The Ontario Securities Commission

OSC Bulletin

March 2, 2012

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

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Table of Contents

Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

March 2, 2012

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

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

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

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Paulette L. Kennedy	—	PLK
Edward P. Kerwin	—	EPK
Vern Krishna	—	VK
Christopher Portner	—	CP
Judith N. Robertson	—	JNR
Charles Wesley Moore (Wes) Scott	—	CWMS

SCHEDULED OSC HEARINGS

March 7, 2012
10:00 a.m.

Systematech Solutions Inc., April Vuong and Hao Quach

s. 127

R. Goldstein/S. Schumacher in attendance for Staff

Panel: JEAT

March 8, 2012
10:00 a.m.

Energy Syndications Inc., Green Syndications Inc., Syndications Canada Inc., Land Syndications Inc. and Douglas Chaddock

s. 127

C. Johnson in attendance for Staff

Panel: CP

March 13, 2012
3:00 p.m.

March 23, 2012
11:00 a.m.

Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjaiants Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd., Cambridge Resources Corporation, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group

s. 127 and 127.1

D. Campbell in attendance for Staff

Panel: VK

March 21, 2012 10:00 a.m.	**Eda Marie Agueci, Dennis Wing, Santo Iacono, Josephine Raponi, Kimberley Stephany, Henry Fiorillo, Giuseppe (Joseph) Fiorini, John Serpa, Ian Telfer, Jacob Gornitzki and Pollen Services Limited** s. 127 J, Waechter/U. Sheikh in attendance for Staff Panel: JEAT
March 22, 2012 9:00 a.m.	**Empire Consulting Inc. and Desmond Chambers** s. 127 D. Ferris in attendance for Staff Panel: EPK
March 23, 2012 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** s. 127 J. Feasby in attendance for Staff Panel: CP
March 26, 2012 11:00 a.m. March 28 and March 30-April 3, 2012 10:00 a.m.	**Shaun Gerard McErlean, Securus Capital Inc., and Acquiesce Investments** s. 127 M. Britton in attendance for Staff Panel: VK/JDC
March 27, 2012 9:00 a.m. June 18 and June 20-22, 2012 10:00 a.m.	**Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva, Gurdip Singh Gahunia aka Michael Gahunia and Abraham Herbert Grossman aka Allen Grossman** s. 127(7) and 127(8) H. Craig in attendance for Staff Panel: PLK
March 28, 2012 10:00 a.m.	**Lyndz Pharmaceuticals Inc., James Marketing Ltd., Michael Eatch and Rickey McKenzie** s. 127(1) and (5) J. Feasby in attendance for Staff Panel: MGC/SOA
March 29, 2012 11:00 a.m. April 10, 2012 2:30 p.m.	**North American Financial Group Inc., North American Capital Inc., Alexander Flavio Arconti, and Luigino Arconti** s. 127 M. Vaillancourt in attendance for Staff Panel: MGC
April 4-5, April 11 and April 13-16, 2012 10:00 a.m. April 12, 2012 9:00 a.m.	**Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)** s. 127 and 127.1 D. Ferris in attendance for Staff Panel: VK/MCH
April 11, 2012 10:00 a.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** s. 127 H. Craig/C. Rossi in attendance for Staff Panel: CP

April 17, 2012 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** s. 37, 127 and 127.1 C. Watson in attendance for Staff Panel: PLK/JNR
April 18, 2012 10:00 a.m.	**Sextant Capital Management Inc., Sextant Capital GP Inc., Otto Spork, Robert Levack and Natalie Spork** s. 127 T. Center in attendance for Staff Panel: JDC
April 23, 2012 10:00 a.m.	**Lehman Brothers & Associates Corp., Greg Marks, Kent Emerson Lounds and Gregory William Higgins** s. 127 C. Rossi in attendance for Staff Panel: CP/CWMS
April 30, 2012 11:00 a.m. May 1-7, May 9-18 and May 23-25, 2012 10:00 a.m.	**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: CP
May 1, 2012 10:00 a.m.	**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: MGC/SOA
May 3, 2012 10:00 a.m.	**Ciccone Group, Medra Corp. (a.k.a. Medra Corporation), 990509 Ontario Inc., Tadd Financial Inc., Cachet Wealth Management Inc., Vincent Ciccone (a.k.a. Vince Ciccone), Darryl Brubacher, Andrew J Martin, Steve Haney, Klaudiusz Malinowski, and Ben Giangrosso** s. 127 M. Vaillancourt in attendance for Staff Panel: JEAT
May 9-18 and May 23-25, 2012 10:00 a.m.	**Crown Hill Capital Corporation and Wayne Lawrence Pushka** s. 127 A. Perschy in attendance for Staff Panel: EPK
May 16-18, May 23-25, June 4 and June 6, 2012 10:00 a.m.	**Nest Acquisitions and Mergers, IMG International Inc., Caroline Myriam Frayssignes, David Pelcowitz, Michael Smith, and Robert Patrick Zuk** s. 37, 127 and 127.1 C. Price in attendance for Staff Panel: JDC/MCH

May 29 – June 1, 2012 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"** s. 127 B. Shulman in attendance for Staff Panel: JEAT
June 4, June 6-18, and June 20-26, 2012 10:00 a.m.	**Peter Sbaraglia** s. 127 J. Lynch in attendance for Staff Panel: TBA
June 21, 2012 10:00 a.m.	**M P Global Financial Ltd., and Joe Feng Deng** s. 127 (1) M. Britton in attendance for Staff Panel: MCH
June 22, 2012 10:00 a.m.	**New Hudson Television Corporation, New Hudson Television L.L.C. & James Dmitry Salganov** s. 127 C. Watson in attendance for Staff Panel: TBA
September 4-10, September 12-14, September 19-24, and September 26 – October 5, 2012 10:00 a.m.	**Portus Alternative Asset Management Inc., Portus Asset Management Inc., Boaz Manor, Michael Mendelson, Michael Labanowich and John Ogg** s. 127 H Craig in attendance for Staff Panel: TBA
September 21, 2012 10:00 a.m.	**Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp., and Weizhen Tang** s. 127 and 127.1 H. Craig in attendance for Staff Panel: TBA
September 24, September 26 – October 5 and October 10-19, 2012 10:00 a.m.	**New Found Freedom Financial, Ron Deonarine Singh, Wayne Gerard Martinez, Pauline Levy, David Whidden, Paul Swaby and Zompas Consulting** s. 127 A. Heydon in attendance for Staff Panel: TBA
October 19, 2012 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** s. 127 H. Craig in attendance for Staff Panel: PLK
October 22 and October 24 – November 5, 2012 10:00 a.m.	**MBS Group (Canada) Ltd., Balbir Ahluwalia and Mohinder Ahluwalia** s. 37, 127 and 127.1 C. Rossi in attendance for staff Panel: TBA
November 21 – December 3 and December 5-December 14, 2012 10:00 a.m.	**Bernard Boily** s. 127 and 127.1 M. Vaillancourt/U. Sheikh in attendance for Staff Panel: TBA

January 7 – February 5, 2013	**Jowdat Waheed and Bruce Walter**
	s. 127
10:00 a.m.	J. Lynch in attendance for Staff
	Panel: TBA
TBA	**Yama Abdullah Yaqeen**
	s. 8(2)
	J. Superina in attendance for Staff
	Panel: TBA
TBA	**Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell**
	s. 127
	J. Waechter in attendance for Staff
	Panel: TBA
TBA	**Frank Dunn, Douglas Beatty, Michael Gollogly**
	s. 127
	K. Daniels in attendance for Staff
	Panel: TBA
TBA	**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	**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

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

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

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

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

Normand Gauthier, Gentree Asset Management Inc., R.E.A.L. Group Fund III (Canada) LP, and CanPro Income Fund I, LP

s. 127

B. Shulman in attendance for Staff

Panel: TBA

TBA

Vincent Ciccone and Medra Corp.

s. 127

M. Vaillancourt in attendance for Staff

Panel: TBA

TBA	**FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun** s. 127 C. Price in attendance for Staff Panel: TBA
TBA	**2196768 Ontario Ltd carrying on business as Rare Investments, Ramadhar Dookhie, Adil Sunderji and Evgueni Todorov** s. 127 D. Campbell in attendance for Staff Panel: TBA
TBA	**York Rio Resources Inc., Brilliante Brasilcan Resources Corp., Victor York, Robert Runic, George Schwartz, Peter Robinson, Adam Sherman, Ryan Demchuk, Matthew Oliver, Gordon Valde and Scott Bassingdale** s. 127 H. Craig/C. Watson 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	**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)** s. 127 J. Lynch/S. Chandra in attendance for Staff Panel: TBA
TBA	**Richvale Resource Corp., Marvin Winick, Howard Blumenfeld, John Colonna, Pasquale Schiavone, and Shafi Khan** s. 127(7) and 127(8) J. Feasby in attendance for Staff Panel: TBA
TBA	**Simply Wealth Financial Group Inc., Naida Allarde, Bernardo Giangrosso, K&S Global Wealth Creative Strategies Inc., Kevin Persaud, Maxine Lobban and Wayne Lobban** s. 127 and 127.1 C. Johnson in attendance for Staff Panel: TBA

TBA

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.

s. 127

M. Britton in attendance for Staff

Panel: TBA

TBA

Sino-Forest Corporation, Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho and Simon Yeung

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA

Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA

Zungui Haixi Corporation, Yanda Cai and Fengyi Cai

s. 127

J. Superina in attendance for Staff

Panel: TBA

TBA

David M. O'Brien

s. 37, 127 and 127.1

B. Shulman in attendance for Staff

Panel: TBA

TBA

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.

s. 127

B. Shulman in attendance for Staff

Panel: TBA

TBA

Ground Wealth Inc., Armadillo Energy Inc., Paul Schuett, Doug DeBoer, James Linde, Susan Lawson, Michelle Dunk, Adrion Smith, Bianca Soto and Terry Reichert

s. 127

S. Schumacher in attendance for Staff

Panel: TBA

TBA

Sage Investment Group, C.A.D.E Resources Group Inc., Greenstone Financial Group, Fidelity Financial Group, Antonio Carlos Neto David Oliveira, and Anne Marie Ridley

s. 127

C. Watson in attendance for Staff

Panel: TBA

TBA

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

s. 127 and 127.1

D. Ferris in attendance for Staff

Panel: TBA

TBA

Sandy Winick, Andrea Lee Mccarthy, Kolt Curry, Laura Mateyak, Gregory J. Curry, American Heritage Stock Transfer Inc., American Heritage Stock Transfer, Inc., BFM Industries Inc., Liquid Gold International Inc., and Nanotech Industries Inc.

s. 127

J. Feasby in attendance for Staff

Panel: TBA

TBA

Majestic Supply Co. Inc., Suncastle Developments Corporation, Herbert Adams, Steve Bishop, Mary Kricfalusi, Kevin Loman and CBK Enterprises Inc.

s. 37, 127 and 127.1

D. Ferris 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

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

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

1.1.2 CSA 2011 Enforcement Report

The *Canadian Securities Administrators 2011 Enforcement Report* is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

CANADIAN SECURITIES ADMINISTRATORS

2011 Enforcement Report

CSA ACVM

Canadian Securities Administrators

The Canadian Securities Administrators (CSA) is the council of the 10 provincial and three territorial securities regulators in Canada. The mission of the CSA is to facilitate Canada's securities regulatory system, providing protection to investors from unfair, improper or fraudulent practices and to promote fair, efficient and transparent capital markets, through the development of harmonized securities regulation, policy and practice.

The CSA seeks to streamline the regulatory process for companies that wish to raise capital and for individuals and companies working in the investment industry. In enforcement matters, while most enforcement activity is conducted locally, CSA members also coordinate multi-jurisdictional investigations and share tools and techniques that help their staff investigate and prosecute securities law violations that cross borders.

RESPONSIVE

Responsive enforcement acts quickly and appropriately in cases of misconduct.

COLLABORATIVE

Collaborative enforcement can prevent misconduct from spreading across borders and promote efficiency across jurisdictions.

EFFECTIVE

Effective enforcement strengthens public confidence in Canadian capital markets.

Message From The Chair

Bill Rice
Chair, CSA

Enforcement action against wrongdoing in Canada's capital markets is a top priority for Canadian securities regulators. In everything we do, we work to stay ahead of evolving trends to foster the confidence of Canadians in the reliability and fairness of our capital markets. Contributing to that effort, we strive to deliver effective, responsive and collaborative securities enforcement across the country.

> "OUR CAPITAL MARKETS UNDERPIN OUR ENTIRE ECONOMY, SO THE IMPORTANCE OF SECURITIES ENFORCEMENT AND REGULATION TO CANADIANS CANNOT BE OVERSTATED."

To be effective and responsive, enforcement activity must be timely. This year's report features examples of proactive measures taken by CSA members to issue cease trade orders or to freeze assets, actions that prevent further harm to investors while investigations proceed. The cases featured on the proactive measures page demonstrate the measures that CSA members take to shut down potentially harmful schemes as early as possible.

We are making progress toward our stated goal of prosecuting more securities offences in the courts. Since the courts are able to impose jail sentences, prosecuting more serious cases in court illustrates our commitment to deliver greater visibility and deterrence through our enforcement activity. These efforts are beginning to generate results.

Again in 2011, illegal distributions made up over half of all concluded enforcement cases. In the typical illegal distribution, Canadians are presented with an investment opportunity that turns out not to be what was promised – the "guaranteed" return is not delivered, the money is not invested as described, or the opportunity turns out to be a Ponzi scheme. These cases often involve a breach of trust.

To defend against these abuses, CSA members work to deter wrongdoing and to protect investors through both enforcement efforts and investor education that helps Canadians to distinguish between legitimate and dubious investment opportunities. This report focuses on the enforcement side of that equation, describing the actions our enforcement teams take to respond to violations ranging from illegal insider trading to market manipulation. The consistent enforcement of securities laws is crucial to protecting Canadians. For more information on the education side of our investor protection work, we encourage readers also to visit the CSA's fraud avoidance web page.

As well as endeavouring to be effective and responsive in our own initiatives, we seek collaborative securities enforcement. While that collaboration takes place mainly across jurisdictional lines among regulators, collaboration with investors and market participants is also important. We continue to reach out to police forces to work jointly on securities crime where possible. We welcome tips about questionable investment opportunities or practices, and we also encourage your feedback on this report and on our other communication efforts. Ensuring a strong, secure and fair financial system in our country is a shared effort among all of us who play roles in that system. Our capital markets underpin our entire economy, so the importance of securities regulation and enforcement to Canadians cannot be overstated.

Bill Rice
Chair, CSA

Key Players in Enforcement

In Canada, a number of laws and rules govern capital markets and market participants; different agencies enforce these laws and rules. Each fulfills different roles in the overall regulation of capital markets. CSA members administer and enforce the securities legislation in each jurisdiction, whereas criminal authorities enforce the *Criminal Code*, which includes offences such as fraud and money laundering.

The Canadian Securities Market

Market Capitalization[1]	$2.05 trillion
Total Issuers[2]	5,035
Total Registrants (firms)[3]	2,299
Total Registrants (individuals)[3]	123,121
Pension Fund Assets[4]	$1.26 trillion
Total Financial Wealth[4]	$2.96 trillion

1 Data from the TMX Group as of October 31, 2011.

2 Total number of issuers compiled from SEDAR and includes listed and unlisted issuers. Does not include investment fund issuers.

3 Data compiled from the National Registration Database, and includes registered and exempt firms and registered and permitted individuals.

4 Data from Investor Economics, Household Balance Sheet, as of 2011 (Pension fund assets include CPP and QPP).

Securities Laws and Regulators

Securities laws in each province and territory are comprised of a *Securities Act*, which provides the legal foundation for regulatory requirements related to the capital markets, along with any regulations or rules under each Act and any blanket rulings, orders and decisions issued by securities regulators. Securities laws impose duties on issuers, registrants and other market participants.

An effective regulatory enforcement regime is rooted in strategies that focus on investor protection and the prevention of harm. CSA members, as securities regulators, investigate suspected securities-related misconduct, such as breaches of obligations by registrants with respect to clients, illegal sales of securities, or other securities law infractions.

Securities regulators may bring allegations of securities misconduct to a hearing before a securities commission or an associated tribunal. Securities legislation authorizes CSA members to seek or impose administrative sanctions for securities-related misconduct, including monetary sanctions and prohibitions from market participation or access. Such sanctions are intended to deter misconduct and to protect investors from harm.

Securities legislation also establishes quasi-criminal offences for contraventions of regulatory requirements and prohibitions of certain activities related to the capital markets. Penalties for committing these types of offences can include a term of imprisonment and a significant fine. In some jurisdictions, staff may directly prosecute such cases in court. In others, securities regulators may refer cases of certain quasi-criminal offences to Crown counsel for prosecution in the courts. CSA members have no authority to order a term of imprisonment; this can only be done by a judge.

Criminal Code and Authorities

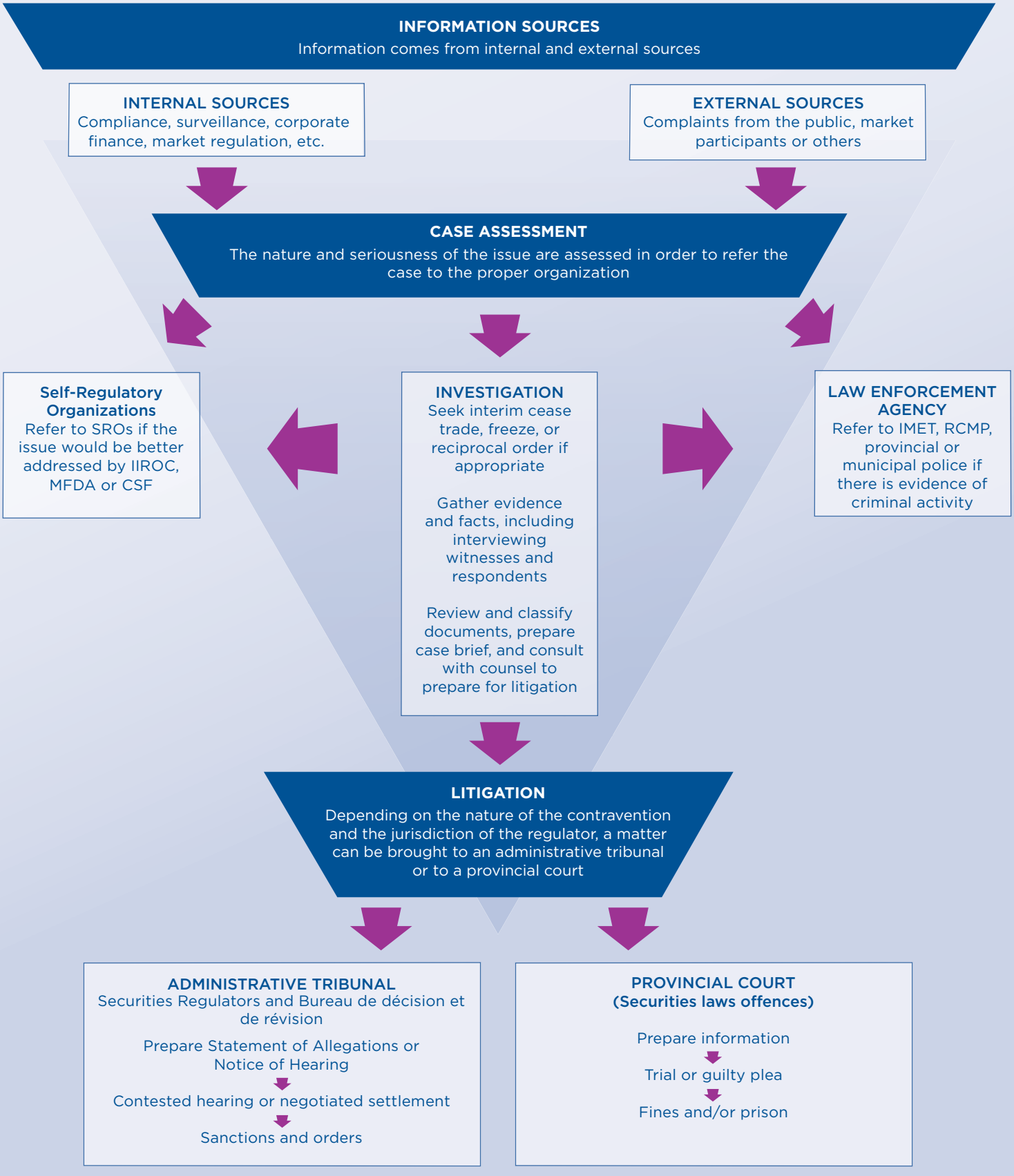
The *Criminal Code*, a federal statute, establishes both specific securities-related criminal offences (such as market manipulation), and more general economic crimes (such as fraud) that could also capture some securities-related misconduct. Penalties imposed by the courts for criminal offences are intended to, among other things, punish those persons who have committed securities-related misconduct. Penalties for committing offences can include a lengthy term of imprisonment and a significant fine under the *Criminal Code*. The pursuit of an offence under the *Criminal Code* requires charges to be laid by law enforcement, the Crown or, in Québec, the Director of Criminal and Penal Prosecutions. The prosecution is then pursued by Crown counsel or the Director.

Generally, RCMP, local and provincial police investigate securities-related criminal offences. (In British Columbia, investigators at the securities regulator also investigate securities-related criminal offences.) Integrated Market Enforcement Teams (IMETs) are groups within the RCMP, comprised of specialized investigators, which also investigate capital market offences.

Self-Regulatory Organizations (SROs)

Canadian securities regulators have recognized self-regulatory organizations (SROs) to regulate investment dealers and mutual fund dealers, under the oversight of CSA members. The key SROs in Canada are the Investment Industry Regulatory Organization of Canada (IIROC), the Chambre de la sécurité financière (CSF), and the Mutual Fund Dealers Association of Canada (MFDA). SROs can discipline member dealers or their employees for breaching SRO rules. Sanctions include suspension or termination of membership or market access and monetary penalties.

The Enforcement Process

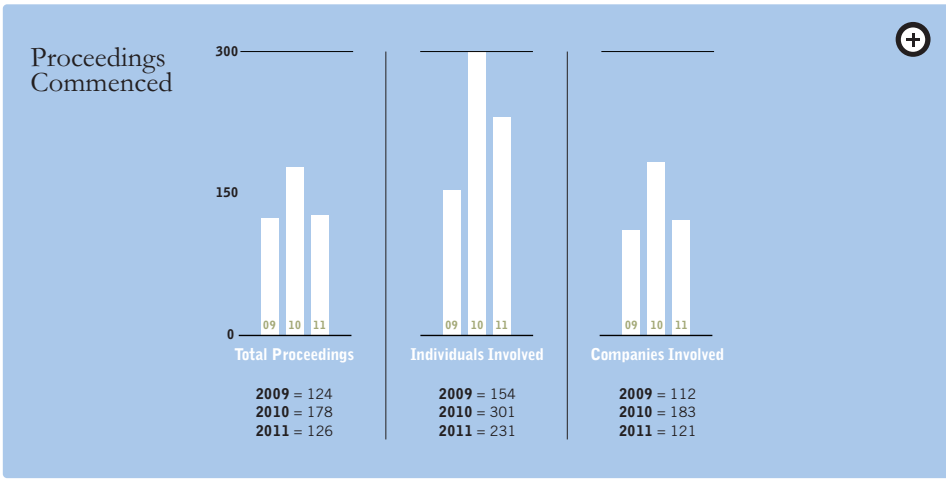


2011 Results

This section presents three years of data in several enforcement categories. The results vary considerably from year to year. Cases differ widely in their complexity and in the number of respondents and victims involved. The time required to conclude a case can range from a few weeks to a year or longer, with complex cases requiring substantial resources. These results should therefore be considered in aggregate; changes in one category are not necessarily a trend.

Proceedings commenced

Proceedings commenced are cases in which Commission staff have filed a statement of allegations or sworn an Information before the courts (or in Québec, where a statement of offence has been served on the defendant), any of which allege wrongdoing. Many of the proceedings commenced in 2011 were still underway at the end of the year, and in such cases, decisions have yet to be rendered. The 126 total proceedings commenced in 2011 include, in aggregate, 231 individuals and 121 companies. By comparison the 178 total proceedings commenced in 2010 included 301 individuals and 183 companies.



Concluded cases

CSA members concluded an aggregate total of 124 cases in 2011, involving 237 individuals and 128 companies. By comparison, the 174 concluded cases in 2010 involved 207 individuals and 100 companies. The tables provide more detail about these cases and how they were concluded. Each case is counted just once, even if more than one person or company was sanctioned in a single case.

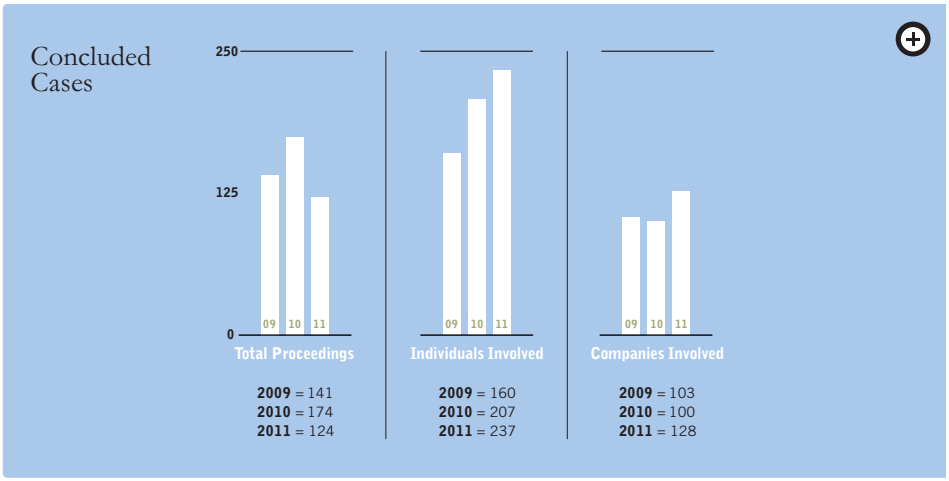


Table 1 shows completed Canadian enforcement cases, by category of wrongdoing, for 2009, 2010, and 2011. Illegal distributions (distributing securities without registration or a prospectus) continue to form the largest category.

Table 1: Concluded Cases by Category*

Type of Offence	2009	2010	2011
Illegal Distributions	68	115	66
Misconduct by Registrants	29	21	21
Illegal Insider Trading	16	13	11
Disclosure Violations	14	11	10
Market Manipulation	3	4	3
Other Cases	11	10	13
Total	**141**	**174**	**124**

*Reciprocal orders and interim cease trade orders have not been counted in this table.

Table 2 provides a breakdown of how cases were concluded, whether by a tribunal decision, a settlement agreement with a CSA member, or a court proceeding under securities legislation. All concluded cases are listed in the database to this report.

Table 2: How Cases Were Concluded

Concluded Cases	2009	2010	2011
Contested hearing before a tribunal	37	39	47
Settlement agreement	69	71	53
Court proceeding (under securities legislation)	35	64	24
Total cases concluded	**141**	**174**	**124**

Penalties

The sanctions imposed for securities law violations or conduct that is contrary to the public interest range from bans on future activity, such as trading in securities or acting as a director or officer of a public company, to financial penalties and jail terms. Tables 3 and 4 outline monetary orders imposed by securities regulators and the courts over the last three years, including settlements.

Total penalties can vary considerably year to year, depending on the nature of the cases in any given year. The 2009 totals were affected by two very large cases. In 2011, approximately $52 million was ordered in fines and administrative penalties. While penalties, costs and other monetary sanctions/orders can be difficult to collect, every effort is made by the regulator to do so, including using the services of collection agencies.

Table 3: Fines and Administrative Penalties

	2009	2010	2011
Illegal Distributions	$ 30,833,925	$ 53,592,614	$ 40,928,558
Misconduct by Registrants	$ 106,186,510*	$ 4,971,418	$ 4,971,418
Illegal Insider Trading	$ 1,769,744	$ 1,835,974	$ 1,958,000
Disclosure Violations	$ 14,454,329	$ 3,148,500	$ 3,076,288
Market Manipulation	$ 3,000	$ 56,000	$ 1,900,000
Other Cases	$ 425,500	$ 222,500	$ 1,928,500
Total	**$ 153,673,008**	**$ 63,827,006**	**$ 52,151,546**

* Five respondents agreed to pay $104,425,000 in administrative penalties as part of settlement agreements in 2009 related to asset-backed commercial paper (ABCP).

Restitution, compensation and disgorgement are powers available in specific circumstances to some regulators or courts under securities legislation. Restitution is a remedy that aims to restore a person to the position he or she would have been in had it not been for the improper conduct of another. Compensation is a payment to an aggrieved investor to compensate for losses, either in whole or in part. An order for disgorgement requires the payment to the regulator of amounts obtained as a result of a failure to comply with or a contravention of securities laws.

Table 4: Restitution, Compensation and Disgorgement

	2009	2010	
Illegal Distributions	$ 21,131,933	$ 57,000,617	$ 42,298,519
Misconduct by Registrants	$ 1,280,695	$ 1,554,866	$ 1,554,866
Illegal Insider Trading	$ 1,675,056	—	$ 362,772
Disclosure Violations	$ 68,100,000*	—	$ 57,000,617
Market Manipulation	$ 18,641	—	$ 5,600,000
Other Cases	—	—	$ 1,290,631
Total	**$ 92,206,325**	**$ 58,555,483**	**$ 49,551,922**

* Three respondents in one matter in 2009 agreed to pay $68,100,000 as part of one settlement.

As well as fines and administrative penalties, respondents are also often ordered by the regulators or courts to pay part or all of the costs of the proceedings. Total costs assigned to respondents by CSA members in 2011 were $2,494,154, as compared to $1,998,135 in 2010.

In addition to monetary orders, courts in Ontario ordered jail terms for eight individuals in 2011, ranging from 30 days to three years.

Legislation provides for a statutory right of appeal of both tribunal and court decisions, and securities regulators expend significant resources responding to appeals brought by respondents. Occasionally a CSA member will appeal a court decision. As well as the appeals of decisions included in the table below, procedural appeals are also quite common as cases proceed through the enforcement system.

Table 5: Appeals

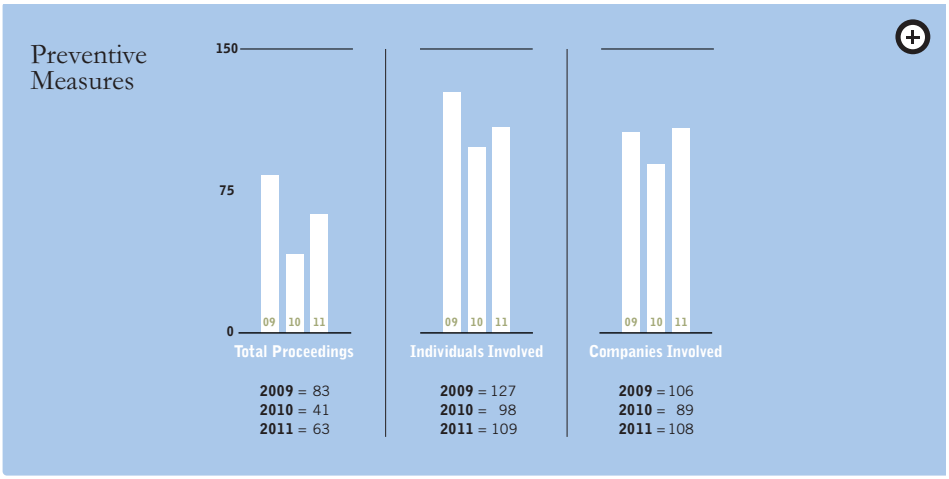
	2009	2010	2011
Cases appealed	12	19	31
Appeal decisions rendered	11	6	19*

* Two decisions were overturned in 2011.

Preventive measures

As the chart below illustrates, CSA members continue to use measures such as interim cease trade and asset freeze orders to protect investors by prohibiting or inhibiting a potentially illegal activity while an investigation is underway.

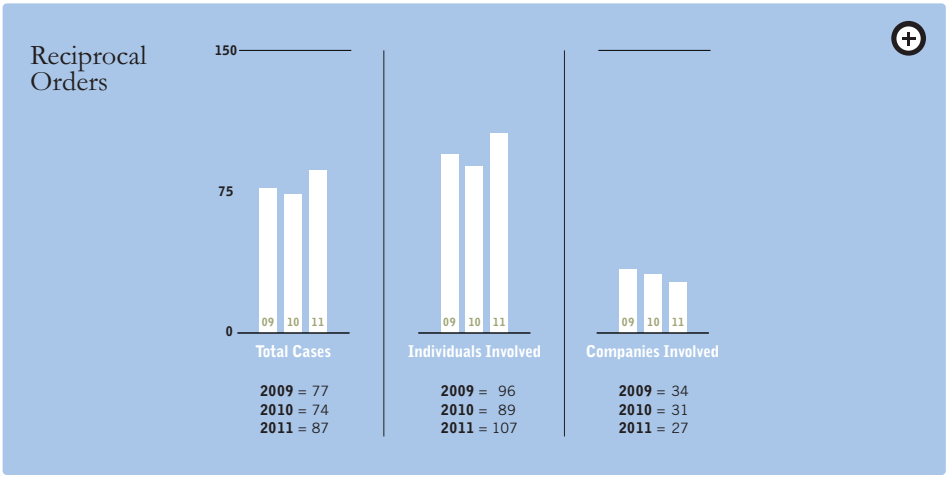
Under the 63 interim orders and asset freeze orders issued in 2011, trading restrictions were placed on 109 individuals and 108 companies. In 2010, that number was 41 interim orders and asset freeze orders, and trading restrictions were placed on 98 individuals and 89 companies.



Asset freeze orders are used by securities regulators to prevent the dissipation of assets pending completion of an investigation. Where circumstances merit, regulators can also apply to the court to appoint a receiver to manage assets that have been frozen to facilitate an orderly distribution of assets back to investors. Assets can include bank accounts and personal property such as vehicles, buildings and other physical assets. In 2011, CSA members froze assets relating to 11 individuals and 16 companies, representing a total of $7,936,121 in bank accounts.

Reciprocal orders

Orders issued by a court or other securities regulatory authorities may be reciprocated. Reciprocal orders prevent individuals or companies from carrying on their conduct in the reciprocating jurisdiction. The use of reciprocal orders demonstrates the commitment of CSA members to strengthening investor protection and enforcement coordination across Canada.



Cases concluded by SROs

Self-regulatory organizations (SROs) are an important part of the enforcement mosaic in Canada. The three key SROs, as overseen by CSA members, are the Investment Industry Regulatory Organization of Canada (IIROC), the Mutual Fund Dealers Association of Canada (MFDA), and the Chambre de la sécurité financière (CSF). These three organizations concluded 133 enforcement cases in 2011, compared with 115 in 2010.

2011 Case Highlights

Securities law violations or conduct contrary to the public interest typically fall into one of five categories, although some cases are relevant to more than one category.

Illegal Distributions

Again in 2011, illegal distributions made up the largest category of securities law violations across Canada by a wide margin. An illegal distribution is a sale or attempted sale of securities to investors that does not comply with securities law registration, trading or disclosure requirements.

Offering an investment opportunity generally requires issuing a prospectus, unless certain exemptions are available. A prospectus is a document that describes the investment and the associated risks to the investor. Anyone in the business of advising or trading in securities in Canada must register with the relevant securities regulator, again unless certain exemptions are available.

Certain investment opportunities may be sold without a prospectus or sold by unregistered people or firms if they fall in the category of "exempt market securities." Exempt market securities must be sold under strict restrictions, such as limiting the investment opportunity to family, friends or business associates, selling securities worth a minimum of $150,000 per transaction or selling investments to accredited investors (persons, corporations or investment funds meeting specific net worth or income requirements).

In December 2011, the Alberta Securities Commission (ASC) imposed sanctions on Wealthstreet Inc., and its former executives David Jones and Rachael Poffenroth for trading in and distributing securities without registration and a prospectus. Jones was also found to have acted as an adviser without registration and engaged in an unfair practice. An ASC panel deemed Jones' misconduct egregious. In one instance, Jones counselled an elderly investor to borrow money against the value of her home, convincing her that her home would be stolen from her unless she borrowed against its equity. She invested the borrowed money to purchase Wealthstreet securities, putting her in a serious debt position.

In addition to trading bans, the ASC ordered Jones and Poffenroth to pay administrative penalties of $1.5 million and $75,000 respectively.

Illegal distribution cases can involve fraud. The two key elements of fraud are dishonesty and deprivation. In an illegal distribution involving fraud, some or all aspects of the investment are misrepresented to investors and their funds are put at risk or used for other purposes than what was promised. The investors often lose their money in such schemes.

The Ontario case of Global Partners Capital involved fraudulent activity. An Ontario Securities Commission (OSC) panel found that Global Partners

Capital, six individuals and two corporations engaged in fraud by selling US$2.2 million worth of securities to 114 investors, most of them located in the United States, through a boiler room operating in Ontario. The respondents established websites with fabricated information and issued false and misleading press releases. The money they raised was used mainly to pay the operating expenses of the boiler room and for the individuals' benefit. In 2011, an OSC panel ordered disgorgement on more than $2.1 million and penalties and costs of more than $1.5 million.

Misrepresentations can include a promise that the investment being offered is risk-free and therefore guaranteed, or that the investor will earn an unrealistically high rate of return. In the Royal Crown Ventures Group Ltd. and Thomas Joseph Sears case in B.C., for example, Sears used high-pressure boiler room sales techniques to phone B.C. investors and convince them to invest in Royal Crown, promising that investors would earn a return of more than 400 per cent by year three of their investment. Sears was ordered to pay a $1.9 million administrative penalty and was banned from the B.C. capital markets for 20 years.

Illegal distributions often involve Ponzi schemes. In a Ponzi scheme, the promised rate of return is paid to the initial investors using funds provided by subsequent investors. The schemes eventually collapse because there is usually no underlying asset and the perpetrator is ultimately unable to make payments to investors. An example of such a case in 2011 was Alberta's Robert John Harris (operating as Harris Agencies). Harris used his position as a licensed insurance salesman to solicit several million dollars from approximately 200 of his clients. Harris convinced his clients to invest in his real estate investment club, which turned out to be a Ponzi scheme that the ASC panel called "reprehensible." Even though Harris had paid most of the money raised to certain investors, the panel sanctioned him with an administrative penalty of $500,000 and a permanent ban from both the Alberta markets and from acting as a director or officer of any securities issuer.

In some illegal distribution cases, investors are persuaded that there is money to be made by experts in specific types of transactions. In the case against Planned Legacies and RightHedge Chrono-Logic Fund in Alberta, investors were promised that their money would be invested in foreign currency trading programs, but there is no evidence that this was ever done. An ASC panel handed down over $4.5 million in total sanctions (including disgorgement orders) against Paul Charles Whitelaw, David Edward Harris, François Michaud and certain RightHedge entities, and the respondents were given significant market access bans.

Perpetrators of illegal distributions will often build a high level of trust with their victims, in some cases creating a sense of exclusivity among those "in the know" about the investment opportunity. In the case of Flamingo Capital in Québec, investors were told that they were privileged, as they had the opportunity to achieve financial freedom through an exclusive investment. They were also told that the opportunity was confidential. The principals in the scheme (including a former lawyer and a former financial planner) were fined a total of more than $1.2 million by the court.

Building and exploiting investor trust is also a central component of affinity fraud, which preys on the affiliation among members of a group such as seniors or religious organizations. In Nova Scotia, Larry Beaton, Quintin Sponagle and Trevor Hill operated Jabez Financial Services, a company incorporated in Panama through which they solicited more than $4 million in investments from 189 investors. Many investors were solicited among various faith communities on promises of a two per cent per month return on investment. Sponagle and Hill received administrative penalties of $500,000 each. Beaton was handed an administrative penalty of $20,000 plus costs. Each of the respondents is also subject to other administrative penalties.

Some of the enforcement cases profiled elsewhere in this report are also examples of illegal distributions. These include Ontario's Borealis case, Maitland Capital case, and Abraham Grossman cases; New Brunswick's Tycoon Energy Inc., Matthew Nerbonne and David Havenor case; and Québec's Alain Péloquin case, Normand Bouchard case and Warren English, Alain-André Desarzens and Michèle Amiot case.

Investors who are taken in by illegal distributions seldom recover their money. This is why, in addition to shutting down illegal distribution schemes, CSA members work to educate investors on how to recognize and avoid suspicious or fraudulent investments by way of provincial and territorial securities regulator websites, programs and investor resources. A good public education resource is the CSA's website page on avoiding fraud.

> "Jones and, through him, Wealthstreet, contravened – indeed, blatantly flouted – basic tenets of and protections offered by Alberta securities laws"
>
> – *ASC panel, ruling in the Wealthstreet case*

Misconduct by registrants

Any person or company in the business of advising or trading in securities in Canada must be registered under the securities laws of each Canadian jurisdiction in which they conduct this activity, unless an exemption is provided in legislation or by order from the securities regulators. Misconduct by registrants occurs when a registered person or company violates securities laws. It is also misconduct to fail to register when required to do so, or to fail to adhere to the conditions of a registration exemption. The cases involving registered firms showcase the importance of diligence, both in the supervision of portfolio advisers, who manage large investment funds, and in disclosure to investors. The individual cases provide useful examples of the severity of penalties applied to registrants found guilty of misconduct.

> "[The investment club Harris operated] was a fraud and operated as a Ponzi scheme... [He] made misleading and untrue statements to induce Alberta investors to invest in the club...[His conduct] was reprehensible and completely inconsistent with the public interest."
>
> – *ASC panel, ruling in the Robert John Harris case*

The Ontario case of Caldwell Investment Management (CIM) reinforces the duties and obligations of a portfolio manager – an individual or team that manages investment funds. In 2011, the Ontario Securities Commission (OSC) settled with CIM regarding its failure to provide adequate compliance oversight and supervision over its individual portfolio adviser who was responsible for providing portfolio management services to various investment funds. CIM also acknowledged failures in record-keeping. CIM was ordered to submit to a review of some of its practices and procedures and to pay costs of $25,000.

In Nova Scotia, John Alexander Allen, a financial adviser with Keybase Financial Group, received significant penalties for fraudulent conduct and for failing to ensure his clients understood the risks involved in their investment portfolios. Allen falsified client data and forged loan applications to support leveraged investment strategies for many of his clients, whether such a strategy was suitable for them or not. In selling the leveraged investments, Allen generated commissions for himself of more than $500,000. The Nova Scotia Securities Commission (NSSC) assessed administrative penalties totalling more than $1 million, which were at the time a record penalty amount in Nova Scotia.

The case of Daniel L'Heureux, profiled in the proactive measures section, offers a good example of a registered firm performing its oversight role, by bringing the possible misconduct of one of its employees to the attention of securities regulators.

> "...Mr. Allen's conduct... demonstrates a pattern of behaviour towards his clients that was grossly unfair, grossly dishonest and also demonstrates bad faith...His actions towards his clients were calculated, manipulative, dishonest and self-serving and were consistently carried out with many clients over an extended period of time."
>
> – *Judge Michel Bellehumeur of the Court of Québec, ruling in the Tardif case*

Illegal insider trading

Illegal insider trading involves buying or selling a security of an issuer while possessing undisclosed material information about the issuer, and includes related violations such as "tipping" information and trading by the person "tipped." Material information (or "privileged information" in some jurisdictions) can include everything from financial results to executive appointments to operational events.

In an Alberta case of illegal insider trading by company officials, four employees of Canext Energy, including former president and CEO Stephen Kapusta, bought Canext shares after the company began producing oil from a large new oil resource pool that had not yet been disclosed to the public. The Alberta Securities Commission (ASC) panel concluded that the oil discovery was material information that could have affected the value of the company's shares. The respondents received market bans and monetary penalties of two to three times the amounts they gained through their insider trading.

In Ontario, Helen Kuszper and her son Paul Kuszper traded securities of Kingsway Financial Services Inc. with undisclosed knowledge that the company would report a material net loss for its quarterly financial

> "Care...must be taken, by everyone associated in any capacity with a reporting issuer, to ensure that they do not, improperly and illegally, profit from material information that they come to know through their connection to the issuer, by buying or selling its securities before the material information has been made public."
>
> – *ASC Panel, ruling on the Canext Energy – Kapusta case*

results. Helen Kuszper was a senior accountant in Kingsway's investment reporting group and she tipped the information to her son. Kuszper and her son admitted to engaging in illegal insider trading and making false and misleading statements to Ontario Securities Commission (OSC) staff. In addition to bans from the securities market, the Kuszpers must disgorge all profits obtained of $321,772 and pay an administrative penalty of $701,690, plus costs. The penalty represents two times the profits made and losses avoided.

In July 2011, a British Columbia Securities Commission (BCSC) panel found that Michael Kyaw Myint Hua Hu, while a director and chairman of Maple Leaf Reforestation Inc., bought shares in the company while knowing undisclosed material information about a biodiesel project that Maple Leaf was negotiating in China. In addition to finding Hu engaged in illegal insider trading, the panel also ruled that he made false and misleading statements to Commission staff when he denied knowing the individual who held the online brokerage account that he used to make the purchases. The BCSC panel permanently banned Hu from the province's securities markets and fined him $1.5 million.

These cases highlight the care any company employee must take when buying or selling his or her company's shares.

> "Hu's deliberate decision to trade on undisclosed material information, and to conceal that trading by using the account of a third party who would not be easily connected to him, shows a calculated contempt for the integrity of securities markets. His acting in any capacity in connection with our markets would pose a serious risk to those markets."
>
> – *BCSC Panel, ruling on the Hu case*

Disclosure violations

Confidence in the capital markets requires confidence in the accuracy of the information, or 'disclosure,' that companies provide about their business activities. Timely, accurate and complete financial statements are the core of good disclosure practice. In disclosure cases, the victims are typically company shareholders. Continuous disclosure review programs undertaken by CSA members aim to ensure that investors have accurate and timely information about public companies on which to base their investment decisions. When appropriate, continuous disclosure reviews may result in a referral to the enforcement branch of a CSA member.

The Ontario Securities Commission's (OSC) case against Coventree Inc. and two of its directors and officers illustrates why the disclosure requirements are a cornerstone of securities laws, serving to protect both investors and the integrity of the capital markets. Coventree Inc. was a sponsor of asset-backed commercial paper (ABCP) in Canada. In 2011, Coventree, Geoff Cornish and Dean Tai were found to have breached disclosure obligations by failing to disclose liquidity and liquidity-related events which led to the disruption of the ABCP market in mid-August of 2007. They also breached disclosure obligations by failing to disclose, in January 2007, a decision by Coventree's credit rating agency to change its rating methodology. Coventree was

> "Melnyk had direct responsibility and involvement in Biovail's various disclosure decisions and had an obligation to exercise due care and diligence in carrying out that responsibility."
>
> – *OSC panel in its Biovail decision*

ordered to pay an administrative penalty of $1 million and $250,000 in costs. In addition to one year bans from serving as a director or officer of an issuer, Cornish and Tai were ordered to pay administrative penalties of $500,000 each.

Ontario's Biovail disclosure violations case concluded in May 2011, when the OSC imposed sanctions on Eugene Melnyk, the former Chairman and CEO of Biovail, for conduct contrary to the public interest in connection with a number of misstatements and omissions by Biovail in certain press releases and in an analyst call. The OSC ordered that Melnyk pay $565,000 in costs and imposed a five-year ban on Melnyk acting as a director or an officer of a publicly-listed company.

In British Columbia, Gregory Clark Carrington, also a former CEO, contravened securities laws when four companies that he headed distributed securities under offering memoranda (OMs) that contained numerous deficiencies. The OMs were misleading and not in the required form. Under the deficient OMs, Carrington raised approximately $8.7 million from 916 investors, which cannot be recovered. The British Columbia Securities Commission (BCSC) banned Carrington for 20 years from trading in securities, from acting as an officer or director of an issuer, or from acting as a consultant with respect to the securities market.

A New Brunswick case, that of Villabar Real Estate Inc., St. Clair Research Associates Inc., Ronald A. Medoff and Mayer Hoffer, illustrates the importance of transparency in compensation structures around investments. Villabar paid compensation to individuals who assisted with the sale of investments but did not disclose that information to investors in the Offering Memorandum. The New Brunswick Securities Commission (NBSC) assigned penalties totalling $50,000.

> "I think we can all agree that the purpose of the legislation is to protect the public against this type of conduct, protection of the public from deceitful, fraudulent and inappropriate acts. That is what you did. It wants to protect the public from that kind of conduct with respect to people that are selling and registered persons under the act."
>
> - *Associate Chief Judge Chartier of the Provincial Court of Manitoba, ruling in the Fileccia case*

Market manipulation

Market manipulation involves efforts to artificially increase or decrease a company's share price. Examples of market manipulation include high closing activities, volume manipulation and "pump and dump" schemes. The latter term describes schemes that involve talking up a company's share price with untrue or exaggerated information, in order to sell shares at a profit before the inevitable crash in the share price when the company's true position becomes evident.

An Ontario case showcasing a "pump and dump" scheme, first reported in the CSA's *2008 Enforcement Report*, concluded in 2011. Sulja Bros. Building Supplies, Ltd., another corporation and six individuals were involved in a fraudulent scheme wherein Sulja shares were issued and subsequently traded

in a market that was inflated by overwhelmingly positive but false press releases about Sulja's prospects. The respondents sought to conceal the extent of their involvement by trading through nominee accounts, creating a misleading appearance of trading activity in Sulja securities and obtaining trading profits of US$5.6 million. The Ontario Securities Commission (OSC) levelled sanctions against the respondents totalling more than $7 million.

In Quebec, Yvan Guyon was convicted of having manipulated the market price of the shares of Peterborough Capital Corporation (PEC). Guyon engaged in multiple market manipulation schemes enabling him to artificially increase the value of the stock of PEC by three times its value. As one example, Guyon touted the stock in an internet blog where he alluded to conversations with the CEO of PEC who stated that important good news was about to surface about the company while he purchased large volumes of the stock. Guyon pled guilty to the charge, but contested the $50,000 fine sought by the Autorité des marchés financiers (AMF). In November 2011, Guyon was fined $40,000. The judge ruled that a severe sentence was merited in order to dissuade conduct of this nature.

Other cases

In Ontario's Anthony Ianno and Saverio Manzo case, profiled in the Market Manipulation section of the *2010 Enforcement Report*, both individuals admitted to conduct contrary to the public interest. Ianno, a former Member of Parliament, and Manzo both engaged in trading that raised or maintained the price of Covalon Technologies Ltd. In addition to bans from participation in Ontario's capital markets, Ianno agreed to pay $100,000 and Manzo agreed to pay $50,000.

In a British Columbia case that concluded in October 2011, Robert Lee Flickinger II committed fraud when he sold securities from two businesses totalling more than $6 million to hundreds of investors while operating under a false identity. Flickinger has a well-documented history of U.S. securities regulatory infractions. For his fraudulent actions, the British Columbia Securities Commission (BCSC) panel permanently banned Flickinger from the B.C. capital markets, ordered him to disgorge to the BCSC the $6 million he obtained as a result of his illegal activity, and imposed an administrative penalty of $12 million.

The case of Locate Technologies Inc. and Tubtron Controls Corp. in New Brunswick illustrates the measures that can be taken by securities regulators when offenders fail to comply with settlements and remedies that have been ordered. Failing to comply with a settlement agreement typically draws costlier penalties for the respondents than the original case. In 2008, these two firms were ordered by the New Brunswick Securities Commission (NBSC) to provide proper disclosure to investors and to offer refunds for any original

> "The Commission... feels that it is in the public interest to impose significant sanctions on the Respondents in order to send a strong message of deterrence to those who ignore orders and settlement agreements of the Commission."
>
> – *Anne W. La Forest, Chair, NBSC panel ruling in the Locate Technologies and Tubtron Controls case*

investments. After the respondents failed to meet the terms of this agreement, the NBSC issued additional administrative penalties of $1.2 million.

Proactive measures

A high priority for each CSA member is to detect and disrupt securities misconduct before harm is caused. CSA members take proactive measures, such as issuing interim cease trade orders or asset freeze orders, whenever possible to safeguard Canadian investors while investigations are in progress. Freeze orders are used to secure funds or other assets while a matter is fully investigated. Cyber surveillance is another tool used by Canadian securities regulators to monitor questionable Internet offers, particularly as investment scams are increasingly promoted through online channels.

In 2011, the Ontario Securities Commission (OSC) issued interim cease trade orders upon launching investigations of two reporting issuers listed on the TSX and TSX Venture, respectively, Sino-Forest Corporation, and Zungui Haixi Corporation. The operations for both of these companies are primarily based in China. The activity under investigation for Sino-Forest includes possible fraud, misrepresented revenue and/or exaggerated assets. In the case of Zungui, the investigation arose as a result of concerns raised by Zungui's auditors, specifically regarding inconsistencies in bank documents and the inability to obtain bank confirmations in an acceptable manner. The allegations against the two companies have not been proven and the investigations are ongoing. In July 2011, the OSC launched a targeted review of Ontario reporting issuers listed on Canadian exchanges who have significant business operations in emerging markets.

In Québec's Warren English and Alain-André Desarzens case, the two respondents issued mass e-mails to thousands of potential investors throughout the world promising quick returns ranging from US$1,000 to $90,000 on a minimum investment of between US$10 and $300. The low initial investment made it accessible and tempting for many investors. The Autorité des marchés financiers (AMF) succeeded in getting cease trade and freeze orders against these two individuals, and in shutting down the website. The assets frozen included bank accounts totalling $177,161 and two houses worth a total of $415,894.

In Ontario, quick action by the OSC froze more than $15 million in proceeds from the sale of securities issued by Borealis International Inc. as part of an investigation of the company and certain individuals. Promotional materials claimed that the investments were guaranteed and insured by reputable third parties, and promised an 18 per cent annual return. The OSC found that the representations were false and the activity was fraudulent and deceitful. The

> "Sadly, this type of financial scam is all too familiar. The bait works because the initial investment is so small. This creates a false sense of security, since investors believe that if they lose their investment, the loss is minimal. On the other hand, if the investment pays off, they stand to make a lot of money."
>
> – *BDR, ruling in the Warren English and Alain-André Desarzens case*

freeze order was crucial in the eventual return of the money to investors. In April 2011, the OSC imposed administrative penalties totalling more than $2 million on one corporate and 13 individual respondents.

In another notable 2011 case from Québec, the AMF took proactive cease trade and freeze order measures against Alain Péloquin for running a suspected Ponzi scheme. Péloquin told his investors he had a federal government contact that allowed him to purchase and sell assets seized by the government before they were put up for sale at auction. Investors were told that all information must be kept strictly secret and confidential. With 147 investors in total, Péloquin raised more than $12 million. The AMF obtained freeze orders on bank accounts, two buildings and multiple vehicles.

Cases are occasionally brought forward to regulators by registered firms themselves, assisting regulators to act quickly to maintain the integrity of the market. In Québec, Daniel L'Heureux, an individual registered as a mutual funds dealer with a well-known and respected firm, solicited at least three clients for an investment in the website Nosfinances.com. L'Heureux was not registered to sell such investments and no prospectus had been issued. The AMF was advised of these irregular transactions by the registered firm for which L'Heureux was working and thus was able to apply to the Bureau de décision et de révision (BDR) for freeze and cease trade orders against L'Heureux.

Regulators continue to develop new ways to protect investors. In 2011, the OSC adopted a "reverse boiler room" strategy to warn investors that they had been identified as possible targets in an illegal distribution of securities. Operators of boiler rooms often purchase contact lists from other fraudsters. These contact lists identify individuals who are susceptible to high pressure tactics by virtue of having purchased securities in these type of operations in the past. In executing a search warrant, OSC investigators obtained such a list and over a one-week period, contacted 420 investors to warn them that their names and contact details were identified as possible targets.

Prosecution in the courts

In some cases, Canadian securities regulators are able to pursue charges related to securities law violations in the courts, either on their own or through a Crown prosecutor, where jail terms can be imposed upon conviction.

In two separate proceedings in Ontario, jail sentences were imposed on individuals who traded in securities while prohibited from doing so under a previous order issued by the Ontario Securities Commission (OSC). Danny De Melo and Steven Hill were each sentenced to 90 days in jail for trading in securities of Hillcorp International Services. The sentence also included

an order to make restitution totalling $993,089 to 22 Ontario investors. Peter Robinson was sentenced to 30 days in jail for trading in Platinum International Investments Inc. securities.

Two other Ontario court cases that concluded in 2011 resulted in jail time imposed on Abraham Grossman, for his activities in relation to both the Maitland Capital Ltd. and Shallow Oil and Gas Inc. cases. Both cases involved boiler room tactics (where high-pressure sales tactics are used to promote an investment opportunity) to sell shares in companies. In the case of Maitland Capital, $5.5 million was raised from Canadian and international investors even though there was no prospectus and the people selling the securities were not registered. Abraham Grossman was sentenced to a 21-month jail term for his role in Maitland Capital, and to a three-year jail term for his role in Shallow Oil and Gas Inc., to be served consecutively. The OSC issued temporary cease trade orders in both of these matters when commencing the investigation.

In a Québec RRSP unlocking scheme prosecuted before the courts, Normand Bouchard placed ads in local newspapers aimed at people in financial need. The ads promised cash in return for allowing Bouchard, who was not registered with the Autorité des marchés financiers (AMF), to manage existing RRSP accounts. Under Bouchard's management, most of the 31 victims lost the full value of their accounts. While the amounts of money invested were as small as $5,000, they were amounts that the victims could not afford to lose, often leaving them in dire financial straits. Bouchard was convicted and fined $310,000, ten times the minimum fine set by the Québec Securities Act.

The Flamingo Capital case in Québec, profiled on the illegal distributions page, was also prosecuted in the courts. The principals of Flamingo Capital were handed a substantial fine of $1.2 million.

Inter-jurisdictional collaboration

Collaboration among securities regulators and law enforcement officials takes many forms. CSA members routinely share information, and will conduct joint investigations or even joint hearings in cases that cross jurisdictional boundaries.

The CSA Enforcement Committee develops and implements measures aimed at facilitating collaboration between CSA jurisdictions. For instance, the Committee has developed a Multi-jurisdictional Enforcement Guide, which sets out procedures for identifying, investigating and prosecuting multi-jurisdictional cases by members of the CSA. Also, a new case-sharing database will facilitate the identification of multi-jurisdictional cases. In order to strengthen enforcement skills in specialized areas, the Committee

identified a set of best practices relating to insider trading and market manipulation investigations and prosecutions, and then provided training for the staff of CSA members across Canada.

The CSA Investor Education Committee is also very active in seeking to protect Canadians coast to coast by educating them through different programs and initiatives.

Canadian securities regulators also work with international regulators, such as the Securities and Exchange Commission and state-level regulators in the U.S., and the Financial Services Authority in the U.K. This collaboration happens both through formal organizations such as the North American Securities Administrators Association and through informal contacts across the jurisdictions. Pursuant to international agreements, enforcement personnel assist their counterparts in other jurisdictions with regulatory investigations. They also share best practices and intelligence about emerging trends.

