The Ontario Securities Commission

OSC Bulletin

June 7, 2012

Volume 35, Issue 23

(2012), 35 OSCB

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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Published under the authority of the Commission by:
Carswell, a Thomson Reuters business
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
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U.S.	$175
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ISSN 0226-9325

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Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

June 7, 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
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20 Queen Street West
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Vern Krishna	—	VK
Christopher Portner	—	CP
Judith N. Robertson	—	JNR
Charles Wesley Moore (Wes) Scott	—	CWMS

SCHEDULED OSC HEARINGS

June 11, 2012 9:00 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
June 18 and June 20-22, 2012 10:00 a.m.	**Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva and Abraham Herbert Grossman aka Allen Grossman and Kevin Wash** s. 127 S. Schumacher in attendance for Staff Panel: PLK
June 18, 2012 11:00 a.m.	**Shaun Gerard McErlean, Securus Capital Inc., and Acquiesce Investments** s. 127 M. Britton in attendance for Staff Panel: VK/JDC
June 20 and June 22, 2012 10:00 a.m.	**Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)** s. 127 and 127.1 D. Ferris in attendance for Staff Panel: VK/MCH

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: EPK
June 25, 2012 10:00 a.m.	**David Charles Phillips and John Russell Wilson** s. 127 Y. Chisholm in attendance for Staff Panel: TBA
July 5, 2012 10:00 a.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
July 12, 2012 10:00 a.m.	**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: MGC
July 12, 2012 10:00 a.m.	**Sino-Forest Corporation, Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho, Simon Yeung and David Horsley** s. 127 H. Craig in attendance for Staff Panel: MGC
July 16, 2012 10:00 a.m.	**Shane Suman and Monie Rahman** s. 127 and 127(1) C. Price in attendance for Staff Panel: JEAT/PLK
July 18, 19, 20 and 23, 2012 10:00 a.m.	**Crown Hill Capital Corporation and Wayne Lawrence Pushka** s. 127 A. Perschy/A. Pelletier in attendance for Staff Panel: JEAT/CP/JNR
July 18, 2012 10:30 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
August 1, 2012 10:00 a.m.	**Marlon Gary Hibbert, Ashanti Corporate Services Inc., Dominion International Resource Management Inc., Kabash Resource Management, Power to Create Wealth Inc. and Power to Create Wealth Inc. (Panama)** s. 127 J. Lynch/S. Chandra in attendance for Staff Panel: JDC

August 7-13, August 15-16 and August 21, 2012 10:00 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
August 15, 2012 10:00 a.m.	**Morgan Dragon Development Corp., John Cheong (aka Kim Meng Cheong), Herman Tse, Devon Ricketts and Mark Griffiths** s. 127 J. Feasby in attendance for Staff Panel: EPK
August 15 and 16, 2012 10:00 a.m.	**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: MGC
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 5, 2012 10:00 a.m.	**Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)** s. 127 M. Vaillancourt in attendance for Staff Panel: TBA
September 5-10, September 12-14 and September 19-21, 2012 10:00 a.m.	**Vincent Ciccone and Medra Corp.** s. 127 M. Vaillancourt 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: JDC

October 10, 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: TBA
October 11, 2012 9:00 a.m.	**New Solutions Capital Inc., New Solutions Financial Corporation, New Solutions Financial (II) Corporation, New Solutions Financial (III) Corporation, New Solutions Financial (VI) Corporation and Ron Ovenden** s. 127 S. Horgan 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 C. Watson 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
October 22, October 24-31, November 1-2, November 7-14, 2012 10:00 a.m.	**Peter Sbaraglia** s. 127 J. Lynch in attendance for Staff Panel: CP
October 31 – November 5, November 7-9, December 3, December 5-17 and December 19, 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: TBA
November 5, 2012 10:00 a.m.	**Heir Home Equity Investment Rewards Inc.; FFI First Fruit Investments Inc.; Wealth Building Mortgages Inc.; Archibald Robertson; Eric Deschamps; Canyon Acquisitions, LLC; Canyon Acquisitions International, LLC; Brent Borland; Wayne D. Robbins; Marco Caruso; Placencia Estates Development, Ltd.; Copal Resort Development Group, LLC; Rendezvous Island, Ltd.; The Placencia Marina, Ltd.; and The Placencia Hotel and Residences Ltd.** s. 127 B. Shulman in attendance for Staff Panel: TBA
November 12-19 and November 21, 2012 10:00 a.m.	**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

November 21 – December 3 and December 5-14, 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 10:00 a.m.	**Jowdat Waheed and Bruce Walter** s. 127 J. Lynch in attendance for Staff Panel: TBA
January 21-28 and January 30 – February 1, 2013 10:00 a.m.	**Moncasa Capital Corporation and John Frederick Collins** s. 127 T. Center in attendance for Staff Panel: TBA
January 23-25 and January 30-31, 2013 10:00 a.m.	**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	**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	**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

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

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

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

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

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

David M. O'Brien

s. 37, 127 and 127.1

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

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

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: TBA

TBA

Empire Consulting Inc. and Desmond Chambers

s. 127

D. Ferris in attendance for Staff

Panel: TBA

TBA

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: TBA

TBA

Energy Syndications Inc., Green Syndications Inc. , Syndications Canada Inc., Daniel Strumos, Michael Baum and Douglas William Chaddock

s. 127

C. Johnson 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 **Bunting & Waddington Inc., Arvind Sanmugam, Julie Winget and Jenifer Brekelmans**

s. 127

S. Schumacher in attendance for Staff

Panel: TBA

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

s. 37, 127 and 127.1

C. Watson in attendance for Staff

Panel: TBA

TBA **Colby Cooper Capital Inc.. Colby Cooper Inc., Pac West Minerals Limited John Douglas Lee Mason**

s. 127

B. Shulman 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 **Beryl Henderson**

s. 127

S. Schumacher in attendance for Staff

Panel: TBA

TBA **Ciccone Group, Cabo Catoche Corp. (a.k.a Medra Corp. and 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: TBA

TBA **International Strategic Investments, International Strategic Investments Inc., Somin Holdings Inc., Nazim Gillani and Ryan J. Driscoll**

s. 127

C. Watson 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

TBA **David Charles Phillips**

s. 127

Y. Chisholm in attendance for Staff

Panel: TBA

TBA **Nest Acquisitions and Mergers, IMG International Inc., Caroline Myriam Frayssignes, David Pelcowitz, Michael Smith, and Robert Patrick Zuk**

s. 37, 127 and 127.1

C. Price in attendance for Staff

Panel: JDC/MCH

TBA **Systematech Solutions Inc., April Vuong and Hao Quach**

s. 127

J. Feasby 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

1.2 Notices of Hearing

1.2.1 David Charles Phillips and John Russell Wilson – ss. 127(1), 127.1

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

AND

IN THE MATTER OF
DAVID CHARLES PHILLIPS AND
JOHN RUSSELL WILSON

NOTICE OF HEARING
(Sections 127(1) and 127.1)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127(1) and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Securities Act*") at the offices of the Commission located at 20 Queen Street West, 17th Floor, Toronto on June 25, 2012 at 10:00 a.m., or as soon thereafter as the hearing can be held.

