8, 2010, Staff informed the Commission that they are of the belief that Michael (Mike) Lehman (a.k.a. Mike Laymen) is an alias used by a person associated with Lehman Corp.;

AND WHEREAS Staff is no longer seeking to extend the Temporary Order against Lehman;

AND WHEREAS the Commission is of the opinion that it is in the public interest to extend the Temporary Order against the Respondents, other than Lehman;

IT IS HEREBY ORDERED that Lehman is no longer subject to the terms of the Temporary Order;

IT IS FURTHER ORDERED pursuant to subsections 127 (7) and (8) of the Act that the Temporary Order is extended against the Respondents, other than Lehman, to October 22, 2010; and

IT IS FURTHER ORDERED that the Hearing is adjourned to October 21, 2010, at 12 p.m.

DATED at Toronto this 10th day of September, 2010.

"James E. A. Turner"

2.2.4 Global Energy Group, Ltd. et al. – Rules of Procedure (2009), 32 O.S.C.B. 1991

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

AND

IN THE MATTER OF
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

MOTION ORDER
(Rules of Procedure (2009), 32 O.S.C.B. 1991)

WHEREAS on July 10, 2008, the Ontario Securities Commission (the "**Commission**") issued a Temporary Order, pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), that all trading by Global Energy Group, Ltd. ("**Global Energy**") and the New Gold Limited Partnerships (the "**New Gold Partnerships**") and their officers, directors, employees and/or agents in securities of the New Gold Partnerships shall cease (the "**Global Energy Temporary Order**");

AND WHEREAS on July 15, 2008, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Global Energy Temporary Order;

AND WHEREAS on July 23, 2008, August 5, 2008, December 3, 2008, June 10, 2009, October 8, 2009 and March 10, 2010, the Commission issued orders to extend the Global Energy Temporary Order;

AND WHEREAS on July 9, 2010, the Commission ordered that the Global Energy Temporary Order was extended to September 1, 2010 and the hearing adjourned to September 1, 2010;

AND WHEREAS on April 7, 2010, the Commission issued a Temporary Order, pursuant to subsections 127(1) and 127(5) of the Act, ordering the following (the "**Individual Respondents Temporary Order**"):

1. Christina Harper ("**Harper**"), Howard Rash ("**Rash**"), Michael Schaumer ("**Schaumer**"), Elliot Feder ("**Feder**"), Vadim Tsatskin ("**Tsatskin**"), Oded Pasternak ("**Pasternak**"), Alan Silverstein ("**Silverstein**"), Herbert Groberman ("**Groberman**"), Allan Walker ("**Walker**"), Peter Robinson ("**Robinson**"), Vyacheslav Brikman ("**Brikman**"), Nikola Bajovski ("**Bajovski**"), Bruce Cohen ("**Cohen**") and Andrew Shiff ("**Shiff**"), collectively, the "**Individual Respondents**", shall cease trading in all securities;

2. that any exemptions contained in Ontario securities law do not apply to the Individual Respondents.

AND WHEREAS on April 14, 2010, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Individual Respondents Temporary Order;

AND WHEREAS on April 20, 2010, the Commission issued an order to extend the Individual Respondents Temporary Order;

AND WHEREAS on June 8, 2010, Staff issued a Statement of Allegations and the Commission issued a Notice of Hearing, returnable on June 14, 2010, with respect to Global Energy, New Gold Partnerships, Harper, Tsatskin, Schaumer, Feder, Pasternak, Silverstein, Groberman, Walker, Robinson, Brikman, Bajovski, Cohen and Shiff;

AND WHEREAS on June 14, 2010, a first appearance was held before the Commission, with respect to the Statement of Allegations and the Commission ordered that the Individual Respondents Temporary Order was extended to September 1, 2010 and the hearing adjourned to September 1, 2010;

AND WHEREAS on August 18, 2010, Harper brought a motion pursuant to Rule 3 of the Commission's *Rules of Procedure* (2009), 32 O.S.C.B. 1991 ("**Rules**"), supported by an Affidavit, sworn on August 18, 2010, and other documents ("**Motion**"), and on August 26, 2010, Harper filed and served additional documents dated August 26, 2010 (collectively, "**Harper's Motion Record**");

AND WHEREAS on August 24, 2010, Staff filed and served the Affidavit of Tom Anderson, Senior Investigator, sworn on August 24, 2010, in response to the Motion, and Staff advised that they would also rely on Anderson's Affidavit, sworn on April 16, 2010, which contained in the Evidence Brief of Staff filed on April 16, 2010 and marked as Exhibit 1 at the April 20, 2010 appearance (collectively, "**Staff's Motion Record**");

AND WHEREAS on August 27, 2010, a hearing was held before the Commission to consider the Motion ("**Motion Hearing**");

AND WHEREAS on August 27, 2010, Harper and counsel for Staff gave oral submissions at the Motion Hearing;

AND WHEREAS Harper seeks the following relief in the Motion: (i) that her name be struck from the style of cause in the proceeding; (ii) that she be given immunity as a victim in this matter; and (iii) that the Commission "close the book on any potential form of future prosecution" against her in relation to this matter;

AND WHEREAS Staff submits that Harper's Motion Record and Staff's Motion Record provide no grounds for granting the relief sought, and that the Rules provide no legal basis for the relief sought, which is similar to a directed verdict or summary judgement;

AND WHEREAS, on considering Harper's Motion Record and Staff's Motion Record and the oral submissions of Harper and counsel for Staff, it is the Commission's opinion that it would not be in the public interest to grant the Motion, considering that:

(i) Harper's submissions can best be considered by the Panel dealing with the hearing on the merits in this matter, at which time Harper will have an opportunity to challenge all of Staff's allegations, to cross-examine Staff's witnesses, and to bring evidence forward about how she viewed her role in the events at issue in this matter;

(ii) should the Panel dealing with the hearing on the merits find that Staff's allegations against Harper have been sustained, Harper will have an opportunity, at a sanctions and costs hearing, to bring evidence forward about the effect of the events at issue on her subsequent health;

(iii) the Statement of Allegations and Notice of Hearing, dated June 8, 2010, do not list Harper's name first on the style of cause; and

(iv) it is not legally possible for a Panel of the Commission to grant the forward-looking immunity sought by Harper;

IT IS THEREFORE ORDERED that the Motion is dismissed.

DATED at Toronto this 27th day of August, 2010.

"Mary G. Condon"

2.2.5 Bank of New York Mellon and Canadian Imperial Bank of Commerce – s. 46(4) of the OBCA

Headnote

Order pursuant to subsection 46(4) of the Business Corporations Act (Ontario) – trust indenture to be governed by the United States Trust Indenture Act of 1939 , as amended, in connection with a proposed public offering of debt securities of an issuer in the United States and Ontario – trustee to be appointed under the trust indenture undertakes to file with the Commission and on SEDAR a submission to the non-exclusive jurisdiction of the courts and administrative tribunals of Ontario and appointment of an agent for service of process in Ontario – any prospectus supplement under which the debt securities will be offered in Ontario will include disclosure about the existence of this order and a statement regarding the risks associated with the purchase of debt securities of the issuer under the trust indenture by a holder in Ontario as a result of the absence of a local trustee appointed under the trust indenture – trust indenture exempted from the requirements of Part V of the Business Corporations Act (Ontario).

Applicable Legislative Provisions

Business Corporations Act , R.S.O. 1990, c. B.16, as am., ss. 46(2), 46(3), 46(4), Part V.
Trust Indenture Act of 1939 , 53 Stat. 1149 (1939), 15 U.S.C., Secs. 77aaa-77bbb, as am.

IN THE MATTER OF
THE BUSINESS CORPORATIONS ACT,
R.S.O. 1990, CHAPTER B.16, AS AMENDED
(THE "OBCA")

AND

IN THE MATTER OF
THE BANK OF NEW YORK MELLON

AND

CANADIAN IMPERIAL BANK OF COMMERCE

ORDER
(Subsection 46(4) of the OBCA)

UPON the application (the "Application") of The Bank of New York Mellon (the "Applicant") to the Ontario Securities Commission (the "Commission") for an order that:

(a) pursuant to subsection 46(4) of the OBCA, a trust indenture to be entered into between Canadian Imperial Bank of Commerce ("CIBC") and the Applicant is exempt from the requirements of Part V of the OBCA; and

(b) the Application and this order be kept confidential by the Commission until the earlier of: (i) the date on which CIBC announces its intention to first effect a distribution of Debt Securities (as defined below) under the Indenture (as defined below); (ii) the date on which the Applicant advises the Commission that there is no longer any need for the Application and this order to remain confidential; and (iii) the date which is 60 days from the date of this order.

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

AND UPON it being represented by CIBC and the Applicant to the Commission that:

1. The Applicant is a banking corporation organized under the laws of New York, is nether resident nor authorized to do business in Ontario, and is proposed to be the trustee under an indenture (the "Indenture") to be entered into between CIBC and the Applicant.

2. CIBC has advised the Applicant that CIBC is incorporated under and governed by the *Bank Act* (Canada) and is a reporting issuer not in default under the *Securities Act* (Ontario), as amended (the "Act") or the regulations promulgated thereunder. CIBC's head office is located at Commerce Court, Toronto, Canada, M5L 1A2.

3. CIBC proposes to sell debt securities (the "Debt Securities") under the Indenture. The Indenture is to be governed by the laws of the State of New York.

4. A short form base shelf prospectus has been filed by CIBC with the Commission pursuant to the applicable requirements of National Instrument 44-101 – *Short Form Prospectus Distributions* and National Instrument 44-102 – *Shelf Distributions* to qualify the distribution of the Debt Securities in Ontario but not in any other province of Canada. Accordingly, the Debt Securities may not be offered or sold in Canada (except in the Province of Ontario) or to any resident of Canada (other than residents of Ontario) except pursuant to an exemption from the prospectus requirements of the applicable province or territory of Canada and otherwise in accordance with applicable securities laws.

5. The Indenture will be filed by CIBC on SEDAR forthwith after CIBC announces its intention to first effect a distribution of Debt Securities under the Indenture.

6. Public offers and sales of the Debt Securities will be made, from time to time, in the United States pursuant to a shelf registration statement on Form F-9 (the "Registration Statement") which has been filed by CIBC with the United States Securities

and Exchange Commission (the "SEC"). The short form base shelf prospectus referred to in paragraph 4 above, describing the principal terms of the Indenture, as well as a draft form of the Indenture, were included in the Registration Statement.

7. It is not anticipated currently that any of the Debt Securities will be listed on any securities exchange, but listing may occur in the future.

8. Part V of the OBCA will apply to the Indenture by virtue of subsection 46(2) of the OBCA as a prospectus has been filed under the Act.

9. As the Applicant is neither resident nor authorized to do business in Ontario, the Applicant has requested the exemption in order to act as trustee under the Indenture.

10. As a result of the filing of the Registration Statement with the SEC, the Indenture will be subject to and governed by the provisions of the United States Trust Indenture Act of 1939, as amended (the "TIA"). Upon the receipt of the requested exemption under the OBCA, the Indenture will continue to be subject to the TIA. The Indenture will further provide that there shall always be a trustee thereunder that satisfies the requirements of sections 310(a)(1), 310(a)(2) and 310(b) of the TIA and that the terms of such Indenture will be consistent with the requirements of the TIA.

11. Because the TIA regulates trustees and trust indentures of publicly offered debt securities in the United States in a manner that is consistent with Part V of the OBCA, holders of Debt Securities in Ontario will not, subject to paragraph 11, derive any additional material benefit from having the Indenture be subject to Part V of the OBCA.

12. The Applicant has undertaken to file with the Commission and on SEDAR a submission to the non-exclusive jurisdiction of the courts and administrative tribunals of Ontario and appointment of an agent for service of process in Ontario (a "Submission to Jurisdiction and Appointment of Agent for Service of Process").

13. CIBC has advised the Applicant that any prospectus supplement under which Debt Securities will be offered or sold in Ontario will disclose the existence of the Order, if granted, and state that the Applicant, its officers and directors, and the assets of the Applicant are located outside of Ontario and, as a result, it may be difficult for a holder of Debt Securities to enforce rights against the Applicant, its officers or directors, or the Applicant's assets and that the holder may have to enforce rights against the Applicant in the United States.

AND UPON the Commission being of the opinion that to do so would not be prejudicial to the public interest;

IT IS ORDERED, pursuant to subsection 46(4) of the OBCA, that the Indenture is exempt from Part V of the OBCA, provided that:

(a) the Indenture is governed by and subject to the TIA; and

(b) prior to or concurrently with the filing of any prospectus supplement of CIBC, the Applicant or any trustee that replaces the Applicant under the terms of the Indenture, has filed with the Commission and on SEDAR a Submission to Jurisdiction and Appointment of Agent for Service of Process.

IT IS ORDERED that the Application and this order be held in confidence by the Commission until the earlier of (i) the date on which CIBC announces its intention to first effect a distribution of Debt Securities; (ii) the date on which the Applicant advises the Commission that there is no longer any need for the Application and this order to remain confidential; and (iii) the date which is 60 days from the date of this order.

DATED at Toronto, Ontario this 3rd day of September, 2010.

"Carol S. Perry"
Commissioner
Ontario Securities Commission

"Sinan O. Akdeniz"
Commissioner
Ontario Securities Commission

2.2.6 Global Energy Group, Ltd. 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 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

ORDER
(Section 127 of the Securities Act)

WHEREAS on June 8, 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 June 8, 2010, issued by Staff of the Commission ("Staff") with respect to Global Energy Group, Ltd. ("Global Energy"), New Gold Limited Partnerships, ("New Gold"), Christina Harper ("Harper"), Michael Schaumer ("Schaumer"), Elliot Feder ("Feder"), Vadim Tsatskin ("Tsatskin"), Oded Pasternak ("Pasternak"), Alan Silverstein ("Silverstein"), Herbert Groberman ("Groberman"), Allan Walker ("Walker"), Peter Robinson ("Robinson"), Vyacheslav Brikman ("Brikman"), Nikola Bajovski ("Bajovski"), Bruce Cohen ("Cohen") and Andrew Shiff ("Shiff"), collectively, the "Respondents";

AND WHEREAS the Notice of Hearing stated that a hearing would be held at the offices of the Commission on June 14, 2010;

AND WHEREAS, on June 14, 2010 Staff confirmed that the Commission had received the affidavit of Kathleen McMillan sworn June 11, 2010 which indicated that service of the Notice of Hearing and Statement of Allegations was attempted on all Respondents personally, electronically, through their counsel or at their last known address;

AND WHEREAS on June 14, 2010, Staff, Schaumer, Silverstein, Brikman, Shiff, counsel for Feder and an agent for counsel for Robinson attended the hearing;

AND WHEREAS on June 14, 2010, Staff informed the Commission that they had received messages from Harper and Groberman that they would not be attending the hearing;

AND WHEREAS on June 14, 2010, Staff informed the Commission that they had received a message from Tsatskin stating that his lawyer would be unable to appear at the hearing;

AND WHEREAS on June 14, 2010, Staff informed the Commission they had received a message from counsel for Pasternak, Walker and Brikman that he would not be attending the hearing;

AND WHEREAS on June 14, 2010, upon hearing submissions from Staff and counsel for Feder, the hearing was adjourned to September 1, 2010;

AND WHEREAS on September 1, 2010, a hearing was held before the Commission, and Staff, Shiff, counsel for Feder, counsel for Robinson and counsel for Pasternak, Walker and Brikman attended the hearing;

IT IS HEREBY ORDERED, upon hearing the submissions of Staff, Shiff, counsel for Feder, counsel for Robinson and counsel for Pasternak, Walker and Brikman, that the hearing is adjourned to November 8, 2010, at 10:00 a.m. or on such other date as provided by the Office of the Secretary and agreed to by the parties for a pre-hearing conference.

DATED at Toronto this 1st day of September, 2010.

"Kevin J. Kelly"

2.2.7 Christina Harper et al. – ss. 127(1), 127(8)

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

AND

IN THE MATTER OF
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

ORDER
(Subsections 127(7) and 127(8))

WHEREAS on April 7, 2010, 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 the following (the "Temporary Order"):

i) Christina Harper ("Harper"), Howard Rash ("Rash"), Michael Schaumer ("Schaumer"), Elliot Feder ("Feder"), Vadim Tsatskin ("Tsatskin"), Oded Pasternak ("Pasternak"), Alan Silverstein ("Silverstein"), Herbert Groberman ("Groberman"), Allan Walker ("Walker"), Peter Robinson ("Robinson"), Vyacheslav Brikman ("Brikman"), Nikola Bajovski ("Bajovski"), Bruce Cohen ("Cohen") and Andrew Shiff ("Shiff"), collectively, the "Respondents", shall cease trading in all securities;

ii) that any exemptions contained in Ontario securities law do not apply to the Respondents.

AND WHEREAS, on April 7, 2010, 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 April 14, 2010, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on April 20, 2010 at 3:00 p.m;

AND WHEREAS the Notice of Hearing set out that the Hearing is to consider, amongst other things whether, in the opinion of the Commission, it is 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 April 20, 2010, a hearing was held before the Commission and none of the Respondents appeared before the Commission to oppose Staff of the Commission's ("Staff") request for the extension of the Temporary Order;

AND WHEREAS on April 20, 2010, the Commission was satisfied that Staff had served or made reasonable attempts to serve each of the Respondents with copies of the Temporary Order, the Notice of Hearing, and the Evidence Brief of Staff as evidenced by the Affidavit of Kathleen McMillan, sworn on April 20, 2010, and filed with the Commission;

AND WHEREAS on April 20, 2010, the Commission considered the evidence and submissions before it and the Commission was of the opinion that: in the absence of a continuing cease-trade order, the length of time required to conclude a hearing could be prejudicial to the public interest; and, it was in the public interest to extend the Temporary Order;

AND WHEREAS, on April 20, 2010, pursuant to subsections 127 (7) and (8) of the Act, the Temporary Order was extended to June 15, 2010 and the hearing in this matter was adjourned to June 14, 2010, at 10:00 a.m.;

AND WHEREAS on June 14, 2010, a hearing was held before the Commission and the Commission ordered that the Temporary Order was extended and the hearing was adjourned to September 1, 2010, at 1:00 p.m.;

AND WHEREAS on September 1, 2010, Staff, Shiff, counsel for Feder, counsel for Robinson and counsel for Pasternak, Walker and Brikman attended the hearing;

AND WHEREAS on September 1, 2010, the Commission considered the evidence and submissions before it and the Commission was of the opinion that: in the absence of a continuing cease-trade order, the length of time required to conclude a hearing could be prejudicial to the public interest.

IT IS HEREBY ORDERED pursuant to subsections 127(7) and 127(8) of the Act that the Temporary Order is extended to November 9, 2010;

AND IT IS FURTHER ORDERED that the hearing in this matter is adjourned to November 8, 2010, at 10:00 a.m.;

AND IT IS FURTHER ORDERED pursuant to subsections 127(1) and (2) of the Act that, notwithstanding the Temporary Order, Feder is permitted to trade securities in an account in his own name or in an account of his registered retirement savings plans (as defined in the *Income Tax Act* (Canada)) in which he has the 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) which is a reporting issuer; and

(ii) he carries out any permitted trading through a dealer registered with the Commission (which dealer must be given a copy of this order) and through accounts opened in his name only.

DATED at Toronto this 1st day of September, 2010.

“Kevin J. Kelly”

2.2.8 Global Energy Group, Ltd. and New Gold Limited Partnerships – ss. 127(7), 127(8)

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

AND

IN THE MATTER OF
GLOBAL ENERGY GROUP, LTD. AND
NEW GOLD LIMITED PARTNERSHIPS

ORDER
(Subsections 127(7) and 127(8))

WHEREAS on July 10, 2008, the Ontario Securities Commission (the "Commission") issued a Temporary Order, pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), that all trading by Global Energy Group, Ltd. ("Global Energy") and the New Gold Limited Partnerships (the "New Gold Partnerships") and their officers, directors, employees and/or agents in securities of the New Gold Partnerships shall cease (the "Temporary Order");

AND WHEREAS on July 10, 2008, 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 July 15, 2008, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, such hearing to be held on July 23, 2008 at 11:00 a.m.;

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

AND WHEREAS a hearing was held on July 23, 2008 at 11:00 a.m. where Staff and counsel for Global Energy appeared but no counsel appeared for the New Gold Partnerships;

AND WHEREAS on July 23, 2008, the Temporary Order was continued until August 6, 2008 and the hearing in this matter was adjourned until August 5, 2008 at 3:00 p.m. on consent of Staff and counsel for Global Energy;

AND WHEREAS a hearing was held on August 5, 2008 at 3:00 p.m. where Staff and counsel for Global Energy appeared but no counsel appeared for the New Gold Partnerships;

AND WHEREAS on August 5, 2008, the Temporary Order was continued until December 4, 2008 and the hearing in this matter was adjourned until December 3, 2008 at 10:00 a.m. on consent of Staff and counsel for Global Energy;

AND WHEREAS on December 3, 2008, on the basis of the record for the written hearing and on consent of Staff and counsel for Global Energy, a Panel of the Commission ordered that the Temporary Order be extended until June 11, 2009 and that the hearing in this matter be adjourned to June 10, 2009, at 10:00 a.m.;

AND WHEREAS on June 10, 2009, Staff advised the Commission that Victor Tsatskin, a.k.a. Vadim Tsatskin ("Tsatskin"), an agent of Global Energy, would not be attending the hearing and was not opposed to Staff's request for the extension of the Temporary Order and no counsel has communicated with Staff on behalf of New Gold Partnerships;

AND WHEREAS on June 10, 2009, on hearing the submissions of Staff, a Panel of the Commission ordered that the Temporary Order be extended until October 9, 2009 and that the hearing in this matter be adjourned to October 8, 2009, at 10:00 a.m.;

AND WHEREAS on October 8, 2009, on hearing the submissions of Staff, a Panel of the Commission ordered that the Temporary Order be extended until March 11, 2010 and that the hearing in this matter be adjourned to March 10, 2010, at 10:00 a.m.;

AND WHEREAS on March 10, 2010, on hearing the submissions of Staff, a Panel of the Commission ordered that the Temporary Order be extended until July 12, 2010 and that the hearing in this matter be adjourned to July 9, 2010, at 11:30 a.m.;

AND WHEREAS on July 9, 2010, on hearing the submissions of Staff, a Panel of the Commission ordered that the Temporary Order be extended until September 1, 2010 and that the hearing in this matter be adjourned to September 1, 2010, at 1:00 p.m.;

AND WHEREAS on September 1, 2010, counsel for Staff appeared and made submissions before the Commission and no person appeared on behalf of Global Energy or New Gold;

AND WHEREAS pursuant to subsections 127(7) and 127(8) of the Act, satisfactory information has not been provided to the Commission by any of the Respondents;

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

IT IS HEREBY ORDERED, pursuant to subsections 127(7) and 127(8) of the Act, that the Temporary Order is extended to November 9, 2010 and that the hearing in this matter is adjourned to November 8, 2010, at 10:00 a.m. or on such other date as provided by the Secretary's Office and agreed to by the parties.

DATED at Toronto this 1st day of September 2010

"Kevin J. Kelly"

2.2.9 IGM Financial Inc.

Headnote

Clause 104(2)(c) – Issuer bid – relief from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act – Issuer proposes to purchase, at a discounted purchase price, up to 1,000,000 of its common shares from one of its shareholders and/or such shareholder's affiliates – due to discounted purchase price, proposed purchases cannot be made through TSX – but for the fact that the proposed purchases cannot be made through the TSX, the Issuer could otherwise acquire the subject shares in reliance upon the issuer bid exemption available under section 101.2 of the Act and in accordance with the TSX rules governing normal course issuer bid purchases – no adverse economic impact on or prejudice to issuer or public shareholders – proposed purchases exempt from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act, subject to conditions, including that the issuer not purchase more than one-third of the maximum number of shares to be purchased under its normal course issuer bid by way of off-exchange block purchases.

Applicable Legislative Provisions

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

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

AND

IN THE MATTER OF
IGM FINANCIAL INC.

ORDER

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

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

AND UPON the Issuer (and the Selling Shareholders in respect of paragraphs 5, 6, 7, 8, 11 and 23 as they relate to the Selling Shareholders) having represented to the Commission that:

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

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

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

4. As at July 31, 2010, the authorized common share capital of the Issuer consisted of an unlimited number of Shares, of which 261,698,349 were issued and outstanding.

5. The corporate headquarters of the Selling Shareholders are located in Toronto, Ontario.

6. The Selling Shareholders do not directly or indirectly own more than 5% of the issued and outstanding Shares.

7. The Selling Shareholders are the beneficial owner of the Subject Shares. The Subject Shares were not acquired by the Selling Shareholders in anticipation of resale pursuant to private agreements under an issuer bid exemption order issued by a securities regulatory authority ("**Off-Exchange Block Purchases**").

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

9. Pursuant to a "Notice of Intention to Make a Normal Course Issuer Bid" filed with the TSX and dated April 7, 2010 (the "**Notice**"), the Issuer is permitted to make normal course issuer bid (the "**Bid**") purchases (each a "**Bid Purchase**") to a maximum of 13,121,380 Shares from April 12, 2010 until April 11, 2011.

10. To date, 850,000 Shares have been purchased under the Bid pursuant to off-Exchange Block Purchases. Assuming the completion of the purchase of the Subject Shares, the Issuer will have purchased under the Bid an aggregate of 1,850,000 Shares pursuant to Off-Exchange Block Purchases, representing approximately 15% of the Shares authorized to be purchased under such Bid.

11. The Issuer and the Selling Shareholders intend to enter into one or more agreements of purchase and sale (the "**Agreement**") pursuant to which the Issuer will agree to acquire, by one or more trades occurring prior to the end of day on October 6,

2010, the Subject Shares from the Selling Shareholders for a purchase price or prices (the "**Purchase Price**") that will be negotiated at arm's length between the Issuer and the Selling Shareholders. The Purchase Price will be at a discount to the prevailing market price and below the prevailing bid-ask price for the Shares.

12. The Subject Shares acquired under each Proposed Purchase will constitute a "block" as that term is defined in section 628 of the TSX Company Manual (the "**TSX Rules**").

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

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

15. But for the fact that the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Shares at the time of the trade, the Issuer could otherwise acquire the Subject Shares as a "block purchase" (a "**Block Purchase**") in accordance with Section 629(l)7 of Part VI of the TSX Rules and the exemption from the Issuer Bid Requirements available pursuant to Section 101.2(1) of the Act. The Notice filed with the TSX by the Issuer contemplates that purchases under the Bid may be made by such other means as permitted by the TSX, including by Off-Exchange Block Purchases.

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

17. The Issuer is of the view that it will be able to purchase the Subject Shares at a lower price than the price at which the Issuer would be able to purchase the Shares under the Bid through the facilities of the TSX and the Issuer is of the view that this is an appropriate use of the Issuer's funds.

18. The purchase of Subject Shares will not adversely affect the Issuer, the rights of any of the Issuer's security holders or affect control of the Issuer.

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

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

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

22. To the best of the Issuer's knowledge, as of July 31, 2010, the public float for the Shares represented approximately 39.68% of all the issued and outstanding Shares for purposes of the TSX Rules.

23. At the time that each Agreement is entered into by the Issuer and the Selling Shareholders and at the time of each Proposed Purchase, neither the Issuer nor the Selling Shareholders will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed.

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

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

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

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

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

(d) the Issuer will otherwise acquire any additional Shares pursuant to the Bid and in accordance with the TSX Rules, including by means of open market transactions and by other means as may be permitted by the TSX, including Off-Exchange Block Purchases.

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

(f) at the time that each Agreement is entered into by the Issuer and the Selling Shareholders and at the time of each Proposed Purchase, neither the Issuer nor the Selling Shareholders will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed;

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

(h) the Issuer does not purchase, pursuant to Off-Exchange Block Purchases, more than one-third of the maximum number of Shares the Issuer can purchase under the Bid.

DATED at Toronto this 10th day of September, 2010.

"Margot C. Howard"
Commissioner
Ontario Securities Commission

"Mary Condon"
Commissioner
Ontario Securities Commission

2.2.10 LeBoldus Capital Inc. – s. 1(11)(b)

Headnote

Subsection 1(11)(b) – Order that the issuer is a reporting issuer for the purposes of Ontario securities law – Issuer already a reporting issuer in Alberta, British Columbia and Saskatchewan – Issuer's securities listed for trading on the TSX Venture Exchange – Continuous disclosure requirements in Alberta, British Columbia and Saskatchewan substantially the same as those in Ontario – Issuer has a significant connection to Ontario.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(11)(b).

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

AND

IN THE MATTER OF
LEBOLDUS CAPITAL INC.

ORDER
(clause 1(11)(b))

UPON the application of LeBoldus Capital Inc. (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order pursuant to clause 1(11)(b) of the Act that, for the purposes of Ontario securities law, the Applicant is a reporting issuer in Ontario;

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

AND UPON the Applicant representing to the Commission as follows:

1) The Applicant was incorporated under the *Business Corporations Act* (Alberta) on January 29, 2008.

2) The head and registered office of the Applicant is located at 3700, 400 Third Avenue S.W., Calgary, Alberta T2P 4H2.

3) The authorized share capital of the Applicant consists of an unlimited number of common shares in the capital of the Applicant (the **Common Shares**) and an unlimited number of preferred shares.

4) As of the date hereof, 6,550,000 Common Shares and no preferred shares of the Applicant are issued and outstanding.

5) The Applicant has been a reporting issuer under the *Securities Act* (Alberta) (the **Alberta Act**), the *Securities Act* (British Columbia) (the **BC Act**) and

the *Securities Act* (Saskatchewan) (the **Saskatchewan Act**) since April 24, 2008 and is not a reporting issuer or the equivalent in any jurisdiction in Canada other than Alberta, British Columbia or Saskatchewan.

6) The Applicant is not on the list of defaulting reporting issuers maintained pursuant to the BC Act, the Alberta Act or the Saskatchewan Act and is not in default of any of its obligations under the BC Act, the Alberta Act or the Saskatchewan Act or the rules and regulations made thereunder.

7) The continuous disclosure materials filed by the Applicant under the securities legislation in Alberta, British Columbia and Saskatchewan are available on the System for Electronic Document Analysis and Retrieval.

8) The continuous disclosure materials filed by the Applicant under the requirements of the BC Act, the Alberta Act and the Saskatchewan Act are substantially the same as the continuous disclosure requirements under the Act.

9) The Common Shares of the Applicant are listed and posted for trading on the TSX Venture Exchange (the **TSXV**) under the symbol "LEB". The Applicant is not in default of any of the rules, regulations or policies of the TSXV.

10) The TSXV requires all of its listed issuers, which are not otherwise reporting issuers in Ontario, to assess whether they have a significant connection with Ontario, as defined in Policy 1.1 of the TSX Venture Exchange Corporate Finance manual, and, upon first becoming aware that it has a significant connection to Ontario, to promptly make application to the Commission to be deemed a reporting issuer in Ontario.

11) The Applicant has a significant connection to Ontario since more than 20% of the total number of equity securities of the Applicant are owned by registered and beneficial shareholders resident in Ontario.

12) The Applicant does not have a shareholder that holds sufficient securities of the Applicant to affect materially the control of the Applicant.

13) Neither the Applicant nor, to the knowledge of the Applicant, its officers or directors, has:

a) been subject to any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority;

b) entered into a settlement agreement with a Canadian securities regulatory authority; or

c) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision.

14) To the knowledge of the Applicant, neither the Applicant nor, to the knowledge of the Applicant, its officers or directors, is or has been the subject of:

a) any known ongoing or concluded investigation by a Canadian securities regulatory authority, or a court or regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision in respect of the Applicant; or

b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver manager or trustee, within the preceding 10 years.

15) To the knowledge of the Applicant, none of its officers and directors is or has been at the time of such event an officer or director of any other issuer that is or has been subject to:

a) any cease trade or similar orders, or orders that denied access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, within the preceding 10 years; or

b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver manager or trustee, within the preceding 10 years.

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

IT IS ORDERED pursuant to clause 1(11)(b) of the Act that the Applicant is a reporting issuer for the purposes of Ontario securities law.

DATED this 13th day of September, 2010

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

2.2.11 TBS New Media Ltd. et al. – ss. 127(1), 127(5)

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

AND

IN THE MATTER OF
TBS NEW MEDIA LTD., TBS NEW MEDIA PLC,
CNF FOOD CORP., CNF CANDY CORP.,
ARI JOHNATHAN FIRESTONE AND MARK GREEN

TEMPORARY ORDER
(Subsections 127(1) & 127(5))

WHEREAS on June 29, 2010, the Ontario Securities Commission (the "Commission") issued a temporary order (the "Temporary 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 the following:

(i) that all trading in the securities of TBS New Media Ltd. ("TBS"), TBS New Media PLC ("TBS PLC"), CNF Food Corp. ("CNF Food") and CNF Candy Corp. ("CNF Candy") shall cease;

(ii) that TBS, TBS PLC, CNF Food, CNF Candy, Ari Jonathan Firestone ("Firestone") and Mark Green ("Green"), collectively the "Respondents", cease trading in all securities; and

(iii) that any exemptions contained in Ontario securities law do not apply to TBS, TBS PLC, CNF Food, CNF Candy, Firestone and Green;

AND WHEREAS on June 29, 2010, 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 July 6, 2010, the Commission issued a notice of hearing to consider, among other things, the extension of the Temporary Order, to be held on July 12, 2010 at 10:00 a.m. (the "Notice of Hearing");

AND WHEREAS the Notice of Hearing set out that the hearing (the "Hearing") is to consider, amongst other things, whether in the opinion of the Commission it is 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 July 12, 2010, a hearing was held before the Commission which counsel for Staff of the Commission ("Staff") attended, counsel attended on behalf of TBS, TBS PLC, CNF Food, CNF Candy and Firestone, but no one attended on behalf of Green;

AND WHEREAS on July 12, 2010, Staff provided the Commission with the Affidavit of Dale Victoria Grybauskas, sworn on July 9, 2010, describing the attempts of Staff to serve the Respondents with copies of the Temporary Order, the Notice of Hearing, and the Affidavit of Stephen Carpenter;

AND WHEREAS on July 12, 2010, the Commission was satisfied that Staff had properly served or attempted to serve the Respondents with copies of the Temporary Order, the Notice of Hearing and the Affidavit of Stephen Carpenter;

AND WHEREAS on July 12, 2010, the Commission considered the evidence and submissions before it and the Commission was of the opinion that satisfactory information has not been provided to it by the Respondents and the Commission was of the opinion that it was in the public interest to extend the Temporary Order, subject to an amendment of the Temporary Order for the benefit of Firestone;

AND WHEREAS Staff did not object to amending the Temporary Order, as submitted by counsel for Firestone;

AND WHEREAS on July 12, 2010, the Commission ordered that the Temporary Order be amended by including a paragraph as follows: Notwithstanding the provisions of this Order, Firestone is permitted to trade, solely through a registered dealer or, as appropriate, a registered dealer in a foreign jurisdiction (which dealer must be given a copy of this order) in (a) any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101 provided that he does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities; or (b) any security issued by a mutual fund that is a reporting issuer; and provided that Firestone provides Staff with the particulars of the accounts in which such trading is to occur (as soon as practicable before any trading in such accounts occurs) including the name of the registered dealer through which the trading will occur and the account numbers, and Firestone shall instruct the registered dealer to provide copies of all trade confirmation notices with respect to trading in the accounts directly to Staff at the same time that such notices are provided to him;

AND WHEREAS pursuant to subsections 127 (7) and (8) of the Act, the Commission ordered that the Temporary Order, as amended by the July 12 order, be extended to September 9, 2010;

AND WHEREAS on September 3, 2010, the Office of the Secretary issued a notice of hearing accompanied by a Statement of Allegations setting the matter down to be heard on September 8, 2010 at 10:00 a.m.;

AND WHEREAS on September 8, 2010, a hearing was held before the Commission which counsel for Staff attended, counsel attended on behalf of TBS, TBS

PLC, CNF Food, CNF Candy and Firestone, but no one attended on behalf of Green;

AND WHEREAS at the hearing on September 8, 2010, a pre-hearing conference in this matter was set down for October 21, 2010;

AND WHEREAS counsel for TBS, TBS PLC, CNF Food, CNF Candy and Firestone consented to an extension of the Temporary Order to October 22, 2010;

IT IS ORDERED that the Temporary Order, as amended by the July 12 order, is extended to October 22, 2010;

IT IS FURTHER ORDERED that the Hearing is adjourned to October 21, 2010 at 11:00 a.m. for a confidential pre-hearing conference.

DATED at Toronto this 10th day of September, 2010.

"James E. A. Turner"

2.2.12 TBS New Media Ltd. 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
TBS NEW MEDIA INC., TBS NEW MEDIA PLC,
CNF FOOD CORP., CNF CANDY CORP.,
ARI JONATHAN FIRESTONE AND MARK GREEN

ORDER
(Section 127 of the Securities Act)

WHEREAS on September 3, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") accompanied by a Statement of Allegations dated September 3, 2010, issued by Staff of the Commission ("Staff") with respect to TBS New Media Inc. ("TBS"), TBS New Media PLC ("TBS PLC"), CNF Food Corp. ("CNF Food"), CNF Candy Corp. ("CNF Candy"), Ari Jonathan Firestone ("Firestone") and Mark Green ("Green"), collectively the "Respondents";

AND WHEREAS the Notice of Hearing stated that a hearing would be held at the offices of the Commission on September 8, 2010;

AND WHEREAS on September 8, 2010, Staff confirmed that the Commission had received the affidavit of Charlene Rochman sworn September 7, 2010 which indicated that service of the Notice of Hearing and Statement of Allegations was attempted on all Respondents personally, electronically, through their counsel or at their last known address;

AND WHEREAS on September 8, 2010, Staff and counsel for TBS, TBS PLC, CNF Food, CNF Candy and Firestone attended the hearing and no one appeared on behalf of Green;

AND WHEREAS on September 8, 2010, counsel for TBS, TBS PLC, CNF Food, CNF Candy and Firestone requested that the hearing be adjourned and a pre-hearing conference scheduled;

AND WHEREAS on September 9, 2010, Staff issued an amended Statement of Allegations to amend the respondent named as "TBS New Media Inc." to "TBS New Media Ltd.";

IT IS ORDERED that the hearing is adjourned to October 21, 2010 at 11:00 a.m. for a confidential pre-hearing conference.

DATED at Toronto this 14th day of September, 2010.

"James E. A. Turner"

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

AND

IN THE MATTER OF
TBS NEW MEDIA INC., TBS NEW MEDIA PLC,
CNF FOOD CORP., CNF CANDY CORP.,
ARI JONATHAN FIRESTONE AND MARK GREEN
The Respondents

AMENDED STATEMENT OF ALLEGATIONS OF STAFF OF THE ONTARIO SECURITIES COMMISSION

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

I. OVERVIEW

1. This proceeding involves the unregistered trading and illegal distribution of securities of CNF Candy Corp. ("CNF Candy") and CNF Food Corp. ("CNF Food") to shareholders of TBS New Media Ltd. ("TBS New Media"), a company incorporated in Ontario, and TBS New Media PLC ("TBS PLC"), a company created pursuant to the laws of the United Kingdom.

2. Between 2004 and 2008, securities in TBS New Media and TBS PLC (collectively "TBS") were distributed to investors in Ontario and throughout Canada purportedly pursuant to a private placement. Some of the persons who originally acquired securities of TBS New Media were asked to return these securities in exchange for securities of TBS PLC.

3. In 2009 and 2010, TBS investors in Canada were then solicited to exchange their shares in TBS for securities in CNF Candy and/or CNF Food. TBS shareholders wishing to acquire securities of CNF Candy and/or CNF Food (collectively "CNF") were also required to provide additional funds.

4. From September of 2009 until March of 2010 (the "Material Time"), TBS investors sent approximately $97,887.00 to a bank account in Toronto, Ontario in the name of CNF Food (the "CNF Account") in order to acquire CNF securities.

5. Ari Jonathan Firestone ("Firestone") was at all material times the sole directing mind of TBS and CNF. Firestone was the sole signatory on the CNF Account.

6. These solicitations to TBS shareholders were made by a person using the name Mark Green ("Green") under the direction and supervision of Firestone.

II. THE CORPORATE RESPONDENTS

7. TBS New Media was originally incorporated in the Province of Ontario on January 30, 1995 under the name Telxl Inc. and changed its name to TBS New Media Ltd. on September 29, 2004. During the Material Time, the registered office of TBS New Media was located in Ontario.

8. TBS PLC was a company governed by the laws of the United Kingdom which was created as a result of a change of name made on January 30, 2008. TBS PLC was previously called Bobcat PLC which incorporated under the *Companies Act 1985* on June 14, 2006.

9. Neither TBS New Media nor TBS PLC have ever been registered with the Ontario Securities Commission (the "Commission") in any capacity.

10. CNF Candy was incorporated pursuant to the laws of Canada on May 3, 2007. CNF Candy changed its named to CNF Food on November 21, 2007. CNF Candy was again incorporated on December 5, 2007. During the Material Time, the registered office of CNF Candy was located in Ontario.

11. CNF Food was dissolved under section 212 of the *Canada Business Corporations Act* on March 2, 2010. During the Material Time, the registered office of CNF Food was located in Ontario.

12. CNF Candy and CNF Food have never been registered in any capacity with the Commission.

III. THE INDIVIDUAL RESPONDENTS

13. Firestone is a resident of Ontario. At all times, he was the directing mind of TBS New Media, TBS PLC, CNF Candy and CNF Food.

14. Firestone was last registered in any capacity with the Commission on July 25, 2000 and has not been registered in any capacity since that date.

15. According to Firestone, Green was the investor relations representative for CNF and solicited TBS investors to acquire CNF securities during the Material Time from the offices of CNF in Ontario.

16. There is no record of a person named Mark Green having ever been registered with the Commission.

IV. UNREGISTERED TRADING IN SECURITIES OF TBS AND CNF CONTRARY TO SECTION 25(1) OF THE ACT

17. Staff allege that members of the public in Canada who had acquired securities of TBS were solicited by salespersons, agents and representatives of CNF to acquire securities of CNF in exchange for their existing shares of TBS and additional funds. As a result, approximately $97,887 was raised from existing investors of TBS.

18. The actions of TBS New Media, TBS PLC, CNF Candy, CNF Food, Firestone and Green in relation to the securities of TBS and CNF constituted the trading of securities without registration contrary to section 25(1) of the Securities Act, R.S.O. 1990, c. S. 5, as amended (the "Act")

V. ILLEGAL DISTRIBUTION OF SECURITIES OF CNF CONTRARY TO SECTION 53(1) OF THE ACT

19. TBS New Media, TBS PLC, CNF Candy, and CNF Food have never filed a prospectus or a preliminary prospectus with the Commission or obtained receipts for them from the Director as required by section 53(1) of the Act.

20. The trading of securities of CNF Candy and/or CNF Food as set out above constituted distributions of these securities by CNF Candy, CNF Food, Firestone and/or Green in circumstances where there were no exemptions available to them under the Act contrary to section 53 of the Act.

VI. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND CONTRARY TO THE PUBLIC INTEREST

21. The specific allegations advanced by Staff related to the trades in TBS and CNF securities during the Material Time are as follows:

    (a) TBS New Media, TBS PLC, CNF Candy, CNF Food, Firestone and Green traded in securities without being registered to trade in securities, contrary to section 25(1) of the Act and contrary to the public interest;

    (b) The actions of CNF Food, CNF Candy, Firestone and Green related to the sale of securities of CNF Candy and CNF Food constituted distributions of securities of CNF Food and CNF Candy where no preliminary prospectus and prospectus were issued nor receipted by the Director, contrary to section 53(1) of the Act and contrary to the public interest; and

    (c) Firestone being a director and/or officer of TBS New Media, TBS PLC, CNF Candy and CNF Food did authorize, permit or acquiesce in the commission of the violations of sections 25(1) and 53(1) of the Act, as set out above, by TBS New Media, TBS PLC, CNF Candy or CNF Food or by the salespersons, representatives or agents of TBS New Media, TBS PLC, CNF Candy or CNF Food, including Green, contrary to section 129.2 of the Act and contrary to the public interest.

22. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED at Toronto, September 9, 2010.

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Mega-C Power et al.

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

AND

IN THE MATTER OF
MEGA-C POWER CORPORATION,
RENE PARDO, GARY USLING,
LEWIS TAYLOR SR., LEWIS TAYLOR JR.,
JARED TAYLOR, COLIN TAYLOR AND
1248136 ONTARIO LIMITED

CONFIDENTIAL REASONS AND DECISION
[Editor's Note: Made public on September 8, 2010.]

In Camera Hearing:	April 12, 2007		
Panel:	Lawrence E. Ritchie	–	Vice-Chair (Chair of the Panel)
	James E. A. Turner	–	Vice-Chair
	Wendell S. Wigle, Q.C.	–	Commissioner
Counsel:	Anne C. Sonnen Sean Horgan	–	For Staff of the Ontario Securities Commission
	Peter Copeland	–	For Lewis Taylor, Sr. and Lewis Taylor Jr.
	Fred Platt	–	For Jared Taylor, Colin Taylor and 1248136 Ontario Limited
	Steven Sofer James Camp	–	For Gary Usling
	David Hausman	–	For the Liquidation Trustee of Mega-C Power Corporation

CONFIDENTIAL REASONS AND DECISION

I. Introduction

[1] On November 16, 2005, the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in connection with a Statement of Allegations delivered by Staff of the Commission ("Staff") on that day. The Notice names the following as Respondents: Mega-C Power Corporation ("Mega-C"), Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited (collectively, "the Respondents"). Staff alleges that the Respondents violated sections 25, 38 and 53 of the Act. An Amended Notice of Hearing was issued by the Commission on February 6, 2007.

[2] By Order dated December 5, 2006, on consent of all parties, the Commission ordered the hearing on the merits to commence on October 29, 2007, to proceed over the following six weeks.

[3] According to Staff's Statement of Allegations, the substantive proceeding relates to activities alleged to have taken place from August 2001 through mid-2003.

II. Status of Pending Motions

[4] At this stage of the proceedings, there are a number of motions pending:

(a) a motion filed by Staff, as well as one by the Trustee of Mega-C (the "Trustee"), relating to the use of evidence obtained pursuant to an investigation order in Mega-C's U.S. bankruptcy proceedings (the "Disclosure Motions");

(b) a motion for particulars (the "Particulars Motion") filed by Jared Taylor, Colin Taylor and 1248136 Ontario Limited (collectively, "the Taylor Group"); and

(c) two motions, one brought by Lewis Taylor Sr. and Lewis Taylor Jr. ("Taylor Sr. and Jr."), and one brought by the Taylor Group, relating to the propriety and legality of certain statutory investigation provisions contained in the Act, and their use in this case (collectively the "Constitutional Motions").

[5] None of these motions have been scheduled. With respect to the Disclosure Motions, we were advised by counsel for both Staff and the Trustee that these motions will not be pursued in advance of the resolution of the Constitutional Motions.

[6] By the Particulars Motion, the Taylor Group seeks particulars of alleged facts and positions asserted in the Statement of Allegations. The Particulars Motion has been adjourned *sine die*.

[7] As described below, the Constitutional Motions challenge both the constitutionality of section 11 of the Act, as well as the manner and basis upon which an investigation order issued pursuant to that section (the "Investigation Order") was obtained and used in the circumstances of this Proceeding. While they are described as the "Constitutional Motions", the Taylor Group and Taylor Sr. and Jr. also rely on principles of "fundamental and/or natural justice", in addition to *Charter* protections (*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the "*Charter*")) as described below.

[8] In response to these Constitutional Motions, Staff filed a "cross-motion" on March 29, 2007, to adjourn the hearing of Taylor Jr. and Sr. and the Taylor Group's motions until the commencement of the hearing in this matter on October 29, 2007 (the "Hearing"), so that the Constitutional Motions would be dealt with at the discretion of the Hearing Panel ("Staff's Motion"). Staff's Motion is described as a motion to adjourn the Constitutional Motions. However, we agree with counsel for Taylor Sr. and Jr. that Staff's Motion is more in the nature of a motion for directions with respect to the scheduling and hearing of the Constitutional Motions.

[9] It is Staff's Motion that is before us.

III. The Constitutional Motions and the Relief Sought

(a) Motion by Taylor Sr. and Jr.

[10] By Notice of Motion dated December 18, 2006, Taylor Sr. and Jr. brought their Constitutional Motion. A Notice of Constitutional Question was also filed, with proof that it was served on the Attorney General for Ontario.

[11] In their Constitutional Motion, Taylor Sr. and Jr. submit, among other things, that section 11 of the Act is void for vagueness. They seek declaratory relief under section 52 of the *Constitution Act, 1982* that section 11 of the Act is of no force and effect. Taylor Sr. and Jr. also seek a declaration that, in the circumstances of this case, the Investigation Order was issued in a manner that infringed their sections 7 and 8 *Charter* rights on the basis that it was granted:

(1) without sufficient foundation;

(2) without full and frank disclosure; and

(3) was sought and obtained for an oblique and improper purpose.

[12] As well, Taylor Sr. and Jr. take issue with, and seek relief as a result of, the manner in which the Investigation Order was utilized by Staff. They allege, among other things, that:

(a) the Investigation Order and the execution thereof, including the subsequent examinations of them and the other persons compelled to give evidence, violated their sections 7 and 8 *Charter* rights and the rules of fundamental and/or natural justice;

(b) the efficacy of the Investigation Order was spent prior to the commencement of the examinations by Staff of Taylor Sr. and Jr. and all persons compelled to give evidence; and

(c) the disclosure and dissemination by Staff of certain materials violated their *Charter* and statutory rights.

[13] Taylor Sr. and Jr. also seek a stay of the section 127 proceedings. In the alternative, they seek: (1) an Order for the pre-hearing examination of a member of Staff or other persons by Taylor Sr. and Jr.; and (ii) an Order prohibiting Staff from using evidence obtained pursuant to the Investigation Order or derived therefrom, and an order that such evidence be destroyed.

(b) The Taylor Group's Motion

[14] The Taylor Group's Notice of Motion, dated December 18, 2006, challenges the constitutionality of section 11 of the Act on grounds similar to that relied upon by Taylor Sr. and Jr. The Taylor Group also alleges that there were violations of section 9 (right against arbitrary detention or imprisonment), section 11 (right to a fair trial) and section 13 (right against self-incrimination) of the *Charter*.

[15] In particular, in their Constitutional Motion, the Taylor Group challenges Staff's conduct, the propriety and validity of the Investigation Order, and their compelled examinations under section 13 of the Act, among others, on the following grounds:

(a) Section 11 of the Act violates the *Charter* on the basis or ground that the word 'expedient" is unconstitutionally vague and undefined;

(b) the Commission granted the Investigation Order, without notice to them:

(i) in circumstances that violated the *Charter* and the statutory rights of Jared Taylor and Colin Taylor under the *Charter*; and

(ii) without proper or sufficient information or grounds, and without sufficient foundation and without Staff making proper or sufficient disclosure;

(c) Staff failed to make full, fair and frank disclosure when Staff sought and obtained the Investigation Order;

(d) Staff sought and obtained the Investigation Order for a collateral and/or improper purpose; and

(e) the Investigation Order and its execution, including Staff's compelled evidence examinations of Jared Taylor and Colin Taylor under section 13 of the Act, violated their *Charter* and statutory rights to fundamental and natural justice.

[16] The Taylor Group requests relief similar to that requested by Taylor Sr. and Jr.

(c) Additional Relief Sought

[17] In their factum and oral submissions, Taylor Sr. and Jr. request that an order be made providing directions with respect to the following matters:

(i) The date upon which Staff would provide its response to the Constitutional Motion;

(ii) The procedure to be adopted for the development of the evidentiary record for their Constitutional Motion; and

(iii) a schedule for the hearing of the Constitutional Motions.

IV. The Issue

[18] The major issue before us is whether the Constitutional Motions brought by the Taylor Group and Taylor Sr. and Jr. ought to be heard at the Hearing, to be dealt with at the discretion of the Hearing Panel, rather than in advance of the Hearing.

V. The Submissions of the Parties

(a) Position of Staff

[19] Staff submits that the Constitutional Motions should not be heard as a pre-hearing matter. Instead it should be heard and determined in the context of the Hearing, by the Hearing Panel. Their argument is summarized as below.