Illegal Distributions

Al-tar Energy Corp.; Alberta Energy Corp.; Drago Gold Corp.; Campbell, David C.; Da Silva, Abel; O'Brien, Eric F.; and Sylvester, Julian M. (ON)

Aurora, Varun Vinny; David Humeniuk; David Jones; and Vincenzo De Palma (AB)

Basi, Ajit Singh (BC)

Borealis International Inc.; Synergy Group (2000) Inc.; Integrated Business Concepts Inc.; Canavista Corporate Services Inc.; Canavista Financial Center Inc.; Smith, Shane; Lloyd, Andrew; Lloyd, Paul; Villanti, Vince; Haliday, Larry; Breau, Jean; Statham, Joy; Prentice, David; Zielke, Len; Stephan, John; Murphy, Ray; Poole, Alexander; Grigor, Derek; Switenky, Earl; Dickerson, Michelle; Dupont, Derek; Ekiert, Bartosz; MacFarlane, Ross; Nerdahl, Brian; Pittoors, Hugo; and Travis, Larry (ON)

Bouchard, Normand (QC)

Campbell, Garret (BC) (written decision not available electronically)

Castiglioni, Luc; CPLC Limited Partnership; and CPLC Management Group Ltd. (BC)

Charles, Douglas; Dupree, James; Ball, Ian T.; Armitage, Stephen; and Thompson, Peter B. (BC)

Charlton, David Robert (BC) (written decision not available electronically)

Coopérative de services aux professionnels; Coopérative de travailleurs actionnaires de C.T.B.T.; Lafond, Louis-Paul; and Lafond, Jean-Pierre (QC)

Desjardins, Guy (Centre financier de la Montérégie) (QC)

Diadamo, Marco (Shallow Oil & Gas) (ON)

Fast, Ronald Jerry (SK)

Flamingo Capital Inc.; Vianna, Jean-Pierre; Daigle, Yves; Carty, Michael; Murray, Andrew; and Chiasson, Michel (QC)

Flicklinger, Robert Lee II (aka Robert Reynolds); Northern Pipeline Resources Ltd.; Lavaca III Limited Partnership; Gulf Coast Basin Limited Partnership; Gulf Coast Basin Operating Ltd.; and Ridgeline Energy Ltd. (BC)

Friesen, John (aka John "Thrasher" Friesen) and Futronics Inc. (MB)

- Order re: Friesen, John (aka John "Thrasher" Friesen) and Futronics Inc.
- Order re: Friesen, John (aka John "Thrasher" Friesen) and Futronics Inc.

Global Partners Capital; Asia Pacific Energy, Inc.; 1666475 Ontario Inc. operating as "Asian Pacific Energy"; Pidgeon, Alex; Pan, Kit Ching (aka Christine Pan); Cheung, Hau Wai (aka Peter Cheung, Tong Cheung, Mike Davidson or Peter McDonald); Gahunia, Gurdip Singh (aka Michael Gahunia or Shawn Miller); Toussaint, Basil Marcellinius (aka Peter Beckford); and Jiwani, Rafique (aka Ralph Jay) (ON)

Goldbridge Financial Inc. and Weber, Wesley Wayne (ON)

Great White Capital Corp. and Keller, Adam (BC)

Grinshpun, Mark (Ameron Oil and Gas) (ON)

Grossman, Abraham (ON)

Harris, Robert John (AB)

Harton, Marie-Thérèse (Group FRL, Centre d'affaires et Services financiers inc. / Multi-prêts Partenaires) (QC) (written decision not available electronically)

Higgins, Gregory William (ON)

High Profit Investment Ltd.; Butcher, Martin; Fortune Investment Group; and Meeker, Robert (BC)

Hill, Trevor; Sponagle, Quintin; and Beaton, Larry (NS)

- Settlement re: Beaton, Larry
- Order re: Beaton, Larry

Decision: Hill, Trevor and Sponagle, Quintin

IMAGIN Diagnostic Centres Inc. and Rooney, Patrick J. (ON)

Imanpoorsaid, Hooshang (QC)

Innovative Gifting Inc. and Lushington, Terence (ON)

Julien, Michel (QC)

Keller, Arno (SK)

Krauth, Peter (Acamex) (QC)

Leuthe, Helga and Archer Gold inc. (Archer Or inc.) (QC)

Lussier, Bertrand (QC)

Maitland Capital Ltd.; Grossman, Abraham Herbert; and Ulfan, Hanoch (ON)

Marcotte, Patricia (AB)

- Merits decision 02/09/11 re: Marcotte, Patricia
- Sanction decision 05/18/11 re: Marcotte, Patricia

Marston, William (Corporation Mount Real) (QC)

Marston, William (Gestion de placements Norshield (Canada) Ltée) (QC)

Mastrocola, Frank (Acamex) (QC)

Maxwell, Don (BC)

- Order re: Maxwell, Don
- Settlement re: Maxwell, Don

McLoughlin, John Arthur Roche; MCL Ventures Inc.; Blue Lighthouse Ltd.; and Collins, Robert Douglas (BC)

- Order re: McLoughlin, John Arthur Roche; MCL Ventures Inc.
- Order re: Blue Lighthouse Ltd.; and Collins, Robert Douglas

Messier, Paul Jr. (Corporation Mount Real) (QC)

Microline Veneer & Forest Products Corp. and Wise, Peter William Arthur (BC)

Muzik, Kenneth Wayne (MB)

Mylonakis, Nick (Corporation Mount Real) (QC)

New Century International and Reynolds, Ray (NB)

New Life Capital Corp.; New Life Capital Investments Inc.; New Life Capital Advantage Inc.; New Life Capital Strategies Inc.; 2126375 Ontario Inc.; 2108375 Ontario Inc.; 2126533 Ontario Inc.; 2152042 Ontario Inc.; 2100228 Ontario Inc.; 2173817 Ontario Inc.; and 1660690 Ontario Ltd. (ON)

Nielsen, Frederick Johnathon (previously known as Gilliland, Frederick John) (BC)

Nitta, Theodore and Venturex Global Investment Corporation (BC)

Pantazis, Nicholas (Dynahedge Capital Investment inc.) and Jekkel, Joseph (Blue Horizon Fund Ltd.) (QC)

Pardo, Rene; Taylor, Lewis Sr.; Taylor, Lewis Jr.; Taylor, Jared; Taylor, Colin; and 1248136 Ontario Limited (ON)

Pasternak, Oded; Brikman, Vyacheslav; and Walker, Allan (ON)

- Order re: Pasternak, Oded
- Order re: Brikman, Vyacheslav
- Order re: Walker, Allan

Patry, Denis (Fonds de croissance Zénith à valeur stable) (QC)

Phoenix Credit Risk Management Consulting Inc.; Phoenix Pension Services Inc.; Phoenix Capital Resources Inc.; Rathore & Associates Asset Management Ltd.; 2195043 Ontario Inc.; Rathore, Jawad; Petrozza, Vincenzo; and Maloney, Omar (ON)

PI Global Properties Group (PI immobilier Global and 4403380 Canada inc.) (QC)

Planned Legacies Inc. (AB)

- Merits decision 02/09/11 re: Planned Legacies Inc.
- Sanction decision 05/11/11 re: Planned Legacies Inc.

Proteau, René (Corporation Mount Real) (QC)

QuantFX Asset Management Inc.; Shtromvaser, Lucien; and Zemlinsky, Rostislav (ON)

- Order re: QuantFX Asset Management Inc.; and Shtromvaser, Lucien
- Order re: Zemlinsky, Rostislav

Reeves, Nicholas (AB)

- Merits decision 12/14/10 re: Reeves, Nicholas
- Sanction decision 02/28/11 re: Reeves, Nicholas

Royal Crown Ventures Group Ltd. and Sears, Thomas Joseph (BC)

Schaumer, Michael (Global Energy Group Ltd.) (ON)

Shallow Oil & Gas Inc.; Da Silva, Abel; and O'Brien, Eric (ON)

Sherman, Adam (ON)

Silverstein, Alan (Global Energy Group Ltd.) (ON)

Sirianni, Vincenzo (AB)

Skyline Apartment Real Estate Investment Trust; Skyline Incorporated; and Skyline Asset Management Inc. (ON)

Spence, Scott William Bradley (MB)

Streifel, Chad (SK)

Tardif, Yves (Gestion de placements Norshield (Canada) Ltée) (QC)

TBS New Media Ltd.; TBS New Media PLC; CNF Food Corp.; CNF Candy Corp; and Firestone, Ari Jonathan (ON)

TD Waterhouse Canada Inc. (BC)

Tessier, Luc (Groupe Financier Inter Continental S.A./Méga Prêt 2000) (QC)

Testa, Italo (Services financiers Pronto) (QC)

Tsatskin, Vadim (QuantFX Asset Management) (ON)

Tsatskin, Vadim; Pasternak, Oded; and Walker, Allan (Ameron Oil and Gas) (ON)

- Order re: Tsatskin, Vadim
- Order re: Pasternak, Oded
- Order re: Walker, Allan

Tycoon Energy Inc.; Nerbonne, Matthew; and Havenor, David (NB)

Waddingham, Leonard; Garner, Ron; Valde, Gord; and Cassidy, Dianna (Maitland Capital Ltd.) (ON)

Wealthstreet Inc. (AB)

- Merits decision 08/25/11 re: Wealthstreet Inc.
- Sanction decision 12/07/11 re: Wealthstreet Inc.

West African Industries Inc. (SK)

Winick, Marvin; Blumenfeld, Howard; Colonna, John; and Khan, Shafi (Richvale Resource Corp) (ON)

- Order re: Winick, Marvin
- Order re: Blumenfeld, Howard
- Order re: Colonna, John
- Order re: Khan, Shafi

Winnipeg Territory License Inc.; Perkins, Timothy James; and Perkins, Johnathon (SK)

Illegal Insider Trading

Elgindy, Amr I. (aka Anthony Elgindy, Tony Elgindy and Anthony Pacific) (BC)

Good, John B. (BC)

Hu, Michael Kyaw Myint Hua (BC)

Kapusta, Stephen (AB)

- Merits decision 06/07/11 re: Kapusta, Stephen
- Sanction decision 10/14/11 re: Kapusta, Stephen
- Variation order 10/31/11 re: Kapusta, Stephen

Kowalchuk, Richard Bruce (AB)

Kuszper, Helen and Kuszper, Paul (ON)

- Order re: Kuszper, Helen
- Order re: Kuszper, Paul

Kwan, Timothy (AB)

Live, Patrice (QC)

Patriarco, Anthony (BC)

Quesnel, Richard (Consolidated Thompson) (QC)

Rak, Jerome John (BC)

- Order re: Rak, Jerome John
- Settlement re: Rak, Jerome John

Wreggit, Allan (AB)

Market Manipulation

Ciavarella, Michael (ON)

Guyon, Yvan (QC)

Mitton, Michael (Pender International Inc.) (ON)

Sulja Bros. Building Supplies, Ltd.; Vucicevich, Petar; Kore International Management Inc.; DeVries, Andrew; Sulja, Steven; Shah, Pranab; Banumas, Tracey; and Sulja, Sam (ON)

Disclosure Violations

Black, E. Neil (NS)

- Order re: Black, E. Neil
- Settlement re: Black, E. Neil

Carrington, Gregory Clark (BC)

Coventree Inc.; Cornish, Geoffrey; and Tai, Dean (ON)

David, Michel (Northern Star Mining Corp.) (QC)

Devcich, Frank Andrew and Singh, Gobinder Kular (AB)

Flemming, William (NS)

- Order re: Flemming, William
- Settlement re: Flemming, William

Helical Corporation Inc., The (NS)

Homburg Invest Inc. (NS)

- Order re: Homburg Invest Inc.
- Settlement re: Homburg Invest Inc.

Keeler, Rebecca E. (Dimethaid Research Inc.) (ON)

Melnyk, Eugene N. (ON)

Northumberland Wind Field Inc. (NS)

- Order re: Northumberland Wind Field Inc.
- Settlement re: Northumberland Wind Field Inc.

Smith, James (NS)

- Order re: Smith, James
- Settlement re: Smith, James

Misconduct by Registrants

Allen, John Alexander (NS)

- Order re: Allen, John Alexander
- Decision re: Allen, John Alexander
- Settlement re: Allen, John Alexander

Brockhouse Cooper Gestion d'actifs inc. (QC)

Caldwell Investment Management Ltd. (ON)

Cordiant Capital inc. (QC)

Cote 100 inc.; L'Écuyer, Marc; and 3508170 Canada inc. (QC)

Côté, Marc-Yvan (Corporation Pourvoyeurs Mondiaux Safari) (QC)

First Canada Capital Partners Inc. and Corrigan, Douglas Francis (BC)

Fonds de placement LaSalle and Corporation Financière LaSalle inc. (QC)

Gestion d'actifs Joël Raby inc. (QC)

Gestion privée Diamant inc. (QC)

Hucal, Taras (ON)

Lavallée, Gaston (Noveko International Inc.) (QC)

Les Fonds d'investissement Lester (QC)

Marleau, Hubert and Gestion Palos inc. (QC)

Maya, Claudio Fernando (ON)

Nelson Financial Group Ltd.; Torres, Paul Manuel; Boutet, Marc D.; Nelson Investment Group Ltd.; Sobol, Stephanie Lockman; and Knoll, H.W. Peter (ON)

Order re: Nelson Financial Group Ltd.

Order re: Torres, Paul Manuel

Order re: Boutet, Marc D.; Nelson Investment Group Ltd.

Order re: Sobol, Stephanie Lockman

Order re: Knoll, H.W. Peter

Overton, Ian (ON)

Road New Media Corporation (Groupe Sajy et al.) (QC)

Semafo (Jean-Pierre Lefebvre) (QC)

Service financier Rimac inc. (QC)

SFCS Capital (Canada) Corp. and Stitt, Robert John Alexander (BC)

Sigma Alpha Capital (QC)

Terrevan inc. and Despatie, Luc (QC)

Villabar Real Estate Inc.; St. Clair Research Associates Inc.; Medoff, Ronald M.; and Hoffer, Mayer (NB)

Order re: Villabar Real Estate Inc.; St. Clair Research Associates Inc.; Medoff, Ronald M.; and Hoffer, Mayer

Settlement re: Villabar Real Estate Inc.; St. Clair Research Associates Inc.; Medoff, Ronald M.; and Hoffer, Mayer

Miscellaneous

Bahd, Karnjit Singh (BC)

Curtis, Charles; Olfert, Peter; Fox-Decent, Waldron (Wally); Baturin, Lea; Beal, Albert; Beresford, Diane; Farley, Sylvia; and Hilliard, Robert (MB)

Settlement re: Curtis, Charles; Olfert, Peter; Fox-Decent, Waldron (Wally); Baturin, Lea; Beal, Albert; Beresford, Diane; Farley, Sylvia; and Hilliard, Robert

Reasons for decision re: Curtis, Charles; Olfert, Peter; Fox-Decent, Waldron (Wally); Baturin, Lea; Beal, Albert; Beresford, Diane; Farley, Sylvia; and Hilliard, Robert

Da Silva, Abel; and O'Brien, Eric (Shallow Oil & Gas Inc.) (ON)

De Melo, Danny and Hill, Steven (ON)

Hibbert, Marlon Gary (Ashanti Corporate Services) (ON) (written decision not available electronically)

Hillcorp International Services; Hillcorp Wealth Management; Suncorp Holdings; 1621852 Ontario Limited; 1694487 Ontario Limited; Hill, Steven John; and De Melo, Danny (ON)

Ianno, Anthony and Manzo, Saverio (ON)

- Order re: Ianno, Anthony
- Order re: Manzo, Saverio

Lehman Cohort Global Group Inc.; Schnedl, Anton; Unzer, Richard; Grundmann, Alexander; and Hehlsinger, Henry (ON)

Locate Technologies Inc. and Tubtron Control Corp. (NB)

Nechi Investment Inc. and Zunenshine, Michael et al. (QC) (written decision not available electronically)

Robinson, Peter (ON)

Stock, Dale Richard (AB)

Tang, Thomas (AB)

Tsatskin, Vadim (Global Energy Group Limited) (ON)

1.1.3 Ameron Oil and Gas Ltd. et al.

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

AND

IN THE MATTER OF
AMERON OIL AND GAS LTD., MX-IV LTD.,
GAYE KNOWLES, GIORGIO KNOWLES,
ANTHONY HOWORTH, VADIM TSATSKIN,
MARK GRINSHPUN, ODED PASTERNAK, AND
ALLAN WALKER

NOTICE OF WITHDRAWAL

WHEREAS the Ontario Securities Commission (the "Commission") issued a Notice of Hearing on December 13, 2010, to consider whether it was in the public interest to make certain orders against Ameron Oil and Gas Ltd. ("Ameron"), MX-IV LTD. ("MX-IV"), Gaye Knowles, Giorgio Knowles, Anthony Howorth ("Howorth"), Vadim Tsatskin, Mark Grinshpun, Oded Pasternak and Allan Walker, pursuant to sections 37, 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended;

AND WHEREAS Staff of the Commission filed a Statement of Allegations and Amended Statement of Allegations (collectively, "Staff's Allegations") in connection with the Notice of Hearing, dated December 13, 2010;

TAKE NOTICE that Staff of the Commission hereby withdraw Staff's Allegations against Ameron, MX-IV, Giorgio Knowles and Howorth.

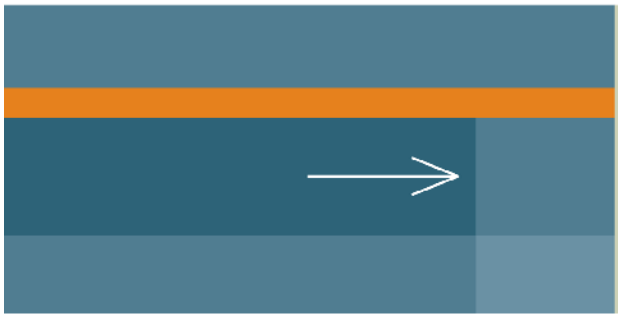
February 22, 2012

Staff of the Ontario Securities Commission
20 Queen Street West
PO Box 55, 19th Floor
Toronto, ON M5H 3S8

1.1.4 2012-2015 Strategic Plan – The OSC: A 21st Century Regulator

The *2012-2015 Strategic Plan – The OSC: A 21st Century Regulator* is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

OSC ONTARIO SECURITIES COMMISSION



2012 - 2015 Strategic Plan

The OSC: A 21st Century Securities Regulator

The Ontario Securities Commission (OSC) is the regulatory body responsible for overseeing Ontario's capital markets, which include all equities, fixed-income and derivatives markets. The OSC is a self-funded Crown corporation accountable to the Ontario Legislature through the Minister of Finance.

The OSC administers and enforces the provincial *Securities Act* and the *Commodity Futures Act*, and administers certain provisions of the *Business Corporations Act*. This legislation sets out the OSC's authority to develop and enforce rules that help safeguard investors, deter misconduct and regulate participants involved in capital markets in Ontario.

OSC Mandate

To provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.

OSC Vision

To be an effective and responsive securities regulator – fostering a culture of integrity and compliance and instilling investor confidence in the capital markets.

OSC Goals

- Deliver responsive regulation
- Deliver effective enforcement and compliance
- Deliver strong investor protection
- Run a modern, accountable and efficient organization
- Support and promote financial stability

Contents

Message from the Chair

The OSC regulates Ontario's capital markets in a global environment of increasing public expectations, a changing securities industry, evolving market infrastructure and regulatory reform initiatives driven at the international level. Within this complex and dynamic environment, we asked ourselves a simple question: What will it take for the OSC to be a 21st century securities regulator?

The answer to that question is to better understand the evolution of the global capital markets, to take a more strategic approach to fulfilling our mandate and to develop the capacity to deliver the right regulation amid the rapid developments in the markets. To that end, in 2011, we engaged in a comprehensive organizational review and a benchmarking exercise against international regulatory best practices which resulted in this new three-year Strategic Plan.

Throughout the planning process we sought to recognize our strengths and areas for improvement and to identify how we can apply our strengths to deliver on our most important regulatory responsibilities. After conducting extensive internal and external consultations we developed a strategy for the OSC to adapt its regulatory focus and direction to reflect the realities of today's markets.

Like other domestic regulators, the OSC faces the challenge of keeping pace with new international standards and adopting those that will reduce the risk of regulatory arbitrage and strengthen Ontario's capital markets. The recent Supreme Court of Canada decision on the national securities regulator now means the OSC will re-focus on continuing to meet its mandate by working in the best interests of the investors and market participants of Ontario, while supporting the provincial government in any activities to make the regulatory system more efficient. Our Strategic Plan is our road map for adjusting how we work to become a more effective and transparent securities regulator. This road map will guide us when co-operating with other provincial and territorial securities regulators on national initiatives and with our international counterparts.

The OSC has many strengths as an organization, and its greatest strength comes from the people who work every day to fulfil the OSC's mandate. The OSC remains focused on regulating Ontario's capital markets in the best interests of all investors and market participants and continuing to support the growth and development of Ontario's financial services industry. I want to thank the Commissioners, management and staff of the OSC for embracing the opportunity to take the necessary steps to make the OSC the best securities regulator it can be for today's complex and innovative capital markets.

Best regards,

Howard I. Wetston, Q.C.
Chair and Chief Executive Officer

Letter from the Executive Director

I am pleased to introduce details of the OSC's Strategic Plan for 2012-2015. This plan will help guide us in this time of change and will allow us to remain an effective, efficient, vigilant and modern organization.

The remarkable breadth and speed of innovation in the global capital markets requires all securities regulators, the securities industry, investors and all participants in the capital markets to evolve quickly. The OSC accepts this challenge and our Strategic Plan sets out how we will deliver effective regulation for the capital markets of Ontario, specifically through a greater focus on investor engagement, research, policy coordination, risk management, performance reporting and operational excellence.

During our strategic planning process, we received valuable input from external stakeholders, including investors and market participants, on how to reposition the OSC as a 21st century securities regulator. I want to thank the stakeholders for their feedback and suggestions. We are committed to being an open and accessible regulator and will seek opportunities for ongoing consultations with external stakeholders on both policy and operational issues.

Commissioners and staff of the OSC made a tremendous contribution to our strategic review with their creative ideas and constructive recommendations for changes and improvements in many areas. The recommendations and suggestions from OSC Commissioners, staff and external stakeholders helped chart the strategic direction outlined in this plan. We envision an OSC with an expanded research capability, improved policy coordination, enhanced risk analysis and a stronger engagement with investors. We also intend to better align our operational activities with our goals and priorities, deliver excellence in operational execution and report on our performance.

Our Strategic Plan will inform how we achieve the OSC's goals to deliver responsive regulation, effective enforcement and compliance, and strong investor protection, as well as run a modern, accountable and efficient organization. Our organizational goals for 2012-15 are similar to our previous goals with the exception of one new goal to support and promote financial stability, which has become a priority for securities regulators in the current market environment.

As we move forward in this strategic direction, we will continue to engage all levels of the organization to ensure that the plan is sound and achieves a successful transformation. We know that the success of our organization is in the hands of our people and we will give them the tools and the support they need to deliver excellence.

We are pleased to present our new strategic direction and are currently adapting our regulatory approaches to achieve these goals. We are ready for this challenge and we will make the OSC a more modern, high-performing regulatory agency focused on protecting Ontario investors and fostering fair and efficient capital markets.

Yours very truly,

Maureen Jensen
Executive Director and Chief Administrative Officer

Capital Markets Environment Today

The complexity and pace of change in the global capital markets have accelerated in recent years. Financial markets are more interconnected. Securities markets are increasingly important to overall financial stability. Innovations in technology enable securities to be traded at lightning speed across multiple marketplaces and there is a greater range of investment products offered to investors. These and other developments are reshaping the capital markets and have combined to challenge the current frameworks and approaches to the regulation of those markets.

Today's capital markets landscape requires the OSC to address many new issues that have international implications, such as multi-jurisdictional enforcement investigations, a regulatory framework for over-the-counter (OTC) derivatives, oversight of credit rating agencies and hedge funds, the regulation of emerging market reporting issuers, the proliferation of complex exchange-traded funds (ETFs) and structured products and an ever-changing market infrastructure. Issues such as these raise complex regulatory, jurisdictional and operational challenges for all regulators, including the OSC.

One of the greatest challenges now facing the OSC and all other securities regulators is to strengthen the capacity and expertise to keep pace with ongoing market developments and the risks that are emerging as a result of innovation, global market stresses and possible unintended consequences of the implementation of new rules globally. Commitments made by the Group of 20 nations now require the introduction of new rules and policies in Canada. The implications of many new rules and policies being introduced in other countries will affect Canada and those effects need to be monitored and carefully considered.

The OSC must continue to regulate proactively in this fast-changing global environment amid growing public expectations. As the regulator of the greatest share of Canada's financial markets, the OSC has an obligation to respond appropriately to these challenges. In the current environment, the OSC recognizes that it must take a more strategic approach to fulfilling its mandate on behalf of the investors and capital markets of Ontario in order to be able to keep pace with change. This Strategic Plan sets out the direction that the OSC is going to take in order to succeed in achieving its organizational goals.

The OSC's Strategic Review

In 2011, the OSC engaged in an extensive strategic review to identify the priorities, objectives and expected outcomes that will define its future direction. As part of this review, an important step was to hear from both external and internal stakeholders, including investors, about areas of concern or issues that need addressing, and to learn from their input. The process of developing and implementing a multi-year strategic plan for the OSC involved several phases, notably:

- The OSC engaged a global consulting firm to analyze relevant environmental developments and benchmark the OSC against the best practices of other regulatory agencies, including the U.S. Securities and Exchange Commission and the U.K. Financial Services Authority, to identify opportunities for improvement and areas requiring focus and articulate the implications for the OSC.
- OSC Commissioners were consulted for their input and recommendations.
- OSC staff conducted comprehensive internal consultations that involved eight employee working groups that gathered input from staff to identify opportunities for improvement and areas requiring more focus.
- Forty external OSC stakeholders were consulted for their feedback about the OSC's future direction, including investor advocates, representatives of financial institutions, self-regulatory organizations, law firms, accounting firms, trade associations, academics, and federal and provincial government departments.

The strategic review resulted in a consensus on how the OSC could improve its efforts to fulfil its mandate, including opportunities to:

- Enhance its understanding of investor concerns and better integrate them into operational and policy initiatives;
- Improve the market and product expertise of staff in order to keep pace with rapid developments in the marketplace;
- Strengthen the capacity to respond more quickly and effectively to developing issues;
- Invest in the development of employee skills and expertise to effectively deploy resources to key issues; and
- Improve internal processes, including priority-setting and policy-making.

The OSC Strategic Plan was formulated taking into account the recommendations from external stakeholders, the consultant, Commissioners and staff. This plan will guide the organization in taking a more strategic approach to fulfilling its mandate by developing employee expertise to keep pace with market developments and regulate today's capital markets more effectively.

The OSC's Strategic Direction

The OSC Strategic Plan supports the OSC's commitment to robust processes, high-quality execution and a culture of collaboration. The OSC will pursue six key strategies to reposition the organization as a more proactive, agile and effective securities regulator that fosters the integrity and quality of Ontario's capital markets. Each of the six strategies will influence programs and operations throughout the OSC and contribute to strengthening its core functions, including compliance and enforcement.

Strategy 1 Expand the OSC's research and analytical capability to be able to respond to and keep pace with market developments and investor concerns and to support policy-making

The OSC will create a dedicated Research and Analysis Group to enhance its capacity to support the right regulation for complex capital markets.

A deep and evolving understanding of market developments and the issues facing investors, market participants and other regulators is critical to the OSC's work. To this end, the OSC will invest in its research and data-analysis capabilities. An increased focus on data to support OSC policy initiatives will become part of how the OSC approaches its work. The Research and Analysis Group will play an influential role in the OSC's policy-formulation process. A stronger commitment to using research- and evidence-based decision-making will ensure that, in the future, policy will rely more heavily on qualitative and quantitative evidence, while also taking investor perspectives into consideration.

Strategy 2 Engage investors more effectively

The OSC will create an Office of the Investor to strengthen the OSC's focus on investor engagement.

The OSC remains focused on protecting the interests of investors as it adapts its regulatory approach to reflect the realities of the global marketplace. Constructive engagement with investors is required in order to better understand their concerns and then integrate those concerns into policy and operational activities. The OSC will create an Office of the Investor to better identify and address investor issues at the highest levels of the organization. This dedicated group will raise investor concerns internally and establish direct links with investor

advocacy groups and the OSC Investor Advisory Panel, work closely with the Investor Education Fund and participate in investor-related research and outreach. The Office of the Investor will participate in the new Policy Coordination Committee to bring a clear investor perspective to the policy agenda of the OSC.

Strategy 3 Improve internal policy coordination and priority-setting

The OSC will establish a Policy Coordination Committee to develop and communicate a clear policy agenda to stakeholders.

To develop and communicate a clear policy agenda, the OSC will form an internal Policy Coordination Committee to impose added discipline on the prioritization of existing initiatives and on the addition of future initiatives. The new Policy Coordination Committee will include representatives from the OSC's policy Branches, the new Research and Analysis group, the OSC's new Office of the Investor and the Office of Domestic and International Affairs. This committee will recommend prioritized policy projects to the OSC Executive Committee for resourcing and approval. Enhancing internal policy coordination and priority-setting will allow the OSC to be more agile in responding to information or analysis that indicates changes to its regulatory approaches, core operating programs and/or priorities may be required. The committee will also help the OSC to be more effective in its work with other provincial and territorial securities regulators.

Strategy 4 Align all operations and programs with defined OSC goals and priorities and develop and report on key performance indicators

The OSC will clearly articulate its goals and develop and implement key performance indicators to help measure its progress against those goals.

Being clear on its goals and priorities and measuring the progress towards achieving the desired outcomes are critical aspects of demonstrating the OSC's accountability to deliver against its mandate and goals. The OSC is focused on clearly articulating its goals and how it plans to measure progress against these objectives. By integrating key performance indicators, the OSC will be able to monitor whether its initiatives and programs are achieving the desired effects and take action to improve outcomes.

Strategy 5 Improve risk identification and management

The OSC will establish an Emerging Risk Committee to develop and implement a risk framework.

Understanding and responding to emerging market and product risks in a timely and appropriate manner is critical to the OSC achieving its mandate. A strong focus on risk is necessary for the OSC to both identify and mitigate risk effectively. The OSC will establish an internal Emerging Risk Committee to work with the expanded Research and Analysis Group to develop a framework for the identification and analysis of risks. This program will be rolled out across the organization and updated on an ongoing basis.

Strategy 6 Deliver excellence in the execution of OSC operations

The OSC will enhance its people strategy and practices, work processes and tools to support a modern, efficient and effective regulatory agency.

Improving the effectiveness and efficiency of the organization will improve the overall performance of the OSC. The OSC will implement innovative practices, embrace inclusion and environmental stewardship and promote continuous learning to attract, engage and retain the talented workforce with the market, product and other expertise needed to deliver on its mandate. To achieve this, the OSC will focus on three key areas:

- Our people and their workplace: The OSC will foster an attractive, modern and high-performing workplace that encourages and supports great people management and employee engagement. The OSC commits to being a top employer.

- Our work processes: The OSC will improve its internal processes to address emerging risks and practices. Internal processes must be modern, efficient and effective and make the best use of resources, such as strengthening enforcement processes in order to address current challenges and international developments.

- Our tools: Enabling technology is a key contributor to a modern and effective workplace. Technology will assist in the gathering, monitoring and analysis of available data and also support an expanded focus on electronic interaction with the OSC such as through electronic filings and hearings.

OSC Organizational Goals

The OSC will pursue this Strategic Plan as part its long-term direction to continue delivering on its mandate to provide protection to investors and foster fair and efficient capital markets. All of the six strategic initiatives complement and support the OSC's organizational goals, with examples cited below.

Goal 1 Deliver Responsive Regulation

The OSC will identify important issues and deal with them in a timely way. The new Policy Coordination Committee will enhance internal coordination and priority-setting, which will allow the OSC to be more agile in responding to information or analysis that may require changes to its regulatory approaches and/or priorities. An enhanced research capability will support the goal of delivering responsive regulation.

Goal 2 Deliver Effective Enforcement and Compliance

The OSC will deliver effective compliance programs and fair, vigorous and timely enforcement. An expanded research and analysis capability will support the OSC's understanding of investor issues and market developments, and will assist with deterring misconduct. In addition, the OSC will improve its priority-setting process which will contribute to an enhanced focus in the priority areas for compliance and enforcement.

Goal 3 Deliver Strong Investor Protection

The OSC will champion investor protection, especially for retail investors. The Office of the Investor will co-ordinate all investor-focused initiatives, including the Investor Education Fund and the OSC Investor Advisory Panel. The new Research and Analysis Group and Office of the Investor will increase the research conducted on investor issues.

Goal 4 Run a Modern, Accountable and Efficient Organization

The OSC will be a modern and efficient organization that values its people, uses resources effectively and is accountable for fulfilling its mandate and achieving its goals. The OSC will foster a high-performing workplace in which staff are supported and assisted to excel. A commitment to deliver excellence in execution of operations will enhance the performance of the OSC. The

introduction of new key performance indicators will help to evaluate results against desired outcomes. In addition, a focus on the development of new IT tools will improve access and understanding of emerging trends to allow for the identification of developing issues.

Goal 5 Support and Promote Financial Stability

The OSC will contribute to both national and international efforts to mitigate systemic risk to promote the financial stability of the global capital markets. The OSC will continue to dedicate resources, including in the areas of market research and data analysis, to develop the required expertise in support of this goal. The new Emerging Risk Committee will strengthen the OSC's capabilities to improve risk identification and management as it co-operates with federal and provincial regulatory agencies.

Moving Forward

The successful implementation of the OSC Strategic Plan will position the organization as a modern, forward-looking securities regulator. Implementation planning began in 2012 and will be completed in phases in accordance with the OSC's business plan and budget. The OSC's *Statement of Priorities* for 2012-13 will set out which Strategic Plan initiatives will be addressed in that fiscal year. The OSC is committed to reporting on the progress of this three-year Strategic Plan on an annual basis, starting with the 2012 Annual Report.

This Strategic Plan supports the evolution of the OSC, which regulates the largest share of Canada's capital markets. Given this leadership role, the OSC recognizes that it must be effective, efficient and agile. The strategic, integrated initiatives presented in this plan reinforce each other and help to build a stronger OSC that achieves its organizational goals and delivers securities regulation that fosters investor confidence, supports a vibrant economy and promotes financial stability.

OSC ONTARIO SECURITIES COMMISSION

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

February 27, 2012

1.1.5 CSA/IIROC Joint Notice 23-312 – Transparency of Short Selling and Failed Trades – Request for Comment

REQUEST FOR COMMENT

CSA/IIROC JOINT NOTICE 23-312
TRANSPARENCY OF SHORT SELLING AND FAILED TRADES

The Canadian Securities Administrators (CSA) and the Investment Industry Regulatory Organization of Canada (IIROC) are publishing for comment CSA/IIROC Joint Notice 23-312 *Transparency of Short Selling and Failed Trades* (Joint Notice). The purpose of the Joint Notice is to seek feedback on a range of regulatory options aimed at strengthening Canada's regulatory regime, including enhanced disclosure of short sales and some public disclosure of failed trades.

A copy of the Joint Notice is published in Chapter 6 of this Bulletin.

1.1.6 CSA Staff Notice 41-307 – Corporate Finance Prospectus Guidance – Concerns regarding an issuer's financial condition and the sufficiency of proceeds from a prospectus offering

CSA Staff Notice 41-307 – *Corporate Finance Prospectus Guidance – Concerns regarding an issuer's financial condition and the sufficiency of proceeds from a prospectus offering* is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

CORPORATE FINANCE PROSPECTUS GUIDANCE

Concerns regarding an issuer's financial condition and the sufficiency of proceeds from a prospectus offering

CSA Staff Notice 41-307

March 2, 2012

The purpose of this staff notice is to alert issuers (other than investment fund issuers) and their advisors about our approach where there are concerns regarding the financial condition of an issuer and/or the sufficiency of proceeds in the context of a prospectus offering.[1] In limited circumstances, these concerns may affect our ability to recommend that a receipt be issued for a prospectus. This staff notice applies to all prospectus reviews, regardless of whether the offering is an IPO, new issue or secondary offering.

In this notice, we describe issues that have arisen in past prospectus reviews and explain the types of comments we have raised about an issuer's financial condition and/or the sufficiency of proceeds.

This guidance applies to issuers that have short-term liquidity concerns and/or offerings that do not appear to be raising sufficient proceeds. We recognize the importance of capital formation in Canada, and this guidance is not intended to inhibit capital raising through a prospectus offering other than where there are significant investor protection concerns.

Significant concerns may result in receipt refusal

Securities legislation provides that the authorized decision maker must issue a receipt for a prospectus unless it appears to the decision maker that it is not in the public interest to do so or for motives enumerated in securities legislation. [2]

Securities legislation also provides that the decision maker shall not issue a receipt for a prospectus or an amendment to a prospectus in specified circumstances. For example, a decision maker is prohibited from issuing a receipt for a prospectus if it appears that the proceeds from the prospectus offering, along with the issuer's other resources, will be insufficient to accomplish the purpose of the issue stated in the prospectus (the sufficiency of proceeds receipt refusal provision).[3]

As a result of these statutory provisions, consideration of an issuer's financial condition is a critical part of every prospectus review. A prospectus must contain clear disclosure on how the issuer intends to use the proceeds raised in the offering as well as disclosure of the issuer's financial condition, including any liquidity concerns. This disclosure is important to investors because it provides warnings about significant risks that the issuer is facing or

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[1] For additional guidance see OSC Staff Notice 52-719 *Going Concern Disclosure Review* (OSC Staff Notice 52-719).
[2] Relevant statutory provisions include: s. 120(1) of the *Securities Act* (Alberta), s. 65(2) of the *Securities Act* (British Columbia), s. 61(1) of the *Securities Act* (Ontario) and ss. 14 and 15 of the *Securities Act* (Quebec).
[3] See s. 120(2)(c) of the *Securities Act* (Alberta), s. 120 (2)(c) of the *Securities Act* (British Columbia), s. 61(2)(c) of the *Securities Act* (Ontario) and s. 15(3) of the *Securities Act* (Quebec).

may face in the short term and may help investors avoid or minimize negative consequences when making investment decisions. Relevant information in this context may include disclosure on negative cash flow from operating activities, working capital deficiencies, net losses and significant going concern risks.

However, disclosure on its own may not be sufficient to satisfy receipt refusal concerns in certain circumstances. For example, a recommendation of receipt refusal may be appropriate where an issuer lacks sufficient funds to continue operations, or if the proceeds from the prospectus offering will be insufficient to accomplish the purpose of the offering. When conducting prospectus reviews, we may consider the anticipated proceeds from a prospectus offering to be insufficient if they are raised:

- for a specific purpose but do not address the issuer's short-term liquidity requirements
- through a best efforts offering without a minimum subscription, or a minimum subscription that does not appear to be sufficient to satisfy the issuer's short-term liquidity requirements, or
- through a shelf prospectus offering that can be drawn down in small increments that, when considered separately, may not be sufficient to satisfy the issuer's short-term liquidity requirements.

A principal purpose of the sufficiency of proceeds receipt refusal provision is to protect the integrity of the capital markets, which would be harmed if an issuer ceased operations on account of insufficient funds shortly after completing a public securities offering.

We have concerns with the potential implications to investors who invest in issuers that may not be able to continue operations for a reasonable period of time. We consider that an issuer should have sufficient resources to meet its short-term liquidity requirements. This will vary depending on the circumstances of each issuer. The table below sets out some guidelines.

Type of Issuer	**Resources to meet short-term liquidity requirements**
Exploration stage issuer	Sufficient to reach completion of the next phase of a project
Development stage issuer	Sufficient to achieve the issuer's next significant milestone
Research & development issuer	Sufficient to achieve progress on the development of a key product
Issuer with active operations	Ability to continue operations for the short term

Potential receipt refusal

The decision maker will not issue a receipt for a prospectus where:

- it appears that the prospectus inadequately discloses an issuer's financial condition and going concern risk, or
- there is adequate disclosure about the issuer's financial condition, but it appears that either the sufficiency of proceeds receipt refusal provision is applicable or that it is not in the public interest to issue the receipt.

Areas of focus

We may raise comments during the prospectus review process where we have identified concerns about an issuer's financial condition and/or sufficiency of proceeds. This staff notice discusses the following five issues in respect of which we may raise comments:

1. Missing information regarding offering amount and pricing
2. Offering structure
3. Use of proceeds disclosure
4. Risk factor disclosure
5. Representations to support ability to continue operations

This list of issues is not exhaustive. The types of comments we raise in these circumstances may change and we will continue to assess and review each prospectus on its own merits.

1. Missing information regarding offering amount and pricing

We require information regarding the size of the offering to assess whether the sufficiency of proceeds receipt refusal provision is applicable and whether it is in the public interest for the decision maker to issue a receipt. If a preliminary prospectus is filed with the offering amount and pricing information bulleted, we will issue a comment that we require a reasonable opportunity to review a blackline of the draft form of final prospectus (using strike through format for deletions of text) before being in a position to clear the final prospectus. The blackline should include the information currently bulleted in the preliminary prospectus, such as the offering amount, pricing and use of proceeds. If providing this information is not practicable, we may accept an estimate or range of these figures, as applicable. Issuers should note that we may have additional comments based on any new information disclosed in the blackline.

Practice point
In order to avoid unanticipated delays, issuers should ensure that the blackline of the draft form of final prospectus is filed not less than two business days prior to filing final materials.

We may also request a copy of any green sheets (and/or similar marketing materials) used in connection with an offering. A review of the green sheet allows us to assess at an early stage the financial condition of the issuer in the context of the then anticipated offering amount. It will also show whether the final offering amount is substantially less than originally anticipated.

2. Offering structure

We will review the overall structure of the proposed offering in the context of the issuer's financial condition. While there is no requirement to have a minimum subscription for an offering (in National Instrument 41-101 *General Prospectus Requirements* or National Instrument 44-101 *Short Form Prospectus Distributions),* the absence of a minimum subscription could be a significant concern where there are questions about the issuer's financial condition

or where a minimum amount of proceeds appears necessary to meet the stated purpose of the offering. Accordingly, we may raise the following types of comments depending on the structure of an offering, tailored to the particular circumstances of the issuer. Ultimately, an issuer may need to change the structure of an offering to address concerns regarding the issuer's financial condition.

Best efforts agency offering

1. Is there a minimum subscription?
2. If not, explain how the stated purpose of the offering and the use of proceeds will be achieved absent a minimum subscription.
3. Disclose and discuss, both qualitatively and quantitatively:
    - how the proceeds will be used by the issuer, with reference to various potential thresholds of proceeds raised, in the event the issuer raises less than the maximum subscription, and
    - the impact (if any) on its liquidity, operations, capital resources and solvency.

Base shelf prospectus offering

We may take the view that a base shelf prospectus is not appropriate given the issuer's financial condition and uncertainty of financing. Under a base shelf prospectus, an issuer may raise small amounts of capital in increments over the period of 25 months. We may request submissions on the following:

- the issuer's rationale for filing a base shelf prospectus
- whether the issuer intends to file a prospectus supplement in the near future, and if so, the type of securities to be offered, the proceeds that are contemplated to be raised and the manner in which the proceeds will be used
- the availability of other sources of financing to provide working capital and fund the issuer's business if sufficient financing cannot be raised
- the proposed nature and timing of the offerings under the base shelf prospectus, including:
    - involvement of an agent or underwriter, if any
    - use of a minimum subscription amount below which an offering will not proceed
    - specific use of proceeds for offerings contemplated in the next 12 months
- details regarding concrete development milestones that would advance the issuer's business objectives and are expected to be completed in the next 12 months, including:
    - a description of the milestone
    - expected timing of completion, and
    - financing requirements.

In order to address the concern that incremental drawdowns may be insufficient to satisfy an issuer's short-term liquidity requirements, we may request that the issuer:

- file a short form prospectus with a minimum subscription
- file a short form prospectus with a fully underwritten commitment, and/or
- arrange for additional sources of financing.

Rights offering

We may raise a comment regarding alternatives to a minimum subscription, such as a stand-by commitment, where there is a concern about the sufficiency of proceeds to meet the stated objectives of the offering or there is a concern about the issuer's financial condition.

3. Use of proceeds disclosure

The use of proceeds disclosure in a prospectus informs our consideration of whether the proceeds of the offering will be sufficient to accomplish the stated purpose of the offering. We will assess whether the use of proceeds disclosure complies with all of the applicable requirements in Item 6 of Form 41-101F1 *Information Required in a Prospectus* (Form 41-101F1) or Item 4 of Form 44-101F1 *Short Form Prospectus* (Form 44-101F1).

We have noted inadequate use of proceeds disclosure in the following areas:

- principal purposes of the proceeds
- business objectives and milestones, and
- negative cash flow from operating activities.

An example of the type of disclosure that does not provide sufficient detail on the allocation of proceeds is set out below.

Example of insufficient use of proceeds disclosure

The net proceeds to the Corporation will be combined with the Corporation's working capital for total available funds of approximately $3,000,000. The estimated net proceeds to the Corporation from this Offering are estimated as indicated below:

Principal Purpose	**Amount**
Exploration Activities	$2,000,000
General Corporate Purposes	$1,000,000
Total Available Funds	**$3,000,000**

The net cash proceeds from the Offering will be used by the Corporation for exploration activities and general corporate purposes. The Corporation expects to accomplish the business objectives described in this Prospectus using the Total Available Funds. The Corporation intends to spend the funds available to it as stated in this Prospectus. There may be circumstances where, for sound business reasons, a reallocation of funds may be necessary.

The guidance below sets out the type of information we would expect to be included in the use of proceeds disclosure.

Principal purposes of the proceeds

Where the disclosure is overly general, we may request that the issuer provide additional information, such as:

- a breakdown of the proceeds towards a certain phase of a project, in the case of an exploration or development stage issuer
- a breakdown of the proceeds towards capital expenditures
- a breakdown of proceeds allocated to general and administrative expenditures, and
- clarification of how proceeds raised under recent financings have been or are being allocated.

If the offering is subject to a minimum subscription, the use of proceeds for both the minimum and maximum subscription must be disclosed. The disclosure should provide adjustments in spending if the proceeds raised are less than the maximum amount. This disclosure should be provided where:

- closing of the distribution is not subject to a minimum offering amount
- the distribution is on a best efforts basis, and
- the issuer has significant short-term non-discretionary expenditures.

Short-term non-discretionary expenditures include those for general corporate purposes, or significant short-term capital or contractual commitments, and an issuer may not have other readily accessible resources to satisfy those expenditures or commitments. We may request that the issuer discuss, both quantitatively and qualitatively, how the proceeds will be used with reference to various potential thresholds of proceeds raised, in the event the issuer raises less than the maximum subscription, and the resulting impact on the issuer's liquidity, operations, capital resources and solvency.

Finally, we remind issuers that statements such as "for general corporate purposes", are not considered to be sufficient disclosure[4].

Business objectives and milestones

Where an issuer has not sufficiently described each significant event that must occur for the business objectives to be accomplished, we will request additional disclosure of each event as well as the specific time period in which each event is expected to occur and the costs related to it. Generally, we expect that the proceeds from the offering will be sufficient to meet the issuer's working capital and operational needs until its next significant milestone.

In the case of a mining issuer, the use of proceeds disclosure should be consistent with the recommendation and budget in the issuer's technical report(s). We take the view that general statements referring to completion of a "phase" of an exploration program may not be sufficient. We may request a further breakdown of the exploration activities contemplated in each phase, as the case may be, and the relevant time period to complete such activities.

[4] As stated in subsection 4.3(2) of *Companion Policy to National Instrument 41-101 General Prospectus Requirements* (Companion Policy 41-101CP) and subsection 4.4(2) of *Companion Policy to National Instrument 44-101 Short Form Prospectus Distributions* (Companion Policy 44-101CP),

Negative cash flow from operating activities

An issuer with negative cash flow from operating activities in its most recently completed financial year for which financial statements have been included in the prospectus should:

- prominently disclose that fact in the use of proceeds section of the prospectus
- disclose whether, and if so, to what extent, it will use the proceeds of the distribution to fund any anticipated negative cash flow from operating activities in future periods, and
- disclose negative cash flow from operating activities as a risk factor[5].

We may also request additional information be disclosed in the prospectus relating to:

- the issuer's most current working capital amount
- the issuer's cash burn rate on a monthly or quarterly basis
- the period of time that the proceeds of the offering are expected to fund operations, and
- any significant debt obligations maturing in the short term.

Item 6.2 of Form 41-101F1 requires additional disclosure of certain information relating to junior issuers, such as disclosure of the total funds available, and the following breakdown of those funds:

- the estimated net proceeds from the sale of the securities offered under the prospectus
- the estimated consolidated working capital (deficiency) as at the most recent month end before filing the prospectus, and
- the total other funds available to be used to achieve the principal purposes identified by the junior issuer pursuant to this item.

Practice Point

Depending on the circumstances, we may take the view that this disclosure is a material fact for issuers that are not technically junior issuers and that this disclosure should be included in a prospectus in order to meet the requirement to provide "full, true and plain disclosure of all material facts".

4. Risk factor disclosure

Item 21.1 of Form 41-101F1 and item 17.1 of Form 44-101F1 require disclosure of risk factors relating to an issuer and its business, such as cash flow and liquidity problems. The accompanying instructions provide guidance that the risks should be disclosed in order of seriousness, from the most serious to the least serious. We have noted insufficient or boilerplate disclosure in the prospectus for many key risk factors related to an issuer's financial condition.

[5] See the guidance set out in subsection 4.3(1) of Companion Policy 41-101CP and subsection 4.4(1) of Companion Policy 44-101CP.

Example of insufficient boilerplate risk factor disclosure

The Corporation's ability to continue as a going concern is dependent upon its ability to obtain adequate financing and to reach profitable levels of operation. The Corporation has no proven history of performance, earnings or success.

Issuer's financial condition

A prospectus should clearly disclose an issuer's going concern risk to allow readers to make an informed investment decision. This disclosure should explain the uncertainties that may create going concern risk and how the issuer is addressing that risk. As previously noted, even if the risk is adequately disclosed, we will exercise judgement to assess whether the sufficiency of proceeds receipt refusal provision is applicable or if there is a public interest concern in issuing a receipt.

When preparing risk factor disclosure about financial condition, issuers should consider disclosing the following:

- quantification of losses, working capital deficit, negative cash flow from operating activities, debt levels
- how the issuer expects to remedy the liquidity or solvency issues
- other sources of financing available to the issuer
- the implications to the issuer's liquidity, capital resources, operations (i.e. scaling back exploration activities, capital expenditures, research and development expenditures, general and administrative expenditures etc.) and its ability to remain a going concern, and
- the period of time the proceeds raised under the prospectus are expected to fund operations.

In many circumstances, an issuer with going concern risk should include the disclosure required by item 8.7 of Form 41-101F1 for junior issuers. This item requires disclosure of:

- the period of time the proceeds raised under the prospectus are expected to fund operations
- the estimated total operating costs necessary for the issuer to achieve its stated business objectives during that period of time, and
- the estimated amount of other material capital expenditures during that period of time.

Practice Point

While item 8.7 of Form 41-101F1 applies specifically to junior issuers, this information may constitute a material fact for other issuers depending on their particular circumstances, and in that case, we may request this disclosure.

Risk associated with negative cash flow from operating activities

Issuers are reminded that section 4.3 of Companion Policy 41-101CP and section 4.4 of Companion Policy 44-101CP provide that issuers should disclose negative cash flow from operating activities as a risk factor.

Risk associated with offering structure - no minimum subscription

Where the offering is being conducted on a best efforts agency basis and we have accepted that a minimum subscription is not required, we generally expect the issuer to include on the face page of the prospectus disclosure that there is no minimum amount of funds that must be raised under the offering. This disclosure should clearly state

that an investor will not generally be entitled to a return of its investment if only a small proportion of the disclosed offering amount is in fact raised.

5. Representations to support ability to continue operations

We take the view that an issuer contemplating an offering should be able to continue its operations for a reasonable period of time and meet its short-term liquidity requirements as described on page two of this staff notice. The length of time the issuer will be able to continue operations will vary among industries and among issuers within an industry group. Accordingly, issuers should anticipate comments regarding their ability to continue operations as a going concern.

Representation regarding ability to continue operations

In order to assess whether we have a receipt refusal concern, we may ask the issuer to provide us with a written representation of the number of months that it will be able to continue its operations given its financial condition. The proceeds from the offering should only be considered when making this determination where the offering is a bought deal, or where there is a minimum subscription or stand-by commitment. We will generally also request that this representation be disclosed in the prospectus. The rationale for requiring this disclosure is that, in our view, this information is a material fact in the particular circumstances of the issuer due to concerns over its financial condition. We may take the view that the absence of this information may either be an omission of a material fact or raise a public interest concern.

Support for representations regarding ability to continue operations

It is the issuer's responsibility to determine the number of months during which it expects to be able to continue its operations given its financial condition. In some instances, the issuer's representations about its ability to continue as a going concern and the period during which it expects to be able to continue operations may:

- be inconsistent with the issuer's historical statement of cash flows (in particular, its cash flows from operating activities)
- be inconsistent with the disclosure in the preliminary prospectus, including disclosure regarding current and expected profitability, debt repayment schedules and potential sources of additional financing, or
- otherwise appear to be unreasonable.

In these cases, we may request that the issuer provide us with a cash flow forecast to support its assumed period of liquidity (i.e. ability to continue operations). As noted above, the proceeds of the offering should only be considered in an issuer's cash flow forecast where the offering is a bought deal or where there is a minimum subscription or stand-by commitment. If a forecast is provided, we will assess whether the assumptions are consistent with the disclosure made in the prospectus as well as the issuer's historical financial performance.

The cash flow forecast should project the issuer's cash flow from operating activities for the period of time the issuer has represented that it can continue operations. The forecast should take the form of a statement of cash flows as presented in the issuer's financial statements in accordance with International Financial Reporting Standards (IFRS). The forecast must be accompanied by a set of robust assumptions to support management's estimates. We may

need supporting schedules and further details in order to assess the reasonableness of the assumptions made by the issuer. See the discussion below about whether this disclosure constitutes forward-looking information (FLI) and forward looking financial information (FOFI).

Practice Point

In the limited circumstances where we request a cash flow forecast, we may request additional disclosure in the prospectus. Specifically, we may ask that the following be included in the prospectus:

- the forecast in its entirety along with all significant assumptions and the material risk factors that could cause actual results to differ materially from the forecast, or
- significant portions of the forecast or material factors and assumptions used to develop the forecast.

This information supports the representation regarding the issuer's ability to continue operations and may inform investors' investment decisions. We may conclude that, in certain cases, the forecast represents a material fact in the particular circumstances of the issuer due to concerns over its financial condition. Any disclosure included in the prospectus is subject to liability provisions.

Forward-looking information and future oriented financial information

A representation regarding an issuer's ability to continue operations constitutes FLI as defined in securities legislation. Generally, FLI means disclosure regarding possible events, conditions or results of operations that is based on assumptions about future economic conditions and courses of action[6]. Depending on its content, this representation may or may not also be FOFI. When this disclosure is included in the prospectus, the disclosure must comply with the FLI and FOFI requirements in Parts 4A and 4B of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102).

Any cash flow forecast and related factors and assumptions provided to support this representation may also be subject to FLI and FOFI requirements.

Issuers will be required to update previously disclosed material FLI in Management's Discussion & Analysis in accordance with section 5.8 of NI 51-102.

Conclusion

We will continue to raise comments in respect of the financial condition of an issuer and the sufficiency of proceeds from a prospectus offering where the concerns discussed above are identified. Additional disclosure may be required in a prospectus, depending on the particular circumstance of the issuer. In some cases where there are significant investor protection concerns, we may recommend that a receipt for a prospectus not be issued.

[6] For the definition of FLI see s. 1(1) of the *Securities Act* (Alberta), s. 1(1) of the *Securities Act* (British Columbia), s. 1(1) of the *Securities Act* (Ontario) and s. 5 of the *Securities Act* (Quebec).

Questions

Questions may be referred to any of:

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Nova Scotia

Kevin Redden, Director
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1.2 Notices of Hearing

1.2.1 Ameron Oil and Gas 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
AMERON OIL AND GAS LTD., MX-IV LTD.,
GAYE KNOWLES, GIORGIO KNOWLES,
ANTHONY HOWORTH, VADIM TSATSKIN,
MARK GRINSHPUN, ODED PASTERNAK, AND
ALLAN WALKER

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN STAFF OF
THE ONTARIO SECURITIES COMMISSION AND
GAYE KNOWLES

NOTICE OF HEARING
(Section 127)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), at the offices of the Commission located at 20 Queen Street West, Toronto, 17th Floor, on Friday, February 24, 2012 at 4:00 p.m. or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve a settlement agreement entered into between Staff of the Commission and Gaye Knowles;

BY REASON OF the allegations set out in the Statement of Allegations and Amended Statement of Allegations of Staff of the Commission dated December 13, 2010 and October 5, 2011 respectively, and such additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that any party to the proceeding may be represented by counsel, if that party attends or submits evidence at the hearing;

AND TAKE FURTHER NOTICE that upon the failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party, and such party is not entitled to any further notice of the proceeding.

DATED at Toronto this 22nd day of February, 2012.

"John Stevenson"
Secretary to the Commission

1.3 News Releases

1.3.1 New OSC Strategic Plan: Road Map to a 21st Century Regulator

FOR IMMEDIATE RELEASE
February 29, 2012

NEW OSC STRATEGIC PLAN:
ROAD MAP TO A 21ST CENTURY REGULATOR

TORONTO – The Ontario Securities Commission (OSC) today released a Strategic Plan that details how the securities regulator can stay ahead of the evolving, complex and dynamic environment of today's global capital markets.

"The OSC Strategic Plan is our road map for working in the best interests of the investors and market participants of Ontario and for making the regulatory system more efficient," said Howard Wetston, Q.C., Chair and CEO of the OSC. "The OSC will take a more strategic approach to fulfilling its mandate while supporting a high-quality, innovative and growing financial services industry in Ontario."

The OSC Strategic Plan includes six key initiatives, including the establishment of an Office of the Investor as part of a wider strategy to engage investors more effectively. As part of the OSC's increased commitment to research and risk management in support of policy initiatives, it will create a dedicated Research and Analysis Group and an Emerging Risk Committee, which will improve risk identification and management.

The OSC Strategic Plan will influence programs throughout the organization and contribute to strengthening the OSC's operations, including compliance and enforcement.

The OSC administers and enforces securities legislation in the province of Ontario. The OSC's statutory mandate is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.

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1.4 Notices from the Office of the Secretary

1.4.1 Ameron Oil and Gas Ltd. et al.

FOR IMMEDIATE RELEASE
February 22, 2012

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

AND

IN THE MATTER OF
AMERON OIL AND GAS LTD., MX-IV LTD.,
GAYE KNOWLES, GIORGIO KNOWLES,
ANTHONY HOWORTH, VADIM TSATSKIN,
MARK GRINSHPUN, ODED PASTERNAK, AND
ALLAN WALKER

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN STAFF OF
THE ONTARIO SECURITIES COMMISSION AND
GAYE KNOWLES

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Gaye Knowles. The hearing will be held on Friday, February 24, 2012 at 4:00 p.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated February 22, 2012 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
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1.4.2 Ameron Oil and Gas Ltd. et al.