AND TAKE NOTICE THAT the purpose of the hearing is to consider whether it is in the public interest for the Commission, at the conclusion of the hearing, to make orders that:

(a) the registration of each of David Charles Phillips ("Phillips") and John Russell Wilson ("Wilson") be suspended or restricted for such period as is specified by the Commission, or terminated, or that terms and conditions be imposed on the registration of each of Phillips and Wilson, pursuant to clause 1 of subsection 127(1) of the *Securities Act*;

(b) trading in any securities by or of each of Phillips and Wilson cease permanently or for such period of time as is specified by the Commission, pursuant to clause 2 of subsection 127(1) of the *Securities Act*;

(c) the acquisition of any securities by each of Phillips and Wilson is prohibited permanently or for such period as is specified by the Commission, pursuant to clause 2.1 of subsection 127(1) of the *Securities Act*;

(d) any exemptions contained in Ontario securities law do not apply to each of Phillips and Wilson permanently or for such period as is specified by the Commission, pursuant to clause 3 of subsection 127(1) of the *Securities Act*;

(e) each of Phillips and Wilson resign any position that he holds as a director or officer of an issuer, registrant or investment fund manager, pursuant to clauses 7, 8.1 and 8.3 of subsection 127(1) of the *Securities Act*;

(f) each of Phillips and Wilson be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the *Securities Act*;

(g) each of Phillips and Wilson be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter, pursuant to clause 8.5 of subsection 127(1) of the *Securities Act*;

(h) each of Phillips and Wilson pay an administrative penalty of not more than $1 million for each failure to comply with Ontario securities law, pursuant to clause 9 of subsection 127(1) of the *Securities Act*;

(i) each of Phillips and Wilson disgorge to the Commission any amounts obtained as a result of their non-compliance with Ontario securities law, pursuant to clause 10 of subsection 127(1) of the *Securities Act*;

(j) each of Wilson and Phillips pay the costs of the investigation and hearing, pursuant to section 127.1 of the *Securities Act*; and

(k) such further order as the Commission considers appropriate in the public interest.

BY REASON OF the allegations as set out in the Statement of Allegations of Staff of the Commission dated June 4, 2012 and such additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that any party to the proceedings may be represented by counsel at the hearing;

AND TAKE FURTHER NOTICE that upon 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 proceedings.

DATED at Toronto this 4th day of June, 2012.

"Josée Turcotte"
Per: John Stevenson
Secretary to the Commission

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

AND

IN THE MATTER OF
DAVID CHARLES PHILLIPS AND
JOHN RUSSELL WILSON

STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION

1. This case revolves around David Charles Phillips, a founder and the directing mind of the First Leaside Group, who intentionally deceived investors by selling and overseeing the sales of almost $19 million in securities while withholding important information.

Overview

2. David Charles Phillips ("Phillips") was a founder and the directing mind of a group of at least 161 companies (the "First Leaside Group"). Phillips directed all significant aspects of the business and growth of the First Leaside Group from its inception in the late 1980s until at least November 2011. John Russell Wilson ("Wilson") was a senior salesperson employed by First Leaside Securities Inc. ("FLSI"), an investment dealer and one of the companies in the First Leaside Group. Wilson worked closely with and reported directly to Phillips.

3. Between August 22 and October 28, 2011 (the "Sales Period"), Phillips directed and oversaw sales of First Leaside Group equity and debt offerings which raised about $18.89 million from investors. Phillips and Wilson were directly responsible for about 65% of the sales. Phillips sold about $3.45 million directly to investors, and Wilson sold about $8.95 million directly to investors.

4. Phillips and Wilson effected these sales knowing that an independent accounting firm, Grant Thornton Limited ("Grant Thornton"), had conducted an extensive six month review of the First Leaside Group and had delivered a report on August 19, 2011 (the "Grant Thornton Report"). The Grant Thornton Report included findings that the future viability of the First Leaside Group was contingent on its ability to raise new capital and that there was a significant equity deficit.

5. The fact that Grant Thornton was reviewing the First Leaside Group, the existence of the Grant Thornton Report and the Grant Thornton Report were important facts investors should have known. During the Sales Period, Phillips did not disclose these important facts to the First Leaside Group salespeople, nor did Phillips and Wilson disclose them to investors to whom they sold directly. By concealing these facts while selling to investors, and in Phillips' case, supervising the entire sales effort, Phillips and Wilson dishonestly placed investors' pecuniary interests at risk.

6. Each of Phillips and Wilson breached subsection 126.1(b) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Securities Act*") by directly or indirectly engaging or participating in an act, practice or course of conduct relating to securities which they each knew, or reasonably ought to have known, would perpetrate a fraud on investors. Each of Phillips and Wilson also breached subsection 44(2) of the *Securities Act*, section 2.1 of Ontario Securities Commission (the "Commission") Rule 31-505, and acted contrary to the public interest.

The First Leaside Group

7. The First Leaside Group included First Leaside Wealth Management Inc. ("FLWM"), which owned FLSI and an exempt market dealer, F.L. Securities Inc. ("F.L. Securities"). FLWM has never been registered under the *Securities Act*.

8. FLSI was registered with the Commission as an investment dealer from March 1, 2004 until February 24, 2012, when its registration was suspended. FLSI was also registered as a dealer member with the Investment Industry Regulatory Organization of Canada ("IIROC"). FLSI's IIROC membership was suspended on February 24, 2012.

9. F.L. Securities was registered with the Commission as a limited market dealer from March 1, 1991 until September 28, 2009, and as an exempt market dealer from September 28, 2009 until February 28, 2012, when its registration was suspended.

The Respondents

Phillips

10. Phillips is an Ontario resident, and has been registered with the Commission in various capacities since 1981. Phillips was the Chief Executive Officer, President, Secretary and a director of the investment dealer FLSI, and the President and a director of FLWM. Phillips owned 100% of the common shares of FLWM.

11. In respect of FLSI, Phillips was registered with the Commission in various capacities from March 1, 2004 to February 24, 2012, and was registered as the ultimate designated person from January 11, 2010 to February 24, 2012. In respect of F.L. Securities, Phillips was registered with the Commission in various capacities from April 14, 2000 to February 27, 2004, and was approved as a shareholder from March 17, 2004 to February 28, 2012.

12. Phillips' registration with FLSI and F.L. Securities was suspended on February 24 and 28, 2012, respectively, pursuant to subsection 29(2) of the *Securities Act*.

Wilson

13. Wilson is an Ontario resident, and has been registered with the Commission in various capacities since 2003. Wilson was a director of FLWM. Wilson commenced employment with FLSI in 2005 and was employed with FLSI until February 2012.

14. In respect of FLSI, Wilson was registered as a salesperson from April 12, 2005 to February 24, 2012 and approved as an officer and director from March 29, 2011 to February 24, 2012.

15. Wilson's registration with FLSI was suspended on February 24, 2012, pursuant to subsection 29(2) of the *Securities Act*.

First Leaside Group's Clients and Business

16. On or about August 19, 2011, the First Leaside Group had at least 1,000 clients, most of whom were residents of Ontario. The First Leaside Group sold proprietary equity and debt offerings that were invested directly or indirectly within the First Leaside Group, and offered full brokerage and financial planning services administered by a carrying broker.

17. The First Leaside Group's proprietary equity and debt offerings typically consisted of units in limited partnerships ("LPs") and funds ("Funds"). The LPs primarily held real estate, including multi-unit residential properties in Canada and Texas. The Funds primarily held promissory notes in LPs which, in turn, held real estate. The real estate included 10 properties held by a member of the First Leaside Group, the Wimberly Apartments LP ("WALP"), through its subsidiaries.

18. At all times during the Sales Period, Phillips continued to be the directing mind of the First Leaside Group. Until at least November 3, 2011, Phillips was responsible for all aspects of the First Leaside Group, including capital raises, deal origination, deal negotiation and structuring and internal administration.

The Grant Thornton Report

19. In the months leading up to the Sales Period, significant real estate assets were being appraised and the business and operations of the First Leaside Group were under review by independent third parties.

