**The Ontario Securities Commission**

# OSC Bulletin

July 29, 2011

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

**The Ontario Securities Commission**
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Toronto, Ontario
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# Notices / News Releases

## 1.1 Notices

### 1.1.1 Current Proceedings Before The Ontario Securities Commission

**July 29, 2011**

**CURRENT PROCEEDINGS**

**BEFORE**

**ONTARIO SECURITIES COMMISSION**

- - - - - - - - - - - - - - - - - - - - - - -

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**SCHEDULED OSC HEARINGS**

| | |
|---|---|
| August 3, 4, 9, 11, 19, 22, 23 and 24, 2011<br><br>10:00 a.m. | **York Rio Resources Inc., Brilliante Brasilcan Resources Corp., Victor York, Robert Runic, George Schwartz, Peter Robinson, Adam Sherman, Ryan Demchuk, Matthew Oliver,** |
| August 12, 2011<br><br>9:00 a.m. | **Gordon Valde and Scott Bassingdale**<br><br>s. 127<br><br>H. Craig/C. Watson in attendance for Staff<br><br>Panel: VK/EPK |
| August 8, 2011<br><br>10:00 a.m. | **Crown Hill Capital Corporation and Wayne Lawrence Pushka**<br><br>s. 127<br><br>A. Perschy in attendance for Staff<br><br>Panel: EPK |
| August 10, 2011<br><br>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**<br><br>s. 127<br><br>M. Vaillancourt in attendance for Staff<br><br>Panel: JEAT |
| August 17, 2011<br><br>10:00 a.m. | **TBS New Media Ltd., TBS New Media PLC, CNF Food Corp., CNF Candy Corp., Ari Jonathan Firestone and Mark Green**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: CP |

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| August 17, 2011<br><br>11:00 a.m. | **MBS Group (Canada) Ltd., Balbir Ahluwalia and Mohinder Ahluwalia**<br><br>s. 37, 127 and 127.1<br><br>C. Rossi in attendance for staff<br><br>Panel: JEAT |
| August 22, 2011<br><br>10:00 a.m. | **Heir Home Equity Investment Rewards Inc.; FFI First Fruit Investments Inc.; Wealth Building Mortgages Inc.; Archibald Robertson; Eric Deschamps; Canyon Acquisitions, LLC; Canyon Acquisitions International, LLC; Brent Borland; Wayne D. Robbins; Marco Caruso; Placencia Estates Development, Ltd.; Copal Resort Development Group, LLC; Rendezvous Island, Ltd.; The Placencia Marina, Ltd.; and The Placencia Hotel and Residences Ltd.**<br><br>s. 127<br><br>A. Perschy / B. Shulman in attendance for Staff<br><br>Panel: CP |
| August 29, 2011<br><br>10:00 a.m. | **Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: JEAT |
| September 2, 2011<br><br>10:00 a.m. | **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**<br><br>s. 127 and 127.1<br><br>D. Ferris in attendance for Staff<br><br>Panel: TBA |
| September 6, 7, 9 and 12, 2011<br><br>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**<br><br>s. 127(7) and 127(8)<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA |
| September 6-12, September 14-26 and September 28, 2011<br><br>10:00 a.m. | **Anthony Ianno and Saverio Manzo**<br><br>s. 127 and 127.1<br><br>A. Clark in attendance for Staff<br><br>Panel: EPK/PLK |
| September 8, 2011<br><br>10:00 a.m. | **American Heritage Stock Transfer Inc., American Heritage Stock Transfer, Inc., BFM Industries Inc., Denver Gardner Inc., Sandy Winick, Andrea Lee McCarthy, Kolt Curry and Laura Mateyak**<br><br>s. 127<br><br>J. Feasby in attendance for Staff<br><br>Panel: TBA |
| September 8, 2011<br><br>11:00 a.m. | **Energy Syndications Inc., Green Syndications Inc., Syndications Canada Inc., Land Syndications Inc. and Douglas Chaddock**<br><br>s. 127<br><br>C. Johnson in attendance for Staff<br><br>Panel: TBA |

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|---|---|
| September 12, 2011<br><br>10:00 a.m.<br><br>September 13, 2011<br><br>2:00 p.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**<br><br>s. 127 and 127.1<br><br>H. Daley in attendance for Staff<br><br>Panel: JDC/MCH |
| September 14-23, September 28 – October 4, 2011<br><br>10:00 a.m. | **Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)**<br><br>s. 127 and 127.1<br><br>D. Ferris in attendance for Staff<br><br>Panel: VK/MCH |
| September 20-21, 2011<br><br>10:00 a.m. | **Peter Beck, Swift Trade Inc. (continued as 7722656 Canada Inc.), Biremis, Corp., Opal Stone Financial Services S.A., Barka Co. Limited, Trieme Corporation and a limited partnership referred to as "Anguilla LP"**<br>s. 127<br><br>B. Shulman in attendance for Staff<br><br>Panel: JEAT |
| September 22-23, 2011<br><br>10:00 a.m. | **Sextant Capital Management Inc., Sextant Capital GP Inc., Otto Spork, Robert Levack and Natalie Spork**<br><br>s. 127<br><br>T. Center in attendance for Staff<br><br>Panel: TBA |
| September 26, 2011<br><br>10:00 a.m. | **Global Energy Group, Ltd., New Gold Limited Partnerships, 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**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: CP |
| September 26, 2011<br><br>10:00 a.m. | **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**<br><br>s. 37, 127 and 127.1<br><br>H. Craig in attendance for Staff<br><br>Panel: CP |
| October 3-7 and October 12-21, 2011<br><br>10:00 a.m. | **FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun**<br><br>s. 127<br><br>C. Price in attendance for Staff<br><br>Panel: CP |

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| October 5, 2011<br><br>10:00 a.m. | **Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjiaints Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd., Cambridge Resources Corporation, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group**<br><br>s. 127 and 127.1<br><br>H. Craig in attendance for Staff<br><br>Panel: MGC |
| October 11, 2011<br><br>2:30 p.m. | **Global Consulting and Financial Services, Crown Capital Management Corporation, Canadian Private Audit Service, Executive Asset Management, Michael Chomica, Peter Siklos (Also Known As Peter Kuti), Jan Chomica, and Lorne Banks**<br><br>s. 127<br><br>H. Craig/C. Rossi in attendance for Staff<br><br>Panel: TBA |
| October 12-24 and October 26-27, 2011<br><br>10:00 a.m. | **Helen Kuszper and Paul Kuszper**<br><br>s. 127 and 127.1<br><br>U. Sheikh in attendance for Staff<br><br>Panel: JDC/CWMS |
| October 17-24 and October 26-31, 2011<br><br>10:00 a.m. | **Richvale Resource Corp., Marvin Winick, Howard Blumenfeld, John Colonna, Pasquale Schiavone, and Shafi Khan**<br><br>s. 127(7) and 127(8)<br><br>C. Johnson in attendance for Staff<br><br>Panel: EPK/MCH |
| October 31, 2011<br><br>10:00 a.m. | **Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp., and Weizhen Tang**<br><br>s. 127 and 127.1<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA |
| October 31-November 3, 2011<br><br>10:00 a.m. | **QuantFX Asset Management Inc., Vadim Tsatskin, Lucien Shtromvaser and Rostislav Zemlinsky**<br><br>s. 127<br><br>C. Rossi in attendance for Staff<br><br>Panel: MGC |
| November 7, November 9-21, November 23 – December 2, 2011<br><br>10:00 a.m. | **Majestic Supply Co. Inc., Suncastle Developments Corporation, Herbert Adams, Steve Bishop, Mary Kricfalusi, Kevin Loman and CBK Enterprises Inc.**<br><br>s. 37, 127 and 127.1<br><br>D. Ferris in attendance for Staff<br><br>Panel: EPK/PLK |
| November 14-21 and November 23-28, 2011<br><br>10:00 a.m. | **Shaun Gerard McErlean, Securus Capital Inc., and Acquiesce Investments**<br><br>s. 127<br><br>M. Britton in attendance for Staff<br><br>Panel: TBA |
| December 1-5 and December 7-15, 2011<br><br>10:00 a.m. | **Marlon Gary Hibbert, Ashanti Corporate Services Inc., Dominion International Resource Management Inc., Kabash Resource Management, Power to Create Wealth Inc. and Power to Create Wealth Inc. (Panama)**<br><br>s. 127<br><br>S. Chandra in attendance for Staff<br><br>Panel: JDC |

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| December 5 and December 7-16, 2011<br><br>10:00 a.m. | **L. Jeffrey Pogachar, Paola Lombardi, Alan S. Price, New Life Capital Corp., New Life Capital Investments Inc., New Life Capital Advantage Inc., New Life Capital Strategies Inc., 1660690 Ontario Ltd., 2126375 Ontario Inc., 2108375 Ontario Inc., 2126533 Ontario Inc., 2152042 Ontario Inc., 2100228 Ontario Inc., and 2173817 Ontario Inc.**<br><br>s. 127<br><br>M. Britton in attendance for Staff<br><br>Panel: EPK/PLK |
| December 19, 2011<br><br>9:00 a.m. | **New Hudson Television Corporation, New Hudson Television L.L.C. & James Dmitry Salganov**<br><br>s. 127<br><br>C. Watson in attendance for Staff<br><br>Panel: MGC |
| January 3-10, 2012<br><br>10:00 a.m. | **Simply Wealth Financial Group Inc., Naida Allarde, Bernardo Giangrosso, K&S Global Wealth Creative Strategies Inc., Kevin Persaud, Maxine Lobban and Wayne Lobban**<br><br>s. 127 and 127.1<br><br>C. Johnson in attendance for Staff<br><br>Panel: JDC |
| January 18-30 and February 1-10, 2012<br><br>10:00 a.m. | **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**<br><br>s. 37, 127 and 127.1<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA |
| January 26-27, 2012<br><br>10:00 a.m. | **Empire Consulting Inc. and Desmond Chambers**<br><br>s. 127<br><br>D. Ferris in attendance for Staff<br><br>Panel: TBA |
| February 1-13, February 15-17 and February 21-23, 2012<br><br>10:00 a.m. | **Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjiaints Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd., Cambridge Resources Corporation, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group**<br><br>s. 127 and 127.1<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA |
| March 12, March 14-26, and March 28, 2012<br><br>10:00 a.m. | **David M. O'Brien**<br><br>s. 37, 127 and 127.1<br><br>B. Shulman in attendance for Staff<br><br>Panel: TBA |
| April 2-5, April 9, April 11-23 and April 25-27, 2012. | **Bernard Boily**<br><br>s. 127 and 127.1<br><br>M. Vaillancourt/U. Sheikh in attendance for Staff<br><br>Panel: TBA |
| TBA | **Yama Abdullah Yaqeen**<br><br>s. 8(2)<br><br>J. Superina in attendance for Staff<br><br>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

**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

**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/C. Rossi 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

**Shane Suman and Monie Rahman**

s. 127 and 127(1)

C. Price in attendance for Staff

Panel: TBA

TBA

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

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA

**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: TBA

TBA

**Abel Da Silva**

s. 127

C. Watson in attendance for Staff

Panel: TBA

TBA

**Paul Azeff, Korin Bobrow, Mitchell Finkelstein, Howard Jeffrey Miller and Man Kin Cheng (a.k.a. Francis Cheng)**

s. 127

T. Center/D. Campbell in attendance for Staff

Panel: TBA

TBA

**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

TBA

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

s. 127

T. Center in attendance for Staff

Panel: TBA

TBA

**Alexander Christ Doulis (aka Alexander Christos Doulis, aka Alexandros Christodoulidis) and Liberty Consulting Ltd.**

s. 127

S. Horgan in attendance for Staff

Panel: TBA

TBA

**Rezwealth Financial Services Inc., Pamela Ramoutar, Justin Ramoutar,**
**Tiffin Financial Corporation, Daniel Tiffin, 2150129 Ontario Inc., Sylvan Blackett, 1778445 Ontario Inc. and Willoughby Smith**

s. 127(1) and (5)

A. Heydon in attendance for Staff

Panel: TBA

TBA

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

s. 127

H. Craig/C.Rossi in attendance for Staff

Panel: TBA

TBA

**Ameron Oil and Gas Ltd., MX-IV Ltd., Gaye Knowles, Giorgio Knowles, Anthony Howorth, Vadim Tsatskin,**
**Mark Grinshpun, Oded Pasternak, and Allan Walker**

s. 127

H. Craig/C. Rossi in attendance for Staff

Panel: TBA

TBA

**Paul Donald**

s. 127

C. Price in attendance for Staff

Panel: TBA

TBA

**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: TBA

TBA **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

TBA **Goldpoint Resources Corporation, Pasqualino Novielli also known as Lee or Lino Novielli, Brian Patrick Moloney also known as Brian Caldwell, and Zaida Pimentel also known as Zaida Novielli**

s. 127(1) and 127(5)

C. Watson in attendance for Staff

Panel: TBA

TBA **Lehman Brothers & Associates Corp., Greg Marks, Kent Emerson Lounds and Gregory William Higgins**

s. 127

C. Rossi in attendance for Staff

Panel: TBA

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

s. 127

M. Vaillancourt in attendance for Staff

Panel: TBA

TBA **Peter Sbaraglia**

s. 127

S. Horgan/P. Foy in attendance for Staff

Panel: TBA

TBA **North American Financial Group Inc., North American Capital Inc., Alexander Flavio Arconti, and Luigino Arconti**

s. 127

M. Vaillancourt 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**

**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 Joint CSA/IIROC Staff Notice 23-311 – Regulatory Approach to Dark Liquidity in the Canadian Market

**JOINT CANADIAN SECURITIES ADMINISTRATORS/INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

**STAFF NOTICE 23-311**
**REGULATORY APPROACH TO DARK LIQUIDITY IN THE CANADIAN MARKET**

## I. INTRODUCTION

The publication of this notice (Joint Notice) follows an extensive consultative process that started in 2009 regarding the use of dark liquidity on Canadian equity marketplaces. The Joint Notice describes the regulatory framework within which dark liquidity may be used in Canada and is being issued in conjunction with IIROC Notice 11-0225 (IIROC Notice) published today. The IIROC Notice seeks comment on proposed amendments to the Universal Market Integrity Rules (UMIR) respecting requirements governing dark liquidity on Canadian equity marketplaces (Proposed UMIR Amendments). The Proposed UMIR Amendments are being filed with the Canadian Securities Administrators (CSA) in accordance with the normal review process.

## II. BACKGROUND

In late 2009, staff of the CSA and of the Investment Industry Regulatory Organization of Canada (IIROC) (together, we) published Joint CSA/IIROC Consultation Paper 23-404 *Dark Pools, Dark Orders, and Other Developments in Market Structure in Canada* (Consultation Paper). [1] The purpose of the Consultation Paper was to seek comment on a number of issues related to the impact of dark pools and dark orders[2] on various features of the Canadian market, including market liquidity, transparency, price discovery, fairness and integrity.

We received 23 response letters to the Consultation Paper and, on March 23, 2010, the CSA and IIROC hosted a forum (the Forum) to discuss further the issues raised in the Consultation Paper and the responses received. Themes discussed at the Forum included:

- Whether dark pools should be required to provide price improvement and if so, what is meaningful price improvement;
- The use of market pegged orders and whether those orders “free-ride” off the visible market;
- The use of sub-penny pricing;
- Broker preferencing at the marketplace level and dealer internalization of order flow;
- The use of indications of interest by dark pools to attract order flow; and
- The fairness of a marketplace offering smart order router services that use marketplace data that is not available to other market participants.

More details regarding the Forum are included in Joint CSA/IIROC Staff Notice 23-308 *Update on Forum to Discuss CSA/IIROC Joint Consultation Paper 23-404 “Dark Pools, Dark Orders and other Developments in Market Structure in Canada” and Next Steps*[3], published on May 28, 2010. That notice included a discussion of ongoing initiatives, proposed next steps, and a summary of the comments received in response to the Consultation Paper.

On November 19, 2010, after considering the response letters and discussions with market participants on the topics discussed in the Consultation Paper and at the Forum, we published Joint CSA/IIROC Position Paper 23-405 *Dark Liquidity in the Canadian Market*[4] (Position Paper). The Position Paper outlined the preliminary responses of the CSA and IIROC to the following questions:

1 Published at (2009) 32 OSCB, beginning at page 7877.

2 In the Consultation Paper, dark pools were defined as marketplaces that provide no pre-trade transparency, and dark orders as orders with limited or no transparency.

3 Published at (2010) 33 OSCB, beginning at page 4747.

4 Published at (2010) 33 OSCB, beginning at page 10764.

- Under which circumstances should dark pools or marketplaces that offer dark orders[5] be exempted from the pre-trade transparency requirements in National Instrument 21-101 *Marketplace Operation* (NI 21-101)?

- Should dark orders be required to provide meaningful price improvement over the national best bid or national best offer (NBBO) and under which circumstances?

- Should visible (lit) orders have priority over dark orders at the same price on the same marketplace?

- What is a meaningful level of price improvement?

The Position Paper did not address a number of issues discussed in the Consultation Paper and at the Forum, such as the use of indications of interest (IOIs) by dark pools to attract order flow, the fairness of a marketplace offering smart order routing (SOR) services that use marketplace data that is not available to other marketplace participants, and the practices of broker preferencing and internalization. Issues relating to the use of IOIs and SORs by certain marketplaces are being addressed in proposed amendments to NI 21-101 (Proposed NI 21-101 Amendments),[6] which were published for a 90 day comment period that ended on June 16, 2011. CSA staff are currently in the process of reviewing the comments received. The concept of broker preferencing and the internalization of order flow are also currently under review.

A summary of the recommendations in the Position Paper is set out below.

- **Recommendation 1** - The exemption to the pre-trade transparency requirements in NI 21-101 should only be available to an order that meets or exceeds a minimum size (the Dark Order Size Threshold); the Dark Order Size Threshold for posting passive dark orders would apply to all marketplaces, transparent or dark pools, regardless of the method of trade matching (including continuous auction, call or negotiation systems), and to all orders whether they are client, non-client or principal.

- **Recommendation 2** – Two dark orders meeting the Dark Order Size Threshold should be able to execute at the NBBO, and meaningful price improvement should be required in all other circumstances.

- **Recommendation 3** – On a marketplace, visible orders should execute before dark orders at the same price, but two dark orders meeting the Dark Order Size Threshold can be executed at that price ahead of visible orders.

- **Recommendation 4** - Meaningful price improvement should be one trading increment as defined in UMIR;[7] however, for securities with a difference between the best bid price and best ask price of one trading increment, one-half increment will be considered to be meaningful price improvement.

We received 20 comments to the Position Paper from buy and sell-side participants, marketplaces, and trade associations, and an independent consultant. We thank all the commenters. A summary of the comment letters received is included with this notice as well as a list of commenters.

## III. REGULATORY FRAMEWORK FOR DARK LIQUIDITY

This Joint Notice describes and provides rationale for the steps being taken to implement the recommendations in the Position Paper, which is being effected through the Proposed NI 21-101 Amendments and the Proposed UMIR Amendments. The framework for dark liquidity in the Joint Notice and the Proposed UMIR Amendments are guided by the policy considerations outlined in the Position Paper to encourage the posting of orders on marketplaces' visible order books, while at the same time exposing as much liquidity as possible to the widest variety of market participants, including those using dark liquidity.

The Proposed NI 21-101 Amendments facilitate the implementation of Recommendation 1 by proposing a pre-trade transparency exemption that would require that a minimum size threshold be met. The Proposed UMIR Amendments would:

1. facilitate the implementation of Recommendation 1 by permitting IIROC to designate a minimum size for orders that are not displayed in a consolidated market display;

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5 In the Position Paper, a dark pool referred to a marketplace that offers no pre-trade transparency on any orders, and a dark order referred to an order on any marketplace entered with no pre-trade transparency.

6 Published at (2011) 34 OSCB (Supp-1).

7 UMIR Rule 1.1 defines a "trading increment". UMIR Rule 6.1 (1) states: "No order to purchase or sell a security shall be entered to trade on a marketplace at a price that includes a fraction or a part of a cent other than an increment of one-half of one cent in respect of an order with a price of less than $0.50."

2. implement Recommendation 2 by providing that an order entered on a marketplace that trades with a dark order must receive meaningful price improvement, unless the former order exceeds a certain size threshold;

3. implement a variation of Recommendation 3 by providing that an order entered on a marketplace must trade with visible orders on that marketplace before trading with dark orders at the same price on that marketplace;[8]

4. implement Recommendation 4 by revising the definition of *better price* in section 1.1 of UMIR to be at least one trading increment as defined in UMIR or, for securities with a difference between the best bid and best ask price of one trading increment, of at least one-half of one trading increment.

In addition, the Proposed UMIR Amendments would include certain consequential amendments to other UMIR requirements, which are fully described in the IIROC Notice.

**(a) Definition of a dark order**

As set out above, in the Position Paper, we referred to a dark order as an order on any marketplace that is entered with no pre-trade transparency and that is not required to be reported to an information processor or data vendor under the applicable rules. We indicated that a dark order does not include reserve or iceberg orders, as a portion of those orders is always displayed, and thus they contribute to the pre-trade price discovery process. We noted that dark orders can be entered on either a transparent marketplace or in a dark pool.

A few commenters to the Position Paper requested further clarification regarding the types of orders that would be considered dark orders, and specifically whether dark orders would include orders that are immediately filled or cancelled by marketplaces upon receipt (such as market, Immediate or Cancel and Fill or Kill orders). We confirm that immediately executable orders would not be considered dark orders for the purposes of our analysis, even though they do not have pre-trade transparency. Dark orders would also exclude specialty orders that may execute at a price outside the spread, such as orders entered on a matching facility of a marketplace during a separate opening or closing session of a marketplace.

The Proposed UMIR Amendments include a definition of a dark order that reflects these considerations.

**(b) Exemption from the pre-trade transparency requirements in NI 21-101**

Part 7 of NI 21-101 sets out the information transparency requirements for marketplaces trading in exchange-traded securities. One of these requirements is that a marketplace that displays orders of exchange-traded securities must provide information regarding the orders displayed on that marketplace to an information processor.[9] An existing exemption from this requirement is available for orders that are only displayed to a marketplace's employees or those retained by the marketplace to assist in the operation of the marketplace.[10]

In the Position Paper, we recommended that the exemption from the pre-trade transparency requirements only apply to orders that meet the Dark Order Size Threshold. We requested feedback on what this minimum size should be. We also set out our expectation that marketplaces could not aggregate orders to meet the Dark Order Size Threshold and that, once posted, orders should not be changed to a quantity less than this threshold. In addition, where a dark order receives a partial fill which results in the remaining balance being less than the Dark Order Size Threshold, we indicated that the balance of the order could remain dark until fully executed or cancelled.

Approximately a third of the commenters were in favour of limiting the exemption from pre-trade transparency requirements to orders that meet a Dark Order Size Threshold for a number of reasons, including that this approach would help preserve the value and quality of the visible order book. The feedback received with respect to what would constitute an appropriate Dark Order Size Threshold varied, from 50 standard trading units[11] to suggestions that the threshold be based on a percentage of the average daily volume or a multiple of the average order size for a security.

The remainder of the respondents did not support establishing a Dark Order Size Threshold for a variety of reasons, including the small level of activity in dark pools and the lack of evidence of harm to market quality. In addition, some respondents

[8] It should be noted that this is a variation from the recommendation in the Position Paper in that large dark orders would not be able to receive execution priority relative to visible orders at the same price. Further discussion regarding the rationale is included below.

[9] Subsection 7.1(1) of NI 21-101.

[10] Subsection 7.1(2) of NI 21-101. Rule 6.3 of UMIR also requires that a Participant immediately enter on a marketplace that displays orders in accordance with Part 7 of NI 21-101 a client order to purchase or sell 50 standard trading units or less of a security. This requirement is subject to certain exceptions, including when the client as specifically instructed the Participant to deal otherwise with the particular order (e.g. authorized the entry of the order on a dark pool).

[11] In respect to equity securities, UMIR defines a standard trading unit as being: (i) 1,000 units of a security trading at less than $0.10 per unit, (ii) 500 units of a security trading at $0.10 or more per unit and less than $1.00 per unit, and (iii) 100 units of a security trading at $1.00 or more per unit.

indicated that dark pools allowed them to manage the impact costs of implementing trading strategies involving smaller order sizes.

We acknowledge that, to date, there has been limited activity in dark pools and no evidence that dark liquidity, including dark orders in visible marketplaces, has had a negative impact on the Canadian capital market. However, we are of the view that it is important and timely to establish a regulatory framework that can adapt to the changing market structure and developments, including an increasing number of dark pools and growth in the use of dark liquidity. In our view, this regulatory framework should include a requirement that orders meet a certain threshold in order to be entered without being subject to pre-trade transparency requirements. We continue to believe that transparency is a fundamental building block of a fair and efficient market. This has been our view since our consultation process began, and the framework will give regulators the ability to introduce a Dark Order Size Threshold to encourage transparency and to address risks to the quality of the price discovery process.

In order to implement this regulatory framework, the Proposed NI 21-101 Amendments included a requirement that orders meet a minimum size established by a regulation services provider in order to be exempt from the transparency requirements in NI 21-101.[12] No minimum order size was proposed.

In the Proposed UMIR Amendments published today, IIROC is proposing new UMIR Rule 6.5 that would permit IIROC to designate a minimum size for orders that are not displayed in a consolidated market display. The IIROC Notice also includes a description of the process to make a designation or change any designation and indicates that this process would involve consultation with both the public and the CSA. In addition, any size threshold proposed by IIROC would be subject to approval by the CSA. This would ensure that the process is transparent to the public, and that the public and the CSA have an opportunity to provide input.

At this time, neither the Proposed NI 21-101 Amendments nor the Proposed UMIR Amendments have included a specific Dark Order Size Threshold. However, in the coming months, we will examine the Canadian market and monitor market developments and regulatory approaches in other jurisdictions to determine the appropriate threshold.[13]

**(c) Price improvement by a dark order**

Currently, orders posted in existing dark pools provide price improvement of at least 10% of the NBBO spread to all orders that execute against them. Dark orders entered on transparent marketplaces also provide price improvement, but have historically been permitted to trade at the NBBO, regardless of their size, as long as all visible orders and displayed portions of iceberg orders at the same price on that marketplace have been executed first.

In the Position Paper, we recommended that two dark orders should be allowed to trade at the NBBO only if both sides of the trade meet the Dark Order Size Threshold. We also recommended that meaningful price improvement should be provided by dark orders in all other circumstances. We indicated that both orders trading at the NBBO must be marked as “dark” to ensure that only those orders specifically utilizing the recommended minimum size exemption can do so, and not traditional liquidity-removing orders. Our position acknowledged that the execution of dark orders meeting the Dark Order Size Threshold contributes to the price discovery process through immediate post-trade transparency. In addition, it was our view that the size of the transaction may provide sufficient information to participants to stimulate further trading that might not otherwise have occurred in the absence of such a large-sized execution. These factors, in our view, justified allowing the execution of large dark orders without price improvement. We also discussed what would be considered to be meaningful price improvement.

The majority of the commenters supported the position that two dark orders meeting the Dark Order Size Threshold should be able to execute at the NBBO and that meaningful price improvement should be required in all other circumstances. A few, however, were not supportive, with one commenter being of the view that dark orders should be able to execute at the NBBO regardless of size.

We maintain our view that a dark order could execute at the NBBO in certain circumstances. The Proposed UMIR Amendments would require, subject to certain exceptions, that an order entered on a marketplace that trades with an order that has not been displayed in a consolidated market display either receive price improvement, or be for more than 50 standard trading units or have a value of more than $100,000. We are not requiring that such orders be marked “dark” in order to be able to trade with a passive dark order at the NBBO, as was recommended in the Position Paper. The requirement to mark these orders as “dark” was based on the fact that the Position Paper also recommended that two large dark orders meeting the Dark Order Size

[12] See proposed amendments to sections 7.1 and 7.3 of NI 21-101.

[13] Notwithstanding that no Dark Order Size Threshold has been established, dealers that are Participants under UMIR will continue to be subject to the existing “Order Exposure Rule” that requires client orders for 50 standard trading units or less of a security to be immediately entered on a transparent marketplace. The rule is subject to a number of exceptions, including when the client has specifically instructed the Participant to deal otherwise with the particular order or the Participant executes the order upon receipt at a better price. IIROC accepts that a Participant may check a Dark Pool for a better price but any unexecuted portion of the order must then be entered on a marketplace that provides order transparency.