[20] Staff submits that the courts in the criminal, civil and administrative law contexts (including securities regulation) have overwhelmingly held that motions such as the Constitutional Motions ought to be heard in the course of the substantive hearing/trial. The jurisprudence enunciates the following principles:

(i) A complete factual foundation is essential for a proper determination in such circumstances. This requirement is particularly acute in a regulatory setting where the expertise of a specialized tribunal is invaluable in ensuring a complete evidentiary record for any review by the Courts. Staff submits that in this case:

(a) the Commission must hear and weigh all the evidence of Staff, other witnesses and documentary evidence to make findings and fashion remedies in response to allegations of *Charter* breaches, abuse of process, improper or oblique purposes;

(b) The Taylor Group and Taylor Sr. and Jr. "seek to attack and invalidate a core provision of the Act and, in essence, to disable Staff's investigation and enforcement powers." The challenges are made both to the statutory provision itself, as well as to how it was utilized in the circumstances of this case;

(c) The case law states that *Charter* challenges should not be made in a factual vacuum, but rather in the context of a full factual matrix and record; the factual foundation for *Charter* challenges should be complete and not solely based on affidavit evidence where there is likely to be a dispute over the facts;

(d) The general principle that *Charter* challenges require a full factual record is accentuated in the context of an administrative tribunal applying a regulatory scheme. In particular, there is a general duty for administrative tribunals to establish a cogent and complete record. An administrative tribunal does not have the authority to make a general declaration of invalidity under section 52 of the *Constitution Act, 1982*, since only superior courts can make general declarations of invalidity applicable to all Canadians. Accordingly, a decision by a tribunal that a law is unconstitutional is only applicable to the parties over which it has jurisdiction and has no precedential value;

(e) Analogous cases in the securities context support Staff's position; and

(f) *Charter* analysis requires a complex balancing of interests of the individual and society. In assessing a *Charter* challenge, the Commission must decide first, whether there was an infringement of *Charter* rights and second, if there was an infringement, whether it can be justified under section 1 of the *Charter* and, if not, the Commission must consider what is the appropriate *Charter* remedy under section 24. Each step requires the consideration of supporting facts.

(ii) The *Charter* breaches alleged are speculative at this time. A tribunal cannot assess the extent of any prejudice alleged until it crystallizes and the effects are known:

(a) It is unknown whether and to what extent any impugned evidence will be tendered and/or ruled admissible at the Hearing;

(b) It is unknown whether and for what purpose any compelled/ derivative evidence may be used; and

(c) It is unknown how any impugned evidence will fit within the context of Staff's evidence as a whole.

(iii) The remedy sought, being a stay of proceedings, is granted in extremely rare circumstances where an applicant has demonstrated prejudice that will be manifested, perpetuated or aggravated by the continuation of proceedings and no other remedies are capable of removing that prejudice. The Commission must defer the decision to assess the degree and extent of alleged prejudice in the context of the evidence as a whole, particularly where there are significant material facts in dispute.

(b) The Taylor Group

[21] In support of their Constitutional Motion, the Taylor Group filed a 47 page affidavit with 37 exhibits.

[22] The Taylor Group submits that the factual basis for the relief they seek is grounded in the filed affidavit materials and that there are no facts that will be the subject of the section 127 hearing, that are relevant to the issues on their Constitutional Motion. They note that Staff has filed no material responding to the Constitutional Motions (apart from bringing Staff's Motion). The Taylor Group submits therefore that Staff cannot demonstrate that any evidence that may be tendered during the section 127 hearing is necessary for a proper record on their Constitutional Motion.

[23] Further, they submit that the facts and related issues raised in their Constitutional Motion are distinct from the facts and issues that are the subject of the section 127 hearing. The facts and issues underlying the Constitutional Motions relate to Staff's conduct prior to the commencement of this section 127 proceeding, and distinct from the following events that are the subject of the section 127 Hearing.

[24] The Taylor Group submits that Staff's response to the Constitutional Motion and argument on their cross-motion is hypothetical as it is devoid of any facts which address to the Constitutional Motions. They submit that since Staff has not filed any responding material, Staff has not addressed the specific facts nor the specific grounds on which the Constitutional Motion is based.

[25] The Taylor Group further submits that their Constitutional Motion is not speculative as their rights under the *Charter*, and natural justice, have actually been violated.

[26] The Taylor Group argues that adjourning (or deferring) the Constitutional Motion, without a factual foundation to base this decision, would result in a loss of jurisdiction and a further denial of justice, and in particular, a decision that renders substantial aspects of the Constitutional Motion moot.

(c) Taylor Sr. and Jr.

[27] Taylor Sr. and Jr. oppose Staff's Motion on the grounds that they seek to proceed with their Constitutional Motion in a timely and efficient manner that will not interfere with the dates already scheduled for the section 127 hearing.

[28] Further, they submit that the evidence relating to the issues raised in their Constitutional Motion is distinct from the evidence that would be adduced at the Hearing. They submit that, unlike some of the cases referred to by Staff, they are not raising constitutional issues in relation to the very provisions at issue in the main proceeding (which, in this case, include sections 25, 38 and 53 of the Act). They acknowledge that if they were challenging the constitutionality of sections 25, 38 and/or 53 of the Act, there could, be substantial overlap between the evidence relating to the constitutional issues and the allegations at the hearing proper, depending upon the nature of the challenge. They submit that while it could be of assistance to the Panel to hear the evidence regarding the allegations in order to consider the constitutional issues in that circumstance, and in some other cases, such as where the evidence on the motion is interrelated with that anticipated to be heard at the hearing on its merits; this is not such a case.

[29] Taylor Sr. and Jr. argue that the violations of their rights are neither speculative nor prospective. Rather, they are based upon events that have already occurred in the course of the investigation. They seek remedies for these past violations of their rights to avoid the compounding of the violations during the course of the proceeding.

[30] They also submit that Staff's approach would create a real risk that the Hearing would not be completed during the scheduled dates. These Hearing dates were set almost a year in advance and had to accommodate the schedule of the Commission and counsel involved.

VI. Analysis

(a) Preliminary Motions in Commission Hearings

(1) General Observations

[31] At the outset, we find it helpful to make some general observations about the nature and propriety of preliminary, pre-hearing motions made in the context of section 127 proceedings. While proceedings before a specialized administrative tribunal are intended to be more streamlined and less formal than those in the court system, Commission proceedings must be conducted with caution to ensure fairness to the parties before it, and efficiency in the conduct of such proceedings. It is not uncommon for parties to bring pre-hearing motions to a Commission panel in the context of a section 127 proceeding. In our view, some of these motions should be heard and determined as pre-hearing motions, in advance of the hearing on the merits, so as to promote and advance the goals of fairness and efficiency. On the other hand, often such motions do not sufficiently advance those goals to warrant being heard in advance of the substantive hearing, and are best addressed by the panel hearing the merits of the case, at the time of the substantive hearing.

[32] In reviewing prior Commission decisions, decisions of other administrative regulatory tribunals, as well as subsequent appeals and judicial reviews of such decisions, we note the following:

(1) There is a wide variety in the nature, scope and breadth of Commission proceedings, and a great diversity in the outcomes sought and the impacts on the parties. When proceedings are brought to a Commission Hearing Panel, Staff could be seeking a range of protective orders and relief that can affect the ability of the parties to participate in the capital markets. The relatively recent legislative amendments which gave the

Commission the power to impose monetary sanctions and cost orders have increased the severity of possible outcomes to persons named as respondents in section 127 proceedings.

(2) The Commission must ensure its proceedings are fair and that all procedural rights to which respondents are entitled are properly and effectively provided. The manner in which that goal is achieved may depend on the context of each individual proceeding, including the sanctions and outcomes sought, and what is ultimately at stake for the respondents before the Commission.

(3) The Commission is responsible for administering the Act, which has an over-arching mandate and obligation:

(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.

(4) Commission proceedings ought to be transparent, fair, effective and efficient, in furtherance of and in light of fulfilling its statutory mandate and obligations.

(5) As an administrative tribunal, the Commission, and each hearing panel in particular, are "masters of their own procedure". (See *Prassad v. Canada (Minister of Employment & Immigration)*, [1989] 1 S.C.R. 560 at para. 16; and Robert W. Macaulay, Q. C., & James L. H. Sprague, *Hearings Before Administrative Tribunals*, 2nd ed. (Scarborough: Carswell, 2002) at § 9.1. See also section 25.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, which enables administrative tribunals in Ontario, such as the Commission, to adopt their own procedures.) The Commission has broad discretion in such matters, which must be exercised with due regard to all of the circumstances, interests and rights of the parties. All such elements need to be carefully balanced.

(2) The Exercise of Discretion

[33] The essence of Staff's argument is that it is premature, for a number of reasons, to have the Constitutional Motions heard and determined as a preliminary matter, in advance of the Hearing.

[34] In our view, in exercising its discretion as "master of its procedure", the Commission ought to have due regard for all of the circumstances described above, as well as concern for not unduly "judicializing" its processes. While fairness and the procedural rights of the Respondents and affected persons must be ensured, as stated above, administrative proceedings are intended to be less formal and more procedurally flexible than those of the courts. In considering the stage at which motions such as these should be heard and determined by a Commission panel, we believe that it is useful to ask the following questions:

(a) Can the issues raised in the motions be fairly, properly or completely resolved without regard to contested facts and the anticipated evidence that will be presented at the hearing on the merits? In other words, will the evidence relied upon on the motions likely be distinct from, and unique of, the evidence to be tendered at the hearing on the merits?

(b) Is it necessary for a fair hearing that the relief sought in the motions be granted prior to the proceeding on its merits?

(c) Will the resolution of the issues raised in the motions materially advance the resolution of the matter, or materially narrow the issues to be resolved at the hearing on the merits such that it will be efficient and effective to have them resolved in advance of the commencement of the hearing on the merits?

[35] If the answer to any of these questions is "yes", in our view, the Commission should hear the Constitutional Motions as pre-hearing motions, in advance of the Hearing, absent strong reasons to the contrary.

[36] In contrast, if the answer to all of these questions is "no", the Commission should be reluctant to address the motions as pre-hearing motions, absent strong reasons to the contrary.

[37] To take an example, motions relating to Staff's disclosure obligations and motions for particulars, are the types of motions that should be brought and heard well in advance of the substantive hearing on the merits: they raise issues which can be fairly, properly and completely resolved without regard to contested facts and anticipated evidence that will be the subject matter of the hearing. Further, if the relief sought is to be granted at all, it is necessary for fairness to the affected Respondents that the relief be granted prior to the commencement of the hearing on its merits. There may be other motions that, if heard in advance, could materially advance the matter or narrow the issues to be resolved on the hearing on the merits.

[38] Of course, we recognize that there can be no "hard and fast" rules that govern the exercise of a Commission panel's discretion. Each case is unique, and a Commission panel's discretion should not be encumbered by generalities. We do, however, suggest this framework may assist the task of balancing the interests of fairness and administrative efficiencies in the face of pre-hearing motions.

(b) *Charter* and Similar Challenges as Preliminary Motions

(1) A Complete Factual Foundation is Generally Desirable

[39] The case law referred to us by Staff supports the view that in a civil law context there is a strong trend in favour of hearing constitutional motions at the trial itself, rather than in advance, because a proper factual foundation is required for the assessment of the constitutionality of a statutory provision.

[40] The Supreme Court has held that *Charter* challenges should be decided within the context of a full factual matrix and record: "*Charter* challenges should not and must not be made in a factual vacuum" (*MacKay v. Manitoba*, [1989] 2 S.C.R. 357, ("*MacKay*") at para. 9).

[41] In *MacKay*, the Supreme Court listed a number of reasons to support hearing a *Charter* challenge in the context of a full factual record. First, *Charter* challenges will frequently involve concepts and principles that are of fundamental importance to Canadian society (*MacKay*, *supra* at para. 8). Since a *Charter* challenge can raise important issues that have an impact on Canadian society as a whole, the Supreme Court emphasized that, "courts have every right to expect and indeed to insist upon the careful preparation and presentation of a factual basis in most *Charter* cases" (*MacKay*, supra at para. 8).

[42] These observations have been followed and applied by the Ontario Court of Appeal, which stated in *Danson v. Ontario* (1987), 41 D.L.R. (4th) 129 (Ont. C.A.) ("*Danson CA*") that if a constitutional challenge:

> […] should fail for lack of a factual underpinning, the loss may not be his alone, but could well prejudice the rights of those who follow […] the court might on this sketchy record, feel constrained to make some sweeping generality which would later appear unwise. (*Danson CA*, *supra* at 138)

[43] Due to the potential impact of the resolution of a constitutional issue, courts have found it to be desirable to hear a constitutional challenge in the context of all relevant facts and circumstances.

[44] When a *Charter* challenge relates to the effect of a statutory provision, courts have observed that it is necessary to consider all the facts that give rise to an alleged violation of the *Charter* before rendering a decision. The Supreme Court has stated:

> A factual foundation is of fundamental importance on this appeal. It is not the purpose of the legislation which is said to infringe the *Charter* but its effects. *If the deleterious effects are not established there can be no Charter violation and no case has been made out.* Thus the absence of a factual base is not just a technicality that could be overlooked, but rather it is a flaw that is fatal to the appellants' position [Emphasis added] (*MacKay*, *supra* at para. 20).

[45] The importance of a factual basis is, in our view, self-evident from the analysis required by the *Charter* itself. A *Charter* analysis involves following multiple steps and each step requires proof with the appropriate factual underpinning. As indicated in *R. v. Oakes*, [1986] 1 S.C.R. 103 ("*Oakes*"), a *Charter* analysis starts with a determination whether a right guaranteed by the *Charter* has been violated. Then, if it is found that a *Charter* right has indeed been infringed, a section 1 *Charter* analysis is carried out to determine whether the *Charter* violation is justified.

[46] Section 1 of the *Charter* has two functions: (1) it promotes and reiterates the constitutional guarantees of the rights and freedoms listed in the *Charter*'s provisions; and (2) it may be relied on to justify limitations to *Charter* rights and freedoms (*Oakes*, *supra* at para. 66). In determining whether a breach of the *Charter* is justified, decision makers must be "guided by the values and principles essential to a free and democratic society" (*Oakes*, *supra* at para. 67). This requires balancing competing interests. In this balancing process, evidence is required to demonstrate whether a *Charter* violation can be justified in a free and democratic society. Specifically, the Supreme Court has said that:

> […] *evidence* is required in order to prove the constituent elements of a s. 1 inquiry and […] it should be *cogent and persuasive* and make clear to the court the consequences of imposing or not imposing a limit [to *Charter* rights] [Emphasis added] (*Oakes*, *supra* at para. 72).

[47] A complete record of evidence is needed in the context of a section 1 *Charter* analysis. Moreover, in order to properly assess a *Charter* challenge and balance competing interests, the *Charter* analysis must be considered within the context in

which the claim arises. Accordingly, the challenged provisions of the Act must be considered within the Act's regulatory scheme, and the specific facts of the case in which the challenge has arisen. The Supreme Court has emphasized that:

> It is now clear that the *Charter* is to be interpreted in light of the context in which the claim arises. Context is relevant both with respect to the delineation of the meaning and scope of *Charter* rights, as well as to the determination of the balance to be struck between individual rights and the interests of society.
>
> A contextual approach is particularly appropriate in the present case to take account of the regulatory nature of the offence and its place within a larger scheme of public welfare legislation. This approach requires that the rights asserted by the appellant be considered in light of the regulatory context in which the claim is situated, acknowledging that a *Charter* right may have different scope and implications in a regulatory context than in a truly criminal one (*R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154 at paras. 149 and 150).

[48] Further, in *Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)*, [1991] 2 S.C.R. 5 ("*Cuddy Chicks*"), the Supreme Court affirmed that "in the case of *Charter* matters which arise in a particular regulatory context, the ability of the decision maker to analyze competing policy concerns is critical" (*Cuddy Chicks*, *supra* at para. 16). A well informed assessment of *Charter* rights in a particular regulatory context is best accomplished based on a complete factual record. Therefore, *Charter* rights need to be evaluated in light of the factual circumstances and this can be most effectively done during the hearing on the merits.

[49] In *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110 ("*Metropolitan Stores*"), the Supreme Court has also recognized that there are disadvantages to hearing a constitutional challenge during the interlocutory stage of a proceeding. In particular, the Supreme Court emphasized that:

> Most of the difficulties encountered by a trial judge at the interlocutory stage, which are raised above, apply not only in *Charter* cases but also in other constitutional challenges of a law. I therefore fully agree with what Professor R. J. Sharpe wrote in Injunctions and Specific Performance, at p. 177, *in particular with respect to constitutional cases that "the courts have sensibly paid heed to the fact that at the interlocutory stage they cannot fully explore the merits of the plaintiff's case". At this stage, even in cases where the plaintiff has a serious question to be tried or even a prima facie case, the court is generally much too uncertain as to the facts and the law to be in a position to decide the merits* [Emphasis added] (*Metropolitan Stores*, *supra* at para. 50).

[50] We agree with Staff that the case law supports the recognition of a "[…] general rule that *Charter* issues should be decided only after a proper record is put before the decision maker" (*DeVries v. British Columbia (Attorney General)*, [2006] B.C.J. No. 3226 (B.C.C.A.) (QL) ("*DeVries*") at para. 7).

(2) *Charter* Challenges in Administrative Law Proceedings

(i) General Observations

[51] Staff also referred us to relevant case law that describes the appropriate process for a *Charter* challenge in an administrative law context. In particular, Staff asserts that administrative tribunals have a general duty to establish a cogent and complete record of proceedings, which is of invaluable assistance to an appeal court in *Charter* disputes.

[52] Indeed, there are a number of reasons to support this submission. In an administrative law context, the informed view of a specialized tribunal possessing knowledge of relevant facts and an ability to compile a cogent record is extremely helpful in *Charter* disputes. For example:

> In the case of *Charter* matters which arise in a particular regulatory context, the ability of the decision maker to analyze competing policy concerns is critical. […] The informed view of the [administrative tribunal], as manifested in a sensitivity to relevant facts and *an ability to compile a cogent record, is also of invaluable assistance* [Emphasis added] (*Cuddy Chicks*, *supra* at para. 16).

[53] Furthermore, in the context of an appeal of a *Charter* challenge heard before an administrative tribunal, it is important to have a complete record including all the relevant facts, in case the decision is appealed. As explained by the Supreme Court in *Nova Scotia (Worker's Compensation Board) v. Martin*, [2003] 2 S.C.R. 504:

> […] the factual findings and record compiled by an administrative tribunal, as well as its informed and expert view of the various issues raised by a constitutional challenge, will often be *invaluable to a reviewing court* [Emphasis added] (*Nova Scotia (Worker's Compensation Board) v. Martin*, *supra* at para. 30).

(ii) Specific Cases in a Securities Law Context

[54] Staff also referred us to decisions in a securities law context, supporting the proposition that *Charter* challenges are best heard during the hearing on the merits in order to ensure that a complete factual record is available. This was the case in *Smolensky v. British Columbia Securities Commission* (2004), 236 D.L.R. (4th) 262 (B.C.C.A.) ("*Smolensky BCCA*"); leave to appeal to the S.C.C. refused: [2004] S.C.C.A. No. 274.

[55] In *Smolensky BCCA*, the respondent challenged the constitutionality of section 148 of the British Columbia Securities Act, R.S.B.C. 1996, c. 418 (the "BCSA"). In particular, the respondent alleged that section 148 of the BCSA violated sections 2(b), 7, 8 and 11(d) of the *Charter*. The British Columbia Court of Appeal held that it was too premature to assess whether section 148 of the BCSA violated the *Charter* (*Smolensky BCCA*, *supra* at para. 26). According to the British Columbia Court of Appeal:

> Before this Court states a definitive opinion on *Charter* issues, *the Commission should have the opportunity to address those issues on the facts of this case*, including any specific restrictions of access to information and disclosure asserted by the appellant. I have concluded that the other grounds of relief raised by the appellant are issues that also should be dismissed as not timely. They are *not appropriate for judicial review in the absence of a complete record of facts* and deliberation before the Commission […] [Emphasis added] (*Smolensky BCCA*, *supra* at para. 6).

[56] Thus, the British Columbia Court of Appeal declined to consider the constitutional question until the British Columbia Securities Commission had the opportunity to address the question and have the opportunity to create a full record for an appeal, if one was taken (*Smolensky BCCA*, *supra* at para. 26). The British Columbia Court of Appeal took the position that without a full record of the relevant facts, the effect of section 148 of the BCSA was unknown and the constitutional question was premature (*Smolensky BCCA*, *supra* at para. 24). As a result, the British Columbia Securities Commission had initial jurisdiction over the constitutional issue and was best suited to create a full and cogent record to deal with that issue.

[57] After the decision was rendered in *Smolensky BCCA*, the matter came before the British Columbia Securities Commission in *Re Smolensky* (2006), BCSECCOM 45 ("*Smolensky BCSC*"). Smolensky brought an application before the British Columbia Securities Commission to challenge the constitutionality of subsection 148(1) of the BCSA before the hearing on the merits of the matter. The British Columbia Securities Commission panel cited *MacKay* as authority to require a full factual record for the determination of a constitutional challenge, and the panel found that they were in the same position as the British Columbia Court of Appeal in *Smolensky BCCA* because no factual context was presented (*Smolensky BCSC*, *supra* at para. 72). The panel of the British Columbia Securities Commission explained that:

> Until a hearing is held on the merits, the Commission will have no factual background upon which to assess the *Charter* issues. For example, at this point we do not know:
>
> - the disclosure that the Executive Director has made to Smolensky
> - the evidence, including witnesses, that the Executive Director intends to use to try to prove the allegations in the notice of hearing
> - the evidence, including witnesses, that Smolensky might reasonably require to try to refute the evidence of the Executive Director
> - Smolensky's actual access to witnesses
>
> Only with this information, and doubtless other information as well, will the Hearing Panel be in a position to determine whether, on the facts of this case (as required by *MacKay*) Smolensky's *Charter* rights have been violated.
>
> In our opinion it is premature to make a ruling on the *Charter*-based grounds of Smolensky's application, and we therefore dismiss them (*Smolensky BCSC*, *supra* at paras. 73 to 75).

(c) The Application of These Principles to the Constitutional Motions

[58] The Taylor Group and Taylor Sr. and Jr. contend that the Constitutional Motions can be heard prior to the hearing on the merits and that the evidence contained in the affidavit materials filed is sufficient to enable the Commission to resolve their motions.

[59] As stated by the Supreme Court of Canada:

> [there] may be rare cases where the question of constitutionality will present itself as a simple question of law alone which can be finally settled by a motion judge (*Metropolitan Stores*, *supra* at para. 49).

[60] In this case, we are not convinced that the Constitutional Motions are based on a simple question of law alone. Here, as discussed above, the Taylor Group and Taylor Sr. and Jr. challenge not only the constitutionality of the relevant provision, but the actions of Staff acting pursuant to it, and their effects.

[61] We find that the Taylor Group and Taylor Sr. and Jr. need to demonstrate if and how the Investigation Order actually violated their *Charter* rights. We doubt that this can be accomplished in a factual vacuum, and therefore, the Constitutional Motions should be assessed and determined in the whole context of this matter.

[62] As established in *Danson v. Ontario (Attorney General)*, [1990] 2 S.C.R. 1086 ("*Danson SCC*"):

> […] any *Charter* challenge based upon allegations of the unconstitutional effects of impugned legislation must be accompanied by admissible evidence of the alleged facts. In the absence of such evidence, the courts are left to proceed in a vacuum, which, in constitutional cases as in nature, has always been abhorred (*Danson SCC*, *supra* at para. 31).

[63] We are of the view that, in order to determine the allegations made in the Constitutional Motions, there must be a full factual record in order to assess whether and how rights have been violated. This reasoning was also followed by the British Columbia Court of Appeal in *DeVries*. In that case, it was argued that section 2(b) of the *Charter* was violated by the nature of the allegations in the Notice of Hearing of the British Columbia Securities Commission. The British Columbia Court of Appeal held that there is a "[…] general rule that *Charter* issues should be decided only after a proper record is put before the decision-maker" (*DeVries*, *supra* at para. 7). The British Columbia Court of Appeal also reiterated that a factual basis was required to conduct the requisite *Charter* analysis, and as a result, adjourned the application so that the constitutional issues could be heard at the hearing in the presence of relevant facts (*DeVries*, *supra* at para. 12). The Taylor Group has failed to demonstrate a strong case justifying departure from this general rule.

[64] Staff asserts that the constitutional violations alleged by the Taylor Group and Taylor Sr. and Jr. in this case are not novel, and thus, we are not in an exceptional situation which justifies that a *Charter* challenge should be heard outside of a full factual basis. We agree with this submission and we note that *Charter* violations concerning the investigatory provisions of the Act have previously been considered and the constitutionality of such provisions have been upheld by the Courts (In particular, see *British Columbia (Securities Commission) v. Stallwood et al.*, (1995), 126 D.L.R. (4th) 89 (B.C.S.C.); *BCSC v. Branch*, (1990), 68 D.L.R. (4th) 347 (B.C.S.C.); *Barry v. Alberta Securities Commission*, (1986), 25 D.L.R. (4th) 730 (Alta. C.A.); *Re Malartic Hygrade Gold Mines and Ontario Securities Commission*, (1986), 27 D.L.R. (4th) 112 (Ont. Div. Ct.), leave to appeal refused (1986), 27 D.L.R. (4th) 112; and *Gatti v. Ontario Securities Commission*, (March 27, 2001: unreported) Ontario Securities Commission).

[65] Further, the answer to the question of the appropriate remedy in the event that a *Charter* violation is found, also requires a proper factual context which, in our view, can only be grounded in the specific facts of this case.

[66] In their written and oral submissions, the Taylor Group and Taylor Sr. and Jr. seek remedies under section 24 of the *Charter*. Section 24 of the *Charter* provides:

> **24.** (1) Anyone whose rights or freedoms, as guaranteed by this *Charter*, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.
>
> (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this *Charter*, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

[67] Apart from the question of whether this section is applicable to the Commission, it is clear from the language of subsection 24(1) of the *Charter* that in order for a remedy under section 24 to be available, a *Charter* breach must be found. In other words, section 24 of the *Charter* cannot apply in the absence of a *Charter* violation. Remedies under section 24 of the *Charter* are not available where the deprivation of the *Charter* right is merely speculative.

[68] While courts have held that it is possible to get relief for a prospective *Charter* violation in circumstances where the claimant can establish that there is a "sufficiently serious risk" or a "high degree of probability" that an alleged *Charter* violation will occur, these types of situations are rare. In such a case, the onus of proving a prospective *Charter* breach is a high one; the

decision maker must be satisfied that if relief under section 24 of the *Charter* is not granted, an individual's *Charter* rights will be prejudiced (*Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mines Tragedy)*, [1995] 2 S.C.R. 97 ("*Phillips*") at para. 110).

[69] The question of whether an individual's *Charter* rights have been, or will be violated cannot be made in the abstract. This must be demonstrated by the factual circumstances. In particular, all the surrounding circumstances need to be taken into account "including, for example, the nature of the right said to be threatened and the extent to which the anticipated harm is susceptible of proof" (*Phillips*, *supra* at para. 110). Again, this demonstrates that *Charter* issues are best dealt with in the presence of all the relevant facts in the context of a hearing on the merits.

[70] At this time, we view the Constitutional Motions as premature, since we have no evidence before us as to what use has been made by Staff of the impugned evidence.

[71] Further, at this point, based on the materials before us, it is unclear whether the impugned evidence will be sought to be used during the Hearing, and it is also unclear exactly how this evidence will be used. Since the use and relevance of the impugned evidence will only be known at a later stage, during the Hearing, it is premature to assess whether the *Charter* rights have been or will be engaged. We find that we are in a similar situation as in *British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 3 ("*Branch SCC*"), where the "true purpose of the evidence will […] not be apparent until the latter stage" (*Branch SCC*, *supra* at para. 10). Therefore, in our view, the *Charter* violations alleged by the Taylor Group and Taylor Sr. and Jr. have not yet have crystallized.

(d) Other Good Reasons to Defer the Motions to the Hearing

[72] A further factor which points toward deferring the motions until the Hearing, is the type of remedy sought by the Taylor Group and Taylor Sr. and Jr. In this case, both parties seek a stay of proceedings as primary relief.

[73] Staff contends that a stay is only granted in extremely rare circumstances and a stay is not appropriate in this case. In support of their position, Staff referred us to the case law dealing with the criteria for granting a stay.

[74] According to the case law:

> […] a stay of proceedings will only be appropriate when two criteria are met:
>
> (1) the prejudice caused by the abuse in question will be manifested, perpetuated or aggravated through the conduct of the trial, or by its outcome; and
>
> (2) no other remedy is reasonably capable of removing that prejudice. (*R. v. Regan*, [2002] 1 S.C.R. 297 at para. 54)

[75] In the case before us, we cannot determine whether this test is satisfied at this time, in the absence of a full record. We agree with Staff that the extent of any prejudice arising from the use of the compelled evidence can only be assessed within the context of the evidence as a whole as it relates to each respondent. Secondly, the Taylor Group and Taylor Sr. and Jr. have not convinced us that there are no other appropriate remedies available. The Hearing Panel will need to assess Staff's submission that there exist other remedies less drastic than a stay which are capable of removing any prejudice, for example, the exclusion of evidence.

[76] In addition, before a stay can be granted, it is necessary to balance the interests of granting a stay against the interest that society has in holding a hearing to have a final decision on the merits (*R. v. Regan*, *supra* at para. 57; and *Regina v. E.D.* (1990) 57 C.C.C. (3d) 151 at para. 23). As previously discussed, balancing interests requires a complete factual record and this can be best accomplished in the context of a hearing on the merits. This is also relevant when balancing interests in the context of an application for a stay. The Ontario Court of Appeal emphasized that a motion for a stay should normally be decided after the trial is completed once all the relevant evidence has been adduced (*R. v. Dikah*, (1994) 18 O.R. (3d) 302 (C.A.) at para. 34. See also *Regina v. François*, (1993), 15 O.R. (3d) 627 (C.A.) at 629).

[77] Staff submits that the decision to rule on a stay application or to reserve until the end of a case is discretionary and should be exercised having regard to two policy considerations:

> (1) Proceedings on the merits should not be fragmented by interlocutory proceedings; and
>
> (2) Adjudication of constitutional challenges without a factual foundation should be discouraged (*R. v. DeSousa*, [1992] 2 S.C.R. 944 at para. 17).

[78] The appropriateness of a stay of proceedings depends on the effect of the conduct amounting to abuse of process or other prejudice on the fairness of the trial. We accept Staff's submission that this is best assessed in the context of a hearing and as a result, it is preferable to reserve a decision regarding a stay until the hearing on the merits. This is because the measurement of the extent of the prejudice often cannot be done without considering all the relevant evidence. As explained by the Supreme Court of Canada in *R. v. La*, [1997] 2 S.C.R. 680:

> The appropriateness of a stay of proceedings depends upon the effect of the conduct amounting to an abuse of process or other prejudice on the fairness of the trial. This is often best assessed in the context of the trial as it unfolds. Accordingly, the trial judge has a discretion as to whether to rule on the application for a stay immediately or after hearing some or all of the evidence. Unless it is clear that no other course of action will cure the prejudice that is occasioned by the conduct giving rise to the abuse, it will usually be preferable to reserve on the application. This will enable the judge to assess the degree of prejudice and as well to determine whether measures to minimize the prejudice have borne fruit (*R. v. La*, *supra* at para. 27).

[79] Counsel for the Taylor Sr. and Jr. argue that in some cases, it is not desirable to put off a decision regarding a stay until the trial stage of a proceeding. In support of their position, they rely on a passage from *R. v. DeSousa* which states:

> In some cases the interests of justice necessitate an immediate decision. Examples of such necessitous circumstances include cases in which the trial court itself is implicated in a constitutional violation as in R. v. Rahey, [1987] 1 S.C.R. 588, or where substantial on-going constitutional violations require immediate attention [page 955] as in R. v. Gamble, [1988] 2 S.C.R. 595. Moreover, in some cases it will save time to decide constitutional questions before proceeding to trial on the evidence. An apparently meritorious *Charter* challenge of the law under which the accused is charged which is not dependent on facts to be elicited during the trial may come within this exception to the general rule. (See Manitoba (Attorney General) v. Metropolitan Stores Ltd., [1987] 1 S.C.R. 110, at p. 133.) This applies with added force when the trial is expected to be of considerable duration. See, for example, R. v. Nova Scotia Pharmaceutical Society, [1992] 2 S.C.R. 606 (*R. v. DeSousa*, *supra* at para. 17).

[80] We accept that exceptions exist to the rule that it is preferable to reserve a decision regarding a stay until the hearing stage; however, we find that the Taylor Group and Taylor Sr. and Jr. have failed to demonstrate that this exception applies in this case. First, we are not dealing with a situation in which the Commission itself or any member of the Hearing Panel is implicated in a constitutional violation. At this point in time, the *Charter* violations, or at least the effects of the impugned actions, are speculative. Secondly, in our opinion, deciding the Constitutional Motions in advance of the hearing on the merits in this matter will not save time. Deciding the constitutional issues in advance of the hearing on the merits can exacerbate the time it will take to complete a proceeding. As observed in *Re Belteco Holdings Inc.* (1997), 20 O.S.C.B. 2921, at paragraph 1.10: often "preliminary motions can take on a life of their own", especially when the parties seek to challenge these motion decisions in the courts, the hearing on the merits cannot continue until the interlocutory matters run their course. The result can be a substantial delay in having a Commission matter heard on the merits. In our view, that result is inconsistent with the ability of the Commission to satisfy its public interest mandate in a timely manner. For these reasons, we do not accept the submissions of Taylor Sr. and Jr. The Commission has generally taken the position in the past that stays are an extraordinary remedy and a Panel should wait until the end of the hearing to make a determination regarding a stay (See *Re Belteco Holdings Inc.*, *supra* and in *Re Glendale Securities Inc.* (1996), 19 O.S.C.B. 3874).

[81] In conclusion, we find that the Constitutional Motions should be dealt with in the course of the hearing on the merits because a determination of the constitutional challenges in advance of the Hearing would deprive the Commission of the complete factual basis that is necessary for a proper consideration of the alleged *Charter* violations.

(e) Other Issues

(1) Staff's Recommendations of a "Voir Dire"

[82] Staff takes the position that it is inappropriate to rely on affidavit evidence on the Constitutional Motions, and submits that only *viva voce* evidence be used. We do not necessarily agree. While we agree that affidavit evidence filed in advance of and in isolation from the evidence tendered at the substantive hearing is unduly limiting, the Hearing Panel has discretion to address how best to deal with the Constitutional Motions within the context of the substantive hearing; these reasons should in no way be seen as limiting or influencing the exercise of that discretion.

(2) The Request for Disclosure of Staff's Position

[83] The Taylor Group and Taylor Sr. and Jr., both in their written submissions and in their oral presentations, express concerns that they have not received a response from Staff to the Constitutional Motions. In light of Staff's Motion, by which Staff requested that the Constitutional Motions be deferred until the Hearing, a lack of response is not surprising. Further, Staff asserts that Staff is not obliged to provide the Respondents with a "road map" of their case on the merits. They suggest that this

includes their argument in response to the Constitutional Motions, which they see as a defence to the substantive allegations and therefore as premature.

[84] We agree that Staff is not required to provide a "road map" of their argument on the merits (*Re Belteco Holdings Inc.* 20 O.S.C.B. 1333 at paras. 26 to 28). However, we note that the Respondents have the right to know the case that they have to meet and that Staff has an obligation to disclose all information and materials which are relevant to the matters at issue in this proceeding. We are of the view that the articulation and communication of Staff's position in response to the Constitutional Motions is certainly consistent with these general obligations and furthers the overarching principle that Commission proceedings be fair and efficient. While we are not, at this time, prepared to determine and direct the appropriate form or extent of that disclosure, we do request and expect that Staff consider and determine its position on the Constitutional Motions, what facts and evidence, if any, they intend to rely upon to support that position and what evidence compelled pursuant to section 11 it intends to rely upon at the Hearing. Staff should advise counsel for the Respondents accordingly.

[85] This information need not be formally presented – we think it could be sufficient that it be conveyed through informal correspondence, such as a letter, or even orally in a face-to-face meeting. But we expect Staff to take steps to advise counsel for the Respondents of these matters. Further, we ask Staff to advise counsel for the Respondents which Staff members they intend to call as witnesses at the Hearing.

[86] We are of the view that if this information is received by the Respondents' counsel well in advance of the Hearing, they will be able to assess what further evidence they feel is required in furtherance of the Constitutional Motions. We anticipate that, with the disclosure of this information, some of the issues raised in the Constitutional Motions will be less "hypothetical" and all parties can be better prepared for the Hearing.

[87] In the circumstances of this case, since the Hearing date is set to commence on October 29, 2007, we feel that 90 days prior to that date (i.e. by July 27, 2007) is a reasonable time by which Staff should make such disclosure to the Respondents. We ask that Staff communicate its position on these matters to the parties by that date.

[88] We note that the Particulars Motion remains outstanding. We would expect, and request, that if the issues raised by the Particulars Motion, and the information described above, are not resolved amongst counsel, the Particulars Motion be scheduled and heard well in advice of the October hearing dates, and any matters arising from these reasons be addressed at that time.

(3) Scheduling Concerns

[89] Counsel for Taylor Sr. and Jr. emphasized the concern that a deferral of the Constitutional Motions would risk a loss in valuable hearing days, set so far in advance. We agree that when the Commission sets hearing dates for a hearing, (in this case six weeks), all parties are expected to make every effort to maintain those dates. To accommodate this concern, we offer to add three days in October to the outset of the Hearing, in order to proceed with any motions, or at least, for the Hearing Panel to receive submissions and consider the most effective means through which to deal with the Constitutional Motions and any other outstanding or contentious matter. We ask that this be coordinated through the Office of the Secretary, who will contact counsel.

(4) Confidentiality Issues

[90] The parties point out that some of the matters addressed in these reasons may raise confidentiality issues. As a result, these reasons are released at this stage on a confidential basis. This Commission Panel undertook to seek submissions from the parties prior to the public release of these Reasons, and we shall do so. We ask the parties to make arrangements with the Office of the Secretary of the Commission to address this issue.

VII. Conclusion

[91] For the reasons set out above, we are not satisfied that the Constitutional Motions should or can properly be resolved by this Panel, or any other Panel, in the absence of a complete and cogent factual record. We note the seriousness of the allegations made in the Constitutional Motions and the nature of the remedies sought.

[92] At the same time, we are sensitive to the rights of the Respondents to "have their day in court" and to assert whatever response to Staff's allegations that are available to them. Respondents should have the right to determine how best to pursue those defences, so long as they do not unduly interfere with the ability of the Commission to accomplish its mandate as set out in the Act.

[93] We believe that the Constitutional Motions are premature because:

(i) It is unknown at this stage whether and to what extent any impugned evidence will be sought to be tendered and/or ruled admissible at the hearing; and

(ii) It is unclear whether and for what purpose any impugned evidence will fit within the context of Staff's evidence as a whole.

[94] This is not an exceptional case justifying the hearing of the Constitutional Motions in advance of the Hearing. Similar constitutional challenges of analogous provisions of securities legislation have been denied by the courts. Indeed, the courts in criminal, civil and administrative law contexts (including securities regulation) have overwhelmingly held that such motions are to be heard within the context of the hearing/trial on the merits.

[95] We are also mindful that proceeding on the basis of affidavit evidence alone as proposed by the Taylor Group and Taylor Sr. and Jr., without a complete factual record, may lead to disputes and further interlocutory motions. To be clear, we do not say that it would be inappropriate to rely on affidavit evidence to determine the Constitutional Motions. However, we are neither prepared nor able, at this time, to find that it is sufficient as a sole basis of evidence, and we leave the ultimate determination of this issue to the Hearing Panel.

[96] For all of these reasons when we ask ourselves the three questions described at paragraph 34 above, we answer "no" to each of them. In our view:

(a) the issues raised in the Constitutional Motions cannot be fairly, properly or completely resolved without regard to contested facts and anticipated evidence that will be the subject of the hearing on the merits;

(b) it is not necessary for fairness to the Respondents that the relief sought in the Constitutional Motions be granted prior to the commencement of the hearing on the merits; and

(c) the resolution of the issues raised by the Constitutional Motions will not materially advance the resolution of this matter, or narrow the issues to be resolved at the hearing on the merits.

[97] We conclude that a determination of the Constitutional Motions in advance of the hearing on the merits would be inappropriate in these circumstances.

[98] Accordingly, we order that the Constitutional Motions shall be heard as part of the hearing on the merits, to be dealt with at the discretion of the Hearing Panel.

[99] In light of the particular circumstances of this motion, we request that no later than 90 days prior to the proposed commencement of the Hearing (i.e. no later than July 27, 2007), Staff counsel advise the Respondents' counsel of its position on the Constitutional Motions, as well as what evidence it intends to rely upon to support that position, the evidence compelled pursuant to section 11 that it intends to rely upon at the Hearing, and a list of Staff members that it intends to call as witnesses. Further we ask Staff to advise the Respondents within that time frame.

[100] We also request that the Taylor Group (or any other Respondent) take steps to schedule the Particulars Motions, if unresolved, and any other motion deemed necessary to address issues remaining unresolved from these reasons, no later than 60 days prior to the commencement of the Hearing (i.e. no later than August 29, 2007).

DATED at Toronto this 18th day of May, 2007.

"Lawrence E. Ritchie"
Lawrence E. Ritchie

"Wendell S. Wigle"
Wendell S. Wigle

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

3.1.2 A, B, C, D, E, F, G and H

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

AND

IN THE MATTER OF
A, B, C, D, E, F, G and H

REDACTED REASONS AND DECISION MADE PURSUANT TO
THE CONFIDENTIAL REASONS AND DECISION
REGARDING THE REQUEST FOR REDACTION
[Editor's Note: Made public on September 8, 2010.]

In Camera Hearing:	April 12, 2007		
Panel:	Lawrence E. Ritchie	–	Vice-Chair (Chair of the Panel)
	James E. A. Turner	–	Vice-Chair
	Wendell S. Wigle, Q.C.	–	Commissioner
Counsel:	Anne C. Sonnen Sean Horgan	–	For Staff of the Ontario Securities Commission
	Peter Copeland	–	For D and E
	Fred Platt	–	For F, G, and H
	Steven Sofer James Camp	–	For C
	David Hausman	–	For the Liquidation Trustee of A

NOTE

Following a cross-motion brought by Staff in response to Constitutional Motions brought by X and Y, an *in camera* hearing was held on April 12, 2007.

The Commission issued its Reasons and Decision on a confidential basis on May 18, 2007.

By letter dated June 14, 2007, the Secretary to the Commission requested, on behalf of the Panel, that the parties file submissions regarding confidentiality and the need for redaction of the Confidential Reasons and Decision of May 18, 2007.

The parties filed written submissions on June 21 and 22, 2007.

We issued Confidential Reasons and Decision Regarding the Request for Redaction on July 18, 2007. Based on these reasons, we have issued these Redacted Reasons and Decision Made Pursuant to the Confidential Reasons and Decision Regarding the Request for Redaction on July 18, 2007.

The unredacted versions of both the Confidential Reasons and Decision, dated May 18, 2007 and the Confidential Reasons and Decision Regarding the Request for Redaction, will be available to the public on the day scheduled for the commencement of the Hearing.

REDACTED REASONS AND DECISION MADE PURSUANT TO THE CONFIDENTIAL REASONS AND DECISION REGARDING THE REQUEST FOR REDACTION

I. Introduction

[1] On […], the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in connection with a Statement of Allegations delivered by Staff of the Commission ("Staff") on that day. The Notice names the following as Respondents: A, B, C, D, E, F, G and H (collectively, "the Respondents"). Staff alleges that the Respondents violated sections 25, 38 and 53 of the Act. An Amended Notice of Hearing was issued by the Commission on […].

[2] By Order dated […], on consent of all parties, the Commission ordered the hearing on the merits to commence on […], to proceed over the following six weeks.

[3] According to Staff's Statement of Allegations, the substantive proceeding relates to activities alleged to have taken place from […].

II. Status of Pending Motions

[4] At this stage of the proceedings, there are a number of motions pending:

(a) a motion filed by Staff, as well as one by the Trustee of A (the "Trustee"), relating to the use of evidence obtained pursuant to an investigation order in A's U.S. bankruptcy proceedings (the "Disclosure Motions");

(b) a motion for particulars (the "Particulars Motion") filed by F, G and H (collectively, "Y"); and

(c) two motions, one brought by D and E (collectively "X"), and one brought by Y (collectively X and Y are referred to as the "Moving Respondents"), relating to the propriety and legality of certain statutory investigation provisions contained in the Act, and their use in this case (collectively the "Constitutional Motions").

[5] None of these motions have been scheduled. With respect to the Disclosure Motions, we were advised by counsel for both Staff and the Trustee that these motions will not be pursued in advance of the resolution of the Constitutional Motions.

[6] By the Particulars Motion, Y seeks particulars of alleged facts and positions asserted in the Statement of Allegations. The Particulars Motion has been adjourned *sine die*.

[7] As described below, the Constitutional Motions challenge both the constitutionality of section 11 of the Act, as well as the manner and basis upon which an investigation order issued pursuant to that section (the "Investigation Order") was obtained and used in the circumstances of this Proceeding. While they are described as the "Constitutional Motions", the Moving Respondents also rely on principles of "fundamental and/or natural justice", in addition to *Charter* protections (*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the "*Charter*")) as described below.

[8] In response to these Constitutional Motions, Staff filed a "cross-motion" on […], to adjourn the hearing of the Moving Respondents' motions until the commencement of the hearing in this matter on […] (the "Hearing"), so that the Constitutional Motions would be dealt with at the discretion of the Hearing Panel ("Staff's Motion"). Staff's Motion is described as a motion to adjourn the Constitutional Motions. However, we agree with counsel for X that Staff's Motion is more in the nature of a motion for directions with respect to the scheduling and hearing of the Constitutional Motions.

[9] It is Staff's Motion that is before us.

III. The Constitutional Motions and the Relief Sought

(a) Motion by X

[10] By Notice of Motion dated […], X brought its Constitutional Motion. A Notice of Constitutional Question was also filed, with proof that it was served on the Attorney General for Ontario.

[11] In its Constitutional Motion, X submits, among other things, that section 11 of the Act is void for vagueness. It seeks declaratory relief under section 52 of the *Constitution Act, 1982* that section 11 of the Act is of no force and effect. X also seeks a declaration that, in the circumstances of this case, the Investigation Order was issued in a manner that infringed its sections 7 and 8 *Charter* rights on the basis that it was granted:

(1) without sufficient foundation;

(2) without full and frank disclosure; and

(3) was sought and obtained for an oblique and improper purpose.

[12] As well, X takes issue with, and seeks relief as a result of, the manner in which the Investigation Order was utilized by Staff. X alleges, among other things, that:

(a) the Investigation Order and the execution thereof, including the subsequent examinations of them and the other persons compelled to give evidence, violated its sections 7 and 8 *Charter* rights and the rules of fundamental and/or natural justice;

(b) the efficacy of the Investigation Order was spent prior to the commencement of the examinations by Staff of X and all persons compelled to give evidence; and

(c) the disclosure and dissemination by Staff of certain materials violated its *Charter* and statutory rights.

[13] X also seeks a stay of the section 127 proceedings. In the alternative, X seeks: (1) an Order for the pre-hearing examination of a member of Staff or other persons by X; and (ii) an Order prohibiting Staff from using evidence obtained pursuant to the Investigation Order or derived therefrom, and an order that such evidence be destroyed.

(b) Y's Motion

[14] Y's Notice of Motion, dated […] challenges the constitutionality of section 11 of the Act on grounds similar to that relied upon by X. Y also alleges that there were violations of section 9 (right against arbitrary detention or imprisonment), section 11 (right to a fair trial) and section 13 (right against self-incrimination) of the *Charter*.

[15] In particular, in its Constitutional Motion, Y challenges Staff's conduct, the propriety and validity of the Investigation Order, and their compelled examinations under section 13 of the Act, among others, on the following grounds:

(a) Section 11 of the Act violates the *Charter* on the basis or ground that the word 'expedient" is unconstitutionally vague and undefined;

(b) the Commission granted the Investigation Order, without notice to it:

(i) in circumstances that violated the *Charter* and the statutory rights of Y under the *Charter*; and

(ii) without proper or sufficient information or grounds, and without sufficient foundation and without Staff making proper or sufficient disclosure;

(c) Staff failed to make full, fair and frank disclosure when Staff sought and obtained the Investigation Order;

(d) Staff sought and obtained the Investigation Order for a collateral and/or improper purpose; and

(e) the Investigation Order and its execution, including Staff's compelled evidence examinations of Y under section 13 of the Act, violated Y's *Charter* and statutory rights to fundamental and natural justice.

[16] Y requests relief similar to that requested by X.

(c) Additional Relief Sought

[17] In its factum and oral submissions, X requests that an order be made providing directions with respect to the following matters:

(i) The date upon which Staff would provide its response to the Constitutional Motion;

(ii) The procedure to be adopted for the development of the evidentiary record for their Constitutional Motion; and

(iii) A schedule for the hearing of the Constitutional Motions.

IV. The Issue

[18] The major issue before us is whether the Constitutional Motions brought by the Moving Respondents ought to be heard at the Hearing, to be dealt with at the discretion of the Hearing Panel, rather than in advance of the Hearing.

V. The Submissions of the Parties

(a) Position of Staff

[19] Staff submits that the Constitutional Motions should not be heard as a pre-hearing matter. Instead it should be heard and determined in the context of the Hearing, by the Hearing Panel. Their argument is summarized as below.

[20] Staff submits that the courts in the criminal, civil and administrative law contexts (including securities regulation) have overwhelmingly held that motions such as the Constitutional Motions ought to be heard in the course of the substantive hearing/trial. The jurisprudence enunciates the following principles:

(i) A complete factual foundation is essential for a proper determination in such circumstances. This requirement is particularly acute in a regulatory setting where the expertise of a specialized tribunal is invaluable in ensuring a complete evidentiary record for any review by the Courts. Staff submits that in this case:

(a) the Commission must hear and weigh all the evidence of Staff, other witnesses and documentary evidence to make findings and fashion remedies in response to allegations of *Charter* breaches, abuse of process, improper or oblique purposes;

(b) The Moving Respondents "seek to attack and invalidate a core provision of the Act and, in essence, to disable Staff's investigation and enforcement powers." The challenges are made both to the statutory provision itself, as well as to how it was utilized in the circumstances of this case;

(c) The case law states that *Charter* challenges should not be made in a factual vacuum, but rather in the context of a full factual matrix and record; the factual foundation for *Charter* challenges should be complete and not solely based on affidavit evidence where there is likely to be a dispute over the facts;

(d) The general principle that *Charter* challenges require a full factual record is accentuated in the context of an administrative tribunal applying a regulatory scheme. In particular, there is a general duty for administrative tribunals to establish a cogent and complete record. An administrative tribunal does not have the authority to make a general declaration of invalidity under section 52 of the *Constitution Act, 1982*, since only superior courts can make general declarations of invalidity applicable to all Canadians. Accordingly, a decision by a tribunal that a law is unconstitutional is only applicable to the parties over which it has jurisdiction and has no precedential value;

(e) Analogous cases in the securities context support Staff's position; and

(f) *Charter* analysis requires a complex balancing of interests of the individual and society. In assessing a *Charter* challenge, the Commission must decide first, whether there was an infringement of *Charter* rights and second, if there was an infringement, whether it can be justified under section 1 of the *Charter* and, if not, the Commission must consider what is the appropriate *Charter* remedy under section 24. Each step requires the consideration of supporting facts.

(ii) The *Charter* breaches alleged are speculative at this time. A tribunal cannot assess the extent of any prejudice alleged until it crystallizes and the effects are known:

(a) It is unknown whether and to what extent any impugned evidence will be tendered and/or ruled admissible at the Hearing;

(b) It is unknown whether and for what purpose any compelled/ derivative evidence may be used; and

(c) It is unknown how any impugned evidence will fit within the context of Staff's evidence as a whole.

(iii) The remedy sought, being a stay of proceedings, is granted in extremely rare circumstances where an applicant has demonstrated prejudice that will be manifested, perpetuated or aggravated by the continuation of proceedings and no other remedies are capable of removing that prejudice. The Commission must defer

the decision to assess the degree and extent of alleged prejudice in the context of the evidence as a whole, particularly where there are significant material facts in dispute.