20. In November 2010, Staff of the Commission ("Staff") sought an accurate, third party market valuation for the WALP properties in Texas and an additional property held by First Leaside Partners LP. The First Leaside Group engaged CB Richard Ellis and Joseph J. Blake and Associates Inc., which delivered their valuation reports to the First Leaside Group by January 2011.

21. In February 2011, due to concerns stemming from the valuation reports, Staff urged the First Leaside Group to retain an independent accounting firm with recognized expertise in restructuring and insolvency matters to conduct a viability study of the First Leaside Group.

22. In March 2011, Grant Thornton was retained by Cassels Brock & Blackwell LLP ("Cassels Brock") to review, report on and make recommendations in respect of the business, assets, affairs and operations of the First Leaside Group. Cassels Brock was counsel to Phillips and to the First Leaside Group.

23. Between March and August 2011, Grant Thornton performed its review of the First Leaside Group, and on August 19, 2011, delivered its report. The Grant Thornton Report included the following findings:

> The future viability of the [First Leaside] Group is contingent on their ability to raise new capital. One of the largest sources of revenue in the [First Leaside] Group is the fees it generates in FLWM on the raising of new capital. If the [First Leaside] Group was restricted from raising new capital, it would likely be unable to continue its operations in the ordinary course, as it would have insufficient revenue to support its infrastructure, staffing costs, distributions, and to meet their funding requirements for existing projects.
>
> […]
>
> We have also reviewed the Asset Valuation of the [First Leaside] Group, using the highest third party valuation figures available for the WALP properties. In this regard, we have calculated an aggregate equity surplus (represented as asset FMV, less third party mortgages and investor debt) of approximately $67M, while there is raised equity in the [First Leaside] Group of approximately $200M. In this regard, there is a significant equity deficit based on the Asset Valuation.

24. Phillips and Wilson were aware that Grant Thornton had been retained to review the First Leaside Group, and each received the Grant Thornton Report on or shortly after August 19, 2011.

25. Despite knowing about the engagement of Grant Thornton, the existence of the Grant Thornton Report and having received the Grant Thornton Report, Phillips directed and oversaw a sales effort, and he and Wilson each sold securities directly to investors while concealing these important facts.

Phillips' and Wilson's Conduct During the Sales Period

26. During the Sales Period, about $18.89 million was raised from investors through sales of units in the following offerings:

Entity	Cost of Units Sold
Special Notes LP	$8,077,328
First Leaside Expansion LP	3,927,102
Flex Fund - Class B and C	3,039,052
First Leaside Venture LP	1,921,359
FLWM Fund	1,265,931
First Leaside Primetime Living LP	335,000
First Leaside Beverages Group LP	130,010
FLWM Series II Preferred Shares	119,841
Wimberly Apartments LP	78,448
Total	**$18,894,071**

27. During the Sales Period, Phillips sold units and shares directly to investors, supervised all of the salespeople and approved each sale, and Wilson sold units and shares directly to investors. Phillips' direct sales totalled about $3,450,923, and Wilson's direct sales totalled about $8,954,927, for a combined total of $12,405,850 or about 65% of sales.

28. Phillips and Wilson each sold units in the Special Notes LP, First Leaside Expansion LP, Flex Fund Class B and C, First Leaside Venture LP, FLWM Fund and WALP and FLWM Series II Preferred Shares directly to investors. Wilson also sold units in First Leaside Primetime Living LP and First Leaside Beverages Group LP directly to investors.

29. Phillips did not disclose to the First Leaside Group salespeople, and Phillips and Wilson did not disclose to investors the fact that Grant Thornton had reviewed the First Leaside Group, the existence of the Grant Thornton Report or the Grant Thornton Report.

30. As registrants, each of Phillips and Wilson had an obligation to deal honestly, fairly and in good faith with their clients. In supervising and conducting sales in the circumstances described, Phillips failed to discharge this obligation. In conducting sales in the circumstances described, Wilson failed to discharge this obligation.

Companies' Creditors Arrangement Act Proceeding

31. On February 23, 2012, less than 4 months after the end of the Sales Period, FLWM, FLSI, F.L. Securities and other members of the First Leaside Group obtained an order from the Ontario Superior Court of Justice that the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 applies to them and they are now subject to a court-supervised wind-up.

Breaches of the *Securities Act* and Conduct Contrary to the Public Interest

32. Phillips and Wilson each directly or indirectly engaged or participated in an act, practice or course of conduct relating to securities which he knew, or reasonably ought to have known, would perpetrate a fraud on investors, contrary to subsection 126.1(b) of the *Securities Act*.

33. Phillips and Wilson each made statements a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship, which statements were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made, contrary to subsection 44(2) of the *Securities Act*.

34. Phillips and Wilson each failed to deal fairly, honestly and in good faith with their clients, contrary to section 2.1 of Commission Rule 31-505.

35. Phillips and Wilson each engaged in conduct contrary to the public interest and harmful to the integrity of the capital markets.

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

DATED at Toronto this 4th day of June, 2012.

1.3 News Releases

1.3.1 OSC Panel Issues Sanctions Against Sextant Capital Management Inc., Sextant Capital GP Inc., Otto Spork, Konstantinos Ekonomidis and Natalie Spork for Breaches of the Securities Act

FOR IMMEDIATE RELEASE
June 4, 2012

OSC PANEL ISSUES SANCTIONS AGAINST
SEXTANT CAPITAL MANAGEMENT INC., SEXTANT CAPITAL GP INC.,
OTTO SPORK, KONSTANTINOS EKONOMIDIS AND NATALIE SPORK

TORONTO – In a decision released today, an Ontario Securities Commission (OSC) panel released its Reasons for Decision on Sanctions and Costs against Sextant Capital Management Inc. (SCMI), Sextant Capital GP Inc. (Sextant GP), Otto Spork (Spork), Konstantinos Ekonomidis (Ekonomidis) and Natalie Spork (N. Spork).

On May 17, 2011, an OSC panel found that Spork, SCMI and Sextant GP committed fraud contrary to the Securities Act. The panel also found that the one or more of the Respondents breached their duties as investment fund managers, failed to deal fairly, honestly and in good faith, failed to maintain proper books and records and acted contrary to the public interest.

In its decision on sanctions and costs, the OSC panel ordered:

- Spork must pay a disgorgement order of $6,350,000, an administrative penalty of $1,000,000 and costs of $350,000;
- Spork is permanently prohibited from trading or acquiring any securities and is banned from becoming or acting as director or officer of any issuer, registrant or investment fund manager;
- Ekonomidis must pay a disgorgement order of $250,000, an administrative penalty of $250,000 and costs of $65,000;
- Ekonomidis is banned from trading or acquiring securities and from becoming or acting as director or officer of any issuer, registrant or investment fund manager for 10 years;
- N. Spork must pay a disgorgement order of $140,000, an administrative penalty of $50,000 and costs of $20,000; and,
- N. Spork is banned from trading or acquiring securities for three years and from becoming or acting as director or officer of any issuer, registrant or investment fund manager for five years.

A copy of the Reasons and Decision on Sanctions in this matter is available on the OSC website at www.osc.gov.on.ca. A copy of the materials relating to the Receivership can be found at: http://www.pwc.com/ca/en/car/sextant .

The mandate of the OSC 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. Investors are urged to check the registration of any person or company offering an investment opportunity and to review the OSC's investor materials available at www.osc.gov.on.ca.