FOR IMMEDIATE RELEASE
February 23, 2012

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

AND

IN THE MATTER OF
AMERON OIL AND GAS LTD., MX-IV LTD.,
GAYE KNOWLES, GIORGIO KNOWLES,
ANTHONY HOWORTH, VADIM TSATSKIN,
MARK GRINSHPUN, ODED PASTERNAK, AND
ALLAN WALKER

TORONTO – Staff of the Ontario Securities Commission filed a Notice of Withdrawal against Ameron Oil and Gas Ltd., MX-IV LTD., Giorgio Knowles and Anthony Howorth.

A copy of the Notice of Withdrawal dated February 22, 2012 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
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1.4.3 Ameron Oil and Gas Ltd. et al.

FOR IMMEDIATE RELEASE
February 23, 2012

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

AND

IN THE MATTER OF
AMERON OIL AND GAS LTD., MX-IV LTD.,
GAYE KNOWLES, GIORGIO KNOWLES,
ANTHONY HOWORTH, VADIM TSATSKIN,
MARK GRINSHPUN, ODED PASTERNAK, AND
ALLAN WALKER

TORONTO – The Commission issued an Order in the above named matter which provides that the status hearing scheduled for February 23, 2012, at 3:00 p.m. is adjourned *sine die*.

A copy of the Order dated February 23, 2012 is available at **www.osc.gov.on.ca**.

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1.4.4 Nest Acquisitions and Mergers et al.

FOR IMMEDIATE RELEASE
February 23, 2012

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

AND

IN THE MATTER OF
NEST ACQUISITIONS AND MERGERS,
IMG INTERNATIONAL INC.,
CAROLINE MYRIAM FRAYSSIGNES,
DAVID PELCOWITZ, MICHAEL SMITH, AND
ROBERT PATRICK ZUK

TORONTO – The Commission issued its Reasons and Decision on a Motion in the above named matter.

A copy of the Reasons and Decision on a Motion dated February 3, 2012 is available at **www.osc.gov.on.ca**.

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1.4.5 Majestic Supply Co. Inc. et al.

FOR IMMEDIATE RELEASE
February 23, 2012

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

AND

IN THE MATTER OF
MAJESTIC SUPPLY CO. INC.,
SUNCASTLE DEVELOPMENTS CORPORATION,
HERBERT ADAMS, STEVE BISHOP,
MARY KRICFALUSI, KEVIN LOMAN AND
CBK ENTERPRISES INC.

TORONTO – The Commission issued an Order in the above named matter which provides that (i) the Motion Hearing date of February 23, 2012 is vacated; and (ii) the Merits Hearing is adjourned pending a decision on the motion to be issued in due course.

A copy of the Order dated February 22, 2012 is available at **www.osc.gov.on.ca**.

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1.4.6 Lyndz Pharmaceuticals Inc. et al.

FOR IMMEDIATE RELEASE
February 24, 2012

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

AND

IN THE MATTER OF
LYNDZ PHARMACEUTICALS INC.,
JAMES MARKETING LTD.,
MICHAEL EATCH AND RICKEY MCKENZIE

TORONTO – Take notice that the sanctions hearing in the above named matter scheduled to be heard on March 6, 2012 will be heard on March 28, 2012 at 10:00 a.m.

OFFICE OF THE SECRETARY
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1.4.7 Ameron Oil and Gas Ltd. et al.

FOR IMMEDIATE RELEASE
February 27, 2012

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

AND

IN THE MATTER OF
AMERON OIL AND GAS LTD., MX-IV LTD.,
GAYE KNOWLES, GIORGIO KNOWLES,
ANTHONY HOWORTH, VADIM TSATSKIN,
MARK GRINSHPUN, ODED PASTERNAK, AND
ALLAN WALKER

TORONTO – The Commission issued an Order in the above named matter which provides that the dates scheduled for the hearing on the merits in this matter are vacated.

A copy of the Order dated February 24, 2012 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
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1.4.8 Ameron Oil and Gas Ltd. et al.

FOR IMMEDIATE RELEASE
February 27, 2012

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

AND

IN THE MATTER OF
AMERON OIL AND GAS LTD., MX-IV LTD.,
GAYE KNOWLES, GIORGIO KNOWLES,
ANTHONY HOWORTH, VADIM TSATSKIN,
MARK GRINSHPUN, ODED PASTERNAK, AND
ALLAN WALKER

TORONTO – Following a hearing held on February 24, 2012, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and Gaye Knowles.

A copy of the Order dated February 24, 2012 and Settlement Agreement dated February 21, 2012 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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1.4.9 North American Financial Group Inc. et al.

FOR IMMEDIATE RELEASE
February 28, 2012

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

AND

IN THE MATTER OF
NORTH AMERICAN FINANCIAL GROUP INC.,
NORTH AMERICAN CAPITAL INC.,
ALEXANDER FLAVIO ARCONTI, AND
LUIGINO ARCONTI

TORONTO – The Commission issued an Order in the above named matter which provides that the hearing is adjourned to Thursday, March 29, 2012 at 11:00 a.m.

A copy of the Order dated February 27, 2012 is available at **www.osc.gov.on.ca**.

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1.4.10 Global Energy Group, Ltd. et al.

FOR IMMEDIATE RELEASE
February 29, 2012

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

AND

IN THE MATTER OF
GLOBAL ENERGY GROUP, LTD., NEW GOLD
LIMITED PARTNERSHIPS, CHRISTINA HARPER,
VADIM TSATSKIN, MICHAEL SCHAUMER,
ELLIOT FEDER, ODED PASTERNAK, ALAN
SILVERSTEIN, HERBERT GROBERMAN,
ALLAN WALKER, PETER ROBINSON,
VYACHESLAV BRIKMAN, NIKOLA BAJOVSKI,
BRUCE COHEN AND ANDREW SHIFF

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

(i) the Merits Hearing will reconvene on April 17, 2012, at 10:00 a.m. at the offices of the Commission, 20 Queen Street West, 17th Floor, Toronto, for the purpose of hearing final submissions from the parties;

(ii) Staff will serve and file a written copy of their final submissions no later than March 23, 2012; and

(iii) any Respondent wishing to make final submissions may serve and file a copy of those submissions in accordance with Rule 10.9 of the Commission's Rules of Procedure no later than April 10, 2012.

A copy of the Order dated February 29, 2012 is available at **www.osc.gov.on.ca**.

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1.4.11 Juniper Fund Management Corporation et al.

FOR IMMEDIATE RELEASE
February 29, 2012

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

AND

IN THE MATTER OF
THE JUNIPER FUND MANAGEMENT CORPORATION, JUNIPER INCOME FUND, JUNIPER EQUITY GROWTH FUND AND ROY BROWN (a.k.a. ROY BROWN-RODRIGUES)

TORONTO – The Commission issued an Order in the above named matter which provides that the Hearing is adjourned on a peremptory basis and shall continue on April 4, 5, 11, 12, 13 and 16, 2012.

A copy of the Order dated February 27, 2012 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Franklin Templeton Investments Corp. et al.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from requirements contained in paragraphs 2.5(2)(a) and 2.5(2)(c) of National Instrument 81-102 Mutual Funds – Top Funds permitted to invest up to 10% of net assets, in aggregate, in securities of mutual funds governed by the laws of Luxembourg that are sub-funds of an affiliate and managed by the same manager – Relief subject to certain conditions – Top Funds are required to divest if laws applicable to Luxembourg mutual funds cease to be materially consistent with Part 2 of NI 81-102.

Applicable Legislative Provisions

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

February 21, 2012

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

AND

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

AND

IN THE MATTER OF
FRANKLIN TEMPLETON INVESTMENTS CORP. (the "Manager"), QUOTENTIAL BALANCED GROWTH PORTFOLIO, QUOTENTIAL BALANCED GROWTH CORPORATE CLASS PORTFOLIO, QUOTENTIAL BALANCED INCOME PORTFOLIO, QUOTENTIAL BALANCED INCOME CORPORATE CLASS PORTFOLIO, QUOTENTIAL CANADIAN GROWTH PORTFOLIO, QUOTENTIAL CANADIAN GROWTH CORPORATE CLASS PORTFOLIO, QUOTENTIAL DIVERSIFIED INCOME PORTFOLIO, QUOTENTIAL DIVERSIFIED INCOME CORPORATE CLASS PORTFOLIO, QUOTENTIAL GLOBAL BALANCED PORTFOLIO, QUOTENTIAL GLOBAL BALANCED CORPORATE CLASS PORTFOLIO, QUOTENTIAL GLOBAL GROWTH PORTFOLIO, QUOTENTIAL GLOBAL GROWTH CORPORATE CLASS PORTFOLIO, QUOTENTIAL GROWTH PORTFOLIO, QUOTENTIAL GROWTH CORPORATE CLASS PORTFOLIO, QUOTENTIAL MAXIMUM GROWTH PORTFOLIO, QUOTENTIAL MAXIMUM GROWTH CORPORATE CLASS PORTFOLIO, FRANKLIN TEMPLETON GLOBAL BLEND FUND, FRANKLIN TEMPLETON GLOBAL BLEND CORPORATE CLASS AND WELLINGTON WEST FRANKLIN TEMPLETON BALANCED RETIREMENT INCOME FUND (the "Existing Top Funds")

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the "Application") from the Manager and the Existing Top Funds (the "Filers") for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "Legislation") exempting the Existing Top Funds and other top funds managed by FTIC after the date of this Decision that invest a portion of their assets in global/international equities or in foreign fixed income by investing in underlying funds with a global/international equity mandate or a foreign fixed income mandate (which together with the Existing Top Funds are referred to collectively as the "Top Funds") from:

(i) the prohibition contained in paragraph 2.5(2)(a) of National Instrument 81-102 *Mutual Funds* (NI 81-102) against a mutual fund investing in another mutual fund that is not subject to NI 81-102 and National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101); and

(ii) the prohibition contained in paragraph 2.5(2)(c) of NI 81-102 against a mutual fund investing in another mutual fund's securities where those securities are not qualified for distribution in the local jurisdiction (together with paragraph (i) above, the "Exemption Sought")

to enable each Top Fund to invest up to 10 per cent of its net assets, taken at market value at the time of the investment, in aggregate, in SICAV Funds (as defined below) managed by an affiliate.

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

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

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

Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

Interpretation

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

"Franklin Templeton Investments" means Franklin Resources, Inc. and its subsidiaries.

"FTIF" means Franklin Templeton Investment Funds, an umbrella SICAV (as defined below) with UCITS status (as defined below) under the laws of Luxembourg.

"SICAV" means Société d'Investissment à Capital Variable, an open-end investment company, governed by the laws of Luxembourg.

"SICAV Funds" means each of the existing sub-funds of FTIF and other similar FTIF sub-funds established in the future under FTIF.

"UCITS" means Undertaking for Collective Investment in Transferable Securities and refers to the investment funds authorized by the European Union as investment funds suitable to be distributed in more than one country of Europe.

Representations

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

1. The Manager is a corporation existing under the laws of Ontario, having its head office in Toronto, Ontario. The Manager is registered as an investment fund manager in Ontario, and as a portfolio manager and mutual fund dealer in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador and Yukon.

2. The Manager is a wholly-owned subsidiary of Templeton Worldwide, Inc., a Delaware corporation, which is a direct wholly-owned subsidiary of Franklin Resources, Inc. ("FRI"). FRI is a global investment management organization operating as Franklin Templeton Investments. Franklin Templeton Investments provides global and domestic investment management solutions for institutional and retail clients managed by its Franklin, Templeton, Mutual Series, Bissett and Fiduciary Trust investment teams. In addition to Canada, FRI and its subsidiaries maintain offices in 30 other countries.

3. The Manager is the manager of the Existing Top Funds, each complying with NI 81-102 and having a simplified prospectus and annual information form prepared in accordance with NI 81-101.

4. The Manager and the Top Funds are not in default of securities legislation in any Canadian jurisdiction.

5. Each of the promoters, portfolio advisors and principal distributors of the SICAV Funds is or will be an indirect wholly-owned subsidiary of FRI.

6. The SICAV Funds, are distributed in several European countries, pursuant to the European passport implemented by the European Union regulations of collective investment schemes, known as the UCITS Directives (*Undertaking for Collective Investment in Transferable Securities*) which simplify the cross-border registration/ distribution of UCITS in more than one country provided the UCITS Directives are followed. As SICAVs, organized under Part I of the Luxembourg law on undertakings for collective investment vehicles, the Underlying Funds qualify as UCITS.

7. As of June 30, 2010, FTIF managed approximately USD 149.4 billion.

8. The Top Funds use or will use a "fund on fund" structure in allocating their assets among underlying funds managed by the Manager in order to diversify by asset class, investment style, geography, sector weighting and market capitalization with the goal of matching a variety of investment goals and risk tolerance levels.

9. The investment strategies of the Top Funds stipulate or will stipulate that each may invest a portion of its assets in global/international equities and/or in foreign fixed income, which the Top Funds do or will do by investing in underlying funds with a global/international equity mandate and/or with a foreign fixed income mandate.

10. Under normal market conditions, Quotential Balanced Growth Portfolio and Quotential Balanced Growth Corporate Class Portfolio each have an optimal asset mix of 30-50% fixed income and 50-70% equities. Up to 60% of each portfolio may be invested in foreign securities.

11. Portfolio each have an optimal asset mix of 50-70% fixed income and 30-50% equities. Up to 50% of each portfolio may be invested in foreign securities.

12. Under normal market conditions, Quotential Canadian Growth Portfolio and Quotential Canadian Growth Corporate Class Portfolio each have an optimal asset mix of 90-100% Canadian equities and 0-10% fixed income. Up to 10% of each portfolio may be invested in foreign securities.

13. Under normal market conditions, Quotential Diversified Income Portfolio and Quotential Diversified Income Corporate Class Portfolio each have an optimal asset mix of 70-90% fixed income and 10-30% equities. Up to 40% of each portfolio may be invested in foreign securities.

14. Under normal market conditions, Quotential Global Balanced Portfolio and Quotential Global Balanced Corporate Class Portfolio each have an optimal asset mix of 30-50% fixed income and 50-70% equities. 60-100% of each portfolio may be invested in foreign securities.

15. Under normal market conditions, Quotential Global Growth Portfolio and Quotential Global Growth Corporate Class Portfolio each have an optimal asset mix of 90-100% equities and 0-10% fixed income. 90-100% of each portfolio may be invested in foreign securities.

16. Under normal market conditions, Quotential Growth Portfolio and Quotential Growth Corporate Class Portfolio each have an optimal asset mix of 10-30% fixed income and 70-90% equities. 20-70% of each portfolio may be invested in foreign securities.

17. Under normal market conditions, Quotential Maximum Growth Portfolio and Quotential Maximum Growth Corporate Class Portfolio each have an optimal asset mix of 90-100% equities and 0-10% fixed income. 50-100% of each portfolio may be invested in foreign securities.

18. Under normal market conditions, the optimal asset mix for Franklin Templeton Global Blend Fund and Franklin Templeton Global Blend Corporate Class is 45-65% global/international equities and 35-55% fixed income.

19. Section 2.5 of NI 81-102 would permit the Top Funds to invest in the SICAV Funds but for the fact that the SICAV Funds are non-Canadian funds that are not governed by NI 81-101 and NI 81-102.

20. The SICAV Funds are conventional mutual funds and would not be considered hedge funds. None of the SICAV Funds may invest more than 10% of their respective net assets in other mutual funds. An FTIF prospectus has been filed with and approved by the Luxembourg financial sector regulator, *Commission de Surveillance du Secteur Financier*, which contains disclosure regarding FTIF.

21. Adding the SICAV Funds to the available investment options for the Top Funds would provide the Top Funds with a better ability to actively manage their investments by providing greater opportunities for diversification according to asset class, investment style, geography, sector weighting, duration and market capitalization. Investing in the SICAV Funds would also allow each Top Fund to better capitalize on global economic trends and respond to market conditions.

22. The SICAV Funds are low-cost mutual funds whose investment objectives and strategies make them suitable investment options for the Top Funds. The SICAV Funds are managed by portfolio managers within the Franklin Templeton Investments organization, and accordingly, the Manager will benefit from understanding their investments and the management styles of the portfolio managers, which understanding will benefit the Top Funds.

23. The Filers believe that it is in the best interests of the Top Funds for investments to be made in the SICAV Funds in order to obtain or increase exposure to geographic regions, asset classes, sectors, durations and/or investment styles not otherwise available to the Top Funds in the FTIC fund family.

24. Due to the limited market in Canada for equity and fixed income funds with a narrower or more specific investment mandate, along with the considerable costs and time involved in launching mutual funds, it would not be viable to launch Canadian equivalents of many of the SICAV Funds.

25. The Manager's ability to access the niche asset classes available through the SICAV Funds gives it a better opportunity to enhance return and manage risk.

26. The investments by the Top Funds in the SICAV Funds are proposed to allow the Top Funds to better achieve their investment objectives by investing, to a limited extent, in unique, suitable and professionally managed lower-cost mutual funds, where the investment style and approach are known to the manager of the Top Funds.

27. The Top Funds would otherwise comply fully with section 2.5 of NI 81-102 in investing in the SICAV Funds and provide all disclosure mandated for mutual funds investing in other mutual funds.

Decision

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

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

(A) The SICAV Funds qualify as UCITS and are distributed in accordance with the UCITS directives, which subject the

SICAV Funds to investment restrictions and practices that are substantially similar to those that govern the Top Funds;

(B) The investment of the Top Funds in the SICAV Funds otherwise complies with section 2.5 of NI 81-102 and the Top Funds provide the disclosure contemplated for fund of fund investments in NI 81-101. Specifically, the investment by the Top Funds in the SICAV Funds is disclosed in their simplified prospectus;

(C) A Top Fund will not invest in a SICAV Fund if, immediately after the investment, more than 10 per cent of its net assets, taken at market value at the time of the investment, would consist of investments in SICAV Funds; and

(D) The Top Funds shall not acquire any additional securities of the SICAV Funds and shall dispose of the securities of the SICAV Funds then held in an orderly and prudent manner, after the date that the laws applicable to the SICAV Funds that are at the date of this decision substantially similar to Part 2 of NI 81-102, change to be materially inconsistent with Part 2 of NI 81-102.

"Darren McKall"
Manager, Investment Funds Branch
Ontario Securities Commission

2.1.2 Dundee Securities Ltd.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from paragraph 13.5(2)(b) of NI 31-103 to permit inter-fund trades between public closed end funds and pooled funds – inter-fund trades will comply with conditions in subsection 6.1(2) of NI 81-107 including IRC approval – trades involving exchange-traded securities are permitted to occur at last sale price as defined in the Universal Market Integrity Rules – relief also subject to pricing and transparency conditions.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.5(2)(b), 15.1.
National Instrument 81-107 Independent Review Committee for Investment Funds, ss. 6.1(2), 6.1(4).

February 15, 2012

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
DUNDEE SECURITIES LTD.
(the "Filer")

AND

IN THE MATTER OF
the EXISTING PUBLIC FUNDS, the
FUTURE PUBLIC FUNDS and the
FUTURE POOLED FUNDS (all as defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Funds (defined below) of which the Filer or an affiliate of the Filer is or will be the manager, for a decision under the securities legislation of the Jurisdiction of the principal regulator ("**Legislation**") for relief from the prohibition contained in paragraph 13.5(2)(b) of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**"NI 31-103**") prohibiting a regis-

tered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as adviser, to purchase or sell securities of any issuer from or to the investment portfolio of an associate of a responsible person or an investment fund for which a responsible person acts as an adviser to permit (the "**Requested Relief**"):

(a) purchases and sales of portfolio securities (each purchase and sale, an "**Inter-Fund Trade**") between Existing Public Funds, Future Public Funds and Future Pooled Funds (collectively, the "**Funds**"); and

(b) a Fund to engage in Inter-Fund Trades of exchange-traded securities (which term shall include Canadian and foreign exchange-traded securities) with another Fund at the last sale price, as defined in the Universal Market Integrity Rules of the Investment Industry Regulatory Organization of Canada, prior to the execution of the trade (the "**Last Sale Price**") or at the closing sale price contemplated by the definition of "current market price of the security" referred to in subparagraph 6.1(1)(a)(i) of National Instrument 81-107 – *Independent Review Committee for Investment Funds* ("**NI 81-107**") on that trading day (the "**Closing Sale Price**").

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* is intended to be relied upon in each of the other provinces and territories of Canada (together with Ontario, the "**Jurisdictions**").

Interpretation

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

"Existing Public Funds" means the existing public non-redeemable investment funds for which the Filer acts as manager and an affiliate of the Filer acts as portfolio adviser.

"Future Funds" means, collectively, the Future Pooled Funds and the Future Public Funds.

"Future Pooled Funds" means the future mutual funds to which National Instrument 81-102 – *Mutual Funds* does not apply, for which the Filer or an affiliate of the Filer will act as manager and/or portfolio adviser.

"Future Public Funds" means the future public non-redeemable investment funds for which the Filer or an affiliate of the Filer will act as manager and/or portfolio adviser.

"Public Funds" means, collectively, the Existing Public Funds and the Future Public Funds.

Representations

1. The Filer is a corporation existing under the laws of the Province of Ontario, is registered in the categories of investment dealer and investment fund manager with the Ontario Securities Commission, as an investment dealer and derivatives dealer with the Quebec Autorité des Marchés Financiers, as an investment dealer with the securities commissions of each of the other provinces of Canada and as a dealer member of the Investment Industry Regulatory Organization of Canada. The Filer is not in default of securities legislation in any of the Jurisdictions. The head office of the Filer is located in Ontario.

2. The Filer believes that because of the various investment objectives and investment strategies utilized by the Funds, it may be appropriate for different investment portfolios to acquire or dispose of the same securities through the same trading system. While NI 81-107 has authorized certain Inter-Fund Trades between Public Funds managed by the same manager, the Filer has determined that there are significant benefits to be achieved by the Public Funds by (i) expanding the potential counterparties to include Future Pooled Funds and (ii) permitting exchange-traded securities to be Inter-Fund Traded at the Last Sale Price in the appropriate circumstances.

3. Each Existing Public Fund is currently advised by Ned Goodman Investment Counsel Limited ("**NGICL**"), an affiliate of the Filer that is registered in the categories of exempt market dealer and portfolio manager in each of the Jurisdictions and in the category of investment fund manager with the Ontario Securities Commission. NGICL is not in default of securities legislation in any of the Jurisdictions.

4. Each Public Fund:

   (a) that is an Existing Public Fund is a limited partnership formed under the laws of Ontario and for which the Filer acts as manager;

   (b) that is a Future Public Fund will be a trust, limited partnership or a corporation established under the laws of Canada or one of the provinces or territories of Canada, as applicable, for which the Filer or an affiliate of the Filer will act as manager;

(c) issues or will issue securities that are or will be qualified for distribution in each of the Jurisdictions pursuant to a prospectus and filed in accordance with the securities legislation of the Jurisdictions;

(d) is or will be advised by the Filer or NGICL or another affiliate; and

(e) has established, for the Existing Public Funds, and will establish, for the Future Public Funds, an independent review committee ("**IRC**") in accordance with the provisions of NI 81-107.

5. Each Pooled Fund:

(a) will offer securities in one or more of the Jurisdictions that are exempt from prospectus requirements in such Jurisdictions;

(b) will not be a reporting issuer;

(c) will have the Filer or an affiliate of the Filer act as its manager;

(d) will be advised by the Filer or NGICL or another affiliate; and

(e) will establish an IRC in accordance with the requirements of NI 81-107, the mandate of which will include the approval of Inter-Fund Trades.

6. The Funds are not in default of securities legislation in any Jurisdiction.

7. At the time of an Inter-Fund Trade, the Filer (or its affiliate) will have in place policies and procedures applicable to Inter-Fund Trades between Funds.

8. When a Filer, or an affiliate of a Filer, engages in an Inter-Fund Trade which involves the purchase and sale of securities between Funds, it will generally follow the following procedures or other procedures approved by the applicable IRC:

(a) the Filer (or affiliate of the Filer), as portfolio manager, will deliver the trade instructions in respect of a purchase or sale of a portfolio security by a Fund (Portfolio A) to a trader on a trading desk with a registered dealer;

(b) the Filer (or affiliate of the Filer), as portfolio manager, will deliver the trade instructions in respect of a purchase or sale of a portfolio security by another Fund (Portfolio B) to a trader on a trading desk with a registered dealer;

(c) the trader on the trading desk will be required to execute the trade on a timely basis as an Inter-Fund Trade between Portfolio A of the relevant Fund on the one hand, and Portfolio B of the other Fund on the other hand, at the Last Sale Price of the security prior to execution of the trade or at the Closing Sale Price, as instructed by the portfolio manager, as the case may be; and

(d) the trader on the trading desk will advise the portfolio manager for Portfolio A and Portfolio B of the price at which the Inter-Fund Trade occurred.

9. The Filer cannot rely on the exemptions in subsection 6.1(4) of NI 81-107 to engage in Inter-Fund Trades unless the parties to the Inter-Fund Trade are both reporting issuers and the Inter-Fund Trade occurs at the current market price which, in the case of exchange-traded securities, includes the Closing Sale Price but not the Last Sale Price.

10. The Filer has determined that it would be in the best interests of the Funds to receive the Requested Relief.

Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted provided that:

(a) the Inter-Fund Trade is consistent with the investment objectives of the Funds;

(b) the Filer refers the Inter-Fund Trade to the IRC of the Funds in the manner contemplated by section 5.1 of NI 81-107 and the Filer complies with section 5.4 of NI 81-107 in respect of any standing instructions an IRC provides in connection with the Inter-Fund Trade;

(c) the IRC of each Fund has approved the Inter-Fund Trade in accordance with the terms of subsection 5.2(2) of NI 81-107; and

(d) for exchange-traded securities, the Inter-Fund Trade is executed at the Last Sale Price or the Closing Sale Price of the security and the Inter-Fund Trade complies with paragraphs (c), (d), (f) and (g) of subsection 6.1(2) of NI 81-107; and

(e) for all other securities, the Inter-Fund Trade complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107.

"Sonny Randhawa"
Manager, Investment Funds Branch
Ontario Securities Commission

2.1.3 Investors Tactical Asset Allocation Fund et al.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of mutual fund mergers – approval required because mergers do not meet the criteria for pre-approval – differences in investment objectives – some mergers will not occur on a tax-deferred basis – liquidation of the portfolio assets of some terminating funds because they are not acceptable to the portfolio advisor of the continuing funds – Terminating funds' securityholders provided with timely and adequate disclosure regarding the merger and prospectus-level disclosure regarding the continuing fund.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 5.5(1)(b), 5.6(1)(a), 5.6(1)(b), 5.6(1)(d).

December 15, 2011

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

AND

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

AND

IN THE MATTER OF THE MERGERS OF
INVESTORS TACTICAL ASSET ALLOCATION FUND
INVESTORS CANADIAN DIVIDEND GROWTH FUND
INVESTORS SUMMA GLOBAL ENVIRONMENTAL LEADERS FUND
INVESTORS SUMMA GLOBAL ENVIRONMENTAL LEADERS CLASS
INVESTORS RETIREMENT HIGH GROWTH PORTFOLIO
INVESTORS WORLD GROWTH PORTFOLIO
(the "Terminating Funds")

INTO

INVESTORS GLOBAL DIVIDEND FUND
INVESTORS CANADIAN EQUITY INCOME FUND
INVESTORS SUMMA GLOBAL SRI FUND
INVESTORS SUMMA GLOBAL SRI CLASS
ALTO AGGRESSIVE CANADA FOCUS PORTFOLIO
ALTO AGGRESSIVE PORTFOLIO
(the "Continuing Funds" and collectively with
the Terminating Funds referred to as the "Funds")

AND

IN THE MATTER OF
I.G. INVESTMENT MANAGEMENT, LTD.
(referred to as the "Investors Group" and
collectively with the Funds referred to the "Filers")

DECISION

Background

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

5.5(1)(b) of National Instrument 81-102 *Mutual Funds* ("NI 81-102") of the Mergers of the Terminating Funds into the applicable Continuing Funds (as defined below in paragraph number 6).

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

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

(b) the Filers have provided notice that section 4.7(1) of Multi-Lateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Nunavut and the North West Territories; 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

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

- Investors Tactical Asset Allocation Fund, Investors Global Dividend Fund, Investors Canadian Dividend Growth Fund, Investors Canadian Equity Income Fund, Investors Summa Global Environmental Leaders Fund, Investors Summa Global SRI Fund, Investors Retirement High Growth Portfolio, Investors World Growth Portfolio, Alto Aggressive Canada Focus Portfolio and Alto Aggressive Portfolio are herein collectively referred to as the "Unit Trust Funds";

- Investors Summa Global Environmental Leaders Class and Investors Summa Global SRI Class are herein collectively referred to as the "Corporate Class Funds";

- Investors Retirement High Growth Portfolio, Investors World Growth Portfolio, Alto Aggressive Canada Focus Portfolio and Alto Aggressive Portfolio are herein collectively referred to as the "Portfolio Funds".

Representations

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

1. Investors Group is a corporation continued under the laws of Ontario. It is the trustee and manager of the Unit Trust Funds and is the manager of the Corporate Class Funds. It is registered as a portfolio manager in Manitoba, Ontario, and Quebec and has an application pending for registration as an investment fund manager in Manitoba. It is also registered as an advisor under the Commodity Futures Act in Manitoba. The head office of Investors Group is in Winnipeg, Manitoba and, accordingly, Manitoba is the principal regulator. Investors Group is not in default of any of the requirements of securities legislation of any of the provinces and territories in Canada.

2. Investors Group Corporate Class Inc. (the "Corporation") is the issuer of the Corporate Class Funds.

3. All of the Funds are open-end mutual funds continued under a Master Declaration of Trust under the laws of Manitoba (in the case of the Unit Trust Funds), or governed by the *Canada Business Corporations Act* (the "CBCA") (in the case of the Corporate Class Funds).

4. All of the Funds are reporting issuers under the Legislation in each Jurisdiction and are not on the list of defaulting reporting issuers maintained under the Legislation in each Jurisdiction, and are not in default of any of the requirements of the securities Legislation of any of the provinces and territories of Canada. The securities of the Funds are qualified for distribution in each of the Jurisdictions pursuant to their own separate simplified prospectuses and annual information forms for the Unit Trust Funds and Corporate Class Funds, respectively, each dated June 30, 2011, as amended (referred to collectively as the "Prospectuses").

5. Each Unit Trust Fund issues three series of units to retail purchasers. Each Corporate Class Fund issues two series of shares to retail purchasers. A Fund Facts document as prescribed by Form 81-101F3 (the "Fund Facts") has been filed for all of the retail series of units and shares issued by the Unit Trust Funds and the Corporate Class Funds, respectively, together with their Prospectuses as described in paragraph number 4.

6. Investors Group proposes that each Terminating Fund be merged into a corresponding Continuing Fund (each a "Merger" and collectively the "Mergers") as follows:

Merging Fund		Continuing Fund
Investors Tactical Asset Allocation Fund	*to merge into*	Investors Global Dividend Fund
Investors Canadian Dividend Growth Fund	*to merge into*	Investors Canadian Equity Income Fund
Investors Summa Global Environmental Leaders Fund	*to merge into*	Investors Summa Global SRI Fund
Investors Summa Global Environmental Leaders Class	*to merge into*	Investors Summa Global SRI Class
Investors Retirement High Growth Portfolio	*to merge into*	Alto Aggressive Canada Focus Portfolio
Investors World Growth Portfolio	*to merge into*	Alto Aggressive Portfolio

7. Meetings of the securityholders of the Terminating Funds are being convened on or about January 23, 2012, to approve the Mergers. A meeting of the securityholders of Investors Summa Global SRI Class (the "Continuing Corporate Class Fund") is also being convened as required by the provisions of the CBCA to approve changes to the Corporation's articles of incorporation in order to facilitate the Merger with its corresponding Terminating Fund. A notice of meeting, a management information circular and a proxy in connection with the meetings of securityholders of the Terminating Funds and the Continuing Corporate Class Fund (collectively, the "Meeting Materials"), will be mailed to securityholders of the Terminating Funds and the Continuing Corporate Class Fund, commencing on or after December 5, 2011, and will be filed via SEDAR.

8. Investors Group has determined that the Mergers will not be a material change to the Continuing Funds because they will not entail a change in the business, operations or affairs of the Continuing Funds that would be considered important by a reasonable investor in determining whether to purchase or continue to hold securities of the Continuing Funds. The meeting of the Continuing Corporate Class Fund is to approve an amendment to the articles of incorporation of the Corporation to facilitate its Merger pursuant to the CBCA and is not being convened because it is a material change for that Continuing Fund.

9. The tax implications of the Mergers, as well as the material differences between each Terminating Fund and the corresponding Continuing Fund, will be described in the Meeting Materials so securityholders of the Terminating Funds will be fully informed when considering whether to approve the Merger of their Fund at the meeting of their Fund. Accordingly, implicit in the approval by securityholders of the Mergers is the acceptance by the securityholders of the Terminating Funds of the proposed tax treatment and their adoption of the investment objective, strategy and fee structure of the corresponding Continuing Fund.

10. Amendments to the Prospectuses and Fund Facts of each retail series of each Terminating Fund, and a material change report, have been filed on SEDAR with respect to the Mergers as required by the Legislation of the Jurisdictions.

11. The Terminating Funds will merge into the Continuing Funds on or about the close of business on February 3, 2012, and the Continuing Funds will continue as publicly offered open-end mutual funds.

12. The Terminating Funds will be wound up as soon as reasonably possible following the Mergers.

13. No sales charges will be payable in connection with the acquisition by the Continuing Funds of the investment portfolios of the Terminating Funds.

14. Securityholders of the Terminating Funds will continue to have the right to redeem securities of the Terminating Funds for cash at any time up to the close of business on the business day immediately before the effective date of the Mergers.

15. Other than circumstances in which the securities regulatory authority of a Jurisdiction has expressly exempted the Funds, the Funds follow the standard investment restrictions and practices established under the Legislation of the Jurisdictions.

16. The net asset values of each series of the Funds are calculated on a daily basis on each day that Investors Group is open for business.

17. Although the investment portfolios held by the Continuing Funds and their corresponding Terminating Funds may be similar, their fundamental investment objectives and /or strategies are not substantially the same.

18. The portfolio securities and other assets of the Terminating Funds to be acquired by the Continuing Funds arising from the Mergers are currently (or will be) acceptable prior to the effective date of the Mergers to the portfolio advisor of the Continuing Funds other than the Mergers of the Portfolio Funds. The Mergers of the Portfolio Funds will entail the liquidation of the portfolio assets of the Terminating Funds (being the underlying funds into which they passively invest) because they are different than those held by their corresponding Continuing Funds.

19. Investors Group will pay for all costs associated with the meetings, including legal, proxy solicitation, printing, and mailing expenses, as well as any brokerage transaction fees associated with any Merger related trades referred to in paragraph 18, and regulatory fees.

20. The fee structures of the Terminating Funds is generally the same as the fee structures of the Continuing Funds, and in some instances the annual management fee and administration fees of the Continuing Funds are lower than that of the Terminating Funds or will be reduced to match those of the Terminating Funds upon completion of the Mergers.

21. Investors Group will send the most recent Fund Facts of the Continuing Funds to securityholders of the Terminating Funds as permitted under paragraph 5.6(1)(f)(ii) of NI 81-102. In addition, securityholders of the Terminating Funds and the Continuing Corporate Class Fund will be sent a management information circular fully describing the Mergers, which prominently discloses that the most recent Prospectuses, audited annual and un-audited interim financial statements of the Continuing Funds (if available) can be obtained by accessing the same at the Investors Group website or the SEDAR website, or requesting the same from Investors Group by toll-free number, or by contacting their servicing advisor at Investors Group or an affiliate of Investors Group ("Investors Group Consultant"), all as described in the Management Information Circular.

22. Approval of the Mergers is required because one or more of the Mergers does not satisfy all of the criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102 in the following ways:

    (a) contrary to section 5.6(1)(a)(ii), a reasonable person may not consider the Continuing Funds as having substantially similar fundamental investment objectives as the Terminating Funds;

    (b) contrary to section 5.6(1)(b), the Mergers of Investors Tactical Asset Allocation Fund into Investors Global Dividend Fund, and Investors Summa Global Environmental Leaders Fund into Investors Summa Global SRI Fund, will not occur on a tax-deferred basis as a "qualifying exchange" within the meaning of section 132.2 of the Income Tax Act (Canada) ("ITA") or a tax-deferred transaction under sub-section 85(1), 85.1(1), 86(1) or 87(1) of the ITA; and

    (c) contrary to section 5.6(1)(d)(ii) the Mergers of the Portfolio Funds will entail the liquidation of the portfolio assets of the Terminating Funds (being the underlying funds into which they passively invest) because they are not acceptable to the portfolio advisor of the Continuing Portfolio Funds (which passively invest in different underlying funds).

23. Except as noted above, the Mergers will otherwise comply with all of the other criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102.

24. The Mergers will increase operational efficiency by elimination of the duplication in time, effort and costs associated with the audit, board review and other compliance requirements arising from having multiple mandates.

25. It is anticipated that securityholders of the Terminating Funds will benefit from the potential for more stable and improved future performance of their investments after the Mergers due to the broader investment mandate and the larger asset size of the Continuing Funds after the Mergers which allow the portfolio advisors to better manage their assets through greater diversification.

26. Investors Group has referred the Mergers to the Independent Review Committee of the Funds (the "IRC") for its review. The IRC has been established as required by NI 81-107 – Fund Governance ("NI 81-107") and consists of individuals who are not in any way related to the Investors Group or its affiliates. The IRC reviews and makes recommendations on conflicts of interest matters for the purposes described in NI 81-107 including fund mergers (if necessary). After due consideration, the IRC has concluded that the Mergers achieve a fair and reasonable result for each of the Funds.

Decision

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

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

1. (a) the management information circular sent to securityholders in connection with the Mergers provides sufficient information about the Mergers to permit securityholders to make an informed decision about the Mergers;

   (b) the management information circular sent to securityholders in connection with the Mergers prominently discloses that securityholders can obtain the most recent prospectuses, interim and annual financial statements (if applicable) of the Continuing Funds by accessing the SEDAR website at www.sedar.com. by accessing the Investors Group website, by calling Investors Group's toll-free telephone number, or by contacting an Investors Group Consultant;

   (c) the Continuing Funds and the Terminating Funds with respect to the Mergers have an unqualified audit report in respect of their last completed financial period; and

   (d) the Meeting Materials sent to securityholders of the Terminating Funds in respect of the Mergers include the applicable Fund Facts of the Continuing Funds.

"Robert Bouchard"
Director and Chief Administration Officer
The Manitoba Securities Commission

2.1.4 Myriad Group AG

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.

Ontario Securities Commission Rule 62-504 Take-Over Bids and Issuer Bids, section 8.1 – Offeror issuer needs relief from certain disclosure requirements for the takeover bid circular – The issuer is a foreign issuer and is not a reporting issuer in Canada; the issuer is not required under its home jurisdiction's laws to prepare certain financial statements; the bid circular will include the financial statements the issuer is required to prepare under the laws of its home jurisdiction; if the bid is successful, the issuer will either comply with National Instrument 51-102 Continuous Disclosure Obligations, or will rely on exemptions from NI 51-102 in National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers.

National Instrument 45-102 Resale of Securities, s. 3.1 – Offeror issuer wants relief to rely on s. 2.11 of NI 45-102 in connection with a securities exchange take-over bid despite not being a reporting issuer on the date the securities of the offeree issuer were first taken up under the take-over bid – Due to the definitions of "reporting issuer" and the operation of section 2.11 of NI 45-102, Canadian shareholders will be subject to a four month seasoning period in certain jurisdictions and not in others; all shareholders of the target will receive the same prospectus level disclosure about the offeror in the take-over bid circular; the take-over bid circular will be filed on SEDAR.

Applicable Legislative Provisions

Ontario Securities Commission Rule 62-504 Take-Over Bids and Issuer Bids, s. 8.
National Instrument 45-102 Resale of Securities, s. 3.1.

February 10, 2012

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
MYRIAD GROUP AG
(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):

1. that the requirement to include:

   (a) the Third Quarter Financial Statements (as defined below); and

   (b) the Third Quarter Pro Forma Statements (as defined below);

   not apply (the Financial Statement Relief) in connection with the proposed securities exchange take-over bid (the Offer) by the Filer for all of the issued and outstanding ordinary shares of Synchronica plc (Synchronica); and

2. for an exemption from the prospectus requirement (the First Trade Relief) as it relates to the first trade of ordinary shares of the Filer (the Myriad Shares) distributed in connection with the Offer (including those that

may be distributed pursuant to any compulsory acquisition described in the Circular) in each of the Non-Reporting Issuer Jurisdictions (as defined below).

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Quebec, Newfoundland and Labrador, Prince Edward Island, Nova Scotia, New Brunswick, Nunavut, Yukon and the Northwest Territories; 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* or MI 11-102 have the same meanings if used in this decision, unless otherwise defined herein.

Representations

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

1. the Filer is a Swiss joint stock company incorporated under Swiss law and its head office, principal place of business and legal address is Selnaustrasse 28, 8001 Zurich, Switzerland; the Filer is a software company that provides software solutions and services for the mobile phone and consumer electronics industries;

2. the Filer's share capital is comprised of 49,140,515 registered shares with a nominal value of CHF 0.10 each;

3. the Myriad Shares are listed on the Main Standard of SIX Swiss Exchange under the symbol "MYRN";

4. the Filer is not currently a reporting issuer under the securities legislation in any jurisdiction; the Filer is not in default of securities legislation in any jurisdiction;

5. as a result of the Offer, and by virtue of the definitions of reporting issuer contained in securities legislation, the Filer will become a reporting issuer (i) in Quebec and Newfoundland and Labrador (the Reporting Issuer Jurisdictions) upon the filing of the Circular (as defined below), and (ii) in British Columbia, upon first taking up and paying for ordinary shares of Synchronica (the Synchronica Shares) under the Offer – the Filer will not become a reporting issuer in the remaining jurisdictions as a result of filing the Circular or any subsequent take-up and payment of Synchronica Shares;

6. Synchronica is a company incorporated under the Companies Act 2006 of England and Wales and its registered office and principal place of business is located at Mount Pleasant House, Lonsdale Gardens, Royal Tunbridge Wells, United Kingdom; Synchronica is a developer of next generation mobile messaging solutions based on open industry standards;

7. Synchronica's share capital consists of ordinary shares without restrictions on transfer of which, based on public information, 158,707,089 Synchronica Shares were issued and outstanding as of November 3, 2011;

8. the Synchronica Shares are admitted for trading on AIM, a market of the London Stock Exchange under the symbol "SYNC" and are also listed and posted for trading on the TSX Venture Exchange under the symbol "SYN";

9. based on publicly available information, we believe that Synchronica has also issued and outstanding the following securities that are convertible or exercisable for Synchronica Shares:

   (a) warrants to acquire an aggregate of approximately 68,227,656 Synchronica Shares;

   (b) options to acquire approximately 3,587,456 Synchronica Shares; and

   (c) compensation options to acquire approximately 879,000 Synchronica Shares;

   (collectively, the Convertible Securities);

10. Synchronica is a reporting issuer in each of the Provinces of British Columbia, Alberta and Quebec;

11. on January 3, 2012, Synchronica publicly announced that it had received an approach from the Filer regarding a possible offer by the Filer for Synchronica; in accordance with the City Code on Takeovers and Mergers in the United Kingdom (the Code), the Filer must, by no later than 5:00 p.m. (London time) on January 31, 2012, either announce a firm intention to make an offer for Synchronica in accordance with the Code or announce that it does not intend to make an offer (the Announcement);

12. on January 31, 2012, the Filer announced its intention to make the Offer and accordingly, the Filer will be required under the Code to make a formal offer to Synchronica shareholders within 28 days following the date of the Announcement;

13. under the Offer, holders of Synchronica Shares will receive 4.67 Myriad Shares for every 100 Synchronica Shares held, subject to the terms and conditions of the Offer;

14. based on publicly available information regarding Synchronica Shares held by Canadian residents as at January 25, 2012, it is anticipated that, subsequent to the distribution of the Myriad Shares pursuant to the Offer, Canadian residents will own, directly or indirectly, approximately 4-6% of the outstanding Myriad Shares;

15. the Filer intends to distribute a securities exchange take-over bid circular (the Circular) to all of the shareholders of Synchronica which will describe the Offer by the Filer to purchase all of the issued and outstanding Synchronica Shares;

16. the Offer will only be made to holders of Synchronica Shares and will provide that each shareholder of Synchronica will be entitled to receive consideration in the form of Myriad Shares for Synchronica Shares, subject to the terms and conditions of the Offer; the Filer will be obliged under UK takeover rules to make an offer in due course to purchase any Convertible Securities which are in the money;

17. the Filer will commence the Offer by mailing the Circular, together with all related documents, to holders of Synchronica Shares whose last address on the books of Synchronica is shown as being in Canada, which Circular will describe, among other things, the terms and conditions of the Offer – the Filer will also file the Circular on the System for Electronic Document Analysis and Retrieval (SEDAR);

18. since the consideration that will be offered for the purchase of Synchronica Shares is Myriad Shares, the form requirements for a take-over bid circular in the Jurisdictions requires the Filer to include in the Circular disclosure as prescribed by the form of prospectus appropriate for the Filer (collectively, the Form Requirements);

19. pursuant to the Form Requirements, the Filer must include unaudited interim financial statements of the Filer for the period ended September 30, 2011 and the related management's discussion and analysis (the Third Quarter Financial Statements) in the Circular;

20. under applicable Swiss laws, the Filer's most recently completed interim financial statements are for the Filer's six month period ended June 30, 2011 and they have been prepared pursuant to applicable Swiss laws in compliance with International Financial Reporting Standards (IFRS); third quarter financial statements are not required in Switzerland; therefore, the Filer has not prepared third quarter financial statements for dissemination to the public and is not in a position to include interim financial statements and management's discussion and analysis for the Filer's third quarter, or any other quarterly period, in the Circular;

21. as of the date hereof, the Filer is a designated foreign issuer as such term is defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107) and National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*, and it is anticipated that the Filer will continue to be a designated foreign issuer subsequent to the distribution of Myriad Shares pursuant to the Offer;

22. the Offer constitutes a "significant probable acquisition of a business" under the Form Requirements; consequently, pursuant to the Form Requirements, the Filer is also required to include in the Circular the following financial disclosure in connection with the proposed acquisition of Synchronica:

    (a) an unaudited pro forma statement of financial position of the Filer as at September 30, 2011 to give effect to the acquisition of Synchronica as if it had taken place as at September 30, 2011;

(b) an unaudited pro forma income statement of the Filer for (i) the year ended December 31, 2010 and (ii) the nine months ended September 30, 2011, each to give effect to the acquisition of Synchronica as if it had taken place on January 1, 2010, being the beginning of the most recently completed financial year of the Filer for which audited financial statements are included in the Circular; and

(c) pro forma earnings per share based on the pro forma statement of income prepared;

(collectively, the Third Quarter Pro Forma Statements);

23. the Circular will contain the following financial statements:

(a) the Filer's audited financial statements for the years ended December 31, 2008, 2009 and 2010 and management's discussion and analysis for the related periods; and

(b) the Filer's unaudited financial statements for the six month period ended June 30, 2011 and management's discussion and analysis for the related period;

(collectively, the Financial Statements);

24. the Circular will also contain the following pro forma statements in connection with the acquisition of Synchronica:

(a) an unaudited pro forma statement of financial position of the Filer as at June 30, 2011 to give effect to the acquisition of Synchronica as if it had taken place as at June 30, 2011;

(b) an unaudited pro forma income statement of the Filer for (i) the year ended December 31, 2010 and (ii) the six months ended June 30, 2011, each to give effect to the acquisition of Synchronica as if it had taken place on January 1, 2010, being the beginning of the most recently completed financial year of the Filer for which audited financial statements are included in the Circular; and

(c) pro forma earnings per share based on the pro forma statement of income prepared;

(collectively, the Pro Forma Statements);

25. the distribution of the Myriad Shares will be exempt from the prospectus requirements in all jurisdictions pursuant to exemptions under National Instrument 45-106 *Prospectus and Registration Exemptions*;

26. the first trade of Myriad Shares issued to shareholders of Synchronica in the jurisdictions will be subject to Section 2.6 of National Instrument 45-102 *Resale of Securities* (NI 45-102), with the result that such Myriad Shares will be subject to a four-month seasoning period following Myriad becoming a reporting issuer, unless an exemption from the requirements of that section is available;

27. pursuant to Section 2.11 of NI 45-102, first trades that would otherwise be subject to Section 2.6 of NI 45-102 are exempt from the seasoning period provided that, among other things, a securities exchange take-over bid circular relating to the distribution of the security was filed by the offeror on SEDAR and the offeror was a reporting issuer on the date the securities of the offeree issuer were first taken up under the bid;

28. the differences between the definitions of "reporting issuer" in the jurisdictions and the operation of Section 2.11 of NI 45-102 will result in: (i) shareholders of Synchronica in the Reporting Issuer Jurisdictions receiving Myriad Shares that are freely-tradeable (however, shareholders of Synchronica in British Columbia will only receive Myriad Shares that are freely-tradeable if Myriad takes up and pays for the Synchronica Shares it first takes up under the Offer on the same day, which is not expected to occur) and (ii) shareholders of Synchronica in the remaining jurisdictions receiving Myriad Shares that are subject to a four month seasoning period; and

29. following the completion of the Offer, the financial reports, proxy materials and other materials currently distributed to the holders of Myriad Shares pursuant to the securities laws of Switzerland will be provided to the holders of Myriad Shares resident in Canada in accordance with applicable securities laws in the jurisdictions.

Decisions

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

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

1. the Financial Statement Relief is granted, provided that the Circular includes:

   (a) the Financial Statements, and

   (b) the Pro Forma Statements; and

2. the First Trade Relief is granted provided that such trades are not a control distribution as defined in the Legislation.

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

2.1.5 Performance Capital Limited et al.

Headnote

Relief granted from the mutual fund conflict of interest investment restrictions of the Securities Act (Ontario) to permit a pooled fund to employ a fund-on-fund structure and invest in underlying funds under common management.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 111(2)(b), 111(2)(c)(i), 111(2)(c)(ii), 111(3), 113, 117.
National Instrument 31-103 Registration Requirements and Exemptions, ss. 13.5(2)(a), 13.5(2)(b), 15.1.
National Instrument 81-106 Investment Fund Continuous Disclosure, s. 17.1.

February 24, 2012

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

AND

IN THE MATTER OF
PERFORMANCE CAPITAL LIMITED
(the Manager)

AND

PERFORMANCE DIVERSIFIED FUND
PERFORMANCE GROWTH FUND
(the Initial Top Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Manager, on its behalf and on behalf of the Initial Top Funds and any other investment fund which is not a reporting issuer under the *Securities Act* (Ontario) (the **Act**) established, advised or managed by the Manager after the date hereof (the **Future Top Funds** and, together with the Initial Top Funds, the **Top Funds**), for a decision under the securities legislation of the Jurisdiction (the **Legislation**), exempting the Manager and the Top Funds from paragraph 111(2)(b) and subsection 111(3) of the Act which prohibit the following:

(a) a mutual fund from knowingly making an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder; and

(b) a mutual fund, its management company or its distribution company from knowingly holding an investment described in paragraph (a) above

(collectively, the **Requested Relief**).

Interpretation

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

Representations

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

Manager

1. The Manager is a corporation incorporated under the laws of the Province of Ontario and has its head office in Toronto, Ontario.

2. The Manager is registered as an investment fund manager, portfolio manager and exempt market dealer in Ontario.

3. Pursuant to separate management agreements (the **Management Agreements**), the Manager is the investment fund manager and portfolio manager of each of the Initial Top Funds, will be the investment fund manager and portfolio manager of the Future Top Funds, is or will be responsible for managing the assets of the Top Funds, has or will have complete discretion to invest and reinvest or to arrange for the investment and reinvestment of the Top Funds' assets, and is or will be responsible for executing or arranging for the execution of all portfolio transactions in respect of the Top Funds.

4. Pursuant to the Management Agreements, the Manager has the power and authority to appoint a portfolio manager to manage the investment portfolios of the Initial Top Funds and will have the power and authority to appoint portfolio managers to manage the investment portfolios of the Future Top Funds.

5. The Manager is not a reporting issuer in any jurisdiction of Canada and, except as noted in paragraph 14 below, is not in default of securities legislation of any jurisdiction of Canada.

Top Funds

6. Each Initial Top Fund is a limited partnership formed under the laws of Ontario by a declaration of limited partnership.

7. Each Initial Top Fund is, and each Future Top Fund will be, a mutual fund for the purposes of the Act.

8. Securities of each of the Initial Top Funds are, and securities of each of the Future Top Funds will be, sold pursuant to available prospectus exemptions in accordance with National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**).

9. The Initial Top Funds are not reporting issuers under the Act and, except as noted in paragraph 14 below, are not in default of securities legislation of any jurisdiction of Canada. None of the Future Top Funds will be a reporting issuer under the Act.

Fund-on-Fund Structure

10. The Top Funds provide investors with exposure to the investment portfolios of underlying funds (the **Underlying Funds**) and their respective investment strategies. The Top Funds will primarily invest directly in the securities of the Underlying Funds (the **Fund-on-Fund Structure**).

11. Each of the Underlying Funds has, or will have, separate investment objectives, strategies and investment restrictions.

12. Securities of each of the Underlying Funds, are, or will be, sold pursuant to available prospectus exemptions in accordance with NI 45-106.

13. To achieve their investment objectives, each Initial Top Fund invests in Underlying Funds which are managed by various alternative strategy fund managers, thereby creating a diversified portfolio of alternative strategy funds, including many newly established funds in the Canadian marketplace.

14. Through inadvertence, each of the Initial Top Funds currently is, alone or together with the other Initial Top Fund, a substantial security holder of one or more Underlying Funds contrary to the Legislation. The Funds were initially launched as venture capital issuers and were not considered to be subject to paragraph 111(2)(b) and subsection 111(3) of the Act. The inadvertence was noted in OSC's letter dated November 25, 2009. Since then, the Manager has addressed the deficiencies noted in that letter, including requesting relief from paragraph 111(2)(b) and subsection 111(3) of the Act, and has strengthened its internal control systems to ensure future compliance with applicable laws and regulations.

15. The Manager believes that the Fund-on-Fund Structure provides an efficient and cost-effective manner of pursuing portfolio diversification on behalf of the Top Funds, rather than through the direct purchase of securities or the use of managed accounts with the various fund managers (which would yield the same results with greater administrative cost to both the Top Funds and the Underlying Funds' managers). Through investing in the Underlying Funds, the Top Funds will be able to achieve greater diversification at a lower cost than investing directly in the securities held by the applicable Underlying Funds.

16. The Fund-on-Fund Structure will allow investors with smaller investments to have access to a larger variety of investments than would otherwise be available.

17. Investment by the Top Funds in the Underlying Funds will increase the asset base of the Underlying Funds, enabling the Underlying Funds to further diversify their portfolios to the benefit of all their investors. The larger asset base will also benefit investors in the Underlying Funds through achieving favourable pricing and transaction costs on portfolio trades, increased access to investments where there is a minimum subscription or purchase amount, and economies of scale through greater administrative efficiency.

18. Purchasers of securities of a Top Fund may subscribe for securities of the Top Funds pursuant to a subscription agreement (the "**Subscription Agreement**").

19. Prior to the execution of the Subscription Agreement, the purchaser will be provided with a copy of the Top Fund's offering memorandum or, if no offering memorandum is prepared in respect of the Top Fund, will be provided with details about the Top Fund and given disclosure respecting relationships and potential conflicts of interest between the Top Fund and the applicable Underlying Funds.

20. Each of the Top Funds will prepare annual audited financial statements and interim unaudited financial statements in accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure* ("**NI 81-106**") and will otherwise comply with the requirements of NI 81-106 applicable to them. The holdings by a Top Fund of securities of an Underlying Fund will be disclosed in the financial statements of the Top Fund.

21. Securityholders of a Top Fund will receive, on request, a copy of the offering document of the Underlying Funds, if available, and the audited annual financial statements and interim unaudited financial statements of any Underlying Fund in which the Top Fund invests.

22. The amounts invested from time to time in an Underlying Fund by a Top Fund may exceed 20% of the outstanding voting securities of the Underlying Fund. As a result, each Top Fund could, either alone or together with other Top Funds, become a substantial security holder of an Underlying Fund. The Top Funds are, or will be, related mutual funds by virtue of the common management by the Manager.

23. In the absence of the Requested Relief, the Top Funds would be precluded from implementing the Fund-on-Fund Structure due to certain investment restrictions in the Legislation.

24. The actual weightings of the investment by a Top Fund in an Underlying Fund will be reviewed and adjusted by the Manager to ensure that the investment weighting continues to be appropriate for the Top Fund's investment objectives.

25. Any investment made by a Top Fund in an Underlying Fund will be aligned with the investment objectives, investment strategy, risk profile and other principal terms of the Top Fund.

26. A Top Fund's investments in the Underlying Funds represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Top Funds.

Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted provided that:

(a) securities of a Top Fund are distributed in Canada solely pursuant to exemptions in accordance with National Instrument 45-106 *Prospectus and Registration Exemptions*;

(b) the investment by a Top Fund in an Underlying Fund is compatible with the fundamental investment objectives of the Top Fund;

(c) no Top Fund will invest in an Underlying Fund unless the Underlying Fund invests less than 10% of its net assets in other mutual funds other than mutual funds that are money market funds or that issue index participation units;

(d) no management fees or incentive fees are payable by a Top Fund that, to a reasonable person, would duplicate a fee payable by the Underlying Fund for the same service;

(e) no sales fees or redemption fees are payable by a Top Fund in relation to its purchases or redemptions of securities of an Underlying Fund that is managed by the the investment fund manager or the portfolio manager of that Top Fund;

(f) where an Underlying Fund is managed or advised by the same investment fund manager or portfolio manager as the Top Fund, the investment fund manager or portfolio manager, as applicable, does not cause the securities of the Underlying Fund held by a Top Fund to be voted at any meeting of the securityholders of an Underlying Fund, except that a Top Fund may arrange for the securities it holds of an Underlying Fund to be voted by the beneficial holders of securities of the Top Fund;

(g) the offering memorandum (or similar document) of each Top Fund discloses:

(i) that the Top Fund may purchase securities of the Underlying Funds;

(ii) that the Underlying Funds may be managed and/or advised by the same investment fund manager and/or portfolio manager as the Top Funds, as applicable;

(iii) the approximate or maximum percentage of net assets of the Top Fund that will be invested in securities of each Underlying Fund; and

(iv) the process or criteria used to select the Underlying Funds.

"Edward Kerwin"
Commissioner
Ontario Securities Commission

"Judith Robertson"
Commissioner
Ontario Securities Commission

2.1.6 First Defined Portfolio Management Co.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from sections 2.3(f), 2.3(h), 2.5(2)(a) and 2.5(2)(c) of National Instrument 81-102 – Mutual Funds to permit mutual fund to invest in silver and to invest up to 10% of net assets in leveraged ETFs, inverse ETFs, gold ETFs, silver ETFs, leveraged gold ETFs and leveraged silver ETFs traded on Canadian or US stock exchanges, subject to 10% exposure to gold and silver, and certain conditions.