(b) Y

[21] In support of their Constitutional Motion, Y filed a 47 page affidavit with 37 exhibits.

[22] Y submits that the factual basis for the relief it seeks is grounded in the filed affidavit materials and that there are no facts that will be the subject of the section 127 hearing, that are relevant to the issues on their Constitutional Motion. They note that Staff has filed no material responding to the Constitutional Motions (apart from bringing Staff's Motion). Y submits therefore that Staff cannot demonstrate that any evidence that may be tendered during the section 127 hearing is necessary for a proper record on their Constitutional Motion.

[23] Further, Y submits that the facts and related issues raised in their Constitutional Motion are distinct from the facts and issues that are the subject of the section 127 hearing. The facts and issues underlying the Constitutional Motions relate to Staff's conduct prior to the commencement of this section 127 proceeding, and distinct from the following events that are the subject of the section 127 Hearing.

[24] Y submits that Staff's response to the Constitutional Motion and argument on their cross-motion is hypothetical as it is devoid of any facts which address to the Constitutional Motions. Y submits that since Staff has not filed any responding material, Staff has not addressed the specific facts nor the specific grounds on which the Constitutional Motion is based.

[25] Y further submits that its Constitutional Motion is not speculative as Y's rights under the *Charter*, and natural justice, have actually been violated.

[26] Y argues that adjourning (or deferring) the Constitutional Motion, without a factual foundation to base this decision, would result in a loss of jurisdiction and a further denial of justice, and in particular, a decision that renders substantial aspects of the Constitutional Motion moot.

(c) X

[27] X opposes Staff's Motion on the grounds that it seeks to proceed with their Constitutional Motion in a timely and efficient manner that will not interfere with the dates already scheduled for the section 127 hearing.

[28] Further, X submits that the evidence relating to the issues raised in its Constitutional Motion is distinct from the evidence that would be adduced at the Hearing. X submits that, unlike some of the cases referred to by Staff, X is not raising constitutional issues in relation to the very provisions at issue in the main proceeding (which, in this case, include sections 25, 38 and 53 of the Act). X acknowledges that if it were challenging the constitutionality of sections 25, 38 and/or 53 of the Act, there could, be substantial overlap between the evidence relating to the constitutional issues and the allegations at the hearing proper, depending upon the nature of the challenge. X submits that while it could be of assistance to the Panel to hear the evidence regarding the allegations in order to consider the constitutional issues in that circumstance, and in some other cases, such as where the evidence on the motion is interrelated with that anticipated to be heard at the hearing on its merits; this is not such a case.

[29] X argues that the violations of its rights are neither speculative nor prospective. Rather, they are based upon events that have already occurred in the course of the investigation. X seeks remedies for these past violations of its rights to avoid the compounding of the violations during the course of the proceeding.

[30] X also submits that Staff's approach would create a real risk that the Hearing would not be completed during the scheduled dates. These Hearing dates were set almost a year in advance and had to accommodate the schedule of the Commission and counsel involved.

VI. Analysis

(a) Preliminary Motions in Commission Hearings

(1) General Observations

[31] At the outset, we find it helpful to make some general observations about the nature and propriety of preliminary, pre-hearing motions made in the context of section 127 proceedings. While proceedings before a specialized administrative tribunal are intended to be more streamlined and less formal than those in the court system, Commission proceedings must be conducted with caution to ensure fairness to the parties before it, and efficiency in the conduct of such proceedings. It is not uncommon for parties to bring pre-hearing motions to a Commission panel in the context of a section 127 proceeding. In our

view, some of these motions should be heard and determined as pre-hearing motions, in advance of the hearing on the merits, so as to promote and advance the goals of fairness and efficiency. On the other hand, often such motions do not sufficiently advance those goals to warrant being heard in advance of the substantive hearing, and are best addressed by the panel hearing the merits of the case, at the time of the substantive hearing.

[32] In reviewing prior Commission decisions, decisions of other administrative regulatory tribunals, as well as subsequent appeals and judicial reviews of such decisions, we note the following:

(1) There is a wide variety in the nature, scope and breadth of Commission proceedings, and a great diversity in the outcomes sought and the impacts on the parties. When proceedings are brought to a Commission Hearing Panel, Staff could be seeking a range of protective orders and relief that can affect the ability of the parties to participate in the capital markets. The relatively recent legislative amendments which gave the Commission the power to impose monetary sanctions and cost orders have increased the severity of possible outcomes to persons named as respondents in section 127 proceedings.

(2) The Commission must ensure its proceedings are fair and that all procedural rights to which respondents are entitled are properly and effectively provided. The manner in which that goal is achieved may depend on the context of each individual proceeding, including the sanctions and outcomes sought, and what is ultimately at stake for the respondents before the Commission.

(3) The Commission is responsible for administering the Act, which has an over-arching mandate and obligation:

(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.

(4) Commission proceedings ought to be transparent, fair, effective and efficient, in furtherance of and in light of fulfilling its statutory mandate and obligations.

(5) As an administrative tribunal, the Commission, and each hearing panel in particular, are "masters of their own procedure". (See *Prassad v. Canada (Minister of Employment & Immigration)*, [1989] 1 S.C.R. 560 at para. 16; and Robert W. Macaulay, Q. C., & James L. H. Sprague, *Hearings Before Administrative Tribunals*, 2nd ed. (Scarborough: Carswell, 2002) at § 9.1. See also section 25.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, which enables administrative tribunals in Ontario, such as the Commission, to adopt their own procedures.) The Commission has broad discretion in such matters, which must be exercised with due regard to all of the circumstances, interests and rights of the parties. All such elements need to be carefully balanced.

(2) The Exercise of Discretion

[33] The essence of Staff's argument is that it is premature, for a number of reasons, to have the Constitutional Motions heard and determined as a preliminary matter, in advance of the Hearing.

[34] In our view, in exercising its discretion as "master of its procedure", the Commission ought to have due regard for all of the circumstances described above, as well as concern for not unduly "judicializing" its processes. While fairness and the procedural rights of the Respondents and affected persons must be ensured, as stated above, administrative proceedings are intended to be less formal and more procedurally flexible than those of the courts. In considering the stage at which motions such as these should be heard and determined by a Commission panel, we believe that it is useful to ask the following questions:

(a) Can the issues raised in the motions be fairly, properly or completely resolved without regard to contested facts and the anticipated evidence that will be presented at the hearing on the merits? In other words, will the evidence relied upon on the motions likely be distinct from, and unique of, the evidence to be tendered at the hearing on the merits?

(b) Is it necessary for a fair hearing that the relief sought in the motions be granted prior to the proceeding on its merits?

(c) Will the resolution of the issues raised in the motions materially advance the resolution of the matter, or materially narrow the issues to be resolved at the hearing on the merits such that it will be efficient and effective to have them resolved in advance of the commencement of the hearing on the merits?

[35] If the answer to any of these questions is "yes", in our view, the Commission should hear the Constitutional Motions as pre-hearing motions, in advance of the Hearing, absent strong reasons to the contrary.

[36] In contrast, if the answer to all of these questions is "no", the Commission should be reluctant to address the motions as pre-hearing motions, absent strong reasons to the contrary.

[37] To take an example, motions relating to Staff's disclosure obligations and motions for particulars, are the types of motions that should be brought and heard well in advance of the substantive hearing on the merits: they raise issues which can be fairly, properly and completely resolved without regard to contested facts and anticipated evidence that will be the subject matter of the hearing. Further, if the relief sought is to be granted at all, it is necessary for fairness to the affected Respondents that the relief be granted prior to the commencement of the hearing on its merits. There may be other motions that, if heard in advance, could materially advance the matter or narrow the issues to be resolved on the hearing on the merits.

[38] Of course, we recognize that there can be no "hard and fast" rules that govern the exercise of a Commission panel's discretion. Each case is unique, and a Commission panel's discretion should not be encumbered by generalities. We do, however, suggest this framework may assist the task of balancing the interests of fairness and administrative efficiencies in the face of pre-hearing motions.

(b) *Charter* and Similar Challenges as Preliminary Motions

(1) A Complete Factual Foundation is Generally Desirable

[39] The case law referred to us by Staff supports the view that in a civil law context there is a strong trend in favour of hearing constitutional motions at the trial itself, rather than in advance, because a proper factual foundation is required for the assessment of the constitutionality of a statutory provision.

[40] The Supreme Court has held that *Charter* challenges should be decided within the context of a full factual matrix and record: "*Charter* challenges should not and must not be made in a factual vacuum" (*MacKay v. Manitoba*, [1989] 2 S.C.R. 357, ("*MacKay*") at para. 9).

[41] In *MacKay*, the Supreme Court listed a number of reasons to support hearing a *Charter* challenge in the context of a full factual record. First, *Charter* challenges will frequently involve concepts and principles that are of fundamental importance to Canadian society (*MacKay*, *supra* at para. 8). Since a *Charter* challenge can raise important issues that have an impact on Canadian society as a whole, the Supreme Court emphasized that, "courts have every right to expect and indeed to insist upon the careful preparation and presentation of a factual basis in most *Charter* cases" (*MacKay*, *supra* at para. 8).

[42] These observations have been followed and applied by the Ontario Court of Appeal, which stated in *Danson v. Ontario* (1987), 41 D.L.R. (4th) 129 (Ont. C.A.) ("*Danson CA*") that if a constitutional challenge:

> […] should fail for lack of a factual underpinning, the loss may not be his alone, but could well prejudice the rights of those who follow […] the court might on this sketchy record, feel constrained to make some sweeping generality which would later appear unwise. (*Danson CA*, *supra* at 138)

[43] Due to the potential impact of the resolution of a constitutional issue, courts have found it to be desirable to hear a constitutional challenge in the context of all relevant facts and circumstances.

[44] When a *Charter* challenge relates to the effect of a statutory provision, courts have observed that it is necessary to consider all the facts that give rise to an alleged violation of the *Charter* before rendering a decision. The Supreme Court has stated:

> A factual foundation is of fundamental importance on this appeal. It is not the purpose of the legislation which is said to infringe the *Charter* but its effects. *If the deleterious effects are not established there can be no Charter violation and no case has been made out.* Thus the absence of a factual base is not just a technicality that could be overlooked, but rather it is a flaw that is fatal to the appellants' position [Emphasis added] (*MacKay*, *supra* at para. 20).

[45] The importance of a factual basis is, in our view, self-evident from the analysis required by the *Charter* itself. A *Charter* analysis involves following multiple steps and each step requires proof with the appropriate factual underpinning. As indicated in *R. v. Oakes*, [1986] 1 S.C.R. 103 ("*Oakes*"), a *Charter* analysis starts with a determination whether a right guaranteed by the *Charter* has been violated. Then, if it is found that a *Charter* right has indeed been infringed, a section 1 *Charter* analysis is carried out to determine whether the *Charter* violation is justified.

[46] Section 1 of the *Charter* has two functions: (1) it promotes and reiterates the constitutional guarantees of the rights and freedoms listed in the *Charter*'s provisions; and (2) it may be relied on to justify limitations to *Charter* rights and freedoms (*Oakes*, *supra* at para. 66). In determining whether a breach of the *Charter* is justified, decision makers must be "guided by the values and principles essential to a free and democratic society" (*Oakes*, *supra* at para. 67). This requires balancing competing interests. In this balancing process, evidence is required to demonstrate whether a *Charter* violation can be justified in a free and democratic society. Specifically, the Supreme Court has said that:

> […] *evidence* is required in order to prove the constituent elements of a s. 1 inquiry and […] it should be c*ogent and persuasive* and make clear to the court the consequences of imposing or not imposing a limit [to *Charter* rights] [Emphasis added] (*Oakes*, *supra* at para. 72).

[47] A complete record of evidence is needed in the context of a section 1 *Charter* analysis. Moreover, in order to properly assess a *Charter* challenge and balance competing interests, the *Charter* analysis must be considered within the context in which the claim arises. Accordingly, the challenged provisions of the Act must be considered within the Act's regulatory scheme, and the specific facts of the case in which the challenge has arisen. The Supreme Court has emphasized that:

> It is now clear that the *Charter* is to be interpreted in light of the context in which the claim arises. Context is relevant both with respect to the delineation of the meaning and scope of *Charter* rights, as well as to the determination of the balance to be struck between individual rights and the interests of society.
>
> A contextual approach is particularly appropriate in the present case to take account of the regulatory nature of the offence and its place within a larger scheme of public welfare legislation. This approach requires that the rights asserted by the appellant be considered in light of the regulatory context in which the claim is situated, acknowledging that a *Charter* right may have different scope and implications in a regulatory context than in a truly criminal one (*R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154 at paras. 149 and 150).

[48] Further, in *Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)*, [1991] 2 S.C.R. 5 ("*Cuddy Chicks*"), the Supreme Court affirmed that "in the case of *Charter* matters which arise in a particular regulatory context, the ability of the decision maker to analyze competing policy concerns is critical" (*Cuddy Chicks*, *supra* at para. 16). A well informed assessment of *Charter* rights in a particular regulatory context is best accomplished based on a complete factual record. Therefore, *Charter* rights need to be evaluated in light of the factual circumstances and this can be most effectively done during the hearing on the merits.

[49] In *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110 ("*Metropolitan Stores*"), the Supreme Court has also recognized that there are disadvantages to hearing a constitutional challenge during the interlocutory stage of a proceeding. In particular, the Supreme Court emphasized that:

> Most of the difficulties encountered by a trial judge at the interlocutory stage, which are raised above, apply not only in *Charter* cases but also in other constitutional challenges of a law. I therefore fully agree with what Professor R. J. Sharpe wrote in Injunctions and Specific Performance, at p. 177, *in particular with respect to constitutional cases that "the courts have sensibly paid heed to the fact that at the interlocutory stage they cannot fully explore the merits of the plaintiff's case". At this stage, even in cases where the plaintiff has a serious question to be tried or even a prima facie case, the court is generally much too uncertain as to the facts and the law to be in a position to decide the merits* [Emphasis added] (*Metropolitan Stores*, *supra* at para. 50).

[50] We agree with Staff that the case law supports the recognition of a "[…] general rule that *Charter* issues should be decided only after a proper record is put before the decision maker" (*DeVries v. British Columbia (Attorney General)*, [2006] B.C.J. No. 3226 (B.C.C.A.) (QL) ("*DeVries*") at para. 7).

(2) *Charter* Challenges in Administrative Law Proceedings

(i) General Observations

[51] Staff also referred us to relevant case law that describes the appropriate process for a *Charter* challenge in an administrative law context. In particular, Staff asserts that administrative tribunals have a general duty to establish a cogent and complete record of proceedings, which is of invaluable assistance to an appeal court in *Charter* disputes.

[52] Indeed, there are a number of reasons to support this submission. In an administrative law context, the informed view of a specialized tribunal possessing knowledge of relevant facts and an ability to compile a cogent record is extremely helpful in *Charter* disputes. For example:

> In the case of *Charter* matters which arise in a particular regulatory context, the ability of the decision maker to analyze competing policy concerns is critical. […] The informed view of the [administrative tribunal], as manifested in a sensitivity to relevant facts and *an ability to compile a cogent record, is also of invaluable assistance* [Emphasis added] (*Cuddy Chicks*, *supra* at para. 16).

[53] Furthermore, in the context of an appeal of a *Charter* challenge heard before an administrative tribunal, it is important to have a complete record including all the relevant facts, in case the decision is appealed. As explained by the Supreme Court in *Nova Scotia (Worker's Compensation Board) v. Martin*, [2003] 2 S.C.R. 504:

> […] the factual findings and record compiled by an administrative tribunal, as well as its informed and expert view of the various issues raised by a constitutional challenge, will often be *invaluable to a reviewing court* [Emphasis added] (*Nova Scotia (Worker's Compensation Board) v. Martin*, *supra* at para. 30).

(ii) Specific Cases in a Securities Law Context

[54] Staff also referred us to decisions in a securities law context, supporting the proposition that *Charter* challenges are best heard during the hearing on the merits in order to ensure that a complete factual record is available. This was the case in *Smolensky v. British Columbia Securities Commission* (2004), 236 D.L.R. (4th) 262 (B.C.C.A.) ("*Smolensky BCCA*"); leave to appeal to the S.C.C. refused: [2004] S.C.C.A. No. 274.

[55] In *Smolensky BCCA*, the respondent challenged the constitutionality of section 148 of the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418 (the "BCSA"). In particular, the respondent alleged that section 148 of the BCSA violated sections 2(b), 7, 8 and 11(d) of the *Charter*. The British Columbia Court of Appeal held that it was too premature to assess whether section 148 of the BCSA violated the *Charter* (*Smolensky BCCA*, *supra* at para. 26). According to the British Columbia Court of Appeal:

> Before this Court states a definitive opinion on *Charter* issues, *the Commission should have the opportunity to address those issues on the facts of this case*, including any specific restrictions of access to information and disclosure asserted by the appellant. I have concluded that the other grounds of relief raised by the appellant are issues that also should be dismissed as not timely. They are *not appropriate for judicial review in the absence of a complete record of facts* and deliberation before the Commission […] [Emphasis added] (*Smolensky BCCA*, *supra* at para. 6).

[56] Thus, the British Columbia Court of Appeal declined to consider the constitutional question until the British Columbia Securities Commission had the opportunity to address the question and have the opportunity to create a full record for an appeal, if one was taken (*Smolensky BCCA*, *supra* at para. 26). The British Columbia Court of Appeal took the position that without a full record of the relevant facts, the effect of section 148 of the BCSA was unknown and the constitutional question was premature (Smolensky BCCA, supra at para. 24). As a result, the British Columbia Securities Commission had initial jurisdiction over the constitutional issue and was best suited to create a full and cogent record to deal with that issue.

[57] After the decision was rendered in *Smolensky BCCA*, the matter came before the British Columbia Securities Commission in *Re Smolensky* (2006), BCSECCOM 45 ("*Smolensky BCSC*"). Smolensky brought an application before the British Columbia Securities Commission to challenge the constitutionality of subsection 148(1) of the BCSA before the hearing on the merits of the matter. The British Columbia Securities Commission panel cited *MacKay* as authority to require a full factual record for the determination of a constitutional challenge, and the panel found that they were in the same position as the British Columbia Court of Appeal in *Smolensky BCCA* because no factual context was presented (*Smolensky BCSC*, *supra* at para. 72). The panel of the British Columbia Securities Commission explained that:

> Until a hearing is held on the merits, the Commission will have no factual background upon which to assess the *Charter* issues. For example, at this point we do not know:
>
> - the disclosure that the Executive Director has made to Smolensky
> - the evidence, including witnesses, that the Executive Director intends to use to try to prove the allegations in the notice of hearing
> - the evidence, including witnesses, that Smolensky might reasonably require to try to refute the evidence of the Executive Director
> - Smolensky's actual access to witnesses

> Only with this information, and doubtless other information as well, will the Hearing Panel be in a position to determine whether, on the facts of this case (as required by *MacKay*) Smolensky's *Charter* rights have been violated.
>
> In our opinion it is premature to make a ruling on the *Charter*-based grounds of Smolensky's application, and we therefore dismiss them (*Smolensky BCSC*, *supra* at paras. 73 to 75).

(c) The Application of These Principles to the Constitutional Motions

[58] The Moving Respondents contend that the Constitutional Motions can be heard prior to the hearing on the merits and that the evidence contained in the affidavit materials filed is sufficient to enable the Commission to resolve their motions.

[59] As stated by the Supreme Court of Canada:

> [there] may be rare cases where the question of constitutionality will present itself as a simple question of law alone which can be finally settled by a motion judge (*Metropolitan Stores*, *supra* at para. 49).

[60] In this case, we are not convinced that the Constitutional Motions are based on a simple question of law alone. Here, as discussed above, the Moving Respondents challenge not only the constitutionality of the relevant provision, but the actions of Staff acting pursuant to it, and their effects.

[61] We find that the Moving Respondents need to demonstrate if and how the Investigation Order actually violated their *Charter* rights. We doubt that this can be accomplished in a factual vacuum, and therefore, the Constitutional Motions should be assessed and determined in the whole context of this matter.

[62] As established in *Danson v. Ontario (Attorney General)*, [1990] 2 S.C.R. 1086 ("*Danson SCC*"):

> […] any *Charter* challenge based upon allegations of the unconstitutional effects of impugned legislation must be accompanied by admissible evidence of the alleged facts. In the absence of such evidence, the courts are left to proceed in a vacuum, which, in constitutional cases as in nature, has always been abhorred (*Danson SCC*, *supra* at para. 31).

[63] We are of the view that, in order to determine the allegations made in the Constitutional Motions, there must be a full factual record in order to assess whether and how rights have been violated. This reasoning was also followed by the British Columbia Court of Appeal in *DeVries*. In that case, it was argued that section 2(b) of the *Charter* was violated by the nature of the allegations in the Notice of Hearing of the British Columbia Securities Commission. The British Columbia Court of Appeal held that there is a "[…] general rule that *Charter* issues should be decided only after a proper record is put before the decision-maker" (*DeVries*, *supra* at para. 7). The British Columbia Court of Appeal also reiterated that a factual basis was required to conduct the requisite *Charter* analysis, and as a result, adjourned the application so that the constitutional issues could be heard at the hearing in the presence of relevant facts (*DeVries*, *supra* at para. 12). Y has failed to demonstrate a strong case justifying departure from this general rule.

[64] Staff asserts that the constitutional violations alleged by the Moving Respondents in this case are not novel, and thus, we are not in an exceptional situation which justifies that a *Charter* challenge should be heard outside of a full factual basis. We agree with this submission and we note that *Charter* violations concerning the investigatory provisions of the Act have previously been considered and the constitutionality of such provisions have been upheld by the Courts (In particular, see *British Columbia (Securities Commission) v. Stallwood et al.*, (1995), 126 D.L.R. (4th) 89 (B.C.S.C.); *BCSC v. Branch*, (1990), 68 D.L.R. (4th) 347 (B.C.S.C.); *Barry v. Alberta Securities Commission*, (1986), 25 D.L.R. (4th) 730 (Alta. C.A.); *Re Malartic Hygrade Gold Mines and Ontario Securities Commission*, (1986), 27 D.L.R. (4th) 112 (Ont. Div. Ct.), leave to appeal refused (1986), 27 D.L.R. (4th) 112; and *Gatti v. Ontario Securities Commission*, (March 27, 2001: unreported) Ontario Securities Commission).

[65] Further, the answer to the question of the appropriate remedy in the event that a *Charter* violation is found, also requires a proper factual context which, in our view, can only be grounded in the specific facts of this case.

[66] In their written and oral submissions, the Moving Respondents seek remedies under section 24 of the *Charter*. Section 24 of the *Charter* provides:

> **24.** (1) Anyone whose rights or freedoms, as guaranteed by this *Charter*, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.
>
> (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this *Charter*, the evidence shall be excluded if

> it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

[67] Apart from the question of whether this section is applicable to the Commission, it is clear from the language of subsection 24(1) of the *Charter* that in order for a remedy under section 24 to be available, a *Charter* breach must be found. In other words, section 24 of the *Charter* cannot apply in the absence of a *Charter* violation. Remedies under section 24 of the *Charter* are not available where the deprivation of the *Charter* right is merely speculative.

[68] While courts have held that it is possible to get relief for a prospective *Charter* violation in circumstances where the claimant can establish that there is a "sufficiently serious risk" or a "high degree of probability" that an alleged *Charter* violation will occur, these types of situations are rare. In such a case, the onus of proving a prospective *Charter* breach is a high one; the decision maker must be satisfied that if relief under section 24 of the *Charter* is not granted, an individual's *Charter* rights will be prejudiced (*Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mines Tragedy)*, [1995] 2 S.C.R. 97 ("*Phillips*") at para. 110).

[69] The question of whether an individual's *Charter* rights have been, or will be violated cannot be made in the abstract. This must be demonstrated by the factual circumstances. In particular, all the surrounding circumstances need to be taken into account "including, for example, the nature of the right said to be threatened and the extent to which the anticipated harm is susceptible of proof" (*Phillips*, *supra* at para. 110). Again, this demonstrates that *Charter* issues are best dealt with in the presence of all the relevant facts in the context of a hearing on the merits.

[70] At this time, we view the Constitutional Motions as premature, since we have no evidence before us as to what use has been made by Staff of the impugned evidence.

[71] Further, at this point, based on the materials before us, it is unclear whether the impugned evidence will be sought to be used during the Hearing, and it is also unclear exactly how this evidence will be used. Since the use and relevance of the impugned evidence will only be known at a later stage, during the Hearing, it is premature to assess whether the *Charter* rights have been or will be engaged. We find that we are in a similar situation as in *British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 3 ("*Branch SCC*"), where the "true purpose of the evidence will […] not be apparent until the latter stage" (*Branch SCC*, *supra* at para. 10). Therefore, in our view, the *Charter* violations alleged by the Moving Respondents have not yet have crystallized.

(d) Other Good Reasons to Defer the Motions to the Hearing

[72] A further factor which points toward deferring the motions until the Hearing, is the type of remedy sought by the Moving Respondents. In this case, the Moving Respondents seek a stay of proceedings as primary relief.

[73] Staff contends that a stay is only granted in extremely rare circumstances and a stay is not appropriate in this case. In support of their position, Staff referred us to the case law dealing with the criteria for granting a stay.

[74] According to the case law:

> […] a stay of proceedings will only be appropriate when two criteria are met:
>
> (1) the prejudice caused by the abuse in question will be manifested, perpetuated or aggravated through the conduct of the trial, or by its outcome; and
>
> (2) no other remedy is reasonably capable of removing that prejudice. (*R. v. Regan*, [2002] 1 S.C.R. 297 at para. 54)

[75] In the case before us, we cannot determine whether this test is satisfied at this time, in the absence of a full record. We agree with Staff that the extent of any prejudice arising from the use of the compelled evidence can only be assessed within the context of the evidence as a whole as it relates to each respondent. Secondly, the Moving Respondents have not convinced us that there are no other appropriate remedies available. The Hearing Panel will need to assess Staff's submission that there exist other remedies less drastic than a stay which are capable of removing any prejudice, for example, the exclusion of evidence.

[76] In addition, before a stay can be granted, it is necessary to balance the interests of granting a stay against the interest that society has in holding a hearing to have a final decision on the merits (*R. v. Regan*, *supra* at para. 57; and *Regina v. E.D.* (1990) 57 C.C.C. (3d) 151 at para. 23). As previously discussed, balancing interests requires a complete factual record and this can be best accomplished in the context of a hearing on the merits. This is also relevant when balancing interests in the context of an application for a stay. The Ontario Court of Appeal emphasized that a motion for a stay should normally be decided after

the trial is completed once all the relevant evidence has been adduced (*R. v. Dikah*, (1994) 18 O.R. (3d) 302 (C.A.) at para. 34. See also *Regina v. François*, (1993), 15 O.R. (3d) 627 (C.A.) at 629).

[77] Staff submits that the decision to rule on a stay application or to reserve until the end of a case is discretionary and should be exercised having regard to two policy considerations:

(1) Proceedings on the merits should not be fragmented by interlocutory proceedings; and

(2) Adjudication of constitutional challenges without a factual foundation should be discouraged (*R. v. DeSousa*, [1992] 2 S.C.R. 944 at para. 17).

[78] The appropriateness of a stay of proceedings depends on the effect of the conduct amounting to abuse of process or other prejudice on the fairness of the trial. We accept Staff's submission that this is best assessed in the context of a hearing and as a result, it is preferable to reserve a decision regarding a stay until the hearing on the merits. This is because the measurement of the extent of the prejudice often cannot be done without considering all the relevant evidence. As explained by the Supreme Court of Canada in *R. v. La*, [1997] 2 S.C.R. 680:

> The appropriateness of a stay of proceedings depends upon the effect of the conduct amounting to an abuse of process or other prejudice on the fairness of the trial. This is often best assessed in the context of the trial as it unfolds. Accordingly, the trial judge has a discretion as to whether to rule on the application for a stay immediately or after hearing some or all of the evidence. Unless it is clear that no other course of action will cure the prejudice that is occasioned by the conduct giving rise to the abuse, it will usually be preferable to reserve on the application. This will enable the judge to assess the degree of prejudice and as well to determine whether measures to minimize the prejudice have borne fruit (*R. v. La*, *supra* at para. 27).

[79] Counsel for X argues that in some cases, it is not desirable to put off a decision regarding a stay until the trial stage of a proceeding. In support of its position, counsel for X relies on a passage from *R. v. DeSousa* which states:

> In some cases the interests of justice necessitate an immediate decision. Examples of such necessitous circumstances include cases in which the trial court itself is implicated in a constitutional violation as in *R. v. Rahey*, [1987] 1 S.C.R. 588, or where substantial on-going constitutional violations require immediate attention [page 955] as in *R. v. Gamble*, [1988] 2 S.C.R. 595. Moreover, in some cases it will save time to decide constitutional questions before proceeding to trial on the evidence. An apparently meritorious *Charter* challenge of the law under which the accused is charged which is not dependent on facts to be elicited during the trial may come within this exception to the general rule. (See *Manitoba (Attorney General) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110, at p. 133.) This applies with added force when the trial is expected to be of considerable duration. See, for example, *R. v. Nova Scotia Pharmaceutical Society*, [1992] 2 S.C.R. 606 (*R. v. DeSousa*, *supra* at para. 17).

[80] We accept that exceptions exist to the rule that it is preferable to reserve a decision regarding a stay until the hearing stage; however, we find that the Moving Respondents have failed to demonstrate that this exception applies in this case. First, we are not dealing with a situation in which the Commission itself or any member of the Hearing Panel is implicated in a constitutional violation. At this point in time, the *Charter* violations, or at least the effects of the impugned actions, are speculative. Secondly, in our opinion, deciding the Constitutional Motions in advance of the hearing on the merits in this matter will not save time. Deciding the constitutional issues in advance of the hearing on the merits can exacerbate the time it will take to complete a proceeding. As observed in *Re Belteco Holdings Inc.* (1997), 20 O.S.C.B. 2921, at paragraph 1.10: often "preliminary motions can take on a life of their own", especially when the parties seek to challenge these motion decisions in the courts, the hearing on the merits cannot continue until the interlocutory matters run their course. The result can be a substantial delay in having a Commission matter heard on the merits. In our view, that result is inconsistent with the ability of the Commission to satisfy its public interest mandate in a timely manner. For these reasons, we do not accept the submissions of X. The Commission has generally taken the position in the past that stays are an extraordinary remedy and a Panel should wait until the end of the hearing to make a determination regarding a stay (See *Re Belteco Holdings Inc.*, *supra* and *Re Glendale Securities Inc.* (1996), 19 O.S.C.B. 3874).

[81] In conclusion, we find that the Constitutional Motions should be dealt with in the course of the hearing on the merits because a determination of the constitutional challenges in advance of the Hearing would deprive the Commission of the complete factual basis that is necessary for a proper consideration of the alleged *Charter* violations.

(e) Other Issues

(1) Staff's Recommendations of a "Voir Dire"

[82] Staff takes the position that it is inappropriate to rely on affidavit evidence on the Constitutional Motions, and submits that only *viva voce* evidence be used. We do not necessarily agree. While we agree that affidavit evidence filed in advance of and in isolation from the evidence tendered at the substantive hearing is unduly limiting, the Hearing Panel has discretion to address how best to deal with the Constitutional Motions within the context of the substantive hearing; these reasons should in no way be seen as limiting or influencing the exercise of that discretion.

(2) The Request for Disclosure of Staff's Position

[83] The Moving Respondents, both in their written submissions and in their oral presentations, express concerns that they have not received a response from Staff to the Constitutional Motions. In light of Staff's Motion, by which Staff requested that the Constitutional Motions be deferred until the Hearing, a lack of response is not surprising. Further, Staff asserts that Staff is not obliged to provide the Respondents with a "road map" of their case on the merits. They suggest that this includes their argument in response to the Constitutional Motions, which they see as a defence to the substantive allegations and therefore as premature.

[84] We agree that Staff is not required to provide a "road map" of their argument on the merits (*Re Belteco Holdings Inc.* 20 O.S.C.B. 1333 at paras. 26 to 28). However, we note that the Respondents have the right to know the case that they have to meet and that Staff has an obligation to disclose all information and materials which are relevant to the matters at issue in this proceeding. We are of the view that the articulation and communication of Staff's position in response to the Constitutional Motions is certainly consistent with these general obligations and furthers the overarching principle that Commission proceedings be fair and efficient. While we are not, at this time, prepared to determine and direct the appropriate form or extent of that disclosure, we do request and expect that Staff consider and determine its position on the Constitutional Motions, what facts and evidence, if any, they intend to rely upon to support that position and what evidence compelled pursuant to section 11 it intends to rely upon at the Hearing. Staff should advise counsel for the Respondents accordingly.

[85] This information need not be formally presented – we think it could be sufficient that it be conveyed through informal correspondence, such as a letter, or even orally in a face-to-face meeting. But we expect Staff to take steps to advise counsel for the Respondents of these matters. Further, we ask Staff to advise counsel for the Respondents which Staff members they intend to call as witnesses at the Hearing.

[86] We are of the view that if this information is received by the Respondents' counsel well in advance of the Hearing, they will be able to assess what further evidence they feel is required in furtherance of the Constitutional Motions. We anticipate that, with the disclosure of this information, some of the issues raised in the Constitutional Motions will be less "hypothetical" and all parties can be better prepared for the Hearing.

[87] In the circumstances of this case, since the Hearing date is set to commence on […], we feel that 90 days prior to that date (i.e. by […]) is a reasonable time by which Staff should make such disclosure to the Respondents. We ask that Staff communicate its position on these matters to the parties by that date.

[88] We note that the Particulars Motion remains outstanding. We would expect, and request, that if the issues raised by the Particulars Motion, and the information described above, are not resolved amongst counsel, the Particulars Motion be scheduled and heard well in advice of the October hearing dates, and any matters arising from these reasons be addressed at that time.

(3) Scheduling Concerns

[89] Counsel for X emphasized the concern that a deferral of the Constitutional Motions would risk a loss in valuable hearing days, set so far in advance. We agree that when the Commission sets hearing dates for a hearing, (in this case six weeks), all parties are expected to make every effort to maintain those dates. To accommodate this concern, we offer to add three days in October to the outset of the Hearing, in order to proceed with any motions, or at least, for the Hearing Panel to receive submissions and consider the most effective means through which to deal with the Constitutional Motions and any other outstanding or contentious matter. We ask that this be coordinated through the Office of the Secretary, who will contact counsel.

(4) Confidentiality Issues

[90] The parties point out that some of the matters addressed in these reasons may raise confidentiality issues. As a result, these reasons are released at this stage on a confidential basis. This Commission Panel undertook to seek submissions from the parties prior to the public release of these Reasons, and we shall do so. We ask the parties to make arrangements with the Office of the Secretary of the Commission to address this issue.

VII. Conclusion

[91] For the reasons set out above, we are not satisfied that the Constitutional Motions should or can properly be resolved by this Panel, or any other Panel, in the absence of a complete and cogent factual record. We note the seriousness of the allegations made in the Constitutional Motions and the nature of the remedies sought.

[92] At the same time, we are sensitive to the rights of the Respondents to "have their day in court" and to assert whatever response to Staff's allegations that are available to them. Respondents should have the right to determine how best to pursue those defences, so long as they do not unduly interfere with the ability of the Commission to accomplish its mandate as set out in the Act.

[93] We believe that the Constitutional Motions are premature because:

(i) It is unknown at this stage whether and to what extent any impugned evidence will be sought to be tendered and/or ruled admissible at the hearing; and

(ii) It is unclear whether and for what purpose any impugned evidence will fit within the context of Staff's evidence as a whole.

[94] This is not an exceptional case justifying the hearing of the Constitutional Motions in advance of the Hearing. Similar constitutional challenges of analogous provisions of securities legislation have been denied by the courts. Indeed, the courts in criminal, civil and administrative law contexts (including securities regulation) have overwhelmingly held that such motions are to be heard within the context of the hearing/trial on the merits.

[95] We are also mindful that proceeding on the basis of affidavit evidence alone as proposed by the Moving Respondents, without a complete factual record, may lead to disputes and further interlocutory motions. To be clear, we do not say that it would be inappropriate to rely on affidavit evidence to determine the Constitutional Motions. However, we are neither prepared nor able, at this time, to find that it is sufficient as a sole basis of evidence, and we leave the ultimate determination of this issue to the Hearing Panel.

[96] For all of these reasons when we ask ourselves the three questions described at paragraph 34 above, we answer "no" to each of them. In our view:

(a) the issues raised in the Constitutional Motions cannot be fairly, properly or completely resolved without regard to contested facts and anticipated evidence that will be the subject of the hearing on the merits;

(b) it is not necessary for fairness to the Respondents that the relief sought in the Constitutional Motions be granted prior to the commencement of the hearing on the merits; and

(c) the resolution of the issues raised by the Constitutional Motions will not materially advance the resolution of this matter, or narrow the issues to be resolved at the hearing on the merits.

[97] We conclude that a determination of the Constitutional Motions in advance of the hearing on the merits would be inappropriate in these circumstances.

[98] Accordingly, we order that the Constitutional Motions shall be heard as part of the hearing on the merits, to be dealt with at the discretion of the Hearing Panel.

[99] In light of the particular circumstances of this motion, we request that no later than 90 days prior to the proposed commencement of the Hearing (i.e. no later than […]), Staff counsel advise the Respondents' counsel of its position on the Constitutional Motions, as well as what evidence it intends to rely upon to support that position, the evidence compelled pursuant to section 11 that it intends to rely upon at the Hearing, and a list of Staff members that it intends to call as witnesses. Further we ask Staff to advise the Respondents within that time frame.

[100] We also request that Y (or any other Respondent) take steps to schedule the Particulars Motions, if unresolved, and any other motion deemed necessary to address issues remaining unresolved from these reasons, no later than 60 days prior to the commencement of the Hearing (i.e. no later than […]).

DATED at Toronto this 26th day of July, 2007.

"Lawrence E. Ritchie"	"Wendell S. Wigle"	"James E. A. Turner"
Lawrence E. Ritchie	Wendell S. Wigle	James E. A. Turner

3.1.3 Mega-C Power Corporation et al.

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

AND

**IN THE MATTER OF
MEGA-C POWER CORPORATION,
RENE PARDO, GARY USLING,
LEWIS TAYLOR SR., LEWIS TAYLOR JR.,
JARED TAYLOR, COLIN TAYLOR AND
1248136 ONTARIO LIMITED**

**CONFIDENTIAL REASONS AND DECISION REGARDING THE REQUEST
FOR REDACTION OF THE CONFIDENTIAL REASONS AND DECISION
DATED MAY 18, 2007
[Editor's Note: Made public on September 8, 2010.]**

Decided on the basis of the written record:	July 26, 2007		
Panel:	Lawrence E. Ritchie	–	Vice-Chair (Chair of the Panel)
	James E. A. Turner	–	Vice-Chair
	Wendell S. Wigle, Q.C.	–	Commissioner
Counsel:	Anne C. Sonnen Sean Horgan	–	For Staff of the Ontario Securities Commission
	Peter Copeland	–	For Lewis Taylor, Sr. and Lewis Taylor Jr.
	Fred Platt	–	For Jared Taylor, Colin Taylor and 1248136 Ontario Limited
	Steven Sofer James Camp	–	For Gary Usling
	David Hausman	–	For the Liquidation Trustee of Mega-C Power Corporation

**CONFIDENTIAL REASONS AND DECISION REGARDING THE REQUEST
FOR REDACTION OF THE CONFIDENTIAL REASONS AND DECISION
DATED MAY 18, 2007**

I. Introduction

[1] On November 16, 2005, the Commission issued a Notice of Hearing against Mega-C Power Corporation ("Mega-C"), Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited (collectively, "the Respondents") pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in connection with a Statement of Allegations delivered by Staff of the Commission ("Staff") on that day. Staff alleges that the Respondents violated sections 25, 38 and 53 of the Act. The allegations relate to activities alleged to have taken place from August 2001 through mid-2003.

[2] By Order dated December 5, 2006, on consent of all parties, the Commission ordered the hearing on the merits to commence on October 29, 2007, to proceed over the following six weeks.

[3] An Amended Notice of Hearing was issued by the Commission on February 6, 2007. On June 4, 2007, a Notice of Withdrawal was issued by Staff withdrawing the allegations against the respondent, Mega-C.

[4] As of April 12, 2007, there were a number of motions pending, including: two motions, one brought by Lewis Taylor Sr. and Lewis Taylor Jr. ("Taylor Sr. and Jr."), and one brought by Jared Taylor, Colin Taylor and 1248136 Ontario Limited (the

"Taylor Group"), relating to the propriety and legality of certain statutory investigation provisions contained in the Act, and their use in this case (collectively, the "Constitutional Motions").

[5] As we noted in our Confidential Reasons and Decision dated May 18, 2007 (the "Confidential Reasons and Decision"), while these motions were described as the "Constitutional Motions", the Taylor Group and Taylor Sr. and Jr. also rely on principles of "fundamental and/or natural justice", in addition to *Charter* protections (*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the "*Charter*")).

[6] In response to these two Constitutional Motions challenging both the constitutionality of section 11 of the Act, as well as the manner and basis upon which an investigation order (the "Investigation Order") was obtained and used in the circumstances of this Proceeding, Staff filed a "cross-motion" on March 29, 2007 ("Staff's Motion"), to adjourn the hearing of the Constitutional Motions until the commencement of the hearing in this matter on October 29, 2007 (the "Hearing"), so that the Constitutional Motions would be dealt with at the discretion of the Hearing Panel.

II. Taylor Sr. and Jr. and the Taylor Group's Request for Redaction of the Confidential Reasons and Decision dated May 18, 2007

[7] At the hearing of Staff's Motion, some of the respondents pointed out that certain matters that would be addressed by the Panel in its reasons and decision may raise confidentiality issues. As a result, we agreed at the time to release our reasons and decision on a confidential basis until we could consider counsel's submissions regarding the need to preserve confidentiality of parts of the reasons and decision until the commencement of the Hearing.

[8] On May 18, 2007, we issued the Confidential Reasons and Decision. At the request of the Respondents, we issued our reasons on a confidential basis to allow them the opportunity to review the Confidential Reasons and Decision and to make submissions as to which parts, in their view, should be kept confidential until the commencement of the Hearing.

[9] We understand that discussion amongst the parties failed to result in agreement as to the public release of the Confidential Reasons and Decision. Accordingly, by way of letter dated June 14, 2007, sent to the parties by the Secretary to the Commission, on behalf of the Panel, we requested that the parties file written submissions regarding their position on the confidentiality issue raised during the hearing of Staff's motion, before we publicly release our Confidential Reasons and Decision.

[10] The parties filed written submissions by letter on June 21st and June 22nd, 2007. Each party filed a letter setting out its position on the issue of confidentiality. Three of the parties respectively filed suggested redacted versions of the Confidential Reasons and Decision to be considered by the Panel.

[11] We have reviewed the letters submitted by the parties and the suggested redacted versions of the Confidential Reasons and Decision proposed by the respective parties. These are our confidential Reasons and Decision regarding the request for redaction of the Confidential Reasons and Decision.

III. Parties' Position

Taylor Sr. and Jr.

[12] Counsel for Taylor Sr. and Jr. submits that paragraph 16(1)(b) of the Act prohibits the public disclosure of information which would help identify the names of persons, including his clients, "examined or sought to be examined under section 13" of the Act.

[13] In counsel's letter dated June 21, 2007, counsel proposed redactions of the Confidential Reasons and Decision with respect to two types of information:

(i) the names of persons who were the subject of examinations pursuant to section 13 of the Act; and

(ii) information that would tend to identify the names of persons who were the subject of examinations pursuant to section 13, including:

a. the name of the proceeding;

b. the identity of all the respondents and their counsel:

c. the history of the proceedings (paragraphs 1 and 2);

d. the time frame of the alleged conduct in the Statement of Allegations (paragraph 3);

e. the specific sections of the Act that are the subject of the allegations (paragraphs 1 and 28); and

f. the scheduled date of the section 127 Hearing (paragraphs 2, 8, 87, 88, 89, 99, 100).

[14] Counsel for Taylor Sr. and Jr. further submits that section 17(6) has no application in these circumstances, as the exceptions allow only for disclosure by "[a] person appointed to make an investigation or examination under the Act". He acknowledges, however, that the scope of the two exceptions to confidentiality in subsection 17(6) of the Act have not been clearly established by the jurisprudence. Moreover, according to counsel, when Staff discloses materials to respondents pursuant to subsection 17(6) of the Act, the protections of section 16 are not displaced. In support of his argument, counsel relies on the decision of *A Co. v. Naster*, [2001] O.J. No 4997 at para. 25 (Div. Ct.) ("*A Co. v. Naster*"):

> Second, there are the provisions of s. 16 of the Act. It is submitted that s. 17(6) does not confine disclosure to the other respondents. That is so, but I observe that the disclosure can only be made "for the purpose of conducting an examination or in connection with a proceeding commenced or proposed to be commenced by the Commission." That appears to me to confine disclosure under s. 17(6) to other respondents, or persons being interviewed in an effort to obtain information. Section 16 extends the protection of confidentiality to any person or company, whether or not a respondent.

[15] Counsel for Taylor Sr. and Jr. filed a proposed redacted version of the Confidential Reasons and Decision for our consideration.

The Taylor Group

[16] In his letter dated June 21, 2007, counsel for the Taylor Group and 1248136 Ontario Limited submits that the following portions of the Confidential Reasons and Decision should be redacted:

a. the name of his clients or portions that refer to his clients; and

b. the names of the members of the Panel and counsel who appeared before the Panel.

[17] Counsel submits that the names of his clients ought to be redacted because the Act requires that the existence of a compelled examination be kept confidential. According to counsel, the information referred to above could be used to identify the proceeding and thereafter the identity of his clients. Counsel submits that the redacted names (other than the names of the members of the Panel and counsel), i.e. those in the body of the Confidential Reasons and Decision, can be given pseudonyms and the dates can be deleted without doing any injustice to the Confidential Reasons and Decision.

[18] Counsel also filed a suggested version of the redacted Confidential Reasons and Decision for our consideration, which follows this proposed approach.

Gary Usling

[19] In his letter dated June 22, 2007, counsel for Gary Usling indicated that Gary Usling has no objection to the Confidential Reasons and Decision being published in full, without redaction.

Staff

[20] In their letter dated June 21, 2007, Staff submit that the confidentiality provisions in section 16 of the Act do not support a *de facto* sealing order of the scope urged upon us by counsel for Taylor Sr. and Jr. and the Taylor Group.

[21] Staff submit that the redactions proposed by counsel for Taylor Sr. and Jr. and by counsel for the Taylor Group are overly broad and contrary to the presumption in favour of open proceedings, which fosters public confidence in the integrity of the administration of justice.

[22] Staff argue that the expedient release of the reasons in an unredacted form is necessary to provide guidance to the public on pre-hearing motions of this nature and to help inform those involved in subsequent proceedings.

[23] Staff point out that the Confidential Reasons and Decision falls within the application of paragraph 17(6)(a) of the Act and that accordingly, no disclosure order is required.

[24] In the alternative, Staff submit that, in the event that the Panel were to conclude that subsection 17(6) of the Act was of no assistance in resolving this legal issue, Staff would be prepared to proceed by way of an application for an order under subsection 17(1) of the Act. Staff submit that it would bring such application on the basis that the moving respondents' rights to confidentiality under section 16 of the Act is not absolute, but rather, any prejudice to the moving respondents from the

disclosure of the fact that a section 11 order was issued and the fact that section 13 evidence was obtained is outweighed by the public interest in having a full copy of the Confidential Reasons and Decision available for public review.

[25] Although Staff are of the view that it is not necessary to redact the Confidential Reasons and Decision, Staff do not oppose an amendment such that references to the Respondents are made generically to ensure that the Confidential Reasons and Decision do not disclose to whom the section 11 order was applied or from whom section 13 evidence was obtained. Staff filed a suggested version of the redacted Confidential Reasons and Decision for our consideration.

IV. Analysis

[26] Sections 16 and 17 of the Act are the relevant provisions to determine the matter in issue. Section 16 of the Act provides confidentiality relating to the nature and content of section 11 orders and evidence obtained under section 13 of the Act. Section 16 provides:

> **16.** (1) Except in accordance with section 17, no person or company shall disclose at any time, except to his, her or its counsel,
>
> (a) the nature or content of an order under section 11 or 12; or
>
> (b) the name of any person examined or sought to be examined under section 13, any testimony given under section 13, any information obtained under section 13, the nature or content of any questions asked under section 13, the nature or content of any demands for the production of any document or other thing under section 13, or the fact that any document or other thing was produced under section 13. 1994, c. 11, s. 358.
>
> (2) If the Commission issues an order under section 11 or 12, all reports provided under section 15, all testimony given under section 13 and all documents and other things obtained under section 13 relating to the investigation or examination that is the subject of the order are for the exclusive use of the Commission or of such other regulator as the Commission may specify in the order, and shall not be disclosed or produced to any other person or company or in any other proceeding except as permitted under section 17.

[27] Subsection 17(6) of the Act reads as follows:

> (6) A person appointed to make an investigation or examination under this Act may disclose or produce anything mentioned in subsection (1), but may do so only *in connection with*,
>
> (a) a proceeding commenced or proposed to be commenced by the Commission under this Act; or
>
> (b) an examination of a witness, including an examination of a witness under section 13. [Emphasis added]

[28] In our view, subsection 16(2) makes it clear that information and material obtained pursuant to an Investigation Order are for the exclusive use of the Commission (or such other regulator identified in the Order). Further, the words used in subsection 16(2), set out above, presume that information obtained pursuant to sections 11, 12 and 13 can be produced or disclosed in the course of a Commission proceeding, since there is a prohibition from disclosure of such information and material "in any other proceeding" "except as permitted by section 17". The reference to "any other proceeding" must be a reference to a proceeding other than the relevant Commission proceeding and/or a proceeding of any other regulator named in the relevant order.

[29] Section 17 of the Act establishes a legal framework for disclosure. We note that subsection 17(6) makes reference to disclosure by the person appointed to make the investigation, but not the Commission. However, we must read all of the relevant provisions as a whole to make them meaningful. In our view, sections 16 and 17 are meant, among other things, to provide some comfort to persons who are examined or who provide information to Staff in the course of an investigation pursuant to an investigation order, that the identities of those individuals, the information they provide and the fact that they have been involved at all, will remain confidential, subject to the terms of the Act. However, the fact that disclosure can be made by a person appointed to make an investigation, "in connection with a proceeding" commenced or proposed to be commenced, qualifies the reasonable expectation of confidentiality of an affected person.

[30] In circumstances such as these, where a proceeding has been commenced and a preliminary motion has been brought, the Act contemplates that information obtained pursuant to the statutory investigation powers can be disclosed in the course of the relevant Commission proceeding.

[31] As the Confidential Reasons and Decision relate to a pre-hearing motion brought in the context of a proceeding that is scheduled for a hearing, we are of the view that disclosure regarding the section 11 Order and the section 13 evidence provided in the Confidential Reasons and Decision falls within the ambit of subsection 16(2) and subparagraph 17(6)(a) of the Act and no separate order is required. Subsection 17(6) does not say: "at the outset of a proceeding", or "in the course of a proceeding". Rather, it states that disclosure is permitted "in connection with" a proceeding. The use of that phrase indicates that once a Notice of Hearing is issued, disclosure of information made confidential pursuant to section 16, may be made if the disclosure is in connection with the proceeding. For example, it is expected that disclosure of such confidential information would be made in satisfaction of Staff's production obligations to respondents, and once that disclosure is made, the information can be used by any party to the proceeding, in the course of that proceeding. We recognize that there could be special circumstances that would warrant the preservation and protection of confidentiality. However, absent any such special circumstances, we are of the view that disclosure in connection with a proceeding ordinarily would include disclosure of preliminary or interlocutory motions made in the connection with the proceeding.

[32] In any event, we agree with Staff that the Confidential Reasons and Decision does not refer to the section 17 application, does not refer to the nature and content of the section 11 order, nor to the contents of the information obtained under section 13 of the Act.

[33] Counsel for Taylor Sr. and Jr. referred us to the decision of *A. Co. v. Naster*, cited above, which is relied upon to support the proposition that subsection 17(6) of the Act is not applicable in these circumstances. First, we note that the portion cited by counsel refers to the application of paragraph 17(6)(a) to the disclosure of the actual compelled evidence in that proceeding. While the released reasons in that matter referred to the applicant as "A. Co.", but for that redaction, the reasons were released in an unredacted form.