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1.4 Notices from the Office of the Secretary

1.4.1 Paul Azeff et al.

FOR IMMEDIATE RELEASE
May 31, 2012

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

AND

IN THE MATTER OF
PAUL AZEFF, KORIN BOBROW,
MITCHELL FINKELSTEIN,
HOWARD JEFFREY MILLER AND
MAN KIN CHENG (a.k.a. FRANCIS CHENG)

TORONTO – The Commission issued its Reasons For Decision On A Stay Motion By Mitchell Finkelstein And Prematurity Cross-Motion By Staff in the above named matter.

A copy of the Reasons For Decision dated May 31, 2012 is available at **www.osc.gov.on.ca**.

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1.4.2 Shallow Oil & Gas Inc. et al.

FOR IMMEDIATE RELEASE
May 30, 2012

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

AND

IN THE MATTER OF
SHALLOW OIL & GAS INC., ERIC O'BRIEN,
ABEL DA SILVA, ABRAHAM HERBERT GROSSMAN
also known as ALLEN GROSSMAN and KEVIN WASH

TORONTO – The Commission issued an Order in the above named matter which provides that the matter is adjourned to the hearing on the merits, which shall commence on June 18, 2012 at 10:00 a.m., at which time the panel for the hearing on the merits may consider Staff's request that the hearing on the merits be conducted as a written hearing.

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

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1.4.3 Bunting & Waddington Inc. et al.

FOR IMMEDIATE RELEASE
May 30, 2012

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

AND

IN THE MATTER OF
BUNTING & WADDINGTON INC.,
ARVIND SANMUGAM, JULIE WINGET AND
JENIFER BREKELMANS

TORONTO – The Commission issued an Order in the above named matter which provides that a confidential pre-hearing conference will be held at 3:00 p.m. on June 19, 2012.

The pre-hearing conference will be held *in camera*.

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

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1.4.4 David Charles Phillips

FOR IMMEDIATE RELEASE
May 31, 2012

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

AND

IN THE MATTER OF
DAVID CHARLES PHILLIPS

TORONTO – The Commission issued an Order in the above named matter which provides that (i) the hearing in this matter is adjourned to June 6, 2012 at 10:00 a.m.; and (ii) the Temporary Order is extended until June 8, 2012 or until further order of the Commission.

A copy of the Order dated May 30, 2012 is available at **www.osc.gov.on.ca**.

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1.4.5 Nicholas David Reeves

FOR IMMEDIATE RELEASE
June 4, 2012

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

AND

IN THE MATTER OF
NICHOLAS DAVID REEVES

TORONTO – Following a hearing held on May 30, 2012, the Commission issued an Order pursuant to subsections 127(1) and 127(10) of the act in the above named matter.

A copy of the Order dated May 30, 2012 is available at **www.osc.gov.on.ca**.

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1.4.6 Sextant Capital Management Inc. et al.

FOR IMMEDIATE RELEASE
June 4, 2012

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

AND

IN THE MATTER OF
SEXTANT CAPITAL MANAGEMENT INC.,
SEXTANT CAPITAL GP INC., OTTO SPORK,
KONSTANTINOS EKONOMIDIS, ROBERT LEVACK
AND NATALIE SPORK

TORONTO – The Commission issued its Reasons For Decision on Sanctions and Costs and an Order in the above noted matter.

A copy of the Reasons For Decision on Sanctions and Costs and the Order dated June 1, 2012 are available at **www.osc.gov.on.ca**.

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1.4.7 David Charles Phillips and John Russell Wilson

FOR IMMEDIATE RELEASE
June 4, 2012

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

AND

IN THE MATTER OF
DAVID CHARLES PHILLIPS AND
JOHN RUSSELL WILSON

TORONTO – The Office of the Secretary issued a Notice of Hearing setting the matter down to be heard on June 25, 2012 at 10:00 a.m. or as soon thereafter as the hearing can be held in the above named matter.

A copy of the Notice of Hearing dated June 4, 2012 and Statement of Allegations of Staff of the Ontario Securities Commission dated June 4, 2012 are available at **www.osc.gov.on.ca**.

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1.4.8 Juniper Fund Management Corporation et al.

FOR IMMEDIATE RELEASE
June 4, 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 two Orders dated June 1, 2012 in the above named matter:

(1) Order (Hearing held May 28, 2012); and

(2) Order (Hearing held May 30, 2012).

A copy of the Orders dated June 1, 2012 are available at **www.osc.gov.on.ca**.

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1.4.9 Peter Sbaraglia

FOR IMMEDIATE RELEASE
June 4, 2012

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

AND

IN THE MATTER OF
PETER SBARAGLIA

TORONTO – The Commission issued an Order in the above named matter which provides that a confidential pre-hearing conference will be held on July 4, 2012 at 10:00 a.m.

The pre-hearing conference will be held *in camera*.

A copy of the Order dated June 4, 2012 is available at **www.osc.gov.on.ca**.

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1.4.10 Morgan Dragon Development Corp. et al.

FOR IMMEDIATE RELEASE
June 5, 2012

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

AND

IN THE MATTER OF
MORGAN DRAGON DEVELOPMENT CORP.,
JOHN CHEONG (aka KIM MENG CHEONG),
HERMAN TSE, DEVON RICKETTS
AND MARK GRIFFITHS

TORONTO – The Commission issued an Order in the above named matter which provides that there will be a hearing on August 15, 2012 at 10:00 a.m. to provide the panel with a status update.

A copy of the Order dated June 4, 2012 is available at **www.osc.gov.on.ca**.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Energy Fuels Inc.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1 – Application by issuer for relief from requirement to include certain financial statements in a management information circular and a business acquisition report (BAR) – Relief subject to condition that management information circular and the BAR include the prescribed financial statements of the operating subsidiary entity and *pro forma* financial statements of the issuer giving effect to the acquisition excluding the holding entities.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, s. 8.4.

May 24, 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
ENERGY FUELS INC. (the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision (the "**Requested Relief**") under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") exempting the Filer from the requirement in Section 8.4 of National Instrument 51-102 – *Continuous Disclosure Obligations* ("**NI 51-102**") of the Filer to include interim financial statements of White Canyon Uranium Limited ("**White Canyon**") for the nine-month interim periods ended March 31, 2012 and 2011 (the "**White Canyon Interim Statements**") in the Filer's management information circular (the "**EFI Circular**") with respect to a special meeting (the "**Meeting**") of shareholders to approve an issuance of securities in connection with a transaction between the Filer and Denison Mines Corp. ("**Denison**") and in the Filer's business acquisition report in respect of such transaction (the "**EFI BAR**").

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 each of British Columbia, Alberta, Saskatchewan and Manitoba, except Ontario.

Interpretation

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

Representations

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

The Filer and Other Parties to the Proposed Transaction

1. The Filer's head office is located at 2 Toronto Street, Suite 500, Toronto, Ontario M5C 2B6.

2. The Filer is a corporation existing under the *Business Corporations Act* (Ontario) (the "**OBCA**").

3. The Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario. The common shares of the Filer are listed and posted for trading on the Toronto Stock Exchange ("**TSX**") under the symbol "EFR".

4. The Filer's financial year end is September 30 of each year.

5. Denison is a corporation existing under the OBCA.

6. Denison is a reporting issuer in each of the provinces of Canada and is not currently in default of the securities legislation in any of these jurisdictions as of the date hereof. The common shares of Denison are listed and posted for trading on the TSX under the symbol "DML" and on the NYSE MKT LLC under the symbol "DNN".

7. Denison holds all of the outstanding shares of White Canyon. Denison and White Canyon together hold all of the outstanding shares of Denison Mines Holdings Corp. ("**DMHC**").