Threshold could execute at the NBBO ahead of visible orders at the same price. As will be discussed in the following section, we have revised our position with respect to the priority of order execution at the NBBO, and are of the view that visible orders on the same marketplace at the same price should always have priority. As such, it would be unnecessary to require a marketable order executing at the NBBO to be marked "dark", as it will be required to first displace any visible orders on that marketplace at the same price.

We acknowledge that requiring price improvement in specific cases may impact certain marketplaces' business models, as some transparent marketplaces offering dark order types currently allow marketable orders of any size to trade with a dark order at the NBBO. We are of the view, however, that any associated cost is justified for the reasons outlined above. As result, existing marketplaces that allow smaller orders to trade with dark orders at the NBBO would not be grandfathered from this requirement.

**(d) Execution priority of orders entered on the same marketplace at the same price**

In the Position Paper, we expressed our view that visible orders on a marketplace should execute before dark orders at the same price on the same marketplace. We recommended an exception for two dark orders meeting the Dark Order Size Threshold to acknowledge the contribution such orders have to the price and size discovery process.

The majority of commenters were supportive of the above recommendation. A few supported the concept of visible orders executing before dark orders, but did not support an exception for two large dark orders.

We continue to be of the view that visible limit orders should execute before dark orders when they are on the same marketplace and at the same price. Proposed UMIR Rule 6.6, part of the Proposed UMIR Amendments, would introduce a formal requirement that visible orders receive execution priority relative to dark orders, when they are on the same marketplace and at the same price. This priority may not be circumvented by any dark orders, regardless of their size. This is a variation from our original recommendation in the Position Paper. After reviewing the comments received and the IOSCO Principles on Dark Liquidity,[14] we have reconsidered our position and are of the view that visible limit orders should always have priority over dark orders. This priority encourages visible liquidity in marketplaces and is fundamental to the protection of the price discovery process.

**(e) Meaningful price improvement**

Currently, orders posted in existing dark pools provide price improvement to all orders that execute against them. Additionally, dark orders entered on transparent marketplaces may also trade against other orders at the NBBO, regardless of their size, as long as all visible and displayed portions of iceberg orders at the same price on that marketplace have been executed first. The amount or percentage of price improvement is at the discretion of the marketplace and may be as low as 10% over the NBBO.

In the Position Paper, we discussed that one of the factors to be considered in determining what level of price improvement might be considered "meaningful" is examining whether there is a "tipping point" at which the individual benefit to an order receiving price improvement becomes outweighed by the risks to the overall quality of the market if increased numbers of orders are entered on marketplaces without pre-trade transparency. If small fractions of price improvement can facilitate an execution in front of a visible quote, the incentives to displaying a visible quote may be weakened. Our view, as expressed in the Position Paper, was that meaningful price improvement occurs when the price is improved over the NBBO by a minimum of one trading increment as defined in UMIR, except where the NBBO spread is already one trading increment. In that case, meaningful price improvement would be at least half of the applicable trading increment.

Comments received on the above recommendation were mixed. Many were in favour of the recommendation regarding price improvement. Some agreed that there should be meaningful price improvement, but did not support the CSA and IIROC's view regarding the amount. A few commenters did not agree with the notion of meaningful price improvement and indicated that any dark order should be allowed to execute at the NBBO.

After considering the comments received, we continue to be of the view that price improvement must be meaningful in order to avoid or minimize harm to the price discovery process through the increasing use of dark liquidity. One of the goals of our recommendation in the Position Paper was to limit the practice of providing increasingly smaller amounts of price improvement to achieve execution in front of visible orders and consequently decreasing the incentive to enter visible orders.

We do not believe that price improvement below one trading increment (except when the spread is at one trading increment) is meaningful to ensure that the benefit to investors from receiving price improvement outweighs the cost, whether quantified or unquantified,[15] of lost opportunities to trade because of dark orders offering minimal price improvement "jumping the queue".

[14] Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD336.pdf

[15] For example, an investor posting a non-marketable limit order may incur the unquantifiable loss of missing an execution if a dark order steps in front of their order and provides a minimal amount of price improvement to the contra-side marketable order that would have

As a result, we are moving forward with defining meaningful price improvement as proposed in the Position Paper. To implement this recommendation and the level of price improvement in the Position Paper, it is proposed that the definition of "better price" in UMIR be revised through the Proposed UMIR Amendments.

Dark orders on all marketplaces would have to provide this level of price improvement, including orders entered on dark pools and orders entered on transparent marketplaces offering dark order types. This requirement would also level the playing field between dark pools and transparent marketplaces, as they each could provide functionality allowing dark orders to trade at the NBBO in certain circumstances, and in all other circumstances provide price improvement of at least one half of the trading increment, which in some cases may be less than one penny.

## IV. INTERNATIONAL DEVELOPMENTS

### (a) IOSCO Principles on Dark Liquidity

On May 20, 2011, the Technical Committee of the International Organization of Securities Commissions (IOSCO) published a final report, Principles on Dark Liquidity, containing principles to assist securities markets authorities in dealing with issues concerning dark liquidity.

We believe that, if implemented, the Proposed NI 21-101 Amendments and the Proposed UMIR Amendments would compliment the existing regulatory structure governing dark liquidity and increase consistency with the principles of the Technical Committee by:

- establishing a regulatory framework that would allow dark liquidity but manage its impact on price discovery, fairness and overall market quality; and
- mandating that transparent orders would have priority over dark orders at the same price within a marketplace, and thus promoting the use of transparent orders.

In this section, we have identified each IOSCO principle and have discussed the Canadian regulatory approach.

*IOSCO Principle 1: The price and volume of firm orders should generally be transparent to the public. However, regulators may choose not to require pre-trade transparency for certain types of market structures and orders. In these circumstances, they should consider the impact of doing so on price discovery, fragmentation, fairness and overall market quality.*

***Canadian regulatory approach***

In our view, the Canadian approach both currently in place and as proposed meets this principle. With respect to existing requirements, NI 21-101 requires that information relating to all orders be provided to and publicly disseminated by an information processor, unless that order is shown only to the employees of a marketplace, or a person or company retained to assist with its operation. As such, while pre-trade transparency is generally required, our existing regulatory framework, and specifically the exemption described above, permits the existence of dark pools and dark orders.

In addition, Rule 6.3 of the UMIR *Exposure of Client Orders* (the Order Exposure Rule) promotes transparency of small-sized orders, by requiring that a Participant immediately enter on a marketplace that displays orders a client order to purchase or sell 50 standard trading units or less unless, among other exceptions, the Participant provides price improvement to that order.

New requirements have been proposed only after extensive consideration of the impact of dark liquidity on price discovery, fairness and market quality. The CSA proposal to introduce a minimum size threshold in order to be exempt from the transparency requirements in NI 21-101, along with the Proposed UMIR Amendments that would permit IIROC to designate a minimum size for such orders, would establish a new framework which seeks to balance the desire of participants to use dark liquidity and the potential negative impact on overall market quality.

*IOSCO Principle 2: Information regarding trades, including those executed in dark pools or as a result of dark orders entered in transparent markets, should be transparent to the public. With respect to the specific information that should be made transparent, regulators should consider both the positive and negative impact of identifying a dark venue and/or the fact that the trade resulted from a dark order.*

executed against the investor's order. To avoid this potential outcome, the investor could adjust the limit price of its order and pay the full spread, thus incurring a quantifiable loss.

***Canadian regulatory approach***

NI 21-101 requires that information regarding all trades, including those executed on transparent marketplaces or dark pools, be disseminated to an information processor for inclusion in consolidated information in real time. Trade information is also disseminated by data vendors and includes all pertinent information including the identity of the marketplace, the security's symbol, quantity, price and time.

*IOSCO Principle 3: In those jurisdictions where dark trading is generally permitted, regulators should take steps to support the use of transparent orders rather than dark orders executed on transparent markets or orders submitted into dark pools. Transparent orders should have priority over dark orders at the same price within a trading venue.*

***Canadian regulatory approach***

In Canada, there are already a number of incentives to foster the use of transparent orders, such as the Order Exposure Rule discussed above, as well as the Order Protection Rule (OPR)[16] which requires marketplaces to have policies and procedures that are reasonably designed to prevent trade-throughs. Specifically, OPR ensures that immediately accessible, visible, better-priced limit orders are executed prior to inferior-priced limit orders.

We currently require and the Proposed UMIR Amendments would codify that visible orders must be given priority over dark orders at the same price on the same marketplace. Specifically, an order entered on a marketplace must trade with visible orders on that marketplace before trading with dark orders at the same price on that marketplace.

*IOSCO Principle 4: Regulators should have a reporting regime and/or means of accessing information regarding orders and trade information in venues that offer trading in dark pools or dark orders.*

***Canadian regulatory approach***

IIROC receives, in real-time, order and trade information from all marketplaces, including dark pools. In addition, alternative trading systems are currently required by NI 21-101 to provide to the CSA quarterly reports regarding trade information. In the Proposed NI 21-101 Amendments, the CSA proposed to enhance this reporting to include additional information regarding dark orders and trading activity to give us an overview of the activities of marketplaces.[17]

*IOSCO Principle 5: Dark pools and transparent markets that offer dark orders should provide market participants with sufficient information so that they are able to understand the manner in which their orders are handled and executed.*

***Canadian regulatory approach***

In the Proposed NI 21-101 Amendments, the CSA proposed that all marketplaces, including dark pools and transparent marketplaces that offer dark orders, disclose on their website information regarding their operations, including a description of how orders are entered, how they interact and execute, the order types they offer, and the marketplaces' access requirements.

*IOSCO Principle 6: Regulators should periodically monitor the development of dark pools and dark orders in their jurisdictions to seek to ensure that such developments do not adversely affect the efficiency of the price formation process, and take appropriate action as needed.*

***Canadian regulatory approach***

The CSA and IIROC monitor closely the trading activity on all marketplaces, including dark pools and transparent marketplaces offering dark order types. We review the operations of marketplaces that propose to operate in Canada, including dark pools, before they commence their operations. We also review changes to existing marketplace operations, which may include new order types or changes to order types. Our review allows us to understand the impact of dark pools and dark orders in the Canadian capital market, and to take appropriate action when there is a risk that such developments may have a negative impact on the quality of the Canadian capital market.

**(b) Other Relevant Current International Work**

The proposed regulatory framework related to dark liquidity is also consistent with steps being considered or taken by other regulatory authorities. For example, the Australian Securities and Investments Commission (ASIC) released, on April 29, 2011, new market integrity rules for competition in exchange markets.[18] ASIC has introduced requirements with respect to pre-trade

[16] National Instrument 23-101 *Trading Rules*, Part 6.

[17] Proposed Form 21-101F3 *Quarterly Report of Marketplace Activities*, available at (2011) 34 OSCB (Supp-1), beginning at page 57.

[18] Available at http://www.asic.gov.au/asic/ASIC.NSF/byHeadline/Market%20integrity%20rules.

transparency, and has specifically introduced a framework which includes a minimum threshold for exemption from the pre-trade transparency requirements, initially set at zero. This will enable ASIC to respond quickly if there is a shift of liquidity from the pre-trade transparent market in the short term at a level that would affect the price formation process. ASIC intends to undertake further consultation in Q3 of this year taking account of the responses it received to its earlier consultation with the aim of adopting revised rules in early 2012.

In Europe, Directive 2004/39/EC, promulgated under the Markets in Financial Instruments Directive (MiFID), is being reviewed by the European Commission and the European Securities and Markets Authority (ESMA). As part of its own review, ESMA published a consultation paper[19] on equity markets which includes, among other things, the examination of existing pre-trade transparency waivers provided under MiFID and policy options regarding crossing systems and processes operated by investment firms. In July 2010, EMSA published a report[20] in which it recommended, among others, that the existing exceptions to pre-trade transparency continue to be allowed under certain circumstances, and that the European Commission undertake or commission further analytical work regarding the existing thresholds.

On February 18, 2011, the Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues presented its summary report, containing 14 recommendations regarding regulatory responses to the market events of May 6, 2010.[21] The Committee's report included the following two recommendations:

> 11. The Committee recommends that the SEC conduct further analysis regarding the impact of a broker-dealer maintaining privileged execution access as a result of internalizing its customer's orders or through preferencing arrangements. The SEC's review should, at a minimum, consider whether to (i) adopt its rule proposal requiring that internalized or preferenced orders only be executed at a price materially superior (*e.g.*, 50 mils for most securities) to the quoted best bid or offer, and/or (ii) require firms internalizing customer order flow or executing preferenced order flow to be subject to market maker obligations that require them to execute some material portion of their order flow during volatile market periods.
>
> 12. The Committee recommends that the SEC study the costs and benefits of alternative routing requirements. In particular, we recommend that the SEC consider adopting a "trade at" routing regime. The Committee further recommends analysis of the current "top of book" protection protocol and the costs and benefits of its replacement with greater protection to limit orders placed off the current quote or increased disclosure of relative liquidity in each book.

To date, the SEC has not proposed any rules or regulations based on these two recommendations, and we will continue to monitor regulatory developments in the United States on these and other key issues.

## V. CONCLUSION

Market structure in Canada has experienced many new developments, including the increased use of dark liquidity, whether in dark pools or as dark orders on transparent marketplaces. Our regulatory objectives in undertaking a review of dark liquidity were to establish a framework which recognizes the need for dark liquidity, promotes innovation and accommodates different market models and marketplace features, while at the same time protecting the integrity of the price discovery process.

We believe that the Proposed NI-21-101 Amendments and the Proposed UMIR Amendments will establish this framework. We recognize the benefits of dark liquidity, and the fact that it is still a small component of the existing market structure. However, we continue to be of the view that it is critical to introduce a framework for our market that fosters fairness, efficiency and confidence. In our view, the framework being proposed will achieve this goal by protecting price discovery and market quality. It will:

- encourage the use of visible orders, by ensuring the priority of visible orders over dark orders at the same price on the same marketplace;
- acknowledge the contribution of dark orders to the post-trade price discovery process and their value to certain investors; and
- ensure meaningful price improvement and level the playing field between transparent marketplaces and dark pools.

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[19] CESR consultation paper ref: CESR/10-394, *CESR Technical Advice to the Commission in the Context of the MiFID Review – Secondary Markets*, April 2010, available at http://www.esma.europa.eu.

[20] CESR Technical Advice to the European Commission in the Context of the MiFID Review and Responses to the European Commission Request for Additional Information, available at http://www.esma.europa.eu/index.php?page=document_details&from_title=Documents&id=7003.

[21] Published at: http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/jacreport_021811.pdf

## VI. QUESTIONS

Questions may be referred to any of:

| | |
|---|---|
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**SUMMARY OF PUBLIC COMMENTS**
**ON JOINT CANADIAN SECURITIES ADMINISTRATORS/**
**INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**
**JOINT POSITION PAPER 23-405 – DARK LIQUIDITY IN THE CANADIAN MARKET**

### 1. General Comments

Many commenters were in support of the recommendations in the Position Paper and thought that the proposals strike an appropriate balance between the objectives of promoting price discovery and the facilitation of large sized trades with minimal market impact. A few commenters recommended that regulators consider investigating the reason for which small orders are sent for execution away from visible marketplaces and suggested that these marketplaces' fee models may be a reason. Some commenters suggested that the appropriateness of the maker-taker model (where a marketplace's fee model gives passive orders a trading fee rebate upon execution which is paid by the active trades) also be reviewed. Others suggested that regulators also scrutinize internalization, broker preferencing and the use of indications of interest. They suggested that any regulatory proposals regarding dark liquidity be considered as part of the overall regulatory framework that includes these issues.

***Response***

*As we indicated in the Joint Notice, CSA staff are currently reviewing other issues noted by the commenters, such as the concept of broker preferencing and the internalization of order flow. In addition, the Proposed NI 21-101 Amendments include further guidance on the use of indications of interest (IOIs), including when an IOI would be considered a firm order, and included a requirement that a marketplace disclose when they disseminate IOIs, including the information included in these IOIs and the types of recipients of this information.*

*We acknowledge the concerns raised regarding marketplace fee models, and particularly the "maker-taker" model. We note that, as part of our ongoing policy work, we have been examining marketplace fee models to assess what, if any, regulatory response is needed.*

Most commenters thought that dark pools are valuable tools that provide dealers additional options as to where to trade and, in turn, increase the options available to investors for executing their strategies. In addition, some thought that dark pools are a valuable tool to manage escalating costs. A number of commenters noted that some of the assumptions about the purpose of dark liquidity that were made in the Position Paper may no longer be valid in light of market developments. For example, they suggested that the initial rationale for the introduction of dark pools and dark order types, which was to facilitate the execution of large orders and to enable more participants to interact with previously unavailable liquidity, is of little relevance in light of the changes that have occurred in the Canadian capital market in recent years.

Many commenters indicated that the level of activity on dark pools in Canada has been low and there has been no evidence of harm to the price discovery process. As a result, a few commenters believed that there is no strong need for any significant regulatory changes to the current Canadian framework for dark liquidity at this time.

***Response***

*We agree that the use of dark pools is broader than their initial purpose. The regulatory framework we have proposed acknowledges the contribution of dark orders to the post-trade price discovery process, while at the same time promoting price discovery and market quality.*

*We acknowledge that, to date, there has been limited activity in dark pools and no evidence that dark liquidity has harmed the integrity of our market, including the quality of the price discovery process. However, we believe that it is appropriate and timely to establish a framework within which dark liquidity can be utilized to the benefit of marketplace participants and grow without negatively impacting market quality.*

Some commenters acknowledged that regulators are addressing similar market structure issues globally, but stressed the importance of focusing on the unique characteristics of local markets, including our regulatory framework: for example, it was noted that Canada has fair access rules and post-trade transparency requirements that require identification of the marketplace. One commenter suggested that this framework, subject to certain enhancements such as mandatory disclosure of the operations of dark pools including allocation methodology, and additional reporting requirements for dealers and marketplaces regarding dark order usage, would provide significant protection to investors.

***Response***

*We believe that the proposed regulatory framework for dark liquidity compliments the existing regulatory structure in Canada, which includes fair access requirements and post-trade transparency. We share the view expressed by some of the commenters that additional transparency of the operations of Dark Pools, including how orders are allocated, would be beneficial. To this extent, in the Proposed NI 21-101 Amendments, the CSA proposed additional transparency of marketplace operations, including how orders are entered, interact and execute on a marketplace.*[22] *The CSA also proposed enhancements to Form 21-101F3, a quarterly report currently filed by ATSs, which would be filed by all marketplaces, and will allow the regulators to gather data in a regular and timely manner regarding dark liquidity so we can monitor its use over time.*

Finally, some commenters cautioned about the unintended consequences of imposing restrictions on the use of dark liquidity, which may be: an increase in the internalization of dealers' order flow, or regulatory arbitrage for inter-listed securities. Additionally, order flow in inter-listed securities could be directed south of the border, and could possibly be sold or routed to U.S. dark and crossing markets.

*We have addressed these comments individually below.*

**2. Recommendation 1 – Dark order size threshold**

Approximately one-third of the comments received were in support of establishing a Dark Order Size Threshold. Opinions were mixed however, on the appropriate size for the threshold. A few suggested that the size threshold should be based on the characteristics of the individual security, and some suggested a measure such as the average daily volume for the security. Other commenters believed that the threshold should be much closer to the smaller average trade sizes in today's market (for example, one commenter noted that, given that the average trade sizes are trending between 200-400 shares, a more appropriate minimum size threshold could be 500, which is greater than the average order size on displayed marketplaces). In contrast, other commenters thought that 50 standard trading units, the size we used as an example in the Position Paper, was

[22] See section 10.1 of the proposed amendments to NI 21-101.

too low and that the threshold should be higher. One thought a more appropriate minimum size should be 10,000 shares with a minimum value of $100,000, and another suggested that the threshold should not be less than the greater of: (i) 50 standard trading units; or (ii) $100,000.

Despite the differing opinions on the size, many of those who supported having a Dark Order Size Threshold did so on the basis that it is important to incent the placement of orders on the visible marketplaces as they are an important component of the price discovery process. One commenter expressed concern that the Canadian market model would move towards the U.S. model, which they believed has led to the erosion of the value of the U.S. visible market. Another commenter noted that regulators should evaluate whether the benefits of any new systems proposed by marketplace participants are worth the potential cost in the reduction of transparency.

***Response***

*While we have not introduced a Dark Order Size Threshold at this time, we will monitor market developments, including international regulatory developments, to determine an appropriate threshold. We acknowledge and will consider the suggestions above in any threshold we will propose. As we noted in the Joint Notice, the process to establish any Dark Order Size Threshold will be subject to approval by the CSA and will involve consultation with the public.*

The majority of commenters did not support a Dark Order Size Threshold for a variety of reasons which are summarized below.

Risk of information leakage

It was noted that, when the size restriction would apply only to passive order flow, and not to active orders that are directed to a marketplace, small pinging orders may be sent to a marketplace to detect the presence of a dark order. With knowledge of the Dark Order Size Threshold applicable to a passive dark order, market participants would gain immediate information regarding the size of the dark order. This could result in an increased use of minimum fill constraints on resting dark orders, which would result in a lower retail order fill rate. It may also result in large orders remaining on trading desks of dealers and portfolio managers rather than entered on a marketplace, and would reduce available liquidity.

***Response***

*We acknowledge the concerns raised with the potential for information leakage due to the imposition of a minimum size only for passive (posted) orders. While we understand that marketplaces generally have tools to limit gaming and marketplace participants may have strategies to reduce the risk of being gamed, we will consider how to mitigate this risk at the time a Dark Order Size Threshold is proposed. For example, we will consider whether small, "child" orders of parent orders that exceed the size threshold could be posted without pre-trade transparency even if these child orders are below the minimum size.*

Risk of liquidity migration

A number of commenters expressed concern that any regulation of dark liquidity that is more restrictive than in the U.S. could result in a loss of order flow for Canadian marketplaces on inter-listed securities. On a related note, commenters also discussed the U.S dark liquidity model which has allowed retail orders to be traded at lower costs for the dealers. One commenter expressed a concern that dealers might form private internalization systems as an alternative method of dealing with a more restrictive framework.

***Response***

*We acknowledge the concerns raised; however, we note that dealers' best execution obligation to their clients should govern any decisions on where and how to execute their trades. Both subsection 1.1.1 of the Companion Policy to National Instrument 23-101 Trading Rules and Policy 5.1 of UMIR indicate that one of the factors that a market participant, including a dealer, would be expected to take into account in seeking the most advantageous execution terms for a client would include speed of execution and the overall cost of the transaction. Dealers would have to justify any decisions on how they directed order flow in the context of best execution requirements. The factors to be considered do not include transaction costs to the dealer that are not passed on to a client.*

No evidence of harm

A common theme amongst commenters not supporting a Dark Order Size Threshold was that there is no evidence of harm to the visible market or the price discovery process due to the use of dark orders. Additionally, given the limited use of dark orders in Canada, many commenters believed that regulatory changes are not needed at this time.

***Response***

*We acknowledge that the level of activity in dark pools has been limited and we plan to continue to gather data regarding the volume of dark liquidity on all marketplaces. However, we are of the view that this is an appropriate time to establish the regulatory framework, through the Proposed UMIR Amendments and Proposed NI 21-101 Amendments.*

New rationale for use of dark orders

Commenters noted that the initial rationale for using dark orders has changed, and that this rationale may have little importance. Commenters indicated that optimal execution strategies on some securities might be to break a larger order into smaller pieces and trade some portion in the visible market, and some in the dark market. Others noted that mandating a Dark Order Size Threshold may not have the desired effect of having more small orders placed on the visible market, and in fact a greater number of orders may be held back entirely in the upstairs market.

***Response***

*We recognize that marketplace participants are using dark orders for differing purposes, some of which go beyond the initial rationale. It is clear that the evolution of our market has resulted in new trading strategies many of which utilize small dark orders, to obtain best execution. However, we maintain our belief that a continued increase in use of small dark orders which could otherwise be directed to visible marketplaces, has the potential to compromise the quality of our visible market. Although we do not believe our market is at a level where the use of dark versus visible strategies has become unbalanced to the detriment of market quality, as stated above, we propose to establish a framework which would allow us to react accordingly as the evolution of trading continues.*

Best execution

Some commenters believed that it is the job of the trader to manage an order and to ensure best execution of orders on behalf of clients. Best execution may demand that smaller orders are placed as dark orders. These commenters did not support regulation that would reduce the options available to traders to achieve best execution. One commenter believed that under UMIR 6.3(e), a dealer is permitted to determine whether the entering of an order would be in the best interest of a client, and therefore noted that provisions already exist which support the idea that traders should be able to protect their clients interests, even if those order sizes do not meet the threshold.

***Response***

*We recognize that the best execution of an individual client order may involve different strategies depending on a number of factors. However, this must be balanced with a view to the public interest and the need for a regulatory environment that ensures fairness and the protection of market quality for all investors. We believe that the framework proposed will give us the flexibility required to ensure a proper balance.*

**3. Recommendation 2 – Price improvement by dark orders**

The majority of commenters were supportive of the recommendation in the Position Paper that two dark orders meeting the Dark Order Size Threshold should be able to execute at the NBBO, while meaningful price improvement should be required in all other circumstances. One commenter noted that this recommendation is no different than what can be accomplished in the upstairs market by a single dealer putting together a block. Another commenter supported a provision whereby participants could “look back” to an already agreed price, in the cases where a quote moves before an execution can occur. Additionally, one response indicated that all reference-priced dark orders, regardless of their size, should be allowed to execute at the NBBO.

Some responses received did not support this recommendation. One commenter believed that any visible order should execute before a dark order on the same marketplace, as this was more consistent with other recommendations set out in the Position Paper. Another commenter was supportive of the concept of dark orders trading at the NBBO if meeting a minimum size, and did not believe that price improvement should be required in other cases.

***Response***

*We are of the view that an order should be able to execute with a dark order at the NBBO only as long as it is of a minimum size. This is consistent with the objective in the Position Paper to encourage posting of visible limit orders, but also acknowledges the contribution that large order executions make to the price and size discovery process through post-trade transparency. The Proposed UMIR Amendments would implement this by introducing the requirement that any order that trades with a dark order, as defined in the Proposed UMIR Amendments, would have to receive price*

*improvement unless the order entered on the marketplace is for more than 50 standard trading units or has a value of more than $100,000.*

**4. Recommendation 3 – Execution priority of orders entered on the same marketplace at the same price**

The majority of commenters were supportive of the recommendation in the Position Paper that visible orders on a marketplace should execute before dark orders at the same price on the same marketplace, with an exception made for two dark orders meeting the Dark Order Size Threshold. Some commenters believed that this should encourage the posting of limit orders on the visible market, and enhance the price discovery process. A few commenters supported the concept of visible orders executing before dark orders, but did not support an exception for two large dark orders.

Some commenters disagreed with this recommendation. Reasons given included:

- the fact that execution priorities should be determined by the individual marketplaces provided that these priorities are clearly disclosed;
- the ability to trade two large dark orders at the NBBO should be sufficient to meet the objectives of recognizing the value of large executions to both price and size discovery, but allowing two large dark orders to execute in front of visible orders would essentially be regulation determining allocation methodologies; and
- enforcing "lit before dark" would shift dark orders away from visible marketplaces to either certain dark pools, or to visible trading venues with less liquidity; this commenter also believed that a "trade-at" rule like that proposed by the SEC was the only correct approach if visible before dark executions were required.

A number of commenters also noted that the CSA and IIROC should examine situations where a marketplace operates multiple order books, to ensure that this is not done as a means to avoid regulatory requirements.

***Response***

*We continue to be of the view that visible limit orders should execute before dark orders when they are on the same marketplace and at the same price. We note that the allocation rules or practices of existing marketplaces already ensure that this priority is respected; however, we are of the view that priority of visible limit orders is a key component of the regulatory framework we are proposing for dark liquidity and, for this reason, it should be codified. The Proposed UMIR Amendments would require that an order entered on a marketplace must trade with visible orders on that marketplace before trading with dark orders at the same price on that marketplace.*

*We agree with the commenters who suggested that visible orders should always receive execution priority when entered at the same price and on the same marketplace as dark orders, regardless of the size of these dark orders. We note that this is also consistent with one of the IOSCO principles for dark liquidity which states that transparent orders should have priority over dark orders at the same price within a trading venue. After further consideration of the issue, and in light of both the comments received and the IOSCO principle, we are varying our initial recommendation in the Position Paper and do not propose that large-sized dark orders be allowed to receive execution priority relative to visible orders. It is our view that there should be adequate incentives to enter visible order limits in order to protect the quality of our visible order books, and giving such orders execution priority in all circumstances would help meet this objective.*

*We recognize the concerns with respect to marketplaces operating multiple order books and the need to monitor the use of these marketplaces to ensure that they are not using their facilities to circumvent this priority. We note that currently, where marketplaces operate multiple books, these are operated as separated marketplaces, and priority of visible orders over dark orders is respected in each. If this changes in the future and marketplaces begin integrating different order books, we will consider providing guidance regarding the allocation priority across multiple order books operated by the marketplace.*

**5. Recommendation 4 - Meaningful price improvement**

Comments received on the recommendation in the Position Paper about what should be considered a meaningful level of price improvement were split. Those commenters who did not support the recommendation expressed the following reasons:

- some believed that meaningful price improvement should take into account underlying costs and rebates set by marketplaces;
- one commenter suggested that a percentage benchmark against the trading price be established in respect of what is considered meaningful;

- others believed that meaningful price improvement should be looked at alongside the maker-taker fee model of marketplaces in order to take a holistic view of the trade; and

- one commenter did not believe in the concept of meaningful price improvement at all, and felt that dark orders should be able to execute at the NBBO regardless of size.