[34] Further, when reviewing the reasons in *A. Co. v. Naster*, we note that this decision did not redact: the nature of the proceeding, the underlying facts of the proceeding, the name of counsel, the names of the Panel members or dates of events in the proceeding. These are all elements of the decision that Respondents' counsel in this case wish to have redacted.

[35] We also note that in other Commission decisions relating to section 11 and or section 13 of the Act, the reasons were published in an unredacted form (see for instance: *Biscotti v. Ontario (Securities Commission)* (1990), 76 D.L.R. (4th), 762 and *OSC v. Gatti* (unreported: March 27, 2001), and *Universal Settlements International Inc. v. Ontario* (2003) 26 O.S.C.B. 7611).

[36] The Commission is a public body, exercising its statutory powers in the public interest. It is important, in our view, that it fulfill its mandate as transparently as practically possible. This means that matters coming before the Commission, including the details about those matters, be made public, to the broadest extent possible, absent special circumstances that would warrant some degree of confidentiality. Where such circumstances exist, the Commission should exercise its discretion narrowly, so as to provide the public with as much information about the proceedings before the Commission as possible in the circumstances.

[37] In the circumstances before us, although we are of the view that the Commission has the authority to release the Confidential Reasons and Decision publicly in an unredacted form pursuant to subsection 16(2) and as contemplated by 17(6) of the Act, we are prepared to release our Confidential Reasons and Decision in a redacted form at this time until the commencement of the Hearing.

[38] In coming to this conclusion, we have considered the fact that Staff do not oppose Taylor Sr. and Jr. and the Taylor Group's request to publish the Confidential Reasons and Decision in a redacted form which removes the names of the parties. We also note that the substantive Hearing on the merits is scheduled to commence shortly, and that the nature of the redactions are largely limited to concealing the names of the parties to that proceeding.

IV. Decision

[39] Accordingly, the Confidential Reasons and Decision dated May 18, 2007 shall be released publicly in a redacted form which removes reference to the parties affected.

[40] These Confidential Reasons and Decision Regarding the Request for Redaction of the Confidential Reasons and Decision dated May 18, 2007, and the Confidential Reasons and Decision, shall be made available to the public in an unredacted form on the first day of the Hearing on the merits.

DATED at Toronto this 26th day of July, 2007.

"Lawrence E. Ritchie"	"Wendell S. Wigle"	"James E. A. Turner"
Lawrence E. Ritchie	Wendell S. Wigle	James E. A. Turner

3.1.4 Rene Pardo et al.

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

AND

IN THE MATTER OF
RENE PARDO, GARY USLING,
LEWIS TAYLOR SR., LEWIS TAYLOR JR.,
JARED TAYLOR, COLIN TAYLOR AND
1248136 ONTARIO LIMITED

CONFIDENTIAL
REASONS AND DECISION ON
MOTION FOR PARTICULARS
[Editor's Note: Made public on September 8, 2010.]

Hearing:	August 23, 2007		
Reasons and Decision:	September 7, 2007		
Panel:	Wendell S. Wigle, Q.C.	–	Commissioner (Chair of the Panel)
	James E. A. Turner	–	Vice-Chair
Counsel:	Emily Cole Lissette Torres	–	For Staff of the Ontario Securities Commission
	Brian Greenspan Peter Copeland	–	For Lewis Taylor, Sr. and Lewis Taylor Jr.
	Fred Platt	–	For Jared Taylor, Colin Taylor and 1248136 Ontario Limited

CONFIDENTIAL
REASONS AND DECISION

I. Introduction and Background

[1] On November 16, 2005, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the Securities Act, R.S.O. 1990, c.S.5, as amended (the "*Securities Act*") together with a Statement of Allegations (the "Statement of Allegations"). The Notice of Hearing and the Statement of Allegations named the following as respondents: Mega-C Power Corporation ("Mega-C"), Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited (the respondents, other than Mega-C, are referred to collectively as "the Respondents"). An Amended Notice of Hearing and an Amended Statement of Allegations were issued by the Commission on February 6, 2007 discontinuing proceedings against Mega-C. It is alleged that the Respondents have violated sections 25, 38 and 53 of the *Securities Act* in connection with certain trading in securities that took place from August 2001 through mid-2003.

[2] By Order dated December 6, 2006, issued following a pre-hearing conference, the Commission ordered the hearing on the merits to commence on October 29, 2007. The hearing is expected to proceed over the following six weeks.

[3] On July 26, 2007, the Commission issued confidential reasons ordering that constitutional challenges brought by certain of the Respondents be dealt with at the discretion of the panel that will be hearing the matter on the merits.

[4] On August 15, 2007, a notice of motion for particulars was filed with the Commission by Jared Taylor, Colin Taylor and 1248136 Ontario Limited (collectively, the "Taylor Group"). On August 16, 2007, a substantially similar motion for particulars was filed by Lewis Taylor Sr. and Lewis Taylor Jr. (the "Taylors") (the Taylor Group and the Taylors are collectively referred to as the "Moving Parties"). The Taylors' motion also included a request for an order of the Commission requiring Staff of the Commission ("Staff") to fulfill an "undertaking" to the Respondents given on February 1, 2007, to provide certain particulars.

[5] The submissions of the Moving Parties were heard at an *in camera* hearing held on August 23, 2007.

[6] The detailed allegations against the Respondents are set forth in the Statement of Allegations. In addition to those allegations, Staff has provided substantial and comprehensive disclosure of materials to the Respondents. Staff has delivered approximately 21 binders of material to the Respondents containing, among other materials, 52 investor questionnaires, 13 transcripts of interviews and 26 telephone interviews. The binders contain approximately 9,964 pages of material. The Respondents have had a substantial portion of that material in their possession for approximately 15 months. Staff also recently sent a letter dated July 13, 2007 to counsel for the Moving Parties containing the disclosure of additional particulars (the "July Letter").

1. Pre-Hearing Meeting

[7] Prior to the current motion for particulars, counsel for the Taylor Group had previously filed a motion for particulars on July 18, 2006. That motion was opposed by Staff.

[8] On February 2, 2007, Staff and counsel for the Respondents attended a pre-hearing meeting that was held on a without prejudice basis. We understand from the materials before us that at that meeting, a proposal was made by Staff that they would direct the Respondents to those portions of the disclosure already made that would satisfy their request for particulars and, as a result of that proposal, the earlier particulars motion was adjourned *sine die*.

[9] The Moving Parties take the position that the proposal constituted an "undertaking" or "promise" by Staff to provide additional particulars and that that obligation has not been honoured. The Moving Parties refer to a number of letters between Staff and counsel for the Respondents in which the Moving Parties say that Staff acknowledged the existence of the commitment.

[10] Staff submits that it had no legally binding obligation to disclose additional particulars, but in any event it has complied with the commitment by delivering the July Letter. It was, and remains, Staff's position that: "the Statement of Allegations, combined with the comprehensive disclosure provided, furnishes the Respondents with reasonable and adequate information to know the case to meet and establish his or her defence" (Letter of Staff dated August 4, 2006). This position was reiterated by Staff in a letter dated October 25, 2006 delivered to counsel for the Taylor Group and in the July Letter.

II. The Obligation to Deliver Particulars

[11] The legal question to be decided on these motions is not in dispute. In order to satisfy the Commission's duty of procedural fairness to the Respondents, Staff has an obligation to provide the Respondents with particulars of the material facts related to the Respondents' alleged breaches of the *Securities Act*. Those particulars are required in order to permit the Respondents to know the case they must meet and to make full answer and defence. The principal issue to be determined is whether Staff has provided sufficient particulars to the Respondents to satisfy that obligation. The related issue to be determined is whether Staff gave an undertaking to the Respondents to provide additional particulars and, if so, whether Staff has complied with that obligation.

III. Submissions of the Parties

[12] The Moving Parties filed one factum. The Taylor Group relied on the factum of the Taylors and agreed with the submissions reflected in that document. At the hearing, counsel for the Moving Parties each argued different aspects of this matter, while agreeing with the submissions made by the other. Counsel for the Taylor Group argued that Staff's allegations and the disclosure made to them contained insufficient particulars in order for the Respondents to adequately know the case they must meet. Counsel for the Taylors argued that Staff had given an undertaking or made a promise to the Respondents that it would provide additional particulars to the Respondents and has failed to do so.

1. The Taylor Group's Submissions

[13] Counsel submitted that the level of detail contained in the Statement of Allegations and the comprehensive disclosure made by Staff are insufficient to allow the Respondents to properly prepare a defence. In particular, counsel argued that the allegations inadequately distinguish between the individual respondents with regard to their specific acts, fail to list or identify specific transactions that are alleged to be contrary to the *Securities Act*, and fail to provide the factual details related to those matters, such as names, dates, and places. Counsel submitted that the allegations made in the Notice of Hearing and the Statement of Allegations are principally legal conclusions that are devoid of facts.

[14] Counsel submitted that there are four "principles" that apply to the requirement to give particulars. First, particulars are granted so that respondents will know the allegations against them and will be able to make full answer and defence. Second, particulars must be a statement of all the alleged material facts. Third, according to the Commission's Rules of Practice and the *Statutory Powers and Procedures Act* ("*SPPA*"), if the character, conduct or competence of a person is at issue, then reasonable information and particulars with respect to the allegations must be provided regarding that conduct. Counsel

submitted that the obligation created by Subrule 3.4 of the Commission's Rules of Practice has been engaged in these circumstances and that disclosure is not a substitute for particulars.

[15] Addressing the last principle, counsel submitted that the amount of disclosure given to the Respondents is too voluminous to review and understand without the focus that particulars would provide. Counsel also submitted that, since the conduct of the Respondents is alleged to be contrary to the public interest, more particulars are required to be given than in other cases.

[16] Counsel reviewed the allegations in detail and identified facts that, in his view, were unknown and that were necessary in order for the Respondents to make full answer and defence.

[17] Counsel also argued that because Staff has the power to compel evidence in connection with a regulatory hearing, they have a heightened obligation to disclose particulars to respondents because respondents have no comparable opportunity for discovery of the material facts.

2. The Taylors' Submissions

[18] Counsel argued that Staff, at the pre-hearing meeting held on February 2, 2007, had "undertaken" or "promised" to provide answers to the questions asked by the Respondents with respect to the material facts that form the basis for the allegations against them. In support of this position, counsel took the Commission through the lengthy correspondence between Staff and the Respondents to establish that an undertaking or promise with respect to particulars was given, but not fulfilled.

[19] Counsel submitted that there are two reasons for the obligation to provide particulars. First, particulars allow the Respondents to know the case to be met, and second, they assist in defining the issues to be argued at a hearing and aid the adjudicator in making evidentiary rulings. Counsel relied upon the case of *Regina v. Armour Pharmaceuticals* (2007), 205 C.C.C. (3d) 97 (Ont. Sup. Ct.) ("*Armour*") as authority for that submission. Counsel argued that if appropriate particulars are given, the hearing of a matter will proceed more smoothly and efficiently because the issues will be articulated more clearly.

[20] Counsel also took issue with several of the arguments made by Staff. He first argued that Staff was confusing the concept of giving particulars with the concept of making disclosure, and reiterated that disclosure is not a substitute for particulars. He also submitted that the amount of disclosure already given to the Respondents is too voluminous to allow them to assess it and identify the facts supporting each allegation.

[21] Counsel also argued, by analogy to *Armour*, that in highly 'document based' cases, there is a higher duty to provide particulars because of the complexity of such cases.

[22] Finally, counsel disagreed with Staff's written submission that, because respondents are not registrants, they are due a lower standard of procedural fairness than registrants. Counsel disputed Staff's interpretation of the case of *Re Lett* (2004), 27 O.S.C.B. 3215 (Ont. Sec. Comm. (QL) ("*Re Lett*"), pointing out that while the burden of proof in a non-disciplinary case may be lower, the duty of fairness is not affected.

3. OSC Staff's Submissions

[23] At the outset of their submissions, Staff submitted that they have given no formal undertaking or promise to the Respondents with respect to providing particulars. While there may have been a proposal to provide certain particulars, that proposal was made at a without prejudice pre-hearing meeting, and did not constitute a formal, legally enforceable undertaking. Staff argued in any event that if an undertaking was given by Staff, it has been complied with through the very extensive disclosure already made by Staff including the disclosure in the July Letter.

[24] Staff's main submissions were divided into three areas: the nature of these proceedings, the level of particularization legally required, and why that standard has been met in this case.

[25] Staff argued that, because the Respondents are not registrants, they are owed a lower duty of procedural fairness because the potential sanctions that can be imposed on the Respondents are less severe than the sanctions that can be imposed on a registrant. Essentially, because a registrant can lose his or her livelihood if registration is terminated, the potential impact of a regulatory proceeding on a registrant is greater than on non-registrants. Staff also submitted that the public interest mandate of the Commission is more important than and takes precedence over the duty of procedural fairness owed to the Respondents.

[26] In arguing the level of particulars required, Staff relied on the case of *R v. Govedarov* [1974] 25 C.R.N.S. 1 ("*Govedarov*") where it was held that the purpose of particulars is to provide the defence with the case to be met insofar as doing so does not fetter the ability of the prosecution to make their case. It was held in *Govedarov* that, at least in the circumstances of that case, quoting directly from the relevant section of a legislative provision is sufficient to frame a charge.

Staff argued on that basis that since all of the allegations against the Respondents refer directly to the provisions of the *Securities Act*, the allegations themselves are sufficient and adequately inform the Respondents of the nature of the case they have to meet. Staff also submitted that because the allegations focus on the Respondents' conduct as a group, that focus should reduce the level of particulars required to be given to each of the Respondents.

[27] Staff also submitted that the disclosure already made is neither overly voluminous nor complex and is well organized. Staff submitted that after separating the "wheat from the chaff", the Respondents will have a sufficient knowledge of the allegations against them to make full answer and defence. Staff also noted that the Respondents have personal knowledge of their involvement in the matters that are before the Commission. Based on the foregoing, Staff argued that the Respondents already know, in fact, the particulars of the allegations against them and no further particulars are necessary.

[28] Turning to the case law, Staff quoted from the Commission decision in *Belteco Holdings Inc*. (Re) [1997] 20 O.S.C.B. 1333 (Ont. Sec. Comm.) (QL) ("*Belteco*"), highlighting the conclusion in that case that it is not the duty of Staff to answer questions regarding what evidence it will bring and Staff is not obligated to provide a roadmap of its case. Staff also relied on the decision of the British Columbia Court of Appeal in *British Columbia (Securities Commission) v. Pacific International Securities Inc.* [2002] B.C.J. No. 1480 (B.C.C.A.) (QL) ("*Pacific International*") where it was held that individualized particulars are not required where allegations are made against respondents as a group.

[29] Finally, Staff submitted that this case is no more complex or complicated than any other similar illegal trading case that comes before the Commission, and that to require more detailed particulars in such a simple case would unduly hinder Staff in their future enforcement efforts. The Commission, it was argued, is a regulatory body that cannot be expected to comply strictly with the rules of criminal courts with respect to giving particulars.

IV. Legal Analysis

1. The Obligation to Provide Particulars

[30] The foundation for the requirement to provide particulars is the duty of procedural fairness owed to respondents: that is, the right of a respondent to know the case to be met. In the Commission decision in *Re YBM Magnex International Inc*. (2000), 23 O.S.C.B. 1171 (Ont. Sec. Comm.) ("*YBM Magnex*"), the Commission stated that "in a hearing of this nature, fairness requires sufficient particularization of the allegations to define the issues, prevent surprise and to enable the parties to prepare for the hearing." We accept that as the correct legal test; we would only add that avoiding surprises means that hearings of the Commission can be held fairly, efficiently and without undue delay.

[31] The Commission has expressly recognized the obligation of Staff to provide particulars. Subrule 3.4 of the Commission's Rules of Practice state that "Subject to Subrule 3.7, if the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party making the allegations shall, as soon as is reasonably practicable after service of the notice of hearing, and in any case at least 10 days before the commencement of the hearing, provide particulars of the allegations and disclose to the party against whom the allegations are made all documents and things in the party's possession or control relevant to the allegations including:

(a) all signed witness statements, or if these do not exist, transcripts or notes of witness interviews or, if none of the foregoing exist, statements of evidence that each witness is expected to give; and

(b) all experts' reports."

[32] In addition, Subrule 3.1(2) of the Commission's Rules of Practice states that "Particulars shall include,

(a) the grounds upon which any remedy or order is being sought or opposed in the proceeding; and

(b) a general statement of the material alleged facts that the party relies on in support of the position being taken by the party in the proceeding."

[33] In our view, Commission Subrule 3.4 applies to the current matter before the Commission involving the Respondents.

[34] Commission Subrule 3.4 is based upon, and refers to, section 8 of the *SPPA*. However, we note that the two provisions are not identical. The *SPPA* requires that "reasonable information" be provided to a respondent. Commission Subrule 3.4 heightens the disclosure requirement and requires "particulars" including a statement of the "material alleged facts" to be provided. It is also clear that the Commission's Rules of Practice distinguish between the obligation to provide disclosure and the obligation to provide particulars of the material alleged facts.

[35] Although particulars inform the nature of the case to be met, they do not inform the mode in which a case will proceed (*YBM Magnex*). There are two distinctions that should be made with regard to the nature of particulars. First, particulars relate

solely to matters of fact (what happened) and are not given to answer questions of law (whether what happened is legal or illegal). Secondly, there is a clear distinction between particulars (the material facts underlying an allegation) and disclosure (all the information, documents and things that must be disclosed to respondents as a matter of fairness). As noted in *YBM Magnex*, the obligation to make disclosure requires Staff to give the Respondents full disclosure of all relevant documents and things Staff possesses relevant to the allegations against the Respondents. That does not, however, relieve Staff from the duty to provide particulars.

[36] In *YBM Magnex*, the Commission noted the distinction between questions of fact and questions of law, and agreed that particulars relate to facts. Staff is not required to answer 'how' an action violates the *Securities Act*, as that is a question of law or mixed fact and law. To satisfy the requirement for giving particulars, Staff must simply identify the conduct in question without having to show exactly why that conduct may be contrary to securities law.

[37] In *Belteco*, the Commission held that for the purpose of providing particulars, Staff is not required to specify which evidence applies to which alleged illegality and respondent. To do so would go beyond providing the underlying facts of the allegations and would confuse particulars with disclosure. In *Belteco*, by requesting specific answers regarding the evidence, the moving party was requesting not particulars but an enhanced form of disclosure that Staff is not required to provide.

[38] We agree with counsel for the Taylors that as stated in *Armour*, "particulars also define the issues and ensure that the trial judge is capable of making evidentiary rulings particularly with respect to relevance." Since the material facts will have to be proven at the hearing on the merits in any event, providing them in advance helps to frame the issues and make the hearing more focussed and efficient.

[39] In summary then, we have concluded that Staff has an obligation to disclose particulars to the Respondents. That obligation relates to the disclosure of material facts and is independent of the obligation to make disclosure generally. We also agree that, as stated in *Belteco*, the obligation to disclose particulars does not require disclosure of evidence or the obligation to provide a roadmap of how Staff intends to prove its case.

2. The Duty of Procedural Fairness

[40] The extent of the duty of procedural fairness owed by the Commission to the Respondents must be considered in order to determine the level of particulars required to be given to the Respondents. The most comprehensive analysis of the duty of procedural fairness owed by a provincial securities commission is in *Pacific International*, a decision of the British Columbia Court of Appeal. The Court in that case concluded that the decision of the British Columbia Securities Commission (the "BC Commission") not to grant additional particulars did not breach its obligation of procedural fairness and that, given the public interest mandate of the BC Commission, it should not be required to apply the same standard of procedural fairness as a criminal court. The Pacific International case adopted the analysis in *Baker v. Canada (Minister of Citizenship and Immigration)* [1999] S.C.J. No. 39 (S.C.C.) (QL) ("*Baker*") which set forth the five factors a tribunal should consider in determining the level of procedural fairness owed in particular circumstances.

[41] Specifically, the Court found in *Pacific International* that while the BC Commission's hearing in that case was in many ways akin to a criminal proceeding, the BC Commission has competing demands as a result of its public interest mandate and the mandate to foster fair and efficient capital markets. Those demands qualify the standard of procedural fairness required. That being said, respondents have a legitimate expectation to know the case brought against them and are entitled to receive particulars that allow them to do so. The Court also held that as an administrative body, the BC Commission has control of its own procedure, which allows it, to an extent, to decide what level of procedural fairness is due to a respondent. In *Pacific International*, the Court also noted that particulars are not required to be delivered in any particular form, so long as the substance meets the applicable standard of fairness and allows the respondents to know the case against them. The Court considered the institutional constraints applicable to the BC Commission and found that given its right to establish its own procedures while balancing its broader mandates, the decision of the BC Commission not to require further particulars should be given weight. We adopt the reasoning and analysis in *Pacific International*.

[42] In *YBM Magnex* the Commission discussed the standard of procedural fairness to be applied in a Commission hearing and commented that while the duty of fairness requires sufficient particularization to allow the parties to know the issues and prevent surprise, it would be inappropriate to treat a statement of allegations as a criminal indictment. That is because the Commission has public interest responsibilities and a mandate to protect investors from unfair, improper and fraudulent practices and to foster fair and efficient capital markets and confidence in their integrity. As a result, the standard to be applied by the Commission is one that is less stringent than in a criminal proceeding.

[43] In our view, the Respondents are owed a duty of procedural fairness by the Commission and we do not accept that the standard of fairness is lower because the Respondents are not registrants. The sanctions the Commission can impose are substantial and could have a very serious impact on any respondent. While we are conscious of the Commission's public interest mandate and responsibilities, we nonetheless believe that the Commission must provide a substantial level of procedural fairness to respondents in circumstances such as these. We have considered and adopted the five point test in

Baker as our guide in reaching our decision in this matter. We agree, however, that Staff is not required to meet the criminal standard in providing particulars.

[44] In our view, Staff has delivered to the Respondents comprehensive disclosure in a relatively manageable form. That disclosure includes investor questionnaires that set out succinctly and effectively very focused and relevant facts related to each investor. We believe that the Statement of Allegations, together with all of the other information already disclosed to the Respondents by Staff, should convey to them clearly the nature of the case they have to meet. We also note that the Respondents have had possession of a substantial portion of that information for a significant period of time.

[45] But, as reflected in Subrule 3.4 of the Commission's Rules of Practice and as held in *YBM Magnex*, there is a difference between providing disclosure and providing particulars. The Commission has an interest in ensuring that appropriate particulars are communicated to respondents both as a matter of fairness to them but also to avoid surprises that could potentially interfere with and cause the delay of a hearing. Pre-hearing conferences are held, in part, to attempt to ensure that hearings are conducted in a fair and efficient manner. One of the important reasons to hold such pre-hearing conferences is to address questions such as the entitlement of respondents to adequate particulars. We strongly support the use of the pre-hearing conference to bring procedural order to otherwise contentious issues.

[46] In considering the motions before us, we have considered the level of particulars provided by Staff in *YBM Magnex*. We have also been influenced in our decision by the description of the particulars provided in the *Pacific International* case. We recognise that the legal principles relating to the obligation to provide particulars are relatively clear; applying them in the particular case is the challenge. Clearly each case must be decided on its own facts and circumstances.

[47] We also recognise that it is difficult for us to make a decision as to the extent of particulars that are required without a full understanding of all of the specific information that has been provided to the Respondents. It is not appropriate for us to review all of the detailed information provided in this matter. We must make our decision based on the more general evidence and submissions made to us. Having said that, the panel hearing this matter on the merits will be in the best position to fully address whether the level of particulars actually provided to the Respondents meets the appropriate level of procedural fairness and to take appropriate action if it does not.

[48] In rendering this decision, we have taken into consideration the regulatory nature of these proceedings and their public interest implications. We believe that Staff is entitled to make an allegation that the conduct of the Respondents is, in all the circumstances, contrary to the public interest within the meaning of the *Securities Act*. Provided the circumstances underlying such allegations are appropriately particularized, we do not believe that Staff is required to provide detailed particulars of all the matters that bear on the question whether the Respondents have acted contrary to the public interest. Staff is alleging in this case that the Moving Parties, who are all family members or a related company, participated as a group or in concert in breaching Ontario securities laws. Consistent with the decision in the *Pacific International* case, we do not believe that, in this case, Staff has an obligation to provide any additional particulars as to the specific involvement or actions of each Respondent.

[49] In our view, however, framing the allegations against the Respondents in terms of the specific sections of the *Securities Act* that are alleged to have been breached is not a sufficient particularization of the allegations.

3. The Commitment to Provide Particulars

[50] On the evidence before us, Staff proposed at the February 2, 2007 meeting and at the pre-hearing conference on February 20, 2007 to provide the Respondents with disclosure that "included directing the respondents to the disclosure that answers all of the questions they're asking" (Transcript of the February 20, 2007 Pre-hearing Conference). Staff expressly acknowledged on the record at the pre-hearing conference that it would comply with this proposal. In our view, making that proposal was both appropriate and desirable. The Respondents' pending motion for particulars was adjourned *sine die* awaiting Staff's response. After considerable delay, Staff's July Letter to counsel for the Moving Parties purported to fulfill Staff's proposal. The Moving Parties took the view that the July Letter did not satisfy their request for particulars and, as a result, these motions were brought forward.

[51] The commitment made by Staff was at best unclear and open to dispute. We recognise, and are prepared to accept in the circumstances, that Staff takes the view that it has complied with its commitment. Accordingly, at the end of the day, we dismiss the Moving Parties' motion to enforce the terms of Staff's commitment.

4. Additional Particulars

[52] In our view, based on the analysis above, Staff should provide some additional particulars to the Respondents in this matter. We are therefore directing Staff to provide the following additional particulars to the Respondents, as soon as reasonably possible, to the extent that Staff considers that such facts will be in issue at the hearing on the merits. Specifically, we direct Staff to:

1. Identify the specific issuances of shares and transfers that Staff alleges constitute illegal distributions. That identification should include the dates of the relevant trades, the persons directly effecting the trades and the persons to whom the shares were issued or transferred;

2. Disclose the dates of the various solicitation meetings held by Mega-C or the Respondents and identify the persons who, to Staff's knowledge, were present including both potential investors in Mega-C and the Respondents (we recognize that Staff will not be able to identify, and need not identify, everyone present at such meetings);

3. Identify the following documents, the investors to whom they were sent and the persons by whom they were sent: (i) the August 24, 2001 Confidential Offering Memorandum, (ii) the November 2001 Confidential Business Plan, (iii) the Reserve Shares Form, and (iv) the June and/or October 2002 letters (again, we recognize that Staff will not be able to identify, and need not identify, everyone to whom such documents were sent);

4. Identify any allegedly illegal oral representations made by Mega-C or any of the Respondents to investors and provide particulars of when those representations were made, to whom and by whom they were made and the specific nature of the representations; and

5. Identify what cash, if any, it is alleged was received by the individual Respondents in connection with the alleged illegal distributions referred to above.

[53] With respect to the disclosure referred to in paragraph 1 above, we are not requiring that Staff give particulars of any additional acts in furtherance of the particular trades by each of the Respondents.

[54] We believe that Staff will be able to comply with this direction by referencing the disclosure already provided to the Respondents by Staff, including certain of the disclosure in the July Letter.

[55] In directing that Staff make disclosure of these particulars, we are attempting to balance the Moving Parties' right to procedural fairness and the Commission's regulatory responsibilities. In our view, this decision is consistent with the decision in Belteco because we are not directing the disclosure of evidence or requiring Staff to deliver a roadmap of how Staff intends to conduct its case. In our view, complying with this decision will not prejudice the conduct of Staff's case or unduly restrict or fetter Staff's ability in the future to effectively carry out its enforcement function.

[56] We note that because this proceeding is regulatory in nature, the Statement of Allegations is not formally amended by any of the particulars provided to the Respondents, as it would be in a criminal proceeding. Counsel for the Taylors acknowledged that. As a result, Staff is not bound to the specific proof of the material particulars provided to the Respondents.

VI. Conclusion

[57] In our view, the allegations made in the Statement of Allegations, the July Letter and all the other comprehensive disclosure made by Staff to the Respondents are not sufficient to permit the Respondents to know the particulars of the case they have to meet and to make full answer and defence. Accordingly, we have directed Staff to provide the additional particulars referred to above. We believe that disclosure of these additional particulars will meet the standard of procedural fairness appropriate in this case without unduly interfering with the Commission's public interest mandate. In our view, the disclosure of the additional particulars required by the this decision should not delay the hearing of this matter on the merits. If that issue arises, the panel hearing this matter on the merits will be best able to resolve it.

[58] This decision shall be publicly released at the commencement of the hearing on the merits.

DATED at Toronto this 7th day of September, 2007.

"Wendell S. Wigle"

"James E. A. Turner"

3.1.5 Mega-C Power Corporation et al.

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

AND

IN THE MATTER OF
MEGA-C POWER CORPORATION, RENE PARDO,
GARY USLING, LEWIS TAYLOR SR.,
LEWIS TAYLOR JR., JARED TAYLOR,
COLIN TAYLOR and 1248136 ONTARIO LIMITED

CONFIDENTIAL DECISION ON A MOTION FOR A STAY
[Editor's Note: Made public on September 8, 2010.]

In Camera Hearing:	August 6 and 7, 2008		
Decision:	October 1, 2008		
Panel:	Lawrence Ritchie	–	Vice-Chair and Chair of the Panel
	James E. A. Turner	–	Vice-Chair
Counsel:	Matthew Britton	–	for Staff of the Ontario Securities Commission
	Rene Pardo	–	for himself
	Linda Fuerst	–	for Gary Usling
	Brian Greenspan	–	for Lewis Taylor Sr. and Lewis Taylor Jr.
	Fred A. Platt	–	for Jared Taylor, Colin Taylor and 1248136 Ontario Ltd.

CONFIDENTIAL DECISION ON A MOTION FOR A STAY

[1] This matter relates to an investigation by Staff ("Staff") of the Ontario Securities Commission (the "Commission") that has been ongoing for five years. There is a hearing on the merits scheduled to commence on November 3, 2008. It is anticipated that the hearing will last for seven weeks. In light of the pending hearing, we are releasing this decision now and intend to supplement it with detailed reasons to follow. In keeping with the Commission's previous confidentiality order in this matter, this decision will not be released to the public until the hearing on the merits.

[2] On November 16, 2005, the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") together with a Statement of Allegations (the "Statement of Allegations"). The Notice of Hearing and Statement of Allegations named the following as respondents: Rene Pardo ("Pardo"), Gary Usling ("Usling"), Lewis Taylor Sr., Lewis Taylor Jr. ("Taylor Sr. and Taylor Jr."), Jared Taylor, Colin Taylor and 1248136 Ontario Limited (collectively, the "Respondents"), as well as Mega-C Power Corporation ("Mega-C"). An Amended Statement of Allegations and Notice of Hearing were issued on February 6, 2007 discontinuing proceedings against Mega-C.

[3] There have been numerous appearances in this matter. In total, the parties have appeared before the Commission seventeen times. The Commission has considered several motions, including a constitutional motion and a particulars motion. Furthermore, there have been numerous pre-hearing and case management conferences. The hearing on the merits, previously scheduled for October 29, 2007, was adjourned to commence on November 3, 2008. That date was agreed to by the parties and set by the Office of the Secretary in November 2007. Many of the issues in dispute in this motion were raised by the parties at previous pre-hearing conferences, case management conferences and motions.

[4] In this motion, the Respondents, except Pardo (the "Moving Parties") seek a stay of proceedings. In the alternative, if a stay is not granted, the Moving Parties request an order that Staff produce a written itemized inventory of relevant materials that Staff does not intend to disclose along with the reason for non-disclosure of each document, and orders restricting the use of disclosed materials. In addition, Jared Taylor, Colin Taylor and 1248136 Ontario Limited seek an order requiring Staff to provide further particulars of the allegations against them.

[5] The Moving Parties do not allege one factor as the basis for a stay, but rather a series of circumstances that together, in their submission, raise serious issues about Staff's conduct of the investigation and proceeding in this matter. These allegations include:

(1) a failure by Staff to conduct a fair investigation;

(2) misrepresentation by Staff to the Commission in obtaining a section 11 order;

(3) failure by Staff to obtain and preserve all evidence from the investigation relevant to this matter;

(4) failure by Staff to protect information and materials obtained pursuant to section 11 of the Act from improper disclosure and use; and

(5) an ongoing and continuing refusal to meet Staff's disclosure obligations.

[6] The Moving Parties state in their submissions that, in making these allegations, they are not pointing a finger at any one member of Staff or group of members of Staff. However, they do say that, in whole, Staff's conduct was improper and has thrown the Commission's process into disrepute.

[7] Staff denies these allegations and submits that it has complied with all of its obligations in conducting the investigation and this proceeding. Staff submits, in any event, that the allegations, if proven, have resulted in no material prejudice to the Moving Parties.

[8] All the parties agree that a stay of proceedings is an extraordinary remedy. For example, in the criminal context, a stay of proceedings "is only appropriate 'in the clearest of cases', where the prejudice to the accused's right to make full answer and defence cannot be remedied or where irreparable prejudice would be caused to the integrity of the judicial system if the prosecution were continued" (*R. v. O'Connor*, [1995] S.C.J. No. 98 (S.C.C.) at para. 82).

[9] We are concerned by the allegations that we have heard. We are particularly concerned by the allegation that Staff failed to take steps to scrupulously protect confidentiality of the documents and materials compelled under section 11 of the Act. In particular, among other things, there is an allegation that confidential documents and materials were delivered to counsel for Mega-C, without any caution, warning or reference to their confidentiality and restricted use, and that these materials then found their way into the hands of certain persons in the United States who have interests adverse to the Moving Parties. This alleged failure to protect confidentiality may have been inadvertent. Nonetheless, it is also alleged that the improprieties were amplified by Staff's additional failures after becoming aware that the confidential material had been improperly disseminated. In particular, the Moving Parties allege that when Staff had the opportunity to take action, it did nothing. The Moving Parties allege that Staff's action (or inaction) in failing to protect the confidentiality of the documents and materials obtained under section 11 was negligent at best and more likely a breach of its duty. This is a very serious allegation.

[10] Staff disputes the version of the facts promoted by the Moving Parties. Staff also, and in any event, submits that it has no obligation to warn a recipient of documents and materials obtained under section 11 of their confidentiality and restricted use. Staff also says that there has been no actual prejudice to any of the Moving Parties in the circumstances and that Staff has and is now taking all reasonable steps to ensure that third parties return the relevant documents and materials.

[11] The legal and factual issues raised on this motion are complex. The submissions before us raise concerns as to Staff's conduct in this matter. We are presented with submissions based on limited affidavit evidence. We do not have the benefit of hearing the evidence directly from witnesses, and the opportunity to assess that evidence in the factual context of the hearing on the merits. That opportunity, in our view, is necessary since questions of credibility, the propriety of the conduct of Staff and the integrity of the Commission as a whole are at issue.

[12] We have given this matter careful consideration and we have determined that we will not stay these proceedings on this preliminary motion. We point out that the allegations made by the Moving Parties against Staff, about the conduct of the investigation and this proceeding, would cause us significant concern if they are proven. However, we are unable to properly assess these serious allegations on the limited evidence before us. This assessment is necessary before we can conclude that the granting of the extraordinary remedy of a stay is justified.

[13] Accordingly, in the circumstances, we dismiss the Moving Parties' motion for a stay, but without prejudice to the Moving Parties renewing their motion at the hearing on the merits. In our view, the panel hearing this matter on the merits would be better able to make the factual determinations required to assess the allegations made, and to decide whether a stay is appropriate in the circumstances, considering the entirety of the evidence.

[14] Staff has been put on notice that its conduct of the investigation and the conduct of this proceeding is at issue and Staff should be prepared to address those allegations if they are renewed before the panel hearing this matter on the merits.

[15] As noted, there have been previous requests for particulars. Some of the Moving Parties assert that the particulars previously ordered by a Commission panel remain outstanding. Staff responds that it has complied with the Commission's Order (dated September 7, 2007) in relation to a previous particulars motion. Little further was said on the motion before us about what specifically remains outstanding. We urge Staff to meet and work with the parties to ensure that the specifics of the allegations made against the Respondents are sufficiently known to each Respondent, to enable them to make answer and defence.

[16] On the issue of disclosure, the Moving Parties assert that Staff is in possession of materials relevant to this proceeding that have not yet been disclosed to the Moving Parties. Staff asserts that any undisclosed material is either irrelevant or subject to privilege. The Moving Parties respond that without knowing the nature of those materials, and the specific reason Staff has for not disclosing them, they cannot properly respond. We agree with the position of the Moving Parties on this point. If agreement cannot be achieved on these issues, they can be addressed at a case management conference scheduled in advance of the hearing on the merits.

[17] Accordingly, IT IS ORDERED THAT:

(1) The motion for the stay of this proceeding is dismissed, without prejudice to the Moving parties to renew their request at the hearing on the merits;

(2) Staff should immediately take appropriate steps to ensure that employees in the Enforcement Branch do not have any documents or materials, including e-mails, relevant to this matter that have not been disclosed to the Respondents;

(3) Staff shall produce a written itemized inventory of documents and materials in its possession that are relevant to this proceeding that Staff does not intend to disclose to the Respondents. The inventory shall disclose in each case the basis upon which Staff proposes to withhold disclosure;

It may not be necessary for Staff to list each and every document. Rather, a grouping by nature and a generalized description of that group will suffice;

(4) The itemized inventory described in paragraph 3 above shall be delivered to the Respondents no later than October 17, 2008; and

(5) A pre-hearing/case management conference shall be held no later than October 31, 2008 to deal with any outstanding issues related to disclosure, particulars or any of the other matters dealt with in this decision (unless the parties determine such a conference is unnecessary).

[18] As stated above, the hearing on the merits in this matter is scheduled to commence on November 3, 2008; those dates have been set for almost a year. It is the Commission's intention that this matter proceed within the time set aside and we ask all parties to use their best efforts to do so.

DATED at Toronto this 1st day of October, 2008.

"Lawrence E. Ritchie"
Lawrence E. Ritchie

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

3.1.6 Mega-C Power Corporation et al.

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

AND

IN THE MATTER OF
MEGA-C POWER CORPORATION, RENE PARDO,
GARY USLING, LEWIS TAYLOR SR.,
LEWIS TAYLOR JR., JARED TAYLOR,
COLIN TAYLOR and 1248136 ONTARIO LIMITED

ENDORSEMENT
[Editor's Note: Made public on September 8, 2010.]

Motion Hearing: September 9, 2009

Appearances:

– Matthew Britton for Staff of the Ontario Securities Commission
– Rene Pardo
– Gary Usling
– Lewis Taylor Sr.
– Jared Taylor
– Colin Taylor

Decision on Mr. Pardo's Motion:

[1] In this hearing, Mr. Pardo seeks an adjournment to May 2010. He says an adjournment will serve to help shareholders of Mega-C in bankruptcy proceedings in Nevada.

[2] This matter began with an investigation in 2003. The Statement of Allegations was issued on November 16, 2005, as was the Notice of Hearing. Since then, there have been a multiplicity of motions, hearings and voluminous correspondence and disclosures. This appearance is approximately the 23rd in the proceeding.

[3] I find it would be scandalous to grant an adjournment sought on the eve of the hearing, particularly where the hearing on the merits is set for September 30, 2009 to proceed for several weeks.

[4] These unrepresented Respondents are not to have their hearing on the merits postponed yet again, particularly at the hands of someone who appears to be adverse to the interests of the other Respondents.

Decision on Mr. Usling's Motion:

[5] Mr. Usling's motion is denied, without prejudice to his right to renew it at the hearing on the merits, in support of his contention the proceeding should be stayed because of Staff's conduct.

[6] Mr. Usling moves to have this matter stayed against him because of Staff's alleged failure to maintain confidentiality of his compelled testimony, and because of alleged refusal of Staff to provide disclosure of pertinent information. He says the failure to disclose has continued following the Panel decision to adjourn the original disclosure motion to the hearing on the merits.

[7] The issue of failure to disclose is a classic "I did so – you did not". This latest allegation can no more be satisfactorily dealt with in a motion forum than it could at the Panel hearing of August 6 and 7, 2008. These allegations and counter-allegations can only be resolved in a full hearing on the merits.

Decision on the Taylors' Motions:

[8] The Taylors' motion for further particulars is denied, without prejudice to their right to renew it at the hearing on the merits. This, as with Mr. Usling, is to give them an opportunity to submit the proceeding should be stayed because of Staff's conduct.

[9] The Taylors' motion for a stay is denied without prejudice to their right to renew it at the hearing on the merits. This, as with Mr. Usling, is to give them an opportunity to submit the matter should be stayed because of Staff's conduct.

The Hearing on the Merits:

[10] There shall be no further motions prior to the hearing on the merits. If anyone feels compelled to move on something, they shall do so 7 days before the hearing, to be heard at the hearing on the merits.

DATED at Toronto on this 9th day of September, 2009.

"James D. Carnwath"
James D. Carnwath

3.1.7 Mega–C Power Corporation et al.

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

AND

IN THE MATTER OF
MEGA–C POWER CORPORATION, RENE PARDO,
GARY USLING, LEWIS TAYLOR SR.,
LEWIS TAYLOR JR., JARED TAYLOR,
COLIN TAYLOR AND 1248136 ONTARIO LIMITED

DECISION

Hearing: September 30, October 1-2, 5-9, 14-15, 19-23, 27-30, November 24-27, 30, December 1-4, 7-11, 14-18, 21-22, 2009, January 11-15, 18, 20-22, 25-29, March 22-26, 2010

Decision: September 7, 2010

Panel: James D. Carnwath – Commissioner (Chair of the Panel)
Kevin J. Kelly – Commissioner

Counsel: Matthew Britton – for Staff of the Commission
Jonathon Feasby

Rene Pardo, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited were self-represented.

Mega-C Power Corporation and Gary Usling, no longer being parties, did not participate in the hearing.

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REASONS AND DECISION

I. INTRODUCTION

[1] This case involves alleged distributions of shares in Mega-C Power Corporation from September 2001 to mid-2003 (the "Relevant Period"). It has a long, complex, even tortured history.

[2] The issues to be decided are relatively simple – did the Respondents, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Ltd. (collectively, the "Taylor Respondents") and Rene Pardo, or any of them:

- trade securities within the meaning of the *Securities Act*, R.S.O, 1990, c. S.5, as amended ("the Act") while not registered to do so, contrary to s. 25(1)(a) of the *Act*?
- distribute Mega-C shares where Mega-C filed no prospectus and was not a reporting issuer in Ontario, contrary to s. 53(1) of the *Act*?
- make prohibited representations to the public, contrary to s. 38 of the *Act*?
- should all allegations against the Taylor Respondents be stayed because of delay, Staff's failure to provide disclosure and particulars, Staff bias, Staff's breaches of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"), or any one of them?

[3] The proceeding against the respondent Mega-C was withdrawn on June 4, 2007. The proceeding against Gary Usling was settled by Order issued on September 17, 2009.

[4] Sections 25(1)(a), 53(1), 38 and the Act's definition of "trade" or "trading" are included in Schedule A annexed to these reasons.

II. MATERIAL FILED

[5] At the opening of the hearing on the merits ("the Hearing"), fourteen Hearing Briefs were filed as exhibits. References to the Hearing Briefs in these reasons will be by volume number, tab and, where necessary, page number (Vol. –, Tab –, p. –).

[6] In addition, approximately 19 binders of Staff disclosure were present in the hearing room, suitably indexed. The 19 binders of disclosure do not constitute evidence except for those documents extracted from the binders and duly entered as an exhibit. Together with the Hearing Briefs there are close to twenty thousand pages of disclosure material.

[7] Finally, there is a complete transcript of the 58 volumes in all. Reference to the transcript will be by transcript page number and line, as required (Tr. –, p. –, l. –).

III. THE MAJOR PLAYERS

[8] Mega-C Power Corporation ("Mega-C"), a company incorporated in the State of Nevada, whose shares are the subject of the allegations made by Staff of the Ontario Securities Commission (the "OSC" or the "Commission"). It is not disputed that Mega-C was originally incorporated as Net Capital Ventures Corporation and that its name was changed to Mega-C Power Corporation some time between March 1, 2001 and October 1, 2001. Throughout these reasons, references to "Mega-C" and "Mega-C shareholders" refer to the Nevada corporation known as Mega-C Power Corporation.

[9] Mega-C Power Corporation, a company incorporated in the province of Ontario ("Mega-C Ontario").

[10] Rene Pardo, at all material times the President and Chief Executive Officer with effective control of Mega-C, Mega-C Ontario and NetProfitEtc Inc. ("NetProfit"). The latter corporation was owned and controlled by Rene Pardo. It, as well as Mr. Pardo, received common shares in Mega-C, ostensibly for Mr. Pardo's role in organizing and establishing the company's operations and as payment for consulting services.

[11] Gary Usling, at all material times a Director and Chief Financial Officer of Mega-C and holding interests in other recipients of Mega-C shares, including Lauterbrunner Developments.

[12] Lewis Taylor Sr. ("Chip Taylor"), acknowledged by his former counsel to have been involved in, or made, all major decisions on behalf of the Taylor family.

[13] Lewis Taylor Jr. ("Skip Taylor"), son of Chip Taylor, at all material times a Vice-President of Mega-C and President of Mega-C Technologies Inc.

[14] C&T Company Inc. ("C&T"), an Ontario corporation, the original owner of the technology (described later in these reasons) to be developed by Mega-C, owned 50% by the Taylor Respondents and 50% by Russian scientists who developed the technology.

[15] Mega-C Technologies Inc. ("Mega-C Tech"), an Ontario corporation, the vehicle through which C&T and the Taylor Respondents intended to commercialize the technology and the recipient from C&T of a licence to commercialize the technology. Its board of directors in March of 2000 included Lewis Taylor Sr., Paul Pignatelli, Claude Bonhomme, Igor Filipenko and Valeri Shtemberg.

[16] Jared Taylor, son of Chip Taylor, the keeper of the financial records for the Taylor Respondents and the person to whom certain "loans" were made by persons receiving shares in Mega-C.

[17] Colin Taylor, son of Chip Taylor, the sole officer and director and directing mind of 1248136 Ontario Limited.

[18] 1248136 Ontario Limited ("1248136"), the alter ego of Colin Taylor, the notional recipient of Mega-C shares from the portion to which the Taylor Respondents were entitled and from which certain shares were transferred to named individuals at the direction of Colin Taylor.

[19] Paul Pignatelli, Chip Taylor's son-in-law, the recipient of a number of shares from the portion of the Mega-C shares to which the Taylor Respondents were entitled.

[20] The Investors Watchdog Group (the "IWG"), a number of early investors who effectively took over Mega-C's assets in midsummer of 2003.

IV. THE OSC INVESTIGATION

[21] Staff of the Commission ("Staff") led evidence of the investigation through Shauna Flynn, a solicitor called to the bar in 2000. She began working for the OSC as Investigation Counsel in November of 2003.

[22] Ms. Flynn began her evidence by describing the structure and process of the Enforcement Branch of the OSC. The branch is composed of a surveillance unit, a case assessment unit, an investigations unit and a litigation unit. The surveillance unit and the case assessment unit are intake units. The case assessment group focuses on illegal distributions, unregistered sales of securities and disclosure issues. If the case assessment unit or the surveillance unit determines that there is evidence of possible breaches of Ontario securities law, or conduct contrary to the public interest, the matter is referred to the investigation unit for further action. If the investigation unit concludes that there is evidence establishing breaches of Ontario securities law, the file is transferred to the litigation unit to start proceedings.

[23] At every stage of the file there is a Staff member who is assigned as the primary person responsible for the file. Other Staff members are assigned as secondaries. Ms. Flynn said she was assigned as a secondary investigator in February of 2004 and became the primary investigator in July of 2004. Her review of the file revealed that it was opened in January of 2003 in the case assessment unit. It was opened to determine whether shares of Mega-C had been traded in violation of the registration and prospectus requirements of the *Act*. Her review revealed that the primary investigator on the file was Andre Moniz when the file first opened.

[24] Her review further revealed that Andre Moniz had written a number of letters to Rene Pardo and members of the Taylor family seeking information about the transfer of Mega-C shares. Several responses were received.

[25] The file was transferred from the case assessment unit to the investigations unit in February of 2004. Peter Coulis was assigned to the file as senior investigator. Mr. Coulis wrote further letters to individuals seeking further information. He also sent out an investor questionnaire to Mega-C shareholders and spoke on the telephone with individuals involved in the sale of shares. Mr. Coulis' participation in the file ended in July of 2004 when Ms. Flynn became the primary investigator.

[26] Staff called neither Mr. Moniz nor Mr. Coulis to give evidence.

[27] On becoming the primary investigator, Ms. Flynn wrote some follow-up letters to individuals involved as well as their counsel. She conducted a number of voluntary interviews. She also sought and obtained s. 11 orders from the Commission. Briefly put, a s. 11 order permits the named investigator to conduct a wide-ranging inquiry into the affairs of any person or company in respect of which an investigation is being made.

[28] Pursuant to s. 13 of the Act, the person carrying out an investigation pursuant to s. 11 has the same power to compel a person to testify on oath or to produce documents as is vested in the Superior Court of Justice (Ontario) for the trial of civil actions. Failure to comply with a request for information and documents made under s. 13 renders a person or company liable to be committed for contempt by the Superior Court of Justice (Ontario) as if in breach of an Order of that court.

[29] Ms. Flynn remained on the file until March of 2005 when it was transferred to the litigation unit. Other investigative work continued, much of it carried out by Albert Ciorma, a forensic accountant for Staff.

[30] Staff issued the Statement of Allegations on November 16, 2005.

[31] The Commission issued a Notice of Hearing on November 16, 2005, returnable January 31, 2006, to consider Staff's allegations.

V. THE HEARING BRIEFS, Vols. 1–14 (Exs. 4–13)

[32] During her testimony, Ms. Flynn gave an overview of the contents of the fourteen Hearing Briefs. Vol. 1, Tab 2, p. 3 is a letter dated March 11, 2003 from Rene Pardo responding to an inquiry from Andre Moniz. The letter purports to provide a summary background and chronology of the development of the business and financing activities of Mega-C and Mr. Pardo's personal involvement in the company. In addition, seven schedules to the letter give a breakdown of shareholdings in Mega-C as recorded by Mr. Pardo:

* Schedule A shows the number of persons who were shareholders of Mega-C as at March 11, 2003, broken down geographically

- Schedule B shows shares of Mega-C issued from treasury
- Schedule C shows "gifted" (shares) and NetProfit sales

- Schedule D shows third party transferees
- Schedule E shows NetProfit sales in Ontario
- Schedule F shows shares purportedly issued to Ontario subscribers pursuant to the accredited investor exemption
- Schedule G shows a list of current and former Mega-C directors, officers, employees and consultants who held (or had held) Mega-C shares and their province, state or country of residence.

[33] There then follows in Vol. 1 correspondence between Mega-C and third parties referencing the technology to be developed, a report from Dr. Brian E. Conway as to the commercial possibility of the technology and a plethora of documents speaking to the development of a hybrid battery in general and the Mega-C technology in particular.

[34] Hearing Brief Vol. 2 begins with material provided by Mr. Pardo expanding on his March 11, 2003 letter. There follow Tabs 7-15 inclusive identified as letters to various members of the Taylor Respondents or to their counsel, requesting information. At Tab 16 is a letter from Brian Greenspan, then counsel to Lewis Taylor Sr., purporting to speak for all the Taylors. We shall refer to this letter later in our reasons. Tabs 18-33 contain documents received from persons who voluntarily wrote to the Commission or who replied to questionnaires and forwarded documents in their possession. Tabs 34-42 contain documents that were obtained by Ms. Flynn during the course of her investigation. Tabs 34-39 include correspondence involving Rene Pardo. Tabs 40-42 reference compelled evidence from the Taylor Respondents including a list of persons to whom shares were transferred allegedly at the direction of Lewis Taylor Sr. or members of his family.

[35] In Hearing Brief Vol. 3, Tabs 43-56 are exhibits from the compelled examinations of Paul Pignatelli, Colin Taylor, Jared Taylor and Lewis Taylor Sr. Tabs 57-74 reference exhibits from the examination of Gary Usling. It will be recalled that the proceeding against Gary Usling was settled although he was called as a witness by Lewis Taylor Sr.

[36] In Hearing Brief Vol. 4, Tabs 75-79 are further exhibits from the examination of Gary Usling. Starting at Tab 82A-LL are OSC surveys completed by Mega-C shareholders.