Applicable Legislative Provisions

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

February 29, 2012

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
FIRST DEFINED PORTFOLIO MANAGEMENT CO.
(THE FILER)

DECISION

BACKGROUND

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

(a) an exemption (the **Silver Exemption**) relieving the existing and future mutual funds managed by the Filer or an affiliate of the Filer that are subject to National Instrument 81-102 *Mutual Funds* (NI 81-102), other than money market funds as defined in NI 81-102 (the **Existing Funds** and the **Future Funds**, respectively, together, the **Funds** and individually, a **Fund**), from the prohibitions contained in paragraphs 2.3(f) and 2.3(h) of NI 81-102, to permit each Fund to

(A) purchase and hold silver

(B) purchase and hold a certificate that represents silver that is

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

(ii) of a minimum fineness of 999 parts per 1000;

(iii) held in Canada;

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

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

(**Permitted Silver Certificates**)

(C) purchase, sell or use a specified derivative, the underlying interest of which is silver.

(**Silver Derivatives**, which together with silver and Permitted Silver Certificates are hereinafter referred to as **Silver**)

(b) an exemption (the **ETF Exemption**) relieving the Funds from the prohibitions contained in paragraphs 2.3(h), 2.5(2)(a) and 2.5(2)(c) of NI-81-102, to permit each Fund to purchase and hold securities of

(i) exchange-traded funds (**ETFs**) that use leverage to obtain exposure to no more than +/- 200% of a specified widely-quoted market index (the ETF's **Underlying Index**) on a daily basis (**Leveraged ETFs**);

(ii) ETFs that seek to provide daily results that replicate the daily performance of their Underlying Index by an inverse multiple of 100% (**Inverse ETFs**);

(iii) ETFs that hold gold, permitted gold certificates or specified derivatives of which the underlying interest is gold or permitted gold certificates (**Gold ETFs**);

(iv) ETFs that hold silver, permitted silver certificates or specified derivatives of which the underlying interest is silver or permitted silver certificates (**Silver ETFs**);

(v) ETFs that seek to replicate (i) the performance of gold and/or silver on an unlevered basis; or (ii) the value of a specified derivative the underlying interest of which are gold and/or silver on an unlevered basis (**Gold/Silver ETFs**);

(vi) Gold ETFs that are also Leveraged ETFs, by a multiple of up to 200% (**Leveraged Gold ETFs**); and

(vii) Silver ETFs that are also Leveraged ETFs, by a multiple of up to 200%(**Leveraged Silver ETFs**).

(Leveraged ETFs, Inverse ETFs, Gold ETFs, Silver ETFs, Gold/Silver ETFs, Leveraged Gold ETFs and Leveraged Silver ETFs are referred to collectively in this decision as the **Underlying ETFs**). The Silver Exemption and the ETF Exemption are collectively the **Exemption Sought**.

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

1. the Ontario Securities Commission is the Principal Regulator for this application; and

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

INTERPRETATION

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

REPRESENTATIONS

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

The Filer and the Funds

1. The Filer is a corporation organized under the laws of the province of Nova Scotia and is registered as an investment fund manager and mutual fund dealer in Ontario.

2. The head office of the Filer is located in Ontario.

3. The Filer is the manager of each of the Existing Funds, and the Filer or an affiliate thereof will be the manager of each of the Future Funds.

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

5. Securities of each Existing Fund are, and securities of each Future Fund will be, qualified for distribution in some or all of the provinces and territories of Canada under a simplified prospectus and annual information form prepared in

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

6. Neither the Filer nor any of the Existing Funds is in default of securities legislation in the Jurisdictions.

Investments in Gold and Silver

7. In addition to investing in gold, the Funds propose to have the ability to invest in Silver.

8. Permitting each Fund to invest in Silver will permit the portfolio managers of the Fund additional flexibility to increase gains for the Fund in certain market conditions, which may have otherwise caused the Fund to have significant cash positions and therefore deter from its ability to achieve its investment objective.

9. The Filer believes that the markets in gold and silver are highly liquid, and there are no liquidity concerns with permitting a Fund to invest directly or through permitted derivatives or ETFs which are not mutual funds, up to 10% in total of its net asset value in gold or silver.

10. The Filer believes that the potential volatility or speculative nature of silver (or the equivalent in certificates or specified derivatives of which the underlying interest is silver) is no greater than that of gold, or of equity securities.

11. To obtain exposure to gold or silver indirectly, the Filer intends to use specified derivatives the underlying interest of which is gold or silver and invest in Gold ETFs, Silver ETFs, Leveraged Gold ETFs, Leveraged Silver ETFs and Gold/Silver ETFs (which together with gold, silver, permitted gold certificates and Permitted Silver Certificates are referred to collectively in this decision as **Gold and Silver Products**).

12. If the investment in Gold and Silver Products represents a material change for any Existing Fund, the Filer will comply with the material change reporting obligations for that Fund.

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

The Underlying ETFs

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

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

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

17. Each Inverse ETF will be rebalanced daily to ensure that its performance and exposure to its Underlying Index will not exceed -100% of the corresponding daily performance of its Underlying Index.

18. Each Leveraged Gold ETF and Leveraged Silver ETF will be rebalanced daily to ensure that its performance and exposure to its underlying gold or silver interest will not exceed +200% of the corresponding daily performance of the underlying gold or silver interest.

Investment in the Underlying ETFs and Silver

19. To the extent a Fund intends to rely on the Exemption Sought, the Fund will be permitted in accordance with its investment objectives and investment strategies to invest in Underlying ETFs and Silver.

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

21. But for the ETF Exemption, paragraph 2.5(2)(a) of NI 81-102 would prohibit a Fund from purchasing or holding a security of an Underlying ETF, because the Underlying ETFs are not subject to both NI 81-102 and NI 81-101.

22. But for the ETF Exemption, paragraph 2.5(2)(c) of NI 81-102 would prohibit a Fund from purchasing or holding securities of some Underlying ETFs, because some Underlying ETFs will not be qualified for distribution in the local jurisdiction.

23. But for the Silver Exemption, paragraph 2.3(f) of NI 81-102 would prohibit an investment by a Fund in Silver, because a Fund is prohibited from purchasing a physical commodity other than gold or permitted gold certificates.

24. But for the Silver Exemption, paragraph 2.3(h) of NI 81-102 would prohibit an investment by a Fund in Silver because a Fund is prohibited from purchasing, selling or using a specified derivative the underlying interest of which is a physical commodity other than gold or a specified derivative of which the underlying interest is a physical commodity other than gold.

25. To the extent a Fund has an active investment strategy, an investment by a Fund in securities of an Underlying ETF and/or Silver will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund.

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

DECISION

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

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

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

(b) in addition to (a), if short selling relief has been obtained in respect of a Fund, the Fund may not purchase securities of a Leveraged ETF that tracks the inverse of its Underlying Index by no more than 200% (**Bear ETF**) or sell any securities short if, immediately after the transaction, the aggregate market value of (i) all securities sold short by the Fund, and (ii) all securities of Bear ETFs held by the Fund, would exceed 20% of the Fund's net assets, taken at market value at the time of the transaction;

(c) each Fund that intends to rely on the Exemption Sought will limit its exposure to gold or silver (including direct purchases of gold or silver, permitted gold certificates or Permitted Silver Certificates, investments in Gold ETFs, Silver ETFs, Gold/Silver ETFs in Leveraged Gold ETFs and Leveraged Silver ETFs, investments in specified derivatives the underlying interest of which is gold or silver and investments in IPUs that track a gold index or a silver index), to no more than 10% of the net assets of the Fund, taken at market value at the time of purchase as applicable;

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

(e) the prospectus of each Fund that intends to rely on the Exemption Sought discloses, or will disclose the next time it is renewed after the date hereof, (i) in the Investment Strategy section of the prospectus, the fact that the Fund has obtained relief to invest in the Underlying ETFs and, as appropriate, (ii) to the extent applicable, the risks associated with such an investment;

(f) the prospectus of each Fund that intends to rely on the Exemption Sought discloses, or will disclose the next time it is renewed after the date hereof, (i) in the Investment Strategy section of the prospectus, the fact that the Fund has obtained relief to invest in Silver; and (ii) to the extent applicable, the risks associated with such an investment;

(g) each Fund will not invest in an Underlying ETF with an Underlying Index based, directly or indirectly through a specified derivative or otherwise, on a physical commodity other than gold or silver;

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

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

(j) no more than 10% of the Fund’s net assets, taken at market value at the time of investment, is invested directly and indirectly in Gold or Silver Products (including through Underlying ETFs and underlying market exposure of specified derivatives); and

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

"Sonny Randhawa"
Manager, Investment Funds Branch
Ontario Securities Commission

2.2 Orders

2.2.1 Dundee Capital Markets Inc. – s. 1(10)(b)

Headnote

Application for an order that the issuer is not a reporting issuer under applicable securities laws – requested relief granted.

Applicable Legislative Provisions

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

February 17, 2012

Norton Rose Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, ON M5J 2Z4

Dear Sirs/Mesdames:

Re: Dundee Capital Markets Inc. (the Applicant) – Application for an order under clause 1(10)(b) of the Securities Act (Ontario) that the Applicant is not a reporting issuer

The Applicant has applied to the Ontario Securities Commission for an order under clause 1(10)(b) of the Act that the Applicant is not a reporting issuer.

As the Applicant has represented to the Commission that:

(a) The outstanding securities of the Applicant, including debt securities are beneficially owned, directly or indirectly, by less than 15 security holders in Ontario and less than 51 security holders 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 not in default of any of its obligations under the Act as a reporting issuer; and

(d) The Applicant will not be a reporting issuer or the equivalent in any jurisdiction in Canada immediately following the Director granting the relief requested.

The Director is satisfied that it would not be prejudicial to the public interest to grant the requested relief and orders that the Applicant is not a reporting issuer.

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

2.2.2 Ameron Oil and Gas Ltd. et al.

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

AND

**IN THE MATTER OF
AMERON OIL AND GAS LTD., MX-IV LTD.,
GAYE KNOWLES, GIORGIO KNOWLES,
ANTHONY HOWORTH, VADIM TSATSKIN,
MARK GRINSHPUN, ODED PASTERNAK, AND
ALLAN WALKER**

ORDER

WHEREAS on April 6, 2010, the Ontario Securities Commission (the "Commission") issued a temporary cease trade order pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering: that all trading in the securities of MX-IV Ltd. ("MX-IV") shall cease; that Ameron Oil and Gas Ltd. ("Ameron"), MX-IV and their representatives cease trading in all securities; and that any exemptions contained in Ontario securities law do not apply to Ameron and MX-IV (the "Temporary Order");

AND WHEREAS on April 6, 2010, the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

AND WHEREAS on April 8, 2010, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on April 20, 2010;

AND WHEREAS on April 20, 2010, the Commission considered the evidence and submissions before it and the Commission was of the opinion that it was in the public interest to extend the Temporary Order to October 14, 2010 and to adjourn the hearing in this matter to October 13, 2010;

AND WHEREAS on October 13, 2010, the Commission ordered that pursuant to subsections 127(7) and (8) of the Act, that the Temporary Order be extended to February 9, 2011 and that the hearing in this matter be adjourned to February 8, 2011;

AND WHEREAS on December 13, 2010, Staff of the Commission ("Staff") issued a Statement of Allegations (the "Allegations") against Ameron, MX-IV, Gaye Knowles, Giorgio Knowles, Anthony Howorth ("Howorth"), Vadim Tsatskin ("Tsatskin"), Mark Grinshpun ("Grinshpun"), Oded Pasternak ("Pasternak"), and Allan Walker ("Walker") (collectively, the "Respondents");

AND WHEREAS on December 13, 2010, the Secretary of the Commission issued a Notice of Hearing, pursuant to sections 37, 127 and 127.1 of the Act, to consider whether it is in the public interest to make certain

orders against the Respondents by reason of the Allegations;

AND WHEREAS on December 20, 2010, the Commission ordered that the hearing be adjourned to February 8, 2011, for a confidential pre-hearing conference;

AND WHEREAS on February 8, 2011, the Commission ordered that the Temporary Order be extended to March 11, 2011, and the hearing in this matter be adjourned to March 10, 2011;

AND WHEREAS on March 10, 2011, the Commission ordered that the Temporary Order be extended to the conclusion of the hearing on the merits in this matter and that a status hearing to confirm dates for the hearing on the merits take place on March 22, 2011;

AND WHEREAS by Notice of Motion dated March 8, 2011, Staff brought a motion before the Commission to add Gaye Knowles, Giorgio Knowles, Howorth, Tsatskin, Grinshpun, Pasternak and Walker (collectively, the "Individual Respondents") to the Temporary Order;

AND WHEREAS on March 22, 2011, the Commission ordered that:

- pursuant to clause 2 of subsection 127(1) of the Act, Gaye Knowles, Giorgio Knowles, Howorth, Tsatskin, Grinshpun, Pasternak and Walker shall cease trading in all securities;
- pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Gaye Knowles, Giorgio Knowles, Howorth, Tsatskin, Grinshpun, Pasternak and Walker;
- the Temporary Order in respect of the Individual Respondents shall take effect immediately and shall expire on the fifteenth day after its making unless extended by the Commission;
- for clarity, the Temporary Order in respect of Ameron and MX-IV Ltd. is extended to the conclusion of the hearing on the merits; and
- the hearing in this matter be adjourned to April 4th, 2011 at 11:00 a.m. or on such other date or time as provided by the Secretary's Office and agreed to by the parties.

AND WHEREAS on April 4, 2011, the Commission ordered that the Temporary Order in respect of the Individual Respondents, Ameron and MX-IV be extended to the conclusion of the hearing on the merits in this matter;

AND WHEREAS on October 13, 2011, the Commission approved a settlement agreement between Staff and Tsatskin;

AND WHEREAS on October 25, 2011, the Commission approved settlement agreements between Staff and each of Pasternak and Walker;

AND WHEREAS on November 29, 2011, the Commission approved a settlement agreement between Staff and Grinshpun;

AND WHEREAS on January 24, 2012, a pre-hearing conference was held before the Commission;

AND WHEREAS on February 14, 2012, a status hearing was held before the Commission;

AND WHEREAS on February 14, 2012, the Commission ordered that a further status hearing be held on February 23, 2012, at 3:00 p.m. at the offices of the Commission;

AND WHEREAS on February 22, 2012, the Office of the Secretary issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing on February 24, 2012, at 4:00 p.m. to consider whether it is in the public interest to approve a settlement agreement between Staff and Gaye Knowles;

AND WHEREAS on February 22, 2012, Staff filed a Notice of Withdrawal with the Commission withdrawing the allegations made in connection with the December 13, 2010, Notice of Hearing against Ameron, MX-IV, Giorgio Knowles and Howorth;

AND WHEREAS Staff has contacted the Office of the Secretary requesting that the status hearing set for February 23, 2012, be adjourned;

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

IT IS ORDERED that the status hearing scheduled for February 23, 2012, at 3:00 p.m. is adjourned *sine die*.

DATED at Toronto this 23rd day of February, 2012.

"Mary G. Condon"

2.2.3 Majestic Supply Co. Inc. et al.

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

AND

IN THE MATTER OF
MAJESTIC SUPPLY CO. INC.,
SUNCASTLE DEVELOPMENTS CORPORATION,
HERBERT ADAMS, STEVE BISHOP,
MARY KRICFALUSI, KEVIN LOMAN AND
CBK ENTERPRISES INC.

ORDER

WHEREAS on October 20, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 37, 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended in connection with a Statement of Allegations dated October 20, 2010 filed by Staff of the Commission ("Staff") with respect to Majestic Supply Co. Inc., Suncastle Developments Corporation, Herbert Adams ("Adams"), Steve Bishop ("Bishop"), Mary Kricfalusi ("Kricfalusi"), Kevin Loman ("Loman") and CBK Enterprises Inc. (collectively, the "Respondents");

AND WHEREAS the hearing on the merits began on November 7, 2011 (the "Merits Hearing") and Staff and the Respondents completed the evidence phase of the Merits Hearing on November 29, 2011 and scheduled closing oral submissions for January 24, 2012;

AND WHEREAS on January 24, 2012, Staff, Adams, Bishop, Kricfalusi and counsel for Loman appeared before the Commission on a motion to reopen the matter to adduce fresh evidence prior to making closing submissions on the merits (the "Motion Hearing");

AND WHEREAS on January 24, 2012, the Commission ordered that the Motion Hearing continue on February 22, 2012 and February 23, 2012 at 10:00 a.m.;

AND WHEREAS on February 22, 2012, Staff, Adams, Bishop and counsel for Loman appeared before the Commission and made submissions on the motion;

AND WHEREAS, at the conclusion of the Motion Hearing on February 22, 2012, the Commission reserved its decision on the motion, vacated the February 23, 2012 hearing date, and adjourned the Merits Hearing pending the issuance of a decision on the motion;

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

IT IS ORDERED that:

(i) The Motion Hearing date of February 23, 2012 is vacated; and

(ii) The Merits Hearing is adjourned pending a decision on the motion to be issued in due course.

DATED at Toronto, this 22nd day of February, 2012.

"Edward P. Kerwin"

"Paulette L. Kennedy"

2.2.4 Ameron Oil and Gas Ltd. et al.

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

AND

IN THE MATTER OF
AMERON OIL AND GAS LTD., MX-IV LTD.,
GAYE KNOWLES, GIORGIO KNOWLES,
ANTHONY HOWORTH, VADIM TSATSKIN,
MARK GRINSHPUN, ODED PASTERNAK, AND
ALLAN WALKER

ORDER

WHEREAS on April 6, 2010, the Ontario Securities Commission (the "Commission") issued a temporary cease trade order pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering: that all trading in the securities of MX-IV Ltd. ("MX-IV") shall cease; that Ameron Oil and Gas Ltd. ("Ameron"), MX-IV and their representatives cease trading in all securities; and that any exemptions contained in Ontario securities law do not apply to Ameron and MX-IV (the "Temporary Order");

AND WHEREAS on December 13, 2010, Staff of the Commission ("Staff") issued a Statement of Allegations (the "Allegations") against Ameron, MX-IV, Gaye Knowles, Giorgio Knowles, Anthony Howorth ("Howorth"), Vadim Tsatskin ("Tsatskin"), Mark Grinshpun ("Grinshpun"), Oded Pasternak ("Pasternak"), and Allan Walker ("Walker") (collectively, the "Respondents");

AND WHEREAS on March 22, 2011, the Commission ordered that Gaye Knowles, Giorgio Knowles, Howorth, Tsatskin, Grinshpun, Pasternak and Walker be added to the Temporary Order;

AND WHEREAS on April 4, 2011, the Commission ordered that the Temporary Order be extended to the conclusion of the hearing on the merits in this matter;

AND WHEREAS the Commission has ordered that the hearing on the merits commence on March 6, 2012, at 10:00 a.m. at the offices of the Commission, 20 Queen Street West, 17th Floor, Toronto, and shall continue on March 7, 8, 9, 12, 14, 15, 16, 19, 20 and 21, 2012;

AND WHEREAS the Commission has approved settlement agreements between Staff and each of Tsatskin, Pasternak, Walker, Grinshpun and Gaye Knowles;

AND WHEREAS Staff has withdrawn the allegations made in connection with the December 13, 2010, Notice of Hearing against all remaining Respondents in this matter, being Ameron, MX-IV, Giorgio Knowles and Howorth;

IT IS ORDERED that the dates scheduled for the hearing on the merits in this matter are vacated.

DATED at Toronto this 24th day of February, 2012.

"Mary G. Condon"

2.2.5 Ameron Oil and Gas Ltd. et al. – s. 127(1)

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

AND

**IN THE MATTER OF
AMERON OIL AND GAS LTD., MX-IV LTD.,
GAYE KNOWLES, GIORGIO KNOWLES,
ANTHONY HOWORTH, VADIM TSATSKIN,
MARK GRINSHPUN, ODED PASTERNAK, AND
ALLAN WALKER**

AND

**IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN STAFF OF
THE ONTARIO SECURITIES COMMISSION AND
GAYE KNOWLES**

**ORDER
(Subsection 127(1))**

WHEREAS by Notice of Hearing dated December 13, 2010, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, commencing on December 20, 2010, pursuant to sections 37, 127, and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make orders, as specified therein, against Ameron Oil and Gas Ltd., MX-IV LTD., Gaye Knowles, Giorgio Knowles, Anthony Howorth, Vadim Tsatskin, Mark Grinshpun, Oded Pasternak and Allan Walker. The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("Staff") dated December 13, 2010;

AND WHEREAS Staff filed an Amended Statement of Allegations dated October 5, 2011;

AND WHEREAS Gaye Knowles entered into a settlement agreement with Staff dated February 21, 2012 (the "Settlement Agreement") in which Gaye Knowles agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated December 13, 2010, subject to the approval of the Commission;

WHEREAS on February 22, 2012, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve the Settlement Agreement;

AND UPON reviewing the Settlement Agreement, the Notices of Hearing, and the Statements of Allegations of Staff, and upon hearing submissions from Gaye Knowles and from Staff;

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

IT IS HEREBY ORDERED THAT:

(a) the Settlement Agreement is approved;

(b) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Gaye Knowles for a period of 5 years;

(c) pursuant to clause 7 of subsection 127(1) of the Act, Gaye Knowles resign any positions he may hold as a director or officer of an issuer;

(d) pursuant to clauses 8, 8.2, and 8.4 of subsection 127(1) of the Act, Gaye Knowles is prohibited for a period of 5 years from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager; and

(e) pursuant to clause 8.5 of subsection 127(1) of the Act, Gaye Knowles is prohibited for a period of 5 years from becoming or acting as a registrant, as an investment fund manager or as a promoter.

DATED at Toronto this 24th day of February, 2012.

"Mary G. Condon"

2.2.6 North American Financial Group Inc. et al. – s. 127

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

AND

IN THE MATTER OF
NORTH AMERICAN FINANCIAL GROUP INC.,
NORTH AMERICAN CAPITAL INC.,
ALEXANDER FLAVIO ARCONTI, AND
LUIGINO ARCONTI

ORDER
(Section 127)

WHEREAS on December 28, 2011, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing (the "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 December 28, 2011 filed by Staff of the Commission ("Staff") with respect to North American Financial Group Inc. ("NAFG"), North American Capital Inc. ("NAC"), Alexander Flavio Arconti ("Flavio") and Luigino Arconti ("Gino");

AND WHEREAS the Notice of Hearing set a hearing in this matter for January 16, 2012 at 10:00 a.m.;

AND WHEREAS on January 16, 2012, the Commission ordered that the hearing be adjourned to February 27, 2012 at 10:00 a.m.;

AND WHEREAS on February 27, 2012, Flavio appeared before the Commission on behalf of himself and his brother, Gino, and sought a one month adjournment of the hearing in order to retain counsel and review the additional disclosure provided by Staff on February 27, 2012 with counsel;

AND WHEREAS NAFG and NAC were served with notice of this hearing;

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

IT IS ORDERED that the hearing is adjourned to Thursday, March 29, 2012 at 11:00 a.m.

DATED at Toronto this 27th day of February, 2012.

"Mary G. Condon"

2.2.7 Global Energy Group, Ltd. et al.

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

AND

IN THE MATTER OF
GLOBAL ENERGY GROUP, LTD., NEW GOLD LIMITED PARTNERSHIPS, CHRISTINA HARPER, VADIM TSATSKIN, MICHAEL SCHAUMER, ELLIOT FEDER, ODED PASTERNAK, ALAN SILVERSTEIN, HERBERT GROBERMAN, ALLAN WALKER, PETER ROBINSON, VYACHESLAV BRIKMAN, NIKOLA BAJOVSKI, BRUCE COHEN AND ANDREW SHIFF

ORDER

WHEREAS on June 8, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 37, 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") accompanied by a Statement of Allegations dated June 8, 2010, issued by Staff of the Commission ("Staff") with respect to Global Energy Group, Ltd., New Gold Limited Partnerships, Christina Harper ("Harper"), 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 (collectively, the "Respondents");

AND WHEREAS the hearing on the merits began on January 23, 2012, (the "Merits Hearing") and continued on January 24, 25, 26, 30, February 1, 2 and 3, 2012;

AND WHEREAS on February 3, 2012, Harper, who had not attended any days of the Merits Hearing, communicated to the Panel through Staff that she had retained counsel and wished to participate in the Merits Hearing;

AND WHEREAS on February 7, 2012, the Commission ordered that:

1. Harper is to provide the Office of the Secretary the name and contact information of her counsel no later than February 10, 2012;

2. Harper, or her counsel, is to provide the Office of the Secretary, no later than February 17, 2012, the dates up to April 30, 2012, on which Harper, or her counsel, would be available to attend a continuation of the Merits Hearing; and

3. If the requested information is not provided to the Office of the Secretary in accordance with this Order, the Merits Hearing will resume after February 8,

2012, for the purpose of hearing final submissions from the parties.

AND WHEREAS the evidence phase of the Merits Hearing was completed on February 8, 2012, subject to Harper's compliance with the Order of February 7, 2012;

AND WHEREAS Harper did not comply with the Order of February 7, 2012;

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

IT IS ORDERED that:

(i) The Merits Hearing will reconvene on April 17, 2012, at 10:00 a.m. at the offices of the Commission, 20 Queen Street West, 17th Floor, Toronto, for the purpose of hearing final submissions from the parties;

(ii) Staff will serve and file a written copy of their final submissions no later than March 23, 2012;

(iii) Any Respondent wishing to make final submissions may serve and file a copy of those submissions in accordance with Rule 10.9 of the Commission's Rules of Procedure no later than April 10, 2012.

DATED at Toronto this 29th day of February, 2012.

"Paulette L. Kennedy"

"Judith N. Robertson"

2.2.8 Juniper Fund Management Corporation et al.

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

AND

IN THE MATTER OF
THE JUNIPER FUND MANAGEMENT CORPORATION, JUNIPER INCOME FUND, JUNIPER EQUITY GROWTH FUND AND ROY BROWN (a.k.a. ROY BROWN-RODRIGUES)

ORDER

WHEREAS on March 8, 2006, the Ontario Securities Commission (the "Commission") ordered pursuant to subsection 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that all trading in the securities of the Juniper Income Fund ("JIF") and the Juniper Equity Growth Fund ("JEGF") (collectively, the "Funds") shall cease forthwith for a period of 15 days from the date thereof (the "Temporary Order");

AND WHEREAS pursuant to subsections 127(1) and 127(5) of the Act, a hearing was scheduled for March 23, 2006 (the "Hearing");

AND WHEREAS the Respondents were served with the Temporary Order, the Notice of Hearing dated March 21, 2006 and the Statement of Allegations dated March 21, 2006;

AND WHEREAS the Commission ordered the extension of the Temporary Order and an adjournment of the Hearing for various reasons on the following dates:

(i) March 23, 2006 extended and adjourned to May 4, 2006;

(ii) May 4, 2006 extended and adjourned to May 23, 2006;

(iii) May 23, 2006 extended and adjourned to September 21, 2006;

(iv) September 21, 2006 extended and adjourned to November 8, 2006;

(v) November 7, 2006 extended and adjourned to December 13, 2006;

(vi) December 13, 2006 extended and adjourned to March 2, 2007;

(vii) March 2, 2007 extended and adjourned to May 22, 2007;

(viii) May 22, 2007 extended and adjourned to July 17, 2007; and

(ix) July 17, 2007 extended and adjourned to September 4, 2007.

AND WHEREAS on September 4, 2007, the Commission ordered that the Hearing commence on April 7, 2008 and continue for nine days thereafter and that the Temporary Order be extended until the conclusion of the Hearing;

AND WHEREAS on March 31, 2008, Brown brought a motion for an adjournment on the basis that: (1) he was no longer represented by counsel; (2) he had not yet seen Staff's disclosure volumes which were served on his former counsel; and (3) he required additional time to prepare for the Hearing, and Staff opposed Brown's motion;

AND WHEREAS on March 31, 2008, the Commission granted Brown's request and ordered that the Hearing be adjourned to June 16, 2008;

AND WHEREAS on June 4, 2008, Staff brought a motion to adjourn the Hearing due to availability;

AND WHEREAS the Office of the Secretary tentatively scheduled the Hearing for June 15 to 19, 2009 but Brown was not available on those dates;

AND WHEREAS on December 23, 2009, Staff requested that a pre-hearing conference in this matter be scheduled, and pre-hearing conferences were subsequently held on:

(i) March 2, 2010;

(ii) April 30, 2010 (wherein the Hearing was scheduled to commence November 15, 2010 and thereafter);

(iii) October 1, 2010;

(iv) October 20, 2010; and

(v) November 1, 2010;

AND WHEREAS during the pre-hearing conference on November 1, 2010, the Commission advised the parties that it was no longer available for the Hearing scheduled to commence on November 15, 2010;

AND WHEREAS a pre-hearing conference was held on January 24, 2011 wherein the Commission ordered that the Hearing shall begin on September 14, 2011 and continue thereafter as scheduled:

AND WHEREAS a confidential hearing was held on August 25, 2011 to consider Brown's motion to adjourn the Hearing;

AND WHEREAS on August 30, 2011, the Commission ordered that the Hearing shall commence on September 16, 2011 and proceed as scheduled;

AND WHEREAS on September 16, 2011 the Commission dismissed Brown's motion to vary the Commission's adjournment decision and ordered that the Hearing commence on September 19, 2011;

AND WHEREAS the Hearing commenced on September 19, 2011 and continued thereafter on September 20, 21, 22, 23, 28, 29, October 5, and November 9, 2011;

AND WHEREAS on October 5, 2011, Brown advised the Commission of his inability to participate in the Hearing due to his medical condition and the Commission adjourned the Hearing to November 9, 2011;

AND WHEREAS by e-mail dated November 6, 2011 Brown requested a further adjournment of the Hearing for medical reasons with supporting evidence for this request;

AND WHEREAS on November 9, 2011 the Commission ordered: (i) the Hearing be adjourned to December 21, 2011, and (ii) Brown to provide the Commission with an update and evidence about his progress and medical condition by November 30, 2011;

AND WHEREAS on December 21, 2011, the Commission considered the evidence provided by Brown and ordered: (i) Brown to bring his motion to recall Staff's witnesses on February 14, 2012; and (ii) the Hearing to continue on February 27, 29 and March 2, 5 and 6, 2012;

AND WHEREAS Brown brought a motion returnable February 14, 2012 seeking an adjournment of the Hearing for approximately 60 days on the basis that his medical condition prevented him from participating in his motion to recall Staff's witnesses as scheduled (the "Brown Adjournment Motion");

AND WHEREAS on February 14, 2012, the Commission heard submissions on the Brown Adjournment Motion, withheld its decision, and requested the parties re-attend to continue the motion on February 22, 2012 in order to allow Brown to provide the Commission with supporting evidence for his motion;

AND WHEREAS on February 17, 2012 Brown filed supporting evidence for his request to adjourn the Hearing and on February 22, 2012 the parties made further submissions in respect thereof;

AND WHEREAS the Commission has considered the submissions made by Staff and Brown, the history of this proceeding, and the evidentiary basis for the Brown Adjournment Motion;

AND WHEREAS the Commission has also considered the factors set out in rule 9 of the *Ontario Securities Commission Rules of Procedure* (2010), 33 O.S.C.B. 8017;

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

IT IS HEREBY ORDERED THAT:

(1) The Hearing is adjourned on a peremptory basis and shall continue on April 4, 5, 11, 12, 13 and 16, 2012, with or without counsel;

(2) Brown is permitted to recall Staff's witnesses on the condition that he must advise the Commission by March 21, 2012 as to which of Staff's witnesses he wishes to recall. Accordingly, the need for Brown to bring forward a motion to recall Staff's witnesses is dispensed with;

(3) Brown shall provide Staff with a list of his own witnesses that he intends to call at the Hearing by March 21, 2012;

(4) Brown is permitted to participate in the Hearing by way of teleconference as requested; and

(5) The medical evidence provided by Brown in support of the Brown Adjournment Motion is confidential and shall not form part of the public record.

DATED at Toronto on this 27th day of February, 2012.

"Vern Krishna"

"Margot C. Howard"

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Nest Acquistions and Mergers et al.

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

AND

IN THE MATTER OF
NEST ACQUISITIONS AND MERGERS,
IMG INTERNATIONAL INC., CAROLINE MYRIAM FRAYSSIGNES,
DAVID PAUL PELCOWITZ, MICHAEL SMITH, AND
ROBERT PATRICK ZUK

REASONS AND DECISION ON A MOTION

Hearing:	December 16, 2011		
Decision:	February 3, 2012		
Panel:	James D. Carnwath, Q.C.	–	Commissioner and Chair of the Panel
	Margot C. Howard	–	Commissioner
Appearances:	Cullen Price Carlo Rossi	–	For Staff of the Ontario Securities Commission
	Caroline Myriam Frayssignes	–	For herself
	Robert Patrick Zuk	–	For himself
		–	No one appeared on behalf of Nest Acquisitions and Mergers, IMG International Inc., David Pelcowitz or Michael Smith

TABLE OF CONTENTS

REASONS AND DECISION ON A MOTION

I. BACKGROUND

A. Overview

[1] One of the Respondents, Caroline Myriam Frayssignes ("**Mme. Frayssignes**" or the "**Respondent**"), moved before the Ontario Securities Commission (the "**Commission**") requesting two orders. First, Mme. Frayssignes requested French translation services to be provided to her during the hearing on the merits and any other proceeding in relation to this matter. Second, Mme. Frayssignes requested French translation of all documents relied upon by Staff of the Commission ("**Staff**") in this matter.

[2] The motion was heard on December 16, 2011 (the "**Motion Hearing**"). Before the Motion Hearing, Mme. Frayssignes and Staff filed written submissions. At the Motion Hearing, Mme. Frayssignes made oral submissions to which Staff responded.

[3] We issued an oral decision at the Motion Hearing with written reasons to follow. These are those reasons.

B. History of the Proceeding

[4] The Commission issued temporary cease trade orders on April 8, 2009 against Nest Acquisitions and Mergers and Mme. Frayssignes and on June 11, 2009 against IMG International Inc./Investors Marketing Group International Inc. and Michael Smith (the "**Temporary Orders**"). The Temporary Orders were extended from time to time and eventually extended, by separate orders on January 22, 2010, until conclusion of the hearing on the merits.

[5] The Commission issued a Notice of Hearing on January 18, 2010, pursuant to sections 37, 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "***Securities Act***") (the "**Merits Hearing**"). Staff filed a Statement of Allegations on the same day. Staff alleged that the respondents breached subsections 25(1)(a) and 126.1(b) of the *Securities Act*. Further, Staff alleged that Mme. Frayssignes and Robert Patrick Zuk ("**Mr. Zuk**") breached subsection 122(1)(a), that Mr. Zuk breached 122(1)(c) and that Michael Smith is liable under section 129.2 of the *Securities Act*.

[6] The Merits Hearing was first scheduled to start on January 31, 2011. Following two adjournments, it was fixed for June 27, 2011.

[7] On June 27, 2011, Mme. Frayssignes asked that she be provided with a simultaneous French translation of the hearing on the merits and a translation of the documents Staff proposed to tender at that hearing. This Panel ordered that the Merits Hearing be adjourned to a date to be fixed by the Office of the Secretary and that the Commission would provide a simultaneous translation into French of the Merits Hearing. We further ordered the parties to make written submissions and that the Motion Hearing take place on September 26, 2011. The order of June 27, 2011 resolved the matter of simultaneous translation for the Merits Hearing, leaving only the question of whether to grant Mme. Frayssignes' motion for translation of documentary evidence.

[8] The Motion Hearing was adjourned on September 26, 2011 to allow Staff to translate their written submissions on the motion into French.

II. THE ISSUES

[9] The Respondent argued that all documents to be relied upon by Staff in this matter should be translated into French. She took the position that as a bilingual individual she was entitled to receive the documents in French. Mme. Frayssignes also submitted that while her English was good, it was not equivalent to her French comprehension, and that English documentation would impede her ability to defend herself as an unrepresented respondent or to adequately respond to Staff's allegations.

[10] Addressing this issue involves two main questions:

(i) Does the Commission have a legal obligation to translate into French documentary evidence which Staff intends to rely upon at the Merits Hearing?

(ii) If not, would proceeding with the Merits Hearing without translating documentary evidence prejudice Mme. Frayssignes?

III. ANALYSIS

1. Respondent's Position

[11] The Respondent submits that she would "not be able to meaningfully participate in the [h]earing or be able to effectively provide answer and defence to the allegations without the assistance of a translator or without translated copies of documents the Staff intends to rely upon." The basis for this argument is that the Respondent's language rights must be protected. The Respondent relies on the *Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11 (the "***Charter***"), for the proposition that French is a recognized as an official language of Ontario courts and appears to rely on sections 16 through 20 of the *Charter*, *supra* for the existence of language rights applicable to this case.

[12] In support of her motion, the Respondent referred us to a number of court cases that consider the application of language rights. The Respondent submits that linguistic guarantees provided by statute create obligations for the State to take necessary measures to implement those rights (*R. v. Beaulac*, [1999] 1 S.C.R. 768 at para. 24 ("***Beaulac***")).

[13] In addition, the Respondent cited the decision in *Dehenne v. Dehenne*, (1999) 47 O.R. (3d) 140, in which the Ontario Superior Court considered the application of the *French Language Services Act*, R.S.O. 1990 c. F.32, (the "***FLSA***"). In that case, the Public Guardian and Trustee had replied to counsel for the applicant in English only, even though the Trustee had a duty to reply in French to communications received in French. The court stated that the Public Guardian and Trustee could not "allege a lack of human or financial resources in an effort to justify an obstacle to carrying out his language responsibilities" (at para. 9).

[14] The Respondent also noted the importance of an accused person's ability to recognize the meaning of documents and how a slight misinterpretation could drastically affect the meaning of the document cited.

[15] According to the Respondent, Staff should provide translated copies of documents it intends to rely upon during the Merits Hearing including, but not limited to, all witness statements and interview transcripts, transcripts of compelled interviews of subjects under investigation, and private investigator notes.

2. Staff's Position

[16] Staff submits there is no absolute right to translation of Staff's intended exhibits and that no such right arises under the Commission's *Rules of Procedure* (2010), 33 O.S.C.B. 8017 (the "***Commission Rules***"), the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (the "***SPPA***") or the *FLSA*, *supra*. Staff further submits that a respondent must demonstrate actual prejudice to the right to make full answer and defense prior to the Commission making an order on fairness grounds.

[17] Staff notes that sections 16 through 20 of the *Charter*, *supra* deal exclusively with institutions of Parliament and the governments of Canada and New Brunswick, but do not apply to institutions of the government of Ontario.

[18] Staff submits the *FLSA* provides rights to communicate with and receive government services from a government agency in French, but only subject to reasonable limitation. Staff submits that third party records in the possession of the Commission and documents created by Staff in the course of the investigation are not collected as a "service" within the meaning of the word as defined at section 1 of the *FLSA*, *supra*.

[19] Staff refers us to *R. c. Rodrigue*, [1994] Y.J. No. 113 (Y.S.C.) at paras. 30 and 31 ("***Rodrigue***"), in which the Yukon Superior Court held that evidence in the hands of the Crown does not fall under language-rights legislation because the evidence is either created by a third party or an internal investigation document, which are not mainly intended for the public. In that case, the Court was considering similarly worded provisions in federal legislation including the *Charter*, *supra* and the *Official Languages Act*, R.S.C., 1985, c. 31 (4th Supp.).

[20] Staff further submits that this interpretation of the *FLSA* is supported by guidelines published by the Ontario Ministry of the Attorney General which state:

> [T]he tribunal's responsibility is to provide a translation of any correspondence, response or hearing decisions that they are making and conveying to the Client, which means documents the tribunal is producing only"[emphasis added].
>
> (The Ministry of the Attorney General, "Guidelines for Administrative Tribunals" (20 December 2010), online: http://www.attorneygeneral.jus.gov.on.ca/english/ justice-ont/french_language_ services/services/administrative_tribunals.asp (the "**Ministry Guidelines**"))

The Ministry Guidelines suggest that tribunals do not have a responsibility to translate all documents which are filed.

[21] In addition, Staff referred us to administrative decisions in which panels declined requests to order translation of documents (*Decision No. 691 04*, [2005] O.W.S.I.A.T.D. No. 480 at addendum para. 5; *Re Pierre Emond, Armel Drapeau, and Jules Bossé*, unreported oral decision and reasons of the New Brunswick Securities Commission, dated May 10, 2011 ("***Re Pierre Emond***")).

[22] In the alternative, Staff submits that it is reasonable and necessary to limit French-language rights pursuant to section 7 of the *FLSA*, *supra* to exclude the Respondent's request because of the nature of the document as evidence. Staff argues that evidence should not be altered in any way. Staff submits that this approach is consistent with the rules for criminal proceedings (*Criminal Code*, R.S.C. 1985, c. C-46, s. 530.1(g)) and was approved by the Ontario Court of Appeal in *R. v. Simard*, [1995] O.J. No. 3989 at para. 33.

[23] With respect to procedural fairness, Staff submits the onus is on the applicant to establish actual prejudice to her right to make full answer and defence. Staff says in the criminal context there is no duty on the Crown to translate evidence into the language of the accused. Staff relies on *Rodrigue*, *supra* for the proposition that the Crown has met its disclosure obligations once it has disclosed all relevant evidence in the language in which it exists (at paras. 50 and 51).

[24] More recently in *R. c. Potvin*, [2004] O.J. No. 2550 at para. 39, a case cited by the Respondent, the Ontario Court of Appeal confirmed that there was "no automatic right to translation of documents filed at a trial".

[25] Staff says the Panel has discretion to order translation of documentary evidence where it is satisfied the Respondent has demonstrated actual prejudice to her right to make full answer and defence.

3. The Law

[26] In *Beaulac*, *supra*, a criminal case, the Supreme Court of Canada (the "**SCC**") stated that "[l]anguage rights must in all cases be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada" (at para. 25).

[27] The Respondent appears to rely on the *Charter* for the existence of language rights applicable to this case. Subsection 16(1) of the *Charter*, *supra* states:

> English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada. [emphasis added]

[28] With respect to services, subsection 20(1) of the *Charter*, *supra* states:

> Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where
>
> (*a*) there is a significant demand for communications with and services from that office in such language; or
>
> (*b*) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French. [emphasis added]

[29] These *Charter* provisions establish that language rights and privileges are bestowed in relation to communications to and from institutions of Parliament and the government of Canada. There are similar *Charter* provisions applicable to institutions of the legislature and government of New Brunswick (*Charter*, *supra*, subsections 16(2) and 20(2)). There [are] no such provisions applicable to institutions of the government of Ontario. However, the *Charter* does note the authority of provincial legislatures "to advance the equality of status or use of English and French" (*Charter*, *supra*, subsection 16(3)).

[30] In Ontario, one example of the advancement of linguistic rights is the *FLSA*. The preamble of the *FLSA*, *supra* acknowledges a desire to preserve the French language for future generations and to guarantee its use in institutions of the government of Ontario. In *Lalonde v. Ontario (Commission de restructuration des services de santé)*, [2001] O.J. No. 4767 at para. 143 ("***Lalonde***"), the Ontario Court of Appeal held that the underlying purposes and objectives of the *FLSA* included the protection of the minority francophone population and the advancement of the French language and promotion of its equality with English.

[31] The *FLSA*, *supra* creates the right of persons to communicate with and receive government services from a government agency in French. Subsection 5(1) states:

> A person has the right in accordance with this Act to communicate in French with, and to receive available services in French from, any head or central office of a government agency or institution of the Legislature, and has the same right in respect of any other office of such agency or institution that is located in or serves an area designated in the Schedule.

[32] Section 1 of the *FLSA*, *supra* defines the word "service" as "any service or procedure that is provided to the public by a government agency or institution of the Legislature and includes all communications for the purpose". In this case, it is not disputed that the Commission is a government agency to which the *FLSA* applies.

[33] With respect to evidence, the *Securities Act* contains a confidentiality provision dealing with evidence collected or created in the course of the investigation. In particular, subsection 16(2) of the *Securities Act*, *supra* states:

> If the Commission issues an order under section 11 or 12 [investigation order], all reports provided under section 15, all testimony given under section 13 and all documents and other things obtained under section 13 relating to the investigation or examination that is the subject of the order are for the exclusive use of the Commission or of such other regulator as the Commission may specify in the order, and shall not be disclosed or produced to any other person or company or in any other proceeding except as permitted under section 17.

The confidentiality provision suggests that internal investigation documents and evidence collected under the *Securities Act* are not intended for the public. Rather, they are for the "exclusive use of the Commission" and therefore their collection would not necessarily constitute a service to the public.

[34] However, even if the documentary evidence were considered part of a service, the *FLSA* also provides that obligations of government agencies are subject to limitation. Section 7 of the *FLSA*, *supra* states:

> The obligations of government agencies and institutions of the Legislature under this Act are subject to such limits as circumstances make reasonable and necessary, if all reasonable measures and plans for compliance with this Act have been taken or made.

[35] In *Lalonde*, *supra* at para. 166, the Court of Appeal discussed the limitation provision of the *FLSA* and noted:

> Although it is impossible to specify precisely what is encompassed by the words "reasonable and necessary" and "all reasonable measures", at a minimum they require some justification or explanation for the directions limiting the rights of francophones to benefit…

As stated above, Staff's argument in favour of imposing limitations on a language right in these circumstances is to uphold the integrity of the evidence and ensure that it is provided to the Respondent in its original form.

[36] With respect to fairness, the SCC in *Beaulac*, *supra* distinguished language rights from the right to a fair trial (*Beaulac*, *supra* at paras. 41 and 45). The SCC stated that the requirement of substantive equality signals that a violation of a language right is a substantial wrong, but does not constitute a procedural irregularity (*Beaulac*, *supra* at para. 54). In that case, the court stated that "[l]anguage rights have a totally distinct origin and role. They are meant to protect official language minorities in this country and to insure[sic] the equality of status of French and English" (*Beaulac*, *supra* at para. 41). This interpretation indicates that language rights serve unique functions which address cultural goals, and not procedural deficiencies.

[37] The onus is on accused to show he or she was denied opportunity to assess the evidence and make informed decisions about his or her defence (*R. v. Butler*, [1997] N.B.J. No. 604 at para. 51). In other words, a respondent must provide evidence of prejudice or unfairness in the circumstances of each case.

[38] We must determine whether the Commission has a substantive legal obligation to provide translation of documentary evidence to the Respondent as a result of language rights provisions, and if not, whether there is a separate obligation on the Commission to provide translation of documentary evidence to ensure a fair hearing.

4. Analysis

[39] We find there is no legal obligation on the Commission to translate documentary evidence into French, and there is no evidence of prejudice to the Respondent in providing documentary evidence in its original form.

i. French Language Rights

[40] We accept the argument of Staff there is no absolute right to translation of third party documents expressed in the applicable legislation or the *Commission's Rules*.

[41] We note that the definition of services in section 1 of the *FLSA*, *supra* expressly acknowledges that the service or procedure is to be "provided to the public". Section 16(2) of the *Securities Act*, *supra* states that investigation documents or evidence obtained in the course of investigation are for the exclusive use of the Commission, and thus does not form part of a service provided by the Commission to the public. To the same end, we agree with the court in *Rodrigue*, *supra* at paras. 30 and 31 that evidence created by a third party does not come from the governmental institution itself and that internal investigation documents are not, strictly speaking, intended for the public since they are prepared and compiled for internal use.

[42] We acknowledge that communications and decisions of the tribunal and that submissions of Staff which pertain to a public proceeding, do fall with the definition of services as provided in the *FLSA*, *supra*. With respect to those services, it is incumbent upon the Commission to provide documents in the official language requested by the party to ensure that language rights are upheld.

[43] Our conclusions are supported by the Ministry Guidelines, *supra*, and the decision of the New Brunswick Securities Commission ("**NBSC**") in *Re Pierre Emond*, *supra*. The Guidelines expressly state that only documents produced by the tribunal must be translated under the *FLSA*. In *Re Pierre Emond*, *supra*, the panel considered similar language-rights legislation and concluded that the NBSC was under no obligation to translate evidence and that the evidence should be tendered in the language of its original author.

[44] We find there is no right to translation of documentary evidence in these circumstances, and therefore no corresponding obligation on the Commission to translate documentary evidence. Since we have found no right to translation of documentary evidence, it is unnecessary to consider arguments on possible limitations.

ii. Procedural Fairness

[45] The right to fairness in a proceeding is distinct from individual language rights (*Beaulac*, *supra* at para. 41). We do not find unfairness or prejudice to the Respondent in holding that documentary evidence need not be translated in these circumstances. We agree with Staff's submission that the Panel has discretion to order translation of documents if the Respondent can establish prejudice.

[46] The SCC has stated that language rights are not meant to be minimum conditions for fairness, nor are they in place to aid efficiency of the defence (*Beaulac*, *supra* at para. 47). Further, in terms of disclosure, it is noted in *Rodrigue*, *supra* at para. 51 that "the right to disclosure of evidence does not include a right to legal assistance nor to scientific expertise nor to translation services".

[47] However, the Court also noted in *Rodrigue*, *supra* at para. 55 that there may be circumstances in which the translation of documentary evidence is necessary to ensure an accused's right to make full answer and defence. The onus is on the accused to show he or she was denied opportunity to assess the evidence and make informed decisions about his or her defence (*R. v. Butler*, [1997] N.B.J. No. 604 at para. 51).

[48] The Respondent has failed to demonstrate the existence of any prejudice to her ability to make full answer and defense in the event that no translation of documentary evidence is ordered. An assertion of prejudice, without evidence, is insufficient to prove that she has or will suffer actual prejudice. We do not find unfairness or prejudice to the Respondent in dismissing her motion for translation of documentary evidence.

III. CONCLUSION

[49] We find it is in the public interest to dismiss Mme. Frayssignes' request. In coming to this conclusion, we find that, given the strength of jurisprudence on the matter, Mme. Frayssignes would have to put forth clear and conclusive evidence in order to persuade the Commission that her request for third-party document translation should be granted. She has not done so. However, the Commission has ordered Mme. Frayssignes to be provided with simultaneous translation for the Merits Hearing and that written submissions and decisions initiated by the Commission or Staff shall be available in both English and French. We therefore ordered, on December 16, 2011, that documentary evidence does not require translation by Staff. We further ordered that the Merits Hearing shall be scheduled on a date to be fixed by the Office or the Secretary, upon consultation with the parties.

DATED at Toronto on this 3rd day of February, 2012.

"James D. Carnwath"	"Margot C. Howard"
James D. Carnwath	Margot C. Howard

3.1.2 Ameron Oil and Gas Ltd. et al.

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

AND

IN THE MATTER OF
AMERON OIL AND GAS LTD., MX-IV LTD.,
GAYE KNOWLES, GIORGIO KNOWLES,
ANTHONY HOWORTH, VADIM TSATSKIN,
MARK GRINSHPUN, ODED PASTERNAK, AND
ALLAN WALKER

SETTLEMENT AGREEMENT
BETWEEN STAFF AND GAYE KNOWLES

PART I – INTRODUCTION

1. By Notice of Hearing dated December 13, 2010, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, commencing on December 20, 2010, pursuant to sections 37, 127, and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make orders, as specified therein, against Ameron Oil and Gas Ltd. ("Ameron"), MX-IV LTD. ("MX-IV"), Gaye Knowles, Giorgio Knowles, Anthony Howorth ("Howorth"), Vadim Tsatskin ("Tsatskin"), Mark Grinshpun ("Grinshpun"), Oded Pasternak and Allan Walker (collectively the "Respondents"). The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("Staff') dated December 13, 2010. Staff filed an Amended Statement of Allegations dated October 5, 2011.

2. The Commission will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Gaye Knowles.

PART II – JOINT SETTLEMENT RECOMMENDATION

3. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing dated December 13, 2010 against Gaye Knowles (the "Proceeding") in accordance with the terms and conditions set out below. Gaye Knowles consents to the making of an order in the form attached as Schedule "A", based on the facts set out below.

PART III – AGREED FACTS

Global Energy Group, Ltd. and the New Gold Securities

4. From approximately June 2007 to June 2008, Global Energy Group, Ltd. ("Global Energy"), and employees and agents of Global Energy, distributed units in limited partnerships called New Gold Limited Partnerships (the "New Gold securities") to members of the public. The New Gold securities purported to entitle the purchaser to an interest in oil wells in the State of Kentucky in the United States of America.

5. Neither Global Energy nor any of the agents selling the New Gold securities was registered in any capacity with the Commission and the New Gold securities were not qualified by a prospectus.

6. The distribution of the New Gold securities to members of the public by Global Energy, its salespersons and agents, ended in and around June of 2008 following the execution of search warrants by Staff on offices related to Global Energy.

7. On June 8, 2010, the Commission issued a Notice of Hearing accompanied by Staff's Statement of Allegations in the matter of Global Energy, New Gold Limited Partnerships ("New Gold") and various individual respondents including Tsatskin. The allegations included that Global Energy, as well as certain salespersons, representatives or agents of Global Energy, engaged in a course of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons purchasing the New Gold securities contrary to subsection 126.1(b) of the Act.

8. On April 1, 2011, the Commission laid an information in the Ontario Court of Justice in respect of Tsatskin and on April 4, 2011 Tsatskin pled guilty to one count of fraud contrary to subsections 126.1(b) and 122(c) of the Act. In his plea, Tsatskin

admitted that the New Gold securities were fraudulently represented to constitute ownership interests in Kentucky oil and gas leases.

Ameron and the MX-IV Securities

9. Gaye Knowles is a resident of the Bahamas and is the principal and directing mind of Travelers Holdings Management Services (Bahamas) Ltd. ("Travelers").

10. Travelers business involves, among other things, establishing International Business Companies ("IBCs") in the Bahamas for international clients, assisting these clients in opening bank accounts and/or trading accounts for the IBCs and providing nominee directors and officers for the IBCs.

11. Gaye Knowles advertised his company's services for providing nominee officers/directors for IBCs to Tsatskin as providing a certain level of anonymity and asset protection as "names do not appear on the public records of the Government Registry".

12. In 2007, Tsatskin contacted Gaye Knowles for the purpose of establishing an IBC. Gaye Knowles established the IBC under the name American Oil & Gas Resources Inc. ("American Oil"). American Oil had no operations and was eventually struck off the register as an IBC for non-payment of fees.

13. In and around April and May of 2009, Tsatskin contacted Gaye Knowles to have American Oil restored and renamed Ameron Oil and Gas Ltd.

14. Gaye Knowles agreed to act as a nominee director and officer of Ameron and he arranged for Anthony Howorth to do the same. Gaye Knowles also arranged for his son, Giorgio Knowles, to become Ameron's Secretary.

15. Travelers was paid USD $4,600 for these initial services. The USD $4,600 was distributed as follows:

(a) USD $1,510 was paid to the Bahamas government to restore the company;

(b) USD $100 was paid to Euro Caribbean Management Service Ltd. (the registered agent) for the name change;

(c) USD $500 was paid to Howorth as an initial fee to act as Vice-President and director of Ameron; and

(d) USD $2,490 was retained by Travelers and Gaye Knowles.

16. Gaye Knowles has represented to Staff that he did not receive any additional payments from Grinshpun or Tsatskin.

17. Gaye Knowles became a director of Ameron and Ameron's President. Tstatskin and/or Grinshpun agreed to pay USD $1000 per month to Gaye Knowles to act as a director and President of Ameron and to establish and operate a virtual office for Ameron.

18. Howorth agreed to become a director of Ameron and to become Ameron's Vice-President. Howorth's fee to act as a director and Vice-President of Ameron was to be USD $500 per month.

19. Tsatskin was the sole shareholder of both American Oil and Ameron until June of 2009 when Tsatskin transferred ownershp to his brother Evgenii Tsatskin.

20. Gaye Knowles provided Grinshpun with documents setting out his and Howorth's employment and educational experience.

21. Gaye Knowles has represented to Staff that he was the only one to have direct contact with Grinshpun and Tsatskin and that neither Howorth nor Giorgio Knowles ever met Grinshpun or Tsatskin or corresponded with them in any manner.

22. None of Gaye Knowles, Howorth or Giorgio Knowles ever had any direct contact with Evgenii Tsatskin, the sole shareholder of Ameron.

23. Gaye Knowles has represented to Staff that he advised Howorth and Giorgio Knowles that he would be responsible for conducting all due diligence to ensure the legitimacy of the operations proposed by Tsatskin and Grinshpun and that the proposed operations would comply with all applicable laws and regulations.

24. Gaye Knowles obtained from Tsatskin a photocopy of the page from Tsatskin's passport that included his name, photo and address, a copy of Tsatskin's driver's license as well as two letters: a reference letter from an accountant and a letter from

TD Canada Trust confirming that Tsatskin had been a client since 1995 and had operated his accounts satisfactorily. Gaye Knowles requested that Tsatskin and/or Grinshpun provide a copy of a valid identification, a reference letter and confirmation of address for Evgenii Tsatskin; however, Tsatskin only provided Knowles with a photocopy of Evgenii Tsatskin's driver's license.

25. Gaye Knowles understood that Grinshpun was working with lawyers in Kentucky and the Bahamas to obtain opinions on the legality of the operations proposed by Grinshpun and Tsatskin. Gaye Knowles sent emails to "Victor NorStar" at norstarltd@gmail.com, which he understood to be an email address used by Grinshpun, requesting that Grinshpun provide these opinions. However, the legal opinions were never provided.

26. Gaye Knowles was presented with promotional materials for Ameron (the "Promotional Materials") promoting the sale of units in MX-IV Ltd. (the "MX-IV securities"). MX-IV Ltd. was held out as a Bahamian partnership and the MX-IV securities purported to entitle the purchaser to an interest in four oil wells located in the State of Kentucky in the United States of America.

27. The Promotional Materials included a "welcome letter" (the "Welcome Letter") purporting to be from Gaye Knowles as President of Ameron. The Promotional Materials, including the Welcome Letter, contained obvious misrepresentations including representations about Knowles' experience in the industry and made untrue statements about the operations of Ameron (including references to Ameron's past performance).

28. At the request of Grinshpun, Gaye Knowles provided his electronic signature to Grinshpun to be used on the Welcome Letter.

29. Gaye Knowles took no reasonable steps to determine the accuracy of the representations contained in the Promotional Materials and Welcome Letter. Other than his request that Grinshpun produce legal opinions, Knowles took no steps to determine whether the business proposed by Grinshpun and Tstatskin was legitimate and carried out in compliance with applicable laws and regulations.

30. Gaye Knowles understood that the Welcome Letter, bearing his signature, and the Promotional Materials, which contained the misrepresentations, were being provided to a printing company to be finalized and copied. Gaye Knowles has represented to Staff that he instructed Grinshpun that the Welcome Letter and Promotional Materials should not be used prior to Grinshpun providing him with the legal opinions referred to above but he took no additional steps to ensure that these documents were not used by Grinshpun or Tsatskin to promote Ameron and/or solicit investors in Ameron or the MX-IV Units.

31. Gaye Knowles did not open any bank, trading or other financial accounts for Ameron. However, Grinshpun informed Gaye Knowles of the existence of an escrow agreement with a lawyer located in the Bahamas (the "Escrow Agreement"). The Escrow Agreement purported to be entered into by Ameron and contemplated the receipt and disbursement of funds through a trust account held at a bank in the Bahamas (the "Trust Account").

Trading in MX-IV Securities

32. From approximately June of 2009 up to and including April 8, 2010 (the "Material Time") members of the public in Canada were contacted by individuals purporting to be salespersons, agents or representatives of Ameron, under the direction of Tsatskin and Grinshpun, from offices in Ontario and solicited to purchase the MX-IV securities.