One commenter who favoured the recommendation believed that "meaningful" also includes a consideration as to whether price improvement offers an appropriate incentive to ensure the health of the pricing mechanism, and that as the level of price improvement shrinks, the balance begins to shift towards harming the price discovery process. However, the same commenter also did not support the position that meaningful price improvement would be at the mid-point when the spread was already at the minimum increment. This commenter believed that the minimum meaningful increment should not be dependent on the spread.

***Response***

*We are of the view that price improvement must be meaningful in order to manage the risk of harm to the price discovery process. One of the goals of our recommendation in the Position Paper was to limit the practice of providing increasingly smaller amounts of price improvement to achieve execution in front of visible orders and consequently decrease the incentive to enter visible orders.*

*We continue to be of the view that meaningful price improvement should be at least one trading increment (as defined in UMIR) over the NBBO except where the NBBO spread is already one trading increment, in which case the price improvement would be at least at the mid-point of the applicable trading increment. One of our regulatory objectives is to maintain confidence in our market. We are of the view that requiring a higher level of price improvement by dark orders resting inside of a visible quote would increase investor confidence in the quality of our market, as visible limit orders would not lose execution to orders priced better by only small fractions of a penny. We believe that this will encourage market participants to post visible limit orders and protect the quality of the visible order book.*

*We acknowledge that the maker-taker fee model of a marketplace has an impact on the costs paid by dealers to trade on a marketplace. Some commenters also noted that rebates received by liquidity providers on a marketplace are generally not passed on to the dealers' clients. However, we believe that a marketplace's fee model and the corresponding impact on the costs of the executing dealer are separate considerations from determining an appropriate level of price improvement received by the client. In most cases, the end client neither pays the active trading fee, nor receives the passive rebate, and thus we do not agree with the view expressed by some commenters that meaningful price improvement should be reviewed along with the maker-taker fee model as part of the same consideration. We note, however, that marketplaces' trading fee models are being examined in order to understand what, if any, regulatory action is needed.*

## LIST OF COMMENTERS

1. AMR Associates Inc.
2. Alpha ATS
3. BMO Nesbitt Burns Inc.
4. Buy-Side Investment Management Association
5. CIBC World Markets Inc.
6. CNSX Markets Inc.
7. Chi-X Canada ATS Limited
8. Canadian Security Traders Association
9. Connor, Clark & Lunn Investment Management Ltd.
10. Goldman Sachs Canada Inc.
11. ITG Canada
12. Investment Industry Association of Canada
13. Liquidnet Canada Inc.
14. Portfolio Management Association of Canada
15. RBC Dominion Securities
16. Scotia Capital Inc.
17. TD Asset Management Inc.
18. TD Bank Financial Group
19. TMX Group
20. TriAct Canada Marketplace

## 1.3 News Releases

### 1.3.1 Canadian Securities Regulators Proceed With Enhanced Executive Compensation Disclosure Requirements

**FOR IMMEDIATE RELEASE**
**July 22, 2011**

**CANADIAN SECURITIES REGULATORS PROCEED WITH**
**ENHANCED EXECUTIVE COMPENSATION DISCLOSURE REQUIREMENTS**

**TORONTO** – The Canadian Securities Administrators (CSA) announced today it is implementing amendments to Form 51-102F6 *Statement of Executive Compensation*, which will provide investors with enhanced information on the key risks, governance matters and compensation practices of publicly listed companies.

A key amendment to the Form, which will come into effect October 31, 2011, is to require public companies to disclose to investors whether their board of directors adequately considered the implications of the risks associated with the company's compensation policies and practices. Public companies will also be required to provide investors with greater details on the fees paid to outside compensation consultants.

"Greater transparency on the compensation policies of public companies will allow investors to make better informed voting and investment decisions, and will help them determine whether management's incentives are aligned with their interests," said Bill Rice, Chair of the CSA and Chair and CEO of the Alberta Securities Commission.

In developing the new requirements, the CSA considered the findings of its 2009 targeted compliance review of a sample of public companies' executive compensation disclosure. The CSA also considered a number of recent international developments in executive compensation disclosure.

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

**For more information:**

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416-593-2361

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Autorité des marchés financiers
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Mark Dickey
Alberta Securities Commission
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Wendy Connors-Beckett
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Natalie MacLellan
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Office of the Attorney General
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Financial Services Regulation Div.
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Ken Kilpatrick
Yukon Securities Registry
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Louis Arki
Nunavut Securities Office
867-975-6587

Donn MacDougall
Northwest Territories Securities Office
867-920-8984

## 1.4 Notices from the Office of the Secretary

### 1.4.1 L.T.M.T. Trading Ltd. et al.

**FOR IMMEDIATE RELEASE**
**July 21, 2011**

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

**AND**

**IN THE MATTER OF**
**L.T.M.T. TRADING LTD. also known as**
**L.T.M.T. TRADING and BERNARD SHAW**

**TORONTO** – Following the hearing held on July 20, 2011, the Commission issued an Order in the above named matter which provides that:

(a) pursuant to subsection 127(1)2, trading in any securities by the Respondents shall cease permanently;

(b) pursuant to subsection 127(1)2.1, the acquisition of any securities by the Respondents shall cease permanently; and

(c) pursuant to subsection 127(1)3, any exemptions in Ontario securities law do not apply to the Respondents permanently.

A copy of the Order dated July 20, 2011 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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Dylan Rae
Media Relations Specialist
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OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

### 1.4.2 Innovative Gifting Inc. et al.

**FOR IMMEDIATE RELEASE**
**July 22, 2011**

**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** – Following the hearing held on July 20, 2011, the Commission issued an Order in the above named matter which provides that the dates previously scheduled for the hearing on the merits of this matter are vacated; and a conference call be scheduled for July 27, 2011 at 10:00 a.m. to review the status of Hewitt's health in relation to her ability to attend the hearing on the proposed hearing dates of August 3, 4, 5 and 15, 2011.

A copy of the Order dated July 20, 2011 is available at **www.osc.gov.on.ca**.

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### 1.4.3 MBS Group (Canada) Ltd. et al.

**FOR IMMEDIATE RELEASE**
**July 26, 2011**

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

**AND**

**IN THE MATTER OF**
**MBS GROUP (CANADA) LTD.,**
**BALBIR AHLUWALIA**
**AND MOHINDER AHLUWALIA**

**TORONTO** – The Commission issued an Order in the above named matter which provides that the hearing is adjourned to August 17, 2011 at 11:00 a.m. or to such other date as provided by the Office of the Secretary and agreed to by the parties.

A copy of the Order dated July 21, 2011 is available at **www.osc.gov.on.ca**.

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### 1.4.4 Heir Home Equity Investment Rewards Inc. et al.

**FOR IMMEDIATE RELEASE**
**July 26, 2011**

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

**AND**

**IN THE MATTER OF**
**HEIR HOME EQUITY INVESTMENT REWARDS INC.;**
**FFI FIRST FRUIT INVESTMENTS INC.;**
**WEALTH BUILDING MORTGAGES INC.;**
**ARCHIBALD ROBERTSON; ERIC DESCHAMPS;**
**CANYON ACQUISITIONS, LLC;**
**CANYON ACQUISITIONS INTERNATIONAL, LLC;**
**BRENT BORLAND; WAYNE D. ROBBINS;**
**MARCO CARUSO;**
**PLACENCIA ESTATES DEVELOPMENT, LTD.;**
**COPAL RESORT DEVELOPMENT GROUP, LLC;**
**RENDEZVOUS ISLAND, LTD.;**
**THE PLACENCIA MARINA, LTD.; AND**
**THE PLACENCIA HOTEL AND RESIDENCES LTD.**

**TORONTO** – The Commission issued an Order in the above named matter which provides that the hearing be adjourned to August 22, 2011 at 10:00 a.m., for the purpose of discussing scheduling and any other procedural matters or for such other purposes as may be appropriate.

A copy of the Order dated July 19, 2011 is available at **www.osc.gov.on.ca**.

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# Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 MacKenzie Financial Corporation

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from restrictions and requirements in subsection 2.1(1) and paragraphs 2.2(1)(a), 2.5(2)(a) and 2.5(2)(c) of National Instrument 81-102 – Mutual Funds. Exemption will permit certain mutual funds to continue their investment in securities of certain related underlying funds after these underlying funds cease to offer their securities under a simplified prospectus – Underlying funds will remain reporting issuers in the same jurisdictions as the top mutual funds after their prospectuses lapse and will continue to be subject to the requirements of NI 81-102, NI 81-106 and NI 81-107.

**Applicable Legislative Provisions**

National Instrument 81-102 Mutual Funds, ss. 2.1(1), 2.2(1)(a), 2.5(2)(a), 2.5(2)(c), 19.1.

**June 30, 2011**

**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**
**MACKENZIE FINANCIAL CORPORATION**
**("MACKENZIE or FILER")**

**AND**

**IN THE MATTER OF**
**THE FUNDS AND THE SHORT-TERM YIELD FUNDS**
**(as each is defined below)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from Mackenzie on behalf of:

(a) each of the mutual funds, other than the Underlying Funds and Short-Term Yield Funds (as each is defined below), of which the Filer is, or in the future becomes, the manager and to which National Instrument 81-102 – *Mutual Funds* ("**NI 81-102**") applies (the "**Funds**"); and

(b) Mackenzie Sentinel Canadian Short-Term Yield Corporate Class and Mackenzie Sentinel U.S. Short-Term Yield Corporate Class (the "**Short-Term Yield Funds**");

for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") exempting:

(a) the Funds from the requirements of subsection 2.1(1), 2.2(1)(a), 2.5(2)(a) and 2.5(2)(c) of NI 81-102 to permit each Fund to (i) invest in securities of any of Mackenzie Universal Canadian Resource Class, Quadrus Fixed Income Fund, Symmetry Equity Corporate Class, Symmetry Fixed Income Corporate Class, Mackenzie Sentinel Canadian Money Market Fund, and Mackenzie Sentinel U.S. Money Market Fund (the "**Underlying Funds**") and the Short-Term Yield Funds and/or (ii) maintain positions in specified derivatives for which the underlying interest is securities of an Underlying Fund or of a Short-Term Yield Fund;

and

(b) the Short-Term Yield Funds from the requirements of subsection 2.1(1), 2.2(1)(a), 2.5(2)(a) and 2.5(2)(c) of NI 81-102 to permit each Short-Term Yield Fund to (i) invest in securities of Mackenzie Sentinel Canadian Money Market Fund and/or Mackenzie Sentinel U.S. Money Market Fund (the "**Money Market Underlying Funds**") and/or (ii) maintain positions in specified derivatives for which the underlying interest is securities of a Money Market Underlying Fund,

after an Underlying Fund or Short-Term Yield Fund ceases to distribute securities under a prospectus but otherwise remains a reporting issuer (the "**Requested Relief**").

In conjunction with the Requested Relief, Mackenzie seeks the revocation of the decision document granted by the Principal Regulator on October 4, 2010 (the "**Previous Decision**").

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

(b) Mackenzie 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 respect of the Requested Relief in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut and Yukon.

**Interpretation**

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

**Representations**

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

1. Mackenzie is a corporation governed by the laws of Ontario and is registered as a Portfolio Manager and Exempt Market Dealer in each Canadian jurisdiction and has applied for registration in Ontario as an Investment Fund Manager. Mackenzie is also registered in Ontario under the *Commodity Futures Act* (Ontario) in the category of Commodity Trading Manager.

2. The Ontario Securities Commission is the principal regulator to review and grant the Requested Relief as the head office of the Filer is in the Province of Ontario.

3. Each of the Funds, Short-Term Yield Funds, and Underlying Funds is, or in the case of a Fund, will be, a mutual fund to which NI 81-102, National Instrument 81-106 – *Investment Fund Continuous Disclosure* ("**NI 81-106**") and National Instrument 81-107 – *Independent Review Committee for Investment Funds* ("**NI 81-107**" and, together with NI 81-102 and NI 81-106, the "**Mutual Fund Instruments**") applies.

4. Each Fund's and each Short-Term Yield Fund's investment objectives and/or strategies permit each Fund and each Short-Term Yield Fund to invest, directly and/or indirectly, in securities. Each Fund's and each Short-Term Yield Fund's investment objectives and/or strategies also permit each Fund and each Short-Term Yield Fund to make such investments:

   (a) directly, by purchasing and holding such securities; and/or

   (b) indirectly, through investments in other mutual funds and/or specified derivatives for which the underlying interest is securities of another mutual fund.

5. Each Short-Term Yield Fund invests directly or indirectly in securities issued by Underlying Funds that are money market funds. Each Fund that invests in a Short-Term Yield Fund is permitted to invest directly or indirectly in securities issued by the Short-Term Yield Funds pursuant to Section 2.5(4)(b)(i) of NI 81-102.

6. A Fund or Short-Term Yield Fund will hold securities of an Underlying Fund or maintain a position in a specified derivative for which the underlying interest is securities of an Underlying Fund, only if such investment is permitted by, and consistent with, the investment objective and/or strategies of the Fund or Short-Term Yield Fund.

7. The securities of each Fund are, or will be, qualified for distribution in some or all of the provinces and territories of Canada pursuant to simplified prospectuses and annual information forms that have been, or will be, prepared and filed in accordance with National Instrument 81-101 – *Mutual Fund Distributions* ("**NI 81-101**"). Each Fund is a reporting issuer in each of the provinces and territories of Canada.

8. The securities of each Short-Term Yield Fund and Underlying Fund were or are qualified for distribution pursuant to simplified prospectuses and annual information forms prepared and filed in accordance with NI 81-101. Each Short-Term Yield Fund and Underlying Fund is a reporting issuer in each of the provinces and territories of Canada.

9. Mackenzie has been granted similar relief in respect of certain of the Underlying Funds in the form of the Previous Decision. This Decision applies in respect of all Underlying Funds and Short-Term Yield Funds.

10. The Underlying Funds and the Short-Term Yield Funds have not renewed, or do not intend to renew, their prospectus after their respective prospectus lapse date.

11. After the lapse date of the prospectus of the Underlying Funds and the Short-Term Yield Funds:

   (a) each Short-Term Yield Fund will remain a reporting issuer in each jurisdiction in which the Funds that directly or indirectly invest in that Short-Term Yield Fund are reporting issuers, and accordingly, each Short-Term Yield Fund will remain subject to all of the requirements of the Mutual Fund Instruments; and

   (b) each Underlying Fund will remain a reporting issuer in each jurisdiction in which the Short-Term Yield Funds or Funds that directly or indirectly invest in

that Underlying Fund are reporting issuers, and accordingly, each Underlying Fund will remain subject to all of the requirements of the Mutual Fund Instruments.

12. A Fund and a Short-Term Yield Fund will not invest, or maintain an investment, directly or indirectly, in securities of an Underlying Fund if the Underlying Fund ceases to be a reporting issuer in any jurisdiction in which that Fund or Short-Term Yield Fund is a reporting issuer.

13. A Fund will not invest, or maintain an investment, directly or indirectly, in securities of a Short-Term Yield Fund if the Short-Term Yield Fund ceases to be a reporting issuer in any jurisdiction in which that Fund is a reporting issuer.

14. The Filer believes that it would be advantageous to each Fund and each Short-Term Yield Fund and each of their securityholders to be able to obtain exposure to the investments of the Underlying Funds or the Short-Term Yield Funds by investing, directly or indirectly, in securities of the Underlying Funds or the Short-Term Yield Funds, as applicable. It would be administratively inefficient, unfeasible, or costly for each Fund and each Short-Term Yield Fund to directly invest in the securities held by the Underlying Funds or Short-Term Yield Funds.

15. Mackenzie, the Funds, the Short-Term Yield Funds, and the Underlying Funds are not in default of securities legislation in any of the provinces and territories of Canada.

**Decision**

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

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

(a) the Requested Relief is granted to each Fund provided that the Underlying Funds and/or the Short-Term Yield Funds in which it invests remain reporting issuers that are subject to the Mutual Fund Instruments in all jurisdictions in which the Fund is a reporting issuer;

(b) the Requested Relief is granted to each Short-Term Yield Fund provided that each Short-Term Yield Fund and the Money Market Underlying Funds in which it invests remain reporting issuers that are subject to the Mutual Fund Instruments in all jurisdictions in which the Short-Term Yield Fund is a reporting issuer; and

(c) the Previous Decision is revoked.

"Darren McKall"
Manager, Investment Funds Branch
Ontario Securities Commission
SEDAR No. 1742443

### 2.1.2 NAL Energy Corporation and Canaccord Genuity Corp.

**Headnote**

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions– Application for exemptive relief to permit issuer and underwriter, acting as agent for the issuer, to enter into equity distribution agreement to make "at the market" (ATM) distributions of trust units to investors through the facilities of the Toronto Stock Exchange (TSX) – ATM distributions to be made pursuant to shelf prospectus procedures in Part 9 of NI 44-102 Shelf Distributions – issuer will issue a press release and file agreement on SEDAR – application for relief from prospectus delivery requirement – delivery of prospectus not practicable in circumstances of an ATM distribution – relief from prospectus delivery requirement has effect of removing two-day right of withdrawal and remedies of rescission or damages for non-delivery of the prospectus – application for relief from certain prospectus form requirements – standard certification by issuer does not work in an ATM distribution since no other supplement to be filed in connection with ATM distribution – relief granted to permit modified forward-looking certificate language – relief granted on terms and conditions set out in decision document – decision will terminate 25 months after the issuance of a receipt for the shelf prospectus.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 71(1), 71(2), 133, 147.

**Applicable Ontario Rules**

National Instrument 44-101 Short Form Prospectus Distributions, Part 8; and Item 20 of Form 44-101F1.
National Instrument 44-102 Shelf Distributions, Part 9; and s. 1.1 of Appendix A.

**Citation:** NAL Energy Corporation, Re, 2011 ABASC 240

**April 20, 2011**

**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**
**NAL ENERGY CORPORATION (THE ISSUER)**
**AND CANACCORD GENUITY CORP.**
**(Canaccord And,**
**Collectively With The Issuer, The Filers)**

**DECISION**

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Makers**) has received an application from the Filers for a decision under the securities legislation of those jurisdictions (the **Legislation**) for the following relief (the **Exemption Sought**):

(a) that the requirement that a dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which the prospectus requirement applies, deliver to the purchaser or its agent the latest prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) and any amendment to the prospectus (the **Prospectus Delivery Requirement**) does not apply to Canaccord or any other Toronto Stock Exchange (the **TSX**) participating organization or other market participant acting as selling agent for Canaccord (each such other organization or market participant, a **Selling Agent**) in connection with at-the-market

distributions (each, an **ATM Distribution**), as defined in National Instrument 44-102 *Shelf Distributions* (**NI 44-102**), made by the Issuer pursuant to the Equity Distribution Agreement (as defined below); and

(b) that the requirement to include in a prospectus supplement:

(i) a certificate of the Issuer in the form specified in section 2.1 of Appendix A to NI 44-102; and

(ii) a statement respecting purchasers' statutory rights of withdrawal and remedies of rescission or damages in substantially the form prescribed in Item 20 of Form 44-101F1 Short Form Prospectus Distributions (the Statement of Purchaser's Rights);

(collectively, the **Prospectus Form Requirements**) do not apply to a prospectus supplement of the Issuer to be filed in connection with an ATM Distribution under the Equity Distribution Agreement, as defined below (the **Prospectus Supplement**) provided that the alternative form of certificate and disclosure regarding a purchaser's statutory rights described below are included in the Prospectus Supplement.

The Decision Makers have also received a request from the Filers for a decision that the application and this decision be kept confidential and not made public until the earliest of (i) the date on which the Filers enter into the Equity Distribution Agreement, (ii) the date on which the Filers advise that there is no longer any need for the Application and this decision to remain confidential, and (iii) the date that is 90 days after the date of this decision (the **Confidentiality Relief**).

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

(c) this 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* or MI 11-102 have the same meaning in this decision, unless they are otherwise defined herein.

**Representations**

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

*The Issuer*

1. The Issuer is an oil and gas corporation incorporated under the laws of the Province of Alberta. The head office of the Issuer (and that of its administrator, NAL Resources Management Limited) is located in Calgary, Alberta.

2. The Issuer is a reporting issuer or the equivalent under the Legislation and is in compliance in all material respects with the applicable requirements of the Legislation.

3. The common shares (the **Common Shares**), 6.25% convertible debentures and 6.75% convertible debentures of the Issuer are listed on the TSX.

4. The Issuer intends to file a short form base shelf prospectus in April 2011 providing for the distribution from time to time of Common Shares, preferred shares, debt securities, warrants, subscription receipts and units (the **Shelf Prospectus**). The Shelf Prospectus will constitute an "unallocated shelf" within the meaning of Part 3 of NI 44-102.

5. The Shelf Prospectus will include: (i) a non-forward looking issuer certificate of the Issuer in the form prescribed by method 2 as set forth in section 1.1 of Appendix B to NI 44-102; and (ii) a Statement of Purchaser's Rights in substantially the form prescribed in Item 20 of Form 44-101F1 except as set forth in this decision.

*The Agent*

6. The head office of Canaccord is located in Vancouver, British Columbia. Canaccord is registered as an investment dealer under the Legislation.

*Proposed ATM Distribution*

7. Subject to mutual agreement on terms and conditions, the Filers propose to enter into an equity distribution agreement (the **Equity Distribution Agreement**) providing for the periodic sale of Common Shares by the Issuer through Canaccord, as agent, through ATM Distributions pursuant to the base shelf prospectus procedures prescribed by Part 9 of NI 44-102.

8. Prior to making any ATM Distributions, the Issuer will have filed the Prospectus Supplement in the Jurisdictions, which will describe the ATM Distributions, including the terms of the Equity Distribution Agreement.

9. The Issuer will issue a news release upon entering into the Equity Distribution Agreement and will file a copy of the Equity Distribution Agreement on SEDAR. The news release will indicate that the Shelf Prospectus and Prospectus Supplement have been filed on SEDAR and specify where and how purchasers may obtain copies.

10. Under the proposed Equity Distribution Agreement, the Issuer may issue and sell Common Shares pursuant to any ATM Distribution thereunder in an amount not to exceed 10% of the aggregate market value of the outstanding Common Shares calculated in accordance with section 9.2 of NI 44-102.

11. The Issuer will sell Common Shares in Canada through methods constituting ATM Distributions, including sales made on the TSX or any other recognized Canadian "marketplace" within the meaning of National Instrument 21-101 *Marketplace Operation*, upon which the Common Shares are listed, quoted or otherwise traded (a **Marketplace**) through Canaccord, directly or through a Selling Agent.

12. Canaccord will act as the sole agent on behalf of the Issuer in connection with the sale of the Common Shares on the TSX or another Marketplace and will be the only person or company paid an agency fee or commission by the Issuer in connection with such sales. Canaccord will sign an underwriters' certificate in the Prospectus Supplement.

13. Canaccord will effect ATM Distributions on the TSX or another Marketplace, either itself or through a Selling Agent. If the sales are effected through a Selling Agent, the Selling Agent will be paid a seller's commission for effecting the trades on Canaccord's behalf. A purchaser's rights and remedies under the Legislation against Canaccord as underwriter of an ATM Distribution through the TSX or another Marketplace will not be affected by a decision to effect the sale directly or through a Selling Agent.

14. The number of Common Shares sold on the TSX or another Marketplace pursuant to an ATM Distribution on any trading day will not exceed 25% of the trading volume of the Common Shares on the TSX and any other Marketplace on that day.

15. The Equity Distribution Agreement will provide that, at the time of each sale of Common Shares pursuant to an ATM Distribution, the Issuer will represent to Canaccord that the Shelf Prospectus, as supplemented by the Prospectus Supplement and any subsequent amendment or supplement to the Shelf Prospectus or Prospectus Supplement (together, the **Prospectus**) contains full, true and plain disclosure of all material facts relating to the Issuer and the Common Shares being distributed. The Issuer would therefore be unable to proceed with sales pursuant to an ATM Distribution when it is in possession of undisclosed information that would constitute a material fact or a material change in respect of the Common Shares.

16. If, after the Issuer delivers a sell notice to Canaccord, the sale of Common Shares specified in the notice, taking into consideration prior sales, would constitute a material fact or material change, the Issuer would be required to suspend sales under the Equity Distribution Agreement until either: (i) it had filed a material change report or amended the Prospectus; or (ii) circumstances had changed such that the sales would no longer constitute a material fact or material change.

17. In determining whether the sale of the number of Common Shares specified in the sell notice would constitute a material fact or material change, the Issuer will take into account a number of factors, including, without limitation: (i) the parameters of the sell notice, including the number of Common Shares proposed to be sold and any price or timing restrictions the Issuer may impose with respect to the particular ATM Distribution; (ii) the percentage of the outstanding Common Shares that number represents; (iii) trading volume and volatility of Common Shares; (iv) recent developments in the business, affairs and capital structure of the Issuer; and (v) prevailing market conditions generally.

18. Canaccord will monitor closely the market's reaction to trades made on the TSX or another Marketplace pursuant to the ATM Distribution in order to evaluate the likely market impact of future trades. Canaccord has experience and expertise in managing sell orders to limit downward pressure on the Common Share price. If Canaccord has concerns as to whether a particular sell order placed by the Issuer may have a significant effect on the market price of the Common Shares, Canaccord will recommend against effecting the trade at that time. It is in the interest of both the Issuer and Canaccord to minimize the market impact of sales under an ATM Distribution.

19. The underwriter's certificate signed by Canaccord included in the Prospectus Supplement will be in the form prescribed by section 2.2 of Appendix B to NI 44-102.

*Prospectus Delivery Requirement*

20. Pursuant to the Prospectus Delivery Requirement, a dealer effecting a trade of securities on the TSX on behalf of the Issuer as part of the ATM Distribution is required to deliver a copy of the prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) within prescribed time limits to all investors who purchase securities on the TSX or another Marketplace.

21. The delivery of a prospectus is not practicable in the circumstances of an ATM Distribution as neither Canaccord nor the Selling Agent effecting the trade will know the identity of the purchasers.

22. Although purchasers under an ATM Distribution would not physically receive a printed prospectus, the Shelf Prospectus and the Prospectus Supplement (together with all documents incorporated by reference) will be filed and readily available to all purchasers electronically via SEDAR. Moreover, the Issuer will issue a news release that specifies where and how copies of the Shelf Prospectus and the Prospectus Supplement can be obtained.

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

*Withdrawal Right*

24. Pursuant to the Legislation, an agreement to purchase securities is not binding on the purchaser if a dealer receives, not later than midnight on the second day exclusive of Saturdays, Sundays and holidays, after receipt by the purchaser of the latest prospectus or any amendment to the prospectus, a notice in writing that the purchaser does not intend to be bound by the agreement of purchase (the **Withdrawal Right**).

25. The Withdrawal Right is not workable in the context of an ATM Distribution because a prospectus will not be delivered to purchasers.

*Right of Rescission or Damages for Non-Delivery*

26. Pursuant to the Legislation, a purchaser of securities has a right of action for rescission or damages against a dealer for non-delivery of the prospectus (the **Right of Action for Non-Delivery**).

27. The Right of Action for Non-Delivery is not workable in the context of the ATM Distribution because a prospectus will not be delivered to purchasers.

*Disclosure of Common Shares Sold in ATM Distributions*

28. The Issuer will file on SEDAR a report disclosing the number and average price of Common Shares distributed over the TSX or another Marketplace by the Issuer pursuant to an ATM Distribution under the Prospectus as well as gross proceeds, commission and net proceeds, within seven calendar days after the end of the month with respect to sales during the prior month.

29. The Issuer will also disclose the number and average price of Common Shares sold pursuant to an ATM Distribution under the Prospectus as well as gross proceeds, commission and net proceeds, in the ordinary course in its annual and interim financial statements and management's discussion and analysis filed on SEDAR.