[37] In Hearing Brief Vol. 5, the OSC surveys are collected under sub-Tabs MM-VV inclusive, some with enclosures, some without. Starting at Tab 83 in Vol. 5, are notes prepared by OSC investigators David Adler and Sabine Dobell found under sub-Tabs A-CC inclusive. There follows Tabs 84-93 inclusive containing corporation profile reports and other corporate documents for the various companies involved in the history of Mega-C. At Tabs 94 and 95 are s. 139 certificates establishing that a prospectus was not filed and receipted for Mega-C and that none of the individual respondents is registered under the *Act*. Tab 96 marks the beginning of documents provided by investor witnesses that Staff proposed to call.

[38] Hearing Brief Vol. 6 continues the investor witness evidence referencing K.A. at Tab 97, S.G. at Tab 98, J.F. at Tab 99, L.L. at Tab 100 and S.K. at Tab 101, thereby completing Vol. 6.

[39] Hearing Brief Vol. 7 continues the investor witnesses with N.C. at Tab 102, S.B. at Tab 103, A.L. at Tab 104, A.R. at Tab 105, T.S. at Tab 106 and P.P. at Tab 107, thereby completing Vol. 7.

[40] At Tab 108 of Hearing Brief Vol. 8 is an e-mail from Kirk Tierney, at one time the General Manager of Mega-C, addressed to Tyler Hodgson, described by Ms. Flynn as litigation counsel on the file in November of 2005. The attachments to the e-mail are described by Mr. Tierney as a “summary executable HTML-based sneak peek”. Mr. Tierney also refers to videos which he claims show the Taylors involved in infractions of the *Act*. During the course of the e-mail Mr. Tierney promises to deliver the alleged videos and indeed may have done so. However, Staff suggested during the Hearing that Mr. Coulis lost the videos. In the overall index found at the beginning of each Hearing Volume, Tab 108B lists the videos to be found there. The tab is empty.

[41] The balance of Vol. 8 consists of a consulting agreement between Net Capital Ventures Limited and Marvin Winick and copies of offering memoranda and subscription documents.

[42] Hearing Brief Vols. 9-13 inclusive are the banking records of Jared Taylor obtained by Staff through a s. 13 summons.

[43] Hearing Brief Vol. 14 is an analysis of Jared Taylor’s bank accounts and an analysis of the Mega-C General Ledger prepared by Albert Ciorma.

VI. THE EVENTS FROM NOVEMBER 16, 2005 TO SEPTEMBER 30, 2009

[44] The Statement of Allegations was issued on November 16, 2005. A Notice of Hearing was issued the same day, returnable January 31, 2006.

[45] On the first appearance on January 31, 2006 various counsel appeared for all parties. Staff had made available the first tranche of disclosure but needed a further six to eight weeks to make further disclosure. The Respondents submitted they needed time to review the disclosure. No objection was taken to an adjournment and the matter was adjourned on consent to March 30, 2006.

[46] The Hearing for March 30, 2006 was adjourned in writing on consent of all parties. A second tranche of disclosure having been made on March 28, 2006, the Respondents requested an adjournment to May 31, 2006 to review the disclosure. Staff consented to the adjournment.

[47] Meanwhile, on May 10, 2006, counsel for all parties appeared before Commissioners LeSage and Davis to speak to a motion brought by Staff pursuant to s. 17 of the Act. Staff was seeking permission to disclose compelled testimony in bankruptcy proceedings in Nevada involving Mega-C. Under s. 17 the Commission may authorize the disclosure to any person or company of compelled testimony obtained pursuant to s. 13 if the Commission considers that it would be in the public interest. Following submissions by counsel for all parties, the s. 17 motion was adjourned to June 29, 2006 with a direction from the Panel to agree on timelines.

[48] On May 31, 2006, a pre-hearing conference was held with counsel for all parties in attendance. The matter had been adjourned from March 30. Staff had disclosed a third tranche of material on May 24, 2006 and the Respondents submitted they needed time to review the material. Following submissions, the parties agreed on the adjournment and timelines to be followed. The pre-hearing conference was adjourned on consent to August, 2006 with a direction that the Respondents' written materials were to be submitted by July 28, 2006 and Staff's written materials to be submitted by August 4, 2006.

[49] On June 29, 2006, counsel for all parties appeared to continue the s. 17 motion. Submissions on work-product privilege, common interest privilege and relevance were received by Commissioners LeSage and Davis. The matter was put over on consent to July 13, 2006.

[50] On July 13, 2006, Staff counsel appeared and adjourned the motion on consent to August 10, 2006 in recognition that the Nevada bankruptcy court might have granted a protective order by that time.

[51] On August 10, 2006, the s. 17 motion was to resume, but was adjourned on consent to September 28, 2006 based on advice that the protective order in Nevada was expected within 3-4 weeks.

[52] On August 15, 2006, a pre-hearing conference was held before Commissioner Bates where there were discussions of disclosure issues, particulars, s. 17 issues including disclosure of compelled testimony to the Nevada Trustee in Bankruptcy, and dates for the hearing on the merits.

[53] During the conference, Mr. Hodgson, counsel for Staff, told everyone that a significant party to the Nevada bankruptcy proceeding was represented by Gowlings. Mr Usling was represented by Mr. Sofer, a member of the Gowlings firm. In the Nevada proceeding, a firm known as Northern Growth Fund Management had been represented to the court as a neutral party, unrelated in any way to any of the named Respondents in this proceeding. This representation was clearly incorrect since Gowlings acted for both Northern Growth and for Mr. Usling. On consent of the parties to the s. 17 motion, the matter was adjourned to December 4, 2006.

[54] On December 4, 2006, a pre-hearing conference before Commissioner Bates continued the discussion of the August 15, 2006 issues, in the presence of counsel for all parties. *Charter* motions were filed on behalf of Mr. Usling and Jared Taylor, Colin Taylor and 1248136. The Lewis Taylors Sr. and Jr. brought a motion for particulars. Following submissions, a 4-6 week hearing on the merits was fixed for October 29, 2007 on consent. In addition, another pre-hearing conference was scheduled for February 6, 2007 to review timelines for motions. Apparently the February 6, 2007 date was extended to February 20, 2007 by consent of the parties.

[55] On February 20, 2007, counsel appeared on the further pre-hearing conference. There were now three Notices of Constitutional Motion filed on behalf of the Taylor and Usling Respondents. In addition, there were motions for particulars filed on behalf of the Respondents. Staff withdrew its request for an administrative penalty under s. 127(1)9 of the *Act*. There were discussions of procedures to follow on the *Charter* motions. The s. 17 motion was adjourned to no fixed date. All other matters were adjourned to April 12, 2007 before a Panel composed of Vice-Chairs Ritchie and Turner and Commissioner Wigle.

[56] On April 12, 2007, counsel appeared for Staff and the Taylor Respondents; Mr. Pardo did not attend, nor did Mr. Usling. Staff advised that the parties had agreed to an *in camera* hearing at the request of counsel for the Taylor Respondents. Staff moved by cross-motion to adjourn the constitutional motion as premature.

[57] The Panel issued unredacted confidential reasons on May 18, 2007. On July 26, 2007, redacted reasons were released dismissing the constitutional motion as premature and confidential reasons were released providing that the

unredacted reasons were to be published on the first day of the hearing on the merits. Staff was ordered to set out its position and evidence on the *Charter* questions 90 days before the hearing on the merits.

[58] On June 4, 2007, Staff withdrew as against Mega-C.

[59] On August 23, 2007, counsel for all parties but Mr. Pardo appeared before Vice-Chair Turner and Commissioner Wigle. Mr. Pardo appeared representing himself. The Respondents had moved for an Order that Staff provide further particulars. On September 7, 2007 confidential reasons were issued ordering Staff to provide further particulars as more particularly set out in para. 52 of those reasons.

[60] On October 18, 2007, Mr. Usling moved for an adjournment of the hearing on the merits scheduled for October 29, 2007 because he had terminated his retainer of Mr. Sofer. Mr. Sofer had a conflict of interest. Staff was asked why it had raised the conflict issue at this late date. Staff pointed out that the potential conflict had been known by the Respondents since August 4, 2006 by way of a letter from Staff to the Office of the Secretary with copies to all parties. In that letter it was made clear that Gowlings represented both Mr. Usling and Northern Growth Fund Management. The Usling adjournment motion was adjourned on consent to October 23, 2007.

[61] On October 23, 2007, counsel for the parties and Mr. Pardo on his own behalf appeared before a Panel composed of Vice-Chair Ritchie and Commissioner Thakrar. Staff raised the conflict issue with respect to Mr. Sofer. Mr. Usling had terminated Mr. Sofer's retainer and asked for an adjournment to retain new counsel. All parties but Mr. Pardo consented to an adjournment to November 5, 2007. During the motion, counsel for Staff reported that Staff had identified two more potential conflicts involving Mr. Sofer and so advised him. In the Order adjourning the matter to November 5, 2007, the parties were directed to come with a full shopping list of remaining pre-hearing matters.

[62] On November 5, 2007, all parties were represented by counsel save Mr. Pardo who appeared on his own behalf. Linda Fuerst appeared for Mr. Usling having replaced Mr. Sofer. Ms. Fuerst asked for an adjournment in order to prepare for the matter. Everyone but Mr. Pardo agreed that an adjournment was required to allow Ms. Fuerst to prepare and because of counsel schedules. An Order was issued adjourning the hearing on the merits to commence November 3, 2008 running until December 19, 2008, based on counsel's estimate of the time required for the hearing. The Order required that the constitutional motions be adjourned to the hearing on the merits with the timing of the motion in that Panel's discretion. A Case Management Conference was directed for January 9, 2008 before Vice-Chair Ritchie. Subsequently, the January 9 date was adjourned on consent to March 26, 2008.

[63] On March 26, 2008, a first case conference was held. The reporter was dismissed and the parties entered into discussions on all matters. Following that case conference, a second case conference was scheduled for May 1, 2008 with any unresolved issues at that time to be scheduled for a motion. On May 1, 2008, a second case conference was held in the absence of a reporter. Counsel for the parties appeared before Vice-Chair Ritchie, with Mr. Pardo representing himself. The matter was set for August 6 and 7 for a motions hearing. No party objected to that date.

[64] On August 6 and 7, 2008, counsel for all parties appeared together with Mr. Pardo representing himself before Vice-Chairs Ritchie and Turner. Among the motions that were considered was a stay motion based upon the following allegations joined in by all the Respondents but Pardo:

- a failure by Staff to conduct a fair investigation;
- misrepresentation by Staff to the Commission in obtaining a s. 11 Order;
- failure by Staff to obtain and preserve all evidence from the investigation relevant to this matter;
- failure by Staff to protect information and materials obtained pursuant to s. 13 of the *Act* from improper disclosure and use; and
- an ongoing and continuing refusal to meet Staff's disclosure obligations.

[65] A confidential decision was issued by the Panel on October 1, 2008 in which the Panel ordered that:

- the motion for the stay of this proceeding is dismissed, without prejudice to the moving parties to renew their request at the hearing on the merits;
- Staff should immediately take appropriate steps to ensure that employees in the Enforcement Branch do not have any documents or materials, including e-mails, relevant to this matter that have not been disclosed to the Respondents;

- Staff shall produce a written itemized inventory of documents and materials in its possession that are relevant to this proceeding that Staff does not intend to disclose to the Respondents. The inventory shall disclose in each case the basis upon which Staff proposes to withhold disclosures;

- it may not be necessary for Staff to list each and every document. Rather, a grouping by nature and a generalized description of that group would suffice;

- the itemized inventory described above shall be delivered to the Respondents no later than October 17, 2008; and

- a pre-hearing/Case Management Conference shall be held no later than October 31, 2008 to deal with any outstanding issues related to disclosure, particulars of any of the other matters dealt with in this decision (unless the parties determine such a conference is unnecessary).

[66] On October 17, 2008, Staff provided additional disclosure pursuant to the Commission's October 1, 2008 Order.

[67] On October 22, 2008, a further pre-hearing conference was convened before Vice-Chair Ritchie. Counsel appeared for Staff, Mr. Usling, Jared and Colin Taylor and 1248136. Lewis Taylor Sr. and Jr. were now representing themselves as Mr. Greenspan had withdrawn from the record by a letter of September 30, 2008. They did not appear because of a death in the family. Mr. Platt, counsel for Jared Taylor, Colin Taylor and 1248136, requested an adjournment on medical grounds. On consent, an adjournment was granted to a tentative date in mid-November, 2008 for a further Case Management Conference.

[68] On November 19, 2008, a further pre-hearing conference was held with no reporter. Vice-Chair Ritchie concluded that the period February 19-27, 2009 which had been tentatively set for the hearing on the merits would be held for any preliminary motions. He directed that if a party requested it, a settlement conference or separate settlement conferences could be arranged without notice to any other party. The hearing on the merits was adjourned to September 7-11, 2009 to continue September 30-October 23, 2009.

[69] On December 11, 2008, a telephone conference was held in Vice-Chair Ritchie's office in the absence of a reporter. Vice-Chair Ritchie directed that any motions were to be heard at the scheduled February 2009 dates but if Lewis Taylor Sr. brought additional motions further dates would be set in April of 2009. The hearing on the merits was confirmed for September-October, 2009.

[70] By motion returnable July 9, 2009 before Vice-Chair Ritchie, Ms. Fuerst obtained leave to withdraw as counsel for Mr. Usling. On the same day, Mr. Platt withdrew as counsel for Jared Taylor, Colin Taylor and 1248136.

[71] Several motions were renewed before Commissioner Carnwath on September 9, 2009. He ordered:

- Mr. Pardo's motion for an adjournment was denied;

- Mr. Usling's stay motion was denied, without prejudice to his right to renew it at the hearing on the merits in support of the stay;

- The Taylors' stay and particulars motion was denied, without prejudice to the right to renew it at the hearing on the merits in support of a stay;

- No further motions were to be brought prior to the hearing on the merits but any motions to be brought 7 days before the hearing were to be heard at the hearing.

[72] On September 17, 2009, a settlement approval hearing was convened with respect to Mr. Usling and the settlement was approved by Commissioners Knight and Kennedy.

[73] On September 29, 2009, a settlement approval hearing was convened involving Mr. Pardo. Commissioners Knight and Condon deferred the settlement to the merits Panel.

[74] On September 30, 2009 the hearing on the merits started before Commissioners Carnwath and Kelly.

VII. FORMATION OF THE PARDO–TAYLOR ALLIANCE

[75] Rene Pardo and Chip Taylor met in the late 1990s. Until May of 2001 they had limited business dealings. In 1999, Chip Taylor was introduced to a new technology owned by C & T. In December of 1999 he entered into a joint venture agreement with C & T to commercialize an application of the new technology. Mega-C Technologies was the vehicle through which C & T

and the Taylor Respondents intended to develop the new technology. C & T licensed to Mega-C Technologies the one application that was the subject of the joint venture agreement.

[76] The technology was submitted for testing to Dr. Brian E. Conway, described in his C.V. as Emeritus Professor of Chemistry, University of Ottawa. His C.V. describes him as the Dean of Electrochemistry in Canada and is found at Hearing Brief Vol. 1, Tab 3, p. 175. Dr. Conway described the technology as a hybrid battery/double-layer capacitor, electric energy and charge/storage device. Dr. Conway and his colleague, Dr. Pell, submitted the technology to various tests and completed a report of approximately 83 pages dated December 14, 2001 (Vol. 1, Tab 3, pp. 176-259). They concluded:

> iv. In conclusion, we wish to state that we have been favourably impressed by the test results we have obtained in the relatively short duration of the project assigned to us, so our recommendations for production engineering, and further commercial development, with investment, are positive. Especially with the small cells where the individual cycle period is short, we have been able to demonstrate excellent reproducibility of the charge-discharge cycle curves, with achievement of a cycle/life of at least 1400, continuing to 1500. (Vol. 1, Tab 3, pp. 253-254)

[77] In addition to the report of Drs. Conway and Pell, there is a wealth of additional material on battery storage contained in Hearing Brief Vol. 1, Tabs 12-22 inclusive. Some of the material is specific to the technology tested by Drs. Conway and Pell while other material relates to storage batteries in general. Suffice it to say the Panel finds that the specific unit tested by Drs. Conway and Pell was not a trumped-up fake to fool investors, but rather a technology that had commercial possibilities.

[78] As a result of his personal and business relationship with the Taylor Respondents, Mr. Pardo, in conjunction with Marvin Winick, made a proposal to Lewis Taylor Sr. Mega-C would license from Mega-C Tech the application of the new technology tested in Ottawa and would become responsible for its development and commercialization. The subsequent discussions and negotiations led to Mega-C Tech and Mega-C entering into a "letter agreement" dated September 11, 2001 (Hearing Brief Vol. 1, Tab 4, p. 260). Shortly put, Mega-C agreed to pay Mega-C Tech $5,250,000.00 US, of which $250,000.00 US was to be paid initially; to pay to Mega-C Tech a net royalty of 10% of the gross revenue of Mega-C; and to transfer to Mega-C Tech 10% of all the outstanding shares of Mega-C.

[79] Lewis Taylor Sr. approached Rene Pardo about the indebtedness owed by Lewis Taylor Sr. to third parties, which had grown to approximately $2,000,000.00 US and $1,000,000.00 CDN. To satisfy these debts, Mr. Pardo proposed that he transfer approximately 2,900,000 shares of Mega-C from the 10,000,000 shares already issued to him or to his related companies, to those persons to whom Lewis Taylor Sr. owed money. This was to be done in accordance with the directions of Lewis Taylor Sr. and the agreement of Mr. Pardo. Agreement was reached and in accordance with the directions of Lewis Taylor Sr. and Mr. Pardo, Mega-C issued a number of share certificates, each of which was approved and signed by Mr. Pardo. It is important to understand that the Mega-C share register was kept by Mr. Pardo alphabetically by first name. One would look in vain for an accurate accounting of the number of shares in Mega-C at the disposal of the Taylor Respondents, nor would the share register reveal that approximately 2,900,000 shares of Mega-C were at the disposal of the Taylor Respondents. What appears to have happened is that Lewis Taylor Sr., Jared Taylor or Colin Taylor would direct Mr. Pardo to transfer "X" number of shares to named individuals, which Mr. Pardo would do by issuing share certificates from his Mega-C shares or from Mega-C shares allocated to NetProfit.

[80] Towards the end of September 2001 Mega-C defaulted in payment of the balance of the $5,000,000.00 US payable under the letter agreement. The Taylors say that Mr. Pardo proposed that the Taylor Respondents could sell their shares in Mega-C to meet their obligations but this was not acceptable to the Taylor Respondents. It is at this point that the Pardo-Taylor alliance ran into difficulty.

VIII. THE "INVESTOR LOANS" ARRANGEMENT

[81] There is strong disagreement between Mr. Pardo and the Taylors over how this arrangement came about. The idea was that the Taylor Respondents would borrow money and would use their Mega-C shares as collateral. The amount of the loan would equal the value of shares that the lender obtained as collateral for the loan. The Taylors say they embarked on the loan arrangement in reliance on Mr. Pardo and Mr. Winick's repeated representations that Mega-C was a reporting issuer and that its shares were freely tradable and unrestricted. Chip Taylor chose his youngest son, Jared Taylor, to be the member of the Taylor family who would actually borrow the money.

[82] Thus, in the period from the fall of 2001 to the spring of 2003, hundreds of people were persuaded to acquire Mega-C shares, either by lending money to Jared Taylor and receiving Mega-C share certificates as collateral for the loan or by direct purchase of shares from NetProfit, controlled by Rene Pardo.

[83] Albert Ciorma did an analysis of Jared Taylor's Canadian and US dollar accounts held in the Toronto Dominion Bank. The documents on which he bases his analysis are found in Hearing Briefs Vols. 9 – 13 inclusive. Volume 14 contains his analysis of those accounts showing the "Funds In" and the "Funds Out" for the accounts during the stated periods. Suffice it to

say that in the period January 2, 2001 to May 30, 2003 the analysis shows $5,000,000.00 approximately flowing into Jared Taylor's Canadian dollar account and $5,000,000.00 approximately flowing out. In the period January 10, 2001 to May 30, 2003 the analysis for Jared Taylor's US dollar account shows Funds In of $3,900,000.00 approximately and Funds Out of $3,900,000.00 approximately.

[84] Similarly, Mr. Ciorma did an analysis of Mega-C's General Ledger for the period August 20, 2001 to February 29, 2004. His analysis shows funds received from investors to be $979,515 Canadian and $4,473,750 US. We shall have more to say about Mr. Ciorma's evidence later in these reasons.

IX. THE PROMISSORY NOTES

[85] Once investors had reached a decision to acquire shares in Mega-C from the Taylor Respondents, a certain procedure was followed in at least 406 cases and perhaps many more. Once the purchase price was established, the investor was instructed to make the cheque or draft payable to Jared Taylor. Since many, if not most, investors thought they were buying treasury shares from Mega-C, investors often asked for an explanation as to why Jared Taylor should be the payee. The standard response given by Jared Taylor or the person closing the sale was it had to be done that way for internal purposes. The explanations were varied but were formulated so as to ensure that it was the Taylor Respondents who would control the money.

[86] Following the transfer of funds, the typical investor would receive a "promissory note" in the following terms:

PROMISSORY NOTE

Date: _____
From: Jared Taylor
To: _____

This is to confirm that you have loaned to me _____ _____ Dollars for Personal purposes. I warrant I will deliver to you as collateral, as soon as possible, _____ Shares of Mega-C Power Corp.

_____
Jared Taylor

[87] In Hearing Brief Vol. 3, Tab 51 are found 406 such promissory notes. Unlike most promissory notes, no interest rate is expressed and no due date is established. The notes indicate that Jared Taylor received approximately $2,274,015 in US funds and $312,742 in Canadian funds from the makers of those notes. Indeed, Lewis Taylor Sr., in making submissions on October 15, 2009, stated at Tr. 10, p. 111, l. 12:

> … there's never been a question ever that the alleged amount of money that came in from sales, loans or anything – I won't quibble with you. Taylors have always accepted that, never denied the fact that "X", $3-million, give or take, whatever that amount at the end of the day is, came into Jared's accounts. That's not an issue.

[88] Most investors received the note a few days or weeks following the transfer of funds. Some were surprised to learn they had loaned to Jared Taylor, heretofore unknown to them, the sum of money involved. The majority of the notes found at Tab 51 were issued from late 2001 to early 2003 with the bulk of them issued in 2002. At the time, Jared Taylor was a recent graduate from university in his early 20s.

[89] Following the investment, most, but not all, investors would receive a share certificate for Mega-C shares agreed upon signed by Rene Pardo.

[90] Based on the testimony of the investors called by Staff, the questionnaires and the telephone interviews, the Panel finds that the promissory note arrangement was not disclosed to most investors at the time the funds were transferred. Following such transfers, many of those investors accepted the result although unhappy with the process. Some investors protested but to no avail. The Panel concludes that this somewhat meek acceptance of the promissory note arrangement by many investors flowed from the persuasive manner of the presentations and their conviction that the technology was commercially viable, as reported by Dr. Conway.

X. THE DISINTEGRATION OF MEGA-C

[91] Alarmed by the Taylor loan program, Mr. Pardo hired Kirk Tierney in February 2003. Shortly thereafter, the OSC letter of enquiry dated February 18, 2003 arrived at Mega-C, triggering alarm bells (Hearing Brief Vol. 1, Tab 1, p. 1). Mr. Pardo told

Mr. Tierney he was to look after the day to day operations of Mega-C while he dealt with the OSC. Mr. Tierney was told to consult with one Joseph Picarelli, a Florida businessman, as needed. Mr. Tierney became General Manager of Mega-C in late April and continued in that role until December 2003.

[92] Following Kirk Tierney's arrival, first Jared Taylor and then Lewis Taylor Jr. left the Mega-C offices at 100 Caster Ave., leaving Mr. Tierney in actual control, while Messrs. Pardo and Usling remained as figureheads. According to Mr. Tierney, he persuaded a group of early substantial investors, the IWG, to provide $500,000 of interim financing to Mega-C. Also according to Mr. Tierney, he developed a plan whereby a new company would be formed to strike a new arrangement with C&T and obtain access to C&T's technology (Ex. 95). To protect the interests of Mega-C shareholders, the new company would set aside two-thirds of its shares in a trust for Mega-C shareholders. To this end, Mr. Tierney incorporated Axion Power Ontario. Axion Power Ontario merged with a US public company, Tamboril Cigar Company, and became Axion Power International. This arrangement became effective December 31, 2003.

[93] In the meantime, relations between the Taylor Respondents and Mr. Pardo deteriorated further. This culminated in the cancellation by Mega-C Tech of its agreement with Mega-C by letter dated June 10, 2003 (Ex. 190). Following the cancellation, various attempts at arbitration were made between the Pardo-Usling camp and the Taylor Respondents. These attempts finally failed in the fall of 2003. Simultaneously, Mr. Taylor Sr. and his family brought three actions in the Superior Court of Justice (Ontario) (i) against C&T and Mega-C (July 30, 2003); (ii) against Mega-C and C&T (September 11, 2003); and (iii) against Axion and others (February 10, 2004). There is no satisfactory evidence as to the status of these actions.

XI. THE NEVADA BANKRUPTCY

[94] On April 5, 2004, members of the IWG put Mega-C into bankruptcy by way of an involuntary petition in the Nevada bankruptcy court. Those members included John Petersen, lawyer for the group, and Messrs. Appel, Granville and Averill. Other petitioning creditors included Axion Power and the Tamboril Cigar Company.

[95] On April 9, 2004, Mega-C consented to the petition over the signature of one Sally Fonner, described as President and CEO of Mega-C. Ms. Fonner and Mr. Petersen were known to each other and she had been the President of Tamboril Cigar Company.

[96] The bankruptcy of Mega-C triggered litigation both in the bankruptcy itself and elsewhere. For our purposes, the only relevance of the bankruptcy is the Taylor Respondents' motion (reserved to the hearing on the merits) for a stay of proceedings. The stay is sought based on delay and on the alleged improper conduct of Staff in the conduct of its investigation, particularly its role in the Nevada bankruptcy.

[97] In the bankruptcy a contest developed among Axion, the Taylor Respondents and the "unaffiliated" shareholders of Mega-C. Each group felt it was the body to represent the interests of the Mega-C shareholders. The Taylor Respondents made strenuous efforts to get their note-holders to align themselves with Jared Taylor, who submitted proofs of claim on behalf of those who chose to do so.

[98] The trust agreement for the Mega-C shareholders developed by Axion ultimately prevailed, in that the court-appointed trustee, William Noall, favoured its proposal as being in the best interests of the Mega-C shareholders. Axion had proposed that 67% of its shares would be held in trust for Mega-C shareholders, though there is conflicting evidence on the ultimate percentage. The Taylor proposal was rejected. There is evidence that the Taylors have appealed.

[99] The Taylors submit Staff acted improperly in the Nevada bankruptcy proceeding by opposing the Taylors' attempt to represent the Mega-C shareholders. Further, the Taylors say Staff suggested to the presiding judge that there was a way for the judge to get around the confidentiality requirements surrounding the Taylors' compelled testimony.

XII. STAFF WITNESSES

(a) Shauna Flynn

[100] Shauna Flynn was examined-in-chief on Monday, October 5, 2009 and briefly on October 6. Having identified the Hearing Briefs for the purpose of entering them as exhibits, Ms. Flynn expanded on the contents of some of the Hearing Briefs that related to the Statement of Allegations. This included identifying share certificates issued by Mega-C to the various respondents.

[101] In particular, Ms. Flynn detailed the contents of a letter dated March 11, 2003 from Mr. Pardo to Andre Moniz, Investigation Counsel for the OSC. The letter is in response to Mr. Moniz's enquiries about the activities of Mega-C. Mr. Pardo described the past and present efforts undertaken to promote the sale of Mega-C shares. He identified an aggregate of 715,389 common shares sold for US $1.50 per share to approximately 21 US investors. He identified the sale of approximately 800,000 common shares issued at US $5 per share for gross proceeds of approximately $4 million, the bulk of which was raised from 14

US residents. Approximately US $460,000 was raised from 15 Ontario residents. Mr. Pardo described this as a "private placement" made pursuant to an offering memorandum dated April 2, 2002 and October 1, 2002, attached as appendix 22 to his letter. He identified the shares received by his company, NetProfit, of which approximately 1 million shares were sold to 73 Ontario investors claimed to be accredited. He reported to Mr. Moniz that he had recently become aware that the Taylor Respondents were making transfers in connection with pledges of shares as collateral for loans made to them.

[102] In Schedule A to his letter, Mr. Pardo identified the number of persons who held Mega-C shares by country of origin. There were 146 US shareholders, 1,103 Canadian shareholders and 27 international shareholders. In Schedule C to his letter, Mr. Pardo identified a list of Ontario residents who obtained their shares from him or his company, NetProfit. The schedule is organized alphabetically by first names. Ontario residents who acquired their shares from shareholders other than Mr. Pardo or NetProfit are listed in Schedule D to his letter. Schedule E identifies NetProfit sales in Ontario in 2002 and Schedule F identifies shares issued to Ontario residents pursuant to the accredited investor exemption. Finally, Schedule G lists current and former Mega-C directors, officers, employees and consultants who hold (or held) Mega-C shares and their place of residence. It is not disputed that Mr. Pardo acted as share transfer agent for Mega-C and the accuracy of the schedules in the letter to Mr. Moniz rests entirely upon the extent to which his evidence on those matters is accepted.

[103] Ms. Flynn referred to a letter received from Brian Greenspan found at Hearing Brief Vol. 2, Tab 16. Mr. Greenspan set out the view of the Taylor family as to how Mega-C developed. He described Lewis Taylor Sr. as the head of the Taylor family and as being involved in or making all major decisions on behalf of the Taylor family. He said both Mr. Pardo and Marvin Winick told the Taylor Respondents that Mega-C was a reporting issuer and that the issued shares of Mega-C were freely tradable and unrestricted. His letter confirmed the details of the "letter agreement" referred to by various witnesses in the course of the proceeding. He identified the transaction whereby Mr. Pardo transferred 2,900,000 shares of Mega-C to persons to whom the Taylors owed money in accordance with the directions of Lewis Taylor Sr. Those share certificates did not contain any restrictions nor any indication that they were not freely tradeable.

[104] Mr. Greenspan also stated that at the end of September 2001, since Mega-C could not honour its obligations under the letter agreement, Mega-C defaulted pursuant to its terms. According to Mr. Greenspan, Mr. Pardo proposed that the Taylors could sell a number of their shares in Mega-C, but the Taylors rejected this proposal. It was then that Messrs. Pardo and Winick proposed the loan arrangement whereby the Taylor Respondents would borrow money and use their Mega-C shares as collateral. In reliance on Messrs. Pardo and Winick and their repeated representations that Mega-C was a reporting issuer and that its shares were freely tradeable, Mr. Taylor agreed with the loan transaction proposal and proceeded accordingly. Jared Taylor was chosen to borrow the money.

[105] Mr. Greenspan then described the demonstration meetings whereby investors were invited to acquire Mega-C shares. According to Mr. Greenspan's submissions, Lewis Taylor Sr. took little part in these demonstrations; Lewis Taylor Jr., a Vice President of Mega-C, assisted in preparation of reports and proposals to develop business markets in the applications and participated in technology presentations; Colin Taylor, other than providing a letter directed to Rene Pardo and Mega-C listing the lenders into whose name shares ought to be transferred, had no involvement. Essentially, Jared Taylor kept the financial records for the Taylor family as instructed by his father.

[106] Ms. Flynn identified at Hearing Brief Vol. 3, Tab 44 a list of individuals to whom members of the Taylor family transferred shares and who paid Jared Taylor, approximately 400 in all. In Vol. 2, Tab 40, she identified the "non-lenders list" being a list of individuals to whom shares were transferred in consideration of past debts owing by the Taylors.

[107] Mr. Pardo cross-examined Ms. Flynn on October 6, 2009. He had two areas of concern. He questioned her about the effect of voluntary cooperation with the OSC as it related to possible sanctions following a finding that security laws were breached. He attempted to get Ms. Flynn to agree that under hypothetical facts posed to her, Mega-C shares could be regarded as freely tradeable. The questions were convoluted, obviously not clear to Ms. Flynn and certainly not to the Panel.

[108] Ms. Flynn's cross-examination by Lewis Taylor Sr. started on the morning of October 6, 2009, continued all day Wednesday, October 7 and ended shortly after lunch on Thursday, October 8. Mr. Taylor's cross-examination of Ms. Flynn was unfocused, abusive and of no assistance to the Panel. Mr. Taylor Sr. insisted on putting hypothetical questions to the witness, inviting her to come to legal conclusions and putting propositions to the witness as fact when those propositions had no foundation in the evidence. Pursuant to subsection 23(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, the Panel finally put a limit on Mr. Taylor Sr.'s cross-examination to the effect that it would terminate on 11:30 Friday, October 9th. Mr. Taylor chose to stop his cross-examination on Thursday after lunch, explaining that he had so much more material to delve into with Ms. Flynn that the 11:30 deadline on Friday made it impossible for him to continue with any utility.

[109] Jared Taylor began his cross-examination of Ms. Flynn on the afternoon of Thursday, October 8, 2009, continued until 11:30 on Friday, October 9, continued on the morning of Wednesday, October 14, and ended on the morning of Thursday, October 15. Jared Taylor's cross-examination of Ms. Flynn was less focused than that of his father, equally abusive and equally of no assistance to the Panel. The areas he wished to explore were irrelevant to the allegations but related rather to the Taylors allegations that the Staff investigation was biased, prejudiced and dishonest.

[110] Colin Taylor cross-examined Ms. Flynn. He continued in the same vein as the preceding two members of his family including accusing Ms. Flynn of dishonesty. His approach to the cross-examination may be best revealed by his concluding exchange with the witness at Tr. 10, p. 85, l. 13:

> Q: Well, Ms. Flynn, I've listened to you over the last week and a half, and you seem to be taking a very cavalier attitude towards a very serious –
>
> Chair: Just a minute, Mr. Taylor, do you have a question for this witness?
>
> Mr. Colin Taylor: Yes, I do.
>
> Mr. Colin Taylor: Q: After having listened to everything you said, how can anyone come to any other conclusion then you're nothing but a lazy, incompetent investigator?
>
> Chair: Oh, Mr. Taylor, are you finished?

[111] Lewis Taylor Jr. cross-examined Ms. Flynn. He was less focused than the preceding members of his family and less abusive. His cross-examination was of no assistance to the Panel.

[112] Mr. Britton did not exercise his rights to re-examination.

[113] The Panel finds Ms. Flynn's evidence helpful and reliable to the extent that it identified the material in the exhibits and gave some structure to the narrative of Mega-C's history. Not surprisingly, she became defensive under the onslaught of the Taylor cross-examinations, particularly where she was asked to draw conclusions from hypothetical or unestablished facts. Her discomfort was greatest when she was unable to answer in one word, questions that would have been more appropriate for other persons involved in the investigation who were not called by Staff.

(b) Albert Ciorma

[114] Staff called Albert Ciorma, a Certified Management Accountant. He started with the OSC in December 2003 as a senior accounts clerk. In 2005 he moved to Enforcement as an Assistant Investigator and was later promoted to Investigator in 2007. His duties were to investigate potential breaches of the Act.

[115] In December 2006, Mr. Ciorma was assigned to the Mega-C file to assist the litigator on that file. He conducted an analysis of Jared Taylor's bank accounts and the general ledgers of Mega-C. The purpose of his investigation was to identify what happened to money that investors paid to Jared Taylor.

(i) Jared Taylor's Bank Accounts

[116] The bank accounts were a Canadian dollar account and a US dollar account, both in the name of Jared Taylor. Mr. Ciorma served a summons on the TD Bank pursuant to s. 13 of the Act. When he received the documents from the bank, he sorted them in an Excel program to provide a summary that would be understandable to a reader.

[117] Mr. Ciorma asked the bank to provide the account profiles and opening documents, application forms and corporate resolutions for the two accounts and then asked for the monthly statements from January 1, 2001 to May 31, 2003 including any supporting documentation for any transactions equal to or above $1,000. That information is compiled at Hearing Brief Vol. 9, Tab 111, and continues in Vols. 10, 11, 12 and 13.

[118] Mr. Ciorma then turned to Hearing Brief Vol. 14, where at Tab 112, p. 7718 is found the summary page for Jared Taylor's Canadian dollar account compiled from January 2, 2001 to May 30, 2003. The first half of the analysis shows the funds going into the account and the second half shows the funds going out of the account.

[119] Mr. Ciorma's analysis shows the following sources of the money flowing into Jared Taylor's TD Canadian dollar account, and is set out below:

Jared Taylor Account – TD Bank
(personal until August 4, 2001, Business from August 4, 2001)

(January 2, 2001 to May 30, 2003)

FUNDS IN (pages 2–10)

Total Funds from Investors	$690,228.77
Total Funds from Jared Taylor	$2,465,090.19
Total Funds from Colin Taylor and 1248136 Ontario Ltd. (Colin Taylor is sole director)	$292,715.81
Total Funds from NetProfitEtc. (Rene Pardo is sole director)	$37,000.00
Total Funds from Taylor Jr., Elgin Investments Inc. (Taylor Jr. is sole director) and Mega-C Technologies Inc. (Taylor Jr. is a director)	$249,000.00
Total Funds from Taylor Sr.	$1,420.24
Total Funds from Mega-C Power Corporation (The directors are Rene Pardo and Gary Usling)	$119,000.00
Total Funds from Minervest Investments Inc. (The directors are Rubin Miklosh and Gary Coleman. Rubin Miklosh is also a director at Select Micro Electronics Corp. with Sharon Taylor.)	$2,500.00
Total Funds from Miscellaneous sources	$1,159,600.56
Total Funds In	$5,016,555.57

FUNDS OUT (pages 11–35)

Total Funds to Colin Taylor, Shardina Estates Limited and 1248136 Ontario Ltd. (Colin Taylor is sole director in both corporations)	–$544,292.21
Total Funds to 2018251 Ontario Inc. (Jared Taylor and Taylor Jr. are directors)	–$294,006.75
Total Funds to Rene Pardo, 503124 Ontario Limited and NetProfitEtc. (Rene Pardo is sole director of both corporations)	–$224,720.72
Total Funds to Jared Taylor	–$716,955.34
Total Funds to Taylor Jr. and Corporations to which he is associated	–$1,260,149.91
Flannigan, Kenneth Legere and Wayne Webber. Page 33 of Pardo's March 2004 transcript indicates that this company is related to the Taylors)	–$41,000.00
Total Funds to Nicole Pignatelli	–$30,000.00
Total Funds to Taylor Sr. and his wife	–$78,463.12
Total Funds to Miscellaneous sources	–$1,817,935.62
Total Funds Out	–$5,007,523.67

[120] There follow at pp. 7719-7727 the individual entries for each transaction of funds going into Jared Taylor's Canadian account. The investors' transactions, for example, identify the investor, the date of the cheque or draft, the amount of the cheque or draft, the page number in the disclosure briefs where the bank statement to Jared Taylor may be found and, finally, the disclosure page numbers where the bank record for each transaction may be found. Similarly, at p. 7728, the bank record for each transaction of funds going out of the Canadian dollar account may be identified in the same way.

[121] In order to understand Mr. Ciorma's pagination, it is important to note that Hearing Brief Vol. 14 was not prepared when he recorded his analysis. The disclosure page numbers for Jared Taylor's bank statements and the disclosure page numbers for the bank records are found at the bottom right hand corner of the records found in Vol. 14, Tab 112 of the Hearing Briefs.

[122] Mr. Ciorma did a similar analysis of Jared Taylor's US dollar account at the TD Bank beginning at p. 7753, which is set out below:

Jared Taylor USD Account – TD Bank
(January 10, 2001 to May 30, 2003)

FUNDS IN (pages 2–7)

Total Funds from Investors	$1,984,864.73
Total Funds from Colin Taylor	$107,267.67
Total Funds from Elgin Investments Inc. (Taylor Jr. is the director)	$120,000.00
Total Funds from Lewis Taylor	$4,000.00
Total Funds from Jared Taylor	$273,734.80
Total Funds from Taylor Sr.	$1,420.24
Total Funds from NetProfitEtc. (Rene Pardo is sole director)	$25,000.00
Total Funds from Mega-C Power Corporation (Rene Pardo and Gary Usling are the directors)	$370,000.00
Total Funds from Miscellaneous sources	$1,033,622.12
Total Funds In	$3,918,489.32

FUNDS OUT (pages 8–12)

Total Funds to NetProfitEtc. (Rene Pardo is sole director) and Rene Pardo	–$348,000.00
Total Funds to Nicole Pignatelli	–$75,000.00
Total Funds to Lewis Taylor	–$2,300.00
Total Funds to 1248136 Ontario Ltd. (Colin Taylor is sole director) and Colin Taylor	–$87,000.00
Total Funds to Jared Taylor	–$1,391,929.11
Total Funds to Mega-C Technologies Inc. (one of the directors is Lewis Taylor)	–$185,014.00
Total Funds to Autoquest and Proscapes Express (Gavin Riches is the director. Jared Taylor refers to Gavin as an associate of his father's on page 134)	–$229,219.58
Total Funds used as cash	–$136,000.00
Total Funds to Green Forest Holdings Inc. (Gary Coleman is sole director. Coleman is also a director in 2018251 Ontario Inc. with Taylor Jr.)	–$316,055.08
Total Funds to Island Critical Care Corporation (Directors are Sean Flannigan, Kenneth Legere and Wayne Webber, Page 33 of Pardo's March 2004 transcript indicates that this company is related to the Taylors)	–$20,000.00
Total Funds to Minervest Investments Inc. (The directors are Rubin Miklosh and Gary Coleman. Rubin Miklosh is also a director at Select Micro Electronics Corp. with Sharon Taylor)	–$7,876.20
Total Funds to Mega-C Power Corporation (The directors are Rene Pardo and Gary Usling)	–$49,990.00
Total Funds to Miscellaneous	–$1,068,695.44
Total Funds Out	–$3,917,079.41

[123] There follows at pp. 7754-7759 an analysis of each individual transaction in the US dollar account identified by date, amount, disclosure page numbers of the bank statements sent to Jared Taylor and the disclosure page numbers of the bank records themselves. Analysis of each transaction for Funds Out is found at pp. 7760-7764.

[124] An examination of the Funds Out from the Canadian dollar account reveals that approximately 3,200,000 Canadian dollars was paid to Rene Pardo or companies with which he is associated and to the Taylor Respondents, companies with which they are associated, members of the Taylor family or associates of the Taylor family. An examination of the funds paid to miscellaneous recipients from the Canadian dollar account shows $1,800,000 approximately going to what appeared to be household expenses of Jared Taylor. Not a penny of the Canadian dollar Funds Out went to Mega-C.

[125] The examination of the US$ Funds Out shows approximately 2,700,000 dollars going to Rene Pardo or companies with which he was associated, the Taylor Respondents and companies with which they were associated, members of the Taylor family and associates of the Taylor family. The total funds shown by Mr. Ciorma going to Mega-C is $49,990.

(ii) Mega-C's General Ledger

[126] Mr. Ciorma turned to his analysis of the Mega-C general ledger. The general ledger appears to have been prepared by Marvin Winick, often described in the evidence as the accountant for Mega-C. Mr. Ciorma explained that his analysis was designed to see how much money was received from investors by Mega-C and if any money went back to the respondents or from the respondents to Mega-C. The general ledger that he used can be found at Hearing Brief Vol. 4, Tab 80. Mr. Ciorma's

analysis of the general ledger can be found beginning at Hearing Brief Vol. 14, Tab 112, p. 7765. His analysis covered the period from August 20, 2001 to February 29, 2004.

[127] Mr. Ciorma's analysis was as set out below:

Mega-C Power Corporation General Ledger Analysis
(Period August 20, 2001 to February 29, 2004)

FUNDS IN (pages 2–4)

Total Funds from Investors – CDN$	$979,515.00	Canadian Dollars
Total Funds from Investors – US$	$4,473,750.00	US Dollars
Total Funds from Jared Taylor	$30,000.00	US Dollars
Total Funds from NetProfitEtc. (Rene Pardo is sole director)	$295,454.01	Canadian Dollars
Total Funds from NetProfitEtc. (Rene Pardo is sole director)	$823,627.63	US Dollars
Total Funds from Gary Usling and Lautterbrunnen Development Inc. (Gary Usling is sole director)	$98,101.08	Canadian Dollars
Total Funds from Gary Usling	$30,000.00	US Dollars

FUNDS OUT (pages 5–8)

Total Funds to Investors	–$120,000.00	US Dollars
Total Funds to Gary Usling, Lautterbrunnen Development Inc. Euromart International Bancorp Inc. and Varone Importing Inc. (Gary Usling is a director in these companies)	–$94,099.59	Canadian Dollars
Total Funds to Jared Taylor	–$374,000.00	US Dollars
Total Funds to Mega-C Technologies Inc. (Lewis Taylor is a director)	–$217,354.00	Canadian Dollars
Total Funds to Lewis Taylor and Mega-C Technologies Inc. (Lewis Taylor is a director)	–$1,826,176.00	US Dollars
Total Funds to Rene Pardo and 503124 Ontario Limited (Rene Pardo is sole director)	–$167,488.19	Canadian Dollars
Total Funds to Rene Pardo	–$3,507.36	US Dollars
Total Funds to NetProfitEtc. (Rene Pardo is sole director)	–$233,036.88	Canadian Dollars
Total Funds to NetProfitEtc. (Rene Pardo is sole director)	–$407,070.00	US Dollars

[128] It will be seen from p. 7765 that Mr. Ciorma distinguished between funds received in Canadian dollars and US dollars and funds paid out in Canadian dollars and US dollars.

[129] When we examined the identity of the investors who provided Funds In as shown on p. 7766, we recognized A.R. and J.F. as investor witnesses who made their cheques directly payable to Mega-C. They were not part of the 400 or so investors who were invited by Jared Taylor to acknowledge that the money they had paid him was a loan for his personal purposes, secured by Mega-C shares. Among the investors in US dollars we find persons referred to throughout the evidence as forming part of the IWG. These investors appear, for example, as directors of Axion and include Messrs. Averill and Patterson.

[130] Of the Funds Out, $120,000 US appears to have been returned to investors. Approximately $94,000 Canadian was transferred to Gary Usling or companies of which he was a director. Approximately $30,000 in Canadian funds and $344,000 US dollars was transferred to Jared Taylor. Approximately $1,800,000 US dollars was transferred to Mega-C Technologies, of which Lewis Taylor Sr. was a director. $167,000 Canadian approximately was transferred to Rene Pardo and 503124 Ontario Limited, of which he was a director. $233,000 Canadian and $407,00 US was transferred to NetProfit, of which Rene Pardo was the sole director.

[131] The effect of the Funds Out transfers noted by Mr. Ciorma for the period August 20, 2001 to February 29, 2004 was to identify the sums retained by Mega-C after giving effect to the transfers to the Pardo, Taylor and Usling interests. The sum of $2,626,624 US approximately and $661,097 Canadian approximately remained to be disbursed in other directions as Mega-C decided.

[132] The further effect is that the Taylor Respondents, Rene Pardo and Gary Usling, together with companies they controlled or were associated with, received $2,730,000 US approximately and $712,000 Canadian approximately from the funds in the applicable period.

[133] In the pages following (pp. 7766-7772), the individual investors are identified and referenced to the general ledger and the recipients of the amounts paid out in the applicable period are identified in the same way.

[134] Mr. Ciorma's cross-examination by Mr. Pardo started on October 19, 2009 and lasted for half the morning. Lewis Taylor Sr. started his cross-examination at 11:30 am on October 19, 2009 and continued for all of Tuesday, October 20 and Wednesday, October 21 till 3:30 in the afternoon. Jared Taylor then cross-examined Mr. Ciorma for the balance of October 21 and continued well into Thursday, October 22, 2009. Finally, Lewis Taylor Jr. also cross-examined Mr. Ciorma. In all of these cross-examinations, Mr. Ciorma was invited to characterize transactions and agree with statements made by the cross-examiners that did not form part of his analysis of the Jared Taylor bank accounts. Time and again, whether by Mr. Pardo, Lewis Taylor Sr., Jared Taylor or Lewis Taylor, Jr., questions were posed to Mr. Ciorma usually beginning with "if such and such were so, would you agree that therefore ….?" Mr. Pardo wanted Mr. Ciorma to characterize payments made by the various players that Mr. Ciorma did not examine. Lewis Taylor Sr. wanted Mr. Ciorma to agree with his analysis of the payments that passed back and forth between Mega-C, C&T and Mega-C Technologies. Mr. Ciorma refused to be drawn into these inquiries and continued to hew to his description of what he did – he examined the bank accounts of Jared Taylor, both the Canadian and the US dollar accounts, and reported on the money that went into and out of those accounts. If the Taylor Respondents wanted to develop further evidence of the significance of these transfers, it was open to them to do so. Both Mr. Taylor Sr. and Jared Taylor had an opportunity to testify. They chose not to do so.

[135] When asked to comment on a series of disjointed questions about those matters in which he did engage, he was able to find the appropriate reference in the Hearing Briefs and Disclosure Briefs with little difficulty. The Panel finds him to have been professional in carrying out his analysis and a trustworthy and reliable witness who was scrupulous in staying within the limits of the work he performed. The same comments apply to his analysis of the Mega-C General Ledger.

(c) Investor Witnesses

(i) S.K.

[136] Staff called S.K., a 78 year old gentlemen retired from the printing business. Exhibits entered through him are found in Hearing Brief Vol. 6, Tab 101. His evidence is found in Tr. 16-17. He rated his investing knowledge as average. He confirmed he was not an accredited investor. SK learned of Mega-C through his chiropractor. He went to the premises of Mega-C at 100 Caster Avenue to see a demonstration and at that meeting met Chip Taylor, Skip Taylor and Jared Taylor together with another person named Silvano. It was Skip Taylor who talked about the potential for the battery. S.K. formed the opinion that Skip Taylor was not a "battery man" but he knew how the operation worked to some extent. Skip Taylor gave S.K. a marketing brochure which can be found at Vol. 6, Tab 101, p. 3613. Following further discussions with the Taylors, S.K. was taken on a tour of the plant which he described as basically empty. He could tell by looking at the laboratory that it had not been used for a long time.

[137] A few weeks later, S.K. called Jared Taylor and indicated he wanted to invest in Mega-C. He met with Jared Taylor who said that the shares would cost US $5 each. Jared told S.K. to bring a certified cheque payable to Jared Taylor for US $12,500 to buy 2,500 shares. When S.K. asked for a receipt, Jared Taylor presented to him a document in the form of a promissory note dated December 4, 2002 which confirmed that S.K. had loaned Jared Taylor the money for personal purposes. In the note, Jared Taylor warranted he would deliver as collateral, as soon as possible, 1,250 shares of Mega-C. S.K. objected to the form of the transaction and refused to sign any acknowledgement that he was lending money to Jared Taylor. In his evidence, he was adamant that he was purchasing shares from Mega-C treasury. S.K. repeated several times that he never understood that there was any kind of loan arrangement before the note was produced to him and his wife and he never had any intention to loan money to Jared Taylor.

[138] In cross-examination, both Lewis Taylor Sr. and Jared Taylor made much of the fact that the original bank draft handed to Jared Taylor had to be replaced because it did not conform with his bank's requirements. The original draft was signed on December 4 and returned by the bank. S.K. delivered a new draft dated December 17, 2002. The Panel was left with the impression that S.K. was content to issue a second replacement draft because he felt it was the only way he would get the shares he had agreed to purchase. Much of S.K.'s cross-examination by the Taylor Respondents concentrated on matters subsequent to the transaction completed by S.K. and having to do with bankruptcy proceedings involving Mega-C in Nevada. The Panel finds the exploration of these matters irrelevant to the allegations upon which the Panel is required to adjudicate, except for the motions for a stay. The Panel finds that S.K. agreed to buy the shares in the form explained to him by Jared Taylor because he accepted Jared Taylor's representation that that was the only way he could get the shares. Despite vigorous suggestions to the contrary put to him in cross-examination, S.K. continued to assert he purchased shares and did not loan any money to Jared Taylor.

(ii) S.G.