33. None of the salespersons, agents or representatives referred to above was registered with the Commission to trade in securities.

34. None of Ameron, MX-IV, Tsatskin, Grinshpun, Gaye Knowles, Giorgio Knowles or Howorth has ever been registered with the Commission in any capacity.

35. Neither Ameron nor MX-IV has ever filed a prospectus with the Commission with respect to the MX-IV securities and there were no exemptions under the Act that permitted the trading of these securities.

36. Approximately $615,500 was raised from the sale of the MX-IV securities to approximately 15 investors (the "MX-IV Investors") as a result of the activities of the individuals purporting to be salespersons, representatives or agents of Ameron. The MX-IV Investors sent their funds to one of two accounts: (i) the Trust Account and (ii) a bank account held at a bank located in Toronto.

37. During the Material Time, Tsatskin, Grinshpun, and other purported employees, representatives or agents of Ameron provided information to the MX-IV Investors that was false, inaccurate and misleading, including, but not limited to, the following:

(a) The names used by the sales representatives of Ameron were not their true names;

(b) That there were already wells in production;

(c) That the net proceeds of the sale of the MX-IV Units would be used primarily for drilling of the wells;

(d) That Ameron had a 90% success rate with previous projects;

(e) The return on the investment in MX-IV Units would come within 90 days of investing; and

(f) Content on the Ameron website was false or misleading to investors, including: statements with respect to the qualifications of employees of Ameron; the location of the Ameron offices; the retainer of a consultant geologist; and the names of the persons that actually operated Ameron.

38. These and other false, inaccurate, misleading representations and omissions were made by Tsatskin, Grinshpun, Pasternak and Walker and other purported employees, representatives or agents of Ameron with the intention of effecting trades in the MX-IV Units.

39. Approximately 19% of the MX-IV Investors funds were paid to the salespersons involved in selling the MX-IV Units to the MX-IV Investors. The MX-IV Investors were not informed of this fact.

40. The Welcome Letter with Gaye Knowles' signature and the Promotional Materials were included in the materials sent to the MX-IV Investors.

41. Biographies for Gaye Knowles and Howorth were included on the Ameron website and they were listed as President and Vice-President respectively.

Conduct Contrary to the Public Interest by Gaye Knowles

42. Gaye Knowles failed to take reasonable steps to ensure that:

- he understood the business that Tsatskin and Grinshpun proposed to conduct through Ameron;
- the business proposed by Tsatskin and Grinshpun was legitimate and was carried out in compliance with applicable laws and regulations;
- the Promotional Materials, including the Welcome Letter bearing his signature, were not used by Grinshpun or Tsatskin to promote Ameron and/or solicit investors in Ameron or the MX-IV Units; and
- neither Grinshpun nor Tsatskin conducted business in the name of Ameron prior to obtaining legal and/or regulatory approvals and prior to Gaye Knowles satisfying himself that the business was legitimate.

PART IV –RESPONDENT'S POSITION

43. It is Gaye Knowles' position that he did not authorize Grinshpun or Tsatskin to undertake any operations in the name of Ameron prior to obtaining the legal opinions referred to above, that he was not aware of the fact that any solicitations were made to members of the public by individuals purporting to act on behalf of Ameron for the purpose of selling the MX-IV Units and that he was not involved in any such solicitations.

44. It is Gaye Knowles' position that he did not receive a copy of the Escrow Agreement and that he was not aware that the agreement purported to be entered into by Ameron or that investors' funds were deposited into the Escrow Account.

PART V – CONDUCT CONTRARY TO THE PUBLIC INTEREST

45. By engaging in the conduct described above, Gaye Knowles has acted in a manner contrary to the public interest.

PART VI – TERMS OF SETTLEMENT

46. Gaye Knowles agrees to the terms of settlement listed below.

47. The Commission will make an order, pursuant to subsection 127(1) of the Act, that:

(a) the Settlement Agreement is approved;

(b) any exemptions contained in Ontario securities law do not apply to Gaye Knowles for a period of 5 years from the date of the approval of the Settlement Agreement;

(c) Gaye Knowles resign any positions he may hold as a director or officer of an issuer;

(d) Gaye Knowles is prohibited for a period of 5 years from the date of the approval of the Settlement Agreement from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager; and

(e) Gaye Knowles is prohibited for a period of 5 years from the date of the approval of the Settlement Agreement from becoming or acting as a registrant, as an investment fund manager or as a promoter.

48. Gaye Knowles undertakes to consent to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the sanctions set out in sub-paragraphs 47 (b) to (e) above.

PART VII – STAFF COMMITMENT

49. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Gaye Knowles in relation to the facts set out in Part III herein, subject to the provisions of paragraph 50 below.

50. If this Settlement Agreement is approved by the Commission, and at any subsequent time Gaye Knowles fails to honour the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Gaye Knowles based on, but not limited to, the facts set out in Part III herein as well as the breach of the Settlement Agreement.

PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

51. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and Gaye Knowles for the scheduling of the hearing to consider the Settlement Agreement.

52. Staff and Gaye Knowles agree that this Settlement Agreement will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding Gaye Knowles's conduct in this matter, unless the parties agree that further facts should be submitted at the settlement hearing.

53. If this Settlement Agreement is approved by the Commission, Gaye Knowles agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

54. If this Settlement Agreement is approved by the Commission, neither party will make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

55. Whether or not this Settlement Agreement is approved by the Commission, Gaye Knowles agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

PART IX – DISCLOSURE OF SETTLEMENT AGREEMENT

56. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule "A" is not made by the Commission:

(a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and Gaye Knowles leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and Gaye Knowles; and

(b) Staff and Gaye Knowles shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Amended Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.

57. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission. The terms of the Settlement Agreement will be treated as confidential forever if the Settlement Agreement is not approved for any reason whatsoever by the Commission, except with the written consent of Gaye Knowles and Staff or as may be required by law.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

58. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.

59. A facsimile copy of any signature will be as effective as an original signature.

Dated this 21st day of February, 2012.

Signed in the presence of:

"Giorgio Knowles"
Witness:

"Gaye Knowles"
Gaye Knowles

Dated this 21st day of February, 2012.

"Tom Atkinson"
STAFF OF THE ONTARIO SECURITIES COMMISSION
per Tom Atkinson
Director, Enforcement Branch

Dated this 21st day of February, 2012.

SCHEDULE "A"

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

AND

IN THE MATTER OF
AMERON OIL AND GAS LTD., MX-IV LTD.,
GAYE KNOWLES, GIORGIO KNOWLES,
ANTHONY HOWORTH, VADIM TSATSKIN,
MARK GRINSHPUN, ODED PASTERNAK, AND
ALLAN WALKER

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN STAFF OF
THE ONTARIO SECURITIES COMMISSION AND
GAYE KNOWLES

ORDER

(Subsection 127(1))

WHEREAS by Notice of Hearing dated December 13, 2010, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, commencing on December 20, 2010, pursuant to sections 37, 127, and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make orders, as specified therein, against Ameron Oil and Gas Ltd., MX-IV LTD. ("MX-IV"), Gaye Knowles, Giorgio Knowles, Anthony Howorth, Vadim Tsatskin, Mark Grinshpun, Oded Pasternak and Allan Walker. The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("Staff") dated December 13, 2010;

AND WHEREAS Staff filed an Amended Statement of Allegations dated October 5, 2011;

AND WHEREAS Gaye Knowles entered into a settlement agreement with Staff dated February _____, 2012 (the "Settlement Agreement") in which Gaye Knowles agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated December 13, 2010, subject to the approval of the Commission;

WHEREAS on February _____, 2012, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve the Settlement Agreement;

AND UPON reviewing the Settlement Agreement, the Notices of Hearing, and the Statements of Allegations of Staff, and upon hearing submissions from Gaye Knowles and from Staff;

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

IT IS HEREBY ORDERED THAT:

(a) the Settlement Agreement is approved;

(b) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Gaye Knowles for a period of 5 years;

(c) pursuant to clause 7 of subsection 127(1) of the Act, Gaye Knowles resign any positions he may hold as a director or officer of an issuer;

(d) pursuant to clauses 8, 8.2, and 8.4 of subsection 127(1) of the Act, Gaye Knowles is prohibited for a period of 5 years from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager; and

(e) pursuant to clause 8.5 of subsection 127(1) of the Act, Gaye Knowles is prohibited for a period of 5 years from becoming or acting as a registrant, as an investment fund manager or as a promoter.

DATED at Toronto this _____ day of_____, 2012.

_____

3.1.3 Anna Pyasetsky – s. 31

IN THE MATTER OF
STAFF'S RECOMMENDATION FOR THE REFUSAL OF REGISTRATION OF
ANNA PYASETSKY

OPPORTUNITY TO BE HEARD BY THE DIRECTOR
Section 31 of the Securities Act, R.S.O. 1990, c. S.5, as amended (the Act)

Decision

1. For the reasons set out below, my decision is to refuse the registration of Anna Pyasetsky (the **Applicant**).

Overview

2. On December 19, 2011 OSC staff (**Staff**) indicated that it would be recommending that the Director refuse the application made by the Applicant for registration as a dealing representative of a mutual fund dealer (the **Application**). By letter dated January 30, 2012, Staff articulated additional grounds for its recommendation. Pursuant to section 31 of the Act, the Applicant is entitled to an opportunity to be heard (**OTBH**) before I make a decision in my capacity as Director.

3. The OTBH proceeding was held on February 10, 2012. My decision is based on the verbal submissions and exhibits (including a transcript of a voluntary interview with the Applicant pursuant to section 33.1 of the Act) tendered at the OTBH by Mark Skuce, Legal Counsel, Compliance and Registrant Regulation Branch of the Ontario Securities Commission (**OSC**) for Staff, and Erin Hallock for the Applicant.

The Issue

4. Staff's recommendation to refuse the Applicant's registration is based on five grounds. The first two grounds were set out in Staff's letter of December 19, 2011; the remaining three grounds were set out in Staff's letter dated January 30, 2012:

   (i) The Applicant knowingly failed to disclose in the Application that the Applicant was previously employed by Global Energy Group, Ltd. (**Global**);

   (ii) On November 16, 2011, the Applicant was informed by Staff that the employment section of her Application ("Item 11 – Previous Employment and Other Activities") was incomplete and needed to be updated; however, it was not updated;

   (iii) Staff alleges that by trading in securities of New Gold Limited Partnership (**New Gold**), the Applicant conducted registerable activity without registration, contrary to s. 25(1) of the Act;

   (iv) Staff alleges that on November 16, 2011, during an examination under affirmation the Applicant falsely represented to Staff that she had never heard the terms Global Energy Limited or New Gold and falsely denied that she had worked for a company bearing the name Global, contrary to subsection 122(1) of the Act; and

   (v) Staff alleges that the Applicant's registration would be objectionable in light of her employment with Global, her failure to disclose that employment in the Application, and her misrepresentations to Staff regarding that employment.

   At the OTBH, Staff withdrew the second ground.

5. The crux of Staff's case is that the Applicant knowingly concealed her employment as a telemarketer with a firm called Global. Global operated an unregistered sales office (also at times referred to as a "boiler room") trading units of limited partnerships called New Gold LLP to members of the public. OSC Staff alleged that between June 2007 and June 2008 approximately $14.75 million (U.S.) worth of New Gold securities were sold to members of the public. One of Global's principals, Vadim Tsatskin, pled guilty on April 5, 2011 to one count of fraud contrary to section 126.1 of the Act and was subsequently sentenced in the Ontario Court Justice to three years in jail.

6. Staff also alleges that during the course of an interview with Staff that took place on November 16, 2011 in connection with the registration process (the Interview), the Applicant lied to Staff by denying that she had ever heard of Global or New Gold.

Suitability for registration generally

7. Subsection 25(1) of the Act requires any person that trades in securities to be registered in the relevant category. As set out in numerous prior decisions, a registrant is in a position to perform valuable services to the public, both in the form of direct services to individual investors and as part of the larger system that provides the public benefits of fair and efficient capital markets. A registrant also has a corresponding capacity to do material harm to individual investors and to the public at large. Therefore, determining whether an applicant should be registered is an important component of the work undertaken by the OSC.

8. Subsection 27(1) of the Act provides that the Director shall register a person unless it appears to the Director that the person is not suitable for registration or that the registration is otherwise objectionable. In many cases, including the recent case *Re Ittihad Securities Inc.*, (2010) 33 OSCB 10458, the Director has discussed the well-established criteria that have been identified by the OSC when considering whether an applicant is suitable for registration:

> The OSC has, over time, articulated three fundamental criteria for determining suitability for registration – integrity (which includes honesty and good faith, particularly in dealings with clients, and compliance with Ontario securities law), proficiency, and solvency. These three fundamental criteria have been codified in subsection 27(2) of the Act, which provides that in determining whether a person is suitable for registration, the Director shall consider whether the person has satisfied the requirements prescribed in the regulations relating to proficiency, solvency and integrity, and such other factors as the Director considers relevant.

9. The determination of whether an applicant's registration may be otherwise objectionable goes beyond the three suitability criteria above. Prior OSC decisions have held that registration is "otherwise objectionable" if it is determined, with reference to the purposes of the Act, that it is not in the public interest for the person or company to be registered. For example, see *Re Mithras Management Ltd.*, (1990) 13 OSCB 1600.

The primary issue in this proceeding relates to the integrity of the Applicant.

Reasons

10. After considering the submissions of Staff and the Applicant and after closely considering the Applicant's testimony, including her candour and demeanour in answering questions posed by Staff and myself at the OTBH proceeding, I have concluded that the registration of the Applicant should be refused. I find that the Applicant knowingly omitted her employment history with Global and that in the course of the registration application process she made numerous misrepresentations to OSC Staff. Accordingly, I find that the Applicant lacks the requisite integrity to be a securities professional.

11. In particular, I was troubled by the veracity of the responses provided by the Applicant to Staff at the Interview. The following are extracts from the Interview (Interview Transcript):

> Interview Transcript, paragraph 146:
>
> Q. Anna, I have got some information that in 2008 you were employed by a company called Global Energy.
>
> A. No.
>
> Q. You were never employed by a company called Global Energy?
>
> A. No. Who are they and what do they do?
>
> Q. Well, I'm asking the question. Did you work for this company?
>
> A. To the best of my knowledge, no.
>
> Q. Let me ask you this question: have you ever sold securities before?
>
> A. No, never, ever, ever.
>
> Q. Okay. Bear with me for a second. All right. I have information that you were employed by Global Energy. You worked as a telemarketer for this company. Your employment ceased

with that company on June 25, 2008, when the OSC executed a search warrant of that business.

A. There was a small – yeah, there was a time period where I was working as a telemarketer for maybe a couple of months at some company that required us to just call on clients and ask them if they would be interested in investing in – speaking to an investment representative. That's all I got told. I was just making money after school. And that's – I have never sold anything to – yes, that was definitely something that I cannot forget because I have never encountered anything like that. But I was just working with my friend, and we were just a normal workplace. And then one day, all of a sudden, there came in CRA and asked everybody to stop what they were doing and sort of took out – take out – give our information and everything. But the officer reassured us that – he reassured us that we were okay because we weren't selling anything. They had to investigate what was going on in the company. So I don't know. There was something – maybe somebody was doing something wrong in the company. I don't know what went on from there, but I have stopped working there after such a thing.

....

Interview Transcript, paragraph 159:

A. I did not even remember that I worked there. Because, as you know – I remember that happening because I was there when they've – but I honestly didn't even recall – you told me now Global Energy, and I'm like, who is – I didn't even remember who that was or what they were.

Q. No, I know. But when I asked you about it you said, there's no way I can forget that; it was a big event. Somebody came in and raided the place, right, and asked questions?

A. Well, I remember that. But when I was doing the application, like I said, it was just in a rush, and I was trying to remember all the small jobs that I have had, and I just missed out –

Q. So when you filled this out, you remembered at the time that you had had that job; is that right, but you couldn't remember the name of the company?

A. No, I didn't remember that I was even working there. I didn't even remember.

...

Interview Transcript, paragraph 298:

Q. – I want to be very clear and very specific about this. At the time you filled this out [the application for registration], you remembered that – you knew that you had worked for this company?

A. No, no. Actually, at the time where I filled this out, I actually didn't even remember that. Like, you know what I mean? I have the same thing happening in regards to many things... So when I filled out this application, like, I haven't even thought about that job. I didn't even – I didn't even remember having it, okay. If I knew this would be be such a big issue, I would have listed it... .

12. At the OTBH proceeding the Applicant acknowledged that as a telemarketer she would read from a script that included references to Global. Over the course of her employment as a telemarketer with Global she acknowledged that she would have had occasion to make several hundred telephone calls and when she got through to the recipient she would have read from a script along the following lines (OTBH transcript, paragraph 95):

> Hi there. My name is Anna and I'm calling you on behalf of my company, Global Energy Group. How are you today? Good to hear. I'll keep this brief. Global Energy is a venture oil/gas company. We do develop [sic] drilling in Lexington, Kentucky and we are introducing ourselves to some of the business/owners of (province) with an information package regarding our company, where we drill, how we drill and how you get involved if interested.

13. In light of being employed to read this script and the traumatic event (as she recalled it) of her office being raided, I find it difficult to accept that when she filled out her initial registration application she simply forgot that she ever worked at Global. When interviewed by Staff, I do not believe that she was truthful in her responses to Staff when she claimed she had never heard of Global.

14. Moreover, at the OTBH proceeding, the Applicant further impugned her integrity by claiming she technically never worked at Global, but instead for GVC Marketing, which was the firm that was paying her telemarketing salary. However, even her amended registration application – which she acknowledged filling out herself after the Interview with Staff - stated under 'previous employment' that she worked for "GVC Marketing Inc./Global Energy Group".

15. Another particularly troubling aspect of the Applicant's testimony, which in my view also impugned her integrity, was her claim – made for the first time at the OTBH proceeding – that she intentionally left off her initial registration application jobs with less than four months in duration, pursuant to her interpretation of an instruction in the application form. When asked why she did not explain this reason at the Interview, she claimed that at the Interview she forgot that she relied on this section of the application form as the basis for not disclosing her employment with Global.

16. Counsel for Staff referred me to several decisions. *Re Thomas*, (1972) OSCB 118 is instructive with respect to the Commission's historic perspective regarding the importance of the application process. This case involved a young man that applied for and received registration as a securities salesman, but in his application he failed to disclose the existence of a criminal charge which he had incurred some years earlier. As a result, the Commission reviewed his continued fitness for registration, cancelled his registration, and in so doing, the panel wrote the following at page 120:

> The keystone to the registration system is the application form. A desire and an ability to answer the questions in it with candour in many respects can be said to be the first test to which the applicant is put.

17. In my view, not only did the Applicant fail the first test contemplated by the Commission in *Re Thomas*, she failed a second test by virtue of the responses she provided to Staff at the Interview. And she failed a third test by not being forthcoming at the OTBH proceeding.

18. n my view, for the reasons set out above, the Applicant has not demonstrated the requisite integrity to be licensed to deal with the investing public.

19. Although Staff also alleged as an independent ground for refusal of registration the fact that the Applicant engaged in registerable activity in breach of subsection 25 of the Act (see paragraph 4(iii) above), I do not find it necessary to make a finding regarding whether her telemarketing activities constituted registrable activity.

20. As an alternative argument, counsel for the Applicant invited me to impose terms and conditions rather than an outright refusal of registration. In following *Re Jaynes*, (2000), 23 OSCB 1543, I do not believe that terms and conditions would be appropriate in a case such as this one, where there is a fundamental issue with the integrity of the Applicant.

21. Counsel for the Applicant also referred me to *Re Trafalgar Associates Limited*, (2010) 33 OSCB 1197 and *Re Solovyev*, (2008) 31 OSCB 8759. *Re Trafalgar* is distinguishable from the case at hand, as I am not basing my decision on the carelessness of the Applicant. *Re Solovyev* involved forgery by a registrant, where terms and conditions were imposed on the registrant. I note that *Re Solovyev* pre-dates the Director's power to suspend found in section 28 of the Act, which came into effect in September 2009 as part of the reformulation of the registration regime in Ontario and across Canada. In my view, terms and conditions are not appropriate for cases involving forgery (see *Re Obasi*, (2011) 34 OSCB 3012 and *Re Dipronio*, (2011) 34 OSCB 6345).

22. For the reasons set out above, my decision is to refuse the registration of the Applicant as a dealing representative of a mutual fund dealer.

"Erez Blumberger "
Deputy Director
Compliance and Registrant Regulation Branch
Ontario Securities Commission

February 28, 2012

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
Cayenne Gold Mines Ltd.	15 Feb 12	27 Feb 12	27 Feb 12	

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
Pacrim International Capital Inc.	30 Dec 11	11 Jan 12	11 Jan 12		

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Chapter 6

Request for Comments

6.1.1 CSA/IIROC Joint Notice 23-312 – Transparency of Short Selling and Failed Trades

REQUEST FOR COMMENT
CANADIAN SECURITIES ADMINISTRATORS / INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA
JOINT NOTICE 23-312
TRANSPARENCY OF SHORT SELLING AND FAILED TRADES

1. Introduction

In recent years, there have been numerous international developments regarding the regulation of short sales and failed trades. A working group (the "Working Group") comprised of staff from the Canadian Securities Administrators ("CSA") and the Investment Industry Regulatory Organization of Canada ("IIROC") has been monitoring these developments and reviewing regulatory approaches to issues arising from short selling and failed trades.

In light of this review, the Working Group is publishing this joint CSA-IIROC notice ("Joint Notice") to solicit feedback on certain aspects of disclosure and transparency measures regarding short sales and failed trades in Canada.

2. The Working Group's approach

The Working Group is examining the issues in a phased approach. The first phase was the publication by IIROC (the "IIROC Notice") of a request for public comment on proposed amendments (the "UMIR Amendments") to the Universal Market Integrity Rules ("UMIR") respecting short sales and failed trades.[1] With a number of minor revisions, the CSA recognizing regulators have approved the UMIR Amendments and IIROC is publishing notice of this approval, which includes a summary of the comments received by IIROC, in conjunction with this Joint Notice.[2] A summary of the UMIR Amendments is contained in Appendix C of this Joint Notice.

The IIROC Notice also described IIROC's plans to enhance transparency of short selling activity and failed trades, which is the second phase. This Joint Notice is intended to complement the discussion and proposals in the IIROC Notice, but is not intended to revisit the UMIR Amendments.

The Working Group is considering other short-selling and failed-trades related issues which may be addressed in future notices. Although this Joint Notice seeks comment on introducing transparency of failed trades, the Working Group is examining issues of trade settlement more broadly and in a larger context. In particular, the Working Group is waiting until IIROC has had more experience with its requirement that Participants[3] report failed trades that have not been rectified by the tenth day following the settlement date (described in section 4 (iii) of this Joint Notice), which became effective on June 1, 2011.

3. The structure of this notice

Section 4 of this Joint Notice sets forth the Working Group's discussions and questions. The Working Group has considered the comments received in response to the specific questions in the IIROC Notice. The Working Group now seeks supplementary feedback from stakeholders on a range of additional approaches to enhance disclosure of short sales and to introduce some public disclosure of failed trades.

To assist stakeholders in considering the discussion and questions in Section 4, we have included in appendices to this Joint Notice summary background information on the following:

- Appendix A - Background on short sales and failed trades, including existing regulatory provisions in Canada governing these topics;

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1 IIROC Notice 11-0075 – Rules Notice – Request for Comments – UMIR - *Provisions Respecting Regulation of Short Sales and Failed Trades* (February 25, 2011).

2 The comments received by IIROC are available on IIROC's Website at http://docs.iiroc.ca/CommentsReceived.aspx?DocumentID=09B964F0FD814123AD04640B2F04A012&LinkID=766&Language=en.
A summary of the comments and the IIROC responses are contained in IIROC Notice 12-0078 – Rules Notice – Notice of Approval – UMIR – *Provisions Respecting Regulation of Short Sales and Failed Trades* (March 2, 2012).

3 UMIR Rule 1.1 defines "Participant" as a dealer that is a member of an exchange, user of a quotation and trade reporting system or a subscriber of an alternative trading system ("ATS"), and "Access Person" as a person other than a Participant who is a subscriber or a user.

- Appendix B – Certain international developments regarding the regulation of short sales and failed trades, including an initiative in 2009 by the International Organization of Securities Commissions ("IOSCO"); and

- Appendix C – An overview of the UMIR Amendments and other measures described in the IIROC Notice.

4. Specific areas for comment

The Working Group believes that Canada's regulatory regime governing short sales is generally consistent with the IOSCO four principles for the effective regulation of short selling (see Appendix A for a summary of Canada's regulatory regime and Appendix B for a summary of the IOSCO principles). However, the Working Group is of the view that it may be appropriate to consider whether additional measures are warranted to: (i) enhance the regulatory reporting and transparency of short sales; and (ii) introduce some transparency of failed trades in our markets.

While the UMIR Amendments promote improvements in these areas, the Working Group requests further stakeholder input on whether additional measures are desirable or needed. The Working Group also notes that IIROC's regulatory jurisdiction is limited to trading by Participants and Access Persons on marketplaces and that CSA rulemaking may be necessary if any measures require a broader scope.

The events during the financial crisis in late 2008 provoked an inquiry into whether enhanced transparency of short selling would improve securities regulation. The Working Group believes that, for the Canadian setting, a careful balance between the potential benefits and costs of transparency of short selling activity must be struck, and is soliciting commenters' views on how to best achieve such balance.

(i) IIROC aggregate short sale trading data

As indicated in the IIROC Notice, IIROC proposes the public release of semi-monthly short sale summaries, showing the aggregate proportion of short selling in the total trading activity of a particular security, based on trading data (number of trades, volume and value) aggregated across all marketplaces monitored by IIROC for trades marked "short sale". This information will supplement the Consolidated Short Position Report ("CSPR") and will correspond to the UMIR reporting cycle for the short position reporting requirement. While the CSPR is produced semi-monthly and shows the total short positions on dealers' books on the first and fifteenth day of each month, the IIROC short sale summary will show the number, value and volume of short sales of each listed security based on all trading on all marketplaces during the semi-monthly period. The short sale summary will also express the number, value and volume of short sales for each security as a percentage of trading activity in that security during the period. IIROC expects to introduce the semi-monthly short sale summaries after the UMIR Amendments come into effect on September 1, 2012.

When the UMIR Amendments come into effect, a change will be made to the marking regime for short sales to help ensure the reported data does not contain unhelpful "noise". The UMIR Amendments will require various accounts which, in the ordinary course, do not take a "directional" position when undertaking a short sale to mark orders as "short-marking exempt" rather than "short".[4] Because these accounts do not know at the time of order entry whether they will be long or short at the time of execution, they mark all sell orders "short". By using a different marker to identify these accounts, the record of orders marked "short" will show those orders that are taking a directional position (i.e. true shorts).

Orders which are designated as "short-marking exempt" will not be included in the semi-monthly short sale summaries. The "short-marking exempt" designation would be applied to all orders from such accounts, including purchases, sales from a long position and sales from a short position.

Question 1: Do you believe that more frequent aggregate short sale summaries should be made publicly available? If so, what should be the frequency of such short sale summaries (e.g. weekly, daily)? What would be the costs and benefits to issuers, investors and Participants from making this information public? Please provide reasons for your answers.

Question 2: In addition to semi-monthly (or more frequent) aggregate short sale summaries, should there be public disclosure of individual short sale transaction data on an anonymous basis? If so, should the publication of this information be time deferred (e.g. one day, one month, etc.)? What would be the costs and benefits to market participants from making this information public? Please provide reasons for your answers.

Question 3: Should data on the usage of the "short-marking exempt" designation in relation to trading activity of a particular security be made publicly available? If so, what should be the frequency of the release of such data? Please provide reasons for your answers.

[4] See Appendix C to this Joint Notice. See also IIROC Notice 12-0079 – Rules Notice – Request for Comments – UMIR – *Proposed Guidance on "Short Sale" and "Short-Marking Exempt" Order Designations* (March 2, 2012).

(ii) Disclosure of short positions (to regulator and/or to public)

As described in Appendix A to this Joint Notice, the aggregate short position in each listed security on the Toronto Stock Exchange ("TSX") and TSX Venture Exchange ("TSXV"), which is contained in the CSPR, is provided twice monthly to IIROC and IIROC has access to the information submitted by each dealer. Currently, the TSX sells the CSPR as a data product and publishes a list of the 20 largest short positions and 20 largest changes in short positions on its website. A separate CSPR is produced by Canadian National Stock Exchange ("CNSX") for securities listed on that exchange. As part of its application to be recognized as an exchange, Alpha Exchange ("Alpha") has indicated an intention to produce a separate CSPR for securities that will be listed on that exchange.

The Working Group noted that, since the global financial crisis, many countries outside of North America have implemented permanent requirements to disclose significant individual short positions by the ultimate investor.[5] CSA Staff on the Working Group discussed whether such a rule should be considered for the Canadian capital markets. As noted in Appendix B to this Joint Notice, the *Dodd-Frank Wall Street Reform and Consumer Protection Act* ("Dodd-Frank Act") in the United States requires the Securities and Exchange Commission ("SEC") to prescribe new rules governing the public disclosure of short sales, at least monthly, by institutional investment managers. However, the Working Group is not proposing any similar individual short sale or short position reporting requirement on buy-side investors at this time, as the Working Group is not convinced that the potential benefits of such reporting outweigh the costs, especially given recent and proposed initiatives described in this Joint Notice.[6] Nor does the Working Group propose at this time to require reporting of short positions under derivative contracts. However, the Working Group will reassess these issues again as regulatory developments in the short sale and short position transparency area continue to unfold in the U.S. and elsewhere.

Despite this, the Working Group recognizes that there are limitations to the current CSPR reporting. For example, only short positions in listed securities are reported. Also, only dealers who are "Participants" (generally dealers who are members of an exchange, users of a quotation and trade report system or subscribers to an ATS) are required to report positions, which means positions held by other dealers and custodians are not included. To the extent that a short position maintained by an Access Person (generally an institution other than a dealer that is a subscriber to an ATS) is held outside of an account with a Participant, the Access Person is required to file a short position report. If all dealers and custodians reported short positions, the CSPR could be more robust.[7]

Question 4: Is the existing public disclosure of short positions adequate? If not, should the information be available for unlisted securities such as debt securities and foreign-listed securities traded on ATSs? Should there be one report covering all securities traded on marketplaces? Should custodians and dealers that are not Participants report their short positions? Please provide reasons for your answers.

Question 5: Is the information in the CSPR timely? Should this information be made available on a more frequent basis? Please provide reasons for your answers.

(iii) Transparency of Failed Trades

The Working Group is soliciting commenters' views on whether measures targeting specific settlement failures or participants that cause fails should be considered. When discussing failed trades in this Joint Notice, the Working Group did not focus specifically on failed trades caused by short sellers. In fact, a previous IIROC study found that long sales are more likely to fail than short sales and that the primary reasons for any trade failure are administrative and clerical errors in back office processing.[8] We believe that reducing failed trades in our markets, however caused, has multiple important policy objectives: it can help provide an effective control over some manipulative activities (including abusive short selling), and it is also an important means to mitigate broader systemic problems, particularly in the clearing and settlement system that underpins the efficiency and integrity of our capital markets.

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5 See Appendix B to this Joint Notice. However, most of these countries do not also have marketplace short sale "flagging" mechanisms similar to the short sale marking regimes in North America. The obligations to make disclosure of significant individual short positions usually start when a minimum threshold is reached, such as a percentage of the total issued and outstanding number or value of the securities. Further disclosures are then required if and when the position reaches other thresholds. A final disclosure would be required if the position fell below the minimum threshold to show that a "disclosable" position was no longer being held. In addition, a two-tier model for disclosure of significant individual net short positions in securities would be used: reporting to regulators of positions would first be required when a certain minimum threshold is reached; and public disclosure would next be required when a higher minimum threshold is reached.

6 Such investors are still subject to existing requirements under securities laws to declare a short sale to their dealer.

7 Securities legislation currently requires that a person who places an order for the sale of a security with a registered dealer declare to the dealer at the time of placing the order whether they do not own the security. A custodian would not necessarily know that securities deposited with them are "owned" by the person on whose behalf the custodian is holding the securities. If custodians were required to report short positions, securities legislation would have to require a comparable declaration at the time the securities are deposited with the custodian.

8 See Market Policy Notice 2007-003 – *General – Results of the Statistical Study of Failed Trades on Canadian Marketplace* (April 13, 2007).

Effective June 1, 2011, Rule 7.10 of UMIR requires Participants to report a trade (an "Extended Failed Trade") that has failed to settle on the settlement date if the trade remains unresolved ten trading days following the settlement date (i.e., after T+13).[9] The report must give the reason for the settlement failure. The Participant is also required to update the report once the problem has been rectified. This information assists IIROC in detecting potential patterns of settlement failure, possibly indicating manipulative or deceptive trading activity.[10]

The Working Group considered whether some public disclosure of failed trades would assist in strengthening settlement discipline. The CSA could arrange for the public disclosure of information on failed trades in individual securities. The publicly-available information could be based on fails to deliver in depository eligible securities processed through the Continuous Net Settlement ("CNS") facilities of CDS Clearing and Depository Services Inc. ("CDS"). This would include all equity securities and exchange-traded funds ("ETFs") traded on all Canadian marketplaces. Fail-to-deliver ("FTD") rates in the CNS facilities could be made publicly available twice a month. This could be supplemented by the public disclosure of aggregate CNS FTD rates in specific groups of securities, such as inter-listed securities, TSX-listed securities, TSXV-listed securities, CNSX-listed securities, ETFs, and so on.

Reporting FTD rates would provide a means of comparing information on short positions and short selling with trade failures during the same period, therefore allowing the reader to determine whether rates of trade failure may be correlated with rates of short selling of a particular security.

Question 6: Currently, are measures for failed trades transparency warranted? If you agree:

- ***What types of information on failed trades would be most useful to participants (some options are described above) and what should be the frequency of such disclosure?***
- ***In addition to equity and other securities processed through the CNS facilities at CDS, do other types of securities or products (e.g. fixed income securities) have FTD rates suggesting that similar failed trade transparency measures should apply to those securities? Please be specific in your answer.***
- ***What would be the costs and benefits, if any, to market participants in implementing such measures? If you believe that measures for failed trades transparency are currently not required, why do you think this information would not be helpful to issuers, investors or Participants? Please provide reasons for your answers.***

5. Conclusion

While the CSA and IIROC believe that the current regulatory framework governing short sales and failed trades in Canada is generally consistent with the four IOSCO principles, some of the proposed additional measures described in this Joint Notice may improve and strengthen our regulatory regime. The CSA and IIROC seek comment on all aspects of the various regulatory approaches discussed in this Joint Notice, and specifically solicit feedback on the questions set out in Section 4 above.

6. How to provide your comments

You must submit your comments in writing by May 31, 2012. If you are not sending your comments by email, you should also send an electronic file containing the submissions (in Windows format, Microsoft Word).

Please address your comments to IIROC and all of the CSA member commissions, as follows:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission

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[9] See the definition of "failed trade" in UMIR Rule 1.1. A "failed trade" includes a sale by an account which has failed to make available the securities for settlement or, in the case of a short sale, has failed to make arrangements with the Participant or Access Person to borrow the securities needed for settlement. Since the failure is determined at the account level, a trade may be considered a "failed trade" for the purposes of UMIR even if the Participant has in fact settled the trade in accordance with the requirements of the clearing agency. An Extended Failed Trade is a "failed trade" within the meaning of the UMIR that was not rectified within ten trading days following the date for settlement contemplated on the execution of that trade. See footnote 22 of Appendix A for information on reports of Extended Failed Trades in the period June 1, 2011 to September 30, 2011.

[10] National Instrument 24-101 *Institutional Trade Matching and Settlement* (NI 24-101) requires registered firms (dealers and advisers) to report to the CSA in certain circumstances information on trade matching (confirmation/affirmation) rates of their institutional equity and debt trades. In addition, clearing agencies and matching service providers are required to provide to the CSA aggregate trade-matching information in respect of their participants or users/subscribers under NI 24-101. However, NI 24-101 does not require the reporting of trade failures.

Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Please send your comments **only** to the addresses below. Your comments will be forwarded to the remaining CSA jurisdictions.

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Fax: 416-593-2318
Email: jstevenson@osc.gov.on.ca

Please note that all comments received during the comment period will be made publicly available. We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. We will post all comments received during the comment period to the OSC website at www.osc.gov.on.ca and to the AMF website at www.lautorite.qc.ca to improve the transparency of the policy-making process.

Questions

Please refer your questions to any of the following CSA and IIROC staff:

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Analyste en réglementation
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Autorité des marchés financiers
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James E. Twiss,
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Investment Industry Regulatory Organization of Canada,
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Paula White
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Manitoba Securities Commission
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Ella-Jane Loomis
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Policy and Market Regulation Branch
Nova Scotia Securities Commission
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(416) 593-2317

Appendix A

Background on short sales and failed trades

a) Introduction

A short sale is generally considered to be the sale of a security that the seller does not own or will not be able to deliver on the settlement of any sale. It involves selling securities at the current market price in the expectation of being able to purchase later at a lower price or being able to cover the short position when securities owned by the seller become available. The selling of securities which are not owned can be risky. Unless the short sale is otherwise "covered" or "hedged", a short seller can lose a potentially unlimited amount on the sale if the price of the particular share rises unexpectedly.

A failed trade occurs when the seller (whether short or long) fails to deliver securities to the buyer when delivery is due, generally three trading days after the trade (T+3). Settlement of a short sale must generally occur on T+3, which means that a short seller needs to purchase the security to cover the sale on the same trading day, unless the security can be "borrowed" from another source.

The terms "short sale" and "failed trade" are not defined in securities legislation, but are defined in UMIR.[11] Short selling is colloquially divided into "naked" and "covered". There is no legal definition of "naked short selling" in Canada. The concept appears to have different meanings in different jurisdictions. In some jurisdictions, it refers to short selling without borrowing in time to make delivery on T+3. In others, a "naked" short sale is viewed as a sale where the seller does not own, and has not borrowed or made arrangements to borrow, securities at the time of the sale. A "covered" short sale is generally considered to be a sale of a security that has been "borrowed" by the seller at the time of the sale. Others have taken a wider interpretation and would include as a "covered" short sale any sale of a security where the seller has arranged or taken steps to borrow the security at the time of the short sale, but will only take delivery of the borrowed security after the sale has been executed.

Short selling is a legitimate trading practice which contributes to market liquidity, efficiency and price discovery. For example, it allows market makers to provide liquidity even when they do not hold a particular security, which helps to stabilise prices. Short selling can contribute to more efficient pricing of securities by moderating both price increases and declines. Short selling can also be an important part of an investor's hedging and risk management strategy.

While fraud and manipulation are not concerns peculiar to short selling, short selling activity can be detrimental when short sellers engage in manipulative activity. Selling pressure spurred by fear and uncertainty may contribute to mispricing and destabilized markets. In extreme market conditions, certain types of short selling, or the use of short selling in combination with certain abusive strategies, may contribute to disorderly markets. In certain circumstances, short sellers may fail to honour their delivery obligations, usually by failing to borrow or make arrangements to borrow securities to settle the sale in a timely manner.

In addition to "naked" and "covered" short selling, trading strategies or derivative positions can create a synthetic short position, where the holder has the same economic exposure as a short seller. Synthetic short positions can be used to manage risk but also can be used as a means of market manipulation.

b) Overview of Canadian short selling and settlement discipline regulation

Existing regulatory controls over short sales and failed trades generally fall into one of the following three categories:

- direct constraints on short sales;
- reporting and transparency measures; and
- settlement discipline regime.

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[11] UMIR Rule 1.1 defines "short sale" as a sale of a security, other than a derivative instrument, which the seller does not own either directly or indirectly or through an agent or trustee. The provision further describes circumstances when a seller is considered to own and not own a security.

UMIR Rule 1.1 defines "failed trade" as a trade resulting from the execution of an order entered on a marketplace on behalf of an "account" and

(a) in the case of a sale, other than a short sale, the account failed to make available securities in such number and form;

(b) in the case of a short sale, the account failed to make:

(i) available securities in such number and form, or

(ii) arrangements with the Participant or Access Person to borrow securities in such number and form; and

(c) in the case of a purchase, the account failed to make available monies in such amount,

as to permit the settlement of the trade at the time on the date contemplated on the execution of the trade. The provision further provides that a trade shall be considered a "failed trade" irrespective of whether the trade has been settled in accordance with the rules or requirements of the clearing agency.

(i) Direct constraints

Most rules in Canada governing short selling are contained in UMIR. Until the UMIR Amendments become effective, UMIR prohibits a Participant or Access Person from making a short sale of a security unless the price is at or above the last sale price for that security (the "UMIR Tick Test").[12] The UMIR Amendments will repeal the UMIR Tick Test effective September 1, 2012.

Since October 2008, UMIR contains a provision that authorizes IIROC, with the approval of the CSA, to designate a security as a "Short Sale Ineligible Security". Such a designation prevents a Participant or Access Person from entering a short sale order on a marketplace in the particular security.[13] A key purpose of this provision is to provide IIROC with the flexibility to respond to evolving developments in the trading of a particular security or class of securities. The Working Group believes that the power to intervene in the markets on an emergency basis and ban short selling in particular securities is an important regulatory tool. Since the introduction of this provision, no circumstance has existed which has warranted the designation of a security as a Short Sale Ineligible Security.

(ii) Short sale reporting and transparency measures

UMIR requires that Participants and Access Persons identify those orders placed on a marketplace that, on execution, would constitute a short sale.[14] The UMIR Amendments will effect a change to the marking regime for short sales such that various accounts which, in the ordinary course, do not take a "directional" position when undertaking a short sale will be expected to mark the order as "short-marking exempt" rather than "short".

Also, Participants and Access Persons are required under UMIR to provide a report twice monthly of the aggregate short position of each individual account in respect of each listed and quoted security.[15] The TSX collects this information with respect to securities listed on the TSX and TSXV and produces the Consolidated Short Position Report ("CSPR") which is made available to IIROC.[16] The TSX also sells the CSPR as a data product and publishes a list of the 20 largest short positions and 20 largest changes in short positions on its website.[17]

(iii) Settlement discipline regime

There are a number of CSA, IIROC and other rules and industry standards that, together, comprise the *settlement discipline* regime in Canada. They include:

- Clause (h) of Part 2 of UMIR Policy 2.2, which interprets the anti-manipulative and deceptive trading provisions of Rule 2.2 of UMIR, provides that entering an order on a marketplace for the sale of a security without, at the time of entering the order, having the *reasonable expectation* of settling any trade that would result from the execution of the order would constitute a manipulative and deceptive trading activity. A similar policy exists for trades off-marketplace in the Companion Policy 23-101CP. A person who enters an order to either purchase or sell a security without having the *ability and intention* to settle the trade would be considered to be violating express anti-manipulation/anti-fraud rules in NI 23-101.[18]

- Rules of self-regulatory organizations ("SROs") and exchanges generally require trades to be settled within a T+3 settlement cycle.[19]

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[12] Inter-listed securities are exempt from the UMIR Tick Test pursuant to an IIROC decision, approved by the CSA in 2007. Inter-listed securities represent approximately 30% of traded volume and 60% of traded value of aggregate daily equity trading volume and value on Canadian marketplaces. ETFs, which account for another 10-15% of trading volume and value, are not subject to the UMIR Tick Test.

[13] See UMIR Rule 3.2(1)(b).

[14] See UMIR Rule 3.2(1)(a). This marking or "flagging" requirement is in addition to securities legislation requirements that require a person, who places an order for the sale of a security that it does not own at the time of placing the order, to declare to the dealer acting on their behalf, that it does not own the security. See, for example, section 48 of the *Securities Act* (Ontario) ("OSA").

[15] UMIR Rule 10.10.

[16] A separate CSPR is produced by CNSX for securities listed on that exchange. As part of its application to be recognized as an exchange, Alpha has indicated an intention to produce a separate CSPR for securities that will be listed on that exchange.

[17] To enhance transparency of short selling in Canada, IIROC is proposing to introduce short sale trade summaries on a semi-monthly basis that will supplement the CSPR and will correspond to the reporting cycle for short position reports. It is also proposing, as part of the UMIR Amendments, to modify the short sale marking requirements to reduce the "noise" in short selling statistics. See Appendix C to this Joint Notice.

[18] See Section 3.1(3)(f) of Companion Policy 23-101CP. Certain provinces have inserted similar general anti-fraud and market manipulation provisions into their securities laws (e.g., OSA s. 126.1), which generally override the anti-manipulation/anti-fraud rules in NI 23-101.

[19] See, for example, IIROC Dealer Member Rule 800.27 and TSX rule 5-103(1). These settlement cycle rules are designed to allow some degree of settlement failure. That is, sometimes legitimate reasons may exist for failures to deliver on time; e.g. improperly endorsed certificates received from a client, back-office glitches or human error. In essence, the SRO rules allow market participants to fix such problems if they do so reasonably quickly.

- The exchanges and CDS have "buy-in" rules to enforce settlement, which allow a purchaser, at its discretion, to require the purchase of securities in the market for delivery to the purchaser, with the seller obliged to pay for the costs of the purchase and thereby forcing the settlement obligation of the seller.[20]

- NI 24-101 requires registered firms trading for or with an institutional investor to have policies and procedures designed to match a "DAP/RAP trade" as soon as practical after the trade is executed, but no later than noon on T+1. Furthermore, NI 24-101 contains a principles-based settlement rule that requires registered dealers to establish, maintain and enforce policies and procedures designed to facilitate settlement of trades by no later than the standard settlement date.[21]

- UMIR Rule 7.10, discussed above, which requires Participants to report extended fails to settle.[22]

[20] See, for example, CDS Rules 7.3.8(b) and 7.4.8(b) and TSX Rule 5-301 (Buy-ins). Generally, where a party to a trade fails to deliver within the usual settlement time, the counterparty may issue a buy-in notice to the defaulting party and request the marketplace to execute the buy-in.

[21] This settlement rule applies to all trades, not just DAP/RAP trades.

[22] The requirement to file an Extended Failed Trade report became effective on June 1, 2011 with respect to trades other than those using the "Trade-for-Trade" settlement facility of CDS. This requirement is at the account level and does not depend on whether the trade was "settled" in the continuous net settlement (CNS) system at CDS. The requirement to provide an Extended Failed Trade Report has not been implemented for a sufficient period of time to allow IIROC to determine if there are any systemic reasons for failures not being rectified within 10 days of the original settlement date. However, to date, all Extended Failed Trade Reports have indicated that the problems have resulted from administrative delays or errors. In the 2006 Failed Trades Study, approximately 4% of failures were not rectified within 10 days and, in the view of IIROC, these "failures" represent the greatest risk to market integrity and confidence in the market. The IIROC Failed Trades Study showed, among other things, that:

- failed trades accounted for 0.27% of the total number of trades executed;
- the predominant cause of failed trades was administrative delay or error, which accounted for almost 51% of fails;
- less than 6% of fails resulting from the sale of a security involved short sales; and
- fails involving short sales accounted for 0.07% of total short sales.

For more details, see the IIROC Notice.

Appendix B

International developments

a) IOSCO

In the wake of the 2008 global financial crisis, IOSCO established a task force to work to eliminate gaps in various regulatory approaches to naked short selling, including delivery requirements and disclosure of short positions. Certain CSA staff on the Working Group participated on the IOSCO task force. The IOSCO task force also examined how to minimize adverse impacts on legitimate securities lending, hedging and other types of transactions that are critical to capital formation and to reducing market volatility. The task force published the report *Regulation of Short Selling* ("IOSCO Report") in June 2009, which contains four high-level principles for the effective regulation of short selling.[23] The four IOSCO principles are designed to assist regulators in their consideration of a regulatory regime for short selling. We briefly discuss the four principles below.[24]

Principle 1: Short selling should be subject to appropriate controls to reduce or minimize the potential risks that could affect the orderly and efficient functioning and stability of financial markets.

The IOSCO Report states that an effective discipline for settlement of short selling transactions is the first pillar for an effective short selling regulatory regime. It recommends that regulation of short selling *should as a minimum requirement impose a strict settlement (such as compulsory buy-in) of failed trades* (emphasis in IOSCO Report).

The IOSCO Report describes various regulatory tools used to control short selling activity, such as price restrictions (e.g. an uptick requirement), a pre-borrow or "locate" requirement or rules that allow short selling of shares only if they meet certain eligibility criteria. In many jurisdictions, there are settlement discipline requirements that impose a form of mandatory buy-in or close-out requirement if the shares in a transaction (whether a short sale or not) are not delivered within the standard settlement cycle, typically T+3.

The Working Group does not believe that a compulsory buy-in requirement is needed in Canada. As noted in this Joint Notice, there has not been a significant problem with failed trades and trade failures are primarily associated with administrative problems with long sales. We note that there are buy-in procedures available for buyers whose trades have failed, and that IIROC requires reporting of extended failed trades and can prohibit short sales in a particular security if warranted. The UMIR Amendments will give IIROC the power to require pre-borrowing for certain accounts or securities if warranted.

Principle 2: Short selling should be subject to a reporting regime that provides timely information to the market or to market authorities.

In order to achieve an appropriate level of transparency regarding short selling activity, the IOSCO Report encourages jurisdictions to consider some form of reporting of short selling information to the market or to market authorities. Broadly speaking, there are two models that are commonly in use for short selling reporting: (i) "flagging" of short sales (i.e. putting a marker on each short sale that a broker sends to a marketplace for execution); and (ii) short position reporting. The IOSCO Report notes that both models have their own merits and each could serve the above regulatory objectives.

In Canada, short sale orders are marked as such when entered on a marketplace. Short position reports are generated semi-monthly for listed securities. With the implementation of the UMIR Amendments, IIROC expects to produce a semi-monthly report on the proportion of short sales to total trading activity for each listed security.

Principle 3: Short selling should be subject to an effective compliance and enforcement system.

The IOSCO Report notes that because an effective compliance and enforcement system is essential for an effective short selling regulatory regime, regulators should, among other things, monitor and inspect settlement failures regularly and establish a mechanism to analyse the information obtained from the reporting of short positions and/or flagging of short sales to identify potential market abuses and systemic risk.

IIROC currently monitors short selling activity in real time and has introduced a new alert designed to detect potential abusive short selling activity.

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[23] The IOSCO report is available on IOSCO's website (www.iosco.org). This IOSCO initiative was an important global response intended to help restore and maintain investor confidence, as the principles were formulated with a view to addressing the objectives of investor protection, helping to ensure that markets are fair, efficient and transparent, and reducing systemic risk.

[24] We note that the IIROC Notice also specifically dealt with the IOSCO initiative (including an appendix that contained an analysis of the application of each IOSCO principle to the situation in the Canadian markets, the impact of measures adopted by IIROC since 2008 and the intended effect of proposals described in the IIROC Notice). The IIROC Notice also contained an analysis of various measures taken or proposed in the United States and indicated why IIROC did not propose to adopt comparable measures for Canadian markets.

Principle 4: Short selling regulation should allow appropriate exceptions for certain types of transactions for efficient market functioning and development.

The IOSCO Report highlights the necessity for flexibility in short selling regulation in order to allow market transactions that are desirable for efficient market function and development, such as market making activity. Regulatory authorities are required, at a minimum, to clearly define the exempted activities and the manner in which these exemptions should be reported.

UMIR currently contains exemptions from the UMIR Tick Test for market maker and arbitrage activities and for certain types of securities, such as ETFs and securities inter-listed on U.S. stock exchanges. With the removal of the UMIR Tick Test on implementation of the UMIR Amendments, these exemptions will no longer be needed. The UMIR Amendments also contain an exemption from the short sale marking requirement for sell orders from non-directional accounts. Such accounts will be required to mark both purchase and sell orders as "short-marking exempt". See Appendix C for more details.

b) United States

(i) The short sale circuit breaker price test

After having repealed all short sale price restrictions (tick/uptick tests) in July 2007, the SEC in April 2009 introduced Rule 201 of Regulation SHO, which sets out a short sale "circuit breaker" triggered price restriction ("Rule 201"). Rule 201, which became effective on February 28, 2011,[25] prohibits short sales of National Market System ("NMS") securities at a price that is less than or equal to the current national best bid if the price of the security decreases intra-day by 10% or more from the prior day's closing price. This short sale price restriction remains in effect for the remainder of the day and the next trading day.

(ii) SEC "locate" and "close-out" measures

In 2005, the SEC introduced a number of measures, including the introduction of the "threshold" fails list and the locate and close-out requirements of Regulation SHO, designed to reduce overall settlement failure rates in the U.S. markets. In 2008, the SEC tightened their close-out rule by requiring participants of a registered clearing agency to close out fail-to-deliver positions in equity securities resulting from short sales by the morning of T+4, and fails to deliver positions resulting from long sales, or bona fide market making activity, by the morning of T+6. This rule (Rule 204 of Regulation SHO, which was first introduced in September 2008 as a temporary Rule 204T) has significantly decreased settlement failure rates in the U.S. The rule also prohibits any further short sales by the participant until a fail-to-deliver position is closed out or a "pre-borrow" is arranged prior to the sale.

(iii) SEC naked short selling antifraud rule

The SEC also adopted Rule 10b-21 under the 1934 Act, a "naked" short selling antifraud rule. Under that rule, a civil fraud violation occurs if a short seller misleads a broker-dealer about its intention or ability to deliver securities by settlement date and fails to deliver securities by settlement date. [26]

(iv) Transparency developments

With respect to transparency, the SEC coordinated with the SROs (which, in the U.S. includes the exchanges) to increase the public availability of short sale-related data. The following new measures were introduced in 2009 to increase transparency in the area of short selling:

1. U.S. SROs, such as the Financial Industry Regulatory Authority ("FINRA"), publish on their websites daily aggregate short sale volume data for that day in each individual security in the NMS.

2. SROs publish on their websites individual short sale transaction data on an anonymous and one-month delayed basis.

The above short sale information is in addition to the current twice-monthly SRO short position reporting requirement imposed on dealers,[27] which is similar to IIROC's short position reporting requirement in Canada. The SEC also introduced the twice-

[25] The initial implementation date for this rule was November 10, 2010. However, on November 8, 2010, the SEC announced that it extended the date to February 28, 2011, to give certain exchanges additional time to modify their market opening, reopening, and closing procedures for individual securities covered by the rule, and in order to provide additional time to market participants for programming and testing of systems for implementation.

[26] In Canada, a person who misleads a dealer about its intention or ability to deliver securities by settlement date and fails to deliver securities by settlement date could be violating the anti-fraud and manipulation rules of securities laws (see NI 23-101 and section 3.1(3)(f) of Companion Policy 23-101CP and OSA s. 126.1). It is also possible that such person would be breaching securities law provisions that require the person, who places an order for the sale of a security that it does not own at the time of placing the order, to declare to the dealer acting for it in the sale that it does not own the security (*see, e.g.,* OSA *s.48*).

monthly publication of fail-to-deliver data on its website for all equity securities processed through National Securities Clearing Corporation ("NSCC")[28] in the U.S., regardless of the fails level.

(v) Dodd-Frank Act

The Dodd-Frank Act, which became law on July 21, 2010, requires the SEC to prescribe new rules governing the public disclosure of short sales, at least monthly, by institutional investment managers that are subject to section 13(f) of the 1934 Act (i.e., generally those with $100 million and over in assets under management). It also mandates the SEC's Division of Risk, Strategy, and Financial Innovation to conduct a study within a year of the feasibility, benefits, and costs of requiring reporting publicly, in real time, of short sale positions in publicly listed securities, or, in the alternative, reporting such short positions in real time only to the SEC and FINRA.[29] Moreover, within two years of the date of enactment, the SEC is required to conclude a study on the state of short selling after recent rule changes and the incidence of failures to deliver shares sold short on the fourth day following a short sale transaction (T+4). The SEC is also required to submit a report to Congress regarding the study, including recommendations for market improvements.

The Dodd-Frank Act amends the 1934 Act to prohibit any "manipulative short sale of any security", and authorizes the SEC to issue rules to enforce this provision. It also requires brokers to notify customers that they may elect not to allow their securities to be used in connection with short sales, and brokers must disclose that they may receive compensation for lending their customers' securities. The SEC is authorized to specify by rule the form, content, time and manner of delivery of such customer notifications. Moreover, the Dodd-Frank Act amends the 1934 Act to grant the SEC explicit authority to issue rules regarding securities lending. It also requires the SEC, within two years after enactment, to promulgate rules designed to increase the transparency of information available regarding securities lending.

c) European Union

In March 2010, the Committee of European Securities Regulators ("CESR") (now the European Securities and Markets Authority or "ESMA") released a report proposing a pan-European short position disclosure regime for European Union ("EU") shares. CESR recommended that short positions should be disclosed to regulators at one threshold, and to the market at a higher threshold. The proposals largely follow the regime that the U.K. Financial Services Authority ("FSA") had already imposed, which is based on a two-tier model for disclosure of significant individual net short positions in all shares that are admitted to trading on European marketplaces. Public disclosure would be required for a net short position of 0.5% of the issuer's issued share capital (taking into account any economic exposure under derivative positions in addition to short positions in the cash markets). Subsequent disclosure would be required for any 0.1% increment change in short position. CESR also proposed a separate private disclosure to the regulators for any 0.2% net short position, and then again at every 0.1% increase or decrease.

Building on CESR's proposals, the European Commission published a Consultation Paper in June 2010, where it sought views of market participants, regulators and other stakeholders about possible measures related to short selling and credit default swap issues that could be included in a legislative proposal. On September 15, 2010, the European Commission adopted a proposal for regulation of short sales and certain aspects of credit default swaps (the "September 15, 2010 Proposal"). On May 17, 2011, the Council of the EU agreed with the general approach of the proposal. On November 15, 2011, the European Parliament adopted the *Regulation of the European Parliament and Council on Short Selling and Certain Aspects of Credit Default Swaps* (the "*Regulation on Short Selling and Credit Default Swaps*").[30] If the Council of the EU approves the regulation unaltered, it will come into force on November 1, 2012.

The main objectives of the *Regulation on Short Selling and Credit Default Swaps* are to ensure member states have clear powers to intervene in exceptional situations, create a harmonized framework for ESMA-coordinated action at the European level, increase transparency on short positions held by investors in EU securities, reduce settlement risks due to naked short selling and reduce risks to the stability of the sovereign debt markets. Highlights of the *Regulation on Short Selling and Credit Default Swaps* include the following:

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27 Firms must report short interest positions in all securities (including NASDAQ, Amex, NYSE, Arca and OTC equity securities) through an SRO on a bi-monthly basis.

28 Most marketable equity and corporate debt securities transactions in the U.S. are cleared and settled through the combination of two registered clearing agencies: NSCC is the entity that performs the clearing and central counterparty functions, while the Depository Trust Company ("DTC") is the central securities depository.

29 To assist in its study, the SEC's Division of Risk, Strategy, and Financial Innovation published on May 3, 2011 a request for comment on a wide range of questions on both the existing uses of short selling in securities markets and the adequacy or inadequacy of currently available information regarding short sales, as well as comment on the likely effect of these possible future reporting regimes on the securities markets, including their feasibility, benefits, and costs. See SEC Release No. 34-64383; File No. 4-627 - *Short Sale Reporting Study Required by Dodd-Frank Act Section 417(a)(2)*.