8. DMHC is a Delaware corporation with a December 31 financial year end. DMHC is a holding company that holds shares and interests of the various entities which comprise Denison's U.S. mining business. Prior to September 1, 2011, Denison held all the shares of DMHC directly.

9. White Canyon is a corporation organized under the laws of Australia with a June 30 financial year end. White Canyon was previously listed on the Australian Stock Exchange ("**ASX**") and was a reporting issuer in Alberta and British Columbia with a secondary listing on the TSX Venture Exchange (the "**TSXV**").

10. Denison acquired approximately 96% of outstanding shares of White Canyon effective July 1, 2011 in a take-over transaction under *Corporations Act 2001* (Australia) that was exempt from the formal bid requirements of Part XX of the *Securities Act* (Ontario) (the "Act") pursuant to section 100.3 of the Act. Denison acquired the remaining shares of White Canyon on July 28, 2011 under the compulsory acquisition provisions of Australian corporate law.

11. Denison's acquisition of White Canyon was not a significant acquisition for Denison for the purposes of Part 8 of NI 51-102.

12. On September 1, 2011, White Canyon transferred the shares of Utah Energy Corporation ("**UEC**") to DMHC. In exchange, DMHC issued 4.7 shares of common stock to White Canyon, representing approximately 29.9% of DMHC's common stock. The remainder of the common shares of DMHC, as well as preferred shares, are held by Denison directly.

13. The shares of UEC represented the only material asset of White Canyon. Since September 1, 2011 the only material asset of White Canyon has been its minority shareholding interest in DMHC. White Canyon has no other material assets or liabilities other than some inter-company debt to Denison.

14. Accordingly:

    (a) since July 1, 2011, DMHC and White Canyon have been under common control; and

    (b) since September 1, 2011, the financial results of the operating business previously owned by White Canyon, being UEC, are included in the financial results of DMHC.

15. Prior to the acquisition by Denison of White Canyon, White Canyon was a "designated foreign issuer" as defined in National Instrument 52-107 – Acceptable Accounting Principles and Auditing Standards. Upon the completion of Denison's acquisition of White Canyon, White Canyon terminated its listings on the ASX and the TSXV, and ceased to be a reporting issuer in any Canadian province.

The Proposed Transaction

16. On April 16, 2012, the Filer and Denison entered into a letter agreement (the "**Letter Agreement**") to complete a transaction whereby the Filer will acquire from Denison all of the outstanding shares of DMHC held by Denison and all of the outstanding shares of White Canyon.

17. As consideration for the shares of DMHC and White Canyon, the Filer will issue 425,441,494 common shares (the "**EFR Share Consideration**"). The transaction will be carried out by Denison in connection with a corporate reorganization under a plan of arrangement pursuant to the OBCA. The plan of arrangement will provide that the EFR Share Consideration will be distributed to Denison's shareholders on a pro rata basis as a return of capital by Denison.

18. Upon completion of the proposed transaction, the Filer will hold all of the shares of DMHC and White Canyon, and Denison's shareholders will in aggregate own approximately 66.5% of the outstanding shares of the Filer.

19. Completion of the transaction is subject to the parties negotiating and entering into a definitive agreement, as well as other customary closing conditions.

20. The Filer will require shareholder approval under the rules of the TSX with respect to the issuance of the EFR Share Consideration, due to the number of shares of the Filer to be issued and will seek such shareholder approval at the Meeting.

21. Denison will also require shareholder approval of the Arrangement under the OBCA. In that regard, Denison will seek such shareholder approval at a special meeting of shareholders.

Financial Disclosure Requirements for the EFI Circular and the EFI BAR

22. Because the Filer will be distributing its securities to Denison's shareholders in the transaction, the EFI Circular will require prospectus-level disclosure of DMHC and White Canyon in accordance with Item 14.2 of Form 51-102F5.

23. The acquisition of DMHC and White Canyon by the Filer will be a significant acquisition for the

Filer under Part 8 of NI 51-102. For this reason, certain annual audited and unaudited interim financial statements of the business to be acquired in the transaction, along with pro forma financial information of the Filer, will be required to be included in the EFI Circular and the EFI BAR.

24. The acquired business consists of the shares of DMHC held by Denison, and all of the White Canyon shares.

25. Because White Canyon and DMHC have only been under common control since June 2011, it will not be possible for the financial statements of DMHC and White Canyon to be presented on a combined basis under Section 8.4(8) of NI 51-102 for all periods for which acquisition statements will be required.

26. In accordance with Section 8.4 of NI 51-102, the financial statements relating to the businesses to be acquired in the transaction to be included or incorporated by reference in the EFI Circular and the EFI BAR will include:

    (a) annual financial statements of DMHC for the two years ended December 31, 2011, of which the statements as at and for the year ended December 31, 2011 will be audited (the "DMHC Annual Statements");

    (b) unaudited interim financial statements of DMHC for the three month periods ended March 31, 2012 and 2011;

    (c) annual financial statements of White Canyon for the two years ended June 30, 2011, of which the statements as at and for the year ended June 30, 2011 will be audited (the "White Canyon Financial Statements");

    (d) pro forma financial statements of Energy Fuels for the periods ended September 30, 2011 and March 31, 2012, and a pro forma balance sheet of Energy Fuels as at March 31, 2012 (the "Pro Forma Statements"); and

    (e) absent the Requested Relief, the Filer would also be required to include the White Canyon Interim Statements.

27. Since September 1, 2011, White Canyon's sole material asset has been its minority shareholding position in DMHC, and White Canyon has no material liabilities other than some inter-company debt with Denison. Prior to September 1, 2011, its sole material asset was the shares of UEC.

28. The Filer has been informed that Denison considered the appropriate accounting treatment for the DMHC Annual Statements and the DMHC Interim Statements, and has discussed its potential approach with its auditors PricewaterhouseCooopers LLC. Denison has determined that it would be appropriate to apply continuity of interest accounting for reorganization between commonly controlled entities as it relates to DMHC and White Canyon. Denison has advised that this approach would be consistent with the preferred approach dealing with Common Control Business Combinations as articulated in OSC Staff Notice 52-720 *Office of the Chief Accountant Financial Reporting Bulletin, February 2012*.

29. In accordance with this approach, Denison proposes to consolidate the results of UEC in DMHC's financial statements for the full period following June 30, 2011.

30. Subsection 8.4(3) of NI 51-102 provides that acquisition financial statements must include financial statements of the acquired business for the most recently completed interim period. For the reasons noted above, this would require statements for both DMHC and White Canyon.

31. Denison feels that the inclusion of separate financial statements for White Canyon after June 30, 2011 would not be helpful to its shareholders and may in fact be misleading given the other financial disclosure in the EFI Circular during that period.

32. In light of the proposed approach for the presentation of the DMHC Annual Statements and the DMHC Interim Statements, Denison is of the view that there would be no added benefit to providing the financial statements for White Canyon for any period after June 30, 2011, and in fact that the inclusion of any such statements may be misleading to the Filer's shareholders.

33. All of the operations of White Canyon were undertaken through UEC. UEC's results will be consolidated into the DMHC Annual Statements and the DMHC Interim Statements from July 1, 2011 onwards. Providing White Canyon financial statements for any period after June 30, 2011 would actually be confusing as those statements would also consolidate the July and August operating results of UEC, since that is the period prior to the legal reorganization and transfer of UEC to DMHC. This would lead to a type of double counting of the operating results for those months both in DMHC and White Canyon.