[139] Staff called S.G., a retired woman with considerable investment experience, particularly in real estate. She was an accredited investor. Her evidence may be found beginning at Tr. 18 and continues a few weeks later in Tr. 20. Relevant documents involving the evidence of S.G. may be found in Hearing Brief Vol. 6, Tab 98. S.G. was introduced to NetProfit by Gary Usling. Mr. Usling told S.G. that Rene Pardo had an outstanding track record in the area of Information Technology and that NetProfit was an umbrella company for five subsidiaries, all involved in dot-com projects. S.G. purchased 200,000 shares in NetProfit for US $60,000 on January 16, 2001. Subsequently, Mr. Usling told S.G. that the NetProfit investments were not

succeeding and that he was going to transfer his attention to Mega-C. He proposed to S.G. that she exchange her NetProfit shares for Mega-C shares, which S.G. did. The exchange was structured in such a way that Mr. Usling purchased the NetProfit shares for the sum of $1 and issued shares in Mega-C in return. Mr. Usling told S.G. she could take her loss in NetProfit as a tax loss during the year 2000. S.G.'s holding company received the share certificate for 20,000 shares in Mega-C signed by Rene Pardo.

[140] S.G.'s evidence is of little assistance to the Panel. She was persuaded to invest in NetProfit by Gary Usling and when that investment soured, she accepted shares in Mega-C at the suggestion of Mr. Usling. This transaction has little or no bearing on the allegations against Mr. Pardo and the Taylor Respondents. Her cross-examination by Lewis Taylor Sr. on the subsequent bankruptcy in Nevada was, as we have stated earlier, irrelevant to the allegations against the respondents.

(iii) J.F.

[141] Staff called as a witness J.F., a lawyer with 40 years experience. Exhibits entered through him are found in Hearing Brief Vol. 6, Tab 101. His evidence is found at Tr. 19. Latterly, J.F. has practised with two major firms in downtown Toronto. J.F. had known Gary Usling for over 20 years and had business dealings with him.

[142] Mr. Usling recommended NetProfit to J.F. as a good investment, describing it as a company with four or five matters under development. J.F. purchased a quantity of shares in NetProfit and in addition received an option to acquire an additional 100,000 shares of NetProfit at 10¢ per share. As was the case with S.G., Gary Usling at some point spoke to J.F. to the effect that the companies within NetProfit were not doing that well, except for one, which was Mega-C. Mr. Usling suggested to J.F. that he swap his shares in NetProfit for shares in Mega-C and this was done. He received a share certificate for 2,381 shares in Mega-C by way of certificate dated October 1, 2001 signed by Rene Pardo as president (Vol. 6, Tab 99, p. 3503).

[143] Some months later, in a letter dated June 12, 2002 (Vol. 6, Tab 99, p. 3510), J.F. wrote to Gary Usling confirming that his options to buy 100,000 shares of NetProfit had been converted to an option to purchase 10,000 shares of Mega-C for US $1 per share. The letter confirmed that J.F. was told by Rene Pardo and Gary Usling that it was their intention to have Mega-C go public in September 2002. The letter also confirmed that Messrs. Pardo and Usling were obliged to give J.F. three days notice of the initial public offering to allow him to exercise his option.

[144] A few days later, J.F. wrote Mr. Pardo to confirm that Mr. Pardo had requested J.F. to exercise his option to buy the 10,000 shares of Mega-C. Eight thousand of these shares were directed to J.F.'s wife (Vol. 6, Tab 99, p. 3506) and 2,000 shares to a friend. When it appeared that Mega-C was not going public, J.F. became concerned and started writing to Mr. Pardo to get information on the fortunes of Mega-C. He received a form letter dated March 2003 addressed to "Dear Shareholder" in which Mr. Pardo gave a positive, if not glowing, report on the future of Mega-C.

[145] By letter dated March 19, 2003, J.F. wrote Mr. Pardo seeking answers to 11 pointed questions directed to the condition of Mega-C (Vol. 6, Tab 99, p. 3516).

[146] On April 23, 2003, J.F. sent an email to Messrs. Usling and Pardo confirming a telephone conversation he had with Mr. Pardo on April 2, 2003. The email confirms Mr. Pardo's representation to J.F. that the company had about 5 million dollars US to proceed with the development of the battery/supercapacitor and that J.F's existing shares could be sold in the "gray market" and could probably be sold in the range of US $3-$4.

[147] Finally, on February 23, 2004, J.F. received a letter from Rene Pardo confirming that Mega-C could not raise funds to continue with the development and commercialization of the energy cells. A letter suggested that a recent transaction involving Axion Power Corporation would allow further development of the technology within a new venture and that J.F.'s shares could entitle him to continue to be involved with the Mega-C technology.

[148] The Taylor Respondents, particularly Lewis Taylor Sr., cross-examined J.F. at length. The cross-examination centred mainly on events following the collapse of Mega-C, a cross-examination which the Panel finds irrelevant to the Panel's consideration of the allegations made against the respondents. The only relevance was the attempt by the Taylor Respondents to establish that the OSC had conspired with the group of Mega-C shareholders who had taken over the company and had thereby deprived the Taylors of "their technology". We shall have more to say about this matter later in these reasons.

[149] We find J.F. to be a reliable witness. He gave his evidence in a matter-of-fact and composed manner, displaying no vindictiveness or animosity against the respondents despite his loss of $10,000 through the exercise of his options. Moreover, his evidence was confirmed by the correspondence he directed to Mr. Pardo, which the latter did not dispute. We conclude he was told by Messrs. Pardo and Usling that Mega-C would shortly be registered as a public company and that a grey market existed for the sale of his shares at an approximate price of US $3 to $4.

(iv) P.B.

[150] Staff called as a witness P.B., a woman in her 30s who had worked for the previous 14 years as an insurance broker. Exhibits entered through her are found in Hearing Brief Vol. 5, Tab 99. Her evidence is found in Tr. 21. She learned of Mega-C through a friend who knew the Taylor family and who described their efforts to bring battery technology to Canada with the intention of developing it. P.B. attended a presentation at 57 Temperance Street in Toronto where there were present Messrs. Pardo, Taylor Sr., Taylor Jr. and Jared Taylor. She was greeted at the door by Jared Taylor and entered a room where there were about 10 people waiting to view the demonstration and to hear a presentation on the Mega-C technology. Lewis Taylor Sr. spoke briefly about how he brought the technology to Canada and then Lewis Taylor Jr. took over. P.B. described him as a dynamic speaker who told the meeting about the Russian scientists who had developed the technology, that Loma Linda, a university hospital in the United States, was interested in its development and that the technology had been tested by a well known Canadian scientist, Dr. Conway.

[151] P.B. said there was a discussion on the stock going public and that it was going to "take off" because Mega-C was going to reinforce the fact that this was a proven technology, thanks to Dr. Conway's report. She said that Lewis Taylor Jr. predicted the stock would go up to about $20 a share and that Rene Pardo and Lewis Taylor Sr. nodded in agreement. She added that Lewis Taylor Jr. confirmed that Borealis was going to invest in Mega-C. Both Lewis Taylor Jr. and Rene Pardo confirmed that Mega-C would be listed on an exchange, she thought the Toronto Stock Exchange.

[152] Shortly after the meeting, P.B. purchased approximately 4,300 shares and wrote a cheque to Rene Pardo's company, 503124 Ontario Limited, for $10,000. She explained that the purchase price was US $1.50 per share. Mr. Pardo instructed her to write "promissory note" on the cheque that she wrote (Vol. 5, Tab 99, p. 3238).

[153] Following her purchase P.B. kept in touch with the friend that had introduced her to Mega-C but nothing developed. Finally, in 2006 she received a phone call from someone she thought to be Lewis Taylor Sr., who reported that another company had come along to buy the shares of Mega-C, which was in bankruptcy.

[154] The Panel found P.B. to be a pleasant and agreeable witness, displaying no ill-will towards the respondents during her testimony. She was unshaken in cross-examination with respect to her account of the meeting at Temperance Street and we conclude that events happened at that meeting as she described them, and as confirmed by others at that meeting. We find her to be a reliable witness.

(v) T.S.

[155] Staff called T.S., a specification writer in the architectural field. Exhibits entered through him are found in Hearing Brief Vol. 7, Tab 106. His evidence is found at Tr. 21. Through his dentist, T.S. was introduced to Mr. Jurgen Volling, who mentioned he was involved with a company that was making a new hybrid battery which was going to revolutionize the energy source industry.

[156] Mr. Volling told T.S. that the battery was ready to be put on the market and that T.S. had an opportunity to invest in Mega-C, which would shortly go on the market, probably in the spring of 2003. Mr. Volling also told T.S. that Mega-C would likely be listed on the New York Stock Exchange or NASDAQ and that more than likely, the stock would multiply in value and would have to be split. Mr. Volling told T.S. that Rene Pardo provided him with the information that he was passing on to T.S.

[157] T.S. issued a cheque dated November 4, 2002 to NetProfit for Cdn. $20,000, for which he received a share certificate dated October 22, 2002 for 2,667 shares in Mega-C. T.S. said this reflected a purchase price of US $5 per share. The cheque was handed to Mr. Volling, who explained that the cheque had to be made out to NetProfit because Mega-C was "some sort of a corporation where you had to have a block of $100,000 before you could buy a Mega-C share". By issuing the cheque to NetProfit, T.S. was able to buy a smaller amount of shares in Mega-C, according to Mr. Volling.

[158] Sometime in the spring of 2003, T.S. went to the Mega-C offices, where he met with Mr. Pardo along with some other investors. Mr. Pardo repeated that the battery was not far from being ready to go on the market and showed the visitors around the offices. T.S. described the plant as very small with one battery in a sort of open area that was supposedly the battery prototype. He was not at all impressed with the premises. Mr. Pardo did tell T.S. that it would not be very long before Mega-C was listed and once it was the shares would split and would increase considerably in value. T.S. invested a further $24,000 in the enterprise, financed by his line of credit. Beginning in 2004, it became apparent to T.S. that things were not going well with Mega-C and he wrote several times to the OSC and others seeking to promote an investigation into the affairs of Mega-C.

[159] The cross-examination of T.S. by the Taylor Respondents is of no assistance to the Panel, concentrating as it did on events subsequent to the facts giving rise to the allegations. The cross-examination was another attempt by the Taylor Respondents to demonstrate that the OSC was avoiding an investigation of those persons whom the Taylor Respondents believe were responsible for them losing "their technology". It is clear that T.S. had no interaction with the Taylors until the failure of Mega-C. His evidence does confirm that Mr. Pardo did not hesitate to tell prospective investors that Mega-C would be listed

on a stock exchange and that the shares would increase considerably in value. The Panel has no reason to believe that T.S. was attempting to embroider or fabricate evidence. We find he was attempting to tell the truth as best he could remember.

(vi) K.A.

[160] Staff called K.A., a man in his late 40s and president of a number of family companies operating in Western Ontario. Exhibits entered through him are found in Hearing Brief Vol. 6, Tab 97. His evidence is found at Tr. 22. He described his investment experience as intermediate and dealt with a broker for personal investments. He was not an accredited investor.

[161] He was introduced to Mega-C through a friend and attended a meeting in downtown Toronto with approximately 14 to 18 other persons. Present at the meeting were the Messrs. Taylor Sr., Jr. and Jared Taylor, together with Rene Pardo. They were introduced to the technology and saw a demonstration of a battery. Later in the fall of 2002, K.A. and a group from Western Ontario went to the same location in downtown Toronto and saw a PowerPoint presentation given by Rene Pardo. Promotional materials were handed out including an executive overview of Mega-C (p. 3241), a list of proposed additional directors of Mega-C (p. 3286) and other materials. K.A. and members of his family were persuaded to invest in Mega-C at various times in the fall of 2002 and on into February of 2003. K.A. prepared a list of the shares that the family received and the certificate numbers, found at p. 3320. The family invested a total of $40,000, all by cheques made payable to Jared Taylor for which they received promissory notes found at p. 3295 and following. When asked why the cheques were made payable to Jared Taylor, K.A. replied that he thought it was similar to brokerage houses, that the money was going into a cash account and once the share structure was established for the corporation, then the shares would be issued. He said the promissory note was basically some collateral for surrendering the money.

[162] In cross-examination, K.A. acknowledged to Lewis Taylor Sr. that it was very clear in his mind that the Taylors thought the monies advanced were advanced as loans. Indeed, K.A. signed a document (Ex. 80) in which he acknowledged that all sums advanced by himself and his family were loans to Jared Taylor.

[163] The balance of the cross-examinations conducted by the Taylor Respondents consisted of visiting events following the advancement of the funds by K.A. and his family and dealing with events in Nevada and the various attempts by competing interests to gain control of Mega-C, none of which has anything to do with the allegations made by Staff.

(vii) A.L.

[164] Staff called as a witness A.L., a man in his middle 60s and the owner of a farm equipment business in Western Ontario. Exhibits entered through him are found in Hearing Brief Vol. 7, Tab 104. His evidence is found in Tr. 23. He described his investment knowledge as poor and was not an accredited investor.

[165] He heard about Mega-C through the owner of a trade magazine that people in his area used for advertising and selling used equipment. The owner of the trade magazine, Ian Micklethwaite, sent two faxes to A.L. describing the Mega-C technology and announcing a meeting to which interested persons could attend to receive further information. The second fax (p. 3884) said that it was anticipated a second block of stock would close in the next week or less, split possibly 5:1 in late December and then launch on the New York NASDAQ Exchange in April/May of 2003, opening at around US $30.00 a share, all according to a US brokerage. The fax invited recipients to get in on the ground floor.

[166] A.L. attended a meeting on November 29, 2002 at 100 Caster Avenue. He described it as a non-descript kind of facility looking rather like a strip mall with a store front. There were a number of people there including Ian Micklethwaite and Jurgen Volling, who met A.L. at the door and handed out some documents. It was his recollection that Chip Taylor did the bulk of the talking and described the technology, “how exciting it was and also got into the shares and the opportunity”. A.L. was told that the shares were being offered at US $5.00 at that point but they were going to go on the NASDAQ very soon and would be opening at about $30.00. He saw a demonstration of the technology in the sense that he was shown a battery on a test bench. He was told that it was ready to go into production but there was no actual demonstration. A.L. was given a document entitled Mega-C Power Presentation, Reserve Shares Form on November 29, 2002 (Ex. 126). A.L. understood that this was an opportunity to buy shares directly from Mega-C, an opportunity to invest in a private company that was expected to go public in a short period of time. He was assured that he would be able to sell the shares at some point. He and his wife went into a room with Jurgen Volling and filled out the document and a few days later made out a cheque to NetProfit for Cdn. $10,000, for which he received 1,283 shares in Mega-C.

[167] A.L. received his share certificate some time later in a form letter dated October 2002 addressed to “Dear Shareholder” from Rene Pardo (p. 3901). The form letter said that prior to public listing he would be asked to exchange the enclosed certificate for new certificates to be issued and signed by “our Corporate Transfer Agent”. A.L.’s examination-in-chief concluded with a brief description of his involvement in the bankruptcy, including a telephone call from Colin Taylor advising him not to sign anything in connection with making a claim in bankruptcy, other than that proposed by the Taylors. In cross-examination, Lewis Taylor Sr. dwelt on A.L.’s identification of Lewis Taylor Sr. as the person who did most of the talking, something that other

witnesses testified was done by Lewis Taylor Jr. A.L. continued to maintain that it was Mr. Taylor Sr. who carried the conversation.

[168] Mr. Taylor then picked up a copy of Ex. 120, a reserve form, and asked A.L. if he had any understanding why it had never been produced before in the proceeding. The Chair reminded Mr. Taylor not to testify, pointing out that it had not been established that it had never been produced. Mr. Taylor Sr. responded he had read all 29,000 pages and did not believe it was there. This necessitated the production of the document in the disclosure which was found at Binder 16, Tab 3, p. 7716. Mr. Taylor denied he said what he said and this required an adjournment while the reporter prepared a transcript of the exchange between the Chair and Mr. Taylor. Mr. Taylor then retreated to the position that it was the signed copy of Exhibit 120 that he had never seen. Suffice it to say, the Panel did not accept his explanation. Forty minutes were wasted preparing the transcript of the exchange. This is but one of many egregious examples of Mr. Taylor Sr. putting facts to a witness that had not been established in the evidence, which he was reminded time and again not to do.

[169] The cross-examination of A.L. by the Taylor Respondents did not assist the Panel in assessing his evidence. What was clear to the Panel was that A.L. was confused as to the roles taken by Lewis Taylor Sr. and Lewis Taylor Jr. However, his description of the presentation at 100 Caster Avenue does not vary in any great particular from the description of other purchasers of Mega-C shares who attended such an event.

(viii) S.J.B.

[170] Staff called S.J.B., a resident of Toronto and the CEO of a TSX listed public company. Exhibits entered through him are found in Hearing Brief Vol. 7, Tab 103. His evidence is found in Tr. 24. He described his knowledge of investing as good and has spent many years trying to raise money for venture start-ups. He declared himself familiar with that process, the laws connected with it and the difficulties associated with it. S.J.B. has a B.A. degree and a law degree from the University of Toronto. He declared himself to be an accredited investor within the meaning of the Act.

[171] S.J.B. was introduced to Mega-C by a friend and associate who thought it would be a good investment opportunity. The friend provided him with a "sort of a prospectus" which described the opportunity and set out some of the applications of the technology (Vol. 7, Tab 103, p. 3719).

[172] S.J.B. attended a meeting at 56 Temperance Street, Toronto, in December 2001. He was introduced to Rene Pardo and Lewis Taylor Jr. who described the opportunity in some detail. They conveyed the idea that S.J.B. was a potential early stage investor and was going to get a big increase in the value of stock purchased at various levels as financing took place and various large players came on board. He was told Mega-C would be listed on the "NASDAQ Bulletin Board", a kind of low-level NASDAQ listing. Names of later stage investors were mentioned to S.J.B. including OMERS, Ontario Power Generation and Borealis.

[173] S.J.B. looked at the opportunity and decided that while he was very enthused about the technology he did not like the structure of the deal. He thought it was at a pretty early stage and he personally did not have the time nor energy to pursue another green technology with due diligence. Ultimately, he put in what he considered to be a token investment of $18,000. This was done at a first meeting at Temperance Street. He purchased 12,000 shares at US $1.50 and made out a cheque payable to Mega-C Power Corporation dated December 24 for US $18,000.

[174] Mr. Feasby reviewed with S.J.B. three documents: first, a confidential term sheet for Ontario Residents found at Tab 103C; second, a subscription agreement for Canadian Residents found at Tab 103D; and third, a confidential offering memorandum found at Tab 103E. Referring to the limitations on share transfers of Mega-C in each of the documents, Mr. Feasby asked S.J.B. if the statements reflected his understanding that he could not resell his Mega-C shares before the company went public. S.J.B. replied that is what he understood the law to be and he understood that he was buying securities that were so restricted.

[175] Mr. Feasby then drew S.J.B.'s attention to the first two pages of Tab 103C, pp. 3746-3747 which S.J.B. identified as a summary of special warrants convertible into freely tradeable common shares of Mega-C. S.J.B. had expected he would be buying Mega-C warrants and that at some point he would get freely tradeable common shares in exchange for those warrants. That is why he was surprised to receive a share certificate for his Mega-C shares. Quite a bit later he heard from his friend, P.G., who took S.J.B. to a meeting at Caster Avenue, where they met with Kirk Tierney. At this point, Mega-C was in bankruptcy in Nevada and the IWG had taken control of it. Subsequently, S.J.B. received correspondence from Sally Fonner, inviting him to a shareholders' meeting near the Toronto airport. He did not attend the shareholders meeting, described by several witnesses as a raucous one. In effect, S.J.B. abandoned any hope of recovering anything for the shares he purchased.

[176] In cross-examination by Lewis Taylor Sr., S.J.B.'s attention was drawn to Vol. 1, Tab 2, p. 40, which is Schedule C to Mr. Pardo's letter to the Commission dated March 11, 2003. Schedule C purports to be a share register created by Mr. Pardo of those shares gifted by NetProfit to various persons. S.J.B. is shown as one such person. He was surprised to learn that his shares did not come from Treasury but from another source. He was also surprised to learn that his friend, P.G., had received a

commission for introducing him to Mega-C. The subsequent cross-examination of S.J.B. by the Taylor Respondents concentrated on those matters taking place following the purchase of his shares involving the bankruptcy of Mega-C, the appearance of Sally Fonner and the takeover of Mega-C by IWG. These matters, the Panel finds, are irrelevant to the allegations the Panel is required to consider.

(ix) N.C.

[177] Staff called as a witness, N.C., a man in his mid forties, formerly employed as a police officer and currently the proprietor of a paralegal firm. Exhibits entered through him are found in Hearing Brief Vol. 7, Tab 102. His evidence is found in Tr. 25. In early 2003, a friend of his told him about Mega-C and put him in touch with one Elliott Gaum, later called as a witness by Lewis Taylor Sr. Mr. Gaum told N.C. that Mega-C was on the cusp of going public in March of that year and that it was developing a fuel cell that was going to take the world by storm. There were "heavy hitters" that were showing interest in becoming involved in the company.

[178] Mr. Gaum suggested to N.C. that he speak to Jared Taylor who would be involved in facilitating an investment in Mega-C. N.C. did so, perhaps a half a dozen times before he invested. Jared Taylor told N.C. that the company was about to explode and that he was building the company up, creating a type of frenzy over the fact that it was about to go public in March. Jared Taylor told N.C. the company would be listed on the NASDAQ Stock Exchange. The price per share was US $5 and Mr. Taylor suggested to N.C. that he would be looking at six or seven times his initial investment as a return. The method of investment would be for N.C. to make out a cheque to Jared Taylor and send it to Mr. Gaum, who in turn would direct it to Mr. Taylor.

[179] N.C. decided to invest in Mega-C and sent Elliott Gaum a bank draft dated February 11, 2003 for US $10,000 payable to Jared Taylor. Other documents introduced included a letter from Rene Pardo thanking him for his investment and enclosing a share certificate for 2,000 shares in Mega-C. Mr. Feasby referred N.C. to p. 3702, which was a second bank draft payable to Jared Taylor for US $5,000, a further investment in Mega-C. It was sent to Jared Taylor via Elliott Gaum.

[180] Following his investments, N.C. also spoke to Lewis Taylor Sr. who was "right on line" with Elliott Gaum and Jared Taylor by indicating the company was going public in March, that there were some large investors such as Mitsubishi and Warren Buffett who were showing keen interest and that great things were going to happen. He also referred to the listing to take place on NASDAQ. N.C. never received a share certificate for his second investment. What he did receive was an "Acceptance of Mega-C Power Collateral" form from Jared Taylor which read as follows:

> This is to confirm that I have received from you 1,000 shares of Mega-C Power Corp. in full settlement of my personal loan to you of US $5,000

which N.C. acknowledged by signing at the bottom. He was asked why he signed the document in the face of his position throughout his evidence, from which he never wavered, that he never loaned Jared Taylor any money and that the acknowledgement he signed was the first time he ever heard of a loan. We took from his response that he concluded it was the only way he would get his share certificate. He never did.

(x) A.R.

[181] Staff called A.R., a builder and developer in his late 30s. Exhibits entered through him are found in Hearing Brief Vol. 7, Tab 105. His evidence is found in Tr. 34. He was introduced to Mega-C by a friend and attended a meeting at the office of a pension fund manager in downtown Toronto. Present were Lewis Taylor Sr., Lewis Taylor Jr., Rene Pardo, Gary Usling and some others. A.R. had met Skip Taylor as a child at school; they were family friends. Lewis Taylor Jr. gave a demonstration of a capacitor. A.R. was told that they were taking Mega-C public in the next 6 months to a year. He was also told that there would be a subsequent offer at an increased price over the current $5 range, perhaps at $7.50 or $10. After doing some due diligence, A.R. bought 10,000 shares at $5 a share. The documents supporting his evidence may be found at Vol. 7, Tab 105, p. 3913 and following. A.R. purchased a further 10,000 shares at US $5 per share for a total of 20,000 shares.

[182] When A.R. learned that the company was in trouble, he went to see Rene Pardo. He learned that "the wheels were coming off at Mega-C" and he told Mr. Pardo he wanted his money back. Mr. Pardo in turn offered him 90,000 shares in Mega-C which A.R. accepted. However, he would not sign a document saying that Mr. Pardo had gifted the shares to him, pointing out that it was consideration being paid because people had not been truthful with him.

[183] In cross-examination by Lewis Taylor Sr., he denied having worked for Mega-C or Axion and, when shown that he was named as a consultant to Mega-C in Mr. Pardo's share register, A.R. vehemently denied this. When shown his entry in the share register as having received a gift of 90,000 shares in Mega-C, A.R. vehemently denied it was a gift.

[184] Mr. A.R.'s evidence was straightforward and believable. It particularly calls into question the accuracy of many of the entries in the share register created by Mr. Pardo.

(d) Investor Witnesses Contacted By Staff

[185] In addition to the investors called by Staff to testify, Staff sent questionnaires to numerous investors whose names came to Staff's attention. The responses are found in Hearing Brief Vol. 4, Tab 82A-LL and in Vol. 5, Tab 82MM-VV. They number 48. A typical questionnaire with responses is annexed as Schedule B to these reasons.

[186] In addition to the oral testimony and the questionnaires, members of Staff conducted telephone interviews with numerous investors whose names came to Staff's attention. The results of these interviews are found in Hearing Brief Vol. 5, Tab 83A-CC. They number 29. A typical interview is annexed as Schedule C to these reasons.

[187] Based on the oral testimony, the questionnaires and the telephone interviews, the Panel makes several findings of fact. Investors found their way to Mega-C in a variety of ways. Some knew the respondents personally, many were gathered in by persons authorized by the respondents to promote Mega-C, many heard about Mega-C through business associates and friends.

[188] Many investors at one time or another attended a demonstration of the technology either in Toronto or at the company's office at 100 Caster Ave., Vaughan, Ontario. Many investors attended information sessions where materials extolling the technology were distributed. Almost all investors heard oral presentations made by Lewis Taylor Sr., Lewis Taylor Jr., Rene Pardo, and to a much lesser extent by Jared Taylor.

[189] At these oral presentations, investors heard at least one, and usually more, of the following representations:

- The technology had unlimited potential to revolutionize the storage of electricity;
- Mega-C was shortly going public and was probably going to be listed on the NASDAQ Exchange;
- The technology was shortly going into production;
- Investors' funds would be used to bring the technology to market;
- Large companies were going to both invest in and purchase from Mega C once production began;
- The shares were going to increase in value and would shortly be worth much more than the price asked of investors.

[190] Of course, not all of the Messrs. Taylor and Pardo were present at every presentation. Not all of them made each of the representations listed above. Nevertheless, we are satisfied on the preponderance of the evidence that at one time or another each one or more of them made one or more of these representations. We are further satisfied that the investors were persuaded to invest by the representations coupled with the opinion of Dr. Conway that the technology appeared to have commercial possibilities.

[191] In particular, we find the Taylor Respondents knowingly participated in a common enterprise conceived and led by Lewis Taylor Sr. As his own counsel at the time wrote "Chip Taylor, as the head of the Taylor family, was involved in or made all major decisions on behalf of the Taylor family" (Hearing Brief Vol. 2, Tab 16, p. 1080).

[192] Quite simply, the common enterprise was to sell shares in Mega-C to the public in the guise of a loan to Jared Taylor, secured by share collateral. To qualify for the exemption in the Act afforded to legitimate loan transactions, the loans must be made in good faith. We shall have more to say about this good faith aspect later in these reasons.

[193] The oral evidence which we have accepted is amplified by the hearsay evidence of the questionnaires and telephone interviews. The Panel may take hearsay evidence into account where it is supported and corroborated by other evidence (*Re Ochnik* (2006) 29 O.S.C.B. 3929, para. 26, and *Alberta Securities Commission v. Brost* [2008] A.J. No. 1071 (Alt. C.A.) para. 36). The oral evidence of the witnesses called by Staff provides such support and corroboration.

(e) The Evidence Of Kirk Tierney

[194] Staff called Kirk Tierney. Exhibits entered through him are found in Hearing Brief Vol. 8, Tab 108. His evidence is found in Tr. 29-33 inclusive. Mr. Tierney was placed in charge of Mega-C by the investors who had become dissatisfied with the course of Mega-C early in 2003. Mr. Tierney's title was General Manager. He testified on five consecutive days, December 7, 8, 9, 10 and 14, 2009. Mr. Tierney's evidence was helpful to the extent that it shed light on the events in 2003 when the IWG intervened in the affairs of Mega-C. This aside, we reject Mr. Tierney's testimony for the following reasons:

- There are two kinds of unresponsive witnesses. The more common is the witness who cannot remember, does not know and generally is unable to recall or describe the simplest matters. The other kind, of which Mr. Tierney is a classic example, is the witness who takes every question as an opportunity to promote a particular mindset and point of view, in this case to paint the Taylors as fraudulent villains.

- During the course of his long answers he seldom lost an opportunity to paint himself in the best light possible. At every turn he cast himself as a potential saviour of Mega-C from the clutches of the Taylor Respondents.

- The animosity between Mr. Tierney and Lewis Taylor Sr. was palpable during the latter's cross-examination of Mr. Tierney. Lewis Taylor Sr. contends that "his technology" was stolen from him by the I.W.G, with the active help of the OSC. Mr. Taylor regarded Mr. Tierney as the personification of that group during his cross-examination. Mr. Tierney's responses, not surprisingly, attempted to blunt the direction of Lewis Taylor Sr.'s questions and, if possible turn the question to Mr. Tierney's advantage in attempting to score a point.

- Mr. Tierney, along with a host of others, is a defendant in a lawsuit brought by Lewis (Chip) Taylor, Chip Taylor in trust, Jared Taylor, Elgin Investments Inc., and Mega-C Technologies Inc. in the Superior Court of Justice (Ontario). The action seeks a declaration that all the assets and profits of Axion Power Corporation in its various manifestations are beneficially owned by Mega-C, a declaration that the agreement of association is a valid and binding agreement, and damages in the amount of 250 million dollars. As with many other witnesses, the cross-examination of Mr. Tierney by Lewis Taylor Sr. appeared to be nothing less than a dress rehearsal for future litigation between the Taylors and those who supplanted them in Mega-C.

[195] Apart from filling in the narrative history of Mega-C, the Panel finds Mr. Tierney's evidence to be of no assistance in this matter.

XIII. PARDO WITNESSES

(a) Rene Pardo

[196] Mr. Pardo chose to testify. His testimony began in the afternoon of December 15, 2009 and including cross-examinations and re-examinations continued on December 16, 17, 18, 21 and 22. Following the holiday recess, his evidence continued on Monday, January 11, 12, 13 and ended on January 14, 2010. Unfortunately, and for reasons not entirely his fault, the value of Mr. Pardo's testimony was not directly proportional to the time he spent in the witness box. The transcripts containing his testimony run from Vol. 34 – 43 inclusive.

[197] Mr. Pardo began his testimony in Hearing Room A with a lengthy and somewhat unfocused description of his early business activities. His reputation did not suffer in his description of those activities. Unfortunately, Mr. Pardo speaks in a low voice and testifies in an unfocused manner. The Panel concluded the Hearing had to move to the smaller hearing room with better sound equipment and this was done in the afternoon of December 15, 2009. The Hearing continued there with the exception of one day in March.

[198] He described his early meetings with Lewis Taylor Sr. about the technology invented by the Russian scientists. There were two technologies, one under the control of C&T and the other under the control of Select Molecular Technologies. For our purposes, it is sufficient to understand that C&T controlled the technology tested by Professor Conway and Select Molecular controlled the technology demonstrated to Loma Linda Medical Centre of California.

[199] On September 11, 2001, Mega-C wrote Lewis Taylor Jr., in his capacity as president of Mega-C Tech, setting out a summary of the agreement reached between those two companies. The letter was acknowledged and signed by Lewis Taylor Jr. This is the "letter agreement" often referred to in the evidence. Under the letter agreement, Mega-C would raise US $5.25 million for Mega-C Tech of which US $250,000 would be provided initially. Mega-C Tech would issue to Mega-C 49% of the total shares issued and outstanding of Mega-C Tech for a nominal consideration, no later than the beginning of trading of Mega-C on a recognized stock exchange or the balance of US $5 million having been raised, whichever occurred earlier. Mega-C had the right to appoint 3 of 7 directors on Mega-C Tech. Conversely, Mega-C Tech had the right to appoint 2 directors to the board of Mega-C.

[200] Pursuant to these financial arrangements Mega-C Tech granted to Mega-C Power exclusive worldwide unlimited rights for developing the technologies owned by Mega-C Tech. Mega-C was to pay Mega-C Tech a 10% royalty on its quarterly revenues received from the sale of Mega-C Tech products. Mega-C was to pay for the development of the technology carried

out by Mega-C Tech. Mega-C Tech undertook to use $3 million of the money raised to develop a research and development facility (Hearing Brief Vol. 1, Tab 4, p. 260).

[201] Also at Vol. 1, Tab 4, p. 263 is an agreement of association dated April 2, 2002 made between Mega-C Tech, Mega-C and C&T. Under the agreement, Mega-C Tech was to transfer 50% of Mega-C Tech shares to Mega-C, conditional upon payment of $2 million to Mega-C Tech, or Mega-C shares of that value. Further, Mega-C was to pay Mega-C Tech $3 million which funds were earmarked for a new corporation created for the purposes of investment in a research facility. In addition, Mega-C Tech was to receive 10% of all the issued and outstanding Mega-C shares with a covenant against dilution. The total of $5 million payable by Mega-C was to be paid in $400,000 increments every 60 days beginning February 1, 2003. This agreement is often referred to in the evidence as the April 2002 agreement.

[202] Mr. Pardo's evidence with respect to the beginnings of Mega-C and the distribution of its shares is unsatisfactory in many respects. We identified factors which contributed to this conclusion:

- Mr. Pardo's method of testifying we have earlier described as unfocused. In responding to questions or testifying in his own behalf, he first made an answer, then qualified it and then either went backwards in time or forwards in time to, as he would put it, "provide clarity". Clarity was seldom provided.

- Mr. Pardo's memory was faulty about the details of the share transfers made during the time he acted as transfer agent for Mega-C. He told us that in many instances, shares that were allocated to the Taylor Respondents were done in a "notional" sense where a share certificate number might be created for a particular block of shares, but no share certificate was produced. When instructed by the Taylors, as he testified he often was, Mr. Pardo would in turn ask his assistant, Sherry Bates, to prepare a share certificate and deduct from the notional Taylor shares a number sufficient to respond to the request for transfer made by one of the Taylor Respondents.

- The manner of Mr. Pardo's cross-examination by Lewis Taylor Sr. did not help the situation. Like other witnesses, Mr. Pardo has been sued by Mr. Taylor Sr. Mr. Taylor's mission in cross-examining Mr. Pardo was to get him to acknowledge that the loan program proceeds went to pay obligations of Mega-C to C&T and/or Mega-C Tech. Mr. Pardo denied that this was the case. On this topic, the Panel prefers the evidence of Albert Ciorma to throw light on what happened.

- Lewis Taylor Sr. cross-examined Mr. Pardo starting Wednesday, December 16 and continuing December 17, 18, 21, 22, Monday, January 11, 2010 and ending Tuesday, January 12, 2010. The cross-examination was of virtually no assistance to the Panel; the Panel implored Mr. Taylor from time to time to confine his questions to matters relevant to the allegations. Mr. Taylor Sr. was either incapable or unwilling to do so.

[203] Nevertheless, a review of the material in Hearing Brief Vol. 1, Tab 2, p. 3 and following, together with his oral evidence permits the Panel to find as follows. Mega-C issued approximately 15,700,000 shares. Of these Rene Pardo personally received 10,550,000, mainly in satisfaction of an invoice he submitted to Mega-C for services performed before its formation. Three million shares were issued to NetProfit, owned and controlled by Mr. Pardo, for a further 3 million shares at his disposal. Smaller amounts of shares were issued to the Russian scientists who developed the technology such as the Messrs. Filipenko, Shtemberg and Malitsky. The Taylor Respondents received some few hundred thousands of shares by way of share certificates. Mr. Pardo further described what he called "gifted shares". NetProfit and Mr. Pardo transferred approximately 9,800,000 shares of Mega-C to approximately 271 individuals for what he called "no consideration". However, it is clear from the evidence that the shares were transferred to persons who had made previous investments in businesses unrelated to Mega-C but related to Mr. Pardo and the Taylor Respondents. Mr. Pardo acknowledged at Vol. 1, Tab 2, p. 14 that NetProfit sold about 1,300,000 shares, half of which he said were reinvested in NetProfit and the other half applied to the repayment of NetProfit's indebtedness.

[204] Mr. Pardo's testimony and his response to the OSC in his voluntary statement acknowledged that approximately 1 million shares were sold to approximately 124 Ontario residents as more particularly set out in Schedule C found in Hearing Brief Vol. 1, Tab 2, p. 25. It is in Schedule C, among other locations, where 1248136, a company incorporated and controlled by Colin Taylor, is shown to have received approximately 1,800,000 shares of Mega-C. According to Schedule C, Gary Usling received 1,250,000 shares. Joseph C. Pardo Limited received 100,000 shares, and Paul Pignatelli, Lewis Taylor Sr.'s son-in-law, received 233,000 shares.

[205] We find it unnecessary to pursue the tangled web of share transfers and the agreements made among Mega-C, Mega-C Tech, C&T, Select Molecular and other corporations referred to in the evidence. We do find that the Taylor Respondents received more than sufficient Mega-C shares, whether recorded on the books of the company or not, for Mr. Pardo to issue share certificates to the approximately 400 persons who allegedly loaned Jared Taylor sums of money, and in return for which they received share certificates signed by Rene Pardo. Ex. 194 is a note to Sherry Bates from Jared Taylor. It sets out the changes to lists he had forwarded directing share certificates to go to certain named people. Ex. 195 is of the same type in which Jared advises Sherry Bates "but, for issuing the shares, follow the blue marks my Dad made on the older list and ignore

my list until a later date". Similar directions to Sherry Bates were received from Colin Taylor on behalf of 1248136 and from Paul Pignatelli.

(b) Nedeljko Ulemek

[206] Mr. Pardo called Nedeljko Ulemek as a witness. He obtained an engineering degree in Yugoslavia and ultimately started his own business in Mississauga involving office equipment. He exported computer material to countries in Eastern Europe and spent a lot of time in Russia where he learned the Russian language.

[207] In the early 1990s, he registered a company called Select Vostok as he wished to import to Canada Russian technology involving capacitors. He met with the Borisenkos, father and son, and retained them to build prototypes of a capacitor that he could use to demonstrate its capabilities to people in North America. The agreement between Vostok and the Borisenkos is filed as Ex. 202. Mr. Ulemek was introduced to the Taylors by Samuel Disabitino and this led to an agreement between Mr. Ulemek, Mr. and Mrs. Lewis Taylor Sr. and Mr. Disabitino (Ex. 203). Mr. Ulemek testified that Lewis Taylor Sr. insisted there be a new company that would take over from Select Vostok to promote and advertise and further development the technology. This was Select Molecular Corporation. While Select Molecular was working on its capacitor technology, Mr. Ulemek introduced Messrs. Miklosh, Rubin and Valeri Shtemberg to the Taylors and the Borisenkos. These latter gentlemen were developing electrical storage based on carbon electrolytes. Messrs. Rubin and Miklosh had formed a company which we know as C&T.

[208] Mr. Ulemek testified that the Taylors and Messrs. Rubin and Shtemberg had a meeting behind his back and started to develop the two technologies without his knowledge. He said he lost track of the activities of C&T and the Taylors until 2002, when the activities of Mega-C and Mega-C Technology were brought to his attention, including some prospectuses prepared at that time. On February 20, 2003, Mr. Ulemek sued the Taylors, Mr. Borisenko, Mega-C Tech, Mega-C and Select Molecular in the Superior Court of Justice (Ontario). His view of the dispute between him and the Taylors is recited in the statement of claim (Ex. 204). An agreement of understanding between Mega-C Tech and Select Molecular dated February 2, 2001 was produced. It was signed by Lewis Taylor for Mega-C Tech and by Colin Taylor for Select Molecular. Mr. Ulemek concluded his examination-in-chief by saying that a few months before his appearance at the hearing on the merits, the Taylors had asked him to drop the suit against them because it was a probable obstacle to their claim in their bankruptcy proceeding in Nevada.

[209] Mr. Ulemek was cross-examined by both Lewis Taylor Sr. and Colin Taylor. The cross-examination followed a pattern that one would expect from adversaries in litigation. A little heat was generated but not much light. The Panel concludes that Mr. Ulemek's evidence is of no help to us in considering the allegations.

XIV. TAYLOR INVESTOR WITNESSES

[210] Lewis Taylor Sr. called a number of witnesses to support the Taylor Respondents' contention that the promissory note arrangement exempted the transfer of Mega-C shares from the requirements of the Act as detailed in the Statement of Allegations. These witnesses, and the transcripts and page number of the transcripts where their evidence may be found are as follows:

- Mr. P.B. (Tr. 26, p. 8)
- A.B. (Tr. 28, p. 7)
- E.J. (Tr. 28, p. 39)
- A.M. (Tr. 44, p. 110)
- H.B. (Tr. 49, p. 110)
- B.R. (Tr. 27, 51, p. 72)
- J.V. (Tr. 51, p. 105)
- W.V. (Tr. 51, p. 123)

[211] Some of the above named witnesses were business associates of Lewis Taylor Sr. or personal friends of Mr. Taylor. Others did not know the Taylor Respondents before being invited to invest in Mega-C. All of them had opted to file claims with the Nevada bankruptcy court on a form provided to them by Jared Taylor. That form, in the case of Mr. P.B., was filed as Ex. 137. The form sets out that Jared Taylor has a deadline to meet to submit supporting documentation in his possession regarding the Nevada bankruptcy. The recipient of the form is invited to submit an acknowledgement of the terms of the promissory note and that Jared Taylor had previously listed the recipient's interest in the promissory note in an action brought in the Superior

Court of Justice (Ontario) as well as in the Nevada bankruptcy court. All of the above named witnesses received and signed an acknowledgement in the form of Ex. 137, thereby going on record in both Nevada and Ontario that they had indeed loaned sums of money to Jared Taylor for his personal use, secured by the collateral of Mega-C shares. In doing so, they threw in their lot with the Taylor Respondents in the competing interests before the Nevada bankruptcy court as opposed to the IWG and the group of unaffiliated shareholders.

(a) Mr. P.B.

[212] Mr. P.B. testified as a witness for the Taylor Respondents. His evidence was taken Wednesday, December 2, 2009 and appears in Tr. 26. Mr. P.B. lived in the same condominium as Elliot Gaum who introduced him to Mega-C and ultimately to Lewis Taylor Sr. He was sufficiently impressed by what he learned about Mega-C from Mr. Gaum and Lewis Taylor Sr. that he transferred US $200,000 to Jared Taylor in exchange for a promissory note and the receipt of 40,000 Mega-C shares.

[213] Since P.B. was the first investor called by the Taylor Respondents, the examinations-in-chief conducted by Lewis Taylor Sr. of those witnesses require comment. Mr. Taylor's examination of Mr. P.B. is a perfect example of the lengths to which Mr. Taylor went to lead his witnesses and to put the answer to his questions in the witnesses' mouths. Beginning at page 10 line 12 of the transcript, the following exchanges are found:

> Q. Thank you. Is it true that in November and December of 2002 you entered into a series of loan transactions with my son Jared Taylor —
>
> A. Yes.
>
> Q. — totalling $200,000 US or — give or take whatever the exchange rate, 300 and some odd thousand dollars Canadian, whatever that exchange would have been at that time?
>
> A. Yes, that's correct.
>
> Q. Did you subsequently receive shares in Mega-C Power?
>
> A. Yes, I did.
>
> Q. Okay. And did they come with a – were they signed by Rene Pardo?
>
> A. They were signed by Mr. Pardo.
>
> Q. Did you make a request as to what names the certificates should be made out to?
>
> A. Yes, I did.
>
> Q. And was that done out satisfactorily and accurately as far as you're concerned?
>
> A. Yes, it was.
>
> Q. Thank you. The certificates, do you continue to have them in their original form and –
>
> A. Yes, I do.
>
> Q. Okay. Did I explain to you that the purpose of the loans, which were made to my son Jared, notwithstanding the promissory notes says for personal purposes were actually to be used for debt reduction concerning a licence agreement I had with Mega-C Power?
>
> A. Yes, that was explained to me at the beginning.

[214] It can be seen that the fundamental question of whether the amounts transferred to Jared Taylor over the history of Mega-C and whether those funds were ever used for the benefit of Mega-C has been answered not by Mr. P.B. but by Mr. Taylor in the manner in which he phrased his questions.

[215] At the close of Lewis Taylor Sr.'s questions, the following exchange took place between the Chair and Mr. Taylor, found at p. 46 starting at l. 11:

> The Chair: When you're conducting your examinations of your witnesses in chief, as we call it, you must try and avoid putting the answer in the witness's mouth. It's the difference between "you understood that such and so" as opposed to "did you understand such and so".
>
> Lewis Taylor, Sr.: So I should emphasize the question more.
>
> The Chair: Yes. In other words, it has to be open, otherwise it's what's called a leading question.
>
> Lewis Taylor, Sr.: It's cheating.
>
> The Chair: No, it's not cheating, it's not cheating. It's unfamiliarity with the business.
>
> Lewis Taylor, Sr.: I'm sorry sir.
>
> The Chair: And I recognize that. But the difficulty is from your point of view, which is why I'm suggesting this to you, is that if you plant the answer then the tendency is to ignore it because it's been planted by the questioner, you see?
>
> Lewis Taylor, Sr.: Would you have an example of one of those questions that I —
>
> The Chair: Yes, you said to the witness, "You understood that this was a loan to Jared" —
>
> Lewis Taylor, Sr.: All right, I understand.
>
> The Chair: "didn't you" sort of thing. Well, when he answers that what else could he say, you see? And so you say, "Did you understand that this was," that's all, because —
>
> Lewis Taylor, Sr.: I'm going to write that right down here.
>
> The Chair: Then the power of the answer is much greater when the questions is open-ended as opposed to closed.

[216] Lewis Taylor Sr.'s manner of examination-in-chief continued with Mr. P.B. and continued throughout the examination of subsequent witnesses called by the Taylor Respondents. Whether by accident or by design, and despite repeated warnings from the Panel, Mr. Taylor continued to lead his witnesses in their examination, thereby bringing into question the reliability of their evidence. For these reasons, the Panel finds Mr. P.B. to be an unreliable witness on the crucial issue of the "loan program".

(b) A.B.

[217] A.B. testified as a witness for the Taylor Respondents. He is a proprietor of a golf driving range west of Toronto and appears to be in his late 70s or early 80s. A.B. was somewhat confused in his evidence with respect to the transaction he entered into involving the Mega-C shares. He said he met a Bob Penner at Whistler who talked about the technology being developed by Mega-C. He visited the location at 100 Caster Avenue and decided to invest in Mega-C to the extent of $5,000. When examined by Lewis Taylor Sr. he was asked the following question:

> Q. Is it — was the proposition put to you that you would enter into — the means of getting involved would be through a loan transaction with Jared Taylor?
>
> A. Yes, it was strictly a loan, and my son also bought the same amount of shares as myself.

[218] This exchange was followed by further questions from Mr. Taylor which the Panel find to be leading.

[219] In cross-examination by Mr. Feasby, A.B. first said that he loaned the money to Jared Taylor. Later in his cross-examination, A.B. agreed that he specifically recalled loaning the money to Mega-C (Tr. 28, p. 34, l. 19). The Panel's overall impression of A.B.'s evidence was that he was unclear about many of the matters put to him both through examination-in-chief and cross-examination. His evidence does not assist the Panel on the crucial issue in this case.

[220] In testifying before the Panel, it appears to the Panel that these investors had little choice but to support the Taylor Respondents' characterization of the loan program. For better or for worse, they were allied with the Taylor Respondents.

[221] The manner of Lewis Taylor Sr.'s examination-in-chief of these witnesses was to pose leading questions of the most blatant kind. The extract from the evidence of Mr. P.B. is but one example of Mr. Taylor's method of questioning.

[222] Occasionally, a witness would depart from the looked for answers and then self-correct. At Tr. 26, p. 28, Mr. P.B. was asked a question and responded:

> A. Yes. It was after I had purchased some, I don't know if it was after I had purchased all the shares, but it was after I had purchased some shares. Or after I entered into the promissory note, at least one, so …

Lewis Taylor Sr.'s manner of examination-in-chief caused the Panel to draw his attention to its counter-productive results, as noted above.

[223] We approach the evidence of the above witnesses, identified by their initials, with considerable caution. We do so for two reasons – first, the obvious alignment of the witnesses with the Taylor interests and second, the leading questions put to the witnesses by Lewis Taylor Sr. This combination persuades us that their evidence is of little assistance in attempting to determine the good faith of the Taylor Respondents vis-à-vis the loan program.

XV. OTHER WITNESSES CALLED ON BEHALF OF THE TAYLOR RESPONDENTS

[224] Witnesses called by Lewis Taylor Sr. on behalf of the Taylor Respondents in addition to those above include the following persons, identified by their initials. Their evidence can be found in the corresponding volume and page number of the transcripts of the evidence:

- C.K. (Tr. 44 p. 5)
- S.N. (Tr. 48 p. 5)
- J.B.K. (Tr. 26 p. 89)
- B.A. (Tr. 53 p. 4)
- N.T. (Tr. 53 p. 17)

The evidence of the above five witnesses is of no assistance to the Panel. Questions posed to them by Lewis Taylor Sr. were not responsive to the allegations but rather pursued matters peripheral and irrelevant to the Statement of Allegations. The balance of questions were directed to the financial and other relationships between the Taylor Respondents and Mr. Pardo and were almost totally unrelated to the Statement of Allegations. We find the evidence of these witnesses to be of no assistance.

[225] Two police officers, A.M. (Tr. 44, p. 110) and S.L. (Tr. 44, p. 152), testified as to the manner in which A.M. was interviewed by a member of OSC Staff. We shall have more to say about their evidence later in these reasons.

(a) Marvin Winick

[226] Marvin Winick was under subpoena by Commission Staff and was held for the benefit of Lewis Taylor Sr. who chose to call Mr. Winick as his witness. His evidence is found in Tr. 50, p. 6 and following. Mr. Winick could remember little of the details of his services to Mega-C as someone who kept its accounting records. His answers were confined mainly to "I cannot remember", "I don't remember", and other professions of an inability to recall details of his services. The one salient feature that was introduced from his voluntary testimony before Commission Staff was the fact that the S.B.-2 filing required for Mega-C to be registered on NASDAQ was never completed. His evidence is of little or no assistance to the Panel.

(b) Jurgen Volling

[227] Lewis Taylor Sr. called Jurgen Volling on behalf of the Taylor Respondents. His evidence is found in Tr. 44, p. 35 and subsequently at p. 165. Mr. Volling is a mechanical engineer and has been in the energy business for about 40 years. Through Lewis Taylor Jr. he was introduced to Rene Pardo who offered him a position with Mega-C. His job description included finding clients that could use the Mega-C technology with a major emphasis on utilities and big electricity users. In his examination-in-chief he stated that attempting to sell stock in Mega-C was not part of his job description.

[228] During cross-examination by Mr. Feasby for Staff, Mr. Volling acknowledged that he received a "bonus" from Rene Pardo that amounted to 10% of any shares purchased by people he brought in to Mega-C. He was specific in pointing out that he did not apply the "bonus" of shares for his own benefit but gave them to charitable organizations or pastors of religious groups.

[229] Mr. Feasby's cross-examination of Mr. Volling continued on January 28, 2010. His evidence is found in Tr. 52, p. 68. Mr. Feasby produced to Mr. Volling documents which indicated that he had directed the shares he received as a "bonus" to

members of his family. It was clear from Mr. Volling's cross-examination by Mr. Feasby that Mr. Volling had indeed directed shares to which he was entitled by virtue of his introducing investors to Mega-C, to members of his family. He had no credible explanation why he had failed to make this clear in his earlier cross-examination. The Panel has no confidence in the credibility of Mr. Volling and his evidence is of no assistance to the Panel.

(c) Claude Bonhomme

[230] Lewis Taylor Sr. called Claude Bonhomme to testify. His evidence is found in Tr. 52, p. 6 and following. He had known Mr. Taylor for about 15 years, the same period of time he had known Mr. Pardo. He described his business activities as someone who financed and structured new companies. He had been in that business for 40 years or so. Mr. Taylor Sr. invited Mr. Bonhomme to become a director of Mega-C Tech. He accepted the invitation and joined Lewis Taylor Jr., Paul Pignatelli and Messrs. Shtemberg and Filipenko as a director of Mega-C Tech. He was also dealing with Colin Taylor in connection with Select Molecular, a company Mr. Bonhomme was trying to organize through funding or to find someone to take over the development of its technology.