30 *See European Parliament legislative resolution of 15 November 2011 on the proposal for a regulation of the European Parliament and of the Council on Short Selling and Certain Aspects of Credit Default Swaps*, Strasbourg, 15.11.2011, COM (2010) 0482 (final) – 2010/0251 (COD), available at: http://www.europarl.europa.eu/.

1. Introducing a requirement that investors disclose significant net short positions in shares to regulators at 0.2% of the issued share capital, and to the public at 0.5%;

2. Introducing a requirement that investors notify regulators of significant net short positions in EU sovereign bonds, including notification of significant credit default swap positions relating to sovereign debt issuers;[31]

3. Giving ESMA the power to intervene in response to threats to financial markets, where the EU national regulator has either failed to act or to do so adequately, and adopt temporary measures with the effect of prohibiting or restricting short selling;

4. Giving the EU national regulators the power to require further transparency or restrict short selling and certain derivative transactions for a wide range of instruments in the case of adverse developments that constitute a serious threat to financial stability or market confidence in the European Union or a Member State;

5. Giving the EU national regulators the power to restrict short selling or limit transactions in a financial instrument[32] if the price of that financial instrument falls by a significant amount (10% from the previous day's close in the case of liquid shares). The restriction will last up to the end of the trading day following the day the price of the financial instrument fell, unless the price falls further;

6. Introducing a pre-borrow or "locate" type requirement where an investor, before entering a short sale for shares or for sovereign debt, would be required:

    - to have borrowed the instruments concerned,

    - to have entered into an agreement to borrow the instruments in order to deliver them by the settlement date, or

    - to have an arrangement with a third party to locate the instruments concerned and to have a "reasonable expectation" of being able to borrow them to affect settlement when it is due;

7. Requiring central counterparties in the EU to ensure that there are adequate arrangements in place for the buy-in of shares if there is a failure to settle a transaction, and requiring that daily fines be imposed for non-settlements;

8. Introducing a ban on holding an uncovered credit default swap position in EU sovereign debt; and

9. Providing an exemption from the regulation for market making and primary market operations, and for shares whose principal trading venue is outside the EU.

The preamble to the regulation[33] suggests that the European Commission consider requiring investment firms to provide information about short sales in transaction reports to EU national regulators.[34]

On January 13, 2011, the European Commission also sought public comment on establishing an effective EU securities settlement regime.[35] Among other things, the European Commission is proposing legislation and rules on settlement discipline that would focus on the following:

- early matching of settlement instructions and settlement in earlier settlement cycles on the settlement date - e.g., encouraging clearing houses to provide incentives for early settlement by participants through an appropriate tariff structure; requiring the use of pre-matching procedures and early matching by participants; and requiring the use of straight-though processing (STP) technology; and

- prevention of fails management and forced settlement of fails after the settlement date - e.g., high-level rules on a harmonized penalty regime for fails, and enforcement rules such as mandatory buy-ins and cash compensation for buyers if a buy-in is not possible.

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31 No requirement was proposed that investors disclose significant positions of sovereign bonds or credit default swaps to the public, due to the potential negative consequences on the sovereign bond market.

32 These powers extend to a wide range of instruments.

33 See *Regulation on Short Selling and Credit Default Swaps*, Preamble (13). See note 29.

34 As part of its revision of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 ("MiFID").

35 See *Public consultation on Central Securities Depositories (CSDs) and on the harmonisation of certain aspects of securities settlement in the European Union*, Brussels, 13 January 2011, DG Markt G2 D(201) 8641, available at: http://ec.europa.eu/internal_market/consultations/2011/csd_en.htm

More recently, on August 11, 2011, some authorities in the EU imposed or extended existing short-selling bans or restrictions in their respective countries due to recent volatility in the European financial markets.[36] ESMA stated, "While short-selling can be a valid trading strategy, when used in combination with spreading false market rumours this is clearly abusive." On the same day, the regulatory authorities in several jurisdictions (France, Italy, Spain and Belgium) announced new bans on short-selling or on the holding of short positions. By banning, restricting and requiring the disclosure of short sales, such countries' regulators are seeking to maintain confidence in their own markets and complement the measures taken by other EU regulators.

d) Hong Kong

The Securities and Futures Commission of Hong Kong (the "SFC-HK") has adopted a rule that, among other things, will:

1. introduce a requirement for weekly reporting of short positions in specified shares that exceed on a net basis either: 0.2% of the issued share capital or HK$30 million. This requirement would apply to both covered and uncovered short positions;

2. only apply to positions taken through the Hong Kong Stock Exchange or an authorized automated trading system specified by the SFC-HK;

3. only apply to shares that are constituents of the Hang Seng Index or the Hang Seng Enterprises Index, and to designated financial stocks and any other security designated by the SFC-HK; and

4. allow the SFC-HK to require daily reporting of short positions when needed, if the financial stability of Hong Kong is threatened.

The rule comes into force on June 18, 2012.

e) Other jurisdictions

The IIROC Notice describes a number of regulatory initiatives undertaken in other countries not mentioned above, including Australia and Asian jurisdictions.

[36] ESMA's public statement is available at: http://www.esma.europa.eu/popup2.php?id=7699. On August 8, 2011, the Greek regulator, the Hellenic Capital Market Commission announced a temporary ban on the short selling of shares or units in exchange-traded funds listed on the Athens Exchange irrespective of the venue where the transaction is executed; intraday positions are also included within the prohibition.

Appendix C

Summary of UMIR Amendments

The UMIR Amendments are effective September 1, 2012. The UMIR Amendments repeal pricing restrictions on short sales; however IIROC does not propose to adopt a circuit breaker rule similar to Rule 201 because IIROC does not believe such a rule is necessary in the Canadian capital markets (as explained in more detail in the IIROC Notice).[37]

The UMIR Amendments also change the marking regime for short sales such that various accounts which, in the ordinary course, do not take a "directional" position when undertaking a short sale (i.e. the short sale is being undertaken for arbitrage, market making or other trading strategy which generally results in the account being "flat" at the end of each trading day) are not required to mark sale orders as "short" but rather as "short-marking exempt". Under the UMIR Amendments, the order designation "short-marking exempt" is used in connection with orders for the *purchase* or *sale* of a security by any exempt account. IIROC suggests that, with this new order designation, it will be able to remove much of the "noise" in the short sale data flowing from trades by persons who are not taking a directional position. This, in turn, will permit IIROC's new surveillance and monitoring "alert" system (described below) to operate more effectively. This "short-marking exempt" designation will not be displayed to the public.

The UMIR Amendments also include a limited pre-borrow rule that requires, subject to certain exceptions, a Participant or Access Person to have made arrangements to borrow securities that would be necessary to settle any short sale prior to the entry of the order on a marketplace if:

- the security has been designated by IIROC to be a "Pre-Borrow Security";[38]
- the client or "non-client"[39] account on whose behalf the short sale order is being entered has previously had an Extended Failed Trade; or
- the Participant had executed, as principal, an Extended Failed Trade in that particular security.

In addition, the IIROC Notice describes the introduction of a new IIROC surveillance and monitoring "alert" that is designed to detect abusive short selling activity on a timely basis and enable IIROC to take appropriate remedial or investigative actions, including designating the security as being ineligible for further short selling activity.

With the approval and forthcoming implementation of the UMIR Amendments, IIROC also expects to be in a position to produce, and to disseminate publicly, a semi-monthly report on the proportion of short sales in the total trading activity of each security across all marketplaces. It believes this should help establish a better appreciation for the "normal" levels of short selling for each security. IIROC withdrew its 2007 proposal to repeal the UMIR short position reporting requirement, with the result that the CSPR will continue to be available.

IIROC suggests that, while no one data source can provide a "complete" picture of short sale activity or positions, the semi-monthly aggregate trading summaries will provide timely information in a cost efficient manner and will supplement the information available through the semi-monthly CSPR.

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37 See also IIROC Notice 12-0077 — Rules Notice — Technical — Effects of Short Sale Circuit Breakers in the United States on the Trading of Inter-listed Securities in Canada (March 2 , 2012).

38 The UMIR Amendments would define a "Pre-Borrow Security" in Rule 1.1 as a security that has been designated by IIROC to be a security in respect of which an order, that on execution would be a short sale, may not be entered on a marketplace unless the Participant or Access Person has made arrangements to borrow the securities that would be necessary to settle the trade prior to the entry of the order.

39 A "non-client" is a person who is a partner, director, officer or employee of a Participant or a related entity of a Participant that holds an approval from an exchange or self-regulatory entity.

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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
01/26/2012	7	2312119 Ontario Inc. - Common Shares	2,500,005.00	2,500,005.00
01/01/2011 to 12/01/2011	6	Aberdeen Canada - Emerging Markets Fund - Units	117,925,000.00	801,595.75
01/01/2011 to 12/01/2011	20	Aberdeen Canada - Global Equity Fund - Units	638,862,562.05	6,898,696.89
01/01/2011 to 12/01/2011	1	Aberdeen Canada - Socially Responsible Global Fund - Units	1,046,312.03	12,263.31
01/31/2012	96	ACM Commercial Mortgage Fund - Units	4,649,384.75	40,976.02
01/01/2011 to 12/31/2011	1	AMI Balanced Fund - Units	3,743,430.78	343,672.00
01/01/2011 to 12/31/2011	2	AMI Balanced Pooled Fund - Units	103,140.52	10,269.00
01/01/2011 to 12/31/2011	1	AMI Canadian Equity Pooled Fund - Units	200,760.71	27,017.38
01/01/2011 to 12/31/2011	2	AMI Capped Canadian Equity Pooled Fund - Units	5,402,981.14	388,318.00
01/01/2011 to 12/31/2011	1	AMI Corporate Bond Pooled Fund - Units	110,620.40	10,630.75
01/01/2011 to 12/31/2011	6	AMI Growing Income Pooled Fund - Units	727,168.05	58,848.00
01/01/2011 to 12/31/2011	3	AMI Money Market Pooled Fund - Units	9,016,857.15	901,685.72
01/01/2011 to 12/31/2011	11	AMI Small Cap Pooled Fund - Units	912,113.35	11,767.34
01/05/2011 to 12/29/2011	405	Barometer Equity Pool - Trust Units	39,801,545.08	3,263,733.88
01/05/2011 to 12/20/2011	425	Barometer Global Equity Pool - Trust Units	21,448,747.08	2,053,134.42
01/06/2011 to 12/02/2011	73	Barometer Global Tactical Balanced Pool - Trust Units	4,956,969.47	452,600.60
01/03/2011 to 12/30/2011	1179	Barometer High Income Pool - Trust Units	216,762,673.88	19,044,968.18
01/05/2011 to 12/26/2011	201	Barometer Long Short Equity Pool - Trust Units	10,863,565.24	1,018,007.97
01/06/2011 to 12/26/2011	393	Barometer Tactical Exchange Traded Fund Pool - Trust Units	19,900,771.28	1,753,765.27

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
02/10/2012	5	Bending Lake Iron Group Limited - Common Shares	30,000.00	15,000.00
12/29/2011	3	Bending Lake Iron Group Limited - Flow-Through Shares	161,000.00	70,000.00
01/01/2011 to 07/01/2011	9	Big Rock Americas High Yield Fund LP - Limited Partnership Units	3,266,612.00	3,129.78
02/01/2012	1	Canadian Health Systems Inc. - Common Shares	150,000.00	2,317.32
01/17/2012	3	Caza Gold Corp. - Common Shares	151,594.96	631,645.00
01/27/2012	1	Chester Downs and marina, LLC and Chester Downs Finance Corp. - Note	4,005,206.77	1.00
01/23/2012 to 01/24/2012	2	Colwood City Centre Limited Partnership - Notes	35,000.00	35,000.00
01/27/2012	1	Delavaco Properties Inc. - Common Shares	5,000,000.00	5,000,000.00
01/09/2012	3	Detour Gold Corporation - Common Shares	10,155,000.00	375,000.00
01/01/2011 to 12/31/2011	5	DIM Private Alternative Strategies Fund - Trust Units	38,249,188.00	3,959,830.00
01/01/2011 to 12/31/2011	4	DIM Private Balanced Fund - Trust Units	7,886,923.00	730,408.00
01/01/2011 to 12/31/2011	4	DIM Private Bond Fund - Trust Units	37,033,484.00	3,514,475.00
01/01/2011 to 12/31/2011	2	DIM Private Canadian Growth Equity Fund - Trust Units	22,360,464.00	1,968,630.00
01/01/2011 to 12/31/2011	6	DIM Private Canadian Large Cap Equity Fund - Trust Units	103,224,543.00	7,839,633.00
01/01/2011 to 12/31/2011	4	DIM Private Canadian Small Cap Equity Fund - Trust Units	14,889,610.00	1,148,240.00
01/01/2011 to 12/31/2011	6	DIM Private Corporate Bond Fund - Trust Units	121,172,709.00	13,193,117.00
01/01/2011 to 12/31/2011	6	DIM Private EAFE Equity Fund - Trust Units	91,741,881.00	10,714,970.00
01/01/2011 to 12/31/2011	6	DIM Private Government Bond Fund - Trust Units	179,264,501.00	19,447,641.00
01/01/2011 to 12/31/2011	5	DIM Private U.S. Equity Fund (for non taxable accounts) - Trust Units	44,348,259.00	7,342,766.00
01/01/2011 to 12/31/2011	6	DIM Private U.S. Equity Fund (for taxable accounts) - Trust Units	94,063,667.00	18,121,565.00
12/15/2011	140	Evans Value Fund - Units	3,785,975.21	18,568.60
01/27/2012	23	First Americas Gold Corporation - Units	411,000.00	1,555,000.00
12/31/2010 to 11/30/2011	97	Formula Growth Hedge Fund - Units	29,458,373.74	2,422,186.20
01/27/2012	8	Hard Creek Nickel Corporation - Units	699,800.04	2,087,778.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/15/2011 to 12/15/2011	21	HughesLittle Balanced Fund - Units	552,669.00	55,718.00
01/15/2011 to 11/15/2011	19	HughesLittle Value Fund - Units	3,418,431.00	284,012.00
01/23/2012 to 01/27/2012	24	IGW Real Estate Investment Trust - Units	898,544.88	898,545.00
01/23/2012 to 01/27/2012	21	IGW Real Estate Investment Trust - Units	348,907.64	332,293.00
02/01/2012	11	Imaflex Inc. - Units	735,484.30	1,935,485.00
01/26/2012	4	Lamar Media Corp. - Notes	5,242,650.00	4.00
01/01/2011 to 12/31/2011	36	Leith Wheeler Canadian Equity Fund - Trust Units	155,194,795.16	4,786,319.25
01/01/2011 to 12/31/2011	2	Leith Wheeler Constrained Fixed Income Fund - Trust Units	4,240,855.24	404,222.80
01/01/2011 to 12/31/2011	8	Leith Wheeler Diversified Pooled Fund - Trust Units	49,702,258.75	4,395,193.12
01/01/2011 to 12/31/2011	25	Leith Wheeler Fixed Income Fund - Trust Units	13,028,874.26	1,212,773.06
01/01/2011 to 12/31/2011	8	Leith Wheeler Income Advantage Fund - Trust Units	3,843,329.24	383,458.49
01/01/2011 to 12/31/2011	1	Leith Wheeler International Equity Plus Fund - Trust Units	290,000.00	35,227.56
01/01/2011 to 12/31/2011	63	Leith Wheeler International Fund - Trust Units	48,365,389.26	3,681,914.71
01/01/2011 to 12/31/2011	51	Leith Wheeler Special Canadian Equity Fund - Trust Units	21,076,207.54	4,672,963.67
01/01/2011 to 12/31/2011	7	Leith Wheeler Total Return Bond Pooled Fund - Trust Units	4,726,527.69	452,570.49
01/01/2011 to 12/31/2011	12	Leith Wheeler Unrestricted Diversified Pooled Fund - Trust Units	39,593,176.90	3,708,905.32
01/01/2011 to 12/31/2011	32	Leith Wheeler US Equity Fund - Trust Units	16,040,600.79	6,515,073.54
01/01/2011 to 12/31/2011	14	Leith Wheeler US Pension Pooled Fund - Trust Units	12,012,046.69	4,709,109.04
01/01/2011 to 12/31/2011	91	Manitou Canadian Equity Fund - Units	15,895,585.14	139,047.39
01/01/2011 to 12/31/2011	103	Manitou Equity Fund - Units	6,335,012.76	50,596.53
01/01/2011 to 12/31/2011	70	Manitou Income Fund - Units	13,119,606.03	126,182.92
01/01/2011 to 12/31/2011	1	Manulife Asia Equity Class - Units	100.00	10.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/01/2011 to 12/31/2011	2	Manulife Asset Management Canadian Bond Index Pooled Fund - Units	338,180,300.97	30,511,084.64
01/01/2011 to 12/31/2011	1	Manulife Asset Management Canadian Core Equity Pooled Fund - Units	2,000,000.00	200,000.00
01/01/2011 to 12/31/2011	1	Manulife Asset Management Canadian Core Fixed Income Pooled Fund - Units	60,731,667.82	5,673,511.10
01/01/2011 to 12/31/2011	3	Manulife Asset Management Canadian Equity Index Pooled Fund - Units	208,701,620.16	13,432,223.93
01/01/2011 to 12/31/2011	1	Manulife Asset Management Canadian Investment Grade Corporate Fixed Income Pooled Fund - Units	30,000,000.00	3,000,000.00
01/01/2011 to 12/31/2011	2	Manulife Asset Management Canadian Large Cap Growth Pooled Fund - Units	1,378,903.42	176,591.03
01/01/2011 to 12/31/2011	1	Manulife Asset Management Canadian Long Duration Fixed Income Pooled Fund - Units	6,506,242.22	644,456.77
01/01/2011 to 12/31/2011	1	Manulife Asset Management Diversified Value Pooled Fund - Units	5,477,653.74	579,145.45
01/01/2011 to 12/31/2011	1	Manulife Asset Management Emerging Markets ADR Pooled Fund - Units	250,000.00	25,000.00
01/01/2011 to 12/31/2011	1	Manulife Asset Management Emerging Markets Equity Pooled Fund - Units	5,000,000.00	500,000.00
01/01/2011 to 12/31/2011	1	Manulife Asset Management Global Diversified Pension Pooled Fund (non-taxable) - Units	2,000,000.00	218,005.04
01/01/2011 to 12/31/2011	2	Manulife Asset Management Global Equity Pooled Fund - Units	675,513.10	90,890.81
01/01/2011 to 12/31/2011	1	Manulife Asset Management Global Large Cap Growth Pooled Fund - Units	6,129,787.03	612,592.86
01/01/2011 to 12/31/2011	1	Manulife Asset Management International Equity Index Pooled Fund - Units	89,416,866.28	9,159,439.30
01/01/2011 to 12/31/2011	1	Manulife Asset Management International Equity Pooled Fund - Units	2,428,908.21	410,032.28
01/01/2011 to 12/31/2011	1	Manulife Asset Management Money Market Pooled Fund - Units	18,454.76	2,299.17
01/01/2011 to 12/31/2011	1	Manulife Asset Management Select Alpha Global Equity Pooled Fund - Units	1,000,000.00	100,000.00
01/01/2011 to 12/31/2011	1	Manulife Asset Management Small-Mid Cap Core Equity Pooled Fund - Units	5,000,000.00	500,000.00
01/01/2011 to 12/31/2011	1	Manulife Asset Management Strategic Income Pooled Fund - Units	283,582,533.02	28,302,281.87
01/01/2011 to 12/31/2011	1	Manulife Asset Management US Equity Index Pooled Fund – Units	169,231,941.10	21,982,497.59
01/01/2011 to 12/31/2011	2	Manulife Asset Management US Equity Index Pooled Fund (non-taxable) - Units	3,943,645.54	354,513.32
01/01/2011 to 12/31/2011	1	Manulife Asset Management US Large Cap Core Pooled Fund - Units	4,522,823.70	870,990.58

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/01/2011 to 12/31/2011	1	Manulife Asset Management US Large Cap Core Pooled Fund (non-taxable) - Units	374,974.34	47,985.66
01/01/2011 to 12/31/2011	1	Manulife Asset Management US Large Cap Growth Equity Pooled Fund - Units	2,000,000.00	200,000.00
01/01/2011 to 12/31/2011	1	Manulife Canadian Core Class - Units	359,346.90	24,477.58
01/01/2011 to 12/31/2011	1	Manulife Canadian Investment Class - Units	32,530,790.20	3,146,455.52
01/01/2011 to 12/31/2011	1	Manulife Canadian Large Cap Value Class - Units	285,553.66	18,153.31
02/16/2011 to 12/31/2011	3	Manulife Canadian Property Portfolio - Units	164,971,025.00	16,483,369.00
02/16/2011 to 12/31/2011	5	Manulife Canadian Real Estate Investment Fund - Units	214,156,536.31	21,264,395.00
01/01/2011 to 12/31/2011	1	Manulife China Class - Units	3,423,589.76	194,653.93
01/01/2011 to 12/31/2011	1	Manulife Global Equity Class - Units	4,706,023.52	434,125.28
01/01/2011 to 12/31/2011	1	Manulife Global Leaders Class - Units	14,705,117.86	1,559,923.60
01/01/2011 to 12/31/2011	1	Manulife Global Opportunities Class - Units	146,040,435.10	12,992,208.41
01/01/2011 to 12/31/2011	1	Manulife International Value Class - Units	21,117,638.14	1,821,872.61
01/01/2011 to 12/31/2011	1	Manulife International Value Equity Class - Units	100.00	10.00
01/01/2011 to 12/31/2011	1	Manulife Japan Class - Units	464,378.23	54,572.07
01/01/2011 to 12/31/2011	1	Manulife U.S. Equity Index Fund - Units	57,156,798.70	4,742,919.61
01/01/2011 to 12/31/2011	1	Manulife U.S. Large Cap Equity Fund - Units	39,661,327.04	3,528,343.74
01/01/2011 to 12/31/2011	1	Manulife U.S. Mid-Cap Fund - Units	8,396,325.41	712,788.77
01/01/2011 to 12/31/2011	1	Manulife U.S. Opportunities Class - Units	32,558,862.01	2,998,844.40
01/01/2011 to 12/31/2011	1	Manulife U.S. Opportunities Fund - Units	93,586,715.27	7,928,496.55
01/01/2011 to 12/31/2011	1	Manulife Value Balanced Fund - Units	100.00	10.00
01/01/2011 to 12/31/2011	1	Manulife World Investment Class - Units	18,583,270.15	1,876,971.90
01/01/2011 to 12/31/2011	1	Manulife World Investment Fund - Units	432,002.00	45,464.85

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/01/2011 to 12/31/2011	1	Manulife Yield Opportunities Fund - Units	70,207,941.31	6,795,653.80
01/26/2012	1	Mayfair Mining and Minerals Inc. - Common Shares	0.00	20,000,000.00
01/01/2011 to 12/31/2011	39	Morgan Meighen Balanced Pooled Fund - Units	3,319,232.00	335,101.00
01/01/2011 to 12/31/2011	8	Morgan Meighen Global Pooled Fund - Units	1,222,000.00	114,944.00
01/01/2011 to 12/31/2011	31	Morgan Meighen Growth Pooled Fund - Units	3,757,768.95	292,730.00
01/01/2011 to 12/31/2011	46	Morgan Meighen Income Pooled Fund - Units	6,118,927.46	435,461.00
01/06/2011 to 12/28/2011	3	Morgan Stanley International Equity Fund - Units	63,189,141.83	7,931,025.29
01/31/2012	17	New Gulf Resources, LLC - Units	16,625,000.00	6,650,000.00
01/27/2012	1	Noble Biomaterials, Inc - Units	5,006,500.00	2,458,136.00
01/31/2012 to 02/09/2012	18	Panacis Medical Incorporated - Common Shares	1,500,000.00	3,708,042.00
02/02/2012	2	Rainy River Resources Ltd. - Common Shares	109,956.00	14,000.00
02/20/2012	8	RESAAS Services Inc. - Units	294,999.00	196,666.00
01/31/2011 to 12/31/2011	20	Rosalind Capital Partners L.P. - Limited Partnership Units	4,744,354.27	452,917.20
03/31/2011 to 12/31/2011	86	RPH Global Sovereign Bond Pooled Fund - Units	10,168,331.11	1,216,373.87
02/01/2012	3	salesforce.com, inc. - Common Shares	8,893,716.48	74,712.00
02/03/2012	4	Samson Investment Company - Notes	52,211,250.00	4.00
01/25/2012	1	Semcan Inc. - Loans	1,700,000.00	1.00
01/01/2011 to 12/31/2011	13	Short-Term Investment Company (Global Series), PLC The US Dollar Liquidity Portfolio - Common Shares	267,496,740.65	262,547,716.20
01/04/2011 to 11/01/2011	27	Silvercove Hard Asset Fund LP - Limited Partnership Units	7,096,000.00	709,600.00
01/04/2011 to 12/01/2011	194	Silvercove Hard Asset Trust - Trust Units	7,820,838.29	784,583.83
01/01/2011 to 12/31/2011	1	Smedley Special Opportunities Fund - Units	250,000.00	242.00
01/01/2011 to 12/31/2011	2	SSGA Active Canadian Universe Bond Fund - Units	2,256,380.29	231,584.97
01/01/2011 to 12/31/2011	8	SSGA Canadian Long Term Government Bond Index Fund - Units	48,601,242.23	4,366,030.74
01/01/2011 to 12/31/2011	3	SSGA Canadian Real Return Bond Index Fund - Units	33,800,371.15	2,526,658.84

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/01/2011 to 12/31/2011	14	SSGA Canadian Short Term Investment Fund - Units	471,175,322.52	47,117,532.25
01/01/2011 to 12/31/2011	5	SSGA Denmark Index Fund - Units	644,981.76	6,732.08
01/01/2011 to 12/31/2011	17	SSGA Enhanced Canadian Long Term Bond Fund - Units	410,891,560.31	38,464,410.80
01/01/2011 to 12/31/2011	41	SSGA Enhanced Canadian Universe Bond Fund - Units	421,310,032.08	36,619,656.95
01/01/2011 to 12/31/2011	5	SSGA Hong Kong Index Fund - Units	690,434.30	7,397.69
01/01/2011 to 12/31/2011	6	SSGA Italy Index Fund - Units	750,032.43	42,487.91
01/01/2011 to 12/31/2011	5	SSGA Japan Index Fund - Units	2,196,110.68	290,711.56
01/01/2011 to 12/31/2011	2	SSGA MA Canadian Equity Index Plus Fund - Units	2,879,423.90	255,559.72
01/01/2011 to 12/31/2011	4	SSGA MA Canadian Long Term Bond Index Fund - Units	222,893,715.25	21,049,570.48
01/01/2011 to 12/31/2011	1	SSGA MA Canadian Universe Bond Index Fund - Units	60,860,840.58	6,086,052.19
01/01/2011 to 12/31/2011	2	SSGA MA International Alpha Select Fund - Units	998,500.23	102,358.08
01/01/2011 to 12/31/2011	8	SSGA MA S&P/TSX Capped Composite Index Fund - Units	152,887,386.01	15,816,669.31
01/01/2011 to 12/31/2011	34	SSGA MSCI EAFE Index Fund - Units	352,654,756.84	41,455,400.53
01/01/2011 to 12/31/2011	6	SSGA Norway Index Fund - Units	924,888.66	22,008.81
01/01/2011 to 12/31/2011	5	SSGA Spain Index Fund - Units	647,598.07	13,521.96
01/01/2011 to 12/31/2011	39	SSGA S&P 500 Index Fund for Canadian Pension Plans - Units	311,159,591.46	5,620,692.05
01/01/2011 to 12/31/2011	5	SSGA S&P 500 Index Fund Hedged to Canadian Dollars for Canadian Pension Plans - Units	26,147,864.53	3,311,687.15
01/01/2011 to 12/31/2011	2	SSGA S&P 500 Stock Index Futures Fund - Units	10,008,512.98	860,617.75
01/01/2011 to 12/31/2011	15	SSGA S&P/TSX Composite Index Fund - Units	757,691,545.81	106,242,503.92
04/29/2011	11	TC Opportunity 3 LP - Units	5,300,000.00	5,300,000.00
07/15/2011	3	TC Opportunity 3 LP - Units	1,425,000.00	1,425,000.00
11/30/2011	2	TC Opportunity 3 LP - Units	6,775,000.00	6,775,000.00
07/04/2011 to 12/31/2011	1	TD Balanced Index Fund - Units	23,746,627.45	2,430,312.86

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
07/04/2011 to 12/31/2011	1	TD U.S. Quantitative Equity Fund - Units	1,819,757.92	192,163.41
12/22/2011	2	Tembo Gold Corp. - Units	40,000.00	40,000.00
01/23/2012	2	Terrapro Mat Investors Group Limited Partnership #1 - Limited Partnership Units	150,000.00	150.00
01/27/2012	1	Urbi, Desarrollos Urbanos, S.A.B. de C.V. - Note	3,003,900.00	1.00
02/06/2012	2	U.S. Silica Holdings, Inc. - Common Shares	1,184,526.00	70,000.00
03/29/2011 to 12/16/2011	4	Vanguard Institutional Index Fund - Units	622,510,809.48	5,330,698.37
01/23/2012 to 02/01/2012	10	Vital Alert Communication Inc. - Preferred Shares	702,998.10	3,905,545.00
05/01/2011 to 12/01/2011	10	YTM Capital Mortgage Income Fund - Units	3,801,310.00	380,131.00
11/15/2011	3	YTM Capital Physician Mortgage Trust - Units	490,000.00	49,000.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Advantaged Canadian High Yield Bond Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated February 28, 2012
NP 11-202 Receipt dated February 28, 2012
Offering Price and Description:
Maximum $ * - * Class A Units and Class F Units Price $ * per Class A Units and Class F Units
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
ACUMEN CAPITAL FINANCE PARTNERS LIMITED
CANACCORD GENUITY CORP.
GMP SECURITIES L.P.
RAYMOND JAMES LTD.
DUNDEE SECURITIES LTD.
MACQUARIE PRIVATE WEALTH INC.
UNION SECURITIES LTD.
Promoter(s):
Scotia Capital Inc.
Project #1863734

Issuer Name:
Azure Dynamics Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated February 22, 2012
NP 11-202 Receipt dated February 22, 2012
Offering Price and Description:
$12,000,000.00 (Minimum Offering) $ * (Maximum Offering)
A Minimum of * Units and
a Maximum of * Units Price: $ * per Unit
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
Promoter(s):
-
Project #1861317

Issuer Name:
BMO Target Enhanced Yield ETF Portfolio
BMO Enhanced Equity Income Fund
BMO Guardian Asian Growth and Income Fund
BMO Guardian Canadian Large Cap Equity Fund
BMO Guardian Global Small Cap Fund
BMO Laddered Corporate Bond Fund
BMO Money Market Fund
BMO Target Yield ETF Portfolio
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated February 22, 2012
NP 11-202 Receipt dated February 24, 2012
Offering Price and Description:
Series A, Series I and Premium Series Securities
Underwriter(s) or Distributor(s):
BMO Investments Inc.
Guardian Group of Funds Ltd.
Promoter(s):
BMO Investments Inc.
Project #1862292

Issuer Name:
Brigus Gold Corp.
Principal Regulator - Nova Scotia
Type and Date:
Preliminary Short Form Prospectus dated February 28, 2012
NP 11-202 Receipt dated February 28, 2012
Offering Price and Description:
$15,000,500.00 - 15,790,000 Common Shares Price: $0.95 per Offered Share
Underwriter(s) or Distributor(s):
CORMARK SECURITIES INC.
HAYWOOD SECURITIES INC.
BMO NESBITT BURNS INC.
CASIMIR CAPITAL LTD.
FRASER MACKENZIE LIMITED
Promoter(s):
-
Project #1864196

Issuer Name:
Brompton 2012 Flow-Through Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated February 28, 2012
NP 11-202 Receipt dated February 28, 2012
Offering Price and Description:
Maximum $35,000,000.00 - 1,400,000 Limited Partnership Units Price: $25.00 per Unit
Minimum Subscription: $5,000 - 200 Units
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
SCOTIA CAPITAL INC.
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
MACQUARIE PRIVATE WEALTH INC.
GMP SECURITIES L.P.
CANACCORD GENUITY CORP.
DESJARDINS SECURITIES INC.
DUNDEE SECURITIES LTD.
MACKIE RESEARCH CAPITAL CORPORATION
RAYMOND JAMES LTD.
UNION SECURITIES LTD.
Promoter(s):
BROMPTON FLOW-THROUGH MANAGEMENT LIMITED
BROMPTON FUNDS LIMITED
Project #1864126

Issuer Name:
Champion Minerals Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated February 23, 2012
NP 11-202 Receipt dated February 23, 2012
Offering Price and Description:
$30,000,000.00 -15,000,000 Common Shares Price: Cdn$2.00 per Common Share
Underwriter(s) or Distributor(s):
MACQUARIE CAPITAL MARKETS CANADA LTD.
PARADIGM CAPITAL INC.
STIFEL NICOLAUS CANADA INC.
CANACCORD GENUITY CORP.
FRASER MACKENZIE LIMITED
Promoter(s):
-
Project #1862056

Issuer Name:
Chartwell Seniors Housing Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated February 22, 2012
NP 11-202 Receipt dated February 22, 2012
Offering Price and Description:
$190,035,000.00 - 23,175,000 Subscription Receipts each representing the right to receive one Unit
Price: $8.20 per Subscription Receipt and $120,000,000 - 5.7% Convertible Unsecured Subordinated Debentures
Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
SCOTIA CAPITAL INC.
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
CANACCORD GENUITY CORP.
GMP SECURITIES L.P.
Promoter(s):
-
Project #1861276

Issuer Name:
Crescent Point Energy Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated February 23, 2012
NP 11-202 Receipt dated February 23, 2012
Offering Price and Description:
$525,352,500.00 - 11,610,000 Common Shares Price: $45.25 per Common Share
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
FIRSTENERGY CAPITAL CORP.
NATIONAL BANK FINANCIAL INC.
GMP SECURITIES L.P.
MACQUARIE CAPITAL MARKETS CANADA LTD.
PETERS & CO. LIMITED
Promoter(s):
-
Project #1862087

Issuer Name:
EXPLOR RESOURCES INC.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated February 23, 2012
NP 11-202 Receipt dated February 24, 2012
Offering Price and Description:
$4,999,999.90 - 14,285,714 Units Price: $0.35 per Unit
$$5,000,000.00 - 12,500,000 Flow-Through Units
Price: $0.40 per Flow-Through Unit
Underwriter(s) or Distributor(s):
Industrial Alliance Securities Inc.
Promoter(s):
-
Project #1862171

Issuer Name:
FNR Energy III Limited Partnership
Principal Regulator - Saskatchewan
Type and Date:
Preliminary Long Form Prospectus dated February 21, 2012
NP 11-202 Receipt dated February 24, 2012
Offering Price and Description:
Maximum Offering: $25,000,000.00 (2,500,000 Units);
Minimum Offering: $1,000,000.00 (100,000 Units)
Price: $10.00 per Unit Minimum Purchase: $5,000 (500 Units)
Underwriter(s) or Distributor(s):
MGI SECURITIES INC.
CANACCORD GENUITY CORP.
GMP SECURITIES L.P.
MACKIE RESEARCH CAPITAL CORPORATION
MACQUARIE PRIVATE WEALTH INC.
RAYMOND JAMES LTD.
LEEDE FINANCIAL MARKETS INC.
PI FINANCIAL CORP.
UNION SECURITIES LTD.
Promoter(s):
FNR ASSET MANAGEMENT INC.
Project #1860986

Issuer Name:
Invesco Intactive Strategic Capital Yield Portfolio Class
Invesco Intactive Strategic Yield Portfolio
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated February 23, 2012
NP 11-202 Receipt dated February 27, 2012
Offering Price and Description:
Series A, F, F6, F8, P, PF, PT6, PT8, T6, T8 shares and Series A, F, I, P, PF Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Invesco Canada Ltd.
Project #1862627

Issuer Name:
Iona Energy Inc
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated February 28, 2012
NP 11-202 Receipt dated February 28, 2012
Offering Price and Description:
Minimum Offering: ● Common Shares at $● per Common Share ($60,000,000.00) Maximum Offering: ● Common Shares at $● per Common Share ($80,000,000.00)
Underwriter(s) or Distributor(s):
Casimir Capital Ltd.
Promoter(s):
-
Project #1864608

Issuer Name:
Labrador Iron Mines Holdings Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated February 28, 2012
NP 11-202 Receipt dated February 28, 2012
Offering Price and Description:
$ * - * Common Shares Price: $ * per Common Share and $ * - * Flow-Through Shares
Price: $ * per Flow-Through Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
-
Project #1864009

Issuer Name:
Lydian International Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated February 27, 2012
NP 11-202 Receipt dated February 27, 2012
Offering Price and Description:
$40,000,000.00 - 15,625,000 Ordinary Shares Price: $2.56 per Ordinary Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Scotia Capital Inc.
Promoter(s):
-
Project #1863255

Issuer Name:
Marquis Balanced Class Portfolio
Marquis Balanced Growth Class Portfolio
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated February 21, 2012
NP 11-202 Receipt dated February 22, 2012
Offering Price and Description:
Series A, Series I and Series T Shares
Underwriter(s) or Distributor(s):
GCIC Ltd.
Promoter(s):
GCIC Ltd.
Project #1861301

Issuer Name:
McLean Budden Balanced Value Fund
McLean Budden Balanced Growth Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated February 22, 2012
NP 11-202 Receipt dated February 23, 2012
Offering Price and Description:
Series F units
Underwriter(s) or Distributor(s):
-
Promoter(s):
SUN LIFE GLOBAL INVESTMENTS (CANADA) INC.
McLEAN BUDDEN LIMITED
Project #1861470

Issuer Name:
MD Precision Balanced Income Portfolio
MD Precision Moderate Growth Portfolio
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated February 24, 2012
NP 11-202 Receipt dated February 27, 2012
Offering Price and Description:
Series A Units
Underwriter(s) or Distributor(s):
MD Management Limited
Promoter(s):
MD Physician Services Inc.
Project #1862468

Issuer Name:
NSX Silver Inc.
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated February 23, 2012
NP 11-202 Receipt dated February 23, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
NSGold Corporation
Project #1814004

Issuer Name:
Pinecrest Energy Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated February 28, 2012
NP 11-202 Receipt dated February 28, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1864614

Issuer Name:
PMI Gold Corporation
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated February 28, 2012
NP 11-202 Receipt dated February 28, 2012
Offering Price and Description:
$35,000,000.00 - 28,000,000 Common Shares Price: C$1.25 per Offered Share
Underwriter(s) or Distributor(s):
CLARUS SECURITIES INC.
RBC DOMINION SECURITIES INC.
GMP SECURITIES L.P.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #1864160

Issuer Name:
Powershares S&P 500 High Beta (CAD Hedged) Index ETF
PowerShares S&P/TSX Composite High Beta Index ETF
PowerShares S&P/TSX Composite Low Volatility Index ETF
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated February 23, 2012
NP 11-202 Receipt dated February 24, 2012
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
INVESCO CANADA LTD.
Project #1862198

Issuer Name:
Pretium Resources Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Base Shelf Prospectus dated February 24, 2012
NP 11-202 Receipt dated February 27, 2012
Offering Price and Description:
$180,000,000.00:
Common Shares
Warrants
Units
Subscription Receipts
Up to C$36,000,000 in principal amount of Common Shares
offered by the Selling Shareholder
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1863270

Issuer Name:
RESAAS Services Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated February 22, 2012
NP 11-202 Receipt dated February 23, 2012
Offering Price and Description:
$1,500,000.00 - 1,000,000 Units at $1.50 per Unit
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
Cory Brandolini
Cameron Shippit
Andrian Barrett
Project #1861697

Issuer Name:
Slate U.S. Opportunity (No. 1) Realty Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated February 23, 2012
NP 11-202 Receipt dated February 24, 2012
Offering Price and Description:
Maximum: U.S.$50,000,000.00 of Class A Units and/or Class U Units (Maximum * Class A Units and/or Class U Units) Price: C$10.00 per Class A Unit and U.S.$10.00 per Class U Unit Minimum Purchase: 100 Class A Units or Class U Units
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
RBC DOMINION SECURITIES INC.
GMP SECURITIES L.P.
RAYMOND JAMES LTD.
SCOTIA CAPITAL INC.
CANACCORD GENUITY CORP.
MACQUARIE PRIVATE WEALTH INC.
DESJARDINS SECURITIES INC.
DUNDEE SECURITIES LTD.
Promoter(s):
SLATE PROPERTIES INC.
Project #1862356

Issuer Name:
Sprott Enhanced Balanced Fund
Sprott Enhanced Equity Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated
NP 11-202 Receipt dated February 28, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1864534

Issuer Name:
Sprott Power Corp.
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Short Form dated February 22, 2012
NP 11-202 Receipt dated February 22, 2012
Offering Price and Description:
$20,021,250.00 - 9,525,000 Units Price: $1.05 per Unit and 8,350,000 Flow-Through Common Shares
Price: $1.20 per Flow-Through Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
TD Securities Inc.
NCP Northland Capital Partners Inc.
Stifel Nicolaus Canada Inc.
Promoter(s):
Jeffrey Jenner
Project #1860803

Issuer Name:
Student Transportation Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated February 27, 2012
NP 11-202 Receipt dated February 28, 2012
Offering Price and Description:
$ * - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
RAYMOND JAMES LTD.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
STIFEL NICOLAUS CANADA, INC.
CIBC WORLD MARKETS INC.
Promoter(s):
-
Project #1863406

Issuer Name:
Student Transportation Inc.
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated February 28, 2012
NP 11-202 Receipt dated February 28, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
RAYMOND JAMES LTD.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
STIFEL NICOLAUS CANADA, INC.
CIBC WORLD MARKETS INC.
Promoter(s):
-
Project #1863406

Issuer Name:
St. Vincent Minerals Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated February 23, 2012
NP 11-202 Receipt dated February 24, 2012
Offering Price and Description:
$ * - * Units Price: $ * per Unit:
Underwriter(s) or Distributor(s):
DUNDEE SECURITIES LTD.
HAYWOOD SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
Promoter(s):
ALLEN V. AMBROSE
BRIAN GAVIN
EARL MCCURLEY
Project #1862458

Issuer Name:
Sundance Minerals Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated February 27, 2012
NP 11-202 Receipt dated February 27, 2012
Offering Price and Description:
MINIMUM OFFERING OF 5,000,000 UNITS ($2,000,000.00); MAXIMUM OFFERING OF 10,000,000 UNITS ($4,000,000.00) PRICE: $0.40 PER UNIT
Underwriter(s) or Distributor(s):
HAYWOOD SECURITIES INC.
Promoter(s):
-
Project #1863595

Issuer Name:
UEX Corporation
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated February 23, 2012
NP 11-202 Receipt dated February 23, 2012
Offering Price and Description:
$10,333,746.40 - 12,917,183 Common Shares Price: $0.80 per Offered Share
Underwriter(s) or Distributor(s):
DUNDEE SECURITIES LTD.
RAYMOND JAMES LTD.
PI FINANCIAL CORP.
Promoter(s):
-
Project #1862034

Issuer Name:
Atlantis Gold Mines Corp.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated February 23, 2012
NP 11-202 Receipt dated February 24, 2012
Offering Price and Description:
15,000,000 Units for Gross Proceeds of $6,000,000.00
Price: $0.40 per Unit
Underwriter(s) or Distributor(s):
Macquarie Private Wealth Inc.
Promoter(s):
Kay Jessel
Project #1852345

Issuer Name:
Epsilon Energy Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated February 21, 2012
NP 11-202 Receipt dated February 22, 2012
Offering Price and Description:
$40,000,000.00 - 7.75% Convertible Unsecured Subordinated Debentures - Price : Per Debenture $1,000
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
Clarus Securities Inc.
CIBC World Markets Inc.
Raymond James Ltd.
Stonecap Securities Inc.
Promoter(s):
Zoran Arandjelovic
Kurt Portmann
Project #1857826

Issuer Name:
First Trust Raymond James Canadian Focus Picks Portfolio
Veritas Canadian Select Portfolio
(Series A and Series F Shares)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated February 23, 2012
NP 11-202 Receipt dated February 27, 2012
Offering Price and Description:
Series A and F Shares @ net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1851013

Issuer Name:
Freehold Royalties Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated February 22, 2012
NP 11-202 Receipt dated February 22, 2012
Offering Price and Description:
$61,500,000.00 - 3,000,000 Common Shares Price: $20.50 per Common Share
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
BMO NESBITT BURNS INC.
SCOTIA CAPITAL INC.
Promoter(s):
-
Project #1858810

Issuer Name:
iShares Alternatives Completion Portfolio Builder Fund
iShares Conservative Core Portfolio Builder Fund
iShares Global Completion Portfolio Builder Fund
iShares Growth Core Portfolio Builder Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated February 17, 2012 to the Long Form Prospectus dated November 11, 2011
NP 11-202 Receipt dated February 23, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Blackrock Asset Management Canada Limited
Promoter(s):
-
Project #1809865

Issuer Name:
iShares Dow Jones Canada Select Growth Index Fund
iShares S&P/TSX SmallCap Index Fund
iShares Dow Jones Canada Select Value Index Fund
iShares Dow Jones Canada Select Dividend Index Fund
iShares S&P/TSX Capped Energy Index Fund
iShares S&P/TSX Equity Income Index Fund
iShares Jantzi Social Index Fund
iShares S&P/TSX Capped Financials Index Fund
iShares S&P/TSX Capped Composite Index Fund
iShares S&P/TSX Capped Information Technology Index Fund
iShares S&P/TSX 60 Index Fund
iShares S&P/TSX Capped Materials Index Fund
iShares S&P/TSX Completion Index Fund
iShares S&P/TSX Capped REIT Index Fund
iShares S&P/TSX Capped Consumer Staples Index Fund
iShares S&P/TSX Capped Utilities Index Fund
iShares S&P/TSX Venture Index Fund
iShares DEX Universe Bond Index Fund
iShares DEX All Corporate Bond Index Fund
iShares DEX All Government Bond Index Fund
iShares DEX HYBrid Bond Index Fund
iShares DEX Long Term Bond Index Fund
iShares DEX Real Return Bond Index Fund
iShares DEX Short Term Bond Index Fund
iShares MSCI Brazil Index Fund
iShares China Index Fund
iShares MSCI Emerging Markets Index Fund
iShares S&P CNX Nifty India Index Fund
iShares S&P Latin America 40 Index Fund
iShares MSCI World Index Fund
iShares S&P/TSX Global Base Metals Index Fund
iShares S&P/TSX Global Gold Index Fund
iShares S&P Global Healthcare Index Fund (CAD-Hedged)
iShares MSCI EAFE Index Fund (CAD-Hedged)
iShares NASDAQ 100 Index Fund (CAD-Hedged)
iShares S&P 500 Index Fund (CAD-Hedged)
iShares Russell 2000 Index Fund (CAD-Hedged)
iShares S&P/TSX North American Preferred Stock Index Fund (CAD-Hedged)
iShares J.P. Morgan USD Emerging Markets Bond Index Fund (CAD-Hedged)
iShares U.S. High Yield Bond Index Fund (CAD-Hedged)
iShares U.S. IG Corporate Bond Index Fund (CAD-Hedged)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated February 17, 2012 to the Long Form Prospectus dated April 11, 2011
NP 11-202 Receipt dated February 23, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Blackrock Asset Management Canada Limited
Promoter(s):
BlackRock Asset Management Canada Limited
Project #1705455

Issuer Name:
Lincluden Balanced Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated January 9, 2012 to the Simplified Prospectus, Annual Information Form dated April 29, 2011
NP 11-202 Receipt dated February 27, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Lincluden Management Limited
Promoter(s):
-
Project #1716101

Issuer Name:
MADALENA VENTURES INC
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated February 27, 2012
NP 11-202 Receipt dated February 27, 2012
Offering Price and Description:
$60,000,000.00 - 48,000,000 Common Shares Price: $1.25 per share
Underwriter(s) or Distributor(s):
Casimir Capital Ltd.
Cormark Securities Inc.
Canaccord Genuity Corp.
Byron Capital Markets Ltd.
Fraser Mackenzie Limited
Mackie Research Capital Corporation
Promoter(s):
-
Project #1860371

Issuer Name:
McLean Budden Fixed Income Fund
Principal Regulator - Ontario
Type and Date:
Amendment #3 dated February 15, 2012 to the Simplified Prospectus and Annual Information Form dated April 4, 2011
NP 11-202 Receipt dated February 22, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
McLean Budden Limited
Project #1700830

Issuer Name:
Pure Industrial Real Estate Trust
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated February 24, 2012
NP 11-202 Receipt dated February 24, 2012
Offering Price and Description:
$31,500,000.00 - 7,000,000 Units Price: $4.50 Per Unit
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
DUNDEE SECURITIES LTD.
RBCDOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.
RAYMOND JAMES LTD.
HSBCSECURITIES (CANADA) INC.
GMP SECURITIES L.P.
MACQUARIE CAPITAL MARKETS CANADA LTD.
SORA GROUP WEALTH ADVISORS INC.
UNION SECURITIES LTD.
Promoter(s):
SUNSTONE INDUSTRIAL ADVISORS INC.
Project #1860423

Issuer Name:
Qwest 2012 Oil & Gas Flow-Through Limited Partnership
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated February 22, 2012
NP 11-202 Receipt dated February 24, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
MANULIFE SECURITIES INCORPORATED
NATIONAL BANK FINANCIAL INC.
GMP SECURITIES L.P.
MACQUARIE PRIVATEWEALTH INC.
RAYMOND JAMES LTD.
CANACCORD GENUITY CORP.
MACKIE RESEARCH CAPITAL CORPORATION
DUNDEE SECURITIES LTD.
HSBC SECURITIES (CANADA) INC.
ROTHENBERG CAPITAL MANAGEMENT INC.
UNION SECURITIES LTD.
Promoter(s):
QWEST INVESTMENTMANAGEMENT CORP.
Project #1843193

Issuer Name:
Rae-Wallace Mining Company
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated February 24, 2012
NP 11-202 Receipt dated February 24, 2012
Offering Price and Description:
Minimum of $2,500,000.00 or 8,333,333 Units Maximum of $4,000,000 or 13,333,333 Units - Price: Per Unit $0.30
Underwriter(s) or Distributor(s):
Raymond James Ltd.
Promoter(s):
-
Project #1771778

Issuer Name:
RBC Target 2013 Corporate Bond ETF
RBC Target 2014 Corporate Bond ETF
RBC Target 2015 Corporate Bond ETF
RBC Target 2016 Corporate Bond ETF
RBC Target 2017 Corporate Bond ETF
RBC Target 2018 Corporate Bond ETF
RBC Target 2019 Corporate Bond ETF
RBC Target 2020 Corporate Bond ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated February 17, 2012 to the Long Form Prospectus dated September 2, 2011
NP 11-202 Receipt dated February 27, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
RBC GLOBAL ASSET MANAGEMENT INC.
Project #1770446

Issuer Name:
Rubicon Minerals Corporation
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated February 22, 2012
NP 11-202 Receipt dated February 22, 2012
Offering Price and Description:
$200,900,000.00 - 49,000,000 Common Shares $4.10 per Offered Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
TD Securities Inc.
USB Securities Canada Inc.
Mackie Research Capital Corporation
Scotia Capital Inc.
NCP Northland Capital Partners Inc.
Promoter(s):
-
Project #1857860

Issuer Name:
lRussell Managed Yield Class
(Series B, E, E-3, E-5, F, F-3, F-5, I-3, I-5, O, US Dollar Hedged Series B, US Dollar Hedged Series F and US Dollar Hedged Series I-5 shares)
Russell Canadian Dividend Class (Series B, E, F, O and US Dollar Hedged Series B shares)
Russell Canadian Equity Class (Series B, E, F and O shares)
Russell Smaller Companies Class (Series B, E, F and O shares)
Russell US Equity Class (Series B, E, F and O shares)
Russell Overseas Equity Class (Series B, E, F and O shares)
Russell Global Equity Class (Series B, E, F and O shares)
Russell Emerging Markets Equity Class (Series B, E, F and O shares)
Russell Money Market Class (Series B, E, F and O shares)
Russell Income Essentials Class Portfolio (formerly Russell Retirement Essentials Class Portfolio)
(Series B, E, E-5, E-6, E-7, F, F-5, F-6, F-7, I-5, I-6, I-7, O and US Dollar Hedged Series B shares)
Russell Diversified Monthly Income Class Portfolio
(Series B, E, E-5, E-7, F, F-5, F-7, I-5, I-7, O and US Dollar Hedged Series B shares)
Russell Enhanced Canadian Growth & Income Class Portfolio
(Series B, E, E-5, E-6, E-7, F, F-5, F-6, F-7, I-5, I-, I-7 and O shares)
Principal Regulator - Ontario
Type and Date:
Amendment #3 dated February 23, 2012 to the Simplified Prospectuses and Annual Information Form dated June 29, 2011
NP 11-202 Receipt dated February 28, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Russell Investments Canada Limited
Promoter(s):
-
Project #1751755

Issuer Name:
Russell Focused US Equity Class
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated February 23, 2012 to the Simplified Prospectus and Annual Information Form dated September 12, 2011
NP 11-202 Receipt dated February 28, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Russell Investments Canada Limited
Promoter(s):
Russell Investments Canada Limited
Project #1786250

Issuer Name:
Russell LifePoints Conservative Income Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated February 23, 2012 to the Simplified Prospectus and Annual Information Form dated December 15, 2011
NP 11-202 Receipt dated February 28, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Russell Investments Canada Limited
Promoter(s):
Russell Investments Canada Limited
Project #1826705

Issuer Name:
Russell LifePoints Conservative Income Class Portfolio
(Series B, F, F-5 and I-5 shares)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated February 23, 2012 to the Simplified Prospectus and Annual Information Form dated January 9, 2012
NP 11-202 Receipt dated February 28, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Russell Investments Canada Limited
Promoter(s):
Russell Investments Canada Limited
Project #1837829

Issuer Name:
SIA Trust
Principal Regulator - Ontario
Type and Date:
Final Long Form Non-Offering Prospectus dated February 27, 2012
NP 11-202 Receipt dated February 28, 2012
Offering Price and Description:
non-offering
Underwriter(s) or Distributor(s):
-
Promoter(s):
PROPEL CAPITAL CORPORATION
Project #1851903

Issuer Name:
Sprott Power Corp.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated February 28, 2012
NP 11-202 Receipt dated February 28, 2012
Offering Price and Description:
$20,021,250.00 - 9,525,000 Units And 8,350,000 Flow-Through Common Shares Price:
$1.05 per Unit And $1.20 per Flow-Through Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
TD Securities Inc.
NCP Northland Capital Partners Inc.
Stifel Nicolaus Canada Inc.
Promoter(s):
Jeffrey Jenner
Project #1860803

Issuer Name:
Strategic Income Allocation Fund
(Units)
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated February 27, 2012
NP 11-202 Receipt dated February 28, 2012
Offering Price and Description:
Maximum: $100,000,000.00 - 10,000,000 Units @ 10 each;
Minimum: $20,000,000.00 - 2,000,000 Units@ 10 each
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
GMP SECURITIES L.P.
TD SECURITIES INC.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
CANACCORD GENUITY CORP.
MACQUARIE PRIVATE WEALTH INC.
RAYMOND JAMES LTD.
DESJARDINS SECURITIES INC.
DUNDEE SECURITIES LTD.
MACKIE RESEARCH CAPITAL CORPORATION
MANULIFE SECURITIES INCORPORATE
Promoter(s):
PROPEL CAPITAL CORPORATION
Project #1851862

Issuer Name:
Series F securities of:
TD Fixed Income Pool
TD Fixed Income Capital Yield Pool Class (Class of TD Mutual Funds Corporate Class Ltd.)
TD Canadian Equity Pool Class (Class of TD Mutual Funds Corporate Class Ltd.)
TD Global Equity Pool Class (Class of TD Mutual Funds Corporate Class Ltd.)
TD Tactical Pool Class (Class of TD Mutual Funds Corporate Class Ltd.)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated February 22, 2012
NP 11-202 Receipt dated February 24, 2012
Offering Price and Description:
Series F securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
TD Asset Management Inc.
Project #1847814

Issuer Name:
ZADAR VENTURES LTD.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated February 27, 2012
NP 11-202 Receipt dated February 28, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
WOLVERTON SECURITIES LTD.
Promoter(s):
MARK TOMMASI
PETER WILSON
JOHN ROOZENDAAL
Project #1803435

Issuer Name:
Argent Energy Trust
Principal Jurisdiction - Alberta
Type and Date:
Preliminary Long Form Prospectus dated August 8, 2011
Withdrawn on February 27, 2012
Offering Price and Description:
$* - *Units
Price: $* per Unit
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets Inc.
Promoter(s):
-
Project #1782000

Issuer Name:
Bonnefield Canadian Farmland Corp.
Principal Jurisdiction - Ontario
Type and Date:
Preliminary Long Form Prospectus dated January 17, 2012
Withdrawn on February 22, 2012
Offering Price and Description:
Maximum $100,000,000 - 10,000,000 Common Shares
Price: $10.00 per Common Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
Raymond James Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Desjardins Securities Inc.
Macquarie Private Wealth Inc.
Cormark Securities Inc.
Dundee Securities Ltd.
Promoter(s):
Bonnefield Canadian Farmland Corp.
Project #1849475

Issuer Name:
Sea Dragon Energy Inc.
Principal Jurisdiction - Alberta
Type and Date:
Preliminary Short Form Prospectus dated January 6, 2012
Withdrawn on February 27, 2012
Offering Price and Description:
$75,000,000 - * Subscription Receipts*
each Subscription Receipt representing the right to receive one Common Share
Price: $ * per Subscription Receipt
Underwriter(s) or Distributor(s):
FIRSTENERGY CAPITAL CORP.
GMP SECURITIES L.P.
DUNDEE SECURITIES LTD.
MAISON PLACEMENTS CANADA INC.
RAYMOND JAMES LTD.
SALMAN PARTNERS INC.
STIFEL NICOLAUS CANADA INC.
Promoter(s):
-
Project #1846918

Issuer Name:
Shoreline Energy Corp.
Principal Jurisdiction - Alberta
Type and Date:
Preliminary Short Form Prospectus dated February 10, 2012
Withdrawn on February 22, 2012
Offering Price and Description:
Up to $12,000,000.00 - Up to * Offered Shares Price: $ * per Offered Share
Underwriter(s) or Distributor(s):
Macquarie Capital Markets Canada Ltd.
MGI Securities Inc.
Dundee Securities Ltd.
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Jennings Capital Inc.
PI Financial Corp.
Promoter(s):
-
Project #1857684

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Suspension pursuant to Section 29(1) of the *Securities Act*	First Leaside Securities Inc.	Investment Dealer	February 24, 2012
Suspended (Regulatory Action)	F.L. Securities Inc.	Exempt Market Dealer	February 28, 2012
New Registration	Community Forward Fund Assistance Corp.	Restricted Dealer, Restricted Portfolio Manager and Investment Fund Manager	February 29, 2012

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Chapter 13

SROs, Marketplaces and Clearing Agencies

13.1 SROs

13.1.1 Notice of Commission Approval – IIROC Rules Notice – UMIR – Provisions Respecting Short Sales and Failed Trades

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

PROVISIONS RESPECTING SHORT SALES AND FAILED TRADES

NOTICE OF COMMISSION APPROVAL

The Ontario Securities Commission approved proposed amendments to the Universal Market Integrity Rules (UMIR). In addition, the British Columbia Securities Commission did not object to, and the Alberta Securities Commission, the Autorité des marchés financiers, the Saskatchewan Financial Services Commission, the Nova Scotia Securities Commission and the New Brunswick Securities Commission approved the proposed amendments. The objective of the amendments is to (i) remove the restrictions on the price at which a short sale may be made, (ii) require short-sellers to make prior arrangements to borrow securities to settle a short sale in certain circumstances, (iii) introduce a "short-marking exempt" marker and (iv) make minor administrative changes.