*Prospectus Form Requirements*

30. Exemptive relief from the Prospectus Form Requirements for the Issuer's forward-looking certificate in the Prospectus Supplement is required to reflect that no pricing supplement will be filed subsequent to the Prospectus Supplement. Accordingly, the Issuer will file the Prospectus Supplement with the following forward-looking issuer certificate which will supersede and replace, solely in respect of ATM Distributions, the certificate prescribed by the Prospectus Form Requirements:

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

31. Exemptive relief from the Prospectus Form Requirements is required to reflect the relief from the Prospectus Delivery Requirement. Accordingly, the Issuer will include the following statements in the Prospectus Supplement in place of the corresponding statements prescribed by the Prospectus Form Requirements:

> *Securities legislation in certain of the provinces of Canada provides purchasers with the right to withdraw from an agreement to purchase securities and with remedies for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment are not delivered to the purchaser, provided that the remedies are exercised by the purchaser within the time limit prescribed by the securities legislation. However, purchasers of Common Shares under an at-the-market distribution by the Corporation will not have any right to withdraw from an agreement to purchase the Common Shares, and will not have remedies for rescission or, in some jurisdictions, revision of the price, or damages for non-delivery, because the prospectus, prospectus supplements relating to Common Shares purchased by the purchaser and any amendment will not be delivered as permitted under a decision dated •, 2011 and granted pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.*
>
> *Securities legislation in certain of the provinces of Canada also provides purchasers with remedies for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment contain a misrepresentation, provided that the remedies are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's jurisdiction. Any remedies under securities legislation that a purchaser of Common Shares under an at-the-market distribution by the Corporation may have against the Corporation or the underwriter for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to the Common Shares purchased by the purchaser and any amendment contain a misrepresentation remain unaffected by the non-delivery of the prospectus and the decision referred to above.*
>
> *Purchasers should refer to the applicable provisions of the securities legislation and the decision referred to above for the particulars of their rights or consult with a legal advisor.*

32. The modified disclosure of purchaser's rights specified in section 31 above, to be included in the Prospectus Supplement, will, solely in respect of ATM Distributions contemplated by the Prospectus Supplement, supersede and replace the statement of purchaser's rights contained in the Shelf Prospectus.

**Decision**

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

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

(a) as it relates to the Prospectus Form Requirements, the disclosure described in paragraphs 28, 30, 31 and 32 is made;

(b) as it relates to the Prospectus Delivery Requirements, the representations made in paragraphs 9, 11, 12, 13, 14, 15, 16 and 18 are complied with; and

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

The further decision of the principal regulator and the securities regulatory authority or regulator in Ontario is that the Confidentiality Relief is granted.

**For the Commission:**

"Glenda Campbell," QC
Vice-Chair

"Stephen Murison"
Vice-Chair

### 2.1.3 Veresen Inc.

**Headnote**

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from the requirement that financial statements be prepared in accordance with Canadian GAAP applicable to publically accountable enterprises to permit an issuer, who is not an SEC Issuer, to prepare its financial statements in accordance with U.S. GAAP for its financial years that begin on or after 1 January 2012 but before 1 January 2015.

**Applicable Legislative Provisions**

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

**Citation:** Veresen Inc., Re, 2011 ABASC 380

**July 15, 2011**

**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**
**VERESEN INC. (the Filer)**

**DECISION**

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker)** has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from the requirements under subsection 3.2(1) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (**NI 52-107**) that financial statements be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises and disclose an unreserved statement of compliance with IFRS or International Accounting Standard 34 Interim Financial Reporting, as applicable (the **Exemption Sought**) to permit the Filer to prepare its financial statements in accordance with U.S. GAAP for its financial years that begin on or after 1 January 2012 but before 1 January 2015.

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

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

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

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

**Interpretation**

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, National Instrument 51-102 *Continuous Disclosure Obligations* or NI 52-107 have the same meaning if used in this decision, unless otherwise defined herein.

**Representations**

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

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

2. The Filer is a reporting issuer or equivalent in the Jurisdictions and each of the Passport Jurisdictions and, to its knowledge, is not in default of securities legislation in any jurisdiction in Canada in which it is a reporting issuer.

3. The Filer is not an SEC issuer.

4. The Filer has "activities subject to rate regulation", as defined in the Handbook.

5. As a "qualifying entity" for the purposes of section 5.4 of NI 52-107, the Filer is permitted by that provision to prepare its financial statements for its financial year commencing 1 January 2011 and ending 31 December 2011 in accordance with Canadian GAAP – Part V of the Handbook.

6. Were the Filer an SEC issuer, it would be permitted by section 3.7 of NI 52-107 to file its financial statements prepared in accordance with U.S. GAAP, which accords treatment of "activities subject to rate regulation" similar to that under Canadian GAAP - Part V.

**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.

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

   (a) for its financial years commencing on or after 1 January 2012 but before 1 January 2015 and interim periods therein, the Filer files its financial statements in accordance with U.S. GAAP; and

   (b) information for comparative periods presented in the financial statements referred to in paragraph (a) is prepared in accordance with U.S. GAAP.

8. The Exemption Sought will terminate in respect of the Filer's financial statements for annual and interim periods commencing on or after the earlier of:

   (a) 1 January 2015; and

   (b) the date on which the Filer ceases to have "activities subject to rate regulation" as defined in the Handbook as at the date of this decision.

“Blaine Young”
Associate Director, Corporate Finance

### 2.1.4 Pacific Forest Regeneration Income Fund et al.

**Headnote**

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.

National Instrument 51-102, s. 13.1 Continuous Disclosure Obligations – Circular Relief – An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation – The issuer is only internally restructuring, not adding or removing any assets or changing the shareholders' proportionate interest in the issuer's operations; the issuer will provide sufficient information about the transaction for shareholders to understand the restructuring.

National Instrument 44-101, s. 8.1 Short Form Prospectus Distributions – Qualification Relief – An issuer wants relief from the qualification criteria in NI 44-101 so it can file a short form prospectus – The issuer is a new reporting issuer that is the continuation of an existing business; the issuer satisfies all the criteria for the exemption in s. 2.7 except that the audited comparative annual financial statements incorporated in its final prospectus are not its own, but are the financial statements of the existing business.

National Instrument 44-101, s. 8.1 Short Form Prospectus Distributions – Prospectus Relief – The filer wants to file its short form prospectus less then 10 days after it files its notice of intention to file a short form prospectus – The issuer is a successor issuer resulting from the conversion of an income fund under a plan of arrangement; the issuer would be entitled to rely on the exemption for successor issuers in s. 2.7(2) except that the financial statements incorporated into the information circular are not its own but are those of the existing business; the issuer is otherwise qualified to file a short form prospectus; the existing business is not required to file a notice of intention by virtue of s. 2.8(4); the relevant continuous disclosure for investors under the offering is the continuous disclosure of the fund, which will be incorporated by reference into the short form prospectus.

**Applicable Legislative Provisions**

National Instrument 51-102, s. 13.1 Continuous Disclosure Obligations.
National Instrument 44-101, s. 8.1 Short Form Prospectus Distributions.

**April 27, 2011**

**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**
**PACIFIC FOREST REGENERATION**
**INCOME FUND (THE FUND)**

**AND**

**PRT INC. (PRT INC.), A COMPANY RESULTING**
**FROM THE AMALGAMATION OF THE FUND'S**
**TWO WHOLLY-OWNED SUBSIDIARIES,**
**PACIFIC REGENERATION TECHNOLOGIES INC.**
**(PRT) AND A NEWLY INCORPORATED**
**WHOLLY-OWNED SUBSIDIARY OF THE FUND**
**(PRT NEWCO)(Together, the Applicants)**

**DECISION**

**Background**

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

   (i) exempting the Fund from the requirement under Item 14.2 of Form 51-102F5 *Information Circular* (the Circular Form) of the Legislation to include in the management information circular (Information Circular) to be prepared by the Fund and delivered to the holders (Unitholders) of trust units (Units) in connection with a special meeting (Meeting) of Unitholders expected to be held in June 2011 for the purposes of considering a statutory plan of arrangement resulting in the reorganization of the Fund's trust structure into a corporate structure (the Conversion Transactions): (a) the financial statements of PRT for the financial years ended December 31, 2010, December 31, 2009, and December 31, 2008; (b) the corresponding management's discussion and analysis for the financial years ended December 31, 2010, and December 31, 2009; and (c) certain comparative statements of PRT and of PRT Inc., including (i) a comparative income statement, a statement of retained earnings, and a cash flow statement of PRT Inc. for the most recent interim period ended more than 45 days before the date of the Information Circular, and (ii) a balance sheet of PRT Inc. as at the end of the most recent interim period ended more than 45 days before the date of the Information Circular (the Circular Relief );

   (ii) exempting PRT Inc. from the qualification criteria for short form prospectus eligibility contained in subsection 2.2(d) of National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) following completion of the Conversion Transactions until the earlier of (a) March 31, 2012; and (b) the date upon which PRT Inc. has filed both its annual financial statements and annual information form for the year ended December 31, 2011, under NI 51-102 *Continuous Disclosure Obligations* (NI 51-102) (the Qualification Relief);

   (iii) exempting PRT Inc. from the requirement to file a notice declaring its intention to be qualified to file a short form prospectus at least 10 business days prior to the filing of its first preliminary short form prospectus after the notice (the Prospectus Relief); and

   (iv) the application and this decision be held in confidence by the Decision Makers (the Confidentiality Relief).

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

   (i) the British Columbia Securities Commission is the principal regulator for this Application;

   (ii) the Applicants have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador; and

   (iii) 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 Applicants:

   1. the Fund is an unincorporated, open-ended, limited purpose trust established under the laws of the Province of British Columbia pursuant to a trust indenture dated May 14, 1997;

   2. the Fund is a reporting issuer (or the equivalent thereof) in each province of Canada and is currently not in default of the securities legislation of any jurisdiction;

   3 .the Fund is authorized to issue an unlimited number of Units and as at March 23, 2011, the Fund had 9,757,631 Units issued and outstanding;

   4. the Units are listed and posted for trading on the Toronto Stock Exchange (TSX) under the trading symbol "PRT.UN";

5. the Fund has filed an AIF and has current financial statements (as such terms are defined in NI 44-101) for the financial year ended December 31, 2010;

6. the Fund holds all of the common shares (PRT Shares) and unsecured subordinated notes (PRT Notes) of PRT, a corporation incorporated under the laws of British Columbia;

7. PRT is not a reporting issuer in any jurisdiction and the PRT Shares and the PRT Notes are not listed or posted for trading on any exchange or quotation and trade reporting system;

8. the Fund does not carry on an active business, but holds, through the PRT Shares and the PRT Notes, an indirect 100% interest in PRT which carries on a forest seedling business (the Business);

9. PRT Newco is a direct wholly-owned subsidiary of the Fund and will have conducted no business prior to the effective date (the Effective Date) of the Conversion Transactions;

10. as the final step of the Conversion Transaction, PRT and PRT Newco will amalgamate and will continue as PRT Inc.;

11. prior to the completion of the Conversion Transactions, PRT Inc. will not be a reporting issuer in any jurisdiction and its common shares (PRT Inc. Shares) will not be listed or posted for trading on any exchange or quotation and trade reporting system;

12. as part of the Conversion Transactions: (i) the Units will be cancelled; (ii) PRT Newco Shares will be distributed to holders of Units on a one-for-one basis; (iii) the Fund will be dissolved into PRT Newco; (iv) PRT Newco and PRT will amalgamate and continue as PRT Inc.; (v) PRT Inc. will continue to carry on the Business presently carried out on behalf of the Fund by PRT; and (vi) PRT Inc. will own, directly or indirectly, all of the existing assets and assume all of the existing liabilities of the Fund, effectively resulting in the reorganization of the Fund's trust structure into a corporate structure;

13. following the completion of the Conversion Transactions: (i) the sole business of PRT Inc. will be the current business of the Fund; (ii) all Unitholders of the Fund will own PRT Inc. Shares; (iii) PRT Inc. will be a reporting issuer or the equivalent under the securities legislation in all of the provinces of Canada; and (iv) the PRT Inc. Shares will, subject to approval by the TSX, be listed on the TSX;

14. the Conversion Transactions will not result in a change in beneficial ownership of the assets and liabilities of the Fund and PRT Inc. will continue to carry on the Business following the Conversion Transactions; the Conversion Transactions will be an internal reorganization undertaken without dilution to the Unitholders; the Unitholders will, following completion of the Conversion Transactions, be the shareholders of PRT Inc.;

15. under the Fund's constating documents and applicable corporate and securities laws, the Unitholders will be required to approve the Conversion Transactions at the Meeting; the Conversion Transactions must be approved by not less than two-thirds of the votes cast by Unitholders at the Meeting; the Meeting is anticipated to take place on June 13, 2011, and the Information Circular is expected to be mailed on or around May 16, 2011;

16. the Conversion Transactions will be accounted for on a continuity of interest basis and accordingly, following the Conversion Transactions, the comparative consolidated financial statements for PRT Inc. prior to the Conversion Transactions will reflect the financial position, results of operations and cash flows as if PRT Inc. had always carried on the business formerly carried on by the Fund;

17. the Conversion Transactions will be a restructuring transaction under NI 51-102 in respect of the Fund and therefore will require compliance with Item 14.2 of the Circular Form;

18. Item 14.2 of the Circular Form requires, among other items, that the Information Circular contain the disclosure (including financial statements and management's discussion and analysis) prescribed under securities legislation and described in the form of prospectus that PRT Inc. would be eligible to use immediately prior to the sending and filing of the Information Circular for a distribution of its securities; therefore, the Information Circular must contain the disclosure in respect of PRT Inc. prescribed by Form 41-101F1 I*nformation Required in a Prospectus* (the Prospectus Form) and by NI 41-101;

19. as PRT Inc. will not have been in existence for three years on the date of the Information Circular, Item 32.1(a) of the Prospectus Form requires that the financial statements of PRT be included as it is the predecessor entity that will form the business of PRT Inc.;

20. Items 8.2(l)(a) and 8.2(2) of the Prospectus Form require the Fund to include management's discussion and analysis corresponding to each of the financial years ended December 31, 2010, and December 31, 2009, of PRT (the MD&A) in the Information Circular;

21. Item 32.2(1) of the Prospectus Form requires the Fund to include certain annual financial statements of PRT in the Information Circular, including: (i) statements of income, retained earnings and cash flows of PRT for each of the financial years ended December 31, 2010, December 31, 2009, and December 31, 2008; and (ii) a balance sheet of PRT as at the end of December 31, 2010, and December 31, 2009 (the PRT Financial Statements); in addition, Item 32.3(1) of the Prospectus Form requires the Fund to include certain comparative statements of PRT and of PRT Inc. in the Information Circular (the Interim Financial Statements), including (a) a comparative income statement, a statement of retained earnings, and a cash flow statement of PRT Inc. for the most recent interim period ended more than 45 days before the date of the Information Circular and (b) a balance sheet of PRT Inc. as at the end of the most recent interim period ended more than 45 days before the date of the Information Circular (the PRT Financial Statements and the Interim Financial Statements are referred to collectively as the Financial Statements);

22. subsection 4.2(1) of NI 41-101 requires that the PRT Financial Statements required to be included in the Information Circular must be audited in accordance with National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107);

23. PRT Newco was established for the exclusive purpose of effecting the Conversion Transactions and will have no material assets (other than a nominal amount of cash) or business operations prior to the Effective Date;

24. PRT Inc. will result from the amalgamation of PRT and PRT Newco on the Effective Date;

25. the financial statements of the Fund are reported on a consolidated basis, which includes the financial results of PRT; PRT does not report its financial results independently from the consolidated financial statements of the Fund; the Financial Statements and the MD&A, if prepared, would not include the accounts of the Fund; there are transactions between the Fund and PRT that would be eliminated when consolidation is performed; to present the Financial Statements and the MD&A in the Information Circular, which would exclude accounts of the Fund, would present the effects of only one side of the financing activities between the Fund and PRT; this would result in intra-group liabilities and intragroup interest expense being reflected in the Financial Statements;

26. the Financial Statements and the MD&A are not relevant to the Unitholders for the purposes of considering the Conversion Transactions; once the Conversion Transactions are completed, the financial statements and management's discussion and analysis of PRT Inc. will be substantially and materially the same as the consolidated financial statements of the Fund filed in accordance with Part 4 of NI 51-102 because the financial position of the entity that exists both before and after the Conversion Transactions is substantially the same;

27. the Information Circular will contain prospectus level disclosure in accordance with the Prospectus Form (other than the Financial Statements and MD&A) and will contain sufficient information to enable a reasonable Unitholder to form a reasoned judgement concerning the nature and effect of the Conversion Transactions and the nature of the resultant public entity and reporting issuer from the Conversion Transactions, being PRT Inc.;

28. subsection 2.7(2) of NI 44-101 contains an exemption for successor issuers from the qualification criteria for short form prospectus eligibility contained in subsection 2.2(d) of NI 44-101, if an information circular relating to the restructuring transaction that resulted in the successor issuer was filed by the successor issuer or an issuer that was a party to the restructuring transaction, and such information circular (i) complied with applicable securities legislation, and (ii) included disclosure in accordance with Item 14.2 or 14.5 of the Circular Form of the successor issuer; PRT Inc. cannot rely on this exemption because the Financial Statements and MD&A will not be included in the Information Circular if the Circular Relief is granted;

29. the Fund is qualified to file a prospectus in the form of a short form prospectus under section 2.2 of NI 44-101 and is deemed to have filed a notice of intention to be qualified to file a short form prospectus under subsection 2.8(4) of NI 44-101;

30. the Applicants anticipate that PRT Inc. may wish to have the ability to file a preliminary short form prospectus following the completion of the Conversion Transactions, relating to the offering or potential offering of securities (including common shares or debt securities) of PRT Inc.;

31. in anticipation of the filing of a preliminary short form prospectus, and assuming the Conversion Transactions have been completed, PRT Inc. intends to file a notice of intention to be qualified to file a short form prospectus (the Notice of Intention) following completion of the Conversion Transactions; in the absence of the Prospectus Relief, PRT Inc. will not be qualified to file a preliminary short form prospectus until 10 business days after the date upon which the Notice of Intention is filed;

32 pursuant to the qualification criteria set forth in section 2.2 of NI 44-101 as modified in the Qualification Relief, following the Conversion Transactions, PRT Inc. will be qualified to file a short form prospectus under NI 44-101;

33. notwithstanding section 2.2 of NI 44-101 as modified in the Qualification Relief, subsection 2.8(1) of NI 44-101 provides that an issuer is not qualified to file a short form prospectus unless it has filed a notice declaring its intention to be qualified to file a short form prospectus at least 10 business days prior to the issuer filing its first preliminary short form prospectus; and

34 .the short form prospectus of PRT Inc. will incorporate by reference the documents that would be required to be incorporated by reference under Item 11 of Form 44-101F1 in a short form prospectus of PRT Inc., as modified by the Qualification Relief.

**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:

(i) the Circular Relief is granted provided that the Information Circular discloses that PRT Newco is a newly incorporated entity that has no material assets, income or liabilities and that PRT Inc. is a corporation resulting from the amalgamation of PRT and PRT Newco on the Effective Date;

(ii) the Qualification Relief is granted provided that any short form prospectus filed by PRT Inc. under NI 44-101 during the Qualification Relief specifically incorporates by reference:

(a) the Information Circular and any financial statements and related management's discussion and analysis of the Fund incorporated by reference into the Information Circular, and

(b) any financial statements, management's discussion and analysis, material change reports or other documents that would have to be incorporated by reference in any short form prospectus filed by the Fund;

(iii) the Prospectus Relief is granted provided that, at the time PRT Inc. files its Notice of Intention, PRT Inc. meets the requirements of section 2.2 of NI 44-101, as modified by the Qualification Relief; and

(iv) the Confidentiality Relief is granted until the earlier of:

(a) the date on which the Fund publicly announces the Conversion Transactions;

(b) the date on which the Fund mails the Information Circular;

(c) the date the Fund advises the principal regulator that there is no longer any need for the application and this decision to remain confidential; and

(d) that date that is 60 days after the date of this decision.

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

### 2.1.5 TransGlobe Apartment Real Estate Investment Trust

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions – issuer is a real estate investment trust which holds all of its properties through limited partnerships – entity holds units in limited partnerships which are exchangeable into and in all material respects the economic equivalent to the issuer's publicly traded units – relief granted from the valuation requirement for certain non-cash assets in connection with a specific related party transaction – valuation not required of exchangeable limited partnership units since public units can be a proxy for such exchangeable units.

**Applicable Legislative Provisions**

Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, ss. 5.5, 5.7, 6.3.

**July 21, 2011**

**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**
**TRANSGLOBE APARTMENT**
**REAL ESTATE INVESTMENT TRUST**
**(the Filer)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filer for a decision pursuant to section 9.1 of Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions (**MI 61-101**) that the Filer be granted an exemption from the requirement in section 6.3(1)(d) of MI 61-101 to obtain a formal valuation of any Exchangeable LP Units (as defined below) to be issued in connection with a related party transaction described below (the **Relief**):

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

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

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

**Interpretation**

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

**Representations**

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

1. The principal, registered and head office of the Filer is located at 5935 Airport Road, Suite 600 in Mississauga, Ontario.

2. The Filer is an unincorporated, open-ended real estate investment trust governed by the laws of the Province of Ontario pursuant to an amended and restated declaration of trust dated as of May 6, 2010.

3. The Filer is a reporting issuer, or the equivalent thereof, in each Province and Territory of Canada and is not in default of securities legislation in any of the jurisdictions of Canada.

4. The trust units of the Filer (the **Trust Units**) are listed and posted for trading on the Toronto Stock Exchange under the symbol "TGA.UN".

5. The Filer was formed to own multi-suite, residential rental properties across Canada and, as at the date hereof, the Filer owns a portfolio of 94 properties principally located in urban centres in the Provinces of Alberta, Ontario, Québec, New Brunswick and Nova Scotia, which it acquired as part of the closing of its initial public offering of Trust Units in May 2010 and subsequent transactions.

6. The Filer is authorized to issue an unlimited number of Trust Units and an unlimited number of special voting units (the **Special Voting Units**). As at the date hereof, there are 40,448,970 Trust Units and 7,072,682 Special Voting Units issued and outstanding. The number of Special Voting Units outstanding at any point in time is equivalent to, and accompanies, the number of outstanding class B limited partnership units (the **Class B LP Units**) of limited partnerships managed and controlled by the Filer (the **Existing Partnerships**). The Class B LP Units are exchangeable into Trust Units and the accompanying Special Voting Units provide voting rights with respect to the Filer to the holder of the Class B LP Units.

7. TransGlobe Investment Management Ltd. and other companies and entities controlled or under the direction of the Drimmer family (collectively, **TransGlobe**) hold all 7,072,682 issued and outstanding Special Voting Units and accompanying Class B LP Units. The 7,072,682 Special Voting Units and 7,072,682 Class B LP Units held by TransGlobe represent, in aggregate as at the date hereof, an approximate 14.9% voting and effective economic interest in the Filer (on a non-diluted basis) and, together with the 350,000 Trust Units held by TransGlobe, represent, in aggregate as at the date hereof, an approximate 15.6% voting and effective economic interest in the Filer (on a non-diluted basis).

8. The Filer holds all of its residential rental properties through seventeen Existing Partnerships. Each such Existing Partnership is authorized to issue an unlimited number of class A general partnership units (the **Class A GP Units**), class B general partnership units (the **Class B GP Units**), class A limited partnership units (the **Class A LP Units**) and Class B LP Units.

9. All of the outstanding Class A GP Units of the Existing Partnerships are held by a wholly-owned subsidiary of the Filer which is the managing general partner of such limited partnerships, and all of the outstanding Class B GP Units of the Existing Partnerships are held by a TransGlobe entity which carries on specific administrative and/or management duties and responsibilities on behalf of such limited partnerships, but remains subject to the oversight of the Filer, in consideration for cash distributions on such Class B GP Units calculated as a percentage of the gross book value and gross property revenue of such Existing Partnerships.

10. All the outstanding Class A LP Units are held by the Filer and all the outstanding Class B LP Units are held by TransGlobe.

11. In a series of transaction steps, the Filer, through a number of newly created limited partnerships managed and controlled by the Filer (the **New Partnerships**), proposes to: (i) acquire a portfolio of 57 real estate properties (the Acquisition Properties) and promissory notes (the **Notes**) from TransGlobe and its co-owners (the **Vendors**) for consideration of approximately $740 million payable to the Vendors to be comprised of a combination of approximately $394 million in cash, the issue of approximately $83 million of class B limited partnership units of the New Partnerships (the **Exchangeable LP Units**), and the assumption of mortgages and/or debt in the aggregate principal amount of approximately $263 million; and (ii) sell to TransGlobe or the Vendors two real estate properties (the Sale Properties) for an aggregate price of approximately $24.4 million (the acquisition and sale transactions are hereinafter collectively known as the **Proposed Transaction**). In respect of three of the Acquisition Properties, the Filer will indirectly acquire such Acquisition Properties by acquiring the securities (the **Entity Securities**) of the entities that own such Acquisition Properties. Such entities own no other assets and will have no liabilities upon closing of the Proposed Transaction.

12. In connection with the Proposed Transaction, the Filer and TransGlobe propose to internalize the management of the Filer for no valuable consideration (the **Management Internalization**). In that regard, TransGlobe proposes to transfer assets required to manage the properties of the Filer (including office equipment, computer hardware and software, and intellectual property) to the Filer for nominal consideration and terminate its management relationships with the Filer without any payment by the Filer (which termination shall require the return of the outstanding Class B GP Units by TransGlobe and the termination of, or amendments to, existing agreements involving the Filer and TransGlobe, including deletion of the board appointment rights and limited approval rights described in paragraph 24 below).

13. The New Partnerships to be created by the Filer in connection with the Proposed Transaction will, in all material respects, have terms and conditions, including capital structure, consistent with the Existing Partnerships and as otherwise described herein after giving effect to the Management Internalization (for clarity, as a result of the Management Internalization, no Class B GP Units will be issued or outstanding and all Class A GP Units will be held by a new, indirect wholly-owned subsidiary of the Filer). In particular, the Exchangeable LP Units to be issued in connection with the Proposed Transaction will have the same attributes, in all material respects, as the Class B LP Units and as otherwise described herein.

14. The Proposed Transaction is subject to the applicable requirements of MI 61-101 relating to, among other things, preparation of a formal valuation of the non-cash assets involved in the Proposed Transaction (the **Non-Cash Valuation Requirement**) and the approval by a majority of the votes cast by disinterested holders of Trust Units entitled to vote on the Proposed Transaction at a duly constituted meeting (the **Unitholder Meeting**) of holders of Trust Units and holders of Special Voting Units (collectively, the **Unit-holders**).

15. While the Management Internalization relating to the transfer of assets is not a related party transaction as the assets are being transferred by TransGlobe to the Filer for no valuable consideration and the termination of the manage-

ment relationships between TransGlobe and the Filer is without any payment by the Filer, the Management Internalization, as a whole, will be voted upon by the Unitholders at the Unitholder Meeting.

16. A committee of independent trustees of the Filer (the **Special Committee**) has been established by the Filer for the purpose of supervising the preparation of a formal valuation of each of: (i) the Acquisition Properties and the Sale Properties (the **Properties Valuations**); (ii) the Entity Securities (the **Entities Valuation**); and (iii) the Notes (the **Notes Valuation**).

17. The Special Committee has retained CB Richard Ellis, Limited to prepare the Properties Valuations, under the supervision of the Special Committee, which to the knowledge of the Filer and the Special Committee will be prepared in accordance with MI 61-101.

18. The Special Committee has retained Stonecap Securities Inc. (**Stonecap**) to prepare the Entities Valuation and the Notes Valuation, under the supervision of the Special Committee, which to the knowledge of the Filer and the Special Committee will be prepared in accordance with MI 61-101.

19. The Special Committee has also retained Stonecap to act as an independent financial advisor to the Special Committee in evaluating the Proposed Transaction and Management Internalization and Stonecap will prepare a formal 'fairness opinion' that speaks to fairness from a financial point of view, of the consideration of the Proposed Transaction and if necessary, Management Internalization, to the Unitholders other than the Vendors.

20. The information circular to be mailed to Unitholders in connection with the Unitholder Meeting will comply with the requirements of applicable securities law and will disclose, among other matters, that the Filer has no knowledge of any material non-public information concerning Filer or its securities that has not been generally disclosed, in accordance with subsection 6.3(2)(b) of MI 61-101.