34. With respect to the results of White Canyon after August 31, 2011, those statements would only reflect the minority shareholding position in DMHC. UEC's financial results will be included in the DMHC Annual Statements and the DMHC Interim Statements. Again, a shareholder

considering the transaction may be confused and not appreciate that the financial results of White Canyon after June 30, 2011 which would be included in the White Canyon Interim Statements were also reflected in the financial statements of DMHC which are in the EFI Circular and will be in the EFI BAR.

35. Including both White Canyon and DMHC results for the period following June 30, 2011 would also result in much more complex and confusing presentation for the pro forma financial information of the Filer to be included in the EFI Circular and the EFI BAR.

36. Under section 8.4(8) of NI 51-102, the Filer would be permitted to provide combined financial statements for periods during which the related businesses of DMHC and White Canyon were under common control. The preparation of combined financial statements for DMHC and White Canyon is not practicable in these circumstances given the differing year ends. The Filer submits that, given the fact that White Canyon's operations are entirely contained within DMHC, that the inclusion of the DMHC Annual Statements and the DMHC Interim Statements which include the UEC business from July 1, 2011 give disclosure regarding the acquired business which is complete and substantially the same as would be included with combined financial statements.

37. If the Requested Relief is granted and the White Canyon Interim Statements are excluded from the EFI Circular and the EFI BAR, the results of UEC would be reflected in the acquisition financial statements as follows:

- for the two year period to June 30, 2011 in the White Canyon Annual Statements;
- for the period from July 1, 2011 to December 31, 2011 in the DMHC Annual Statements; and
- for the period from January 1, 2012 to March 31, 2012 in the DMHC Interim Statements.

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.

"Lisa Enright"
Ontario Securities Commission

2.1.2 Energy Fuels Inc.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption from requirements in subsection 4.11(4), 4.12(1) and 4.14(1) of National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards (NI 52-107) to reconcile acquisition statements to the issuer's GAAP, permit the use of ISAs and to prepare the pro forma financial statements in accordance with issuer's GAAP – The issuer wants relief from the requirement to include a reconciliation to Canadian GAAP in annual financial statements of the acquired business and to have those statements audited in accordance with Canadian or US GAAS – The issuer will prepare *pro forma* financial statements in accordance with the guidance set out in section 8.7(9) of Companion Policy 51-102CP as it applies to financial years beginning on or after January 1, 2011 for all periods presented.

Applicable Legislative Provisions

National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards, s. 5.1.

May 24, 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
ENERGY FUELS INC.
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") exempting the Filer from certain requirements in National Instrument 52-107 – *Acceptable Accounting Principles and Auditing Standards* ("**NI 52-107**"). Specifically, the Filer seeks the following relief:

(a) that the annual acquisition statements as at and for the year ended June 30, 2011 (the "**White Canyon Financial Statements**") of White Canyon Uranium Limited ("**White Canyon**") to be included in the information circular of the Filer (the "**EFI**

Circular") relating to a special meeting of shareholders (the "**EFI Meeting**") to approve an issuance of securities in connection with a transaction between the Filer and Denison Mines Corp. ("**Denison**") and in the Filer's business acquisition report in respect of such transaction (the "**EFI BAR**") may be audited in accordance with Australian Auditing Standards, which are the same as International Standards on Auditing ("**ISA**") issued by the International Auditing and Assurance Standards Board (the "**IAASB**") notwithstanding section 4.12(1) of NI 52-107;

(b) that the requirement under section 4.11(4) of NI 52-107 to reconcile acquisition statements to the issuer's generally accepted accounting principles ("**GAAP**") does not apply to the White Canyon Financial Statements and to the annual acquisition statements as at and for the year ended December 31, 2011 (the "**DMHC Financial Statements**") of Denison Mines Holdings Corp. ("**DMHC**"); and

(c) that the pro forma statements of the Filer to be included in the EFI Circular and the EFI BAR be prepared in accordance with International Financial Reporting Standards ("**IFRS**") as issued by the International Accounting Standards Board ("**IASB**").

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 and Manitoba, except Ontario.

Interpretation

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

Representations

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

The Filer and Other Parties to the Proposed Transaction

1. The Filer's head office is located at 2 Toronto Street, Suite 500, Toronto, Ontario M5C 2B6.

2. The Filer is a corporation existing under the *Business Corporations Act* (Ontario) (the "**OBCA**").

3. The Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario. The common shares of the Filer are listed and posted for trading on the Toronto Stock Exchange ("**TSX**") under the symbol "EFR".

4. The Filer's financial year end is September 30 of each year. DMHC's financial year end is December 31 of each year. White Canyon's financial year end is June 30 of each year.

5. Denison is a corporation existing under the OBCA.

6. Denison is a reporting issuer in each of the provinces of Canada and is not currently in default of the securities legislation in any of these jurisdictions as of the date hereof. The common shares of the Filer are listed and posted for trading on the TSX under the symbol "DML" and on the NYSE MKT LLC under the symbol "DNN".

7. Denison holds all of the outstanding shares of White Canyon. Denison and White Canyon together hold all of the outstanding shares of DMHC.

8. DMHC is a corporation organized under the laws of Delaware that holds shares of various subsidiaries that operate Denison's U.S. mining exploration and development business (the "**US Mining Division**").

9. White Canyon is a corporation organized under the laws of Australia. White Canyon was previously listed on the Australian Stock Exchange ("**ASX**") and was a reporting issuer in Alberta and British Columbia with a secondary listing on the TSX Venture Exchange (the "**TSXV**").

10. Denison acquired approximately 96% of outstanding shares of White Canyon effective July 1, 2011 in a take-over transaction under *Corporations Act 2001* (Australia) that was exempt from the formal bid requirements of Part XX of the *Securities Act* (Ontario) (the "**Act**") pursuant to section 100.3 of the Act. Denison acquired the remaining shares of White Canyon on July 28, 2011 under the compulsory acquisition provisions of Australian corporate law.

11. Denison's acquisition of White Canyon was not a significant acquisition for Denison for the purposes of Part 8 of National Instrument 51-102 – *Continuous Disclosure Obligations* ("**NI 51-102**").

12. On September 1, 2011, as part of an internal reorganization, White Canyon transferred its operating subsidiary in the United States to DMHC for shares of DMHC. Since that date, White Canyon's only material asset has been shares of DMHC, and White Canyon has no further material

obligations or liabilities other than inter-company debt to the Filer or other of its subsidiaries.

13. Prior to the acquisition by Denison of White Canyon, White Canyon was a "designated foreign issuer" as defined in NI 52-107. Upon the completion of Denison's acquisition of White Canyon, White Canyon terminated its listings on the ASX and the TSXV, and ceased to be a reporting issuer in any Canadian province.

The Proposed Transaction

14. On April 16, 2012, the Filer entered into a letter agreement (the "**Letter Agreement**") with Denison to complete a transaction whereby the Filer will acquire from Denison all of the outstanding shares of DMHC held by Denison and all of the outstanding shares of White Canyon.

15. As consideration for the shares of DMHC and White Canyon, the Filer will issue 425,441,494 of its common shares (the "**EFI Share Consideration**"). In connection with the transaction, Denison will complete a corporate reorganization under a plan of arrangement pursuant to the OBCA. The plan of arrangement will provide that the EFI Share Consideration will be distributed to Denison's shareholders on a pro rata basis as a return of capital by Denison.

16. Upon completion of the proposed transaction, the Filer will hold all of the shares of DMHC and White Canyon, and Denison's shareholders will in aggregate own approximately 66.5% of the outstanding shares of the Filer.

17. Completion of the transaction is subject to the parties negotiating and entering into a definitive agreement, as well as other customary closing conditions.

18. The Filer will require shareholder approval under the rules of the TSX with respect to the issuance of the EFI Share Consideration, due to the number of shares of the Filer to be issued at the EFI Meeting.