[231] During cross-examination by Mr. Pardo, Mr. Bonhomme said he asked Mr. Taylor to meet with Mr. Pardo about the technology Mr. Taylor was developing. He said to Mr. Pardo:

> I asked Mr. Taylor to meet with you. I was not privy to your negotiations. I was just told what was going on after the fact, and I advised Mr. Taylor to make sure that he retained a royalty on the technology. (Tr. 52 p. 25 ll. 6-10 inclusive)

[232] Mr. Pardo then asked Mr. Bonhomme about 2.5 or 3 million dollars raised by the Taylor Respondents and if Mr. Bonhomme was under the impression that that money went to Mega-C or to the benefit of C&T. Mr. Bonhomme responded:

> That I can't tell because I was not involved in the receipt of the money but all I can tell you is that that money was secured on the basis there were notes that were supposed to be paid back. (Tr. 52, p. 28, ll. 6-9 inclusive)

In response to a question from Mr. Pardo about the loan program, Mr. Bonhomme responded:

> Well, sir, if I may suggest here, I was not involved with the operation of Mega-C Power, I don't know what you were doing, I haven't seen the books of Mega-C Power, I don't know what that money was advanced for, I haven't seen an audited statement describing what this money was advanced for, so I can't give you any opinion. (Tr. 52, p. 32, ll. 5-11 inclusive)

Mr. Pardo then posed the following question:

> Do you recall in … may have been 2003 or 2004, actually 2004 at the time Sally Fonner was around, do you recall a conversation that we had when I explained to you that I provided Mr. Taylor 3 million shares and you were totally surprised, and that your reaction was, "I should have had 1.5 million of them? Do you recall that conversation?
>
> A: No I didn't tell you 1.5 but I told you I should have received some of the consideration and I agree I told you that, and that's why I got the 500,000 shares that came in. (Tr. 52, p. 36, ll. 12-22 inclusive)

[233] Mr. Bonhomme acknowledged that he received 100,000 shares in Mega-C in 2001 for his investment in NetProfit. He said that the 500,000 shares he expected to receive was something that he and Mr. Taylor Sr. shook hands on and it was a matter of indifference to him whether it came from the 3 million shares or "the previous allotment to Mr. Taylor" (Tr. 52, p. 37, ll. 22-25 inclusive). During cross examination by Mr. Feasby, Staff counsel, Mr. Bonhomme acknowledged that he filed a claim with the bankruptcy court in Nevada for 500,000 shares describing the basis for his claim as follows: "I am submitting a claim for 500,000 shares of Mega-C Power Corporation which I was to receive directly as a result of Rene Pardo's debt settlement with Jared Taylor and myself" (Ex. 300).

[234] During re-examination by Lewis Taylor Sr., Mr. Bonhomme confirmed to Mr. Taylor that the fact Mr. Taylor had received 3 million shares in Mega-C was a surprise to him and he felt he should have shared in those shares. That was exactly the nature of the conversation he had with Mr. Taylor, said Mr. Bonhomme. He agreed that it was absolutely clear in his mind that Mr. Pardo told him that Lewis Taylor Sr. had received 3 million shares.

[235] Nowhere in his testimony did Mr. Bonhomme confirm the closing submission by Mr. Taylor Sr. that the loan program required Jared Taylor to take the money he received and show it to Rene Pardo, who would then issue shares to the recipient of the note and deduct the amount shown to him from the monies owed by him to Mr. Taylor Sr.

(d) Joseph Koppel

[236] Lewis Taylor Sr. called Joseph Koppel as a witness. His evidence is found in Tr. 50, p. 89 and following in Tr. 51, p. 6. Over the last number of years he has invested in high-tech companies through mutual associates. Mr. Koppel met Mr. Taylor Sr., who introduced Mr. Koppel to Select Molecular, a company developing energy storage. Through Mr. Taylor Sr., Mr. Koppel met Rene Pardo.

[237] He learned that Mr. Taylor planned to join forces with Mr. Pardo regarding a licence for the technology that would be promoted by Mega-C. Because of the help Mr. Koppel gave to Mr. Pardo, his understanding was that Mr. Pardo was going to "gift him" certain shares in Mega-C, much as was to happen with Claude Bonhomme.

[238] We pause to note that Mr. Taylor Sr. conducted his examination of Mr. Koppel by asking leading questions. In Tr. 50, p. 97, l. 19:

> Q. Past support. OK, then. But in any case, the shares that was – – were given to you were an independent transaction or a gift from Mr. Pardo.
>
> A. Yes.
>
> Q. And you may have had an – – a moral obligation or something to continue to help if you chose.
>
> Chair: Well don't put the answer to him, please.
>
> Lewis Taylor Sr.: I am sorry.
>
> Chair: Goodness gracious, Mr. Taylor. After all these weeks – –
>
> Lewis Taylor Sr.: I just don't catch on.

[239] We subsequently learned that Mr. Koppel received 100,000 shares in Mega-C for the help he gave to Mr. Pardo.

[240] Mr. Koppel testified he continued to work closely with Mr. Pardo, on the understanding that he would receive further shares in Mega-C, which never took place. When the OSC intervened, Mr. Koppel flew to Miami and met with Joe Bibace, Joe Piccarelli and Ron Bibace, members of the IWG. He became involved as an informal mediator in an attempt to find some sort of reconciliation between different parties. When the mediation attempts failed, Mr. Koppel retained Toronto counsel and became a member of the group of unaffiliated shareholders of Mega-C, one of the three parties vying to represent the interests of Mega-C shareholders in the bankruptcy. Mr. Taylor Sr. led Mr. Koppel through a detailed discussion of proceedings in the bankruptcy court in Nevada which was of little or no assistance to the Panel. In cross-examination by Mr. Britton, we learned from Mr. Koppel that the bankruptcy proceedings in Nevada were completed, the proposal of Axion including the protection of Mega-C shareholders was accepted by the court and the respective proposals by the Taylors and the unaffiliated shareholders were rejected. We learned further that the Taylor Respondents have appealed the bankruptcy decision to the Superior Court in California.

(e) Colin Taylor

[241] Colin Taylor testified on his own behalf. His evidence is found in Tr. 43, p. 12 and following. He produced in support of the loan program the acknowledgements signed by those persons who had filed their claims in the Nevada bankruptcy, based on the promissory notes they received from Jared Taylor.

[242] He produced an agreement of purchase and sale made between himself and third parties to evidence the fact that he had other shareholders in 1248136 (Ex. 251). The agreement of purchase and sale appears to record that the assets of 1248136 were to be purchased by shareholders of 1248136 other than Colin Taylor. He made this point to submit that if he had instructed anyone to place Mega-C shares in his company, the other shareholders in 1248136 would have been beneficially entitled to the value of those shares. This submission ignores the fact that no certificates were ever issued to 1248136 but rather notionally attributed to it.

[243] In Hearing Brief Vol. 3, Tab 46, pp. 1646-1647 is a direction signed by Colin Taylor addressed to Rene Pardo. In the direction, Colin Taylor asks "please transfer from 1248136 Ontario Limited shares in Mega-C Power Corp. to the following people:" There then follows a list of approximately 175 named persons to whom shares are asked to be transferred ranging from 56,000 shares to 100 shares. In his testimony Colin Taylor explained the document by telling the Panel that he received a telephone call from Rene Pardo asking him to go to the office. The list of shareholders was produced to him by Mr. Pardo who asked him to sign at the bottom because an error had been made in linking the shares with Mr. Taylor's company. Colin Taylor

complied with the request and subsequently phoned his brother Jared to tell him what happened. Mr. Jared Taylor told him that if Rene Pardo had asked him to sign the direction that he could trust Rene Pardo.

[244] During his testimony, Colin Taylor exhibited all the tendencies of someone attempting to be as unresponsive as possible to the questions put to him. He said he could not remember why he incorporated 1248136, he did not know what businesses his brother or his father were associated with, he could not recall whether he was a director of Shardina Estates Limited. When asked why his brother Jared Taylor transferred $544,292.21 to him, he replied:

> A. You know, that was some time ago, and to speak to what the amount was for and for what reason, I can't recall at this time.

[245] Colin Taylor had an opportunity and did cross-examine Rene Pardo. At no time did he put to Rene Pardo his explanation for signing the direction to Mr. Pardo to transfer shares from 1248136. We draw an adverse inference from his failure to do so.

[246] For the above reasons we reject Colin Taylor's evidence in its entirety. We find he attempted to deceive the Panel. The attempt failed.

XVI. ANALYSIS

(a) Standard of Proof and Onus of Proof

[247] The standard of proof that must be met in administrative proceedings is the civil standard of the "balance of probabilities" (*F.H. v. McDougall* [2008] 3.S.C.R. 41 ("*McDougall*") at para. 40). The OSC has adopted and endorsed the statement of the law in *McDougall* (*Re Sunwide Finance Inc*. (2009), 32 O.S.C.B. 4671 at paras. 26-28). Evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test (*McDougall*, above, at para. 46).

[248] If a respondent has engaged in an activity for which registration is required and for which an exemption is claimed, the onus is on the respondent to prove facts establishing the availability of the exemption (*Re Lydia Diamond Exploration of Canada Ltd*. (2003), 26 O.S.C.B. 2511 at paras. 83-84).

(b) The s. 25 Allegations

(i) The Law

[249] Shortly put, s. 25(1)(a), during the Relevant Period, said no person shall trade in a security unless registered as a dealer, or as a salesperson, partner, or officer of a registered dealer (see Schedule A to these reasons).

[250] "Trade" or "trading" includes a sale or disposition of a security for valuable consideration and any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing (see Schedule A to these reasons). It is not disputed and we find that none of Rene Pardo, Lewis Taylor Sr., Lewis Taylor Jr., Colin Taylor and Jared Taylor was a registrant within the meaning of the Act.

[251] The Commission has adopted a contextual approach when determining whether or not conduct constitutes an act in furtherance of a trade:

> There is no bright line separating acts, solicitations and conduct indirectly in furtherance of a trade from acts, solicitations and conduct not in furtherance of a trade. Whether a particular act is in furtherance of an actual trade is a question of fact that must be answered in the circumstances of each case. A useful guide is whether the activity in question had a sufficiently proximate connection to an actual trade.
>
> (*Re Costello* (2003), 26 O.S.C.B. 1617 ("*Re Costello*") at para. 47)

[252] In *Re Momentas Corp*. (2006), 29 O.S.C.B. 7408 ("*Re Momentas*"), the Commission stated:

> Such approach requires an examination of the totality of the conduct and the setting in which the acts have occurred, the primary consideration of which is the effects the acts had on those to whom they were directed [citations omitted].
>
> . . . .

> The inclusion of the word "indirectly" in the definition of acts in furtherance of trade reflects the intention by the Legislature to capture conduct which seeks to avoid registration requirements by doing indirectly that which is prohibited directly [citations omitted].
>
> (*Re Momentas*, above, at paras. 77 and 79)

[253] As stated in *Re Momentas*, examples of activities found in the jurisprudence that have fallen within the definition of a trade as "acts in furtherance" include:

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 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*, above, at para. 80)

[254] A person may qualify for an exemption from the registration requirements. During the Relevant Period, the accredited investor exemption was introduced on November 30, 2001, when revised OSC Rule 45-501, *Ontario Prospectus and Registration Exemptions*, took effect ((2001), 24 O.S.C.B. 7011) ("Rule 45-501"). Section 2.3 of Rule 45-501 provides an exemption from the prospectus and registration requirements if the purchaser purchases the security as principal and is an accredited investor, which is defined in section 1.1 of Rule 45-501 to include:

> (m) an individual who beneficially owns, or who together with a spouse beneficially own, financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $1,000,000;
>
> (n) an individual whose net income before taxes exceeded $200,000 in each of the two most recent years or whose net income before taxes combined with that of a spouse exceeded $300,000 in each of those years and who, in either case, has a reasonable expectation of exceeding the same net income level in the current year.

(ii) Rene Pardo

[255] In his letter to the OSC dated March 11, 2003, Rene Pardo set out in various schedules his transfers of Mega-C shares. He acknowledges his then solicitor told him that his transfers of Mega-C shares "may not have been undertaken in full compliance with Ontario securities laws" (Hearing Brief Vol. 1, Tab 2, p. 3).

[256] The Schedule C to the letter of March 11, 2003 (p. 25) records transfers of Mega-C shares as "gifts" which Mr. Pardo claimed were exempt. However, by his own evidence Mr. Pardo testified many of those transfers were made from Lewis Taylor Sr.'s allocated shares, in payment of his obligations previously incurred to those transferees. We find these transfers to have been made for valuable consideration, nullifying any possible "gift" exemption.

[257] Albert Ciorma testified as to the "Funds In" and "Funds Out" of the Mega-C bank account from August 20, 2001 to February 29, 2004. Mega-C received from investors Cdn. $979,515 and US $4,473,750. In the same period Mega-C paid to Rene Pardo Cdn. $400,000 approximately and US $400,000 approximately. At the then rate of exchange this represents approximately $1,000,000 Cdn. (Vol. 14, Tab 112, p. 7765 and following).

[258] It is not disputed that Mr. Pardo signed all but two or three of the share certificates issued by Mega-C, acts which we find to be in furtherance of trading. We find that Mr. Pardo participated in numerous meetings with investors at which he made representations to potential investors which we find to have been made in furtherance of a sale or disposition of a security for valuable consideration. Based on the foregoing, we find Mr. Pardo to have infringed s. 25 of the *Act* unless he qualifies for an exemption from s. 25.

[259] We reject Mr. Pardo's submission that his conduct did not contravene s. 25(1)(a) because he did not sell the shares for valuable consideration; we accept Staff's submission that the definition of "trade" and "trading" in the Act does not require that the person who traded receive valuable consideration for the transaction, and in any event, we find that Mr. Pardo received valuable consideration for certain trades.

[260] Mr. Pardo also says he relied on a legal opinion to the effect that the shares of Mega-C he transferred were freely tradeable.

[261] Assuming, without deciding, that the defence of reliance on legal advice is available to Mr. Pardo, on the facts of this case the defence will fail unless he can establish four things:

- the lawyer had sufficient knowledge of the facts on which to base the advice;
- the lawyer was qualified to give the advice;
- the advice was credible given the circumstances under which it was given; and
- that Mr. Pardo made sufficient enquiries and relied on the advice.

(*Re YBM Magnex International Inc*. (2003), 26 O.S.C.B. 5285; *Blair v. Consolidated Enfield Corp*. (1993), 15 O.R. (3d) 783 at 796-801 (C.A.), aff'd [1995] 4 S.C.R. 5)

[262] In cross-examination, Lewis Taylor Sr. asked Mr. Pardo whether they had attended together at the offices of a lawyer, Mr. Bouchard. He asked further if they had asked Mr. Bouchard whether the shares were freely tradeable. Mr. Pardo responded "most likely" (Tr. 35, p. 144, l. 25). In cross-examination, Mr. Pardo could not remember having a conversation with Mr. Bouchard. He confirmed that he had never mentioned Mr. Bouchard's alleged legal advice in any of his interactions with Staff. The general reference to Mr. Bouchard is so vague and incomplete that it falls far short of meeting the requirements referred to above. The evidence is of no assistance to Mr. Pardo establishing the exemption he claims (Tr. 42, p. 151, l. 5).

[263] In his examination-in-chief, Mr. Pardo claimed that he received advice from a lawyer by the name of Bozidar Crnatovic. Mr. Pardo's evidence about the advice he received from Mr. Crnatovic was unfocused and difficult to follow. Apparently, according to Mr. Pardo, he was told that shares sold by a vendor who had received those shares as a gift could be sold in a secondary market transaction and from that point forward were freely tradeable. Mr. Pardo did not get this opinion in writing because he did not see it as important. He did tell the Taylors about the advice he received, that the shares were freely tradeable.

[264] Mr. Pardo then produced Ex. 250, a recorded telephone conversation that he had with Mr. Crnatovic in August 2001. A reading of the transcript of that telephone conversation persuades us that Mr. Crnatovic hardly remembered who Mr. Pardo was and clearly confirms that he gave no legal opinion on freely tradeable shares before Mr. Pardo called him. He had some unclear things to say about gifted shares and freely tradeable shares at the time of the telephone conversation. There is no evidence Mr. Crnatovic was qualified to give the opinion that Mr. Pardo says he did. It is impossible to conclude that Mr. Crnatovic had sufficient knowledge of the facts on which to base any of the advice Pardo says he received. There is of course no document setting out the advice Mr. Crnatovic is supposed to have given. The evidence of the legal opinion falls far short of meeting the requirements noted above to advance a defence of reliance on a legal opinion. We find no due diligence defence available to Mr. Pardo based on his having received a legal opinion that gifted shares thereby became freely tradeable.

[265] Based on the foregoing, we find Rene Pardo to have contravened s. 25(1)(a) of the *Act*.

(iii) The Taylor Respondents

[266] Turning to the Taylor Respondents, there is ample evidence that Lewis Taylor Sr., Lewis Taylor Jr. and Jared Taylor engaged in meetings with a wide variety of investors at which they made representations that were designed to persuade people to invest in Mega-C. We find these to be acts in furtherance of trading.

[267] Lewis Taylor Jr. prepared an assortment of materials which were also designed to persuade people to invest in Mega-C. It is not disputed by the Taylors that Mr. Jared Taylor received the funds from the "lenders", arranged for them to receive their shares and distributed the funds from his personal bank accounts to members of his family and corporations in which they were involved (Ex. 194).

[268] As noted earlier, Colin Taylor attempted to persuade the Panel that his direction to Rene Pardo to transfer shares from 1248136 was merely an act to correct a mistake that Mr. Pardo made. His attempt failed for reasons given earlier in this decision. We find he participated with other members of his family in trading in securities.

[269] In response to the s. 25(1)(a) allegations, the Taylor Respondents rely on the definition of trading found in s. 1(1) of the Act. It provides any sale or disposition of a security for valuable consideration constitutes trading but exempts a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith. The Taylors submit that the "loan program" exempts them from being subject to the definition of trading.

[270] We reject the Taylor submissions that the loans made under the "loan program" were made in good faith for the following reasons.

[271] We accept Albert Ciorma's evidence that of the total "Funds In" to Jared Taylor's Canadian and US dollar accounts, only US $49,990 went to Mega-C. Most investors were told and believed the money was to be spent on developing the technology (Tr. 14, Tab 112, p. 7753).

[272] We accept the uncontradicted evidence of Albert Ciorma which shows funds of the Taylor Respondents going into Jared Taylor's accounts and being withdrawn from them. In the Canadian account, the Taylor Respondents (including associated companies) put in approximately Cdn. $102,000 more than they took out. In the US account they took out approximately US $1,979,000 more than they put in. Thus the amount in favour of the Taylor Respondents is approximately US $1,900,000.

[273] Albert Ciorma establishes that total Canadian "Funds In" for "miscellaneous" is approximately Cdn. $1,160,000 and miscellaneous Funds Out is $1,800,000 leaving approximately Cdn. $640,000 unaccounted for. In the US dollar account the Funds In and Out are virtually a wash. Both miscellaneous "Funds Out" seemed to have been spent on personal, household, credit card and cash expenses. Certainly, none of the money went to Mega-C.

[274] As noted earlier, the evidence from the oral testimony of investors called by Staff compels us to find that most investors thought they were buying shares. This evidence supports the hearsay evidence to the same effect obtained from investors through the questionnaires and the telephone interviews, to which we give considerable weight. For reasons earlier expressed, we find the evidence of the Taylor witnesses on the legitimacy of the loan program to be unconvincing.

[275] Neither Lewis Taylor Sr. nor Jared Taylor testified when given the opportunity. In civil cases, an unfavourable inference may be drawn when, in the absence of an explanation, a party litigant does not testify, or fails to provide affidavit evidence on an application, or fails to call a witness who would have knowledge of the facts and would be assumed to be willing to assist that party (Sopinka Lederman and Bryant, *The Law of Evidence in Canada*, 3rd Ed. (Markham: Lexis Nexis Canada 2009), p. 377, para. 6.449).

[276] If any two persons could shed light on the bank account activities of Jared Taylor it would be he or his father. We accept Mr. Greenspan's submission in the letter of April 28, 2004 (Hearing Brief Vol. 2, Tab 16, p. 1075) that Lewis Taylor Sr. "was involved in or made all major decisions on behalf of the Taylor family". Jared Taylor was, of course, the person in charge of the bank accounts. From their failure to testify, we draw an adverse inference against their submission that the loans were made in good faith. (See *Miller v. Carley*, 2009 CanLII 39065 (ON S.C.) and the authorities referred to therein.)

[277] Jared Taylor was in his early 20s at the time of the so-called loans. Applying ordinary life experience and common sense, we conclude that hundreds of strangers would not have chosen to advance large sums of money to Jared Taylor in return for a promissory note that bore no interest rate and no payment due date. We find the large majority of "lenders" accepted the arrangement because they believed it was the only way to acquire Mega-C shares.

[278] Accordingly, we conclude that the exemption is not available. Lewis Taylor Sr. as the deviser of the scheme, Lewis Taylor Jr. as the creator of the "prospectus" literature, Jared Taylor as the manager of the money and Colin Taylor as the director of distribution of shares from 1248136, all participated in trading and acts in furtherance of trading of Mega-C shares for which there was no prospectus and while being non-registrants.

[279] The Taylors attempted to shelter under the alleged legal advice passed on to them by Rene Pardo about freely tradeable shares. The defence is even frailer than that advanced by Mr. Pardo on his own behalf and has no merit, for the reasons outlined above.

[280] Based on the foregoing, we find Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 to have contravened s. 25(1)(a) of the *Act*.

(c) The s. 53(1) Allegations

[281] Section 53(1) of the *Act* provides that 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. "Distribution" for the purposes of our decision is defined in s. 1(1) of the *Act* as a trade in securities of an issuer that have not been previously issued. The definition is

a broad one, and includes "any transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution".

[282] We find Mega-C to be an issuer within the definition of that term found in s. 1(1) of the *Act*. We have found that each of the named respondents have traded in securities. We further find that in many instances, each of the respondents traded in shares of Mega-C not previously issued; we reject Mr. Pardo's submission that certain of the shares were issued in the secondary market. Rene Pardo issued thousands of Mega-C shares to persons whom he has not established to be accredited investors. A.R., whose evidence is found in Tr. 34, p. 6, l. 4 and following, was but one of many such investors. On the schedules to his March 11, 2003 letter to the OSC, Rene Pardo showed A.R. on Schedule B as a "consultant" and on Schedule F as an accredited investor. On the evidence of A.R., we find he was neither. This is but one example of Mr. Pardo's attempts to cast his trading and distribution of Mega-C shares in a manner to attract what he thought were exemptions under the *Act*.

[283] We have found that the Taylor Respondents had control over the disposition of shares from Mega-C not previously issued. The shares have been described in the evidence as "notional" or "earmarked". All the Taylor Respondents traded in Mega-C shares as we have found earlier. We have previously found that the loan program was not exempt from the trading definition nor were the Mega-C shares freely tradeable. The only remaining exemption available to the Taylor Respondents on the question of distribution is the exemption for distribution to accredited investors. We are not satisfied the Taylor Respondents proved their entitlement to reliance on the accredited investor exemption because there is ample evidence that many transfers of Mega-C shares were made to investors who were not accredited investors and where no other exemption to the registration and prospectus requirements applied. There is ample evidence that Lewis Taylor Sr. and Colin Taylor directed shares to be issued and there is ample evidence that Jared Taylor and Lewis Taylor Jr. acted in furtherance of the distributions.

[284] We find Rene Pardo, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 to have contravened the provisions of s. 53(1) of the *Act*.

(d) The s. 38 Allegations

[285] The provisions of s. 38 of the *Act* are found in Schedule A to these reasons. Subsection (2) of s. 38 prohibits a person from giving an undertaking relating to the future value or price of the security with the intention of effecting a trade. We find that the evidence in this case does not support a finding that the various representations made by the respondents constitute an undertaking. An undertaking carries with it the sense of a promise or guarantee that something will take place. It would be an unusual sales pitch designed to effect a sale of shares that did not contain within it some speculative discussion about how high the shares might go. The majority of investors purchase shares in the hope they will go up in value. (See *Re Limelight Entertainment Inc*. (2008), 31 O.S.C.B. 1727 at paras. 164-170.) On the evidence in this case, we find no such undertakings.

[286] Subsection (3) of s. 38 prohibits any representation that a security will be listed on any stock exchange or that application has been or will be made to list such security upon any stock exchange with the intention of effecting a trade in a security except with the written permission of the Director. Two exemptions apply — if an application has been made to list the securities being traded and securities of the same issue are currently listed on any stock exchange, or the stock exchange has granted approval to the listing conditional or otherwise, or has consented to or does not object to the representation. Neither of the exemptions listed in subsection (3) of s. 38 has been established. We reject Mr. Pardo's submission that he did not contravene s. 38(3) if he did not receive any valuable consideration as a result of making a prohibited representation; we accept Staff's submission that s. 38(3) requires only that the representation be made with the intention of effecting a trade in a security. We find that at one time or another, all the respondents but Colin Taylor represented to investors that an application would be made or had been made to list Mega-C shares on a stock exchange. We are not satisfied that Colin Taylor made such a representation.

[287] We find Rene Pardo, Lewis Taylor Sr., Lewis Taylor Jr. and Jared Taylor to have contravened s. 38(3) of the *Act*.

XVII. THE TAYLOR RESPONDENTS' MOTIONS

[288] Over the course of this proceeding, the Taylor Respondents and Mr. Usling brought a variety of motions, some while represented by counsel, others while unrepresented. Mr. Greenspan and Mr. Platt represented some or all of the Taylors at different times. Mr. Sofer and Ms. Fuerst represented Gary Usling from time to time.

[289] To make sense of the motions, it is first necessary to remember that the motions brought by Mr. Usling no longer require adjudication as his matter has been resolved. Nevertheless, the Taylors from time to time indicated in their material that they relied on certain submissions made in the Usling motions. The Panel has not lost sight of those reliances.

[290] To complicate matters further, various submissions by the Taylor Respondents throughout the motions before and during the Hearing have been advanced in support of not just one, but several of their motions. There were continuing themes advanced by the Taylors to support their motions which include the following:

- Delay on the part of Staff in their conduct of the proceeding.
- Staff raising at the last minute the conflict of interest question involving J.F., a lawyer with a large Toronto firm.
- Bias on the part of Staff against the Taylor Respondents throughout the proceeding.
- Bias on the part of the Panel hearing the stay motion of August 6-7, 2008.
- Institutional bias of the Panel conducting the hearing on the merits.
- Failure on the part of Staff to provide particulars of the allegations.
- Improper disclosure of compelled testimony and failure to take steps to minimize the prejudice flowing from such disclosure.
- Failure by Staff to obtain and preserve all evidence relevant to the allegations.
- Failure of Staff to disclose the material relied on in applying for the s. 11 Orders.

[291] In Commission decisions issued in 2007 and 2008, the motions for a stay of proceedings and the motions based on infringement of the Taylor *Charter* rights were found to be premature and were put over to the hearing on the merits, so that a complete record would be available to consider the motions. Indeed, on September 9, 2009, Commissioner Carnwath heard a motion for adjournment brought by Mr. Pardo and a motion for a stay brought by the Taylor Respondents based on similar submissions. The stay motions were put over once again so that a complete record would be available.

[292] The hearing on the merits having been finally set for September 30, 2009, the first three days of the hearing on the merits were spent arguing the motions. Some usefulness can be derived from this exercise to the extent that the Taylors identified the motions that they submitted were still in issue and the reasons supporting their submissions. In effect, the relief sought was a stay of proceedings based on the following four separate motions:

- Delay
- Failure to provide disclosure and particulars
- Staff and Panel bias
- Breaches of the Charter

(a) Delay

[293] We reject the Taylor Respondents' motion for a stay of proceedings based on delay. We do so for a number of reasons. From the outset, the matter was destined to be complicated. Six individuals and two corporations were named in the title of proceeding, all of whom were entitled to representation. All were, at one time or another, represented by counsel; those counsel changed from time to time until eventually, each of the named respondents represented himself or itself. Simple matters such as an adjournment required consultation among the parties and counsel in Order to find a convenient date. Moreover, the investigation carried out by Staff was complicated by the sheer number of corporations and individuals, many of whom played a significant role in Mega-C. Recordkeeping by Mr. Pardo of the shareholders of Mega-C was deficient. The source of shares issued to investors was difficult to determine.

[294] Staff opened the Mega-C file in January of 2003 and the Statement of Allegations and Notice of Hearing were issued on November 16, 2005, some two years and 10 months later. We find this period to be well within the limits of what such an investigation would require in terms of time, given the way the Mega-C shares were transferred and the number of persons involved. We find the initial investigation did not contribute to the delay.

[295] The Statement of Allegations was issued on November 16, 2005. The first appearance was held on January 31, 2006 and there followed a number of appearances dealing with disclosure and other pre-hearing matters, as well as the Nevada bankruptcy. Beginning in late 2006, many appearances were taken up with *Charter* issues brought by Mr. Sofer on behalf of Mr. Usling. At no time between November of 2005 and October 18, 2007 did anyone object to the adjournments that were ordered by various Panels from time to time.

[296] On October 18, 2007, Mr. Usling requested an adjournment of the hearing on the merits scheduled for October 29, 2007 because he had terminated his retainer of Mr. Sofer. The adjournment request was put over to October 23, 2007. Mr. Sofer's withdrawal required Mr. Usling to get new counsel, which he did in the person of Ms. Fuerst. She appeared on

November 5, 2007 and asked for an adjournment to make the necessary preparations for the hearing. All parties agreed that an adjournment to November 2008 was needed because of counsel schedules, etc. The hearing on the merits was adjourned to November 3, 2008.

[297] The Taylor Respondents made much of the prejudice they suffered because of the year's adjournment created by Mr. Sofer's conflict of interest. They alleged that Staff brought a particular conflict of interest to the attention of Mr. Sofer days before the October 18,, 2007 pre-hearing conference. What is clear from the transcript of that pre-hearing conference is that Mr. Sofer had been alerted in August of 2006 of the potential conflict involving someone from his firm who was appearing in the Nevada bankruptcy court. The nature of that appearance required counsel to undertake that he had no connection to any of the persons before the bankruptcy court. Thus it was for Mr. Sofer to consider his position and take whatever course of action he felt was appropriate regarding his retainer. It was not for Staff to make that decision for him until such time as he indicated how he planned to proceed.

[298] During the course of the pre-hearing conference of October 23, 2007, Staff counsel also told the Panel that she had discovered two other possible conflicts of Mr. Sofer a few days before. One of these apparently involved J.F., a lawyer in Mr. Sofer's firm, who was a Mega-C investor and a proposed witness for Staff. There is insufficient evidence for us to find that Mr. Usling ended his retainer of Mr. Sofer because of something counsel learned a few days before the pre-hearing conference. In any event, the withdrawal of Mr. Sofer resulted in a year's delay. We cannot conclude that period alone is sufficient to support a stay of proceedings based on delay.

[299] Following the motions hearing that took place on August 6-7, 2008, an Order was issued on October 1, 2008 requiring a case management conference to be held by October 31, 2008. The matter returned on October 22, 2008 at which time Mr. Platt, counsel for Jared Taylor and Colin Taylor, requested an adjournment on medical grounds. No objection was taken and the hearing on the merits which had been set for November 3, 2008 was adjourned to February 19, 2009. Whatever the reason for this delay of the hearing on the merits, the delay was not caused by Staff.

[300] Taking all the above into account, we reject the Taylor Respondents' motion for a stay of proceedings based on delay.

(b) Failure to provide disclosure and particulars

[301] The Taylor Respondents submit that Staff failed to make timely disclosure and to provide particulars of the allegations. That failure prevented them from making full answer and defence and denied them procedural fairness, say the Taylors. They point out that on at least two occasions Staff declared disclosure to be complete, only to provide further disclosure at a later date. This is evidence of Staff's bias against the Taylors, they submit.

[302] At the outset there were three tranches of disclosure. On May 31, 2006, before Commissioner Susan Wolburgh Jenah, Staff declared disclosure to be complete. Additional disclosure followed. Successive motions for further disclosure and particulars were brought and on August 23, 2007, further particulars were Ordered so as to connect individual respondents to the allegations.

[303] Following the hearing on August 6-7, 2008, on October 1, 2008, Staff was Ordered to review files to ensure full disclosure and to provide an inventory of documents which Staff submitted need not be disclosed. On October 17, 2008, Staff complied with this Order.

[304] The Taylors seemed to take the view that once Staff declared disclosure to be complete they were barred from subsequent disclosure. At the same time, they sought further disclosure which Staff provided. In matters of this kind the investigation is open-ended and can continue up to the hearing of the merits, as long as disclosure and particulars are timely and the Statement of Allegations and Notice of Hearing are amended with respect to any new allegations or request for relief. Albert Ciorma's report (Hearing Brief Vol. 14) and the particulars contained therein is an example of the ongoing nature of an investigation.

[305] Arguments over disclosure and particulars are not unknown to the litigation process, often resulting in contested motions as in this case. We make the following two observations. First, the material filed in this matter is voluminous and detailed. Fourteen Hearing Briefs, 21 binders of disclosure and 311 exhibits were before us. One might have concluded there was too much material rather than too little, had it not been carefully indexed. Second, there was no evidence the Taylors were unable to make full answer and defence because of lack of disclosure or failure to provide particulars. Cross-examinations of Ms. Flynn and Mr. Ciorma each took approximately 1 week. The Taylor Respondents were able to find and produce dozens of documents from the disclosure binder to put to witnesses they cross-examined. We note that of the 311 exhibits, approximately one-third deal with the Nevada bankruptcy and were introduced by Mr. Taylor Sr.

[306] We reject the submission that Staff failed to make timely disclosure and provide sufficient particulars, such that the Taylor Respondents were denied procedural fairness and prevented from making full answer and defence.

(c) Staff Bias

[307] The Taylors submit that Staff exhibited bias towards the Taylor Respondents throughout the proceeding. They identify Staff's intervention in the Nevada bankruptcy, the failure to call certain members of Staff involved in the investigation, the failure to prevent the circulation of compelled evidence, delay caused by Staff (previously dealt with in these reasons), and an attempt by Staff counsel to suborn a police officer witness.

[308] Staff, in its wisdom, took an active part in the Nevada bankruptcy, limited to efforts to prevent the Taylor Respondents from purporting to represent the interests of Mega-C shareholders. This action by Staff was taken in the public interest, Staff submits. In the result, the Axion proposal for the protection of Mega-C shareholders in the bankruptcy was accepted by the bankruptcy court and the proposals by the Taylor Respondents and the unaffiliated Mega-C shareholders were rejected. More than anything else, it was this finding of the bankruptcy court and Staff's participation that caused Lewis Taylor Sr. to conduct himself in a manner we find ungovernable. He missed no opportunity to criticize Mr. Britton, Staff counsel, accusing him of fraud and witness tampering. His recurring theme was that "his technology" has been stolen from him.

[309] An examination of the e-mails generated by Staff while in Nevada did nothing to dispel Mr. Lewis Taylor Sr.'s conviction that Staff was "out to get him".

[310] Tyler Hodgson created an investigation note on February 2, 2006. Addressed to Gerald Gordon, US counsel for the Trustee in Bankruptcy, the note contains the following:

> I communicated in a without prejudice discussion that the OSC had an interest in ensuring that a Nevada court did not find the Taylor loans to be legitimate and made in good faith and would consider making the appropriate representations to this end to the Nevada bankruptcy court. (Ex. 15)

[311] In a further investigation note dated October 1, 2006, Mr. Hodgson says:

> Gordon states that the plan is to convert Mega-C into Axion shares and hope that Axion "hits a home run". The significant remaining obstacle for the estate is to wipe out the Taylor claim. (Ex. 31)

[312] On several occasions, Lewis Taylor Sr. lost control of his emotions to the point where the Chair would ask him if he needed "five minutes". The offer was usually accepted. On one occasion, following a ruling from the Chair, Mr. Taylor advanced on the Panel in a threatening and intimidating manner (Tr. 36, pp. 86-87).

[313] We find that Staff intervened in the bankruptcy because it concluded it was in the public interest to protect Ontario Mega-C shareholders from the Taylor Respondents. This action by Staff required Staff to prefer the interests of the Axion Mega-C shareholders against the interests of those shareholders represented by the Taylor Respondents and by the group of unaffiliated shareholders. Presumably Staff took this action because of its confidence in the merit of the allegations. It was a risk Staff was prepared to take. Staff was right and justified in intervening.

[314] Staff's decision not to call the Staff employees involved in the investigation was within the prosecutorial discretion of how Staff wishes to conduct its case. There is no property in a witness – it was open to the Taylor Respondents to call whatever witnesses they chose to support their position in response to the allegations.

[315] The compelled evidence of the Taylor Respondents was given to Mr. Hausman, Canadian counsel for Mega-C in the bankruptcy. Since Mega-C was a respondent in the proceeding, Staff had an obligation to disclose the evidence generated by the compelled testimony of the Taylors to Mega-C. Subsequently, that compelled testimony fell into other hands in the Nevada bankruptcy, although Staff took no active part in the release of that compelled testimony. Staff used its best efforts to recover compelled testimony from the persons into whose hands it fell. The Taylors say this is just another example of Staff bias.

[316] We find that while it would have been preferable for Staff to be more specific about the uses to which the compelled testimony could be put in the Mega-C bankruptcy, Staff's failure to do so does not support a finding of bias against the Taylor Respondents.

[317] The evidence of two police officers called by Lewis Taylor Sr. is more disturbing. A.M., a member of the Toronto Police Service testified as follows: he was called by Staff counsel, on September 26, 2007. As a result of that conversation, A.M. formed the opinion that Staff counsel was attempting to influence his evidence as a witness in the Mega-C proceeding. He arranged a meeting with that counsel and two other members of Staff, one of whom was an investigator who was a former police officer of 20 years experience. As a precaution, A.M. arranged for a colleague, S.L., to sit in on the meeting. A.M. had made notes of the meeting and was given permission to refer to them. As the meeting progressed, A.M. warned Staff counsel about attempts at intimidating him, at which point counsel said "I guess I have to talk to people I know in Toronto Police to have you make a statement". Matters deteriorated and the former police officer suggested that he be left alone with A.M. and S.L.

This was done. After an exchange of views, the Staff investigator concluded the interview by saying "I don't think we are going to see each other again and that should be the end of everything". A.M. was unshaken in cross-examination by Staff.

[318] S.L. confirmed that he was at the interview on September 27, 2007. He confirmed that A.M. felt that Staff counsel was trying to intimidate him and trying to coerce him into saying something that he did not want to say. He confirmed the reference by Staff counsel to knowing senior officers or higher ranking officers in the police service and that A.M. could be compelled to be a part of the investigation. S.L. formed the opinion that Staff counsel wanted A.M. to change his testimony from one position to another and that's what he objected to.

[319] A.M. and S.L. testified on January 15, 2010. The respondents' evidence ended on March 22, 2010. There was ample time for Staff to call any one of the three members of Staff present at the meeting with A.M. on September 27, 2007. No evidence was called in reply to counter the evidence of A.M. and S.L. We find that the events of that day happened much as the two officers described them. The actions of Staff counsel were unwarranted, inappropriate and overreaching.

[320] Does the investigatory approach of Staff counsel with the two officers support a conclusion that Staff were biased against the Taylor Respondents? We find that it does not. The attempt to influence A.M.'s testimony was unsuccessful. It takes more than an over-zealous attempt to enlist a favourable witness, to support a finding of bias.

[321] For the above reasons, we reject the Taylor Respondents' submission that the proceeding against them should be stayed on the basis of Staff bias.

(d) Hearing Panel Bias

[322] On the second day of the Hearing, October 1, 2009, Lewis Taylor Sr. sounded a note that remained constant through the balance of the Hearing. At Tr. 2 pp. 158-159, the following exchange took place between the Chair and Mr. Taylor Sr.

> Chair: So as I understand your submission, your submission to us is that you cannot receive a fair hearing from this Panel; that is myself and my colleague, Mr. Kelly. Is that it?
>
> Mr. Lewis Taylor Sr.: To put it bluntly, yes, sir.
>
> Chair: All right.
>
> Mr. Lewis Taylor Sr.: Okay? And I'd like to take the personality out of it. I have nothing but respect for you, sir. You've been brought in three days ago.
>
> Chair: So would it be fair to say that it wouldn't matter who was sitting here? You wouldn't get --
>
> Mr. Lewis Taylor Sr.: It would not matter who it was.
>
> Chair: All right. I understand your submissions.
>
> Mr. Lewis Taylor Sr.: We're talking about the Commission itself…

[323] As we understand the submissions of Lewis Taylor Sr. and Jared Taylor, they point to the fact that Vice-Chairs Turner and Ritchie presided over the motions heard on August 6 and 7, 2008. In doing so they heard the allegations of the Taylors about the misconduct of Staff during the course of the investigation. The two Commissioners had to know of the serious nature of those allegations.

[324] Nevertheless, say the Taylors, the same two Commissioners later appeared before the Standing Committee of the Legislature and endorsed the enforcement activities of Staff, all the while knowing of the serious allegations made by the Taylors in their August 6 and 7, 2008 motions hearing. Therefore, the Taylors submit, the Commission is biased in favour of Staff and therefore biased against the Taylors.

[325] This in turn leads to a submission that any OSC hearing panel is prejudiced against the Taylor Respondents. Institutionally, as the argument goes, the Commission in its adjudicative role will never deal fairly with the Taylors because to do so would reflect on the reputation of Staff and call into question the submissions of Vice-Chairs Turner and Ritchie before the Standing Committee.

[326] It is difficult to know how to respond to such an argument. There is no evidence whatsoever to conclude that Vice-Chairs Turner and Ritchie were motivated to conclude as they did in the motion hearing of August 6-7, 2008 by other than their consideration of the material before them. The Ontario Legislature has mandated the structure of the Commission and how it is

to function. Internal guidelines are in place to protect against concerns of actual and perceived bias. We reject the Taylor Respondents motion for a stay based on the institutional bias of the Commission.

(e) Breaches of the *Charter*

[327] Allegations of *Charter* breaches were advanced in several motions brought by Gary Usling and the Taylor Respondents. The allegations were based on a variety of submissions, some already rejected in the preceding discussions of motions alleging delay, failure to disclose and bias.

[328] Since Mr. Usling and the Taylors often incorporated each other's submissions by reference in their respective materials, we have endeavoured to deal with all of them. It should be remembered that the *Charter* arguments at the various motion conferences centred on whether they should abide the full hearing on the merits. Three different Panels found they should.

[329] Many *Charter* submissions involve the s. 11 Orders and the subsequent compelled testimony. The Taylor Respondents submit that:

- the word "expedient" in s. 11 is unconstitutionally vague;
- Staff breached the confidentiality expectations of the respondents and the implied undertaking rule;
- Staff breached its obligation to make full and frank disclosure to the Commission when seeking the s. 11 Orders;
- Staff selectively enforced s. 16 and the implied undertaking rule;
- Staff failed to comply with its disclosure obligations to the respondents;
- Staff failed to preserve evidence, namely videotapes made by Kirk Tierney;
- Staff failed to investigate and prosecute fairly.

[330] We reject the submission that word "expedient" in s. 11 in unconstitutionally vague. If the OSC is satisfied that it is appropriate, practical, or fit for the purpose of protecting the public, that is sufficient to make the appointments to investigate pursuant to s. 11.

[331] We reject the submission that Staff breached the respondents' expectation of confidentiality and the implied undertaking rule. Earlier in these reasons, we found that Staff had an obligation to disclose the compelled testimony of the respondents to the Canadian counsel for Mega-C in the bankruptcy hearing. At the time, Mega-C was a respondent in this proceeding and entitled to the disclosure. We further found that Staff took no active part in the release of the compelled testimony in the Nevada bankruptcy proceeding. We find no merit in this submission.

[332] We reject the submission that Staff selectively enforced s. 16 and the implied undertaking rule. Apparently, in litigation in Ontario between Mr. Usling and the insurer for Mega-C over an insurance matter, Staff objected to Mr. Usling producing the disclosure in that litigation. We find Staff was entitled to do so. Moreover, the issue was restricted to the interests of Mr. Usling, not the Taylor Respondents.

[333] We reject the submission that Staff breached an obligation to make full disclosure to the Commission when seeking the s. 11 Orders in this case. The respondents' submissions on this point are based on cases involving injunctions, wiretap authorizations and search warrants, where the potential for irreparable harm from highly intrusive state intervention are present. It is no surprise that courts require full disclosure from an applicant in such situations.

[334] Provincial securities legislation gives much less power to investigators. The OSC can appoint persons to conduct investigations where there is an important social element of protection of the public. The question was considered by Iacobucci J. in a commentary on the investigative power of the British Columbia Securities Commission:

> Clearly, this purpose of the Act justifies enquiries of limited scope. The Act aims to protect the public from unscrupulous trading practices which may result in investors being defrauded. It is designed to ensure that the public may rely on honest traders of good repute able to carry out their business in a manner that does not harm the market or society generally. An inquiry of this kind legitimately compels testimony as the Act is concerned with the furtherance of a goal which is of substantial public importance, namely, obtaining evidence to regulate the securities industry.

(*British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 3, at para. 35)

[335] Staff's obligation is to satisfy the Commission that it should appoint one or more persons as it considers expedient for the due administration of Ontario securities law or the regulation of capital markets. The information provided in support of a s. 11 Order should contain a concise summary of the relevant facts sufficient to engage the OSC's jurisdiction to make the Order. Anything more than that would impair the OSC's obligation to investigate expeditiously and its ability to carry out its mandate – to provide protection to investors from unfair, improper or fraudulent practices.

[336] We reject any suggestion that the Taylor Respondents were willing to testify voluntarily. That willingness was subject to conditions that Staff properly treated as a refusal.

[337] We reject the submission that Staff failed to comply with its disclosure obligations. Earlier in these reasons we found no merit in this submission.

[338] We reject the submission that Staff failed to preserve evidence that might have assisted the Taylor Respondents. This submission flows from the evidence of Kirk Tierney who testified that he took videos of some presentations carried out at 100 Caster Avenue by, among others, the Taylor Respondents. He gave them, he says, to Peter Coulis, one of the OSC investigators. Mr. Tierney says that if the tapes are missing, Peter Coulis must have lost them. Assuming without deciding that Peter Coulis did lose the videotapes, we find no prejudice to the Taylor Respondents. Kirk Tierney was not videotaping the presentations to investors to create a record favourable to the Taylors. He was inserted in Mega-C to preserve the technology for the IWG. We can come to no other conclusion than that the tapes would reveal the Taylor Respondents making representations to investors that we have earlier found were acts in furtherance of trading in securities and acts contrary to s. 38. We fail to see how the videotapes would assist the Taylors.

[339] We reject the submission that Staff failed to investigate and prosecute fairly. In support of their position, the respondents rely on an article written by Birkenbosch and Casey. However, the authors support the position taken by Staff on this question. At page 3 of their article, we find:

> As part of an investigation into chelation therapy, the College of Physicians and Surgeons sought to review the records of a physician in *Strauts v. College of Physicians and Surgeons (British Columbia)*. The doctor refused, contending that procedural fairness required that he be shown copies of any letters of complaint against him. The British Columbia Court of Appeal affirmed the Order requiring him to make his patient records available for inspection by investigators appointed by the College and stated the following with respect to procedural fairness in the investigative stage:
>
> > The approach of the Courts with respect of the College has been to recognize its purpose and functions as being to serve and protect the public. That is clear from the statute itself. That end is not accomplished by imposing on the College in its investigative function the panoplies of administrative law that protect the members at the adjudicative stage of the College's proceedings. In my opinion the Court should not find itself cloaking the individual member of the College with rights at the stage of investigation – as is the case here – that would or could work contrary to the public interest. Where the stage is adjudicative the member is and must be protected by all of the principles over the years which have been developed by the Courts to ensure fairness at every stage of the adjudicative process.
> >
> > Here we are concerned with the investigative process and in my opinion the Courts must be mindful of the public factor and duties of the College to protect the public interest when it comes to what principles of fairness the College must follow at that stage.
>
> Although the results in the foregoing cases vary according to their facts, the general analyses in the decisions can be reconciled. The decisions in which it was held that there was no duty to act fairly were those in which the investigative stage had no decision-making element. On the other hand, when the investigator had the power to draw conclusions or make findings as to the rights of a party, the duty was often found to apply.
>
> (Wendy-Anne Berkenbosch and James T. Casey, "The Duty of Fairness in the Investigative Stage of Administrative Proceedings" (2002), 40 Admin. L.R. (3d) 50; *Strauts v. College of Physicians and Surgeons of British Columbia* [1997] B.C.J. No. 1518)

[340] Staff has no decision-making power in carrying out an investigation. Following investigation, Staff's only power is to issue a Statement of Allegations, where appropriate, and to prove those allegations in a hearing before the Commission. Moreover, we are not persuaded that Staff investigated or prosecuted unfairly, but rather the reverse.

[341] We find nothing in the activities of Staff in the conduct of this matter that would constitute a breach of the *Charter*.

(f) Conclusion on the Taylor Respondents' Motions

[342] The relief sought by the Taylors is a stay of proceedings. Our task is to determine whether the four areas identified above — delay, failure to provide disclosure and particulars, bias and *Charter* breaches attract a finding of abuse of process. In doing so we propose to examine the cumulative effect of our individual findings, in the light of *R. v Regan*, [2002] 1 S.C.R. 297 ("*Regan*").

[343] In *Regan*, the Supreme Court of Canada concluded that a stay of proceedings will be granted only as a remedy for an abuse of process in the "clearest of cases". Regardless of whether the abuse causes prejudice to the accused, because of an unfair trial, or to the integrity of the justice system, a stay of proceedings will only be appropriate when two criteria are met: (i) the prejudice caused by the abuse in question will be manifested, perpetuated or aggravated through the conduct of the trial, or by its outcome; and (ii) no other remedy is reasonably capable of removing that prejudice.

[344] We find no abuse of process in these proceedings. The cumulative effect of the overall delay, the sequential tranches of disclosure and particulars, the allegations of bias and breaches of the *Charter*, while troubling in some respects does not rise to the level of abuse of process required to call for a stay of proceedings. The conduct complained of was not so oppressive or vexatious as to violate the fundamental principles of justice underlying the community's sense of fair play and decency. (See *Regan* paras 50 and 53-55.)

[345] Our decision on the merits stands.

XVIII. CONCLUSION

[346] We find Rene Pardo, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited contravened s. 25(1)(a) of the Act, contrary to the public interest.

[347] We find Rene Pardo, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited contravened s. 53(1) of the Act, contrary to the public interest.

[348] We find Rene Pardo, Lewis Taylor Sr., Lewis Taylor Jr., and Jared Taylor contravened s. 38(3) of the Act, contrary to the public interest.

[349] We direct the parties to appear before the Panel on September 28, 2010 at 2:30 p.m. at which time the Panel will set the date for a sanctions and costs hearing.

[350] DATED in Toronto this 7th day of September, 2010.

"James D. Carnwath"

"Kevin J. Kelly"

SCHEDULE A

Part XI — Registration

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;

Part XV — Prospectuses — Distribution

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.

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.

(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.

(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.

127. (1) Orders in the public interest — The Commission may make one or more of the following orders if in its opinion it is in the public interest to make the order or orders:

1. An order that the registration or recognition granted to a person or company under Ontario securities law be suspended or restricted for such period as is specified in the order or be terminated, or that terms and conditions be imposed on the registration or recognition.

2. An order that trading in any securities by or of a person or company cease permanently or for such period as is specified in the order.

2.1 An order that acquisition of any securities by a particular person or company is prohibited, permanently or for the period specified in the order.

3. An order that any exemptions contained in Ontario securities law do not apply to a person or company permanently or for such period as is specified in the order.

4. An order that a market participant submit to a review of his, her or its practices and procedures and institute such changes as may be ordered by the Commission.

5. If the Commission is satisfied that Ontario securities law has not been complied with, an order that a release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular, offering memorandum, proxy solicitation or any other document described in the order,

i be provided by a market participant to a person or company,

ii. not be provided by a market participant to a person or company, or

iii. be amended by a market participant to the extent that amendment is practicable.