21. The Exchangeable LP Units shall be in all material respects, economically equivalent to the Trust Units:

    a. The Exchangeable LP Units shall be exchangeable on a one-for-one basis for Trust Units (subject to customary anti-dilution adjustments) at any time at the option of the holder thereof.

    b. The distributions to be made on the Exchangeable LP Units shall be equal to the distributions that the holder of the Exchangeable LP Units would have received if it was holding Trust Units that may be obtained upon the exchange of such Exchangeable LP Units.

    c. Each Exchangeable LP Unit shall be accompanied by a Special Voting Unit so that the holder of the Exchangeable LP Units is provided with voting rights on matters respecting the Filer equal to the number of Trust Units that may be obtained upon the exchange of the Exchangeable LP Units to which such Special Voting Units are attached.

22. The Exchangeable LP Units shall represent part of the equity value of the Filer and, moreover, the economic interests that underlie the Exchangeable LP Units shall be based solely upon the assets and operations held directly or indirectly by the operating entities of the Filer.

23. The Exchangeable LP Units shall not be listed and posted for trading on the Toronto Stock Exchange or any other stock exchange.

24. Although TransGlobe was granted additional rights at the time of the Filer's initial public offering of trust units, including pre-emptive rights, registrations rights, tag/drag rights, board appointment rights and limited approval rights, these rights are based on ownership thresholds that treat Exchangeable LP Units, Class B LP Units and Trust Units on a combined basis. As a result, by acquiring Exchangeable LP Units in connection with the Proposed Transaction rather than Trust Units, TransGlobe does not gain any additional or unique rights or benefits that they would not otherwise have. Any additional rights attached to the Exchangeable LP Units arise solely by virtue of the Exchangeable LP Units being limited partnership units and would be no greater than the customary rights associated with limited partnership units. Other than the rights described above, the Exchangeable LP Units carry no other rights that would impact their value.

25. Section 6.3(2)(a) of MI 61-101 provides an exemption from the Non-Cash Valuation Requirement where the non-cash consideration or assets are securities of a reporting issuer or are securities of a class for which there is a published market.

26. Stonecap has confirmed that it agrees with the facts set out in this application.

**Decision**

The principal regulator is satisfied that the decision meets the test set out in MI 61-101 for the principal regulator to make the decision.

The decision of the principal regulator is that the Relief is granted provided the Filer complies with subsection 6.3(2) of Multilateral Instrument 61-101 other than clause (a) thereof.

"Naizam Kanji"
Deputy Director, Corporate Finance
Ontario Securities Commission

### 2.1.6 Vector Aerospace Corporation

**Headnote**

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

**Ontario Statutes**

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

July 25, 2011

Vector Aerospace Corporation
2 Bloor Street West, Suite 2100
Toronto, ON M4W 3E2

Dear Sirs/Mesdames:

**Re: Vector Aerospace Corporation (the Applicant) – application for a decision under the securities legislation of Ontario, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the Jurisdictions) that the Applicant is not a reporting issuer**

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

As the Applicant has represented to the Decision Makers that:

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

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

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

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

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

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

### 2.1.7 QHR Technologies Inc.

**Headnote**

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 54-101 – Communication with Beneficial Owners of Securities of a Reporting Issuer (NI 54-101) – s. 2.7 – An issuer is holding a shareholder meeting; there is a mail service disruption; the issuer cannot comply with its obligations to send proxy-related materials to its shareholders within the periods prescribed by securities law due to the disruption of mail service; all matters submitted to the meeting are routine and would be considered to be non-contentious; the issuer has taken reasonable steps to notify shareholders of the meeting and where proxy-related materials are available; the issuer sends the proxy-related materials to shareholders upon resumption of mail service.

**Applicable Legislative Provisions**

National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer, s. 2.7.

**July 7, 2011**

**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**
**QHR TECHNOLOGIES INC.**
**(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 provisions of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (NI 54-101) that require the Filer to send proxy-related materials to its beneficial owners holding through Canadian intermediaries (the Beneficial Owners) in connection with the 2011 Meeting (as defined below) within the time periods prescribed by NI 54-101 (the Exemption Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport 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, and Manitoba (the Passport Jurisdictions); and

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

**Interpretation**

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

**Representations**

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

    1. the Filer is a corporation incorporated under the *Business Corporations Act* (British Columbia);

    2. the Filer's head office is located at Suite 300 – 1620 Dickson Avenue, Kelowna, BC V1Y 9Y2;

    3. the authorized capital of the Filer consists of an unlimited number of common shares (the Shares) of which 42,790,621 Shares were issued and outstanding as of June 13, 2011, and an unlimited number of Class A Preference Shares of which no shares were issued and outstanding as of June 13, 2011;

    4. the Shares are listed and posted for trading on the TSX Venture Exchange;

    5. the Filer is not in default of securities legislation in any jurisdiction in which it is a reporting issuer;

    6. the Filer intends to hold an annual meeting of its shareholders on Monday, July 18, 2011 (the 2011 Meeting); the following matters will be submitted to the meeting:

        (a) the receiving of the audited financial statements of the Filer for the financial year ended December 31, 2010, and accompanying report of the auditor;

        (b) the setting of the number of directors of the Filer for the ensuing year at six (6) persons;

        (c) the election of the directors of the Filer to serve until the next annual general meeting of the shareholders;

        (d) the appointment of Grant Thornton LLP, Chartered Accountants, as the auditor of the Filer for the fiscal year ending December 31, 2011 and to authorize the directors of the Filer to fix the remuneration to be paid to the auditor for the fiscal year ending December 31, 2011; and

        (e) the approval of the Filer's Incentive Stock Option Plan, which will be limited to 10% of the issued shares of the Filer at the time of any granting of options.

    7. no matter requiring a special resolution of shareholders will be put before the 2011 Meeting and, therefore, the 2011 Meeting will not be considered a "special meeting" for the purposes of NI 54-101;

    8. no matter requiring a minority vote pursuant to Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* will be put before the 2011 Meeting;

    9. in the Filer's reasonable opinion, none of the matters to be put before the 2011 Meeting would be considered by a shareholder to be a contentious matter;

    10. National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) requires the Filer to deliver proxy materials to registered shareholders (the Registered Shareholders) and NI 54-101 requires the Filer to deliver proxy materials to intermediaries for delivery to those Beneficial Owners that have requested materials for annual meetings;

    11. it was the Filer's intention to mail all materials in respect of the 2011 Meeting (the 2011 Meeting Materials) to its Registered Shareholders and to deliver the 2011 Meeting Materials to intermediaries for delivery to those Beneficial Owners that have requested materials for annual meetings within the periods prescribed by NI 54-101;

    12. on June 15, 2011, Canada Post locked out the Canadian Union of Postal Workers (the Postal Lockout) and suspended all mail service in Canada;

    13. the Postal Lockout continued until June 27, 2011 and mail service resumed on June 28, 2011;

    14. due to the Postal Lockout, the Filer was unable to send the 2011 Meeting Materials to Broadridge Financial Solutions, Inc. (Broadridge) for delivery to Beneficial Owners within the time periods prescribed by NI 54-101;

    15. the Filer caused Broadridge to courier the 2011 Meeting Materials to the Beneficial Owners on June 27, 2011, two business days fewer than the three business days required by section 2.12 of NI 54-101;

16. the Filer mailed the 2011 Meeting Materials to its Registered Shareholders upon the resumption of mail service on June 28, 2011;

17. the Filer filed the notification and record dates required by NI 54-101 on May 11, 2011;

18. the Filer has filed the 2011 Meeting Materials on SEDAR as required by NI 51-102; and

19. on June 24, 2011, the Filer filed and disseminated a news release notifying Registered Shareholders, Beneficial Owners, and intermediaries of Beneficial Owners that:

    (a) the Postal Lockout may disrupt delivery of the 2011 Meeting Materials;

    (b) the 2011 Meeting Materials, including the information circular, are available to be downloaded from the Filer's issuer profile on SEDAR at http://www.sedar.com; and

    (c) upon request by any Registered Shareholder, Beneficial Owner, or intermediary for any Beneficial Owner, which request may be made by telephone to the Filer at (250) 763-3122, the Filer will make available copies of the 2011 Meeting Materials, including the information circular, by electronic mail or facsimile as requested by the Registered Shareholder, Beneficial Owner, or intermediary for any Beneficial Owner, 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 Representations 7, 8, and 9 remain true as at the date of the 2011 Meeting.

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

### 2.1.8 Ember Resources Inc.

**Headnote**

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

**Applicable Legislative Provisions**

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

**Citation:** Ember Resources Inc., Re, 2011 ABASC 366

July 6, 2011

Bennett Jones
4500 Bankers Hall East,
855-2nd Street SW
Calgary, AB T2P 4K7

**Attention: Colin R. Perry**

Dear Sir:

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

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

As the Applicant has represented to the Decision Makers that:

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

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

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

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

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

"Blaine Young"
Associate Director, Corporate Finance

### 2.1.9 Shamaran Petroleum Corp.

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – An issuer applied for relief from the requirement in the definition of "venture issuer" in section 1.1 of National Instrument 51-102 Continuous Disclosure Obligations and other rules that the issuer not have any of its securities listed or quoted on 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 issuer has common shares listed on TSX Venture Exchange (TSXV) – The issuer has listed its common shares on a foreign exchange that does not meet the requirements of the definition of a venture issuer – The foreign exchange is a junior market that has less rigorous requirements than the TSXV – Relief granted subject to conditions, including that in order to remain a venture issuer, the issuer must continue to have its common shares listed on the TSXV and the foreign exchange must remain a junior market.

**Applicable Legislative Provisions**

National Instrument 51-102 Continuous Disclosure Obligations, ss. 1.1, 13.1.
National Instrument 52-109 Certification of Disclosure in Issuer's Annual and Interim Filings, ss. 1.1, 8.6.
National Instrument 52-110 Audit Committees, ss. 1.1, 8.1.
National Instrument 58-101 Disclosure of Corporate Governance Practices, ss. 1.1, 3.1.

**July 19, 2011**

**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**
**SHAMARAN PETROLEUM CORP.**
**(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) 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*, National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, National Instrument 52-110 *Audit Committees and National Instrument 58-101 Disclosure of Corporate Governance Practices*, 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 or the United States other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operating by PLUS Markets Group plc (the Exemption Sought);

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 - *Passport System* (MI 11-102) is intended to be relied upon in Alberta, 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 is incorporated under the *Business Corporations Act* (British Columbia) and its head office is located in Vancouver, British Columbia;

2. the Filer is an international oil and gas exploration company based in Canada with assets in Iraq;

3. the Filer is a reporting issuer in British Columbia, Alberta and Ontario and the Filer is not in default of securities legislation in any jurisdiction;

4. the Filer is authorized to issue an unlimited number of common shares without par value; as of July 14, 2011,

the Filer has 680, 483, 860 common shares issued and outstanding;

5. the common shares of the Filer are listed on the TSX Venture Exchange (the TSX-V);

6. effective June 1, 2011 the Filer obtained a listing on the NASDAQ OMX First North, the junior board of NASDAQ OMX Nordic List;

7. the NASDAQ OMX First North is a junior market; it is not registered as a national securities exchange under section 6(a) of the *Securities Exchange Act of 1934*;

8. the NASDAQ OMX First North is junior to the TSX-V in terms of its requirements, as the minimum listing requirements, the listing maintenance requirements, and the continuous disclosure requirements are much less strenuous for the NASDAQ OMX First North as compared to the TSX-V;

9. the NASDAQ OMX First North requires that the Filer's annual reports be prepared in accordance with applicable laws or other regulations, and in accordance with generally accepted accounting principles, required by the Filer's home jurisdiction; and

10. the information the Filer provided about the NASDAQ OMX First North and its status as a junior market for the purposes of review by capital markets staff of the principal regulator is accurate as at the date of this decision.

**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 NASDAQ OMX First North is not restructured in a manner that makes it unreasonable to conclude that it is still a junior market;

(b) the representations in sections 7 through 10 above continue to be true;

(c) the Filer continues to have its common shares listed on the TSX-V; and

(d) the Filer does 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 NASDAQ OMX First North, the Alternative Investment Market of the London Stock Exchange or the PLUS markets operating by PLUS Markets Group plc.

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

### 2.1.10 Transcanada Pipelines Limited

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer granted exemption from the prospectus requirement in connection with trades of commercial paper that does not meet the "approved credit rating" requirement for the purpose of the short-term debt exemption in section 2.35 of National Instrument 45-106 Prospectus and Registration Exemptions – Commercial paper only required to obtain one prescribed credit rating from an approved credit rating organization - Relief granted subject to conditions, including that the commercial paper is not asset-backed commercial paper.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., s. 74.

**Citation:** TransCanada PipeLines Limited, Re, 2011 ABASC 391

**July 22, 2011**

**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**
**TRANSCANADA PIPELINES LIMITED (THE FILER)**

**DECISION**

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that trades of negotiable promissory notes or commercial paper, maturing not more than one year from the date of issue, of the Filer (**Commercial Paper**) be exempt from the prospectus requirements of the Legislation (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 each of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (the Passport Jurisdictions); and

(c) this 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* or MI 11-102 have the same meanings in this decision, unless otherwise defined herein.

**In this decision:**

"Asset-backed Short-term Debt" means short-term debt that is backed, secured or serviced by or from, a discrete pool of mortgages, receivables or other financial assets or interests designed to ensure the servicing or timely distribution of proceeds to holders of that short-term debt;

"NI 31-103" means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Relationships*;

"NI 45-106" means National Instrument 45-106 *Prospectus and Registration Exemptions*; and

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

Representations

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

1. The Filer is a corporation under the *Canada Business Corporations Act* with its head office in Calgary, Alberta.

2. The Filer is a reporting issuer in the Jurisdictions and the Passport Jurisdictions. The Filer is not in default of its reporting issuer obligations under the Legislation or the securities legislation of the Jurisdictions and Passport Jurisdictions.

3. Subsection 2.35(b) of NI 45-106 provides that the exemption from the prospectus requirement of the Legislation for short-term debt (the **Commercial Paper Exemption**) is available only where such short-term debt "has an approved credit rating from an approved credit rating organization". NI 45-106 incorporates by reference the definitions for "approved credit rating" and "approved credit rating organization" in NI 81-102.

4. The definition of "approved credit rating" in NI 81-102 requires, among other things, that the rating assigned to particular debt must be "at or above" certain prescribed short-term ratings, and such debt must not have been assigned a rating by any "approved credit rating organization" that is not an "approved credit rating".

5. The Commercial Paper has an "R-1(low)" rating from Dominion Bond Rating Service Limited, which meets the prescribed threshold in NI 81-102.

6. The Commercial Paper does not meet the "approved credit rating" definition in NI 81-102 because it was assigned a subsequently discontinued "P-2" rating by Moody's Investor Service, which is a lower rating than required by the Commercial Paper Exemption.

**Decision**

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

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

1. the Commercial Paper:

   (a) matures not more than one year from the date of issue;

   (b) is not convertible or exchangeable into or accompanied by a right to purchase another security other than Commercial Paper;

   (c) is not Asset-backed Short-term Debt; and

   (d) has a rating issued by one of the following rating organizations, or any of their successors, at or above one of the following rating categories or rating category that replaces a category listed below:

| Rating Organization | Rating |
|---|---|
| Dominion Bond Rating Service Limited | R-1 (low) |
| Fitch Ratings Ltd. | F2 |
| Moody's Investors Service | P-2 |
| Standard & Poor's | A-2 |

2. each trade of Commercial Paper to a resident in a jurisdiction in Canada by the Filer in reliance on this exemption is made: (i) through an agent who is a registered dealer, registered in a category that permits the trade; (ii) through a bank listed in Schedule I, II or III to the Bank Act (Canada) trading in reliance on an exemption from registration available in the circumstances in the jurisdiction or jurisdictions in which the trade occurs; or (iii) through a dealer permitted to rely on the "international dealer exemption" under section 8.18 of NI 31-103; and

3. for each jurisdiction of Canada, the Exemption Sought will terminate on the earlier of:

   (a) 90 days after the coming into force of any rule, other regulation or blanket order or ruling under the securities legislation of that jurisdiction of Canada that amends the conditions of the prospectus exemption under section 2.35 of NI 45-106 or provides an alternate exemption; and

   (b) June 30, 2017.

**For the Commission:**

"Glenda Campbell, QC"
Vice-Chair

"Stephen Murison"
Vice-Chair

**2.2.1 L.T.M.T. Trading Ltd. et al. – ss. 127(1), 127(10)**

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

**AND**

**IN THE MATTER OF**
**L.T.M.T. TRADING LTD. also known as**
**L.T.M.T. TRADING and BERNARD SHAW**

**ORDER**
**(Section 127(1) and 127(10))**

**WHEREAS** on April 8, 2011, 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 "Act"), accompanied by a Statement of Allegations dated April 8, 2011 issued by Staff of the Commission ("Staff"), with respect to L.T.M.T. Trading Ltd., also known as L.T.M.T. Trading, and Bernard Shaw (collectively, the "Respondents");

**AND WHEREAS** on July 20, 2011, the Commission held a hearing to consider whether it is in the public interest to make an order against the Respondents;

**AND WHEREAS** Staff attended the hearing and made written and oral submissions;

**AND WHEREAS** the Respondents did not participate in the hearing, although properly served;

**AND WHEREAS** I find that the Respondents are subject to an order issued by the Saskatchewan Financial Services Commission (the "SFS") imposing sanctions, conditions, restrictions or requirements on them within the meaning of subsection 127(10) of the Act;

**AND WHEREAS** the conduct of the Respondents that gave rise to the order by the SFS would have contravened the Act if it had occurred in Ontario;

**AND WHEREAS** I find that it is in the public interest to exercise, in respect of the Respondents, the Commission's inter-jurisdictional enforcement authority pursuant to subsections 127(10) and 127(1) of the Act;

**IT IS ORDERED THAT:**

(a) pursuant to subsection 127(1)2, trading in any securities by the Respondents shall cease permanently;

(b) pursuant to subsection 127(1)2.1, the acquisition of any securities by the Respondents shall cease permanently; and

(c) pursuant to subsection 127(1)3, any exemptions in Ontario securities law do not apply to the Respondents permanently.

**DATED** at Toronto this 20th day of July, 2011.

"James E. A. Turner"

### 2.2.2 Pacific Coal Resources Ltd. – 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 and British Columbia – Issuer's securities listed for trading on the TSX Venture Exchange – Continuous disclosure requirements in Alberta and British Columbia 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, c S.5, AS AMENDED**
**(the Act)**

**AND**

**IN THE MATTER OF**
**PACIFIC COAL RESOURCES LTD.**

**ORDER**
**(Clause 1(11)(b))**

**UPON** the application of Pacific Coal Resources Ltd. (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 having represented to the Commission as follows:

1. The Applicant is a corporation under the *Business Corporations Act* (British Columbia) with its registered office at 1188 West Georgia Street, Suite 650, Vancouver, British Columbia V6E 4A2.

2. The Applicant's head office is at 333 Bay Street, Suite 1100, Toronto, Ontario M5H 2R2.

3. The authorized share capital of the Applicant consists of an unlimited number of common shares and preferred shares without nominal or par value, of which 333,202,406 common shares and no preferred shares are issued and outstanding as of the date hereof.

4. The Applicant is a reporting issuer under the *Securities Act* (British Columbia) (the "BC Act") and the *Securities Act* (Alberta) (the "Alberta Act").

5. The Applicant is not currently a reporting issuer in any jurisdiction other than British Columbia and Alberta.

6. The Applicant is not on the lists of defaulting reporting issuers maintained pursuant to the BC Act or the Alberta Act and is not in default of any requirement of either the BC Act or the Alberta Act or the rules and regulations made thereunder.

7. The continuous disclosure requirements of the BC Act and the Alberta Act are substantially the same as the continuous disclosure requirements under the Act.

8. The continuous disclosure documents filed by the Applicant under the BC Act and the Alberta Act are available on the System for Electronic Document Analysis and Retrieval ("SEDAR").

9. The Applicant's common shares are listed and posted for trading on the TSX Venture Exchange (the "Exchange") under the trading symbol "PAK".

10. The Applicants warrants are listed and posted for trading on the Exchange under the trading symbol "PAK.WT".

11. The Applicant is not in default of any of the rules, regulations or policies of the Exchange.

12. Pursuant to the policies of the Exchange, a listed issuer, which is not otherwise a reporting issuer in Ontario, must assess whether it has a "significant connection to Ontario" (as defined in the policies of the Exchange) and, upon becoming aware that it has a significant connection to Ontario, promptly make a bona fide application to the Commission to be deemed a reporting issuer in Ontario.

13. The Applicant has determined that it has a "significant connection to Ontario" (as defined in Exchange policies) because beneficial holders of the Applicant's securities resident in Ontario hold more than 10% of the Applicant's common Shares and the mind and management of the Applicant are located in Ontario.

14. Neither the Applicant nor any of its officers, directors, nor, to the knowledge of the Applicant or its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, has:

    (a) been the subject of 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 the subject of 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.

15. Neither the Applicant nor any of its officers, directors, nor, to the knowledge of the Applicant or its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been subject to:

    (a) any known ongoing or concluded investigations by:

        (i) a Canadian securities regulatory authority; or

        (ii) 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; or

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

16. Neither any of the officers or directors of the Applicant, nor, to the knowledge of the Applicant or its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been at the time of such event an officer or director of any other issuer which is or has been subject to:

    (a) any cease trade order or similar order, or order 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 appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.

17. As the Applicant has a significant number of non-resident directors and officers, the Applicant has filed with the Commission on SEDAR a "Non-Issuer Submission to Jurisdiction and Appointment of Agent for Service of Process" form executed by each non-resident director and officer, as well as the promoter, of the Applicant.

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

**IT IS HEREBY 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 22nd day of July, 2011

"Michael Brown"
Assistant Manager
Corporate Finance
Ontario Securities Commission

### 2.2.3 MBS Group (Canada) 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**
**MBS GROUP (CANADA) LTD.,**
**BALBIR AHLUWALIA AND**
**MOHINDER AHLUWALIA**

**ORDER**
**(Section 127 of the Securities Act)**

**WHEREAS** on June 30, 2011, 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 June 30, 2011, issued by Staff of the Commission ("Staff") with respect to MBS Group (Canada) Ltd. ("MBS Group"), Mohinder Ahluwalia ("Mohinder") and Balbir Ahluwalia ("Balbir"), collectively the "Respondents";

**AND WHEREAS** the Notice of Hearing stated that a hearing would be held at the offices of the Commission on July 21, 2011;

**AND WHEREAS** on July 21, 2011, Staff confirmed that the Commission had received the affidavit of Daniela DeChellis sworn July 19, 2011 which indicated that the Notice of Hearing and Statement of Allegations were served on the Respondents;

**AND WHEREAS** on July 21, 2011, Staff attended the hearing and no one appeared on behalf of the Respondents;

**AND WHEREAS** on July 21, 2011, Staff provided the Panel with emails from Balbir and Mohinder advising Staff that they were unable to attend the hearing and requesting that the hearing be adjourned for a short period of time;

**AND WHEREAS** Staff advised the Commission that it was not opposed to a brief adjournment;

**IT IS ORDERED** that the hearing is adjourned to August 17, 2011 at 11:00 a.m. or to such other date as provided by the Office of the Secretary and agreed to by the parties.

**DATED** at Toronto this 21st day of July, 2011.

"James E. A. Turner"

### 2.2.4 Heir Home Equity Investment Rewards Inc. et al. – ss. 127(1), 127.1

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

**AND**

**IN THE MATTER OF**
**HEIR HOME EQUITY INVESTMENT REWARDS INC.;**
**FFI FIRST FRUIT INVESTMENTS INC.;**
**WEALTH BUILDING MORTGAGES INC.;**
**ARCHIBALD ROBERTSON; ERIC DESCHAMPS;**
**CANYON ACQUISITIONS, LLC;**
**CANYON ACQUISITIONS INTERNATIONAL, LLC;**
**BRENT BORLAND; WAYNE D. ROBBINS;**
**MARCO CARUSO;**
**PLACENCIA ESTATES DEVELOPMENT, LTD.;**
**COPAL RESORT DEVELOPMENT GROUP, LLC;**
**RENDEZVOUS ISLAND, LTD.;**
**THE PLACENCIA MARINA, LTD.; AND**
**THE PLACENCIA HOTEL AND RESIDENCES LTD.**

**ORDER**
**(Sections 127(1) and 127.1)**

**WHEREAS** on March 29, 2011, 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 in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on March 29, 2011 in respect of HEIR Home Equity Investment Rewards Inc., FFI First Fruit Investments Inc., Wealth Building Mortgages Inc., Archibald Robertson, Eric Deschamps (collectively the "HEIR Respondents") and Canyon Acquisitions, LLC, Canyon Acquisitions International, LLC, Brent Borland, Wayne D. Robbins, Marco Caruso, Placencia Estates Development, Ltd., Copal Resort Development Group, LLC, Rendezvous Island, Ltd., The Placencia Marina, Ltd. and The Placencia Hotel and Residences Ltd. (collectively the "Canyon Respondents");

**AND WHEREAS** the Respondents were served with the Notice of Hearing and Statement of Allegations on March 29 and 30, 2011 and April 5, 2011;

**AND WHEREAS** the Notice of Hearing provided that a hearing would be held at the offices of the Commission on April 27, 2011;

**AND WHEREAS** counsel for the Canyon Respondents wished to attend the hearing but was not available on April 27, 2011;

**AND WHEREAS**, on consent of all the parties, on April 20, 2011, the Commission ordered that the hearing scheduled to commence on April 27, 2011 be rescheduled to commence on May 17, 2011 at 11:00 a.m. or as soon thereafter as the hearing can be held;

**AND WHEREAS** on May 17, 2011, a first appearance on this matter was held before the Commission, at which Staff attended, counsel from Borden Ladner Gervais LLP attended on behalf of all of the HEIR Respondents, and counsel from Cassels Brock & Blackwell LLP attended on behalf of all of the Canyon Respondents, and at that first attendance, Staff submitted that the hearing on the merits should be scheduled at a future pre-hearing conference or at a subsequent attendance;

**AND WHEREAS**, on May 17, 2011, the Commission ordered that the hearing be adjourned to June 28, 2011 at 10:00 a.m., or to such other date as may be agreed to by the parties and fixed by the Office of the Secretary, for the purpose of addressing scheduling and any other procedural matters or for such other purposes as may be requested;

**AND WHEREAS** on June 28, 2011, Staff and counsel for the HEIR Respondents attended, and Staff advised the Commission that counsel for the Canyon Respondents, while not in attendance, had recently indicated that the Canyon Respondents would likely retain new counsel in the near future to represent them before the Commission;

**AND WHEREAS** on June 28, 2011, the Commission ordered that the hearing be adjourned to July 19, 2011 at 2:30 p.m., for the purpose of addressing scheduling and any other procedural matters or for such other purposes as may be requested;

**AND WHEREAS** on July 19, 2011, McCarthy Tétrault LLP served a notice that it had been engaged to represent the Canyon Respondents as of that date;

**AND WHEREAS** at the attendance before the Commission on July 19, 2011, counsel from McCarthy Tétrault LLP attended on behalf of the Canyon Respondents and confirmed the firm's engagement;

**AND WHEREAS** at the attendance before the Commission on July 19, 2011, counsel made submissions regarding the scheduling of a further status conference or a pre-hearing conference in light of McCarthy Tétrault LLP having been retained that day and the on-going investigation by the Commission;

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

**IT IS ORDERED** that the hearing be adjourned to August 22, 2011 at 10:00 a.m., for the purpose of discussing scheduling and any other procedural matters or for such other purposes as may be appropriate.