19. Denison will require shareholder approval of the Arrangement under the OBCA. In that regard, Denison will seek such shareholder approval at a special meeting.

Financial Disclosure Requirements for the EFI Circular and the EFI BAR

20. Because the Filer will be distributing its securities to Denison's shareholders in the transaction, the EFI Circular will require prospectus-level disclosure of Denison in accordance with Item 14.2 of Form 51-102F5.

21. The acquisition of DMHC and White Canyon by the Filer will be a significant acquisition for the Filer under Part 8 of NI 51-102. For this reason, certain annual audited and unaudited interim financial statements of the business to be acquired in the transaction, along with pro forma financial information of the Filer, will be required to be included in the EFI Circular and the EFI BAR.

22. The acquired business consists of the shares of DMHC held by Denison, and all of the White Canyon shares.

23. Because White Canyon and DMHC have only been under common control since June 2011, it will not be possible for the financial statements of DMHC and White Canyon to be presented on a combined basis under Section 8.4(8) of NI 51-102 for all periods for which acquisition statements will be required.

24. In accordance with Section 8.4 of NI 51-102, the financial statements relating to the Filer and the businesses to be acquired in the transaction to be included or incorporated by reference in the EFI Circular and the EFI BAR will include:

    (a) audited annual financial statements of the Filer for the two years ended September 30, 2011, which statements were prepared in accordance with Canadian GAAP;

    (b) unaudited interim financial statements of the Filer for the six month periods ended March 31, 2012 and 2011, which statements were prepared in accordance with IFRS;

    (c) the DMHC Financial Statements, being annual financial statements of DMHC for the two years ended December 31, 2011, of which the statements as at and for the year ended December 31, 2011 will be audited, which statements are being prepared in accordance with IFRS;

    (d) the White Canyon Financial Statements, being annual financial statements of White Canyon for the two years ended June 30, 2011, of which the statements as at and for the year ended June 30, 2011 will be audited, which statements have been prepared in accordance with IFRS;

    (e) pro forma financial statements of the Filer for the periods ended September 30, 2011 and March 31, 2012, and a pro forma balance sheet of the Filer as at March 31, 2012 (the "**Pro Forma Statements**").

In addition, interim financial statements of the acquired business, as well as financial statements relating to an earlier significant acquisition by the Filer, will be included or incorporated by reference in the EFI Circular and the EFI BAR.

25. White Canyon has prepared audited financial statements (the "**WC Special Purpose Financial Statements**") for the two years ended June 30, 2011. The WC Special Purpose Financial Statements are special purpose financial statements to meet White Canyon's statutory reporting requirements as a private company under the *Corporations Act 2001* (Australia). The Special Purpose Financial Statements were prepared in accordance with IFRS; however they did not include all the note disclosure that would be required under IFRS for a public company.

26. Denison will supplement the note disclosure to the WC Special Purpose Statements to complete the White Canyon Financial Statements, so that such financial statements will be presented in full compliance with IFRS. The Filer will include the White Canyon Financial Statements in the EFI Circular and the EFI BAR.

27. White Canyon's auditor is RSM Bird Cameron Partners ("**RSM**"), a member of RSM International, an international network of independent accounting and consulting firms around the world, with over 700 offices in 86 countries. RSM has represented to Denison that it has expertise and experience in ISA as adopted by the IAASB.

28. The WC Special Purpose Financial Statements were audited in accordance with Australian Auditing Standards. RSM has represented to Denison that Australian Auditing Standards are the same auditing standards as ISA as adopted by the IAASB. Accordingly, the WC Special Purpose Statements were audited in accordance with ISA.

29. RSM will update its audit in respect of the White Canyon Financial Statements, and such statements will be audited in accordance with Australian Auditing Standards.

30. The Filer will include in the EFI Circular and the EFI BAR clear disclosure as to the basis of presentation of the White Canyon Financial Statements and the DMHC Financial Statements (collectively, the "**Acquisition Statements**") and the fact that the White Canyon Financial Statements have been audited in accordance with Australian Auditing Standards, which are equivalent to ISA.

31. The Pro Forma Statements will be prepared in accordance with the guidance in section 8.7(9) of Companion Policy 51-102CP as it applies to financial years beginning on or after January 1, 2011. As part of the preparation of the required Pro Forma Statements, the Filer will identify accounting policy differences between Canadian GAAP and IFRS that would potentially have a material impact and which could be reasonably estimated, and will describe such differences in the notes to the Pro Forma Statements in the course of describing the adjustments presented relating to the financial results of the Filer.

32. Paragraph 20 of Part 1 of the Assurance Handbook of the Canadian Institute of Chartered Accountants provides that the ISA issued by the IAASB have been adopted as Canadian Auditing Standards for audits of financial statements for periods ending on or after December 14, 2010.

33. Subsection 4.11(4) of NI 52-107 provides that if acquisition statements are prepared using accounting principles that are different from the issuer's GAAP, the acquisition statements must, among other things, be reconciled to the issuer's GAAP.

34. Subsection 4.12(1) of NI 52-107 provides that the acquisition statements for financial years beginning before January 1, 2011 must be audited in accordance with Canadian GAAS or U.S. GAAS. Although subsection 4.12(2) of NI 52-107 provides limited exceptions to the general requirements set out in subsection 4.12(1) of NI 52-107, the exceptions do not apply in the context of the acquisition of White Canyon.

35. Subsection 4.14(1) of NI 52-107 provides that pro forma financial statements must be prepared in accordance with the issuer's GAAP.

36. The substance of the White Canyon Financial Statements have been audited in accordance with Australian Auditing Standards which are equivalent to ISA, being auditing standards that would be permitted under NI 52-107 if the White Canyon Financial Statements were in respect of a financial year beginning on or after January 1, 2011.

37. It would cause undue delay and expense to the Filer if the audit of the White Canyon Financial Statements had to be performed again under Canadian GAAS.

38. The Filer is seeking to present the most meaningful financial information to investors in the context of its transition to IFRS. The Filer believes that the presentation of the Acquisition Statements and the Pro Forma Statements to be included in the EFI Circular and the EFI BAR in IFRS would constitute higher quality financial information than if the Acquisition Statements are reconciled to, and the pro forma financial statements presented in, Canadian GAAP.

39. The Filer believes that the rationale for presenting the Acquisition Statements and the Pro Forma Statements in IFRS is supported by the facts that the Filer will have filed interim financial statements under IFRS for two fiscal quarters prior to the completion of the EFI Circular and the EFI BAR, and that interim financial statements regarding the Filer prepared in accordance with IFRS will be incorporated by reference in the EFI Circular and the EFI BAR.

40. The reconciliation requirement does not apply to the interim statements to be included or incorporated by reference in the EFI Circular and the EFI BAR as they relate to a financial year beginning on or after January 1, 2011.

41. Due to these facts, it is the Filer's view that the relief sought herein is appropriate in the context of its transition to IFRS and would ultimately provide investors with the most meaningful financial information regarding the Filer and the business to be acquired in the transaction. The Filer believes that the reconciliation of the Acquisition Statements to Canadian GAAP will not present investors with any incremental or useful information.

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:

1. the White Canyon Financial Statements to be included in the EFI Circular and the EFI BAR will have been prepared in accordance with IFRS and audited in accordance with ISA;

2. the White Canyon Financial Statements to be included in the EFI Circular and the EFI BAR are accompanied by an auditor's report from the auditor of White Canyon, which contains or is accompanied by a statement by the auditor that:

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

   (b) indicates that an auditor's report prepared in accordance with Canadian GAAS would not contain a reservation; and

3. the Pro Forma Statements in the EFI Circular and the EFI BAR are prepared in accordance with the guidance in section 8.7(9) of Companion Policy 51-102CP as it applies to financial years beginning on or after January 1, 2011 for all periods presented.