6. An order that a person or company be reprimanded.

7. An order that a person resign one or more positions that the person holds as a director or officer of an issuer.

8. An order that a person is prohibited from becoming or acting as a director or officer of any issuer.

8.1 An order that a person resign one or more positions that the persons holds as a director or officer of a registrant.

8.2 An order that a person is prohibited from becoming or acting as a director or officer of a registrant.

8.3 An order that a person resign one or more positions that the person holds as a director or officer of an investment fund manager.

8.4 An order that a person is prohibited from becoming or acting as a director or officer of an investment fund manager.

8.5 An order that a person or company is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter.

9. If a person or company has not complied with Ontario securities law, an order requiring the person or company to pay an administrative penalty of not more than $1 million for each failure to comply.

10. If a person or company has not complied with Ontario securities law, an order requiring the person or company to disgorge to the Commission any amounts obtained as a result of the noncompliance.

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, 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;

SCHEDULE B

SCHEDULE "B"

[redacted] / [redacted]

Kindly provide answers to the following questions:

1. How and when were you first introduced to Mega-C Power?
   BY A FRIEND WHO WORKED FOR MEGA-C. OCT 2002.

2. Who asked you to invest in the securities of Mega-C Power?
   MY FRIEND IN MEGA-C. HE HAD ALREADY INVESTED A SIZEABLE AMOUNT.

3. When were you asked to invest?
   SEPT. 2002 AFTER A DEMONSTRATION MEETING AT MEGA-C OFFICE - 100 CASTER AVE

4. Can you describe what technology Mega-C Power was promoting?
   THE TECHNOLOGY WAS DESCRIBED AS BEING A HIGH CAPACITY RECHARGEABLE ELECTRICAL STORAGE CELL WITH THE ADD-ON CAPABILITIES TO AN INFINITE SIZE.

5. Did you attend a presentation or witness any demonstrations of the Mega-C Power technology by any of its representatives? If so, when and where did it occur? Who conducted the demonstration?
   I ATTENDED AT 100 CASTER A PRESENTATION & DEMONSTRATION CONDUCTED BY SKIP TAYLOR my son attended with me. An Environmental Consultant with United Nations attended the demonstration as well.

6. What were you told at the demonstration?
   THIS TECHNOLOGY WOULD BE THE ANSWER TO WIND & SOLAR STORAGE. WOULD BE USED IN HUNDREDS OF APPLICATIONS - THEY HAD A WHEEL CHAIR - SAID IT WAS BEING RUN BY THESE STORAGE BATTERIES - 3HR CHARGE TO GIVE 8 HRS OF OPERATION

7. Was the product described as merely in the development/testing stage, about to start production, or already in production?
   READY TO START PRODUCTION - FACILITIES HAD BEEN ACQUIRED FOR PRODUCTION TO BEGIN IN SPRING 2003.

8. Did you purchase the Mega-C Power common shares as a result of any presentation or demonstration? If so, who accepted your payment for the shares?
   AS A RESULT OF ABOVE DEMONSTRATION, I PURCHASED SHARES THROUGH JURGEN VOLLING, WHO WORKED FOR MEGA-C AT THAT TIME.

[redacted] 7810

SCHEDULE C

Wednesday November 17, 2004; 2:00
PM Interviewer: David Adler

Mega-C Power Corporation – Questions for Shareholders

A. Background Information on Shareholders:

- Full Name: **[Redacted]**
- Date of Birth: **Will not answer**
- Home Address (or *confirm home address on Investor List*): **As on list.**
- Telephone Numbers: **[Redacted**]
- Education University: **degree**
- Occupation: **[Redacted]**

  Prior Investment Experience

  - Brokerage account(s) (*do they have any?*): **No**
  - Classes of securities invested in (*stocks, bonds, mutual funds, GICs*: **None**
  - Risk tolerance: **Not applicable**
  - Self-described level of securities knowledge: **"next to nil":**

B. Introduction to Mega-C:

- How did you first find out about Mega-C? (*If referral, by who?*) **From a friend [Redacted] who gave her Sylvano's phone number.**
- Other than your investment, do you have any relationship with Mega-C or anyone who works at Mega-C? (i.e. *are you a friend, relative, etc. of person selling shares*) ***No***.
- When did Mega-C first contact you? By what means? (*telephone, invitation.to presentation, etc.*)How did Mega-C get your name
- Who did you speak to with respect to Mega-C? To your knowledge, did they work for Mega-C? (*Get the name of everyone spoke with – at least the first name, if can't remember full name*) **Sylvano – did not know last name, thinks he is an investor as well...**

C. Mega-C Presentations:

- Did you attend any presentations with respect to Mega-C? **No**
- Who invited you?
- Where was it held? When?Who else was present?
- Who gave the presentation? What was said?
- Did you take any notes? (*If so, ask for a copy*)

D. Mega-C Shareholdings

- How many Mega-C shares do you own? **400**

- How did you come to hold these shares? (i.e., *did you purchase them, were they given to you, etc.*) Purchase she thought, but when she sent in cheque she received a paper from Jared Taylor saying that he considered it a loan, so she asked for her money back. She never heard anything from him and eventually she received the share certificate.

- Do you know who held the shares before you? Did you understand that you were buying them straight from Mega-C (i.e. *from treasury*) or did you understand that you were buying them from someone else's shareholdings? Whose? **Straight from Mega-C**

- Did you receive a share certificate? When? Who signed **it? Yes, in the spring or early summer 2003 – could not remember who signed it.**

  (i) If Purchased Mega-C Shares:

  - How many shares did you purchase? When? **400 December 2002**

  - At what price per share? **Total of about CAN $3200; she think it was US $5.00**

  - How did you pay? (*cheque/bank draft*) **Cheque in Canadian funds.**

  - Who was the cheque payable to? (i.e. *Mega-C, NetProfit, numbered company, Rene Pardo, Gary Usling, etc.*) **Jared Taylor**

  - Do you have a copy of the cancelled cheque? (*if so, ask them to send a copy*) **No**

  - Who did you give the cheque to? **Mailed to Jared Taylor.**

  - Did you sign any documents when you purchased the shares? What did you .sign? Who asked you to sign it?

  - *If they were asked to sign a "promissory note" and a "debt settlement agreement", why* were you asked to sign these documents? What explanation was given for what you were signing? What were you told? By whom? *(attempt to ascertain whether they thought they were lending money or purchasing shares)*

  - Prior to your purchase of Mega-C shares, were you provided with any material on Mega-C? Did you receive an offering memorandum? **No**

  (ii) If shares obtained otherwise:

  - When did you obtain Mega-C shares?

  - Who did you receive them from?

  - Why did you receive Mega-C shares? (i.e. *service provided, invested in previous companies, were friends of Pardo, Usling, Taylors, were owed money by someone*)

  - ***If service provided***, what service did you provide?

    - Who did you provide it to?

    - Was there a written contract governing the services to. be provided? (*if so, obtain copy*)

  - ***If invested in previous company (i.e. NetProfit)*, what previous business did you invest in?**

    - Whose business was it?

    - How much did you invest?

- What was your understanding of why you were receiving Mega-C shares? (attempt to ascertain whether they thought they were exchanging their shares or whether the Mega-C shares were simply a gift)
- Were you asked to return your shares in (*previous company invested in*)? Who asked you this?
- Who did you return them to? When?

- ***If they received shares as a result of a debt owing***, who owed you money?
  - In relation to what? Is there an underlying contract?
  - Did you sign any documentation saying you were receiving Mega-C shares in satisfaction for the debt? Did you keep a copy? (f so, *obtain a copy*)

E. Representations

- What were you told about your investment in Mega-C? By whom? **Sylvano told her it was wonderful investment. When she phoned him "he did all the talking."**
- Before you purchased the shares, were you told anything about the expected return on the investment or its future value or price? What were you told? Who told you this? **Her friend Bill told her if she buys the shares in December they will double in value by February and triple by May. She said she thought Bill was just repeating what Sylvano told him.**
- Before you purchased the shares, were any representations made regarding listing or applying to list Mega-C shares on a stock exchange? Which stock exchange? What were the representations? Who told you this? (i.e.: *Will be listed? Applied or will apply to be listed?*) It **would be listed in the near future.**
- Were you told if the shares could be traded? What specifically were you told? Who told you this? **Nothing said to her.**
- What were you told about the investment risks? Who told you this? **Nothing said to her.**
- What were you told that the investment funds would be used for? Who told you this? **For an energy cell.**

F. Accredited Investor Exemption

- Did _____ *(the person who sold them Mega-C shares)* ask you about your financial situation? Did you tell them anything about your financial situation? Was there any discussion regarding the .value of your assets? Net worth? **No**
- Any discussion regarding your income? **No**
- Any discussion regarding whether you can afford the investment? No
- Did any material you received from Mega-C make reference to the term "accredited investor"? What material? What did it say? When did they send it? Did you keep it? (*if so, obtain a copy*) **No**
- Are you familiar with the term "accredited investor"? *If yes_* **No**
  - What do you understand it means? How did you gain this understanding?
  - Would you fit within the definition of an accredited investor?
  - Did anyone tell you whether or not you qualified as an accredited investor? Or that the OSC recognized you as an accredited investor?

- Would either of the following descriptions apply to you at the time of your initial purchase?

  (i) Excluding your home, your financial assets less liabilities exceeds one million dollars. [OSC Rule 45-501 s.l.l "accredited investor" (m)]; **No**

  (ii) In each of the two most recent years, your net income before taxes exceeded $200,000; or your combined net income with your spouse exceeded $300,000 and it is likely that you will exceed the same net income level in the current year [OSC Rule 45-501 s.l.l "accredited investor" (n)]; **No**

- **Did you sign a certificate stating that you were an accredited investor? How many did you sign? Did you retain a copy?** (if so, ask them to send in a copy) **No**

G. Conclusion

Is there any other information that you would like to tell us? She thinks the Taylors had been to Bill's house, "they made use of his hospitality."

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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	30 Aug 10	10 Sept 10	10 Sept 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	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
08/25/2010	2	219 Laurier Avenue West LP - Units	9,293,418.72	9,293,418.72
08/25/2010	3	4171624 Canada Inc. - Loans	2,350,000.00	2,350,000.00
08/25/2010	3	9126-7393 Quebec Inc. - Loans	1,200,000.00	1,200,000.00
09/01/2010	6	99 Capital Corporation - Common Shares	405,000.00	2,700,000.00
08/31/2010	49	ACM Commercial Mortgage Fund - Units	4,251,112.86	38,310.87
08/09/2010	12	Advanced Composite Technologies Inc. - Common Shares	394,500.00	394,500.00
08/04/2010	19	Advanced Primary Minerals Corporation - Common Shares	1,398,800.55	9,325,337.00
04/22/2010	1	African Aura Mining Inc. - Common Shares	928,111.75	923,000.00
09/02/2008 to 12/01/2008	4	Agilith Quantitative Opportunity Fund L.P. - Limited Partnership Units	700,000.00	700.00
04/02/2009 to 03/31/2010	2	AIM Canadian Balanced Fund - Units	2,553,332.33	177,026.31
04/02/2009 to 03/25/2010	1	AIM Canadian Premier Class - Common Shares	619,172.56	35,514.08
05/22/2009 to 03/25/2010	1	AIM Canadian Premier Fund - Units	409,546.38	21,028.13
04/02/2009 to 03/30/2010	1	AIM International Growth Class - Common Shares	262,251.75	22,734.06
08/05/2010	35	Alexandria Minerals Corporation - Units	4,930,699.86	27,292,777.00
08/24/2010	10	Alpha Gold Corp. - Units	133,200.00	1,480,000.00
08/24/2010	24	American Bonanza Gold Corp. - Units	701,275.00	4,675,166.00
08/11/2010	10	American Manganese Inc. - Units	412,231.32	2,290,174.00
05/14/2010 to 08/09/2010	14	APO Energy Inc. - Common Shares	22,435,823.12	20,454,558.00
02/17/2010 to 05/14/2010	34	APO Energy Inc. - Common Shares	26,656,121.50	26,080,000.00
09/01/2010	1	Argyle Funds SPC Inc. - Units	150,000.00	15,000.00
08/31/2010	1	Armtec Infrastructure Income Fund - Units	3,342,138.80	183,634.00
08/11/2010	45	Artek Exploration Ltd. - Common Shares	8,662,881.00	7,532,940.00
08/27/2010	3	Astral Mining Corporation - Flow-Through Units	500,000.00	2,500,000.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
08/27/2010	1	Augusta Resource Corporation - Units	29,990.37	10,905,590.00
08/26/2010	1	Auramex Resource Corp. - Common Shares	75,000.00	1,000,000.00
08/05/2010	12	Avnel Gold Mining Limited - Units	16,903,476.00	84,517,382.00
08/06/2010		BacTech Mining Corporation - Units		26,663,333.00
01/05/2010	15	Bell Copper Corporation - Flow-Through Shares	360,000.00	1,800,000.00
02/25/2010	48	Bell Copper Corporation - Units	750,000.00	N/A
03/15/2010	51	Bell Copper Corporation - Units	1,526,460.00	N/A
03/09/2010	32	Bell Copper Corporation - Units	15,195.19	N/A
08/30/2010	2	Bending Lake Iron Group Limited - Flow-Through Units	167,500.00	223,334.00
07/22/2009	50	Big Red Diamond Corporation - Units	75,000.00	NA
07/27/2010	15	Caledonian Royalty Corporation - Units	1,200,000.00	120,000.00
08/26/2010	9	Canadian Horizons Blended Mortage Investment Corporation - Preferred Shares	289,822.00	289,822.00
08/26/2010	27	Canadian Horizons First Mortgage Investment Corporation - Preferred Shares	1,801,371.00	1,801,371.00
12/31/2009	5	Canadian Orebodies Inc. - Units	54,000.00	540,000.00
12/31/2009	6	Canadian Orebodies Inc. - Flow-Through Shares	203,439.96	1,695,333.00
08/31/2010 to 09/08/2010	15	CanAm Coal Corp. - Debentures	535,000.00	107.00
08/26/2010 to 08/27/2010	14	CareVest Blended Mortgage Investment Corporation - Preferred Shares	543,334.00	548,334.00
08/23/2010	1	Centria Capital Construction Fund, L.P. - Units	2,000,000.00	209,195.74
08/31/2010	21	Centurion Apartment Real Estate Investment Trust - Units	639,050.00	63,905.00
08/19/2008 to 12/03/2009	230	CFG Custom Portfolio Corporation - Units	2,817,646.00	476,476.87
08/31/2010	2	Chama Market Neutral 2X, Ltd. - Common Shares	21,278,000.00	20,000.00
09/07/2010	2	Chemaphor Inc. - Common Shares	156,000.00	1,560,000.00
08/25/2010	2	Choice Hotels International Inc. - Notes	3,184,395.02	3,000,000.00
01/01/2007 to 12/31/2007	15	CIBC Balanced Fund - Units	5,186,989.96	N/A
08/13/2010	58	Coastport Capital Inc. - Units	2,860,000.00	22,880,000.00
08/03/2010 to 08/06/2010	6	Colwood City Centre Limited Partnership - Notes	347,000.00	6.00
07/30/2010 to 08/06/2010	128	Communications DVR Inc. - Units	1,115,575.00	1,611,083.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
08/12/2010	1	CommunityLend Inc. - Loan Agreements	3,330.00	1.00
12/15/2009	1	Crosshair Exploration & Mining Corp. - Flow-Through Shares	500,000.00	2,000,000.00
09/10/2010	1	CSMART PTN Trust - Note	325,000,000.00	1.00
01/01/2005 to 12/31/2005	101	C.F.G. Heward Fund - Units	15,584,981.15	N/A
01/01/2006 to 12/31/2006	140	C.F.G. Heward Fund - Units	5,923,609.00	N/A
01/01/2008 to 12/31/2008	66	C.F.G. Heward Fund - Units	3,058,825.82	N/A
04/02/2008 to 07/31/2008	5	Di Tomasso Equilibrium Fund - Trust Units	2,318,540.00	95,763.35
08/20/2010	16	Elissa Resources Ltd. - Units	259,200.00	4,320,000.00
09/03/2010	1	Ellerslie GT-SDM Limited Partnership - Loans	75,000.00	3.00
09/09/2010	19	Enseco Energy Services Corp. - Special Warrants	5,990,000.00	30,000,000.00
03/12/2010	19	EPM Mining Ventures Inc. - Common Shares	680,000.00	6,800,000.00
03/03/2010	79	Estrella Overseas Limited - Special Warrants	76,000,000.00	76,000,000.00
09/01/2010	3	First Leaside Fund - Units	125,558.00	125,558.00
08/26/2010	1	First Leaside Mortgage Fund - Trust Units	15,000.00	15,000.00
09/07/2010	4	First Leaside Mortgage Fund - Units	325,000.00	325,000.00
09/07/2010	1	First Leaside Universal Limited Partnership - Units	115,000.00	115,000.00
09/01/2010 to 09/03/2010	2	First Leaside Wealth Management Inc. - Preferred Shares	65,000.00	65,000.00
07/12/2010	120	First Star Resources Inc. - Units	1,787,240.15	1,690,000.00
08/18/2010	1	Forbes & Manhattan (Coal) Inc. - Special Warrants	3,080,000.00	1,100,000.00
08/18/2010	38	Ford Credit Canada Limited - Notes	550,000,000.00	550,000,000.00
05/06/2010	1	Formation Metals Inc. - Debenture	8,000,000.00	1.00
05/06/2010	9	Formation Metals Inc. - Units	1,966,538.00	1,333,375.00
09/08/2010	10	Foundation Group Capital Trust - Units	198,675.00	17,660.00
08/27/2010	3	Frontline Gold Corporation - Units	500,000,000.00	3,225,805.00
08/31/2010	2	Georgian Partners Growth Fund I, L.P. - Limited Partnership Interest	2,000,000.00	2.00
07/21/2010 to 08/20/2010	1	GMO Developed World Equity Investment Fund PLC - Units	159,188.39	6,615.83
01/01/2009 to 12/31/2009	2	GMO Emerging Illiquid Fund L.P. - Units	1,174,194.00	N/A

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
07/29/2010	1	GMO Emerging Markets FUnd-IV - Units	5,000,000.04	385,101.62
01/01/2009 to 12/31/2009	1	GMO Global Active Equity Fund A - Units	20,500,000.00	N/A
07/12/2010	1	GMO Global Equity Allocation Fund-III in USD - Units	5,182,753.65	695,473.54
07/27/2010 to 08/09/2010	1	GMO International Core Equity Fund-IV - Units	2,578,186.70	94,759.98
08/04/2010 to 08/23/2010	1	GMO International Intrinsic Value Fund- II - Units	124,717.76	6,227.69
07/30/2010	1	GMO International Opportunities Equity Allocation Fund-III - Units	67,577.85	5,126.21
08/31/2010	1	Golden Band Resources Inc. - Notes	7,447,300.00	1.00
11/16/2009	3	Goldeye Exploration Limited - Flow-Through Shares	500,000.00	5,822,352.00
12/16/2009	1	Goldeye Explorations Limited - Units	80,000.00	1,000,000.00
03/12/2010	2	GT Canada Capital Corporation - Common Shares	20,000.00	80,000.00
06/22/2010	11	Guerrero Gold Inc. - Common Shares	170,250.00	2,269,999.00
12/31/2009	5	Hy Lake Gold Inc. - Flow-Through Shares	300,000.00	1,200,000.00
12/04/2009	1	Hy Lake Gold Inc. - Units	1,000,000.00	5,000,000.00
08/30/2010 to 09/01/2010	45	IGW Real Estate Investment Trust - Units	1,083,290.28	709,448.00
04/23/2010	1	Imex Systems Inc. - Preferred Shares	350.00	N/A
04/23/2010	1	Imex Systems Inc. - Units	1,000,000.00	N/A
08/31/2010	12	InfraRedx Inc. - Note	1,481,463.95	1.00
08/27/2010	35	IntelGenx Technologies Corp. - Units	2,600,000.00	6,500,000.00
08/27/2010	15	International PBX Ventures Ltd. - Units	378,500.00	1,892,500.00
04/01/2009 to 03/26/2010	1	Invesco Balanced Pool - Units	3,502,000.00	346,668.91
04/01/2009 to 03/18/2010	2	Invesco Canadian Equity Pool - Units	7,395,123.06	1,045,802.36
12/16/2009	1	Invesco Core Canadian Fixed Income Pool - Units	5,662,960.00	566,296.00
04/06/2009 to 03/31/2010	2	Invesco Global Equity Pool - Units	2,134,031.80	263,759.00
05/05/2009 to 10/09/2009	2	Invesco Global Real Estate Pool - Units	22,079,109.79	2,285,448.73
12/11/2009	49	iseemedia Inc. - Common Shares	2,719,600.00	N/A
08/18/2010	13	Jennerex, Inc. - Common Shares	2,378,373.34	355,626.00
06/11/2010	2	Jovian Capital Corporation - Debentures	10,000,000.00	N/A

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
07/29/2010	19	Kaminak Gold Corporation - Common Shares	14,503,810.00	9,159,300.00
08/25/2010	2	Kilo Goldmines Ltd. - Units	300,000.00	1,500,000.00
04/30/2010	3	Kingwest Avenue Portfolio - Units	101,000.00	3,632.52
04/15/2010	2	Kingwest Avenue Portfolio - Units	100,800.00	3,597.65
04/15/2010	1	Kingwest Canadian Equity Portfolio - Units	10,642.50	974.05
04/30/2010	1	Kingwest U.S. Equity Portfolio - Units	253,047.68	33,239.19
04/15/2010	1	Kingwest U.S. Equity Portfolio - Units	6,990.84	12,827.38
09/03/2010	17	Knigthcove Media Corp. - Units	675,000.00	6,750,000.00
08/18/2010	3	Kodiak Oil & Gas Corp. - Common Shares	11,037,000.00	3,900,000.00
07/03/2009	30	Kokomo Enterprises Inc. - Units	300,000.00	4,000,000.00
07/21/2009	1	KWG Resources Inc. - Units	0.00	1,500,000.00
02/16/2010	21	Lake Shore Gold Corp. - Flow-Through Shares	7,614,460.32	1,273,036.00
09/08/2010	7	Linn Energy LLC and Linn Energy Finance Corp. - Notes	26,822,107.05	26,350.00
04/28/2010	28	Macarthur Minerals Ltd. - Common Shares	9,000,000.00	6,000,000.00
04/01/2010 to 04/23/2010	4	Magenta Mortgage Investment Corporation - Common Shares	259,900.00	25,990.00
08/06/2010	2	Majescor Resources Inc. - Units	50,000.00	200,000.00
05/11/2010	16	Manitou Gold Inc. - Flow-Through Shares	300,000.00	600,000.00
08/11/2010	34	Marksmen Resources Ltd. - Receipts	669,958.25	58,156,888.00
08/02/2010	19	Match Capital Resources Corporation - Units	500,000.00	5,000,000.00
08/25/2010	11	Maxim Resources Inc. - Units	263,200.00	1,316,000.00
07/16/2009 to 07/23/2009	34	MBMI Resources Inc. - Common Shares	471,037.43	6,280,497.00
01/28/2009	39	MBMI Resources Inc. - Common Shares	190,700.00	3,814,000.00
12/23/2008	13	MBMI Resources Inc. - Common Shares	108,400.00	2,168,000.00
12/30/2008	4	MBMI Resources Inc. - Common Shares	90,000.00	1,800,000.00
12/31/2009	5	McLaren Resources Inc. - Flow-Through Shares	170,000.00	850,000.00
10/01/2009	13	Meekatharra Gold Corporation - Units	940,000.00	N/A
12/11/2009	26	Metanor Resources Inc. - Units	3,165,000.00	3,370,000.00
01/01/2008 to 12/31/2008	2	MFS International Equity Fund - Units	61,891,761.28	N/A
04/01/2009 to 02/23/2010	13	MGI Canadian Equity Fund - Units	106,515,606.73	11,687,161.80

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
04/28/2009 to 03/29/2010	19	MGI Fixed Income Fund - Units	143,891,819.00	13,923,846.84
04/02/2009 to 03/29/2010	19	MGI International Equity Fund - Units	71,832,818.00	10,129,800.30
04/01/2009 to 03/29/2010	21	MGI Long Bond Fund - Units	74,104,363.93	7,166,698.89
05/04/2009 to 02/05/2010	16	MGI Money Market Fund - Units	15,482,506.27	1,548,250.63
11/20/2009	3	MGI Real Return Bond Fund - Units	10,313,113.00	965,746.09
04/01/2009 to 03/08/2010	19	MGI U.S. Equity Fund - Units	52,800,368.00	7,377,716.21
04/30/2009 to 08/04/2009	2	MGI U.S. Equity Trust - Units	759,023.00	112,485.86
08/24/2010	1	Micromem Technologies Inc - Units	50,000.00	200,000.00
08/24/2010	1	Micromem Technologies Inc. - Debenture	200,000.00	1.00
03/23/2009	2	Mondrian Emerging Markets Equity Fund - Units	24,584,684.66	1,638,978.98
08/20/2010	11	Mooncor Oil & Gas Corp. - Units	117,042.90	289,155.00
08/19/2010	18	Morrison Laurier Mortgage Corporation - Preferred Shares	1,188,200.00	118,820.00
09/02/2010	3	Nakina Systems Inc. - Notes	473,400.00	3.00
05/01/2010	11	Nerium Biotechnology, Inc. - Units	514,000.00	500,000.00
08/25/2010	16	Nevada Exploration Inc. - Units	415,400.00	830,800.00
08/25/2010	2	New Sage Energy Corp. - Units	20,000.00	400,000.00
06/01/2010	39	New World Lenders Corp. - Bonds	2,104,960.00	N/A
08/01/2010 to 09/03/2010	64	New World Lenders Corp. - Bonds	3,555,350.00	3,522.00
06/17/2010 to 06/24/2010	45	Newport Canadian Equity Fund - Units	561,770.97	1,879.49
04/15/2010 to 04/23/2010	47	Newport Canadian Equity Fund - Units	2,867,655.18	22,641.39
06/17/2010 to 06/24/2010	75	Newport Fixed Income Fund - Units	1,785,185.36	16,687.59
04/19/2010 to 04/23/2010	11	Newport Fixed Income Fund - Units	807,272.65	7,706.47
06/21/2010	2	Newport Global Equity Fund - Units	16,500.00	286.53
04/19/2010	2	Newport Global Equity Fund - Units	115,683.14	1,928.97
06/17/2010 to 06/24/2010	96	Newport Yield Fund - Units	2,454,333.15	12,313.09

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
04/15/2010 to 04/23/2010	94	Newport Yield Fund - Units	5,851,345.81	51,840.98
07/30/2010	13	Next Gen Metals Inc. - Common Shares	435,750.00	2,905,000.00
12/14/2009	1	Next Gen Metals Inc. - Common Shares	1,550,000.00	500,000.00
07/16/2010	1	Nichromet Extraction Inc. - Units	838,000.00	8,380,000.00
04/20/2010	2	Nighingale Informatix Corporation - Common Shares	1,250,000.00	561,364.00
04/20/2010	13	Nightingale Informatix Corporation - Receipts	2,074,000.00	2,074.00
09/09/2010	8	North Altantic Resources Ltd. - Units	1,960,000.00	7,000,000.00
10/23/2009 to 11/16/2009	1	North American Portfolio Trust - Units	65,732,907.16	2,810,242.84
08/26/2010 to 08/27/2010	2	North Vernon Properties Limited - Limited Partnership Units	10,000.00	10,000.00
08/30/2010 to 09/01/2010	10	North Vernon Properties Limited Partnership - Limited Partnership Units	585,000.00	858,000.00
08/26/2010 to 08/31/2010	22	Northern Shield Resources Inc. - Units	444,060.00	37,500,500.00
09/09/2010	2	Northern Superior Resources Inc. - Common Shares	625,000.00	3,125,000.00
08/20/2010	39	OTISH Energy Inc. - Units	400,920.00	5,727,428.00
07/05/2010 to 07/06/2010	3	Plasco Energy Group Inc. - Units	44,133.32	16,265.00
08/26/2010	4	Plazacorp Property Holdings Inc. - Loans	10,750,000.00	10,750,000.00
08/18/2010	23	Prairie Pacific Mining Corp. - Common Shares	1,037,000.00	1,037,000.00
03/29/2010 to 05/31/2010	32	Rainbow Resources Inc. - Units	305,400.00	5,090,000.00
08/24/2010	19	Red Pine Exploration Inc. - Units	1,155,000.00	14,437,500.00
08/24/2010 to 08/27/2010	24	Redux Duncan City Centre Limited Partnership - Notes	1,838,000.00	1,838,000.00
08/30/2010 to 09/01/2010	6	Redux Duncan City Centre Limited Partnership - Notes	162,000.00	162,000.00
08/24/2010 to 08/31/2010	12	Revett Minerals Inc. - Units	4,071,963.28	14,542,726.00
08/30/2010	1	Rio Cristal Resources Corporation - Units	314,249.25	3,500,000.00
07/31/2010	40	Rogers Oil & Gas Inc. - Debenture	704,100.00	0.00
08/20/2010	6	Royal Nickel Corporation - Flow-Through Shares	118,125.00	52,500.00
03/23/2010	13	Rx Exploration Inc. - Units	332,040.00	1,106,800.00
03/01/2010	20	Rx Exploration Inc. - Units	663,349.80	2,211,166.00
03/24/2010	1	Rx Exploration Inc. - Units	50,000.00	166,666.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
03/24/2010	3	Rx Exploration Inc. - Units	119,600.10	398,667.00
03/18/2010 to 03/24/2010	27	Rx Exploration Inc. - Units	752,479.50	2,508,265.00
06/01/2010	4	Sage Gold Inc. - Units	232,000.12	1,054,546.00
08/19/2010	10	Salares Lithium Inc. - Receipts	40,000,001.18	32,128,515.00
09/03/2010	1	San Gold Corporation - Common Shares	615,000.00	150,000.00
08/27/2010	34	Sea NG Corporation - Units	7,000,500.00	7,000,500.00
09/03/2010	1	SGX Resources Inc. - Common Shares	192,000.00	600,000.00
09/07/2010	3	Silver Spruce Resources Inc. - Flow-Through Units	550,000.00	9,166,666.66
08/18/2010	1	Slam Exploration Ltd. - Units	275,000.00	2,500,000.00
06/30/2010	34	Small Potatoes Urban Delivery Inc. - Note	3,873,151.93	0.00
08/12/2010	9	Soft Switching Technologies Corporation - Common Shares	3,088,299.18	45,521,291.00
08/24/2010	1	Solvarvest BioEnergy Inc. - Common Shares	50,000.00	200,000.00
07/15/2010 to 07/19/2010	15	South American Silver Corp. - Units	4,000,500.00	6,350,000.00
05/01/2010	4	Stacey Muirhead Limited Partnership - Limited Partnership Units	444,626.28	11,096.35
03/12/2010 to 06/18/2010	22	Sundre Development Ltd. - Preferred Shares	665,000.00	66.50
04/01/2008 to 09/01/2008	6	Tailwind Fund L.P. - Limited Partnership Units	773,000.00	773.00
12/11/2009	38	Takara Resources Inc. - Common Shares	350,000.00	11,666,667.00
03/31/2010 to 04/13/2010	8	Tarsis Resources Ltd. - Flow-Through Shares	400,000.00	2,000,000.00
07/02/2010	6	The Investment Partners Fund - Trust Units	356,898.00	21,967.82
09/01/2010	7	The Investment Partners Fund - Units	744,636.75	43,475.58
08/26/2010	40	Timbercreek Global Real Estate Fund - Units	8,682,204.00	723,517.00
09/03/2010	2	TireStamp Inc. - Debentures	200,000.00	2.00
07/14/2010	31	Tournigan Energy Ltd. - Unit	3,000,000.00	0.00
09/03/2010	8	Tri Origin Exploration Ltd. - Common Shares	472,000.00	7,866,667.00
04/07/2009 to 03/23/2010	1	Trimark Canadian First Class - Common Shares	629,132.76	48,512.34
05/22/2010	1	Trimark Global Technology Fund - Units	9,550.00	5,441.60
08/11/2009	68	Trueclaim Exploration Inc. - Units	1,291,896.00	20,000,000.00
08/10/2010	115	Vantex Resources Ltd. - Units	2,045,000.00	2,045.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
04/12/2010	4	Vendome Capital II Corp. - Debentures	470,000.00	2.00
08/20/2009	3	Verafin Inc. - Preferred Shares	5,500,000.00	N/A
04/09/2010	11	Victory Nickel Inc. - Units	1,379,880.81	6,570,861.00
07/30/2010	23	Walton AZ Verona Investment Corporation - Common Shares	319,030.00	31,903.00
08/13/2009	8	WestCan Uranium Corp. - Flow-Through Shares	42,200.00	1,055,000.00
07/06/2010 to 07/14/2010	2	Western Wind Energy Corp. - Units	2,147,343.00	2,027,971.00
08/25/2010	2	Whiterock 219 Laurier Avenue West Ottawa Inc. - Loans	30,450,000.00	30,450,000.00
09/01/2010 to 09/07/2010	7	Wimberly Fund - Trust Units	725,000.00	725,000.00
08/31/2010	30	Wind River Energy Corp. - Common Shares	300,000.00	3,000,000.00
09/01/2010	1	Woodstock Hydro Services Inc. - Debenture	1,800,000.00	1.00
08/26/2010	2	WTH Car Rental ULC - Notes	315,000,000.00	2.00
09/01/2010	1	York Credit Opportunities Unit Trust - Trust Units	52,485.00	N/A
09/01/2010	1	York Investment Limited - Common Shares	104,969,981.11	N/A
09/01/2010	1	York Select Unit Trust - Units	262,425.00	N/A

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
AllBanc Split Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated September 8, 2010
NP 11-202 Receipt dated September 8, 2010
Offering Price and Description:
Warrants to Subscribe for up to * Class A Capital Shares and * Class B Preferred Shares at a Subscription Price of $ *
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
Promoter(s):
SCOTIA MANAGED COMPANIES ADMINISTRATION INC.
Project #1633519

Issuer Name:
Avalon Rare Metals Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated September 14, 2010
NP 11-202 Receipt dated September 14, 2010
Offering Price and Description:
$ * - * Units Price: $ * per Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Promoter(s):
-
Project #1635113

Issuer Name:
Canexus Income Fund
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated September 14, 2010
NP 11-202 Receipt dated September 14, 2010
Offering Price and Description:
$60,000,000.00 - 5.75% Convertible Unsecured Subordinated Series III Debentures
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
TD Securities Inc.
HSBC Securities (Canada) Inc.
Acumen Capital Finance Partners Limited
Promoter(s):
-
Project #1635223

Issuer Name:
Counsel Managed Yield Portfolio
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated September 8, 2010
NP 11-202 Receipt dated September 8, 2010
Offering Price and Description:
(Series A, D, E, F and I Units)
Underwriter(s) or Distributor(s):
none
Promoter(s):
Counsel Portfolio Services Inc.
Project #1633348

Issuer Name:
Mood Media Corporation (formerly Fluid Music Canada, Inc.)
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated September 13, 2010
NP 11-202 Receipt dated September 13, 2010
Offering Price and Description:
U.S.$ * - * % Convertible Unsecured Subordinated Debentures due October 31, 2015 Price:U.S.$1,000.00 per Debenture
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Promoter(s):
-
Project #1634618

Issuer Name:
Northern Graphite Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 9, 2010
NP 11-202 Receipt dated September 9, 2010
Offering Price and Description:
Minimum: $1,000,000.00; Maximum: $3,000,000.00 - Minimum: 2,000,000 Common Shares - Maximum: 6,000,000 Common Shares Price: $0.50 per Common Share
Underwriter(s) or Distributor(s):
Union Securities Ltd.
Promoter(s):
Gregory Bowes
Project #1633818

Issuer Name:
Northern Property Real Estate Investment Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated September 14, 2010
NP 11-202 Receipt dated September 14, 2010
Offering Price and Description:
$45,007,500.00 - 1,765,000 Units Price: 25.50 per Unit
Underwriter(s) or Distributor(s):
CIBC World Market Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Canaccord Genuity Corp.
National Bank Financial Inc.
Dundee Securities Corporation
Promoter(s):
-
Project #1635251

Issuer Name:
Qwest Energy 2010-II Flow-Through Limited Partnership
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated September 8, 2010
NP 11-202 Receipt dated
Offering Price and Description:
Maximum Offering: $25,000,000.00 (1,000,000 Units); Minimum Offering: $5,000,000.00 (200,000 Units)
Price: $25 per Unit Minimum Purchase: 100 Units
Underwriter(s) or Distributor(s):
Dundee Securities Corporation
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
HSBC Securities (Canada) Inc.
Manulife Securities Incorporated
National Bank Financial Inc.
Canaccord Genuity Corp.
Raymond James Ltd.
Wellington West Capital Markets Inc.
GMP Securities L.P.
Promoter(s):
Qwest Investment Management Corp.
Project #1633851

Issuer Name:
Sprott Physical Gold Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 3, 2010
NP 11-202 Receipt dated September 8, 2010
Offering Price and Description:
US$* - * Units) Price: US$ * per Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Morgan Stanley Canada Ltd.
Promoter(s):
Sprott Asset Management LP
Project #1632745

Issuer Name:
Sprott Physical Silver Trust
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Long Form PREP Prospectus dated September 7, 2010
NP 11-202 Receipt dated September 8, 2010
Offering Price and Description:
US$ * - (* Units) Price: US$10.00 per Unit - Minimum Subscription: US$1,000 (100 Units)
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Morgan Stanley Canada Limited
Promoter(s):
Sprott Asset Management LP
Project #1605635

Issuer Name:
Star Portfolio Corp.
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated September 7, 2010
NP 11-202 Receipt dated September 8, 2010
Offering Price and Description:
$* Maximum - * Units of Star Yield Managers Class Price: $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.
Dundee Securities Corporation
CIBC World Markets Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Canaccord Geniuty Corp.
Macquarie Private Wealth Inc.
Raymond James Ltd.
Desjardins Securities Inc.
Manulife Securities Incorporated
Rothenberg Capital Management Inc.
Wellington West Capital Markets Inc.
Promoter(s):
BMO Nesbitt Burns Inc.
Project #1631489

Issuer Name:
Tekmira Pharmaceuticals Corporation
Principal Regulator - British Columbia
Type and Date:
Preliminary Base Shelf Prospectus dated September 10, 2010
NP 11-202 Receipt dated September 10, 2010
Offering Price and Description:
US$50,000,000.00 - Common Shares, Warrants and Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1634190

Issuer Name:
Yorkton Ventures Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary CPC Prospectus dated September 8, 2010
NP 11-202 Receipt dated September 10, 2010
Offering Price and Description:
Minimum Offering: $400,000.00 (2,000,000 Common Shares); Maximum Offering: $600,000 (3,000,000 Common Shares) Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Macquarie Private Wealth Inc.
Promoter(s):
Dale W. Peterson
Micheal W. Wilson
Nicholas F. Watters.
Project #1634060

Issuer Name:
Allied Properties Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated September 8, 2010
NP 11-202 Receipt dated September 8, 2010
Offering Price and Description:
$50,014,800.00 - 2,376,000 Units Price: $21.05 per Unit
Underwriter(s) or Distributor(s):
Scotial Capital Inc.
RBC Dominion Securities Inc.
CIBC World Markets Inc.
Canaccord Genuity Corp.
National Bank Financial Inc.
Dundee Securities Corporation
Macquarie Capital Markets Canada Ltd.
Desjardins Securities Inc.
Promoter(s):
-
Project #1631936

Issuer Name:
Bastion Resources Ltd.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated September 9, 2010
NP 11-202 Receipt dated September 13, 2010
Offering Price and Description:
$600,000.00 - 3,000,000 SHARES AT A PRICE OF $0.20 PER SHARE
Underwriter(s) or Distributor(s):
Wolverton Securities Ltd.
Promoter(s):
Grant Kemp
Project #1610904

Issuer Name:
Boralex Inc.
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated September 8, 2010
NP 11-202 Receipt dated September 8, 2010
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:
Brookfield Renewable Power Inc.
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated September 9, 2010
NP 11-202 Receipt dated September 9, 2010
Offering Price and Description:
US$750,000,000.00 - Debt Securities (unsecured)
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1623327

Issuer Name:
Series A, Series B and Series F shares of:
Creststreet Resource Class
Creststreet Dividend & Income Class
Creststreet Alternative Energy Class
(Classes of shares of Creststreet Mutual Funds Limited)
Principal Regulator - Ontario
Type and Date:
Amended and Restated Simplified Prospectuses and Annual Information Form dated August 16, 2010 (the amended prospectus) amending and restating the Simplified Prospectuses and Annual Information Form dated June 22, 2010
NP 11-202 Receipt dated September 13, 2010
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Creststreet Asset Management Limited
Project #1593745

Issuer Name:
First Capital Realty Inc.
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated September 13, 2010
NP 11-202 Receipt dated September 14, 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:
Horizons BetaPro S&P/TSX 60 Index ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated August 31, 2010
NP 11-202 Receipt dated September 8, 2010
Offering Price and Description:
Class A Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
BetaPro Management Inc.
Project #1577962

Issuer Name:
ImmunoVaccine Inc.
Principal Regulator - Nova Scotia
Type and Date:
Final Short Form Prospectus dated September 9, 2010
NP 11-202 Receipt dated September 9, 2010
Offering Price and Description:
Minimum Offering: $6,500,000.00 or 6,500,000 Units (the “Minimum Offering”); Maximum Offering: $8,000,000.00 or 8,000,000 Units (the “Maximum Offering”) Price: $1.00 per Unit
Underwriter(s) or Distributor(s):
Paradigm Capital Inc.
Dundee Securities Corporation
Beacon Securities Limited
Promoter(s):
-
Project #1617312

Issuer Name:
iShares Diversified Monthly Income Fund
(formerly, iShares S&P/TSX Income Trust Index Fund)
(Units)
Principal Regulator - Ontario
Type and Date:
Amended and Restated Long Form
Prospectus dated September 1, 2010 (the amended prospectus) amending and restating the Long Form Prospectus dated April 14, 2010.
NP 11-202 Receipt dated September 8, 2010
Offering Price and Description:
Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Blackrock Asset Management Canada Limited
Promoter(s):
-
Project #1546193

Issuer Name:
LAURENTIAN BANK OF CANADA
Principal Regulator - Quebec
Type and Date:
Final Base Shelf Prospectus dated September 10, 2010
NP 11-202 Receipt dated September 10, 2010
Offering Price and Description:
$1,000,000,000.00 - Debt Securities (subordinated indebtedness) Class A Preferred Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1632360

Issuer Name:
Series A, E, F, I, J and O Securities (and other Securities as noted) of:
Mackenzie Sentinel Corporate Bond Fund (also Series G)
Mackenzie Sentinel North American Corporate Bond Class (also Series E6, E8, F6, I6, I8, J6 and
T6)
Mackenzie Sentinel Strategic Income Class (also Series E6, E8, F6, F8, I6, I8, J6, J8, T6 and T8)
Principal Regulator - Ontario
Type and Date:
Amendment #5 dated September 3, 2010 to the Simplified Prospectuses and Annual Information Form dated October 30, 2009
NP 11-202 Receipt dated September 14, 2010
Offering Price and Description:
Series A, E, F, G, I, J, O, E6, E8, F6, F8, I6, I8, J6, J8, T6 and T8 @ Net Asset Value
Underwriter(s) or Distributor(s):

Quadrus Investment Services Ltd.
Promoter(s):
Mackenzie Financial Corporation
Project #1478783

Issuer Name:
NewGrowth Corp.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated September 8, 2010
NP 11-202 Receipt dated September 9, 2010
Offering Price and Description:
Warrants to Subscribe for up to 2,201,213 Class A Capital Shares and 2,201,213 Class B Preferred Shares, Series 2 at a Subscription Price of $41.57
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
Promoter(s):
Scotia Managed Companies Administration Inc.
Project #1621603

Issuer Name:
Class I Units and Manager Class Units (as noted below) of:
Pinnacle Income Fund (Class I Units)
Pinnacle High Yield Income Fund (Class I and Manager Class Units)
Pinnacle Canadian Value Equity Fund (Class I Units)
Pinnacle Canadian Growth Equity Fund (Class I Units)
Pinnacle American Large Cap Growth Equity Fund (Class I Units)
Pinnacle Canadian Mid Cap Equity Fund (Class I Units)
Pinnacle American Mid Cap Value Equity Fund (Manager Class Units)
Pinnacle American Mid Cap Growth Equity Fund (Manager Class Units)
Principal Regulator - Ontario
Type and Date:
Amendment No. 1 dated September 8, 2010 (amendment no. 1) to the Simplified Prospectuses and Annual Information Form dated December 11, 2009
NP 11-202 Receipt dated September 13, 2010
Offering Price and Description:
Class I Units and Manager Class Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Scotia Capital Inc.(for Class A and F units only)
Scotia Capital Inc. (for Class A and F units only)
Promoter(s):
-
Project #1499469

Issuer Name:
Pinnacle Emerging Markets Equity Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated September 10, 2010
NP 11-202 Receipt dated September 13, 2010
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
Promoter(s):
Scotia Asset Management L.P.
Project #1603332

Issuer Name:
Ravenstar Ventures Inc.
Principal Regulator - British Columbia
Type and Date:
Final CPC Prospectus dated September 1, 2010
NP 11-202 Receipt dated September 8, 2010
Offering Price and Description:
$250,000.00 - 2,500,000 OFFERED SHARES Price: $0.10 per Offered Share
Underwriter(s) or Distributor(s):
PI Financial Corp.
Promoter(s):
Bruno Gasbarro
Project #1616542

Issuer Name:
Series A Units, Series F Units and Series I Units (unless otherwise indicated) of:
Sun Life MFS Global Growth Fund
Sun Life MFS Global Value Fund
Sun Life MFS U.S. Growth Fund
Sun Life MFS U.S. Value Fund
Sun Life MFS International Growth Fund
Sun Life MFS International Value Fund
Sun Life MFS Global Total Return Fund
Sun Life Money Market Fund
Sun Life Milestone 2020 Fund (Series A Units only)
Sun Life Milestone 2025 Fund (Series A Units only)
Sun Life Milestone 2030 Fund (Series A Units only)
Sun Life Milestone 2035 Fund (formerly Sun Life Milestone 2015 Fund) (Series A Units only)
Sun Life Milestone Global Equity Fund (Series I Units only)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated September 10, 2010
NP 11-202 Receipt dated September 13, 2010
Offering Price and Description:
Series A Units, Series F Units and Series I Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Sun Life Global Investors (Canada) Inc.
Project #1603099

Issuer Name:
Total Capital Canada Ltd.
Principal Regulator – Alberta
Type and Date:
Final Base Shelf Prospectus dated September 14, 2010
NP 11-202 Receipt dated September 14, 2010
Offering Price and Description:
Cdn. $4,000,000,000 .00 - Medium Term Notes (Unsecured) Unconditionally guaranteed as to payment of all amounts payable there under 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.
CIBC WORLD MARKETS INC.
Promoter(s):
-
Project #1629898

Issuer Name:
Total Capital S.A.
Principal Regulator - Alberta
Type and Date:
Final Base Shelf Prospectus dated September 14, 2010
NP 11-202 Receipt dated September 14, 2010
Offering Price and Description:
Cdn. $4,000,000,000.00 - Medium Term Notes (Unsecured) Unconditionally guaranteed as to payment of all amounts payable there under 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.
CIBC WORLD MARKETS INC.
Promoter(s):
-
Project #1630082

Issuer Name:
Union Gas Limited
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated September 10, 2010
NP 11-202 Receipt dated September 13, 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:
Final Base Shelf Prospectus dated September 10, 2010
NP 11-202 Receipt dated September 10, 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

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change in Registration Category	Calrossie Investment Management Inc.	From: Exempt Market Dealer and Portfolio Manager To: Exempt Market Dealer, Portfolio Manager, and Investment Fund Manager	September 9, 2010
Change in Registration Category	BloombergSen Inc.	From: Exempt Market Dealer and Portfolio Manager To: Exempt Market Dealer, Portfolio Manager, and Investment Fund Manager	September 9, 2010
Change in Registration Category	Brompton Capital Advisors Inc.	From: Exempt Market Dealer and Portfolio Manager To: Exempt Market Dealer, Portfolio Manager, and Investment Fund Manager	September 9, 2010
Change in Registration Category	Manitou Investment Management Ltd.	From: Exempt Market Dealer and Portfolio Manager To: Exempt Market Dealer, Portfolio Manager, and Investment Fund Manager	September 9, 2010
Change in Registration Category	BMO Investments Inc.	From: Mutual Fund Dealer To: Mutual Fund Dealer and Investment Fund Manager	September 9, 2010
Change in Registration Category	Investeco Financial Corp.	From: Exempt Market Dealer and Portfolio Manager To: Exempt Market Dealer, Portfolio Manager, and Investment Fund Manager	September 10, 2010

Type	Company	Category of Registration	Effective Date
Change in Registration Category	Georgian Capital Partners Corporation	From: Exempt Market Dealer and Portfolio Manager To: Exempt Market Dealer, Portfolio Manager, and Investment Fund Manager	September 10, 2010
Name Change	From: Sceptre Investment Counsel Limited To: Fiera Sceptre Inc.	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
Change of Category	Nuleaf Ventures Inc.	From: Exempt Market Dealer To: Exempt Market Dealer and Investment Fund Manager	September 13, 2010
Name Change	From: Promark Investment Advisors, Inc. To: General Motors Investment Management Corporation	Portfolio Manager	September 1, 2010
Name Change	From: Pyramis Canada ULC To: Pyramis Global Advisors (Canada) ULC	Portfolio Manager and Commodity Trading Manager	August 10, 2010
Name Change	From: I3 Advisors Inc. Information, Innovation and Independence To: I3 Advisors Inc.	Portfolio Manager	September 1, 2010
Change in Registration Category	Morgan Meighan & Associates Limited	From: Portfolio Manager To: Exempt Market Dealer, Portfolio Manager, and Investment Fund Manager	September 14, 2010
Change in Registration Category	BlackRock Asset Management Canada Limited	From: Commodity Trading Manager, Exempt Market Dealer and Portfolio Manager To: Commodity Trading Manager, Exempt Market Dealer, Portfolio Manager, and Investment Fund Manager	September 14, 2010

Type	Company	Category of Registration	Effective Date
Change of Category	Janus Capital Management LLC	From: Portfolio Manager To: Portfolio Manager Exempt Market Dealer	September 14, 2010
Change in Registration Category	Secutor Capital Management Corporation	From: Investment Dealer To: Investment Dealer and Investment Fund Manager	September 15, 2010

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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 ("Chi-X Canada") has announced its proposed plans to implement the changes described below in November 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*.

Feedback on the proposed changes should be in writing and submitted by Monday, October 18, 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
Chief Compliance Officer
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 November 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 adding the following pre-trade validation checks to its Chi-Controls™ risk management tools:

- **Price limit** – provides Subscribers the ability to set price parameters for incoming orders. Price limits can be determined by either specifying a percentage band calculated from the last sale price (i.e. 10 percent above or below the last sale price) and/or by specifying fixed price levels for a security (ex. For a security trading at $6.00; a price ceiling of $9.00, and a price floor of $4.00). When an order is entered with a price that would violate a price parameter, the order will be rejected and sent back to the Subscriber.

- **Share limit** – provides Subscribers the ability to set a maximum number of shares permitted per order per security. When an order is entered with a share amount that exceeds this limit, the order will be rejected and sent back to the Subscriber.

- **Capitalization limit** – provides Subscribers the ability to set the maximum notional value per order per security. The notional value of a trade is calculated by the number of shares multiplied by the price of the security. When an order is entered with a notional value above this set limit, the order will be rejected and sent back to the Subscriber.

Impact of the Changes

These pre-trade validation checks will assist Subscribers in their ability to implement risk controls and perform effective risk management. In addition, by offering Subscribers the ability to prevent "fat finger" orders, these checks will contribute to a more orderly market.

Consultations

Chi-X has consulted with industry participants who supported the proposed change.

Existence of Proposed Change in the Market

Currently other marketplaces in Canada offer similar pre-trade validation checks.

Any questions regarding these changes should be addressed to Matthew Thompson, Chief Compliance Officer, Chi-X Canada: matthew.thompson@chi-xcanada.com, T: 416 304-6376

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