**DATED** at Toronto this 19th day of July, 2011.

"Christopher Portner"

### 2.2.5 Innovative Gifting 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 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 *Securities Act*, R.S.O. 1990, c. S.5, as amended, against Innovative Gifting Inc. ("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 March 2, 2010. Service by Staff was evidenced by the Affidavit of Service of Joanne Wadden, sworn on March 4, 2010, which was filed with the Commission;

**AND WHEREAS** on March 5, 2010, the Commission ordered that the 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 13, 2010, the Commission issued an order that, *inter alia*, the hearing with respect to the Notice of Hearing dated March 2, 2010 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, the Commission issued an order that, *inter alia*, the hearing with respect to the Notice of Hearing dated March 2, 2010 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 WHEREAS** on September 9, 2010, the Commission ordered, *inter alia*, that the hearing with respect to the Notice of Hearing dated March 2, 2010 be 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;

**AND WHEREAS** on November 3, 2010, all parties requested, in writing, that the pre-hearing conference scheduled for November 4, 2010 be adjourned to 10:00 a.m. on December 6th, 2010 and at that time dates will be fixed for the hearing on the merits in this matter;

**AND WHEREAS** on November 4, 2010, the Commission ordered that, *inter alia*, the hearing with respect to the Notice of Hearing dated March 2, 2010 be adjourned to December 6th, 2010 at 10:00 a.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;

**AND WHEREAS** on December 6, 2010, all parties attended the pre-hearing conference and all parties made submissions to the Commission;

**AND WHEREAS** on December 6, 2010 the Commission ordered the hearing on the merits in this matter to commence on May 2, 2011 and continue until May 16, 2011, with the exception that the hearing on the merits would not be heard on May 3, 2011;

**AND WHEREAS** on December 6, 2010, the Commission also scheduled Z2A and Hewitt to make a motion to the Commission on March 30, 2011 at 2:00 p.m for severance of the hearing as to the allegations relating to them;

**AND WHEREAS** on March 29, 2011, the Commission approved a Settlement Agreement dated March 24, 2011 between Staff and Lushington and IGI;

**AND WHEREAS** on April 26, 2011 counsel for Z2A and Hewitt (the "Remaining Respondents") and Staff attended a pre-hearing conference at which time a motion was scheduled for April 28, 2011 at 11:00 a.m. before the panel scheduled to hear this matter on the merits, to hear the Remaining Respondents' request to adjourn the hearing of this matter;

**AND WHEREAS** on April 28, 2011, the Commission ordered that the hearing on the merits be adjourned to June 6, 2011 and continue until June 10, 2011 and, if necessary, continue on June 15 and 16, 2011, commencing each day at 10:00 a.m., with the exception of June 7, 2011, which hearing day would commence at 2:00 p.m. and continue until 5:00 p.m.;

**AND WHEREAS** on June 6, 2011, the Commission ordered that the hearing on the merits of this matter be adjourned to and commence on July 18, 2011 peremptory on the Remaining Respondents and continue on July 20, 21, 22 and 25, 2011, commencing each day at 10:00 a.m.;

**AND WHEREAS** the Remaining Respondents sought, through their counsel, at the commencement of the hearing on July 18, 2011, an adjournment of the hearing on the merits on the basis that Hewitt was ill and not able to attend;

**AND WHEREAS** on July 18, 2011, the panel adjourned the hearing to July 20, 2011 to assess any evidence to be provided by the Remaining Respondents as to Hewitt's medical condition;

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

**IT IS ORDERED** that the dates previously scheduled for the hearing on the merits of this matter are vacated;

**AND IT IS FURTHER ORDERED** that a conference call be scheduled for July 27, 2011 at 10:00 a.m. to review the status of Hewitt's health in relation to her ability to attend the hearing on the proposed hearing dates of August 3, 4, 5 and 15, 2011.

**DATED** at Toronto this 20th day of July, 2011.

"Paulette L. Kennedy"

## 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 |
|---|---|---|---|---|
| Delta Uranium Inc. | 06 July 11 | 18 July 11 | 18 July 11 | 21 July 11 |
| Southeast Asia Mining Corp. | 04 May 09 | 15 May 09 | 15 May 09 | 27 July 11 |

### 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 |
|---|---|---|---|---|---|
| | | | | | |

**THERE ARE NO ITEMS FOR THIS WEEK.**

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## Chapter 7

# Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

## Chapter 8

# Notice of Exempt Financings

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

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price ($) | No. of Securities Distributed |
|---|---|---|---|---|
| 05/31/2011 | 66 | ACM Commercial Mortgage Fund - Units | 7,254,815.55 | 65,348.34 |
| 07/15/2011 | 12 | Amaya Gaming Group Inc. - Common Shares | 10,228,909.00 | 3,300,000.00 |
| 06/22/2011 | 60 | Amerix Precious Metals Corporation - Units | 4,004,000.00 | 18,200,000.00 |
| 06/03/2011 | 11 | Anaconda Mining Inc. - Common Shares | 1,287,560.89 | 18,393,727.00 |
| 06/29/2011 | 11 | BacTech Environmental Corporation - Units | 500,000.00 | 2,500,000.00 |
| 07/04/2011 | 1 | Bank of Montreal - Debt | 3,400,000.00 | 1.00 |
| 07/07/2011 | 15 | Birch Lake Energy Inc. - Units | 2,381,800.00 | 12,118,750.00 |
| 06/22/2011 | 12 | BlackBerry Partners Fund LP - Units | 114,500,002.00 | 114,502.00 |
| 07/01/2011 | 1 | Blue Mountain Credit Alternatives Fund Ltd. - Common Shares | 100,000,000.00 | 1,000,000.00 |
| 06/08/2011 | 6 | Bonanza Blue Corp. - Units | 300,000.00 | 3,000,000.00 |
| 06/23/2011 | 27 | Canadian Horizons First Mortgage Investment Corporation - Preferred Shares | 684,738.00 | 684,738.00 |
| 06/28/2011 | 15 | Canadian Oil Recovery & Remediation Enterprises Ltd. - Units | 356,320.00 | 937,685.00 |
| 06/21/2011 | 28 | Canadian Satellite Radio Holdings Inc. - Notes | 130,771,000.00 | 130,771.00 |
| 06/23/2011 | 16 | CareVest Blended Mortgage Investment Corporation - Preferred Shares | 365,501.00 | 365,501.00 |
| 06/23/2011 | 10 | CareVest First Mortgage Investment Fund - Preferred Shares | 231,474.00 | 231,474.00 |
| 07/04/2011 | 14 | Caribou Copper Resources Ltd. - Flow-Through Units | 275,000.00 | 1,100,000.00 |
| 07/04/2011 | 15 | Caribou Copper Resources Ltd. - Units | 298,000.00 | 1,490,000.00 |
| 06/13/2011 | 2 | Castlepoint Studio Partners Limited - Limited Partnership Interest | 4,500,000.00 | 4,500,000.00 |
| 05/31/2011 | 1 | Champlain Resources Inc. - Common Shares | 92,500.00 | 500,000.00 |
| 05/12/2011 | 16 | Cimarron Minerals Corp. - Common Shares | 1,625,858.00 | 1,625,858.00 |
| 06/15/2011 | 4 | CIT Group Inc. - Special Shares | 8,968,260.00 | 8.00 |
| 06/22/2011 | 4 | Cleanfield Alternative Energy Inc. - Common Shares | 87,155.02 | 871,550.00 |
| 05/31/2011 | 15 | Counsel Corporation - Common Shares | 12,550,000.50 | 12,733,334.00 |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price ($) | No. of Securities Distributed |
|---|---|---|---|---|
| 07/01/2011 | 2 | Dorchester Capital Secondaries Offshore II, L.P. - Limited Partnership Interest | 2,060,000.00 | 2.00 |
| 07/05/2011 | 136 | Drexel Resources Ltd. - Common Shares | 2,400,000.00 | 24,000,000.00 |
| 07/12/2011 | 1 | Dynacast International LLC and Dynacast Finance Inc. - Note | 96,680.00 | 1.00 |
| 07/01/2011 | 121 | EQT V1 (No.1) Limited Partnership - Limited Partnership Interest | 3,471,856,063.88 | 152,222,858.78 |
| 07/06/2011 | 6 | Equinix, Inc. - Notes | 5,649,345.00 | 6.00 |
| 05/22/2011 | 1 | Evisors LLC - Note | 10,000.00 | 1.00 |
| 06/29/2011 | 95 | Expand Energy Corporation - Common Shares | 12,082,787.70 | 9,826,013.00 |
| 06/02/2011 | 1 | First Leaside Mortgage Fund - Trust Units | 150,000.00 | 150,000.00 |
| 06/01/2011 to 06/03/2011 | 5 | First Leaside Wealth Management Fund - Limited Partnership Interest | 137,776.00 | 137,776.00 |
| 06/23/2011 to 06/28/2011 | 8 | First Leaside Wealth Management Fund - Limited Partnership Interest | 572,153.00 | 572,153.00 |
| 06/09/2011 to 06/14/2011 | 4 | First Leaside Wealth Management Fund - Limited Partnership Interest | 336,797.00 | 336,797.00 |
| 05/31/2011 to 06/02/2011 | 33 | Fort Chimo Minerals Inc. - Units | 385,000.00 | 7,700,000.00 |
| 07/04/2011 | 1 | Freedom House International Church - Debentures | 1,189,000.00 | 1,189.00 |
| 06/09/2011 | 154 | Golden Fame Resources Corp. - Units | 7,100,920.00 | 22,190,375.00 |
| 01/01/2010 to 12/31/2010 | 8 | Goldman Sachs Corporate Credit - Units | 13,601,155.00 | 13,675,000.00 |
| 10/01/2010 to 12/31/2010 | 4 | Goldman Sachs Early Secondaries - Units | 2,735,150.00 | 2,750,000.00 |
| 12/31/2010 | 1 | Goldman Sachs EUR Liquid - Units | 857,503.38 | 4,550.00 |
| 06/01/2010 to 12/31/2010 | 1 | Goldman Sachs Growth Strategy - Units | 83.70 | 84.16 |
| 03/01/2010 to 12/31/2010 | 4 | Goldman Sachs Investment Partners - Units | 3,481,100.00 | 2,250,000.00 |
| 10/01/2009 to 12/31/2009 | 1 | Goldman Sachs Investment Partners - Units | 1,046,600.00 | 1,000,000.00 |
| 02/25/2010 to 12/31/2010 | 1 | Goldman Sachs Long Duration Plus - Units | 24,105,993.01 | 24,263,872.00 |
| 06/10/2011 | 42 | Health Montreal Collective Limited Partnership - Bonds | 1,370,828,000.00 | 1,370,328,000.00 |
| 06/10/2011 | 1 | Heritage Grove Center Inc. - Units | 2,050,000.00 | 2,050,000.00 |
| 06/08/2011 | 105 | IronCo. LLC - Units | 537,900,000.00 | 205,550.00 |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price ($) | No. of Securities Distributed |
|---|---|---|---|---|
| 07/06/2011 | 53 | Jennerex, Inc. - Common Shares | 3,506,211.41 | 427,076.00 |
| 06/01/2010 to 05/01/2011 | 38 | Magenta Mortgage Investment Corporation - Common Shares | 6,315,250.80 | 631,525.08 |
| 07/05/2011 to 07/07/2011 | 6 | Member-Partners Solar Energy Limited Partnership - Units | 201,000.00 | 201,000.00 |
| 06/21/2011 | 16 | Minerva Minerals Limited - Investment Trust Interests | 280,000.00 | 4,000,000.00 |
| 06/03/2011 | 3 | Mistango River Resources Inc. - Units | 550,000.00 | 2,200,000.00 |
| 06/23/2011 | 123 | Mongolia Growth Group Ltd. - Common Shares | 17,099,572.38 | 4,871,673.00 |
| 06/30/2011 | 26 | Morrison Laurier Mortgage Corporation - Preferred Shares | 2,775,350.00 | 277,535.00 |
| 06/28/2011 | 1 | NuVasive, Inc. - Note | 491,050.00 | 1.00 |
| 06/07/2011 | 58 | Pacific Potash Corporation - Units | 3,688,524.75 | 5,113,833.00 |
| 07/11/2011 | 1 | PAG Asia I LP - Limited Partnership Interest | 194,000,000.00 | 1.00 |
| 06/23/2011 | 19 | Pancontinental Uranium Corporation - Units | 2,021,760.00 | 7,776,000.00 |
| 06/03/2011 | 1 | Pier 21 Global Value Pool - Units | 100,000.00 | 9,597.75 |
| 05/30/2011 | 4 | Proforma Capital Bond (II) Corporation - Bonds | 646,600.00 | 6,466.00 |
| 06/03/2011 | 4 | Purepoint Uranium Group Inc. - Common Shares | 500,000.00 | 2,272,727.00 |
| 07/04/2011 to 07/08/2011 | 28 | Redux Duncan City Centre Limited Partnership - Notes | 2,748,000.00 | 2,748,000.00 |
| 07/05/2011 to 07/08/2011 | 5 | Residences At Quadra Village Limited Partnership - Units | 199,000.00 | 199,000.00 |
| 05/31/2011 | 14 | Sage Gold Inc. - Flow-Through Units | 903,003.00 | NA |
| 07/04/2011 | 1 | Sarama Resources Limited - Common Shares | 2,560,000.00 | 3,200,000.00 |
| 07/06/2011 | 17 | Scabdinavian Metals Inc. - Common Shares | 729,991.00 | 14,599,820.00 |
| 05/31/2011 | 47 | Second City Capital Partners I, Limited Partnership - Limited Partnership Interest | 61,276,600.00 | 64,550,000.00 |
| 06/30/2011 | 7 | Security Concepts Group Member LLC - Units | 280,000.00 | 28,000.00 |
| 06/23/2011 to 06/27/2011 | 4 | Shoal Point Energy Ltd. - Units | 535,500.00 | 1,785,000.00 |
| 06/30/2011 | 6 | Solar Income Fund LP #2 - Units | 955,000.00 | 955.00 |
| 06/28/2011 | 29 | SoMedia Networks Inc. - Units | 489,399.90 | 1,631,333.00 |
| 06/10/2011 | 32 | Spot Coffee (Canada) Ltd. - Units | 500,000.00 | 5,000,000.00 |
| 06/23/2011 | 7 | Strateco Resources Inc. - Flow-Through | 3,500,100.00 | 3,571,571.00 |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price ($) | No. of Securities Distributed |
|---|---|---|---|---|
| | | Shares | | |
| 06/29/2011 | 1 | Synchronica plc - Warrants | 50,000.00 | 200,000.00 |
| 06/30/2011 | 22 | TearLab Corporation - Units | 6,769,231.04 | 3,846,154.00 |
| 06/30/2011 | 6 | The Futura Loyalty Group Inc. - Units | 795,000.00 | 15,900,000.00 |
| 07/06/2011 | 2 | TireStamp Inc. - Debentures | 150,000.00 | 2.00 |
| 05/18/2011 | 1 | Touchdown Resources Inc. - Common Shares | 90,000.00 | 1,200,000.00 |
| 06/17/2011 to 06/20/2011 | 47 | Unitech Energy Resources Inc - Units | 2,141,415.00 | 42,828,300.00 |
| 07/05/2011 | 37 | Videotron Ltd/Videotron Ltee - Notes | 335,100,000.00 | 37.00 |
| 06/17/2011 | 7 | Virgin Metals Inc. - Units | 345,000.00 | 1,150,000.00 |
| 06/17/2011 | 2 | VMG Partners II, L.P. - Limited Partnership Interest | 41,155,800.00 | 42,000,000.00 |
| 01/01/2010 to 12/31/2010 | 8 | Vontobel: Non-US Equity Offshore L.P. - Units | 9,607,836.00 | 9,660,000.00 |
| 06/20/2011 | 6 | Wabi Exploration Inc. - Units | 125,000.00 | 2,500,000.00 |
| 07/07/2011 | 16 | Walton Silver Crossing Investment Corporation - Common Shares | 445,240.00 | 44,524.00 |
| 07/07/2011 | 2 | Walton Silver Crossing LP - Units | 469,332.55 | 48,691.00 |
| 06/07/2011 | 56 | Wolverine Minerals Corp. - Flow-Through Units | 5,453,475.00 | 2,150,000.00 |
| 07/01/2011 | 1 | York European Opportunities Unit Trust - Trust Units | 168,752.50 | 168,753.00 |

## Chapter 11

# IPOs, New Issues and Secondary Financings

**Issuer Name:**
Anatolia Energy Inc.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Long Form Prospectus dated July 25, 2011
NP 11-202 Receipt dated July 25, 2011
**Offering Price and Description:**
Minimum: * Common Shares ($35,000,000.00); Maximum: * Common Shares ($45,000,000.00) Price: $ * per Common Share
**Underwriter(s) or Distributor(s):**
RAYMOND JAMES LTD.
CANACCORD GENUITY CORP.
TD SECURITIES INC.
HAYWOOD SECURITIES INC.
**Promoter(s):**
Robert Spring
Tim Marchant
Patrick McGarth
**Project** #1776147

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**Issuer Name:**
Argentex Mining Corporation
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Short Form Prospectus dated July 25, 2011
NP 11-202 Receipt dated July 25, 2011
**Offering Price and Description:**
$10,005,000.00 - 8,700,000 Units Price: $1.15 per Unit
**Underwriter(s) or Distributor(s):**
GMP SECURITIES L.P.
HAYWOOD SECURITIES INC.
BYRON CAPITAL MARKETS LTD.
CASIMIR CAPITAL LTD.
**Promoter(s):**
-
**Project** #1776118

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**Issuer Name:**
Atrium Innovations Inc.
Principal Regulator - Quebec
**Type and Date:**
Preliminary Short Form Prospectus dated July 21, 2011
NP 11-202 Receipt dated July 21, 2011
**Offering Price and Description:**
$75,000,000.00 - 5.75 % Convertible Unsecured Subordinated Debentures Price: $1,000 per Debenture
**Underwriter(s) or Distributor(s):**
TD SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
DESJARDINS SECURITIES INC.
GMP SECURITIES LP
HSBC SECURITIES (CANADA) INC.
SCOTIA CAPITAL INC.
CANACCORD GENUITY CORP.
**Promoter(s):**
-
**Project** #1775306

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**Issuer Name:**
Baytex Energy Corp.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Base Shelf Prospectus dated July 26, 2011
NP 11-202 Receipt dated July 26, 2011
**Offering Price and Description:**
CDN$500,000,000.00:
Common Shares
Subscription Receipts Warrants Options
Debt Securities
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1776571

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**Issuer Name:**
Casa Minerals Inc
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Long Form Prospectus dated July 21, 2011
NP 11-202 Receipt dated July 22, 2011
**Offering Price and Description:**
$1,000,000.00 to $1,500,000.00 - 4,000,000 to 6,000,0000 Common Shares Price: $0.25 per Common Share
**Underwriter(s) or Distributor(s):**
UNION SECURITIES LTD.
**Promoter(s):**
FARSHAD SHIRVANI
**Project** #1775590

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**Issuer Name:**
Detour Gold Corporation
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated July 20, 2011
NP 11-202 Receipt dated July 20, 2011
**Offering Price and Description:**
$371,875,000.00 - 12,500,000 Common Shares Price: $29.75 per Common Share
**Underwriter(s) or Distributor(s):**
BMO NESBITT BURNS INC.
TD SECURITIES INC.
CIBC WORLD MARKETS INC.
RAYMOND JAMES LTD.
RBC DOMINION SECURITIES INC.
CANACCORD GENUITY CORP.
CREDIT SUISSE SECURITIES (CANADA), INC.
HAYWOODSECURITIES INC.
MACQUARIE CAPITAL MARKETS CANADA LTD.
NATIONAL BANK FINANCIAL INC.
UBS SECURITIES CANADA INC.
FRASER MACKENZIE LIMITED
NCP NORTHLAND CAPITAL PARTNERS INC.
PARADIGM CAPITAL INC.
**Promoter(s):**
-
**Project** #1774900

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**Issuer Name:**
Elemental Minerals Limited
Principal Regulator - Ontario
**Type and Date:**
Amended and Restated Preliminary Long Form Prospectus dated July 22, 2011
NP 11-202 Receipt dated July 22, 2011
**Offering Price and Description:**
$ * - * Ordinary Shares Price: $ * per Share
**Underwriter(s) or Distributor(s):**
BMO NESBITT BURNS INC.
STIFEL NICOLAUS CANADA INC.
NATIONAL BANK FINANCIAL INC.
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
**Promoter(s):**
-
**Project** #1762320

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**Issuer Name:**
Exemplar Canadian Income Fund
Exemplar Global Infrastructure Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Simplified Prospectuses dated July 20, 2011
NP 11-202 Receipt dated July 25, 2011
**Offering Price and Description:**
Series A and Series F Units
**Underwriter(s) or Distributor(s):**
Blumont Capital Corporation
**Promoter(s):**
Blumont Capital Corporation
**Project** #1775304

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**Issuer Name:**
Neptune Technologies & Bioressources Inc.
Principal Regulator - Quebec
**Type and Date:**
Preliminary Base Shelf Prospectus dated July 21, 2011
NP 11-202 Receipt dated July 25, 2011
**Offering Price and Description:**
5,785,057.00 of our common shares, 680,556 U.S. warrants (the “U.S. warrants”) and 765,709 Canadian warrants (the “Canadian warrants” and, together with the U.S. warrants, the “warrants”), currently held by the selling security holders
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1775862

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**Issuer Name:**
Orvana Minerals Corp.
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated July 26, 2011
NP 11-202 Receipt dated July 26, 2011
**Offering Price and Description:**
$ * - * Common Shares Price: $ * per Common Share
**Underwriter(s) or Distributor(s):**
RAYMOND JAMES LTD.
CIBC WORLD MARKETS INC.
HAYWOOD SECURITIES INC.
CLARUS SECURITIES INC.
STONECAP SECURITIES INC.
NORTHERN SECURITIES INC.
**Promoter(s):**
-
**Project** #1776488

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**Issuer Name:**
Puget Ventures Inc.
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Short Form Prospectus dated July 21, 2011
NP 11-202 Receipt dated July 21, 2011
**Offering Price and Description:**
$16,000,950.00 - 15,239,000 Subscription Receipts each Subscription Receipt representing the right to receive one Unit Price: $1.05 per Subscription Receipt
**Underwriter(s) or Distributor(s):**
MACKIE RESEARCH CAPITAL CORPORATION
**Promoter(s):**
-
**Project** #1775437

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**Issuer Name:**
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 Tradewinds Emerging Markets Fund
Sun Life MFS Global Total Return Fund
Sun Life Beutel Goodman Canadian Bond Fund
Sun Life McLean Budden Monthly Income Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Simplified Prospectuses dated July 21, 2011
NP 11-202 Receipt dated July 22, 2011
**Offering Price and Description:**
Series A, Series AH, Series T5, Series T8, Series F and Series I units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Sunlife Global Investments (Canada) Inc.
**Project** #1775587

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**Issuer Name:**
Vector Resources Inc.
Principal Regulator - Ontario
**Type and Date:**
Preliminary CPC Prospectus dated July 20, 2011
NP 11-202 Receipt dated July 20, 2011
**Offering Price and Description:**
Minimum Offering: $200,000.00 (1,000,000 Common Shares); Maximum Offering: $500,000.00 (2,500,000 Common Shares) Price: $0.20 per Common Share
**Underwriter(s) or Distributor(s):**
MACQUARIE PRIVATE WEALTH INC.
**Promoter(s):**
Darryl Levitt
Keith Baptist
Richard Molyneux
Mike Nell
**Project** #1774877

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**Issuer Name:**
Dundee International Real Estate Investment Trust
Principal Regulator - Ontario
**Type and Date:**
Final Long Form Prospectus dated July 21, 2011
NP 11-202 Receipt dated July 22, 2011
**Offering Price and Description:**
$410,000,000.00: (1) $270,000,000.00 - 27,000,000 Units and (2) $140,000,000.00 - 5.5% Convertible Unsecured Subordinated Debentures due July 31, 2018
**Underwriter(s) or Distributor(s):**
TD Securities Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Canaccord Genuity Corp.
Dundee Securities Ltd.
HSBC Securities (Canada) Inc.
Brookfield Financial Corp.
GMP Securities L.P.
National Bank Financial Inc.
**Promoter(s):**
Dundee Realty Corporation
**Project** #1756925

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**Issuer Name:**
Fidelity Corporate Bond Capital Yield Class
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated July 11, 2011 to the Simplified Prospectus and Annual Information Form dated March 25, 2011
NP 11-202 Receipt dated July 25, 2011
**Offering Price and Description:**
Series A, Series B, Series F, Series T5, Series S5 and Series F5 Shares @ Net Asset Value
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
FIDELITY INVESTMENTS CANADA ULC
**Project** #1699107

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**Issuer Name:**
GE Capital Canada Funding Company
Principal Regulator - Ontario
**Type and Date:**
Final Base Shelf Prospectus dated July 22, 2011
NP 11-202 Receipt dated July 25, 2011
**Offering Price and Description:**
Cdn. $4,000,000,000.00 - Medium Term Notes (unsecured) Unconditionally guaranteed as to principal, premium (if any), interest and certain other amounts by GENERAL ELECTRIC CAPITAL CORPORATION
**Underwriter(s) or Distributor(s):**
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
**Promoter(s):**
-
**Project** #1771624

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**Issuer Name:**
Goldspike Exploration Inc.
Principal Regulator - Ontario
**Type and Date:**
Final Long Form Prospectus dated July 21, 2011
NP 11-202 Receipt dated July 22, 2011
**Offering Price and Description:**
MINIMUM $3,250,000.00 - 13,000,000 UNITS; MAXIMUM $4,000,000.00 - 16,000,000 UNITS PRICE: $0.25 PER UNIT
**Underwriter(s) or Distributor(s):**
CANACCORD GENUITY CORP.
**Promoter(s):**
R. Bruce Durham
**Project** #1745827

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**Issuer Name:**
Longreach Oil and Gas Limited
Principal Regulator - Alberta
**Type and Date:**
Final Short Form Prospectus dated July 25, 2011
NP 11-202 Receipt dated July 25, 2011
**Offering Price and Description:**
Minimum $10,000,000.00; Maximum $25,000,000.00 - up to 23,809,523 Units Price: $1.05 per Unit
**Underwriter(s) or Distributor(s):**
PARADIGM CAPITAL INC.
FRASER MACKENZIE LIMITED
**Promoter(s):**
-
**Project** #1750325

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**Issuer Name:**
Lorus Therapeutics Inc.
Principal Regulator - Ontario
**Type and Date:**
Final Short Form Prospectus dated July 20, 2011
NP 11-202 Receipt dated July 22, 2011
**Offering Price and Description:**
Minimum of $2,000,000.00; Maximum of $4,000,000.00 - A Minimum of 5,000,000 Units and a Maximum of 10,000,000 Units Price: $0.40 per Unit
**Underwriter(s) or Distributor(s):**
Euro Pacific Canada Inc.
**Promoter(s):**
-
**Project** #1761149, 1742263

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**Issuer Name:**
Nevada Copper Corp.
Principal Regulator - British Columbia
**Type and Date:**
Final Short Form Prospectus dated July 25, 2011
NP 11-202 Receipt dated July 25, 2011
**Offering Price and Description:**
$65,070,000.00 - 12,050,000 Common Shares Price: $5.40 per Common Share
**Underwriter(s) or Distributor(s):**
CANACCORD GENUITY CORP.
SCOTIA CAPITAL INC.
GMP SECURITIES L.P.
CORMARK SECURITIES INC.
MACQUARIE CAPITAL MARKETS CANADA LTD.
PARADIGM CAPITAL INC.
DESJARDINS SECURITIES INC.
M PARTNERS INC.
**Promoter(s):**
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**Project** #1772791

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**Issuer Name:**
New Flyer Industries Inc.
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated July 21, 2011 to the Short Form Prospectus dated July 7, 2011
NP 11-202 Receipt dated July 22, 2011
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
BMO Nesbitt Burns Inc.
**Promoter(s):**
-
**Project** #1765049

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**Issuer Name:**
New Zealand Energy Corp.
Principal Regulator - British Columbia
**Type and Date:**
Final Long Form Prospectus dated July 19, 2011
NP 11-202 Receipt dated July 20, 2011
**Offering Price and Description:**
$20,000,000.00 - 20,000,000 Common Shares: Per Share $1.00
**Underwriter(s) or Distributor(s):**
GMP Securities L.P.
Canaccord Genuity Corp.
Macquarie Capital Markets Canada Ltd.
Haywood Securities Inc.
NCP Northland Capital Partners Inc.
**Promoter(s):**
John G. Proust
**Project** #1737317

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**Issuer Name:**
ORANGE Directional Technologies Inc.
Principal Jurisdiction - Alberta
**Type and Date:**
Preliminary Long Form Prospectus dated June 13, 2011
Withdrawn on July 20, 2011
**Offering Price and Description:**
Up to $30,000,000.00 - Public Offering of • Common Shares - and - Distribution of 2,421,400 Common Shares issuable upon the conversion of previously issued Special Warrants Price: $ * per Common Share
**Underwriter(s) or Distributor(s):**
FirstEnergy Capital Corp.
Dundee Securities Ltd.
Haywood Securities Inc.
**Promoter(s):**
-
**Project** #1758252

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**Issuer Name:**
Sherritt International Corporation
Principal Jurisdiction - Ontario
**Type and Date:**
Preliminary Base Shelf Prospectus dated May 18, 2011
Withdrawn on July 26, 2011
**Offering Price and Description:**
$500,000,000.00:
Debt Securities
Common Shares
Subscription Receipts
Warrants
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1747570

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# Chapter 12

# Registrations

### 12.1.1 Registrants

| Type | Company | Category of Registration | Effective Date |
|---|---|---|---|
| Change in Registration Category | Addenda Capital Inc. | From:<br>Investment Fund Manager<br>Portfolio Manager, Commodity Trading Manager and Exempt Market Dealer<br><br>To:<br>Investment Fund Manager<br>Portfolio Manager, Commodity Trading Manager | July 12, 2011 |
| New Registration | Brompton Funds Limited | Investment Fund Manager<br>Portfolio Manager, Exempt Market Dealer | July 25, 2011 |
| New Registration | Septentrion Macro Advisors Inc. | Exempt Market Dealer | July 25, 2011 |
| New Registration | BFML Management Limited | Investment Fund Manager | July 25, 2011 |
| Change in Registration Category | Letko, Brosseau & Associates Inc. | From:<br>Portfolio Manager<br><br>To:<br>Portfolio Manager and Investment Fund Manager | July 25, 2011 |
| Change in Registration Category | PFSL Investments Canada Ltd. | From:<br>Mutual Fund Dealer<br><br>To:<br>Mutual Fund Dealer and Investment Fund Manager | July 26, 2011 |
| Consent to Suspension (Pending Surrender) | Tempest Funds Ltd. | Exempt Market Dealer, Portfolio Manager and Investment Fund Manager | July 26, 2011 |

| Type | Company | Category of Registration | Effective Date |
|---|---|---|---|
| New Registration | Tempest Funds General Partnership | Exempt Market Dealer, Portfolio Manager and Investment Fund Manager | July 26, 2011 |

# Chapter 13

# SROs, Marketplaces and Clearing Agencies

## 13.1 SROs

### 13.1.1 IIROC Rules Notice – Request for Comments –Provisions Respecting Dark Liquidity

**11-0225**
**July 29, 2011**

**IIROC RULES NOTICE – REQUEST FOR COMMENTS – PROVISIONS RESPECTING DARK LIQUIDITY PROVISIONS RESPECTING DARK LIQUIDITY**

**Summary**

This IIROC Notice provides notice that, on June 29, 2011, the Board of Directors ("Board") of the Investment Industry Regulatory Organization of Canada ("IIROC") approved the publication for comment of proposed amendments ("Proposed Amendments") to the Universal Market Integrity Rules ("UMIR") respecting certain requirements governing "dark liquidity" on Canadian equity marketplaces.