The proposed amendments were published for comment on February 25, 2011, at (2011) 34 OSCB 2435, and 16 comments was received. A summary of the comments and IIROC's response and a copy of the approved amendments are included in Chapter 13 of this Bulletin.

NOTICE OF COMMISSION APPROVAL – PROVISIONS RESPECTING REGULATION OF SHORT SALES AND FAILED TRADES

12-0078
March 2, 2012

Provisions Respecting Short Sales and Failed Trades

Executive Summary

On March 2, 2012, the applicable securities regulatory authorities approved amendments ("Amendments") to UMIR respecting short sales and failed trades.[1] The Amendments, which are **effective September 1, 2012**:

- **repeal the tick test;**[2]
- impose pre-borrow requirements for short sales made in certain circumstances; and
- require a sell order from a short position to continue to be marked "short sale" but introduce a "short-marking exempt" designation to be used with an order for the ***purchase or sale*** of a security by certain accounts that adopt a "directionally neutral" strategy in the trading of securities.

When the Amendments become effective, Participants and Access Persons will:

- be relieved of the obligation to ensure short sales comply with the "tick test";
- be required to have policies and procedures applicable to the circumstances when a security must be "pre-borrowed" prior to a short sale; and
- be required to have policies and procedures to properly identify on entry orders that should be designated as either "short sale" or "short-marking exempt".

IIROC has initiated meetings with marketplaces and service providers to deal with the technological implications of the Amendments and, in particular, to co-ordinate the introduction of the "short-marking exempt" designation. IIROC expects to issue guidance on the use of the "short sale" and "short-marking exempt" designations prior to the Amendments coming into effect.

1. Development of a Strategy for the Canadian Market

Since a number of amendments to UMIR regarding short sales and failed trades were approved in October of 2008, IIROC has undertaken a process of evaluating additional steps which IIROC might take in Canada to deal with issues related to short sales and failed trades. In developing the proposals for the further regulation of short sales and failed trades, IIROC sought to ensure that any rules, guidance and monitoring regime is:

- supported by the empirical evidence regarding short sales and failed trades in the Canadian market;
- part of a comprehensive monitoring of market integrity risks (e.g. restricting short sales may not be the appropriate response to all "rapid" price declines);
- neutral, in that it treats "unusual" price movements of a security, whether up or down, as a reason for increased regulatory scrutiny;
- focused, in that the burden for compliance is placed on those that have failed to comply with the requirements;
- practical, in that marketplaces and dealers can comply with the requirements in a cost effective manner;

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1 Reference should be made to IIROC Notice 11-0075 – Rules Notice – Request for Comments – UMIR – *Provisions Respecting Short Sales and Failed Trades* (February 25, 2011) with which the proposed amendments were published for public comment (the "Proposed Amendments"). See Appendix B for the summary of comments received on the Proposed Amendments and the responses of IIROC. Column 1 of the table highlights the changes made to the Amendments as approved from the Proposed Amendments.

2 The tick test is the requirement under Rule 3.1 of UMIR that a short sale not be made at a price which is less than the last sale price of the security.

- proportionate, in that the proposals do not invoke a regulatory response which results in a deterioration of market quality for all market participants; and

- effective, in that the proposals do not impede the proper uses of short selling and the liquidity that such proper activity provides to the market.

The overall strategy on the regulation of short sales and failed trades includes:

- repealing the tick test;

- increasing transparency of information regarding short sale activity and failed trades;

- monitoring of regulatory arbitrage opportunities related to short sales;

- enhancing investor education and confidence regarding the role of short selling in the operation of the market and the reasons for trade failures;

- disclosing the criteria for regulatory intervention for variation or cancellation of trades in the event of significant price volatility;

- enhancing monitoring of short sales and failed trades; and

- imposing pre-borrow requirements for short sales made in certain circumstances.

While the Amendments, including the repeal of the tick test, represent an important component of the strategy, Appendix "C" outlines the various initiatives which IIROC has undertaken since October of 2008 or plans to take to execute this strategy.

1.1 Repeal of Price Restrictions on Short Sales

Studies by IIROC support the premise that the tick test has no appreciable impact on pricing[3] and, in light of that, IIROC believes that there are better mechanisms to detect and address abusive short selling. Under the Amendments, the tick test has been repealed but IIROC will continue to work with other Canadian regulators to enhance measures intended to identify and address incidents of "abusive" short selling.

1.2 Transparency

In an effort to enhance the transparency of short selling activity in the Canadian market, IIROC:

- will, following the implementation of the Amendments, be in a position to produce, and to disseminate publicly, a semi-monthly report on the proportion of "short sales" in the total trading activity of each security across all marketplaces which should help establish a better appreciation for the "normal" levels of short selling for each security; and

- withdrew a proposal to repeal the requirements for the preparation of short position reports and, as a result, the Consolidated Short Position Report ("CSPR")[4] will continue to be produced on a semi-monthly basis.

In addition to the Amendments and other IIROC initiatives described in this IIROC Notice, the Canadian Securities Administrators ("CSA") and IIROC have published a joint notice to solicit feedback on whether other proposals to enhance transparency of short sale and failed trade information are required or appropriate ("Joint Notice").[5] Based on responses to the Joint Notice, IIROC may propose additional rule changes or other initiatives.

1.3 Monitoring of Regulatory Arbitrage Opportunities

In the United States, the Securities and Exchange Commission ("SEC") adopted Rule 201 which was implemented on February 28, 2011 and which provides that there is no price restriction or "tick test" for a short sale unless a circuit breaker has first been

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[3] In particular, reference should be made to IIROC Notice 11-0077 – Rules Notice – Technical – UMIR – *Price Movement and Short Sale Activity: The Case of the TSX Venture Exchange* (February 25, 2011).

[4] While Rule 10.10 of UMIR requires Participants and Access Persons to file short position reports, the CSPR is produced for securities listed on the TSX and TSXV by the TSX which makes certain of the information publicly available and provides the full CSPR on a subscription basis. A separate CSPR is produced by CNSX for securities listed on that exchange. See IIROC Notice 11-0075, *op. cit.*

[5] IIROC Notice 12-0076 – Rules Notice – Request for Comments – UMIR – Canadian Securities Administrators / Investment Industry Regulatory Organization of Canada Joint Notice 23-312 – *Transparency of Short Selling and Failed Trades* (March 2, 2012).

triggered by a 10% price decline in a particular security, in which case a short sale must be entered at a price that is one increment above the best bid price for the balance of that trading day and the next trading day.[6] Given the required price decline, coupled with the relatively short period of time during which price restrictions on short sales apply after imposition, the majority of U.S. market activity is not subject to a tick test.

Concurrent with the issuance of this Rules Notice, IIROC has published the results of a study of the effects of short sale circuit breakers in the U.S. on the trading of inter-listed securities in Canada ("Short Sale Circuit Breaker Study").[7] The Short Sale Circuit Breaker Study analyzed the effect that the triggering of a short sale circuit breaker in the U.S. of a security inter-listed with the Toronto Stock Exchange ("TSX") or the TSXV Venture Exchange ("TSXV") had on trading activity in Canada, particularly short selling, during the period immediately before, during and immediately after the imposition of short sale price restrictions on the trading of the security on U.S. markets. The Short Sale Circuit Breaker Study suggests that, overall, there was minimal impact on short selling activity of inter-listed securities on marketplaces in Canada when price restrictions on short sales were in effect following the triggering of a short sale circuit breaker.

In the view of IIROC, Canada does not need to adopt the same short sale circuit breaker system and alternative uptick rules. In part, this view is due to the fact the empirical studies undertaken by IIROC did not find a relationship between rapid price declines and unusual short selling activity. In addition, IIROC believes that the Canadian market is able to demonstrate that its trade monitoring regime effectively addresses "abusive" short selling through other mechanisms, including real-time alerts based on trading activity across all Canadian marketplaces.

IIROC has introduced an alert for its surveillance system that monitors for unusual levels of short selling activity, coupled with significant price movements. If unusual levels of short selling are detected which are disruptive to the market, IIROC also has the ability to intervene to vary or cancel the prices of any trade that is "unreasonable" or, in particularly egregious circumstances, to impose a halt on trading of a particular security across all marketplaces. In addition, IIROC has the ability to designate a security as a "Short Sale Ineligible Security" for a period of time.

1.4 Enhancement of Investor Confidence

In the view of IIROC, investor confidence is best bolstered by:

- educating investors and, to a lesser extent, the industry as to the role of short selling in ordinary trading activity (including releasing existing empirical studies undertaken by IIROC and supporting future academic research, particularly on the impact of the repeal of the tick test);
- greater disclosure of the monitoring undertaken by IIROC and the circumstances when IIROC would pursue "regulatory intervention" given rapid, significant and unexplained price declines in the price of particular securities;[8] and
- adherence to the general principles of short sale regulation enunciated by the International Organization of Securities Commissions ("IOSCO") taking into consideration the unique characteristics and practices of the Canadian market.[9]

IIROC has published a number of studies on short sales and failed trades including:

- the Short Sale Circuit Breaker Study which suggests that, overall, there was minimal impact on short selling activity of inter-listed securities on marketplaces in Canada when price restrictions on short sales were in effect following the triggering of a short sale circuit breaker;[10]
- a study of the relationship between price movement and short selling activity for securities listed on the TSX Venture Exchange during the period May 1, 2007 to April 30, 2010, which found that prices and rates of short

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6 See SEC Release 34-6159 – *Regulation SHO* (February 26, 2010) and SEC Release 34-63247 – *Regulation SHO* (November 4, 2010).

7 IIROC Notice 12-0077 – Rules Notice – Technical – UMIR – *Effects of Short Sale Circuit Breakers in the United States on the Trading of Inter-listed Securities in Canada* (March 2, 2012). The Short Sale Circuit Breaker Study considered the 112 instances between February 28, 2011 and April 29, 2011 when a short sale circuit breaker was triggered in the U.S. for an inter-listed security.

8 See IIROC Notice 12-0040 – Rules Notice – Guidance Note – UMIR – *Guidance Respecting the Implementation of Single-Stock Circuit Breakers* (February 2, 2012). See IIROC Notice 10-0331 – Rules Notice – Request for Comments – UMIR – *Proposed Guidance on Regulatory Intervention for the Variation or Cancellation of Trades* (December 15, 2010).

9 See Appendix "C" – *Reconciliation of UMIR and Proposed Amendments to the IOSCO Recommendations on Regulation of Short Sales* of IIROC Notice 11-0075, *op. cit*.

10 See IIROC Notice 12-0077, *op. cit*.

selling activity tended to move in tandem and that, in the periods of the most significant price decline, "shorts" were in the market purchasing securities to cover their positions thereby providing price support; [11]

- a study of trends in trading activity, short sales and failed trades that covered the three-year period May 1, 2007 to April 30, 2010, which found that rates of short selling were relatively constant throughout the period and that rates of trade failure generally declined over the period ("Trends Study"); [12]

- a prior study of trends in trading activity, short sales and failed trades that covered the period May 1, 2007 to September 30, 2008 and generally identified trends consistent with those identified in the Trends Study;[13]

- an analysis of the impact of the prohibition on the short sale of certain financial sector issuers listed on the TSX that were also listed on a U.S. exchange that was in effect between September 22, 2008 and October 8, 2008 which found that the prohibition had a significant impact on market quality by reducing liquidity and increasing "spreads" while not having any effect on price volatility;[14] and

- a study of failed trades undertaken by Market Regulation Services Inc. in 2006 that, among other findings, determined that a short sale had a lower probability of failing than trades generally and that the principal reason for trade failures was administrative error.[15]

Taken together, the results of the empirical studies indicate that the Canadian market has not had the problems with short sales, particularly naked short sales, and failed trades that may have been evident in other jurisdictions.

1.5 "Regulatory Intervention"

Currently, IIROC's policies and procedures for undertaking a regulatory intervention to halt trading in a security or to vary or cancel trades are not publicly disclosed. In a separate initiative, IIROC has published for public comment draft guidance that would provide greater transparency of IIROC's existing policies and procedures relating to the variation or cancellation of "unreasonable" trades and trades which are not in compliance with the requirements of UMIR.[16] In addition, IIROC has published guidance respecting the implementation of "Single-Stock Circuit Breakers" that would halt trading in a particular security for a short period of time if that security experienced rapid, significant and unexplained price movement.[17]

1.6 Enhanced Monitoring

IIROC has taken steps to enhance its monitoring of short sales and failed trades. In particular:

- Effective June 1, 2011, IIROC has implemented a web-based system for the reporting of "Extended Failed Trades", defined as trades which the client has failed to resolve within 10 business days following the regular settlement date, that helps to identify "problem" fails and allow IIROC to assess the reasons for the failure and monitor the steps being taken to resolve the problem.[18]

- IIROC has deployed a new surveillance alert which looks for declines in the price of a security associated with changes in the rate of short selling, based on a comparison to historical short selling patterns for the particular security.

- CDS Clearing and Depository Service Inc. ("CDS") is providing to the Ontario Securities Commission data on daily trade failures for trades settling in the continuous net settlement facilities ("CNS") of CDS. IIROC is in the

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[11] Reference should be made to IIROC Notice 11-0077 – Rules Notice – Technical – *Price Movement and Short Sale Activity: The Case of the TSX Venture Exchange* (February 25, 2011).

[12] Reference should be made to IIROC Notice 11-0078 – Rules Notice – Technical – *Trends in Trading Activity, Short Sales and Failed Trades* (February 25, 2011).

[13] Reference should be made to IIROC Notice 09-0037 – Administrative Notice – General – *Recent Trends in Trading Activity, Short Sales and Failed Trades* (February 4, 2009).

[14] Reference should be made to IIROC Notice 09-0038 – Administrative Notice – General – *Impact of the Prohibition on the Short Sale of Inter-listed Financial Sector Issuers* (February 9, 2009).

[15] For a more detailed discussion of the Failed Trade Study and its results, see Market Policy Notice 2007-003 – *General – Results of the Statistical Study of Failed Trades on Canadian Marketplaces* (April 13, 2007).

[16] See IIROC Notice 10-0331, *op. cit*. IIROC expects to publish the draft guidance in the near future for further public comment.

[17] See IIROC Notice 12-0044, *op. cit.*

[18] See IIROC Notice 11-0080 – Rules Notice – Guidance Note – UMIR – *Implementation Date for the Reporting of Extended Failed Trades* (February 25, 2011).

process of obtaining access to this database which would allow IIROC to determine, from time to time, variations in trade failures from historic patterns for particular securities and Participants.

- As part of the Amendments which become effective on September 1, 2012, purchase and sale orders from arbitrage accounts, accounts of persons with Marketplace Trading Obligations and certain accounts that adopt a "directionally neutral" strategy in the trading of securities would carry a "short-marking exempt order" designation. The use of this order designation will permit the data on "short sales" to better reflect the activities of persons who may have adopted a "directional" trading strategy.

1.7 Pre-Borrow Requirements

Rule 2.2 of UMIR deals with those activities which are considered to be "manipulative and deceptive" and, as such, prohibited. The entering of an order for the sale of a security without, at the time of entering the order, having the reasonable expectation of settling any trade that would result from the execution of the order constitutes a violation of the prohibition on manipulative and deceptive activities. As such, "naked short selling", as that term is sometimes understood, is not permitted under UMIR.[19] The provisions of Rule 2.2 of UMIR do not require the Participant or Access Person that is entering a short sale to have made a "positive affirmation" prior to the entry of the order that it can borrow or otherwise obtain the securities that would be required to settle a short sale. However, once a Participant or Access Person is aware of difficulties in obtaining particular securities to make settlement of any short sale, the Participant or Access Person would no longer have a "reasonable expectation" of being able to settle a resulting trade and therefore would not be able to enter further short sale orders. For trading in a particular security, certain Participants or Access Persons who do not have the ability to borrow that security may be precluded from entering short sales while other Participants or Access Persons with the ability to borrow that security may continue to undertake additional short sales.

Even when the person entering an order has "reasonable expectations" of being able to settle any resulting trade, there may be circumstances in which the person should be required to have made arrangements to "pre-borrow" the securities which are the subject of a short sale. These types of circumstances may include when:

- the person making the short sale has previously executed trades which have failed to settle on the date scheduled for settlement and within a reasonable time after that date; and

- rates of settlement failure for a particular security have increased above historic levels and the increase is attributable to short selling activity.

2. Discussion of the Amendments

2.1 Repeal of Price Restrictions on Short Sales

The Amendments repeal all restrictions on the price at which a short sale may be made. The Amendments parallel action taken by the SEC to repeal price restrictions on short sales in the U.S. effective July 7, 2007 but the Amendments do not introduce a short sale circuit breaker as was done by Rule 201 in the U.S.

While the restrictions on the price at which a short sale may be executed are repealed under the Amendments, the requirement to mark an order as "short" continues.

2.2 Pre-Borrow Requirements

Under the Amendments, a Participant or Access Person would be given specific direction as to the need, subject to certain exceptions, to have made arrangements to borrow securities when entering an order that on execution would be a short sale of:

- any listed security on behalf of a client or non-client[20] that previously had an Extended Failed Trade in any listed security; or

- a particular security by the Participant or Access Person acting as principal if the Participant or Access Person had previously had an Extended Failed Trade in respect of a principal trade in that particular security.

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[19] There is no universally accepted definition of "naked short selling". The most common usage is in connection with a short sale when the seller has not made arrangements to borrow any securities that may be required to settle the resulting trade. Some commentators use a more restrictive interpretation that describes any short sale when the seller has not pre-borrowed the securities necessary for settlement.

[20] A "non-client" is a person who is a partner, director, officer or employee of a Participant or a related entity of a Participant that holds an approval from an exchange or self-regulatory entity.

An Extended Failed Trade is one in respect of which notice of the failed trade was required to be provided to IIROC in accordance with Rule 7.10 of UMIR as the reason for the failure had not been rectified within ten trading days following the date for settlement contemplated on the execution of the failed trade.

If an Extended Failed Trade report has been filed previously at any time by a Participant with IIROC with respect to an Extended Failed Trade in the account of a client or non-client, that client or non-client would not be able to enter an order that on execution would be a short sale without having made arrangements to borrow the securities necessary to settle any resulting trade unless the Participant through which the order is to be entered on a marketplace is satisfied, after reasonable inquiry, that the reason for any prior failed trade was not as a result of any intentional or negligent act of the client or non-client. IIROC confirms that "administrative error" or "delay" (such as delayed processing times by a transfer agent or custodian) would not be considered an intentional or negligent act of the client or non-client.

If a Participant or Access Person has filed previously at any time a report of an Extended Failed Trade in respect of a principal trade by that Participant or Access Person in a particular security, the Participant or Access Person would not be able to enter an order that on execution would be a short sale without having made arrangements to borrow the securities necessary to settle any resulting trade unless IIROC has consented to the entry of the principal order that is a short sale of that particular security. In providing the consent, IIROC will be able to review with the Participant or Access Person the circumstances surrounding the previous Extended Failed Trade and the reasons why the Participant or Access Person believes that future short sales of that particular security are unlikely to fail to settle.

Under the Amendments, a Participant or Access Person who enters an order that would, on execution, be a short sale of a security that IIROC has designated as a "Pre-Borrow Security" would be required to have made arrangements to borrow the securities necessary for settlement of any trade prior to the entry of the order on a marketplace.

As a result of the Amendments, each Participant and Access Person will have to ensure that they have adequate policies and procedures to regulate the entry of short sales in circumstances when the Participant or Access Person has previously executed an "Extended Failed Trade"[21] or IIROC has designated a security as a "Pre-Borrow Security".

2.3 Repeal of the "Short Exempt" Designation

Prior to the Amendments being implemented, the "short exempt" order designation will be used to identify an order for the short sale of a security which is not subject to the tick test. Upon the tick test being repealed on September 1, 2012, the use of the "short exempt" order designation will no longer be required and provisions for its use are also repealed.

2.4 Introduction of the "Short-Marking Exempt" Designation

Under the Amendments, a new order designation will be introduced to indicate that an order is being entered by an account that is exempt from marking an order as "short" (i.e. "short-marking exempt"). Under this provision, orders from particular accounts for the **purchase or sale** of a security would be designated as "short-marking exempt" upon entry on a marketplace. More specifically, orders would be marked as "short-marking exempt" if the order is from an account that is:

- an arbitrage account which makes a usual practice of buying and selling securities in different markets to take advantage of differences in prices;
- the account of a person with Marketplace Trading Obligations[22] in respect of a security for which that person has obligations;
- a client, non-client or principal account:
    - for which order generation and entry is fully-automated, and
    - which, in the ordinary course, does not have at the end of each trading day more than a nominal position, whether short or long, in a particular security; or
- a principal account that has acquired during a trading day a position in a particular security in a transaction with a client that is unwound during the balance of the trading day such that, in the ordinary course, the

[21] IIROC Notice 11-0080, *op. cit*. A report of an Extended Failed Trade is required on and after June 1, 2011 for trades settling through the CNS facilities of CDS. A report for failures of trades settling through the Trade-for-Trade settlement facility of CDS will become effective at a later date once IIROC has completed the development and testing of system that would permit IIROC to receive the information directly from CDS.

[22] See IIROC Notice 11-0251 – Rules Notice – Notice of Approval – UMIR – *Provisions Respecting Market Maker, Odd Lot and Other Marketplace Trading Obligations* (August 26, 2011).

account does not have, at the end of each trading day, more than a nominal position, whether short or long, in a particular security.

Concurrent with the issuance of this Rules Notice, IIROC has issued for public comment revised draft guidance on the use of the "short sale" and "short-marking exempt" order designations. IIROC would intend to issue the guidance in final form prior to the Amendments becoming effective.[23]

2.5 Consequential Amendments

2.5.1 Definition of "Pre-Borrow Security"

The Amendments require a Participant or Access Person to have made arrangements to borrow securities prior to the entry of an order that would, on execution, be a short sale of a security that IIROC has designated as a "Pre-Borrow Security". The Amendments add a definition of "Pre-Borrow Security" to Rule 1.1 and set out the considerations which IIROC would take into account in making such a designation in an addition to Policy 1.1. In determining whether to make such a designation, IIROC would have to consider whether:

- based on information known to IIROC, there has been an increase in the number, value or volume of failed trades in the particular security by more than one Participant or Access Person;
- the number or pattern of failed trades is related to short selling; and
- the designation helps to maintain a fair and orderly market.

2.5.2 Example of "Manipulative or Deceptive Method, Act or Practice"

With the repeal of the price restrictions on the price at which a short sale may be made, clause (d) of Part 1 of Policy 2.2 which precludes the practice of purchasing a security at a price below the last sale price with the intention of making a short sale at that new lower price has become spent and, as such, the Amendments repeal the provision.

3. Changes from the Proposed Amendments

The Amendments as approved vary from the Proposed Amendments in a number of areas including:

- changes to the definition of "short-marking exempt order" to permit any client, non-client or principal account (and not just an account of an institutional customer as set out in the Proposed Amendments) to qualify and to simplify the criteria to require that:
  - order generation and entry is fully-automated, and
  - in the ordinary course, trading activity is "non-directional";
- extending the definition of "short-marking exempt order" to include certain principal "facilitation" accounts which are "non-directional"; and
- simplifying the ability of a Participant to relieve a client or non-client of the need to "pre-borrow" a security subject to a short sale if the Participant is satisfied that any previous failure was not as a result of any intentional or negligent act of the client or non-client (which simplification also eliminated the need for IIROC to have the ability to consent to such order entry).

4. Summary of the Impact of the Amendments

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

- Participants and Access Persons are relieved of the obligation to ensure that short sales comply with the "tick test";
- marketplaces, which have elected to system-enforce the "tick test" for Participants and Access Persons, are able to remove this functionality from their trading systems;

[23] See IIROC Notice 12-0079 – Rules Notice – Request for Comments – UMIR – *Proposed Guidance on "Short Sale" and "Short-Marking Exempt" Order Designations* (March 2, 2012).

- each Participant and Access Person will have to ensure that they have policies and procedures that will adequately regulate the entry of short sales in circumstances where the security has been designated a "Pre-Borrow Security" or the Participant or Access Person has previously executed an Extended Failed Trade;

- Participants and Access Persons will need to have made arrangements to borrow securities when undertaking a short sale of:

    - a security that has been designated as a "Pre-Borrow Security",

    - any listed security on behalf of a client or non-client that previously had an Extended Failed Trade in any listed security, or

    - a particular security by the Participant or Access Person acting as principal if the Participant or Access Person has had an Extended Failed Trade in respect of that particular security;

- each Participant will have to ensure that it has adequate policies and procedures to properly identify orders that should be designated as either "short sale" or "short-marking exempt"; and
- each marketplace will have to ensure that its trading systems correctly handle orders designated as "short sale" or "short-marking exempt".

5. Technological Implications and Implementation Plan

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

- their systems have to be able to differentiate between an order designated as "short sale" and "short-marking exempt" (since, under the Amendments, the designations are mutually exclusive);

- their systems have to be able to accept the "short-marking exempt" designation on both purchase and sell orders; and

- their system enforcement of the tick test should be disabled for orders marked as a "short sale".

The Amendments will become effective on **September 1, 2012**. IIROC has initiated meetings with marketplaces and service providers to deal with the technological implications of the Amendments and, in particular, to co-ordinate the introduction of the "short-marking exempt" designation.

Appendix A – Text of Provisions Respecting Regulation of Short Sales and Failed Trades

The Universal Market Integrity Rules are hereby amended as follows:

1. Rule 1.1 is amended by inserting the following definitions of "Pre-Borrow Security" and "short-marking exempt order":

> "Pre-Borrow Security" means a security that has been designated by a Market Regulator to be a security in respect of which an order, that on execution would be a short sale, may not be entered on a marketplace unless the Participant or Access Person has made arrangements to borrow the securities that would be necessary to settle the trade prior to the entry of the order.
>
> "short-marking exempt order" means an order for the purchase or sale of a security from account that is:
>
> (a) an arbitrage account;
>
> (b) the account of a person with Marketplace Trading Obligations in respect of a security for which that person has obligations;
>
> (c) a client, non-client or principal account:
>
> (i) for which order generation and entry is fully-automated, and
>
> (ii) which, in the ordinary course, does not have, at the end of each trading day, more than a nominal position, whether short or long, in a particular security; or
>
> (d) a principal account that has acquired during a trading day a position in a particular security in a transaction with a client that is unwound during the balance of the trading day such that, in the ordinary course, the account does not have, at the end of each trading day, more than a nominal position, whether short or long, in a particular security.

2. Rule 3.1 is deleted.

3. Rule 3.2 is amended by:

> (a) deleting in clause (a) of subsection (1) the phrase "or subclause 6.2(1)(b)(ix)";
>
> (b) deleting subsection (2) and inserting:
>
> Clause (a) of subsection (1) does not apply to an order that has been designated as a "short-marking exempt order" in accordance with subclause 6.2(1)(b)(ix).

4. Rule 6.1 is amended by adding the following subsections:

> (3) A Participant acting as agent shall not enter a client order or a non-client order on a marketplace that would, if executed, be a short sale if the client or non-client has previously executed a sale of any listed security that became a failed trade in respect of which notice to the Market Regulator was required pursuant to Rule 7.10 unless:
>
> (a) the Participant has made arrangements for the borrowing of the securities necessary to settle any resulting trade prior to the entry of the order; or
>
> (b) the Participant is satisfied, after reasonable inquiry, that the reason for any prior failed trade was not as a result of any intentional or negligent act of the client or non-client.
>
> (4) A Participant acting as principal or an Access Person shall not enter an order on a marketplace for a particular security that would, if executed, be a short sale if the Participant or Access Person has previously executed a sale in that security that became a failed trade in respect of which notice to the Market Regulator was required pursuant to Rule 7.10 unless:
>
> (a) the Participant or Access Person has made arrangements for the borrowing of the securities necessary to settle any resulting trade prior to the entry of the order; or
>
> (b) the Market Regulator has consented to the entry of such order or orders.

(5) A Participant or an Access Person shall not enter an order on a marketplace for a Pre-Borrow Security that would, if executed, be a short sale unless the Participant or Access Person has made arrangements for the borrowing of the securities necessary to settle any resulting trade prior to the entry of the order.

5. Clause (b) of subsection (1) of Rule 6.2 is amended by:

(a) deleting in subclause (viii) the phrase "which is subject to the price restriction under subsection (1) of Rule 3.1" and substituting the phrase "but not including an order which is designated as a "short-marking exempt order" in accordance with subclause 6.2(1)(b)(ix)"; and

(b) deleting subclause (ix) and substituting the following:

(ix) a short-marking exempt order.

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

1. Policy 1.1 is amended by inserting the following as Part 2.1

Part 2.1 – Definition of "Pre-Borrow Security"

Under the definition of a "Pre-Borrow Security", the Market Regulator may designate a security in respect of which an order that on execution would be a short sale may not be entered on a marketplace unless the Participant or Access Person entering the order has made arrangements to borrow the securities that would be required to settle the trade prior to the entry of the order. In determining whether to make such a designation, the Market Regulator shall consider whether:

- based on information known to the Market Regulator, there is an increase in the number, value or volume of failed trades in the particular security by more than one Participant or Access Person;
- the number or pattern of failed trades is related to short selling; and
- the designation would be in the interest of maintaining a fair and orderly market.

2. Part 1 of Policy 2.2 is amended by:

(a) inserting at the end of clause (b) the word "and";

(b) deleting at the end of clause (c) the phrase "; and"; and

(c) deleting clause (d).

3. Policy 3.1 is repealed.

Appendix B – Comments Received in Response to
Rules Notice 11-0075 – Request for Comments – UMIR –
Provisions Respecting Regulation of Short Sales and Failed Trades

On February 25, 2011, the Investment Industry Regulatory Organization of Canada ("IIROC") issued Rules Notice 11-0075 requesting comments on Provisions Respecting Regulation of Short Sales and Failed Trades ("Proposed Amendments"). IIROC received comments on the Proposed Amendments from:

The Canadian Depository for Securities Limited ("CDS")
Canadian Security Traders Association, Inc. ("CSTA")
Chi-X Canada ("Chix-X")
CIBC World Markets Inc. ("CIBC")
CNSX Markets Inc. ("CNSX")
Desjardins Securities ("Desjardins")
Brian M. Hearst ("Hearst")
Investment Industry Association of Canada ("IIAC")
Elaine and Robert MacDonald ("MacDonald")
RBC Capital Markets ("RBC")
Scotia Capital ("Scotia")
Summerwood Capital Corp. ("Summerwood")
TD Newcrest ("TD")
William R. Thompson ("Thompson")
TMX Group Inc. ("TMX")
Wolverton Securities Ltd. ("Wolverton")

A copy of the comment letter in response to the Proposed Amendments is publicly available on the website of IIROC (www.iiroc.ca under the heading "Policy" and sub-heading "Market Proposals/Comments"). The following table presents a summary of the comments received on the Proposed Amendments together with the responses of IIROC to those comments. Column 1 of the table highlights the revisions to the Proposed Amendments made on the approval of the Amendments.

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
1.1 Definitions "Pre-Borrow Security" means a security that has been designated by a Market Regulator to be a security in respect of which an order, that on execution would be a short sale, may not be entered on a marketplace unless the Participant or Access Person has made arrangements to borrow the securities that would be necessary to settle the trade prior to the entry of the order.	**RBC** – Believes that the proposal would impose disproportionate and substantial changes to Participants' order entry and back office systems in order to maintain accurate and up-to-date lists of "pre-borrow" securities and "extended failed trades".	IIROC believes that the approach (i.e. designating securities that will require "pre-borrowing" before undertaking a short sale) is preferable to general and comprehensive requirements such as in the United States. As set out in the notice, there have been historic instances of "problems" in the trading of specific securities but there have been none since the "manipulative" rules were amended in 2005. Presently, UMIR provides that IIROC may designate particular securities as being ineligible for short sale. The introduction of the "pre-borrow" requirement is seen as a less dramatic intervention with a similar impact on Participant's systems.
1.1 Definitions "short-marking exempt order" means an order for the purchase or sale of a security from account that is: (a) an arbitrage account; (b) the account of a person with Marketplace Trading Obligations in respect of a security for which that person has obligations; ~~and~~ (c) a client, non-client or principal ~~the~~ account ~~of an institutional customer~~:	**CSTA –** Supports the proposal and suggests that the separate marking be extended to all trading activity from the "specialty participants".	IIROC expanded the definition to permit orders from certain client, non-client and principal accounts to qualify as "short-marking exempt". To qualify, the activity in the account would have to be "directionally" neutral and the generation and entry of orders would have to be fully-automated.

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
(i) for which order generation and entry is fully-automated, and ~~(ii) which, in the ordinary course, executes both purchases and sales of a particular security on one or more marketplaces on each trading day, and~~ (iii) which, in the ordinary course, does not have, at the end of each trading day, more than a nominal position, whether short or long, in a ~~the~~ particular security; or (d) a principal account that has acquired during a trading day a position in a particular security in a transaction with a client that is unwound during the balance of the trading day such that, in the ordinary course, the account does not have, at the end of each trading day, more than a nominal position, whether short or long, in a particular security.	**CIBC** and **IIAC–** Supports the proposal but suggests that it be expanded to include proprietary accounts that use "directionally neutral strategies" such as "facilitation trades".	See the response to CSTA above. In particular, the revisions permit orders from a principal account to be marked as a "short-marking exempt order" if the account is used essentially for "facilitation" trades such as entering into a short position to facilitate a client purchase which is then covered by purchases generally by the end of the same trading day.
	Scotia – Notes that there is no a generally accepted definition of "high frequency trading" but do not agree that HFT should have an "advantage" in marking trades that in effect were short at the time of entry simply because it is problematic. Suggests a "more principle based approach" in place of the specific criteria. Also suggests that principal accounts should be able to qualify.	IIROC would note that in some jurisdictions, HFTs have adopted the practice of marking all sell orders as "short". Such a practice compromises the ability to properly monitor short sale activity. The Amendments seek to maintain the value of the order data by dividing the orders between those that make a general practice of being "directionally" neutral (e.g. any short sales during the day will be offset by purchases during the trading day such that securities will not have to be borrowed to effect settlement) from those that are entering short orders as a result of "negative" sentiment or who will have to borrow securities to effect settlement of any trade. IIROC would also note that the "rule" component is principle based but the guidance sets out "general guidelines". Failure to meet the guidelines for short periods of time would not constitute "non-compliance".
3.1 Restrictions on Short Selling – *repealed*	**CSTA, Chi-X, CIBC, CNSX, Desjardins, IIAC, RBC, Scotia, Summerwood** and **TD-** Supportive of the repeal of price restrictions at which a short sale may be made.	IIROC acknowledges support for the repeal.
	Summerwood –Notes that some market participants confuse the principles of investor protection and market integrity with price stability.	In the view of IIROC, "unexplained" significant price movement, both to the upside and the downside, is a concern in maintaining a fair and orderly market.
	CNSX – Critical for IIROC to continue to work with other regulators to identify abusive practices, including abusive short selling.	IIROC has introduced an alert to its surveillance system to detect price declines associated with increases in rates of short selling. The alert will allow regulatory attention to be directed to potentially abusive behaviour in "real-time".

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
	Hearst – Opposes the removal of the tick test and would support a ban on short selling as it makes it difficult for issuer to "keep their market stable".	Studies by IIROC and others have demonstrated that short selling contributes to price stability and that volatility and spreads increase when short selling is prohibited. The purpose of markets is to provide price discovery and not to favour or support either "inflated" or "depressed" prices for securities. IIROC would note that the issuer does not have a responsibility for ensuring the price stability of their securities. The price discovery mechanism is premised on buyers and sellers with equal access to material information concerning the issuer coming together to establish the market price.
	MacDonald – Believes short selling enables large institutional holders/purchasers of stock to manipulate the market prices.	Short selling performs many functions not the least of which is lessening price volatility. Misuse of short selling for "manipulative" purposes is contrary to the rules in the same way as "pump and dump" from long positions is contrary from the rules.
	Thompson – Believes that the tick test "does slow down abusive short selling". Allowing an excessive time frame to borrow stocks to cover short positions in no way protects the retail investor and leads to a lack of confidence in a fair and equitable marketplace.	"Abusive short selling" is manipulation and can be dealt with by existing rules dealing with manipulation. The tick test complicates the other "normal" short selling activity without providing a regulatory benefit. IIROC has introduced a real-time alert to assist in the detection of "abusive" short selling.
	TMX – Believes that removing the short sale tick test should not lead to any harm given the regulatory framework in Canada and IIROC's ability to perform real-time surveillance.	IIROC is in agreement with the comment.
	Wolverton – Believes that the tick rule permits shorts when the market is "frothy" while shuts down short sales when a public company is weak and in need of protection. For junior companies market manipulation is a real concern both on the upside and the downside.	The empirical studies by IIROC demonstrate that rates of short selling and short positions increase in rising markets and fall during periods of price decline (indicating that "shorts" act as support in the periods of price decline and a not the cause of the decline). This pattern is particularly pronounced for "junior" securities. IIROC has moved to specifically introduce real-time alerts that monitor for "abusive" short selling (increases in rates of short selling during periods of price decline). The price

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
		discovery mechanism is designed to provide a "true price" based on overall market sentiment and full disclosure of material information and should not be distorted to provide "protection" for the price of securities in certain circumstances.
3.2 Prohibition on Entry of Orders (1) A Participant or Access Person shall not enter an order to sell a security on a marketplace that on execution would be a short sale: (a) unless the order is marked as a short sale in accordance with subclause 6.2(1)(b)(viii); or (b) if the security is a Short Sale Ineligible Security at the time of the entry of the order. (2) Clause (a) of subsection (1) does not apply to an order that has been designated as a "short-marking exempt order" in accordance with subclause 6.2(1)(b)(ix). …		
6.1 Entry of Orders to a Marketplace … (3) A Participant acting as agent shall not enter a client order or a non-client order on a marketplace that would, if executed, be a short sale if the client or non-client has previously executed a sale of any listed security that became a failed trade in respect of which notice to the Market Regulator was required pursuant to Rule 7.10 unless: (a) the Participant has made arrangements for the borrowing of the securities necessary to settle any resulting trade prior to the entry of the order; or (b) the Participant is satisfied, after reasonable inquiry, that the reason for any prior failed trade was ~~solely as a result of administrative error and~~ not as a result of any intentional or negligent act of the client or non-client~~;~~. ~~or~~ ~~(c) the Market Regulator has consented to the entry of such order or orders.~~ (4) A Participant acting as principal or an Access Person shall not enter an order on a marketplace for a particular security that would, if executed, be a short sale if the Participant or Access Person has previously executed a sale in that security that became a failed trade in respect of which notice to the Market	**CSTA –** Street will face significant costs to implement pre-borrow and regulators should weight the costs of implementation versus the actual benefits.	Unlike the regulatory framework in the United States, IIROC is not introducing a "general obligation" that is applicable to all short sales. Rather, IIROC has tried to focus the obligation only on those accounts that have demonstrated an inability to settle a trade within a reasonable time (10 days) following the original settlement date. IIROC originally proposed an exception from the requirement if the Participant is satisfied that the reason for the "extended failed trade" was due to administrative error. IIROC has revised the exception to clarify that the Participant may waive the requirement if the Participant is satisfied that the reason for the prior failure was not as a result of any intentional or negligent act. There would be no compliance costs if all trades are settled and the account has met all delivery requirements within the 10 days following the original settlement date.
	Chi-X – Supports IIROC's determination not to introduce a mandatory pre-borrow requirement.	See response to CSTA comment above.

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
Regulator was required pursuant to Rule 7.10 unless: (a) the Participant or Access Person has made arrangements for the borrowing of the securities necessary to settle any resulting trade prior to the entry of the order; or (b) the Market Regulator has consented to the entry of such order or orders. (5) A Participant or an Access Person shall not enter an order on a marketplace for a Pre-Borrow Security that would, if executed, be a short sale unless the Participant or Access Person has made arrangements for the borrowing of the securities necessary to settle any resulting trade prior to the entry of the order.	**CIBC –** Believes that existing UMIR requirements related to manipulative trading and other IIROC requirements make the proposal unnecessary. Believes that there will be significant costs to the investor in both time and resources.	IIROC agrees that a general "pre-borrow" requirement would be "unnecessary and burdensome" given the history in Canada of short selling and trade failures. For that reason, the proposed requirement is only applicable to those accounts that have previously executed an "extended failed trade". In this way, the cost to investors will only be borne by those investors who have established a record for defaulting on settlement which has not been rectified within a "reasonable" time (e.g. 10 days after the original settlement date). The additional requirements become an "incentive" to investors and Participants to ensure rectification of delivery problems within the 10 days. IIROC acknowledges that these "failures" represent a very small percentage of failures but they have an inordinate impact on rates of cumulative trade failure. IIROC expects that these additional requirements will lead Participants to strengthen settlement discipline such that number of extended failed trades would fall from current levels and would focus on failures that may evidence non-compliance by the account holders with other regulatory requirements.
	Desjardins – Suggests that the requirement be revisited as the IIROC studies do "not indicate that a problem currently exists".	IIROC acknowledges that the studies demonstrate that there is not a problem which would require a "general and comprehensive" solution. IIROC has attempted to focus the burden only on those accounts with a record of failing to settle within a reasonable time.
	IIAC –Believes that the pre-borrow requirement is an example of regulation without clear justification. If the requirement is to be retained, it should be based on a threshold where the number of shorts against a stock impairs the settlement process. Believes that there are significant systems issues to monitoring extended failed trades.	Under the Amendments, "pre-borrow" is not a requirement for all short sales. Pre-borrow would only apply if the account had previously experienced an extended failed trade that was not of an administrative nature or if IIROC designated a particular security due to settlement problems related to levels of short selling. Reference should be made to the proposed Part 2.1 of Policy 1.1 dealing with the definition of a "Pre-Borrow Security." The definition of "Pre-Borrow Security" addresses the systemic problems arising from

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
		short sales while the extended failed trade threshold addresses "potential abusive short selling" which may be occurring at the account level (such as when the account holder has engaged in "naked" short selling without an intention of effecting settlement on the settlement date.) The number of extended failed trades will be extremely low (and IIROC further expects that Participants will "tighten" settlement procedures to avoid triggering the extended failed trade provisions except in circumstances that would justify regulatory review of the trade to ensure that the failure is not part of a manipulative pattern of trading.
	RBC – Believes that the restriction on clients to pre-borrow should only be for the specific security which was the subject of an extended failed trade. Failed trades resulting from administrative delay should not be treated in the same manner as fails resulting from improper shorts.	If a client has previously had an "extended failed trade", the pre-borrow requirement would apply to all securities unless the Participant was satisfied that the earlier failure was not as a result of an intentional or negligent act by the client. If the client intentionally defaulted on its obligations to settle a sale of stock "A", IIROC is of the view that the client should not be permitted to make a short sale of stock "B" (since the Participant could not know in advance whether the client intended to default on its settlement obligations). IIROC confirms that "administrative error" or "delay" (such as delayed processing times by a transfer agent or custodian) would not be considered an intentional or negligent act of the client or non-client.
	RBC – The proposed requirements would likely have a negative impact on the number of short sales executed and may unduly reduce or restrict trading in certain securities that are not readily available for pre-borrow, such as "junior securities". Particular complexities may arise with the sale of securities subject to Rule 144A restrictions which, due to delays in the removal of the legend, are prone to extended fails.	IIROC believes that the "pre-borrow" requirements will have no impact on short selling activity unless there is an abnormal situation in the market or the person entering the order has previously had an extended failed trade. IIROC has previously issued guidance (Market Integrity Notice 2006-006 – Sale of Securities Subject to Certain United States Securities Laws) that confirms that the sale of securities subject to Rule 144A or Regulation D other than as a Special Term Order with

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
		"delayed delivery" to allow for the removal of the restrictive legend would be achieved by the Participant marking the order as "short exempt" and "the Participant would need to borrow free-trading securities to complete settlement while arranging for the removal of any restrictive legend". To do otherwise would be the entry of an order without having "the reasonable expectation of settling" any resulting trade contrary to Policy 2.2 of UMIR.
	Scotia – Does not believe that the "pre-borrowing" requirement will benefit the overall settlement process. It also will not deter manipulative behaviours of individuals that wish to naked short.	The studies by IIROC demonstrated that there was no demonstrable relationship between short selling and failed trades. In fact, the IIROC studies indicated that a short sale was less likely to fail than a regular trade. However, IIROC is of the view that those persons who have failed to settle and have not rectified the situation within a reasonable period of time should be subject to additional restrictions and that this approach is preferable to options pursued in other jurisdictions such as locate requirements for any short sale or the imposition of "mandatory close-outs" when the majority of trade failures are due to administrative error or delay.
	Wolverton – Problem with restraining shorts with borrowing is that most small companies are purchased in cash accounts and fully-paid for by clients resulting in almost no stock available for borrowing thereby "eliminating" short sales.	The Amendments do not introduce a general borrowing requirement for short sales. Rather the requirement is limited to securities which are experiencing highly unusual settlement problems or when the person making the short sale has previously executed an "extended failed trade" that is attributable to an intentional or negligent act of the client or non-client. The pre-borrowing requirement would not arise if the prior failure was due to administrative error or delay. Existing UMIR provisions require a Participant that is entering an order on a marketplace to have a "reasonable expectation of settling any trade that would result from the execution of the order". A Participant is not able to enter an order if the Participant knows the Participant will not be in a position

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
		to settle the trade on the settlement date.
6.2 Designations and Identifiers (1) Each order entered on a marketplace shall contain: … (b) a designation acceptable to the Market Regulator for the marketplace on which the order is entered, if the order is: (i) a Call Market Order, (ii) an Opening Order, (iii) a Market-on-Close Order, (iv) a Special Terms Order, (v) a Volume-Weighted Average Price Order, (v.1) a Basis Order, (v.2) a Closing Price Order, (v.3) a bypass order, (v.4) a directed action order as defined in the Trading Rules, (vi) part of a Program Trade, (vii) part of an intentional cross or internal cross, (viii) a short sale but not including an order which is designated as a "short-marking exempt order" in accordance with subclause 6.2(1)(b)(ix), (ix) a short-marking exempt order, (x) a non-client order, (xi) a principal order, (xii) a jitney order, (xiii) for the account of a derivatives market maker, (xiv) for the account of a person who is an insider of the issuer of the security which is the subject of the order, (xv) for the account of a person who is a significant shareholder of the issuer of the security which is the subject of the order, or (xvi) of a type for which the Market Regulator may from time to time require a specific or particular designation.		
Policy 1.1 - Definitions **Part 2.1 – Definition of "Pre-Borrow Security"** Under the definition of a "Pre-Borrow Security", the Market Regulator may designate a security in respect of which an order that on execution would be a short sale may not be entered on a marketplace unless the Participant or Access Person entering the order has made arrangements to borrow the securities that would be required to settle the trade prior to the entry of the order. In determining whether to make such a designation, the Market Regulator		

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
shall consider whether: • based on information known to the Market Regulator, there is an increase in the number, value or volume of failed trades in the particular security by more than one Participant or Access Person; • the number or pattern of failed trades is related to short selling; and • the designation would be in the interest of maintaining a fair and orderly market.		
Policy 2.2. – Manipulative and Deceptive Activities **Part 1 – Manipulative or Deceptive Method, Act or Practice** There are a number of activities which, by their very nature, will be considered to be a manipulative or deceptive method, act or practice. For the purpose of subsection (1) of Rule 2.2 and without limiting the generality that subsection, the following activities when undertaken on a marketplace constitute a manipulative or deceptive method, act or practice: (a) making a fictitious trade; (b) effecting a trade in a security which involves no change in the beneficial or economic ownership; and (c) effecting trades by a single interest or group with the intent of limiting the supply of a security for settlement of trades made by other persons except at prices and on terms arbitrarily dictated by such interest or group. If persons know or ought reasonably to know that they are engaging or participating in these or similar types of activities those persons will be in breach of subsection (1) of Rule 2.2 irrespective of whether such method, act or practice results in a false or misleading appearance of trading activity or interest in the purchase or sale of a security or an artificial ask price, bid price or sale price for a security or a related security.		
Policy 3.1 Restrictions on Short Selling **Part 1 – Entry of Short Sales Prior to the Opening** **- *repealed***		
Policy 3.1 Restrictions on Short Selling **Part 2 – Short Sale Price When Trading Ex-Distribution** **- *repealed***		
Questions: 1. Are there any policy reasons, other than those identified in this Request for Comments, that IIROC should consider in pursuing the proposed repeal of the existing “tick test” (short sales must be made at a price not less than the last sale price)? If you disagree with the proposal to repeal the tick test, please indicate why it should be retained.	**Scotia** – Agrees with the repeal but suggests other safeguards such as circuit breakers.	IIROC does not support restrictions on short sales when a circuit breaker is triggered. The analysis by IIROC indicates that sharp price declines are rarely associated with short selling activity (though IIROC monitors for this type of activity and has introduced an alert based on increased short selling activity and price declines).

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
		IIROC has been monitoring the instances in which an inter-listed security has been subject to a short sale circuit breaker in the U.S. In more than 80% of the cases, the price decline was attributable to the release of material negative news or sector specific events. Patterns of short selling in the period leading up to the triggering of the circuit breaker were not significantly different from that in the period after the circuit breaker had expired (nor the pattern during the period when the circuit breaker was in effect in the U.S.). IIROC continues to believe that a short sale circuit breaker regime is not warranted.
2. If restrictions on the price of a short sale are to be retained, should UMIR adopt a "bid test" at the time of order entry (e.g. a short order may only be entered on a marketplace at a price above the best bid price)?	**Scotia –** Does not support the use of any type of tick test unless it is coupled with a circuit breaker approach and evidence exists that short sales were driving down the market.	See comment on Scotia response to Question 1.
	TD – Does not believe any restriction on the price of a short sale should be retained.	IIROC agrees with the comment.
3. If restrictions on the price of a short sale are to be retained, whether in the short-term or on a long-term basis, should there be an exemption provided to securities inter-listed on an exchange in the United States?	**CIBC, Desjardins, IIAC, Scotia** and **TD –** If the tick test is retained, inter-listed securities should be exempt to prevent regulatory arbitrage detrimental to Canadian markets.	IIROC agrees with the comment.
4. If restrictions on the price of a short sale are repealed, what regulatory arbitrage opportunities may exist in the case of an inter-listed security, where a circuit breaker has been triggered in the United States giving rise to short sale price restrictions? What measures could be taken, if any, to limit this potential regulatory arbitrage?	**Chi-X –**Where possible, differences in regulatory regimes should be reconciled, nonetheless the policy rationale for repeal of the "tick test" outweighs the impact of creating an opportunity for regulatory arbitrage.	IIROC has been monitoring the trading of inter-listed securities which have triggered short sale circuit breakers in the United States. IIROC has found no evidence of "short sale" migration. In addition, IIROC has found no evidence that increases in the rate of short selling was the cause of price declines.
	CIBC – Proposed "general" circuit breaker should be sufficient.	IIROC agrees with the comment. Guidance for the triggering of "Single-Stock Circuit Breakers" has been published in IIROC Notice 12-0040. Revised proposed guidance on regulatory intervention for the cancellation or variation of trades has been published for comment.
	Desjardins and **Scotia–** Believes that no measures will be necessary.	

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
	IIAC – If no regulatory risk in repealing the tick test, there is no reason why the arbitrage opportunity should not be permitted to exist.	
	TD – Believes that opportunities for regulatory arbitrage will be "extremely limited". Notes that historically Canadian rules on short sale price restrictions have varied from those in the U.S.	
	TMX – Not aware of any regulatory arbitrage to date and believes existing UMIR provisions are adequate to protect the Canadian market.	
5. The Proposed Amendments would "reuse" the existing "short exempt" designation to indicate accounts that qualify for the "short-marking exempt" designation. Are there any specific operational considerations for marketplaces or Participants from this change in use? Would there be any benefits to introducing a separate, new designation if marketplaces, service providers and Participants still have to modify their system to remove functionality and provision for the existing "short exempt" designation?	**Chi-X** , **CIBC, CNSX** and **Scotia** – While the "re-use" of the existing marker may save costs, commenters suggest that investor confusion/variations from the FIX protocol used in the U.S. may make the introduction of a new tag preferable.	IIROC agrees with the suggestion.
	IIAC – Suggest marketplaces be required to provide a new tag/marker that would be uniform across all venues.	IIROC agrees with the suggestion.
	RBC – Implementation costs will be significant and, if the change is for purely statistical reasons, suggests that IIROC reconsider the proposal.	The key element in the Amendments is the removal of the tick test on short sales. To address concerns that this removal may open the door to "abusive" short selling, IIROC needs to be in a position to better monitor short selling activity. The provisions differentiate short sales being made by investors with a "directional" focus on the merits of a security from short sales by "persons" who are directionally neutral but simply taking advantage of "trading opportunities" principally created by an increase in the number of markets and marketplaces trading the same securities While there will be costs to the implementation of the new marker, the changes will, in the longer term, simplify the oversight by Participants of the fact that orders have been properly marked. The change will also have the effect of removing the requirement for

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
		accounts that qualify as "short-marking exempt" to change the status of a previously entered order to "short" when subsequent to the entry of the sell order the account has moved from a "long" position. Such changes to an order may affect the order's priority on certain marketplaces.
	TD – Supports the "re-use" of the marker.	
	TMX – Prefers the introduction of a new order marker.	IIROC agrees with the suggestion.
6. Are there any other operational considerations for marketplaces or Participants that would arise as a result of the adoption of the Proposed Amendments, beyond those identified in this Request for Comments?	**Chi-X –** The repeal of the "tick test" will simplify routing decisions for smart order routers that will no longer have to take into account differences in the mechanisms used by each marketplace to system enforce the price restrictions.	IIROC agrees. IIROC has solicited comment on changes to the requirements surrounding the calculation of "last sale price" as part of proposed amendments to UMIR regarding "Dark Liquidity". See IIROC Notice 11-0225 issued on July 29, 2011.
	CIBC and **IIAC –** Believes that the time and resources required to scope and develop system to automate and monitor compliance with the requirements may be disproportionate to the regulatory benefits obtained.	The number of failed trades is small and the extended failed trades are less than 4% of that. IIROC would expect that Participants will review their policies and procedures with a view to minimizing the number of extended failed trades even further. Given the limited number of instances, IIROC does not expect that Participants would specifically "automate" compliance with either EFTR or pre-borrow. Each Participant presently monitors "credit" activity of accounts and has the ability to "manually" place restrictions on trading activity.
7. If the Proposed Amendments are approved, IIROC is proposing to delay the implementation for a period of one hundred and eighty (180) days in order to provide Participants, marketplaces and service providers the time to make necessary changes to their systems, policies and procedures. Should the implementation period be longer and, if so, why?	**CIBC** and **IIAC** – Suggests one year implementation period.	See response to CIBC comment on question 6.
	Desjardins – Difficult to estimate the time.	IIROC can be flexible in extending the implementation if issues arise.
	Scotia – Suggests an implementation period of not less than one year given system changes together with education, training and testing.	Given the limited nature of the Amendments (i.e. to impose additional restrictions on particular accounts that have defaulted in delivery on settlement or the trading of particular securities in extraordinary circumstances), IIROC believes that the existing policies, procedures or mechanisms which Participants have to constrain trading activities in particular securities or accounts

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
		will be adequate (and should not require major modification).
	TD – Supports suggested 180 day implementation period.	
	TMX – 180 days should be sufficient for marketplaces (if a new "short marking exempt" marker is introduced rather than "re-used").	
8. The requirement to mark a sell order as a "short sale" is determined based on the aggregate holdings of the "seller" (across multiple accounts which may in fact be held at multiple Participants or dealers) while the requirement of a Participant to file a short position report is based on the position of each individual account. If the tick test is repealed, should the basis for determining the marking orders and filing short position reports be harmonized? Would it be preferable for the marking of orders to be determined based on the holdings in the account entering the sell order at the time the order is entered?	**CIBC** and **IIAC** – Marking for client accounts should be on an "aggregate" basis but suggests that proprietary accounts be given the option of either methodology.	With the repeal of the tick test, any benefit from aggregating positions across accounts will be removed (i.e. the ability to make a sale below the last sale price even when the account actually making the sale will be in a short position.). If there is in fact "settlement" risk when the security is not held in the account making the sale, there may be merit to having such sale marked "short".
	Desjardins – Supports use of "aggregate" level.	
	Scotia – Suggests that "net position" for both firm and client would provide a more reliable benchmark for marking purposes and short position reporting purposes. Questions whether accounts exempt from marking orders as short would be exempt from short position reporting.	Accounts exempt from "short" marking are not exempt from short position reporting.
	TD – Practicable approach is to make the determination based on the position of each individual account. For "delivery against payment" accounts dealers currently have to rely on client disclosure.	
General Comments	**CDS** – Strongly supports all initiatives to reduce failed trades. If IIROC or CDS participants determine that additional or enhanced reports would facilitate IIROC's objectives, CDS will engage in discussions to determine how best to develop these reports and the timing for such development work.	IIROC and the CSA are issuing a joint notice requesting comments on various aspects of transparency of short sales and failed trades.
	CSTA – Notes problems with U.S. short sale circuit breakers including the fact that securities subject to a	IIROC did not support a short sale circuit breaker as its analysis did not find a relationship between significant price declines and short

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
	"corporate action" have not been exempted.	selling activity.
	IIAC – Suggests the proposals be re-examined to ensure that they are addressing a demonstrated Canadian problem that would justify the increased regulatory burden.	Given the limited nature of the IIROC proposals to impose additional restrictions on particular accounts that have defaulted in delivery on settlement or the trading of particular securities in extraordinary circumstances, IIROC that the existing policies, procedures or mechanisms which Participants have to constrain trading activities in particular securities or accounts will be adequate (and should not require major modification).
	Wolverton – Significant differences in settlement and margin rules between Canada and the United States mean Canada has not had the short sale or failure problems experienced in the United States. Shorting does not need fixing, "respectfully, please resist the urge to fix things that aren't broken."	IIROC has not proposed to adopt the general and comprehensive "solutions" suggested or adopted in the United States. Rather the Amendments focus any additional requirements only in situations in which there have been "problems" and to remove restrictions which are not warranted by trading experience.

Appendix C – IIROC Initiatives on Short Sales and Failed Trades

The following table outlines the initiatives taken or proposed by IIROC in connection with short sales and failed trades since October of 2008. The initiatives are grouped under the following elements of the overall strategy of IIROC regarding the regulation of short sales and failed trades:

- repeal the price restrictions on short sales;
- enhance investor education and confidence regarding the role of short selling in the operation of the market and the reasons for trade failures;
- increase transparency of information regarding short sale activity and failed trades;
- monitoring regulatory arbitrage opportunities related to short sales;
- disclose the criteria for regulatory intervention for variation or cancellation of trades in the event of significant price volatility;
- enhance monitoring of short sales and failed trades; and
- impose pre-borrow requirements for short sales made in certain circumstances.