The Proposed Amendments would:

- define "better price" to mean a minimum of one trading increment except, when the difference between the best ask price and the best bid price is one trading increment, the amount shall be a minimum of one-half of one trading increment;
- permit IIROC to designate a minimum size for orders that are not displayed in a consolidated market display;
- permit IIROC to designate a minimum size of an "iceberg" order that must be displayed in a consolidated market display;
- provide that an order entered on a marketplace must trade with visible orders on that marketplace at the same price before trading with dark orders at the same price on that marketplace;
- require, subject to certain exceptions, an order entered on a marketplace that trades with an order that has not be displayed in a consolidated market display to either:
    - receive a better price, or
    - be for more than 50 standard trading units or have a value of more than $100,000;
- provide that a Participant or Access Person may not enter an order on a particular marketplace if they know that the handling of the order by the marketplace may result in the order or resulting trade not being in compliance with UMIR; and
- make a number of consequential or editorial amendments to the definition of "last sale price", the requirements for order exposure and the reporting of trade execution prices.

**Rule-Making Process**

IIROC has been recognized as a self-regulatory organization by each of the Canadian provincial securities regulatory authorities (the "Recognizing Regulators") and, as such, is authorized to be a regulation services provider for the purposes of National Instrument 21-101 ("Marketplace Operation Instrument") and National Instrument 23-101.

As a regulation services provider, IIROC administers and enforces trading rules for the marketplaces that retain the services of IIROC.[1] IIROC has adopted, and the Recognizing Regulators have approved, UMIR as the integrity trading rules that will apply in any marketplace that retains IIROC as its regulation services provider.

The Market Rules Advisory Committee of IIROC ("MRAC") reviewed the Proposed Amendments prior to their consideration by the Board. MRAC is an advisory committee comprised of representatives of each of: the marketplaces for which IIROC acts as a regulation services provider; Participants; institutional investors and subscribers; and the legal and compliance community.

The text of the Proposed Amendments is set out in Appendix "A". The Proposed Amendments are part of an overall strategy regarding dark liquidity in Canadian equity marketplace that has been developed in co-ordination with Canadian Securities Administrators and, as a result, the Board has determined the Proposed Amendment to be in the public interest. Comments are requested on all aspects of the Proposed Amendments, including any policy alternatives to the Proposed Amendments that commentators consider preferable and/or more effective to achieve the intended objectives. Comments should be in writing and delivered by ***October 27, 2011*** to:

James E. Twiss,
Vice President, Market Regulation Policy,
Investment Industry Regulatory Organization of Canada,
Suite 900,
145 King Street West,
Toronto, Ontario. M5H 1J8

Fax: 416.646.7265
e-mail: jtwiss@iiroc.ca

A copy should also be provided to Recognizing Regulators by forwarding a copy to:

Susan Greenglass
Director, Market Regulation
Ontario Securities Commission
Suite 1903, Box 55,
20 Queen Street West
Toronto, Ontario. M5H 3S8

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

***Commentators should be aware that a copy of their comment letter will be made publicly available on the IIROC website (www.iiroc.ca under the heading "Policy" and sub-heading "Market Proposals/Comments") upon receipt. A summary of the comments contained in each submission will also be included in a future IIROC Notice.***

After considering the comments on the Proposed Amendments received in response to this Request for Comments together with any comments of the Recognizing Regulators, staff of IIROC may recommend that revisions be made to the Proposed Amendments. If the revisions are not of a material nature, the Board has authorized the President to approve the revisions on behalf of IIROC and the Proposed Amendments as revised will be subject to approval by the Recognizing Regulators. If the revisions are material, the Proposed Amendments as revised will be submitted to the Board for ratification and, if ratified, will be republished for further public comment.

**Development of Proposals for the Canadian Market**

***Joint CSA/IIROC Consultation Paper***

The publication of this IIROC Notice is the next step in a process that began in late 2009. In the Joint CSA/IIROC Consultation Paper 23-404 *Dark Pools, Dark Orders, and Other Developments in Market Structure in Canada*[2] ("Consultation Paper"), comment was sought on a number of issues, particularly the general impact of marketplaces that offer no pre-trade

[1] Presently, IIROC has been retained to be the regulation services provider for: the Toronto Stock Exchange ("TSX"), TSX Venture Exchange ("TSXV") and Canadian National Stock Exchange ("CNSX"), each as an "exchange" for the purposes of the Marketplace Operation Instrument ("Exchange"); and for Alpha Trading Systems ("Alpha"), Bloomberg Tradebook Canada Company, Chi-X Canada ATS Limited ("Chi-X"), Instinet Canada Cross Ltd. ("Instinet"), Liquidnet Canada Inc. ("Liquidnet"), Omega ATS Limited ("Omega") and TriAct Canada Marketplace LP (the operator of "MATCH Now"), each as an alternative trading system ("ATS"). CNSX presently operates an "alternative market" known as "Pure Trading" that is entitled to trade securities that are listed on other Exchanges and that presently trades securities listed on the TSX and TSXV.

[2] Published at (2009) 32 OSCB, beginning at page 7877.

transparency on any orders ("Dark Pools"), the introduction of dark order types, and the introduction of smart order routers. The Consultation Paper discussed these issues and their potential impact on the Canadian markets, including their impact on market liquidity, transparency, price discovery, fairness and integrity.[3] The CSA and IIROC received 23 letters in response to the Consultation Paper, from a range of respondents including marketplaces, buy-side and sell-side representatives, and industry associations.

***Dark Liquidity Forum***

On March 23, 2010, the CSA and IIROC hosted a forum to discuss the issues raised in the Consultation Paper and in the response letters ("Forum"). The themes discussed at the Forum included:

- whether Dark Pools should be required to provide price improvement and if so, what is meaningful price improvement;
- the use of market pegged orders and whether those orders "free-ride" off the visible market;
- the use of sub-penny pricing;
- broker preferencing at the marketplace level and dealer internalization of order flow;
- the use of Indications of Interest (IOIs) by Dark Pools to attract order flow; and
- the fairness of a marketplace offering smart order router services that use marketplace data that is not available to other marketplace participants.

More details regarding the Forum were included in Joint CSA/IIROC Staff Notice 23-308 *Update on Forum to Discuss CSA/IIROC Joint Consultation Paper 23-404 "Dark Pools, Dark Orders and Other Developments in Market Structure in Canada" and Next Steps* published on May 28, 2010. That notice included a discussion of ongoing initiatives, proposed next steps to address some of the issues, and a summary of the comments received in response to the Consultation Paper.

***Joint CSA/IIROC Position Paper***

On November 19, 2010, the Investment Industry Regulatory Organization of Canada ("IIROC") and the Canadian Securities Administrators published *Joint Canadian Securities Administrators/Investment Industry Regulatory Organization of Canada – Position Paper 23-405 – Dark Liquidity in the Canadian Marketplace* ("Position Paper").[4] The Position Paper set out CSA and IIROC's position on the following questions:

- Under what circumstances should Dark Pools or marketplaces that offer dark orders be exempted from the requirements of pre-trade transparency under NI 21-101?
- Should Dark Orders be required to provide meaningful price improvement over the NBBO, and under what circumstances?
- Should visible (lit) orders have priority over dark orders at the same price on the same marketplace?
- What is a "meaningful" level of price improvement?

The recommendations in the Position Paper regarding these four issues were as follows:

- The only exemption to pre-trade transparency should be for orders that meet a minimum size threshold.
- Two dark orders meeting the minimum size exemption should be able to execute at the best ask price or the best bid price ("NBBO"). Meaningful price improvement should be required in all other circumstances, including all executions with orders not specifically marked in a manner indicating they are using the minimum size exemption.
- Visible orders on a marketplace should execute before dark orders at the same price on the same marketplace. However, an exception could be made where two dark orders meeting the minimum size threshold can be executed at that price.

[3] See the Consultation Paper at page 7880.

[4] IIROC Notice 10-0303 – Rules Notice – Request for Comments - UMIR – *Joint Canadian Securities Administrators/Investment Industry Regulatory Organization of Canada – Position Paper 23-405 - Dark Liquidity in the Canadian Marketplace* (November 19, 2010).

- Meaningful price improvement means that the price is improved over the NBBO by a minimum of one trading increment as defined in the UMIR, except where the NBBO spread is already at the minimum tick. In this case, meaningful price improvement would be at the mid-point of the spread.

***Joint CSA/IIROC Response***

A total of 20 comments were received on the Position Paper. These comments, and the responses of the CSA and IIROC, have been summarized in Appendix "A" of IIROC Notice 11-0226 ("Joint Notice").[5] Reference should be made to the Joint Notice for a more detailed outline of the policy considerations underlying the Proposed Amendments. The Joint Notice also contains a discussion of the final report of the Technical Committee of the International Organization of Securities Commissions ("IOSCO") entitled "Principles on Dark Liquidity", which contains principles to assist securities markets authorities in dealing with issues concerning dark liquidity.

**Summary of the Proposed Amendments**

The following is a summary of the Proposed Amendments:

***Definition of "Better Price"***

Presently, UMIR defines a "better price" simply as a lower price than the best ask price in the case of a purchase and a higher price than the best bid price in the case of a sale. The term "better price" would be redefined to require at least one trading increment price improvement except when the difference between the best ask price and the best bid price is at least a single trading increment a half-increment would be accepted. The revised definition would set the minimum amount of price improvement that would be acceptable for a "small" order (being 50 standard trading units or less which is 5,000 units of a security trading at $1.00 or more per unit, 25,000 units of a security trading at $0.10 or more per unit and less than $1.00 and 50,000 units when a security is trading at less than $0.10 per unit) when it executes with a "Dark Order".

The revised definition would also be applicable to the requirements under the Order Exposure Rule (Rule 6.3 which permits small orders to be withheld from an immediate entry on a marketplace if executed at a "better price") and the Client-Principal Trading Rule (Rule 8.1 which requires that principal trades with small client orders be undertaken at a "better price" in order to avoid conflicts) and the amendments would provide greater certainty in the application of those rules. The revised definition makes clear that a "better price" applies in respect of each trade resulting from an order. For example, a "better price" would not be achieved if an order for 1,000 shares of a security executed in two trades with 100 shares receiving a $0.01 price improvement and the balance of 900 shares executing at the NBBO. In order to be considered a "better price", all 1,000 shares must be executed with a minimum of $0.01 price improvement.

***Definition of "Dark Order"***

The Proposed Amendments would introduce a definition of "Dark Order" for use in a number of substantive UMIR provisions dealing with:

- the size of Dark Orders;
- priority of execution; and
- price improvement requirements.

However, the term "Dark Order" would be defined in such a manner that a separate regulatory order marker would not be required. Instead, order types and functionality established by each marketplace would determine whether or not a particular order entered on that marketplace would be considered to be a "Dark Order". An order for which no portion is displayed at the time of entry on a marketplace in a consolidated market display would be a "Dark Order" but any order which is immediately executable on entry or which is a "specialty" type of order that may execute at a price outside of the best ask price/best bid price spread would be excluded from the definition of Dark Order.

The Proposed Amendments would add the following definition of "Dark Order":

> **"Dark Order"** means an order no portion of which is displayed on entry on a marketplace in a consolidated market display but does not include an order entered on a marketplace as:

[5] IIROC Notice 11-0226 – Rules Notice – Request for Comments – UMIR – *Joint Canadian Securities Administrators/Investment Industry Regulatory Organization of Canada Staff Notice 23-311 – Regulatory Approach to Dark Liquidity in the Canadian Marketplace* (July 29, 2011).

(a) part of an intentional cross;

(b) a market order;

(c) a limit order that, based on orders displayed in a consolidated market display, is immediately executed in full on one or more marketplaces at the time of entry;

(d) a Basis Order;

(e) a Closing Price Order;

(f) a Market-on-Close Order;

(g) an Opening Order; or

(h) a Volume-Weighted Average Price Order.

It is important to note that a Call Market Order is considered to be a "Dark Order". Generally, a small order that executes with a Call Market Order would have to receive "price improvement" in the form of an execution at a "better price". It is also important to note that an "iceberg" order (a portion of which is displayed in a consolidated market display) will not be considered a "Dark Order" and, as such, the hidden portion of the order would not have to provide "price improvement" on execution.

***Definition of "Last Sale Price"***

Presently, UMIR defines the "last sale price" as the price of the last sale of at least one standard trading unit of a particular security displayed in a consolidated market display but does not include the price of a sale resulting from an order that is:

- a Basis Order;
- a Call Market Order;
- a Closing Price Order;
- a Special Terms Order unless the Special Terms Order has executed with an order or orders other than a Special Terms Order; or
- a Volume-Weighted Average Price Order.

This definition contemplates that the "last sale price" will be set at a "trading increment". With the proposed introduction under the Proposed Amendments of a new definition of "better price", UMIR will specifically acknowledge that trades may execute (and be reported) at a fraction of a trading increment. For this reason, the Proposed Amendments would revise the definition of "last sale price" to provide that, if the trade executed at a price other than a trading increment, the price shall be rounded to the nearest trading increment and, if the trade executed at one-half of a trading increment, the price shall be rounded up to the next trading increment.

Currently, the concept of "last sale price" is used in a number of UMIR requirements including:

- the use of the "last sale price" in a consolidated display on a trading day for determining the size of the standard trading unit applicable to the particular security on the immediately following trading day;
- consideration of the "last sale price" in determining whether a particular price is "artificial" contrary to Rule 2.2 of UMIR;
- requiring that a short sale, subject to certain exceptions, be executed at a price not less than the "last sale price" in accordance with Rule 3.1 of UMIR;[6] and
- consideration of the "last sale price" in determining whether the price which a Participant provides to a client on a principal trade is the "best available price".

[6] IIROC has proposed the repeal of the "tick test" under Rule 3.1 of UMIR. See IIROC Notice 11-075 – Rule Notice – Request for Comments – UMIR – *Provisions Respecting the Regulation of Short Sales and Failed Trades* (February 25, 2011).

Use of full trading increments for the "last sale price" simplifies compliance with these provisions, particularly when a Participant or marketplace has automated the monitoring as is the case currently with the compliance with the "tick test" for short sales. Irrespective of the fractions of a trading increment at which an order may execute on a marketplace, UMIR requires that all orders entered on a marketplace be at full trading increment.

***Clarification of Requirements of the Order Exposure Rule***

The Proposed Amendments would make a clarification to Rule 6.3 of UMIR (the "Order Exposure Rule"). Since "transparent" marketplaces may introduce "Dark Orders", the requirements under the Order Exposure Rule would be amended to ensure that any order required to be entered on a transparent marketplace is "for display" in a consolidated market display. Under the Proposed Amendments, a "small" client order could not be entered on a transparent marketplace as a Dark Order except with the express instruction or consent of the client.

***Size Requirements for Dark Orders and Icebergs***

The CSA has proposed to amend National Instrument 21-101 to permit a regulation services provider to designate the minimum size of a "Dark Order".[7] The Proposed Amendments would add Rule 6.5 to UMIR and provide IIROC with the specific power to make such a designation. In order to avoid potential gaming of this provision and the requirement for Dark Orders to provide price improvement in certain circumstances, the proposed Rule 6.5 would provide that an "iceberg" order must display at least one standard trading unit or such greater size as designated by IIROC.

Prior to IIROC proposing to designate, or to change any designation of, a number of units of a security for the purposes of Rule 6.5, IIROC would consult with the applicable securities regulatory authorities and IIROC would issue a notice requesting public comment in a period of not less than 30 days from the date of issuance of the notice. Provided the applicable securities regulatory authorities have approved of the designation or change in the designation, IIROC would issue a notice of the number of units of a security that have been designated for the purposes of clause (a) or (b) of Rule 6.5 and the effective date of the designation which would not be sooner than 10 trading days following the date of the issuance of the notice.

Until IIROC designates a minimum size for a Dark Order, a Dark Order may be any size. However, the effect of Order Exposure Rule means a client order to purchase or sell 50 standard trading units or less of a security that is not immediately executed at a better price or otherwise exempted from the requirements of the Order Exposure Rule[8] may only be entered on a marketplace as a Dark Order with the express instruction or consent of the client. In addition, Dark Orders for 50 standard trading units or less may be entered on a marketplace by or for:

- a principal account;
- a non-client account;
- an Access Person (essentially a subscriber to an alternative trading system that is not a dealer);

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[7] Canadian Securities Administrators Notice of Proposed Amendments to National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules (2011) 34 OSCB (Supp-1) (March 18, 2011). In discussing the policy rationale for this proposed amendment to subsection 7.1(2) of NI 21-101, the CSA stated:

> We acknowledge that, to date, there has been limited activity in dark pools and no evidence that dark liquidity has had a negative impact on the Canadian capital markets. However, we are of the view that it is important and timely to establish a regulatory framework so that we are in a position to respond expeditiously to future market developments. For this reason, in the proposed amendments to NI 21-101, we propose to introduce a requirement that order meet a minimum size established by a regulation services provider in order to be exempt from the transparency requirements in NI 21-101. However, at this time no minimum order size is being proposed. Any size threshold that may be proposed in the future would be set in consultation with the CSA and would follow the regular public comment process. The CSA and IIROC will continue to monitor the level of activity on non-transparent marketplaces and its impact on price discovery to determine whether and when to propose a specific size threshold.

[8] Rule 6.3 - *Exposure of Client Orders* requires that an order for 50 trading units or less must be immediately entered on a transparent marketplace unless otherwise exempted. Permitted exemptions include:

(a) if the client has specified different instructions;
(b) if the order is executed immediately at a better price;
(c) if the order is returned for the terms of the order to be confirmed;
(d) if the order is withheld pending confirmation that the order complies with applicable securities requirements;
(e) if entering the order based on market conditions would not be in the interests of the client;
(f) if the order has a value greater than $100,000;
(g) if the order is part of a trade to be made in accordance with Rule 6.4 by means other than entry on a marketplace; or
(h) if the client has directed or consented that the order be entered on a marketplace as a Call Market Order, an Opening Order, a Special Terms Order, a Volume-Weighted Average Price Order, a Market-on-Close Order, a Basis Order, or a Closing Price Order.

- a client account if the order entered as a Dark Order is part of a larger client order for the particular security which, when provided to the Participant, was for more than 50 standard trading units.

***Price Improvement by a Dark Order***

Under the Proposed Amendments, any order which trades with a "Dark Order" would have to receive price improvement on the execution unless the order, as entered on the marketplace, was for more than 50 standard trading units or had a value of more than $100,000. If the order met either of these requirements, the order could trade with the Dark Order at the market price provided no displayed orders were available on that marketplace at the market price.[9] If the order as entered on the marketplace exceeds the size parameters, any portion of the order which does not execute with visible orders on that marketplace may execute with a Dark Order provided that are no visible orders on that marketplace at that price and there are no visible orders at a "better price" on another marketplace. The impact of this provision provides execution priority to visible orders on a marketplace at that same price as Dark Orders. Under the Proposed Amendments, a "large" order entered on a marketplace will be able to execute with a Dark Order at a particular price even though visible orders may be displayed on other marketplaces at that price.

There are a number of additional exceptions if the order that trades with the "Dark Order" is one of the "specialty" orders that can otherwise trade outside of the best ask – best bid spread (being: a Basis Order; a Call Market Order; a Closing Price Order; a Market-on-Close Order; an Opening Order or a Volume-Weighted Average Price Order).

The hidden portion of an "iceberg" order is not considered to be a Dark Order as at least one standard trading unit of the iceberg order must be displayed in a consolidated market display and thereby contribute directly to price discovery mechanism by being eligible to establish the best ask price or the best bid price for the purposes of UMIR. For this reason, the hidden portion of an iceberg order is not required to provide price improvement.

***Inability to Rely on Marketplace Functionality***

The Proposed Amendments would add a new provision to UMIR which would prohibit a Participant or Access Person from relying on marketplace functionality that they know will result in an order or trade failing to comply with UMIR. A Participant or Access Person would have breached UMIR if the Participant or Access Person enters an order on a marketplace and the Participant or Access Person knows or ought reasonably to have known that the functionality of that marketplace would permit the order to execute with a Dark Order without receiving price improvement or without providing priority to visible orders on that marketplace on the same side of the market. This provision is based on current guidance that IIROC has issued (in particular in connection with "locked" and "crossed" markets[10]) regarding the obligation of the Participant or Access Person when entering orders on a particular marketplace.

IIROC acknowledges that marketplaces presently offer functionality and orders types that would not guarantee sufficient price improvement to constitute a "better price" for the purposes of the proposed amendments.[11] If the Proposed Amendments are adopted, each marketplace would have to ensure that its system functionality and order types comply with the requirements in the Proposed Amendments for trade prices and execution priority otherwise Participants and Access Persons would be precluded from using such functionality or order types. (See "Technological Implications and Implementation Plan".)

***Execution Price of Orders***

With the proposed change to the definition of "better price" under the Proposed Amendments, UMIR will specifically acknowledge that trades may execute at a fraction of a trading increment. Marketplaces, including transparent marketplaces, would be able to introduce order types or functionality that would allow for the execution of orders at a "better price". For example, when the spread between the "best ask price" and the "best bid price" is at one trading increment executions could occur at the mid-point. Marketplaces could provide functionality for orders at the "best ask price" and the "best bid price" to indicate a willingness at the mid-point or other price level that would provide price improvement for both sides of the trade.

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9 If the Proposed Amendments are adopted, previous guidance issued by IIROC to the effect that an order "routed to a non-transparent marketplace or facility to determine if liquidity is available on that marketplace or facility at prices that are the same or better than displayed in a consolidated market display would comply with the requirements of Rule 6.3" would be repealed since such order would not be able to execute at the "same" price displayed in a consolidated market display. See the response to question 1 under Market Integrity Notice 2007-019 – *Guidance – Entering Client Orders on Non-Transparent Marketplaces and Facilities* (September 21, 2007).

10 In particular, see the response to question 8 in IIROC Notice 11-0043 - Rules Notice – Guidance Note – UMIR – *Guidance on "Locked" and "Crossed" Markets* (February 1, 2011).

11 For example, MATCH Now presently provides a minimum price improvement of 20% of the spread. When this functionality was originally approved, the average spread between the best ask price and the best bid price was approximately $0.05 resulting in price improvement of approximately $0.01. Since the introduction of MATCH Now, the spread on the most liquid securities has decreased significantly and for major parts of a trading day may be as little as a single trading increment. The proposed definition of "better price" attempts to ensure that there is meaningful price improvement over the prices of transparent orders regardless of changes in the average spread for securities.

For this reason, the Proposed Amendments would revise the provisions regarding the reporting of the trade price to allow any trade (and not just the trade price of a Basis Order, Call Market Order or a Volume-Weighted Average Price Order as contemplated by the current policy under Policy 6.1) to be reported, if permitted by the information processor or information vendor, at the increment established by the marketplace for execution. If the information processor or data vendor does not permit reporting in such partial trading increments, the reported trade price shall be rounded to the nearest trading increment and, if the trade executed at one-half of a trading increment, the price shall be rounded up to the next trading increment.

**Variations from the Recommendations of the Position Paper**

***Definition of "Dark Order"***

In the Position Paper, the term "dark order" was defined as "an order on any marketplace which is entered with no pre-trade transparency". UMIR is structured to generally impose obligations at the time of entry of an order on a marketplace or on the execution of a trade. In order to accommodate the structure of UMIR, a more precise definition of "Dark Order" is included in the Proposed Amendments. The proposed definition confirms that market orders and certain limit orders will be excluded from the definition if the orders would immediately execute upon entry on a marketplace, thereby precluding the orders from being exposed in a consolidated display. The definition of "Dark Order" in the Proposed Amendments also excludes various specialty orders for which the execution price is not known at the time of entry and which are permitted to execute outside of the NBBO in accordance with the terms of the Order Protection Rule. Under UMIR, these specialty orders include: a Basis Order; a Closing Price Order; a Market-on-Close Order; an Opening Order; and a Volume-Weighted Average Price Order.

***Minimum Size Requirement for Dark Orders***

One of the recommendations in the Position Paper was that an exemption from the pre-trade transparency requirements should only be available for orders meeting a minimum size threshold. The Position Paper did not make a recommendation as to an appropriate size of an order for exemption from the pre-trade transparency requirements. The Position Paper sought specific feedback on the question of what would be an appropriate size. Based on the feedback, the CSA determined not to establish a minimum size requirement at this time but the CSA has proposed to amend the Marketplace Operation Instrument to provide that such a threshold may be established by a regulation services provider, which currently is IIROC.[12] The Proposed Amendments would introduce Rule 6.5 of UMIR which would allow IIROC to designate a minimum size for a Dark Order. The Proposed Amendments would also provide that an "iceberg" order must display at least one standard trading unit or such greater size as may be designated by IIROC.

No designation of a minimum size for Dark Orders or the displayed portion of icebergs would be made on the approval of the Proposed Amendments. However, in the coming month, the CSA and IIROC will examine the Canadian market and monitor market developments and regulatory approaches in other jurisdictions to determine the appropriate size threshold for Dark Orders. IIROC would only make such designations after public consultation and the approval of the CSA.

***Price Improvement***

The recommendation of the Position Paper was that a "Dark Order" had to provide meaningful price improvement except when it traded with another Dark Order that met minimum size requirements. Under the Proposed Amendments, any "Dark Order" irrespective of size would be able to trade:

- provided the other order received a "better price"; or
- at the NBBO if the other order at the time of entry on the marketplace was for more than 50 standard trading units or with a value of more than $100,000.

This change from the recommendation of the Position Paper ensures that visible orders on the same marketplace are given execution priority over Dark Orders at the same price, while at the same time providing greater opportunity for Dark Orders to be executed.

[12] See subsection 7.1(2) of proposed amendments to NI 21-101. Canadian Securities Administrators Notice of Proposed Amendments to National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules (2011) 34 OSCB (Supp-1) (March 18, 2011).

**Summary of the Impact of the Proposed Amendments**

The following is a summary of the most significant impacts of the adoption of the Proposed Amendments. The Proposed Amendments would:

- ensure that visible orders on a marketplace are given execution priority over Dark Orders on that marketplace at the same price;
- require Dark Orders to provide meaningful price improvement except when executing with "large" orders; and
- provide that meaningful price improvement is at least one trading increment and, when the displayed market has a spread of only one trading increment, at least one-half of a trading increment.

**Technological Implications and Implementation Plan**

The Proposed Amendments would permit IIROC to impose obligations on Participants and Access Persons with respect to minimum size requirements for Dark Orders and displayed portions of iceberg orders. The Proposed Amendments would also require, subject to certain exceptions, that orders that execute with Dark Orders be provided with price improvement and that visible orders on the same marketplace be given execution priority over Dark Orders at the same price.

The technological implications of the Proposed Amendments on Participants, Access Persons, marketplaces or service providers are as follows:

- there would be no impact on the systems of transparent marketplaces that do not provide for "Dark Orders" nor iceberg orders with less than one standard trading unit being displayed;
- since the Proposed Amendments do not require the marking of "Dark Orders", there would be no impact on the systems of Participants, Access Persons or service providers; and
- "Dark Pools" and transparent marketplaces that permit "Dark Orders" or icebergs with less than one standard trading unit being displayed would be required to ensure that their trading system functionality provides:
    - execution priority for visible orders on their marketplace over Dark Orders on their marketplace at the same price, and
    - meaningful price improvement of at least one trading increment (provided that when the displayed market has a spread of only one trading increment, at least one-half of a trading increment) to orders (other than "large" orders) that execute with Dark Orders.

IIROC would expect that if the Proposed Amendments are approved by the Recognizing Regulators, the amendments would become effective on the date IIROC publishes notice of the approval but implementation would be deferred for one hundred and eighty (180) days following the date IIROC publishes notice of the approval.

**Questions**

While comment is requested on all aspects of the Proposed Amendments, comment is specifically requested on the following questions:

1. If the restrictions at which a short sale may be made are repealed, do the other uses of the "last sale price" under UMIR justify the continuation of the restriction that the last sale price must be a full trading increment?
2. Presently UMIR provides that all orders entered on a marketplace must be priced at a "trading increment". With the adoption of the definition of "better price" which will permit orders to execute at partial trading increments, should UMIR allow the entry of a "Better-Priced Intentional Cross" at a partial trading increment to facilitate compliance with the "better price" requirements of the Order Exposure Rule (Rule 6.3) and the Client-Principal Trading Rule (Rule 8.1)?

**Appendices**

- Appendix “A” sets out the text of the Proposed Amendments to UMIR respecting dark liquidity; and
- Appendix “B” contains the text of the relevant provisions of UMIR as they would read on the adoption of the Proposed Amendments.

**Appendix "A"**

**Provisions Respecting Dark Liquidity**

The Universal Market Integrity Rules are hereby amended as follows:

1. Rule 1.1 is amended by:

   (a) deleting the definition of "better price" and substituting the following:

   **"better price"** means, in respect of each trade resulting from an order for a particular security:

   (a) in the case of a purchase, a price that is at least one trading increment lower than the best ask price at the time of the entry of the order to a marketplace provided that, if the best bid price is one trading increment lower than the best ask price, the price shall be at least one-half of one trading increment lower; and

   (b) in the case of a sale, a price that is at least one trading increment higher than the best bid price at the time of the entry of the order to a marketplace provided that, if the best ask price is one trading increment higher than the best bid price, the price shall be at least one-half of one trading increment higher.

   (b) adding the following definition of "Dark Order":

   **"Dark Order"** means an order no portion of which is displayed on entry on a marketplace in a consolidated market display but does not include an order entered on a marketplace as:

   (a) part of an intentional cross;

   (b) a market order;

   (c) a limit order that, based on orders displayed in a consolidated market display, is immediately executed in full on one or more marketplaces at the time of entry;

   (d) a Basis Order;

   (e) a Closing Price Order;

   (f) a Market-on-Close Order;

   (g) an Opening Order; or

   (h) a Volume-Weighted Average Price Order.

   (c) amending the definition of "last sale price" by inserting the phrase "provided that, if the trade executed at a price other than a trading increment, the price shall be rounded to the nearest trading increment and, if the trade executed at one-half of a trading increment, the price shall be rounded up to the next trading increment" immediately following the word "display".

2. Rule 6.3 is amended by inserting the phrase "for display" immediately following the word "enter".

3. Part 6 is amended by adding the following as Rule 6.5:

   **Minimum Size Requirements of Certain Orders Entered on a Marketplace**

   A Participant or Access Person shall not enter an order for the purchase or sale of a security on a marketplace if:

   (a) the order is a Dark Order and the order does not exceed the number of units as designated from time to time by the Market Regulator for the purposes of this clause; or

   (b) less than one standard trading unit of the order or such greater number of units as designated from time to time by the Market Regulator for the purposes of this clause will be displayed in a

consolidated market display on the entry of the order on the marketplace and at any time prior to the full execution of the order.

4. Part 6 is amended by adding the following as Rule 6.6:

**Provision of Price Improvement by a Dark Order**

(1) If a Participant or Access Person enters an order on a marketplace for the purchase or sale of a security that order may execute with a Dark Order provided the order entered by the Participant or Access Person is executed:

(a) at a better price;

(b) in the case of a purchase, at the best ask price if:

(i) the order on entry to the marketplace is for more than 50 standard trading units or has a value of more than $100,000, and

(ii) on the execution of the trade with the Dark Order, no orders for the sale of the security are displayed on that marketplace at that best ask price; or

(c) in the case of a sale, at the best bid price if:

(i) the order on entry to the marketplace is for more than 50 standard trading units or has a value of more than $100,000, and

(ii) on the execution of the trade with the Dark Order, no orders for the purchase of the security are displayed on that marketplace at that best bid price.

(2) Subsection (1) does not apply if the order entered by the Participant or Access Person is:

(a) a Basis Order;

(b) a Call Market Order;

(c) a Closing Price Order;

(d) a Market-on-Close Order;

(e) an Opening Order; or

(f) a Volume-Weighted Average Price Order.

5. Part 7 is amended by adding the following as Rule 7.12:

**Inability to Rely on Marketplace Functionality**

A Participant or Access Person shall not enter an order on a particular marketplace if the Participant or Access Person knows or ought reasonably to know that the handling of the order by the marketplace and the trading systems of the marketplace may result in the display of the order or the execution of the order not being in compliance with any of the applicable requirements of UMIR.

The Policies to the Universal Market Integrity Rules are hereby amended as follows:

1. Part 1 of Policy 6.1 is deleted and the following substituted:

**Part 1 – Execution Price of Orders**

An order may execute at such price increment as established by the marketplace for the execution of such orders provided, unless otherwise permitted by the information processor or information vendor, that the marketplace shall report the price at which the trade was executed to the information processor or an information vendor as the nearest trading increment and if the price results in one-half of a trading increment the price shall be rounded up to the next trading increment.

**Appendix "B"**

**Text of UMIR to Reflect Proposed Amendments Respecting Dark Liquidity**

| Text of Provisions Following Adoption of the Proposed Amendments | Text of Current Provisions Marked to Reflect Adoption of the Proposed Amendments |
|---|---|
| **1.1 Definitions**<br><br>**"better price"** means, in respect of each trade resulting from an order for a particular security:<br><br>(a) in the case of a purchase, a price that is at least one trading increment lower than the best ask price at the time of the entry of the order to a marketplace provided that, if the best bid price is one trading increment lower than the best ask price, the price shall be at least one-half of one trading increment lower; and<br><br>(b) in the case of a sale, a price that is at least one trading increment higher than the best bid price at the time of the entry of the order to a marketplace provided that, if the best ask price is one trading increment higher than the best bid price, the price shall be at least one-half of one trading increment higher. | **1.1 Definitions**<br><br>**"better price"** means, in respect of each trade resulting from an order for a particular security:<br><br>(a) ~~a price lower than the best ask price,~~ in the case of a purchase, a price that is at least one trading increment lower than the best ask price at the time of the entry of the order to a marketplace provided that, if the best bid price is one trading increment lower than the best ask price, the price shall be at least one-half of one trading increment lower; and<br><br>(b) ~~a price higher than the best bid price,~~ in the case of a sale, a price that is at least one trading increment higher than the best bid price at the time of the entry of the order to a marketplace provided that, if the best ask price is one trading increment higher than the best bid price, the price shall be at least one-half of one trading increment higher. |
| **1.1 Definitions**<br><br>**"Dark Order"** means an order no portion of which is displayed on entry on a marketplace in a consolidated market display but does not include an order entered on a marketplace as:<br><br>(a) part of an intentional cross;<br><br>(b) a market order;<br><br>(c) a limit order that, based on orders displayed in a consolidated market display, is immediately executed in full on one or more marketplaces at the time of entry;<br><br>(d) a Basis Order;<br><br>(e) a Closing Price Order;<br><br>(f) a Market-on-Close Order;<br><br>(g) an Opening Order; or<br><br>(h) a Volume-Weighted Average Price Order. | **1.1 Definitions**<br><br>**"Dark Order"** means an order no portion of which is displayed on entry on a marketplace in a consolidated market display but does not include an order entered on a marketplace as:<br><br>(a) part of an intentional cross;<br><br>(b) a market order;<br><br>(c) a limit order that, based on orders displayed in a consolidated market display, is immediately executed in full on one or more marketplaces at the time of entry;<br><br>(d) a Basis Order;<br><br>(e) a Closing Price Order;<br><br>(f) a Market-on-Close Order;<br><br>(g) an Opening Order; or<br><br>(h) a Volume-Weighted Average Price Order. |
| **1.1 Definitions**<br><br>**"last sale price"** means the price of the last sale of at least one standard trading unit of a particular security displayed in a consolidated market display provided that, if the trade executed at a price other than a trading increment, the price shall be rounded to the nearest trading increment and, if the trade executed at one-half of a trading increment, the price shall be rounded up to the next trading increment but does | **1.1 Definitions**<br><br>**"last sale price"** means the price of the last sale of at least one standard trading unit of a particular security displayed in a consolidated market display provided that, if the trade executed at a price other than a trading increment, the price shall be rounded to the nearest trading increment and, if the trade executed at one-half of a trading increment, the price shall be rounded up to the next trading increment but does |

| Text of Provisions Following Adoption of the Proposed Amendments | Text of Current Provisions Marked to Reflect Adoption of the Proposed Amendments |
|---|---|
| not include the price of a sale resulting from an order that is:<br><br>(a) a Basis Order;<br><br>(b) a Call Market Order;<br><br>(c) a Closing Price Order;<br><br>(d) a Special Terms Order unless the Special Terms Order has executed with an order or orders other than a Special Terms Order; or<br><br>(e) a Volume-Weighted Average Price Order. | not include the price of a sale resulting from an order that is:<br><br>(a) a Basis Order;<br><br>(b) a Call Market Order;<br><br>(c) a Closing Price Order;<br><br>(d) a Special Terms Order unless the Special Terms Order has executed with an order or orders other than a Special Terms Order; or<br><br>(e) a Volume-Weighted Average Price Order. |
| **6.3 Exposure of Client Orders**<br><br>(1) A Participant shall immediately enter for display on a marketplace that displays orders in accordance with Part 7 of the Marketplace Operation Instrument a client order to purchase or sell 50 standard trading units or less of a security unless:<br>… | **6.3 Exposure of Client Orders**<br><br>(1) A Participant shall immediately enter <u>for display</u> on a marketplace that displays orders in accordance with Part 7 of the Marketplace Operation Instrument a client order to purchase or sell 50 standard trading units or less of a security unless:<br>… |
| **6.5 Minimum Size Requirements of Certain Orders Entered on a Marketplace**<br><br>A Participant or Access Person shall not enter an order for the purchase or sale of a security on a marketplace if:<br><br>(a) the order is a Dark Order and the order does not exceed the number of units as designated from time to time by the Market Regulator for the purposes of this clause; or<br><br>(b) less than one standard trading unit of the order or such greater number of units as designated from time to time by the Market Regulator for the purposes of this clause will be displayed in a consolidated market display on the entry of the order on the marketplace and at any time prior to the full execution of the order. | **<u>6.5 Minimum Size Requirements of Certain Orders Entered on a Marketplace</u>**<br><br><u>A Participant or Access Person shall not enter an order for the purchase or sale of a security on a marketplace if:</u><br><br><u>(a) the order is a Dark Order and the order does not exceed the number of units as designated from time to time by the Market Regulator for the purposes of this clause; or</u><br><br><u>(b) less than one standard trading unit of the order or such greater number of units as designated from time to time by the Market Regulator for the purposes of this clause will be displayed in a consolidated market display on the entry of the order on the marketplace and at any time prior to the full execution of the order.</u> |
| **6.6 Provision of Price Improvement by a Dark Order**<br><br>(1) If a Participant or Access Person enters an order on a marketplace for the purchase or sale of a security that order may execute with a Dark Order provided the order entered by the Participant or Access Person is executed:<br><br>(a) at a better price;<br><br>(b) in the case of a purchase, at the best ask price if:<br><br>(i) the order on entry to the marketplace is for more than 50 standard trading units or has a value of more than $100,000, and<br><br>(ii) on the execution of the trade with the Dark Order, no orders for the sale of the security are displayed on that marketplace at that best | **<u>6.6 Provision of Price Improvement by a Dark Order</u>**<br><br><u>(1) If a Participant or Access Person enters an order on a marketplace for the purchase or sale of a security that order may execute with a Dark Order provided the order entered by the Participant or Access Person is executed:</u><br><br><u>(a) at a better price;</u><br><br><u>(b) in the case of a purchase, at the best ask price if:</u><br><br><u>(i) the order on entry to the marketplace is for more than 50 standard trading units or has a value of more than $100,000, and</u><br><br><u>(ii) on the execution of the trade with the Dark Order, no orders for the sale of the security are displayed on that marketplace at that best</u> |

| Text of Provisions Following Adoption of the Proposed Amendments | Text of Current Provisions Marked to Reflect Adoption of the Proposed Amendments |
|---|---|
| ask price; or<br><br>(c) in the case of a sale, at the best bid price if:<br><br>(i) the order on entry to the marketplace is for more than 50 standard trading units or has a value of more than $100,000, and<br><br>(ii) on the execution of the trade with the Dark Order, no orders for the purchase of the security are displayed on that marketplace at that best bid price.<br><br>(2) Subsection (1) does not apply if the order entered by the Participant or Access Person is:<br><br>(a) a Basis Order;<br><br>(b) a Call Market Order;<br><br>(c) a Closing Price Order;<br><br>(d) a Market-on-Close Order;<br><br>(e) an Opening Order; or<br><br>(f) a Volume-Weighted Average Price Order. | ask price; or<br><br>(c) in the case of a sale, at the best bid price if:<br><br>(i) the order on entry to the marketplace is for more than 50 standard trading units or has a value of more than $100,000, and<br><br>(ii) on the execution of the trade with the Dark Order, no orders for the purchase of the security are displayed on that marketplace at that best bid price.<br><br>(2) Subsection (1) does not apply if the order entered by the Participant or Access Person is:<br><br>(a) a Basis Order;<br><br>(b) a Call Market Order;<br><br>(c) a Closing Price Order;<br><br>(d) a Market-on-Close Order;<br><br>(e) an Opening Order; or<br><br>(f) a Volume-Weighted Average Price Order. |
| **7.12 Inability to Rely on Marketplace Functionality**<br><br>A Participant or Access Person shall not enter an order on a particular marketplace if the Participant or Access Person knows or ought reasonably to know that the handling of the order by the marketplace and the trading systems of the marketplace may result in the display of the order or the execution of the order not being in compliance with any of the applicable requirements of UMIR. | **7.12 Inability to Rely on Marketplace Functionality**<br><br>A Participant or Access Person shall not enter an order on a particular marketplace if the Participant or Access Person knows or ought reasonably to know that the handling of the order by the marketplace and the trading systems of the marketplace may result in the display of the order or the execution of the order not being in compliance with any of the applicable requirements of UMIR. |
| **Policy 6.1 – Entry of Orders to a Marketplace**<br><br>**Part 1 – Execution Price of Orders**<br><br>An order may execute at such price increment as established by the marketplace for the execution of such orders provided, unless otherwise permitted by the information processor or information vendor, that the marketplace shall report the price at which the trade was executed to the information processor or an information vendor as the nearest trading increment and if the price results in one-half of a trading increment the price shall be rounded up to the next trading increment. | **Policy 6.1 – Entry of Orders to a Marketplace**<br><br>**Part 1 – ~~Exceptions for Certain Types~~ Execution Price of Orders**<br><br>~~Notwithstanding that all orders for a security at a price of $0.50 or more must be entered on a marketplace at a price that does not include a fraction or a part of a cent, an order which is entered on a marketplace as a Basis Order, Call Market Order or a Volume Weighted Average Price Order~~ An order may execute at such price increment as established by the marketplace for the execution of such orders provided, unless otherwise permitted by the information processor or information vendor, that the marketplace shall report the price at which the trade was executed to the information processor or an information vendor as the nearest trading increment and if the price results in one-half of a trading increment the price shall be rounded up to the next trading increment. |

## 13.2 Marketplaces

### 13.2.1 TSX Notice of Approval – Amendments to Part III, Part V and Part VI of the TSX Company Manual

**TORONTO STOCK EXCHANGE**
**NOTICE OF APPROVAL**
**AMENDMENTS TO PART III, PART V AND PART VI OF THE**
**TORONTO STOCK EXCHANGE ("TSX") COMPANY MANUAL**
**(THE "MANUAL")**

**Introduction**

In accordance with the Protocol for Commission Oversight of Toronto Stock Exchange Rule Proposals (the "Protocol"), TSX has adopted, and the Ontario Securities Commission (the "OSC") has approved, amendments (the "Amendments") to Part III, Part V and Part VI of the TSX Company Manual (the "Manual") which are attached at **Appendix A**. The Amendments are public interest amendments to the Manual. The Amendments were published for public comment in a request for comments on February 4, 2011 ("Request for Comments").

**Reasons for the Amendments**

The Amendments:

A. introduce a new subsection in Section 319 for a new subcategory of minimum listing requirements for oil & gas development stage companies;

B. amend Subsections 501(c), 604(a)(ii) and 611(b) to provide for aggregation of transactions involving insiders over a six-month period;

C. amend Subsection 613(c) to provide that no security holder approval will be required for employment inducements provided that the aggregate number of securities issued to officers under the exemption in the one-year preceding period is not more than 2% of the number of securities outstanding; and

D. delete Subsection 614(n)(v) which provides that a rights offering must be unconditional.

**Summary of the Amendments**

TSX received no comments in response to the Request for Comments. The blackline at **Appendix B** indicates non-material revisions made since the Request for Comments.

**Text of the Amendments**

The Amendments are attached at **Appendix A**.

**Effective Date**

i) The Amendments to Section 319 and Section 614 are effective today, July 29, 2011.

ii) The Amendments to Subsections 501(c), 604(a)(ii), 611(b) and 613(c) will become effective thirty (30) days from today, on August 29, 2011. These Amendments will not have any retroactive effect.

**APPENDIX A**
**PROPOSED AMENDMENTS TO THE TSX COMPANY MANUAL**

MINIMUM LISTING REQUIREMENTS FOR OIL AND GAS COMPANIES

**Sec. 319. Requirements for Eligibility for Listing Non-Exempt Issuers[28]**

**(b) Oil & Gas Development Stage Companies[30C]**

(i) contingent resources[30A] of $500,000,000[30B];

(ii) a minimum market value of the issued securities that are to be listed of at least $200,000,000;

(iii) a clearly defined development plan, satisfactory to the Exchange, which can reasonably be expected to advance the property; [X3]

(iv) adequate funds to either: (A) execute the development plan and cover all other capital expenditures as well as general, administrative and debt service expenses, for a period of 18 months with an allowance for contingencies; or (B) bring the property into commercial production, and adequate working capital to fund all budgeted capital expenditures and carry on the business. A management-prepared 18-month projection (by quarter) of sources and uses of funds detailing all planned and required expenditures signed by the Chief Financial Officer must be submitted. The projection must also include actual financial results for the most recently completed quarter; and

(iv) an appropriate capital structure.

[30] – The Company must submit a technical report prepared by an independent technical consultant that conforms to National Instrument 51-101 and be acceptable to the Exchange. Reports prepared in conformity with other reporting systems deemed by the Exchange to be equivalent of National Instrument 51-101 will normally be acceptable also. The value of reserves should be calculated as the net present value of future cash flows before income taxes, prepared on a forecast basis, and discounted at a rate of ~~20~~10%. The Exchange may, at its discretion, also require the provision of a price sensitivity analysis.

[30A] – "contingent resources" are defined in accordance with Canadian Oil and Gas Evaluation Handbook and National Instrument 51-101, however the Exchange in its discretion may exclude certain resources classified as contingent resources after taking into consideration the nature of the contingency. The Exchange will use the best-case estimate for contingent resources, prepared in accordance with National Instrument 51-101.

[30B] – The Company must submit a technical report prepared by an independent technical consultant that conforms to National Instrument 51-101 and be acceptable to the Exchange. Reports prepared in conformity with other reporting systems deemed by the Exchange to be the equivalent of National Instrument 51-101 will normally be acceptable also. The value of the resources should be calculated as the best case scenario of the net present value of future cash flows before income taxes, prepared on a forecast basis, and discounted at a rate of 10%. The Exchange may, at its discretion, also require the provision of a price sensitivity analysis.

[30C] – The Exchange strongly recommends pre-consultation with the Exchange for any applicant applying under this listing category. Generally, this category will be limited to issuers with unconventional oil & gas assets, such as oil sands.

**Part V Special Requirements for Non-Exempt Issuers**

**Sec. 501.**

(c) Transactions involving insiders or other related parties of the non-exempt issuer[1] (both as defined in Part I) and which (i) do not involve an issuance or potential issuance of listed securities; or (ii) that are initiated or undertaken by the non-exempt issuer and materially affect control (as defined in Part I) require TSX acceptance under this Part V before the non-exempt issuer may proceed with the proposed transaction. Failure to comply with this provision may result in the suspension and delisting of the non-exempt issuer's listed securities (see Part VII of this Manual).

[1] For the purposes of this section, "transactions involving insiders and other related parties of the non-exempt issuer" includes, but is not limited to, (a) services rendered for which fees and commissions are payable; (b) purchases and sales of assets; (c) interest to be received by an insider or other related party pursuant to a loan, but does not include the principal amount of a loan which must be repaid; and (d) a loan by a non-exempt issuer to an insider or a related party, which includes both the principal and interest on any loan.

If the value of the consideration to be received by the insider or other related party exceeds 2% of the market capitalization of the issuer, TSX will require that:

(i) the proposed transaction be approved by the board on the recommendation of the directors who are unrelated to the transaction; and

(ii) the value of the consideration be established in an independent report, other than for executive or director compensation for services rendered unless the consideration appears to be commercially unreasonable, as determined by TSX.

In addition, if the value of the consideration to be received by the insider or other related party exceeds 10% of the market capitalization of the issuer, TSX will require that the transaction be approved by the issuer's security holders, other than the insider or other related party.

During any six-month period, transactions with insiders or other related parties will be aggregated for the purposes of this Subsection.

**Sec. 604. Security Holder Approval**

(a) In addition to any specific requirement for security holder approval, TSX will generally require security holder approval as a condition of acceptance of a notice under Section 602 if in the opinion of TSX, the transaction:

(i) materially affects control of the listed issuer; or

(ii) provides consideration to insiders in aggregate of 10% or greater of the market capitalization of the listed issuer, during any six-month period, and has not been negotiated at arm's length.

If any insider of the listed issuer has a beneficial interest, direct or indirect, in the proposed transaction which differs from other security holders of the same class TSX will regard such a transaction as not having been negotiated at arm's length.

**Sec. 611. Acquisitions**

(b) Security holder approval will be required in those instances where the number of securities issued or issuable to insiders as a group, together with any securities issued or made issuable to insiders as a group for acquisitions during the preceding six months, in payment of the purchase price for an acquisition exceeds 10% of the number of securities of the listed issuer which are outstanding on a non-diluted basis, prior to the date of closing of the transaction. Insiders receiving securities pursuant to the transaction are not eligible to vote their securities in respect of such approval.

**Sec. 613.**

**Exception to the Requirement for Security Holder Approval—Employment Inducements**

(c) Security holder approval is not required for security based compensation arrangements used as an inducement to ~~a~~ person(s) or company(ies) not previously employed by and not previously an insider of the listed issuer, ~~to enter~~provided that: i) such person(s) or company(ies) enters into a contract of full time employment as an officer of the listed issuer~~, provided that~~; and ii) the number of securities made issuable ~~to such person or company~~pursuant to this Subsection during any twelve month period do not exceed in aggregate 2% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis, prior to the date ~~of the arrangement~~this exemption is first used during such twelve month period

**Sec. 614.**

(n) The following requirements apply to rights which are listed on TSX, although TSX may, in appropriate circumstances, apply these requirements to rights not so listed:

(i) once the rights have been listed on TSX, TSX will not permit the essential terms of the rights offering, such as the exercise price or the expiry date, to be amended. However, under extremely exceptional circumstances, such as an unexpected postal disruption, TSX may grant an exemption from the requirement that the expiry date not be extended;

(ii) the rights offering must be open for a period of at least twenty-one (21) calendar days following the date on which the rights offering circular is sent to security holders or such longer period as is necessary to ensure that security holders, including security holders residing in foreign countries, will have sufficient time to exercise or sell their rights on an informed basis;

(iii) security holders must receive exactly one right for each security held. An exemption from this requirement will be considered if the rights offering entitles security holders to purchase more than one security for each security held (prior to giving effect to any additional subscription privilege); and

(iv) if the listed issuer proposes to provide a rounding mechanism, whereby security holders not holding a number of securities equally divisible by a specified number would have their entitlements adjusted upward, adequate arrangements must be made to ensure that beneficial owners of securities registered in the names of CDS, banks, trust companies, investment dealers or similar institutions will be treated, for purposes of such additional entitlements, as though they were registered security holders; and.

~~(v) the rights offering must be unconditional.~~

**APPENDIX B**
**REVISIONS MADE SINCE THE REQUEST FOR COMMENTS**

**Minimum Listing Requirements for Oil and Gas Companies**

**Sec. 319. Requirements for Eligibility for Listing Non-Exempt Issuers[28]**

**(b) Oil & Gas Development Stage Companies[30C]**

(i) contingent resources[30A] of $500,000,000[30B];

(ii) a minimum market value of the issued securities that are to be listed of at least $200,000,000;

(iii) a clearly defined development plan, satisfactory to the Exchange, which can reasonably be expected to advance the property; [x3]

(iv) adequate funds to either: (A) execute the development plan and cover all other capital expenditures as well as general, administrative and debt service expenses, for a period of 18 months with an allowance for contingencies; or (B) bring the property into commercial production, and adequate working capital to fund all budgeted capital expenditures and carry on the business. A management-prepared 18-month projection (by quarter) of sources and uses of funds detailing all planned and required expenditures signed by the Chief Financial Officer must be submitted. The projection must also include actual financial results for the most recently completed quarter; and

(iv) an appropriate capital structure.

[30] – The Company must submit a technical report prepared by an independent technical consultant that conforms to National Instrument 51-101 and be acceptable to the Exchange. Reports prepared in conformity with other reporting systems deemed by the Exchange to be equivalent of National Instrument 51-101 will normally be acceptable also. The value of reserves should be calculated as the net present value of future cash flows before income taxes, prepared on a forecast basis, and discounted at a rate of 10%. The Exchange may, at its discretion, also require the provision of a price sensitivity analysis.

[30A] – "contingent resources" are defined in accordance with Canadian Oil and Gas Evaluation Handbook and National Instrument 51-101, however the Exchange in its discretion may exclude certain resources classified as contingent resources after taking into consideration the nature of the contingency. ~~The Exchange strongly recommends pre-consultation with the Exchange for any applicant applying under this listing category.~~ The Exchange will use the best-case estimate for contingent resources, prepared in accordance with National Instrument 51-101.

[30B] – The Company must submit a technical report prepared by an independent technical consultant that conforms to National Instrument 51-101 and be acceptable to the Exchange. Reports prepared in conformity with other reporting systems deemed by the Exchange to be the equivalent of National Instrument 51-101 will normally be acceptable also. The value of the resources should be calculated as the best case scenario of the net present value of future cash flows before income taxes, prepared on a forecast basis, and discounted at a rate of 10%. The Exchange may, at its discretion, also require the provision of a price sensitivity analysis.

[30C] – The Exchange strongly recommends pre-consultation with the Exchange for any applicant applying under this listing category. Generally, this category will be limited to issuers with unconventional oil & gas assets, such as oil sands.

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