Specific Initiative	Summary Description	Status of Initiative	Implementation Dates	
			Approved Initiatives	Proposed/On-going Initiatives
Repeal of Price Restrictions on Short Sales				
Repeal of Price Restrictions on Short Sales	Repeal of the requirement that a short sale may not be made at a price less than the last sale price of the security (“tick test”).	Approved		September 1, 2012
Elimination of “Short Exempt” Order Marking Requirements	Eliminate the ability to mark a “short sale” as being “exempt” from the tick test.	Approved		September 1, 2012
Enhancement of Investor Confidence				
Educating Investors on the Role of Short Selling	Provide disclosure in the IIROC on-line investor education tool (“Guide to Equity Markets: Learning the Mechanics and Rules of Trading”) regarding the role of short selling. Address “short selling” at the “Investor Forum” that would be accompany the launch of the investor education tool.	Completed	May 2011	
Release of Empirical Studies	Publication of *Trends in Trading Activity, Short Sales and Failed Trades (for the period May 1, 2007 to April 30, 2010)* and *Price Movement and Short Sale Activity: The Case of the TSX Venture Exchange (for the period May 1, 2007 to April 30, 2010)*.	Completed	February 25, 2011 (Studies published as IIROC Notices 11-0077 and 11-0078)	
Update of Empirical Studies	Undertake and publish updates of the empirical studies to determine the effect, if any, of the Amendments and other initiatives on trends in trading activity, short sales and failed trades.	Planning Stage		Approximately one year after implementation of Amendments
Release Study on Short Sale Circuit Breakers	Publication of *Effects of Short Sale Circuit Breakers in the United States on the Trading of Inter-listed Securities in Canada*.	Completed	March 2, 2012 (Published as IIROC Notice 12-0077)	

Specific Initiative	Summary Description	Status of Initiative	Implementation Dates	
			Approved Initiatives	Proposed/On-going Initiatives
Transparency				
Marketplace Dissemination of Daily Summaries of Short Sale Activity	Encourage marketplaces to co-operatively prepare and disseminate daily summaries of short sale activity.	Meetings with marketplaces		While certain marketplaces have explored this option, there are no firm plans to provide this information
IIROC Dissemination of Semi-Monthly Short Sale Trading Summaries	IIROC to prepare and publish on a semi-monthly basis (that corresponds to the timetable for the Consolidated Short Position Reports) information on short selling activity in each security consolidated from trading on each marketplace.	Planning Stage		Following introduction of the "Short-Marking Exempt" designation
Continuation of Semi-Monthly Short Position Report	Withdrawal of the proposal to repeal the requirement for each Participant to prepare a short position report.	Withdrawn	February 25, 2011	
Additional Transparency of Short Sale and Failed Trade Information	In conjunction with the Canadian Securities Administrators, solicit public input of possible additional transparency of short sales and failed trades.	Issuance of Request for Comments on March 2, 2012 (IIROC Notice 12-0076)		Publication of comments received and specific proposals
Monitoring of Regulatory Arbitrage Opportunities				
Short Sale Ineligible Security	Provide that IIROC, with the concurrence of applicable securities regulatory authorities, may designate a security as being ineligible to be sold short for a period of time.	Approved (October 15, 2008)	October 15, 2008	
Monitoring of Short Selling of Inter-listed Securities Subject to Price Restriction in the United States	The Securities and Exchange Commission has adopted a rule effective February 28, 2011 which provides that if a the price of a security declines 10% from the previous closing on the listing market that any short sales for the balance of that trading day and the next trading day must be entered at a price at least one trading increment above the national best bid at the time of entry. IIROC Surveillance will monitor the triggering of short sale circuit breakers for inter-listed securities and impact on short selling activities on Canadian marketplaces.	On-going	Since February 28, 2011	

Specific Initiative	Summary Description	Status of Initiative	Implementation Dates	
			Approved Initiatives	Proposed/On-going Initiatives
Disclosure of Criteria for Regulatory Intervention				
Guidance on Implementation of Single Stock Circuit Breakers	IIROC has issued guidance respecting the use of IIROC's power to impose a regulatory halt in the event of a significant (of at least 10%) and unexplained price movement over a 5-minute period in a security included in the S&P/TSX Composite Index or an exchange-traded fund comprised principally of listed securities.	Completed (Guidance issued as IIROC Notice 12-0040)	February 2, 2012	
Proposed Guidance on Regulatory Intervention for Trade Variation or Cancellation	IIROC has issued proposed guidance respecting the use of IIROC's power to vary or cancel "unreasonable" trades or certain other trades which were not in compliance with UMIR.	Republication of Request for Comments		Following review of public comments
Enhanced Monitoring				
Report of an "Extended Failed Trade"	Requirement to provide an on-line report to IIROC if a "failed trade" persists for a period of 10 days or more.	Approved (October 15, 2008)	June 1, 2011 (for trades other than those utilizing the Trade-for-Trade facility of CDS)	
Report of a Trade Variation or Cancellation	Requirement to provide a report to IIROC if a trade is varied or cancelled (with respect to price, volume or settlement date) after execution outside of procedures of the marketplace on which the trade was executed or the clearing agency.	Approved (October 15, 2008)	June 1, 2011	
Clarify Requirements to be Considered "Owner" of Securities	Clarify that a person will only be considered to own securities as a result of a conversion, exchange or exercise if full payment has been made and all forms, notices and, if applicable, certificates have been submitted.	Approved (October 15, 2008)	October 15, 2008	
Introduce Short Sale/Price Movement Trade Alert	Introduce a new alert in the surveillance system that looks specifically at changes in the pattern of short selling in connection with price declines.	Completed	Fully operational First Quarter of 2011	
Daily Failed Trade Database	Co-operate with the OSC and CDS in the development of a database of daily trade failures.	Planning Stage		Following review of public comments
Introduce "Short-Marking Exempt" Designation	Provide that certain accounts (arbitrage, market makers and automated institutional accounts that do not take a "directional" position on particular securities) are exempt from marking sales as "short sales".	Approved		September 1, 2012
Pre-Borrow Requirements in Certain Circumstances				
Client or Non-Client Having an "Extended Failed Trade"	Require a client or "non-client" to have pre-borrowed securities that are the subject of a short sale if the client or non-client has previously executed an "extended failed	Approved		September 1, 2012

Specific Initiative	Summary Description	Status of Initiative	Implementation Dates	
			Approved Initiatives	Proposed/On-going Initiatives
	trade" in any security (and the Participant is not satisfied that the extended failed trade was not solely the result of an administrative error).			
Participant Having an "Extended Failed Trade"	Require a Participant to have pre-borrowed securities that are the subject of a short sale if the Participant has previously executed an "extended failed trade" in the particular security (if IIROC has not consented to the entry of the order).	Approved		September 1, 2012
Designation of a "Pre-Borrow Security"	Provide that a person will have to have made arrangements to pre-borrow any security that is the subject of a short sale if IIROC has designated the particular security as a "Pre-Borrow Security" based on rates of short selling and trade failure in that security.	Approved		September 1, 2012

13.1.2 OSC Staff Notice of Commission Approval – MFDA Proposed Amendments to MFDA Rule 5.3 (Client Reporting)

OSC STAFF NOTICE OF COMMISSION APPROVAL

MUTUAL FUNDS DEALERS ASSOCIATION OF CANADA

MFDA AMENDMENTS TO MFDA RULE 5.3 (CLIENT REPORTING)

The Ontario Securities Commission approved the MFDA's amendments to MFDA Rule 5.3 (Client Reporting). The Alberta Securities Commission, Saskatchewan Financial Services Commission, Manitoba Securities Commission, Nova Scotia Securities Commission and New Brunswick Securities Commission have approved the amendments, and the British Columbia Securities Commission did not object to the MFDA's amendment.

Summary of Material Rule

The amendments require Members to deliver account statements to clients at least once every three months for both client name and nominee name accounts. The amendments will ensure that Members are subject to consistent requirements in respect of the frequency of account statement delivery under both MFDA Rules and NI 31-103. The amendments will harmonize the delivery requirements for accounts held in client and nominee name.

The amendments also deletes Rule 5.3.2 (Automatic Payment Plans) which requires Members to send a quarterly statement to clients for automatic payment plan transactions held in nominee name. This requirement is no longer necessary as quarterly statements will be required for all accounts.

Summary of Public Comments

The OSC published the amendments for comment on October 28, 2011 at (2011) 34 OSCB 11029 for a 30-day comment period. The MFDA received one public comment letter. We attach the MFDA's summary of public comments received and responses as Attachment A.

Attachment A

Summary of Public Comments Respecting Proposed Amendments to MFDA Rule 5.3 (Client Reporting) and Responses of the MFDA

On October 28, 2011, the British Columbia Securities Commission published proposed amendments to MFDA Rule 5.3 (Client Reporting) (the "**Proposed Amendments**") for a 30-day public comment period that expired on November 28, 2011.

One submission was received during the public comment period:

Advocis

A copy of the comment submission may be viewed on the MFDA website at: http://www.mfda.ca/regulation/comments.html#5-3.

The following is a summary of the comments received, together with the MFDA's responses.

Quarterly Reporting Requirement for Nominee Name Accounts

Advocis noted that the Proposed Amendments will result in clients with nominee name accounts, who currently receive a statement for any month when there is activity in their account, receiving reports only quarterly, and expressed the view that this reduction in the frequency of reporting may not be appropriate. The commenter suggested that certain clients with nominee name accounts rely on the receipt of monthly statements, and if the Rule is amended as proposed, they may wonder why they no longer are receiving statements for months when they have activity and instead are only receiving quarterly statements.

Advocis recommended that the MFDA conform its Rule to the minimum requirements in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103") without eliminating monthly reporting for nominee name accounts for months when there has been activity. The commenter suggested revising the Proposed Amendments so that the Rule continues to provide for reporting at least once every month for a nominee name account for months when there is activity in the account, but in any event no less frequently than once every quarter.

MFDA Response

As described in the Notice of Request for Comments, the Proposed Amendments are intended to ensure that requirements under MFDA Rules are consistent with those under NI 31-103. Staff is of the view that quarterly reporting is appropriate given the nature of mutual funds, which are not intended to be frequently traded securities. In addition, where there is a transaction in the month, clients will receive a trade confirmation for that transaction. Further, there is no reason to distinguish between client name and nominee name accounts with respect to frequency of reporting. The Proposed Amendments constitute minimum standards and Members may choose to provide more frequent reporting to clients where Members feel it is appropriate.

13.3 Clearing Agencies

13.3.1 FundSERV Inc. – Notice and Request for Comment – Application for Recognition as a Clearing Agency

NOTICE AND REQUEST FOR COMMENT

FUNDSERV INC.

APPLICATION FOR RECOGNITION AS A CLEARING AGENCY

A. Background

On March 1, 2011, subsection 21.2(0.1) of the *Securities Act* (Ontario) (OSA) came into force which prohibits clearing agencies from carrying on business in Ontario unless they are recognized as a clearing agency or are exempt from the requirement to be recognized by order of the Ontario Securities Commission (Commission).

FundSERV Inc. (FundSERV) has applied (the Application) to the Commission for recognition as a clearing agency pursuant to section 21.2 of the OSA.

FundSERV offers electronic business services to the investment industry. FundSERV's core service is its infrastructure for the placement and reconciliation of orders for mutual funds. Centralized payment exchange facilities are available to its participants and for those who choose, to settle orders, on a net basis, through payment exchange currently handled by a Canadian chartered bank through the Large Value Transfer System operated by the Canadian Payments Association.

In assessing the Application, staff followed the process set out in OSC Staff Notice 24-702 - *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies* (OSC Staff Notice 24-702).

B. Draft Order

In the Application, FundSERV has addressed the applicable criteria for recognition as a clearing agency. Subject to comments received, staff will recommend that the Commission grant a recognition order with terms and conditions to FundSERV based on the proposed draft recognition order (Draft Order) that is attached as Appendix A to the Application.

FundSERV provides limited clearing agency functions related to the centralized payment exchange facilities. The business model of FundSERV, however, does not involve many features engaged in by other clearing agencies and central counterparties such as credit enhancement, the assumption of counterparty risk, netting, novation or custody. Consequently, the limited clearing agency functions pose little systemic risk. The Draft Order is, therefore, tailored to FundSERV's circumstances and imposes requirements that are proportional to the level of risk and the level of activities engaged in by FundSERV. It requires FundSERV to comply with the following terms and conditions relating to:

1. Governance
2. Fees
3. Access
4. Rules and Rulemaking
5. Due Process
6. Risk Management
7. Systems and Technology
8. Financial Viability and Reporting
9. Outsourcing
10. Information Sharing and Regulatory Reporting

C. Comment Process

The Commission is publishing for public comment the Application and Draft Order. We are seeking comment on all aspects of the Application and Draft Order.

You are asked to provide your comments in writing and delivered on or before April 1, 2012, addressed to:

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8
E-mail: jstevenson@osc.gov.on.ca

We request that you also submit an electronic copy of your submission. The confidentiality of submissions cannot be maintained as a summary of written comments received during the comment period will be published.

Questions may be referred to:

Winfield Liu
Senior Legal Counsel, Market Regulation
Tel: 416-593-8250
wliu@osc.gov.on.ca

Leslie Pearson
Legal Counsel, Market Regulation
Tel.: 416-593-8297
lpearson@osc.gov.on.ca

February 13, 2012

BY DELIVERY AND
ELECTRONIC FILING

Ontario Securities Commission
20 Queen Street West, Suite 1903
Toronto, Ontario M5H 3S8
Attention: Secretary to the Commission

Re: Application of FundSERV Inc. requesting to be recognized as a clearing agency under the *Securities Act* (Ontario)

Dear Sirs/Mesdames:

FundSERV Inc. ("**FundSERV**"), a Canadian corporation with its head office located in Toronto, Ontario, is hereby applying to the Ontario Securities Commission (the "**Commission**") for an order (the "**Order**"), pursuant to Section 147 of the Securities Act (Ontario) (the "**Act**"), recognizing FundSERV as a clearing agency in Ontario under subsection 21.2(0.1)(1).

FundSERV is a leading provider of electronic business services to the Canadian investment industry. Established in 1993 (with active encouragement from the Commission), FundSERV operates on a cost-recovery basis, serving more than 700 organizations and their business units and providing online access to over 10,000 investment instruments. FundSERV also supports the customer staffed committees and working groups that address issues and develop electronic data and security standards for the industry.

FundSERV does not believe it is, or should be viewed as, a clearing agency in the conventional sense. Rather, it operates a value-added network with a variety of application services for business-to-business transaction processing. The core service is to provide the network infrastructure for its customers to place and reconcile their orders through efficient, secure data exchange, and for those who so elect, to enable them to settle their orders through a payment exchange handled by the Royal Bank of Canada through the Large-Value Transfer System ("**LVTS**") operated by the Canadian Payments Association.

FundSERV is dedicated to meeting the needs of all participants in the investment industry. Its data standards and security infrastructure enable the industry to continue to apply technology for the ultimate benefit of the Canadian investing public. Through efficient, secure data exchange, customers have the ability to place, reconcile and net settle orders.

FundSERV's business model does not involve credit enhancement, the assumption of counter-party risk, novation or custody. Rather, its service is similar to other back-office suppliers and service bureaus, facilitating common standards and providing communications infrastructure through which its participants' data flows. It is neither the author, auditor nor guarantor of such data (or the resulting transactions). As noted below, participants may (and do) choose alternative arrangements.

Among other things, Commission Staff Notice 24-702 Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agency dated March 19, 2010 requires FundSERV to describe how it satisfies the specific criteria outlined in Appendix A thereof which are relevant to FundSERV's activities in Ontario. Accordingly, FundSERV has reproduced below the criteria in *italics*, followed by a description of how FundSERV satisfies each criterion or why the criterion is not relevant to FundSERV because of the nature and scope of its activities in Ontario.

PART 1 GOVERNANCE

1.1 The governance structure and governance arrangements of the clearing agency ensures:

(a) effective oversight of the clearing agency;

(b) the clearing agency's activities are in keeping with its public interest mandate;

(c) fair, meaningful and diverse representation on the governing body (Board) and any committees of the Board, including a reasonable proportion of independent directors;

(d) a proper balance among the interests of the owners and the different entities seeking access (participants) to the clearing, settlement and depository services and facilities (settlement services) of the clearing agency;

(e) the clearing agency has policies and procedures to appropriately identify and manage conflicts of interest;

(f) each director or officer of the clearing agency, and each person or company that owns or controls, directly or indirectly, more than 10 percent of the clearing agency is a fit and proper person; and

(g) there are appropriate qualifications, limitation of liability and indemnity provisions for directors and officers of the clearing agency.

Extensive information concerning FundSERV's structure and governance is available on its website (www.fundserv.com). The following summarizes and amplifies elements thereof.

FundSERV is a Canadian corporation incorporated in 1997. It is owned by 10 shareholders (not one of which owns more than 10% of the outstanding shares of the corporation). Specifically, FundSERV's Board is comprised of representatives of some of the largest mutual fund manufacturers in Canada (AGF Management Ltd., Fidelity Investments Canada ULC, Franklin Templeton Investments Corp. and Invesco Trimark Ltd.). Other Board members are representatives of some of the largest integrated fund manufacturers/distributors in Canada (C.I. Investments Inc., CIBC Asset Management Inc. and Goodman and Company Investment Counsel Ltd.). Another is involved in fund manufacturing and distribution as well as life insurance (MacKenzie Financial Corporation). A service provider (International Financial Data Services (Canada) Limited) represents the interests of its customers (primarily small to medium sized manufacturers). Finally, IIROC represents the interests of distributors. The composition of the Board reflects FundSERV's history and ownership structure. Our Board consists of nominees from these 10 shareholders, up to four independent directors chosen by the shareholders on recommendation of the Human Resources and Governance Committee ("**HRGC**") (which also assesses their independence on a case-by-case basis) and the CEO. All directors must meet qualification and conflict of interest criteria defined in FundSERV's by-laws, and they are protected in part by limitations of liability, indemnification, and insurance coverage.

The owners, on recommendation of the Board, determined in 2004 that the input of independent directors would enhance FundSERV's governance structure and help ensure that the interests of different participants are addressed. One independent position is currently vacant by design. Only the four independents are remunerated; the 10 shareholder representatives are not compensated for their services.

The primary manner in which stakeholder interests are addressed is through FundSERV's customer-driven operational committee structure. Participation on such committees is open to all customers.

Our mission is "To provide reliable and resilient value-added network and application services for B2B initiatives that minimize risk and promote timely, automated interactions that reduce cost within the Canadian investment industry". The bulk of our work is driven by our Standards Steering Committee ("**SSC**") and Mandatory Standards Committee ("**MSC**"). The SSC is established by the Board of Directors to advise the corporation on the strategic direction of workflow management, systems and related standards for business transactions that would benefit from standardization. The SSC utilizes an evaluation model to select, review and prioritize new initiatives. The SSC has the authority to establish working committees as circumstances dictate. The SSC reports to the Board of Directors, and consists of 20-25 members who are industry experts and/or subject matter experts and who are able to effect change at their own organizations. The SSC ensures the interests of different participants (fund manufacturers, dealers, brokers, regulators, etc) are met. The HRGC of the Board (which includes two independent directors) ensures each director and officer is a fit and proper person by seeking a mix of competencies, commitment, and independent judgment that will enhance the effectiveness of the Board. Employees and internal officers are subject to background screening, including credit checks, reference checks, criminal checks, education verification and verification of past employment. Our shareholders perform their own checks for their nominees to the Board.

The purpose of the HRGC, in part, is to:

- identify individuals qualified to become Board members, consistent with criteria approved by the Board;
- recommend to the Board the persons to be nominated for election as directors at any meeting of shareholders and the persons (if any) to be elected by the Board to fill any vacancies on the Board; and
- recommend to the Board the directors to be appointed to each committee of the Board.

FundSERV has policies and procedures in place to identify and manage conflicts of interest. Codes of Conduct (the "**Codes**") set forth legal and ethical standards of conduct for directors, officers and employees. The Codes are intended to deter wrongdoing and to promote the conduct of all business in accordance with high standards of integrity and in compliance with all applicable laws and regulations. They further outline the high standards by which personnel are expected to conduct themselves in order to provide a positive work environment in which all parties can achieve maximum productivity and job satisfaction.

The management team focuses on running the business and meets frequently to discuss organizational, operational and other corporate matters. FundSERV's internal operational projects are overseen by the project control board ("**PCB**"), which is the

semi-monthly forum where projects are tracked and presented to executives and senior management for review and decision making. All project managers are required to attend and report on each of their projects according to the project scope and impact. Once a month, a Project Scorecard is produced summarizing status, issues, budget and future tasks for each project. PCB members include the executive team (CEO, CFO and CIO), and 6 senior managers from both the IT and business divisions.

PART 2 FEES

2.1 All fees imposed by the clearing agency are equitably allocated. The fees do not have the effect of creating unreasonable barriers to access.

2.2 The process for setting fees is fair and appropriate, and the fee model is transparent.

FundSERV operates on a cost recovery basis, whereby any surplus is refunded pro rata to customers via an annual rebate. FundSERV has never paid, and does not foresee paying in the future, a dividend to its shareholders. All paid customers, whether they are owners or not, pay fees according to the same fee schedule and are entitled to a pro-rata rebate on the same basis.

Our 2010 revenue was $27.7M with a $7.4M rebate to customers based on usage (net $20.3M). FundSERV has benefited from consistent revenues and margins by utilizing a cost-based fee structure. With prudent management of our expenditures, our fees provide an adequate working capital cushion. This fee structure achieves the following objectives: i) it is fair and equitable to any and all customers, ii) it allows us to attract as many participants as possible without being exclusionary, iii) it enables us to weather cyclical market fluctuations, and iv) it avoids us having to seek funding or capital from shareholders or customers.

Participation in FundSERV is voluntary. As 50% of the market has chosen alternative processing solutions, this fee structure is regularly reviewed with a view to determining whether and how FundSERV might attract a greater customer mass to reduce industry costs and risks, to increase capacity, and to ensure a dynamic customer-driven standard-setting process.

The Board of FundSERV periodically reviews fee structures. Fees were last revised by the Board of Directors in 1998, after consultation with the SSC. FundSERV has a standard participant agreement which includes the fee schedule and provides a complete list of all fees and other charges imposed for use of its services. FundSERV provides 90 days advance notice, in writing, of any changes to such fees or charges to users/subscribers prior to their implementation.

Since 1998, FundSERV has added many services at no incremental costs to customers, including non-financial updates (NFUs), fund set-up file automation (FD file), PKI FundPORTAL/FundSERV Connect security, N$M service via LVTS, alternative products (hedge funds, segregated funds, principal-protected notes), flexible settlement dates, XML file formats, client automation, business continuity planning including redundant network routers and connections for customers and FundCOM web-based inquiry. Rather than altering the fees charged to customers, FundSERV has varied the rebates. As a result, net fees are variable, and are based on FundSERV's expenses.

The use of a transactional based fee model with a no annual license fee ensures accessibility to all participants wishing to use FundSERV's services regardless of the number of transactions processed per month. The model is transparent and there are no hidden charges.

PART 3 ACCESS

3.1 The clearing agency has appropriate written standards for access to its services.

3.2 The access standards and the process for obtaining, limiting and denying access are fair and transparent. A clearing agency keeps records of

(a) each grant of access including, for each participant, the reasons for granting such access, and

(b) each denial or limitation of access, including the reasons for denying or limiting access to an applicant.

FundSERV is a network providing access to participants rather than an intermediary to any transactions. The terms and conditions for access are specified to both customers and vendors prior to joining FundSERV. In summary, the basic access conditions include network connectivity testing as well as banking tests and regulatory checks. We also have established rules for the layout of transactions flowing through the network (we do not regulate the content). FundSERV does not put up capital to support financial transactions.

FundSERV is open to any customer (including certain sponsored foreign participants) who can meet our technical standards, thereby decreasing system risk and advancing the industry goal of decreasing processing time, cost and risk. Offshore funds

are distributed through Canadian dealers' back offices. The dealers are responsible for ensuring offshore funds are sold to appropriate investors (eg: non-Canadians). We require an onshore sponsor to be responsible for the settlement obligation of the foreign participant due to time zone differences. We review all participant's regulatory registration annually to ensure good standing. As an inclusive community, we meet the needs of many participants in both regulated and unregulated marketplaces, including offshore funds, segregated product, hedge funds and structured product such as principal-protected notes. Maintaining the integrity of our system is paramount when potential customers join to use our services.

The overwhelming majority of participants are regulated. The exceptions are certain segregated fund dealers (managing general agents or MGAs) where, we understand that regulatory initiatives are currently underway to extend regulation to such distributors as well. Acceptable domestic regulators include OSFI, each of the provincial/territorial securities regulators, IIROC and the MFDA. For foreign participants, FundSERV obtains written confirmation of good-standing from their domestic regulator, as well as an agreement from their Canadian sponsor, assuming responsibility for the foreign-based entity's settlement obligations in the event of non-payment. Likewise, for the MGAs noted above, FundSERV obtains written confirmation from their insurance carrier as to its responsibility for managing its distribution partners. Via the customer contract, participants represent they are in compliance with applicable regulatory requirements each and every time they utilize FundSERV's services. FundSERV further monitors regulatory websites and subscribes to the notification lists of the MFDA, IIROC, OSFI and the various provincial/territorial securities regulators for any relevant notices that could impact or alter the status of its customers.

As noted above, each participant signs a standard agreement which sets forth the terms for access, term and termination, fees, warranties, limitation of liability, client's responsibilities and data confidentiality, indemnification, and excusable delays. Each participant goes through documented training and testing/acceptance phases before going live on the network. Once live, their status is available to the community through an online directory. FundSERV has not denied or limited access to any applicant.

Most terminations have been initiated upon receipt of a written request from a customer and are effected in an orderly manner. Some notifications are received from regulators (or by FundSERV's monitoring of regulatory actions (e.g., cease trade orders or bankruptcies)). Where appropriate, FundSERV removes any pending trades and settlements. FundSERV initiated terminations have historically been limited to non-payment of invoices and only in the case of inactive customers. For active customers, these are generally rectified after one or more requests for payment by FundSERV.

FundSERV has a dominant but not exclusive market share for third party retail funds, which, in turn, constitutes approximately 50% of the market (with bank and proprietary funds and distribution channels constituting the other half of the market).

FundSERV has moved beyond servicing the 'plain vanilla' mutual fund market by addressing the investment fund industry's need for alternative products. With a mandate to reduce time, cost and risk of customer processing, we have started to also focus on other markets such as GICs. Despite being owned predominantly by fund companies, recent business initiatives such as GICSERV have been driven by distributors. In fact, much of FundSERV's current and future standards' (GICSERV) development will be for the benefit of the industry at large, and not the originating fund company shareholders. The inclusivity of access to FundSERV and our operational efficiency has encouraged non-traditional customers to seek out FundSERV to resolve their processing inefficiencies.

PART 4 RULES AND RULEMAKING

4.1 The clearing agency's rules are designed to govern all aspects of the settlement services offered by the clearing agency, and

(a) are not inconsistent with securities legislation,

(b) do not permit unreasonable discrimination among participants, and

(c) do not impose any burden on competition that is not necessary or appropriate.

4.2 The clearing agency's rules and the process for adopting new rules or amending existing rules should be transparent to participants and the general public.

4.3 The clearing agency monitors participant activities to ensure compliance with the rules.

4.4 The rules set out appropriate sanctions in the event of non-compliance by participants.

FundSERV operates a $20M enterprise with a staff complement of approximately 80 employees. Much of our success and efficiency is directly attributable to our many industry volunteers. Despite being a small organization in terms of headcount, we rely on volunteers who are industry experts and/or subject matter experts to promote the efficient and timely development of standards to keep industry costs low. Annual costs of at least $300 million are currently being removed from the industry due to FundSERV's standards.

FundSERV's greatest asset is our community of users. FundSERV is effectively the investment industry's central meeting place – fostering collaboration and ease of doing business. Our customers, via an effective and transparent standard-setting process, direct FundSERV's development. The business model relies heavily on industry volunteers, who collectively spend hundreds of hours advancing our 'open access' model. FundSERV draws on the resources of the industry and thus is effectively run by the industry.

A release of our standards takes a minimum of 16 months. The process starts with requirements going to the SSC until March, SSC approval in April, requirements documented usually by June, technical and industry review by July, standards published in October, development/QA testing until the following March, industry testing from April until June and finally implementation in mid June. All participants (and their vendors) are invited and encouraged to participate in the technical review, industry review, and industry user acceptance testing ("**UAT"**). Formal comment periods exist for all participants.

When implementing the standards, we first solicit topics for inclusion from the industry, establish working groups, develop requirements, send requirements out for review to the entire industry, begin development and ensure adequate time for customer testing and acceptance and implementation. Our entire standards handbook is available on the internet to all authorized participants.

While the Board sets strategy and monitors performance, the SSC selects projects and approves standards. The SSC consists of members who are industry experts and/or subject matter experts and who are able to effect change at their own organizations. Further committees include the MSC (to enforce standards adherence) and the Technical Advisory Committee (to provide recommendations on security, infrastructure and development). These committees are complemented by working groups who develop detailed specifications.

FundSERV issues a bulletin to its entire customer base seeking interested parties to apply to serve on the SSC. An ad-hoc committee of the SSC reviews applications received, conducts interviews where appropriate, and recommends new members, which are then voted on by the existing SSC. Criteria for selection include relevant industry knowledge, ability to represent their constituents and ensuring that FundSERV's diverse customer base is fully represented.

FundSERV has established a set of standard rules for processing, and standardized agreements with all participants to ensure transparency. All participants have the same access to services and support at no additional cost.

FundSERV is solely a carrier of electronic data and does not hold funds nor manage accounts on behalf of clients, it does not provide centralized facilities for the clearing of trades in securities, nor does it act as a depository of securities. While monitoring is electronic, it focuses on data format integrity by highlighting irregularities, rejects, connectivity concerns, etc. Participants are provided with a phone number to contact FundSERV to anonymously report customers who are not adhering to standards. There are financial penalties for those participants not adhering to standards or missing deadlines for transmitting file data. Such penalties are not to the benefit of FundSERV (as any penalties collected are rebated back to the industry at large without factoring into the payor participants pro-rata share), but are in place to deter non-conformance to industry-agreed standards that ultimately impact other participants.

FundSERV has never invoked its right to suspend or terminate for non-compliance. To date, suasion has proven sufficient.

PART 5 DUE PROCESS

5.1 For any decision made by the clearing agency that affects an applicant or a participant, including a decision in relation to access, the clearing agency ensures that:

(a) applicant or a participant is given an opportunity to be heard or make representations; and

(b) the clearing agency keeps a record of, gives reasons for, and provides for appeals or reviews of, its decisions.

If any participant materially or repeatedly defaults in performing its duties or obligations described in the FundSERV Agreement, the agreement provides the participant with 30 days to resolve the situation. FundSERV keeps written records detailing the actions taken and subsequent decisions. To date, compliance by suasion has proven effective. If suspension or termination were to be invoked, or reinstatement denied, there would be a right of appeal to FundSERV's Board of Directors.

For instances where participants do not use the electronic processing standards deemed mandatory by the SSC, they are entitled to appeal to the Mandatory Standards Appeals Committee, a sub-committee of the Board. Ultimately, there is little benefit to the industry at large if customers are removed due to non-conformance. In fact, this has never occurred, as FundSERV instead uses suasion rather than financial penalty to ensure cooperative adherence to standards by all participants.

PART 6 RISK MANAGEMENT

6.1 The clearing agency's settlement services are designed to minimize systemic risk.

6.2 The clearing agency has appropriate risk management policies and procedures and internal controls in place.

6.3 Without limiting the generality of the foregoing, the clearing agency's services or functions are designed to achieve the following objectives:

1. Where the clearing agency acts as a central counterparty, it rigorously controls the risks it assumes.

2. The clearing agency minimizes principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.

3. Final settlement occurs no later than the end of the settlement day. Intraday or real-time finality is provided where necessary to reduce risks.

4. Where the clearing agency extends intraday credit to participants, including a clearing agency that operates net settlement systems, it institutes risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle.

5. Assets used to settle the ultimate payment obligations arising from securities transactions carry little or no credit or liquidity risk. If central bank money is not used, steps are to be taken to protect participants in settlement services from potential losses and liquidity pressures arising from the failure of the cash settlement agent whose assets are used for that purpose.

6. If the clearing agency establishes links to settle cross-border trades, it designs and operates such links to reduce effectively the risks associated with cross-border settlements.

6.4 The clearing agency engaging in activities not related to settlement services carries on such activities in a manner that prevents the spillover of risk to the clearing agency that might affect its financial viability or negatively impact any of the participants in the settlement service.

While FundSERV does not perform core clearing agency functions, it recognizes the need for proper risk management and maintains a risk assessment process to identify and manage risks. FundSERV has a 'public company' mindset despite its private company status. For example, the Board's Audit/Finance/Risk Committee (chaired by an independent director) meets at least quarterly. At the management level, FundSERV periodically conducts an independent enterprise risk management ("**ERM**") assessment to identify, assess and mitigate risks. The ERM assessment was first conducted to respond to general business demands for more diligent and robust risk mitigation capabilities. It is intended to educate and raise awareness for both management and the Board by reviewing and reporting on the critical risks and opportunities facing FundSERV. In addition, our controls are audited annually under Section 5970 of the Canadian Institute of Chartered Accountants ("**CICA**") Handbook ("**Section 5970**") standards, while our financial results are also audited annually.

To support the independent ERM assessment noted above, FundSERV established an internal risk management committee ("**RMC**"). On a quarterly basis (or more frequently if required) the RMC identifies, assesses, mitigates and reports on current and future risk events and remediation efforts to the Board's Audit/Finance/Risk committee. Composed of senior management personnel, the RMC has concluded that our primary risk is ensuring the availability of our network and application services.

Availability of our network and application services was recognized by our Board as our raison d'être and thus embedded into the organization's mindset when 'reliable and resilient' were added to our mission statement as follows: "To provide reliable and resilient value-added network and application services for B2B initiatives that minimize risk and promote timely, automated interactions that reduce cost within the Canadian investment industry". FundSERV has developed and currently maintains a robust and reliable business continuity program that ensures the availability of people, services and technology. We are capable of fully operating from both our Toronto or Mississauga locations and conduct industry wide business continuity exercises annually to ensure all customers are both capable and vigilant of industry continuance in the event of an outage. In addition, participants can always transact without FundSERV's assistance. FundSERV's internal Business Continuity Plan (**"BCP"**) Steering Committee assesses the business continuity management profile for the organization and decides on improvement actions that need to be acted upon in a timely manner, providing a forum to ensure that there is clear direction and visible management support for business continuity initiatives. The BCP Steering Committee members include the executive team (CEO, CFO and CIO), and 4 senior managers from both the IT and business divisions.

FundSERV's Net $ettlement Messaging ("**N$M**") service facilitates the exchange of customer net settlement payment messages. Payments from customers in a net payable position are directed to those in a net receivable position through Royal

Bank via LVTS for Canadian dollar amounts and the Fedwire for US dollar amounts. N$M is completely redundant, with backup facilities at the desktop, site, and network levels. The mechanics involved with calculating net settlement amounts centre around data provided by participants. Trade and settlement dates for data provided to FundSERV by distributors are calculated based on the corresponding fund profile provided by manufacturers. All calculations use the settlement instruction records returned by the fund companies. FundSERV does not carry out any calculations to determine the individual settlement amount for any trade or commission related transaction.

Every participant in a net payable position must pay the full amount provided to them, even if they believe the amount to be incorrect. A participant that disputes the amount payable must still pay the full amount to FundSERV. After the participant has paid the full amount, the problem can be resolved in one of two ways: the participant can deal directly with the counterparty or the participant can settle within N$M on a subsequent settlement date when the manufacturer submits amending contracts. The transaction goes in as a late settlement.

Default risk is significantly mitigated using the N$M model – FundSERV ensures that all monies are collected from customers in the morning before authorizing the release of funds in the afternoon to those customers receiving monies. FundSERV has a small line of credit to deal with the occasional minor discrepancy; however, in recent years, it has never been used. FundSERV does not fund any customers; instead we have a robust process to back-out any failing party and rerun the settlement process for the industry. Instead of funding a failed payment, we remove the failing customer and recalculate payment totals. In short, FundSERV facilitates the settlement process; payments are not made by FundSERV.

Although we are prepared to deal with a customer default scenario and have plans in place to avoid such payment failures, it is not a significant concern as evidenced by past experience. Payment failures are extremely rare in occurrence, and no adverse consequence has ever arisen. When participants fail to make a payment we remove them. Based on past experience and the current complement of controls and mitigation processes, our likelihood assessment is that a significant adverse consequence would not occur.

The controls surrounding N$M are multi-faceted. Roles are segregated to ensure customer bank account setup, deletion and changes are authorized and validated. Staff with authorization to release payments are authorized by personnel outside of the finance area. Two personnel are required to authorize the release of any payment to customers in a receivable position. All monies are held in accounts designated as in-trust. In addition, insurance is maintained.

Overall, controls provide reasonable assurance that client access to FundSERV's core applications and data is restricted and set up based on authorized service agreements. Controls within FundSERV's core applications provide reasonable assurance that client transactions, as authorized by clients, are processed and executed. Controls provide reasonable assurance that changes to the existing FundSERV core applications are authorized, tested, approved, properly implemented and documented.

FundSERV maintains approximately $27 million of P&C insurance, $5 million of E&O insurance and $25 million of D&O insurance. It also maintains a Financial Institution Bond for $100 million ($50 million per occurrence).

PART 7 SYSTEMS AND TECHNOLOGY

7.1 For its settlement services systems, the clearing agency:

(a) develops and maintains,

(i) reasonable business continuity and disaster recovery plans,

(ii) an adequate system of internal control,

(iii) adequate information technology general controls, including controls relating to information systems operations, information security, change management, problem management, network support, and system software support;

(b) on a reasonably frequent basis, and in any event, at least annually, and in a manner that is consistent with prudent business practice,

(i) makes reasonable current and future capacity estimates,

(ii) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner,

(iii) tests its business continuity and disaster recovery plans; and

(c) promptly notifies the regulator of any material systems failures.

7.2 The clearing agency annually engages a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards regarding its compliance with section 7.1(a).

FundSERV has built a reliable hub and spoke network that is widely acknowledged to be the most efficient investment fund transaction processing system. This centralized hub has both direct and web-based connections. As described in the previous section, FundSERV has developed and currently maintains a robust and reliable business continuity program that ensures the availability of people, services and technology in the event of a catastrophe or pandemic. We are capable of fully operating from either or both of our Toronto or Mississauga locations and conduct industry wide business continuity exercises annually to ensure all customers are both capable and vigilant of industry continuance in the event of an outage. The alternate data and operations facility allows rapid (less than 30 minutes) switching of operations to this secondary data centre should the primary data centre experience a disaster. In the event of a business disruption, this near-real time data replication will let clients immediately resume business operations. The secondary data centre has been in place since 2005. We operated completely from our secondary site (which has workspace for over 50 people) as recently as November 2011 as a planned exercise to demonstrate our capability of servicing the industry. The next such exercise is scheduled to occur in September 2012. All business continuity related systems are tested yearly and are included in the annual Section 5970 audit report.

FundSERV's information technology department deploys a wide range of automated tools that continually monitor capacity, queues, system performance, response times and similar matters. This electronic monitoring system also generates emails to a wide range of staff advising of warnings and errors. FundSERV provides the following information technology services for its customers:

- Information Systems Function Management
- Systems Development and Maintenance
- Computer Security
- Computer Operations
- Business Continuity Management
- Physical and Environmental Security
- Identification and Authentication Security

The IT risk management committee is responsible for ensuring that IT risk is addressed and effectively managed so as to maintain an acceptable level of control and assurance. The committee evaluates and assesses the level of risk to the infrastructure and ensures that the appropriate action is taken to mitigate identified risks.

FundSERV's internal change advisory board (**"CAB"**) ensures that all FundSERV changes are assessed and prioritized prior to being implemented into production. The approval process includes ensuring that the change has been properly documented, resourced and scheduled with a communication and back out plan if applicable. All changes that could impact FundSERV's customers or production infrastructure must be approved by CAB before being implemented. CAB has representation from both FundSERV's technical and business management areas.

Our infrastructure operates FundSERV's proprietary workflow management applications that have real-time, batch or web interfaces. FundSERV standards and business processing rules are defined by customers and are contractually protected, thereby ensuring consistent processes across the entire industry and a central source for common reference data.

PART 8 FINANCIAL VIABILITY AND REPORTING

8.1 The clearing agency has sufficient financial resources for the proper performance of its functions and to meet its responsibilities and allocates sufficient financial and staff resources to carry out its functions as a clearing agency in a manner that is consistent with any regulatory requirements.

As noted above (see Part 2), FundSERV's financial flows are relatively simple. We have one single revenue source. Our expenses are categorized as employment, technology, general/admin, or occupancy. The only funds that flow through FundSERV are about $28 million in gross revenue, of which approximately a third is rebated back to customers based on their pro-rata usage.

The determination of the user rebate is designed to reduce FundSERV's taxable income to zero. Accounting income fluctuates depending on the tax basis of FundSERV's assets. All current and future FundSERV expenditures are funded from operations.

We are currently looking at attracting other products such as GICs to complement our ability to reduce (and spread) processing costs and mitigate the impact of industry volatility. Any such new business, if it materializes, would not be subsidized or otherwise at the expense of our core investment fund offering. The nature of our ownership ensures that we will not lose our focus on servicing our current core customer base.

FundSERV's annual financial statements are audited by PricewaterhouseCoopers LLP and are publically available in our annual report that is distributed to all customers. The integrity of the fee structure and rebate process is vetted via committees and the Board.

PART 9 OPERATIONAL RELIABILITY

9.1 The clearing agency has procedures and processes to ensure the provision of accurate and reliable settlement services to participants.

As previously described, FundSERV has developed and currently maintains a robust and reliable business continuity program that ensures the availability of people, services and technology.

The control objectives specified in FundSERV's Section 5970 report meet comparable industry standards. The description of controls is intended to provide our clients, and their auditors, with information about the control environment, practices and policies of FundSERV. The description has been prepared taking into consideration the guidance contained in Section 5970 for audits of controls at a service organization.

Specifically, the control objectives within the Section 5970 report cover:

- core application Services
- Net $ettlement Messaging
- the information technology function
- the billing process
- information protection activities

FundSERV's N$M service ensures that all monies are collected from customers in the morning before authorizing the release of funds in the afternoon to those customers receiving monies. By utilizing the LVTS framework through the Royal Bank, our settlement process provides for:

- a simple process that is controlled by participants
- a process strongly endorsed by the Bank of Canada and the Commission
- finality of payment, and
- a consistent process for Canadian and US dollar payments

Our customers are not required to use the N$M service – it is an optional service that many of our customers do not avail themselves of. In the rare event of unavailability of N$M, the industry participants can communicate directly with each other, as is the case for some today.

PART 10 PROTECTION OF ASSETS

10.1 The clearing agency has established accounting practices, internal controls, and safekeeping and segregation procedures to protect the assets that are held by the clearing agency.

FundSERV is a communications network. Securities and cash are not held nor exchanged by FundSERV on behalf of participants.

PART 11 OUTSOURCING

11.1 Where the clearing agency has outsourced any of its key functions, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices. The outsourcing arrangement provides regulatory authorities with access to all data, information, and systems maintained by the third party service provider required for the purposes of regulatory oversight of the agency.

FundSERV does not have any material outsourcing agreements.

PART 12 INFORMATION SHARING AND REGULATORY COOPERATION

12.1 For regulatory purposes, the clearing agency cooperates by sharing information or otherwise with the Commission and its staff, self-regulatory organizations, exchanges, quotation and trade reporting systems, alternative trading systems, other clearing agencies, investor protection funds, and other appropriate regulatory bodies.

FundSERV is transparent to the industry (see www.fundserv.com) and fully responsive to any information request from the Commission. It commits to ongoing cooperation with the Commission and is committed to share information with the Commission and its staff, and, as appropriate, other regulatory bodies and will cooperate with recognized or exempt clearing agencies at the direction of the Commission, subject to applicable privacy or other laws governing the sharing of information and the protection of personal information.

SUBMISSION

FundSERV submits that it is not a clearing agency in the conventional sense, nor does it give rise to systemic risk concerns. Rather, FundSERV provides the network infrastructure for its customers to place and reconcile orders through efficient, secure data exchange and, for those who so elect, to enable them to settle orders through a payment-exchange handled by the Royal Bank of Canada through the Large-Value Transfer System operated by the Canadian Payments Association. The nature of FundSERV's business model (which does not involve credit enhancement, the assumption of counter-party risk, novation or custody) as well as the level of transparency and cooperation which FundSERV has always maintained with the Commission will be formalized under the proposed Order.

We enclose a cheque in the amount of $5,250, payable to the Commission, representing the fee payable for this application.

Yours truly,

Brian Gore
President & CEO

Appendix A

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

AND

IN THE MATTER OF
FUNDSERV INC.

ORDER
(Section 21.2)

WHEREAS FundSERV Inc. (FundSERV) had filed an application dated February 13, 2012 (Application) with the Ontario Securities Commission (Commission) pursuant to section 21.2 of the Act requesting an order recognizing FundSERV as a clearing agency.

AND WHEREAS FundSERV has represented to the Commission that:

1. FundSERV is a Canadian corporation with its head office located in Toronto, Ontario;

2. FundSERV is a provider of electronic business services to the Canadian investment industry;

3. FundSERV's core service is to provide the network infrastructure for its customers to place and reconcile orders through efficient, secure data exchange;

4. FundSERV provides centralized payment exchange facilities (clearing agency services), for those customers who so elect, to settle orders, on a net basis, through payment exchange currently handled by a Canadian chartered bank utilizing the Large Value Transfer System operated by the Canadian Payments Association;

5. FundSERV's business model does not involve credit enhancement, the assumption of counter-party risk, novation or custody;

6. FundSERV operates on a cost-recovery basis, serving more than 700 organizations and their business units and providing online access to over 10,000 investment fund instruments;

7. While FundSERV has developed business continuity systems, market participants can and do transact without FundSERV's assistance; and

8. FundSERV also supports the customer staffed committees and working groups, that include users of the clearing agency services, that address issues and develop electronic data and security standards for the industry;

AND WHEREAS the Commission considers it appropriate to set out in an order the terms and conditions for the recognition of FundSERV as a clearing agency, which terms and conditions are set out in Schedule "A" attached;

AND WHEREAS FundSERV has agreed to the terms and conditions as set out in Schedule "A";

AND WHEREAS based on the Application and the representations FundSERV has made to the Commission, the Commission is satisfied that granting an order would not be prejudicial to the public interest;

THE COMMISSION HEREBY RECOGNIZES FundSERV as a clearing agency pursuant to section 21.2 of the Act, subject to the terms and conditions set out in Schedule "A";

DATED February ____, 2012

SCHEDULE "A"

FUNDSERV INC.

TERMS AND CONDITIONS

GOVERNANCE

1. FundSERV's governance arrangements will be designed to promote the objectives of the users (participants) of its services and its shareholders.

2. Without limiting the generality of the foregoing, FundSERV's governance structure and governance arrangements will ensure:

   (a) effective oversight of FundSERV;

   (b) FundSERV takes into consideration the public interest ;

   (c) fair, meaningful and diverse representation on the Board and any committees of the Board, including a reasonable proportion of independent directors;

   (d) FundSERV's Board has the capacity to effectively consider the interests of FundSERV's various stakeholders;

   (e) FundSERV has policies and procedures to appropriately identify and manage conflicts of interest;

   (f) each director or officer of FundSERV, and each person or company that owns or controls, directly or indirectly, more than 10 percent of FundSERV is a fit and proper person; and

   (g) there are appropriate qualifications, limitation of liability and indemnity provisions for directors and officers of FundSERV.

3. FundSERV will not, without the Commission's prior written approval, make significant changes to its governance structure or constating documents.

FEES

4. Fees imposed by FundSERV for the clearing agency services will be equitably allocated. The fees will not have the effect of creating unreasonable barriers to access.

5. The process for setting such fees will be fair and the fee model will be transparent.

ACCESS

6. FundSERV will have transparent written standards for access to its clearing agency services.

7. The access standards and the process for granting, limiting or denying access to the clearing agency services will be fair and transparent. FundSERV will keep records of

   (a) each grant of access, and

   (b) each denial or limitation of access, including the reasons for denying or limiting access to an applicant.

RULES AND RULEMAKING

8. FundSERV will establish rules that are necessary or appropriate to govern the clearing agency services it offers.

9. FundSERV will ensure that its rules relating to the clearing agency services

   (a) are not inconsistent with securities legislation,

   (b) do not permit unreasonable discrimination among participants, and

(c) do not impose a burden on competition that is not necessary or appropriate.

10. FundSERV will submit its rules for approval in accordance with the rule protocol attached as Appendix ”A” to this Schedule “A”, as amended from time to time.

11. FundSERV’s rules and the processes for adopting new rules or amending existing rules will be transparent to participants.

12. FundSERV will monitor participant activities to ensure compliance with such rules. Such rules will set out appropriate sanctions in the event of non-compliance by participants.

DUE PROCESS

13. For any decision made by FundSERV that materially affects an applicant or a participant in respect of the clearing agency services, including a decision in relation to access, FundSERV will ensure that:

(a) an applicant or a participant is given an opportunity to be heard or make representations; and

(b) FundSERV keeps a record of, gives reasons for, and provides for appeals or reviews of, its decisions.

RISK MANAGEMENT

14. FundSERV will maintain appropriate risk management policies and procedures.

15. FundSERV will carry its activities that do not relate to the clearing agency services in a manner that minimizes the spillover of risk that might adversely affect its financial viability or operations or negatively impact any of its participants.

SYSTEMS AND TECHNOLOGY

16. For its systems, FundSERV will:

(a) develop and maintain,

(i) reasonable business continuity and disaster recovery plans,

(ii) an adequate system of internal control,

(iii) adequate general computer controls, including controls relating to information systems operations, information security, change management, problem management, network support, and system software support;

(b) on a reasonably frequent basis, and in any event, at least annually, and in a manner that is consistent with prudent business practice,

(i) make reasonable current and future capacity estimates,

(ii) conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner,

(iii) test its business continuity and disaster recovery plans; and

(c) promptly notify the Commission staff of any material systems failures.

17. FundSERV will annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards regarding its compliance with section 16(a) and such report will be provided to Commission staff.

FINANCIAL VIABILITY AND REPORTING

18. FundSERV will maintain sufficient financial resources to meet its responsibilities and allocate sufficient financial and staff resources to carry out its clearing agency services.

19. FundSERV will provide to Commission staff unaudited quarterly financial statements within 60 days of each quarter end and audited annual financial statements, together with any annual report to the shareholders and participants, within 145 days of each year end.

20. If FundSERV fails to maintain, or anticipates that it will fail to maintain a cash and accounts receivable balance equal to or greater than four months of expenses, it shall immediately notify Commission staff and advise what steps are being taken to address the situation.

OUTSOURCING

21. Where FundSERV decides to outsource any of its functions supporting or critical to its clearing agency services, it will have appropriate and formal arrangements and processes in place that permit it to meet its obligations in the provision of the clearing agency services and under this Order, and which are in accordance with industry best practices.

22. The outsourcing arrangement shall provide Commission staff with access to all data, information, and systems maintained by the third party service provider required for the purposes of regulatory oversight.

INFORMATION SHARING AND REGULATORY COOPERATION

23. FundSERV will provide such information as may be reasonably requested from time to time by, and otherwise cooperate with, the Commission or its staff.

24. Unless otherwise prohibited under applicable law, FundSERV will share information and otherwise cooperate with recognized self-regulatory organizations, investor protection funds, marketplaces, recognized and exempt clearing agencies, and other regulatory bodies as appropriate.

25. FundSERV will comply with Appendix "B" to this Schedule setting out the reporting obligations, as amended from time to time, regarding the reporting of information to the Commission.

APPENDIX "A"

RULE PROTOCOL REGARDING THE REVIEW AND APPROVAL OF FUNDSERV INC. RULES BY THE ONTARIO SECURITIES COMMISSION

1. Purpose of the Protocol

On [_____, 2012], the Ontario Securities Commission (Commission) issued a recognition order ("Recognition Order") with terms and conditions governing the recognition of FundSERV Inc. (FundSERV) as a clearing agency pursuant to subsection 21.2(1) of the *Securities Act* (Ontario) (“Act”). To comply with the Recognition Order, FundSERV must , among other things, submit its rules to the Commission for approval. This protocol sets out the procedures for the submission of a rule by FundSERV and the review and approval of the rule by the Commission.

2. Definitions

In this protocol:

"rule" means any new requirement or an amendment to or deletion of an existing requirement relating to the clearing agency services as defined in the Recognition Order, that would have an impact on FundSERV, its participants, other market participants, or the capital markets in general, relating to:

(a) Access to the clearing agency services;

(b) The rights and obligations of FundSERV or participants using the clearing agency services;

(c) Fees or costs charged to participants for use of the clearing agency services;

(d) Risks to FundSERV or its participants;

(e) The process for or the transparency of making rules;

(f) Competition among participants, other market participants or in the capital markets; or

(g) Material costs of compliance with the rule.

All other terms have the respective meanings ascribed to them in the Recognition Order and in securities legislation as that term is defined in NI 14-101.

3. Procedures for Review and Approval of Rules

(a) Documents

For a rule, FundSERV will provide to the Commission, where applicable, the following documents in electronic format or by other means as agreed to by Commission staff and FundSERV from time to time:

(i) a cover letter that indicates:

(a) a description of the rule and its nature and purpose; and

(b) a description and analysis of the possible effects of such rule on FundSERV, its participants, other market participants and the capital markets in general, including but not limited to competition, risks and the costs of compliance borne by any of the foregoing parties;

(ii) the rule and a blacklined version of the rule indicating the proposed changes to an existing rule;

(iii) the concept and business case; and

(iv) the cost/benefit analysis.

(b) Confirmation of Receipt

Commission staff will within 3 business days send to FundSERV confirmation of receipt of documents submitted by FundSERV under subsection (a).

(c) Notice of Rules to Participants

FundSERV will provide notice to participants of any rules with an opportunity to comment and the notice will be posted on the FundSERV website for a period of not less than four (4) weeks.

(d) Publication of a Rule by the Commission

If a rule has an impact on market participants (other than FundSERV participants) or the capital markets in general, then Commission staff may require that a notice of rule change and, where applicable, a blacklined version of the rule, be published in the OSC Bulletin or the OSC website for a comment period of not less than four (4) weeks. The notice and accompanying rule will be published as soon as reasonably practicable.

(e) Review by Commission Staff

Commission staff will use their best efforts to conduct their initial review of the rule and provide comments to FundSERV within 30 days of FundSERV filing materials with the Commission. However, there will be no restriction on the amount of time necessary to complete the review of the rule.

(f) FundSERV Responses to Commission Staff's Comments

FundSERV will respond to any comments received to Commission staff in writing.

(g) Approval by the Commission

Commission staff will use their best efforts to prepare the rule for approval by the later of (i) 45 days receipt of the filing of the rule from FundSERV including the filing of all relevant documents in subsection (a) above, and (ii) 30 days after receipt of written responses from FundSERV to staff's comments or requests for additional information, and the summary of industry comments and FundSERV's response to the industry comments (and upon the request of Commission staff, copies of the original comments), or confirmation from FundSERV that there were no comments received. If at any time during the review period, Commission staff determine that they have further comments or require further information from FundSERV in order to prepare the materials for Commission approval, the review period will be extended by an additional period of 21calendar days commencing on the day that Commission staff receive responses to the comments or the information requested. Commission staff will promptly notify FundSERV of the Commission's approval.

(h) Effective Date of a Rule

A rule will be effective as of the date of approval by Commission in accordance with subsection (g) or on a date determined by FundSERV, if such date is later.

4. Immediate Implementation of a Rule

(a) Criteria for Immediate Implementation

FundSERV may make a rule effective immediately where FundSERV determines that there is an urgent need to implement the rule because of a substantial and imminent risk of significant harm to FundSERV, participants, other market participants, or the capital markets.

(b) Prior Notification

Where FundSERV determines that immediate implementation is appropriate, FundSERV will advise Commission staff in writing as soon as possible but in any event at least 5 business days prior to the implementation of the rule. Such written notice will include an analysis to support the need for immediate implementation.

(c) Disagreement on Need for Immediate Implementation

If Commission staff do not agree that immediate implementation is necessary, the process for resolving the disagreement will be as follows:

(i) Commission staff will notify FundSERV, in writing, of the disagreement, or request more time to consider the immediate implementation, within 3 business days of being advised by FundSERV under subsection (b).

(ii) Commission staff and FundSERV will discuss and resolve any concerns raised by Commission staff.

(iii) If no notice is received by FundSERV by the 3rd business day after Commission staff received FundSERV's notification, FundSERV may assume that Commission staff does not disagree with their assessment.

(d) Review of Rule Implemented Immediately

A rule that has been implemented immediately will be reviewed and approved by the Commission in accordance with the procedures set out in section 3 with necessary modifications. If the Commission subsequently disapproves the rule, FundSERV will immediately repeal the rule and inform its participants of the disapproval.

5. Miscellaneous Provisions

(a) Waiving Provisions of the Protocol

Commission staff may waive any part of this protocol upon request from FundSERV or as determined by Commission staff. Such a waiver must be granted in writing by Commission staff.

(b) Amendments

This protocol and any provision hereof may be amended at any time with the approval of the Commission and FundSERV.

APPENDIX "B"

FUNDSERV INC.

REPORTING OBLIGATIONS

In addition to the notification, reporting and filing obligations set out in Schedule "A" to the Recognition Order, FundSERV will also comply with the reporting obligations set out below.

1. Prior Notification

1.1 FundSERV will provide to Commission staff reasonable prior notification of:

(a) any proposed change to FundSERV's corporate governance structure other than significant changes to the governance structure or constating documents for which prior approval is required under item 3 of Schedule "A" to the Recognition Order;

(b) entering into an agreement, memorandum of understanding or other similar arrangement with any governmental or regulatory body, self-regulatory organization, clearing agency, stock exchange, other marketplace or market, other than an agreement, memorandum of understanding or similar arrangement for normal commercial purposes; or

(c) engaging in a new type of business activity or cease to engage in a business activity in which FundSERV is then engaged;

2. Immediate Notification

2.1 FundSERV will provide to Commission staff immediate notice of:

(a) the appointment of any new director or officer, including a description of the individual's employment history; and

(b) the resignation of a director or officer or the auditors of FundSERV.

2.2 FundSERV will immediately notify Commission staff if it:

(a) becomes the subject of any order, directive or other similar action of a governmental or regulatory authority;

(b) becomes aware that it is the subject of a criminal or regulatory investigation; or

(c) becomes, or is aware that it may become, the subject of a material lawsuit.

3. Annual Reporting

3.1 FundSERV will provide to Commission staff annually:

(a) a list of the directors and officers of FundSERV, and identify which directors are independent;

(b) a list of the committees of the FundSERV board of directors, setting out the members, mandate and responsibilities of each of the committees;

(c) a list of all participants in the clearing agency services; and

(d) FundSERV's annual report.

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Index