"Lisa Enright"
Ontario Securities Commission

2.1.3 Gain Capital – FOREX.com Canada Ltd. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application by investment dealer (Canadian Filer) for relief from prospectus requirement in connection with distribution of contracts for difference (CFDs) and OTC foreign exchange contracts (collectively, OTC Contracts) to investors, subject to terms and conditions – Application by affiliates of Canadian Filer for relief from prospectus requirement in connection with distribution of OTC Contracts to Canadian Filer pursuant to offsetting transactions – Canadian Filer acts as both market intermediary and as principal or counterparty to OTC transaction with client – Canadian Filer registered as investment dealer and a member of the Investment Industry Regulatory Organization of Canada (IIROC) – Filer complies with IIROC rules and IIROC acceptable practices applicable to offerings of OTC Contracts – Canadian Filer seeking relief to permit Canadian Filer to offer OTC Contracts to investors on the basis of clear and plain language risk disclosure document rather than a prospectus – risk disclosure document contains disclosure substantially similar to risk disclosure document required for recognized options in OSC Rule 91-502 Trades in Recognized Options, the regime for OTC derivatives contemplated by former proposed OSC Rule 91-504 OTC Derivatives (which was not adopted), and the Quebec Derivatives Act – Relief consistent with relief contemplated by OSC Staff Notice 91-702 Offerings of contracts for difference and foreign exchange contracts to investors in Ontario(OSC SN 91-702) – Relief granted, subject to terms and conditions as described in OSC SN 91-702 including four-year sunset clause.

Legislation Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53, 74(1).
OSC Rule 91-502 Trades in Recognized Options.
OSC Rule 91-503 Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario.
Proposed OSC Rule 91-504 OTC Derivatives (not adopted).

May 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
GAIN CAPITAL – FOREX.COM CANADA LTD.
(the Canadian Filer)

AND

GAIN CAPITAL HOLDINGS, INC.,
GAIN CAPITAL GROUP, LLC
AND GAIN CAPITAL – FOREX.COM UK LTD.
(each a Canadian Filer Affiliate and collectively
with the Canadian Filer, the Filers)

DECISION

Background

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

(a) the Canadian Filer and its respective officers, directors and representatives be exempt from the prospectus requirement in respect of the distribution of contracts for difference (**CFDs**), over-the-counter (**OTC**) foreign exchange

contracts and other similar OTC contracts (collectively, **OTC Contracts**) to investors resident in Canada (the **Client Prospectus Relief**) subject to the terms and conditions below; and

(b) the Canadian Filer Affiliates and their respective officers, directors and representatives be exempt from the prospectus requirement in respect of the distribution of OTC Contracts to the Canadian Filer pursuant to an Off-setting Transaction, as described below (the **Canadian Filer Prospectus Relief**).

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

(a) the Ontario Securities Commission is the principal regulator for this application (the **Principal Regulator**); 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 each province and territory of Canada, except Quebec and Alberta, with respect to the Client Prospectus Relief.

Interpretation

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

Representations

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

The Canadian Filer

1. The Canadian Filer is a corporation incorporated under the *Canada Business Corporations Act* with its registered corporate head office located in Toronto, Ontario.

2. On or about May 10, 2012, the Canadian Filer became registered as a dealer in the category of investment dealer in each of the provinces and territories of Canada, and as a derivatives dealer in Quebec. Further, on May 10, 2012, the Canadian Filer was approved as a dealer member of the Investment Industry Regulatory Organization of Canada (**IIROC**).

3. The Canadian Filer does not have any securities listed or quoted on an exchange or marketplace in any jurisdiction inside or outside of Canada.

4. The Canadian Filer is not, to the best of its knowledge, in default of any requirements of securities or derivatives legislation in Canada or IIROC Rules or IIROC Acceptable Practices (as defined below).

The GAIN Capital Group

5. The Canadian Filer is an indirect, wholly owned subsidiary of GAIN Capital Holdings, Inc. and part of the GAIN Capital Group of companies.

6. The Filers are all related companies within the GAIN Capital Group of companies. GAIN Capital Holdings, Inc. is the parent company of the Filers and is a publicly listed company with its common shares listed for trading on the New York Stock Exchange (**NYSE**) under the symbol "**GCAP**".

7. Operating under the global brand "Forex.com" the Canadian Filer Affiliates are each well-established leading providers of 24-hour online self-directed OTC trading services offering CFDs and spot forex contracts and servicing retail and institutional customers from more than 140 countries around the globe. The Filers seek to bring these services to Canada through the Canadian Filer.

8. GAIN Capital Group, LLC (**Forex.com US**), an indirect wholly owned subsidiary of GAIN Capital Holdings, Inc., is authorized and registered as a Retail Foreign Exchange Dealer with the United States National Futures Association (the **NFA**) and is registered as a Futures Commission Merchant with the United States Commodity Futures Trading Commission (the **CFTC**).

9. GAIN Capital – Forex.com UK Ltd. (**Forex.com UK**), an indirect wholly owned subsidiary of GAIN Capital Holdings, Inc., is authorized and regulated by the Financial Services Authority (the **FSA**) in the United Kingdom ("**U.K.**") as a BIPRU 730k firm. Forex.com UK is licensed in the U.K., among other things, to act as principal to its clients in the

products it offers and may deal with all categories of clients, including directly with retail clients. Furthermore, Forex.com UK is regulated on a consolidated basis in the U.K. by the FSA.

The Proposed Offerings

10. The Canadian Filer wishes to offer OTC Contracts to investors in each of the provinces and territories of Canada, except Quebec and Alberta, (collectively, the **Applicable Jurisdictions**) in accordance with the representations, terms and conditions described in this Decision. For the Interim Period (as defined below), the Canadian Filer is seeking the Client Prospectus Relief in connection with the proposed offering of OTC Contracts to investors in Ontario and intends to rely on this Decision and the *Passport System* described in MI 11-102 (the **Passport System**) to offer OTC Contracts in the other Applicable Jurisdictions.

11. In Quebec, the Filers have concurrently applied for an Order from the *Autorité des marchés financiers* (the **AMF**) to permit the Canadian Filer to offer OTC Contracts to both accredited and retail investors in Quebec pursuant to the provisions of the *Derivatives Act* (Québec) (the **QDA**). The AMF Order will, if granted, exempt the Canadian Filer from the qualifying requirement set forth in section 82 of the QDA relating to the creation or marketing of OTC Contracts offered to the public, subject to certain terms and conditions.

12. In Alberta, the Filers understand that staff of the Alberta Securities Commission (**ASC**) has advised other IIROC members that they have public interest concerns with a filer relying on the Passport System to passport a prospectus exemption order relating to OTC Contracts. Accordingly, the Filers intend to contact ASC staff directly in due course with respect to making a separate local application for relief in that jurisdiction.

IIROC Rules and Acceptable Practices

13. As a member of IIROC, the Canadian Filer is only permitted to enter into OTC Contracts pursuant to the rules and regulations of IIROC (the **IIROC Rules**).

14. In addition, IIROC has communicated to its members certain additional expectations as to acceptable business practices (**IIROC Acceptable Practices**) as articulated in IIROC's "*Regulatory Analysis of Contracts for Differences (CFDs)*" published by IIROC on June 6, 2007, as amended on September 12, 2007 (the **IIROC CFD Paper**), for any IIROC member proposing to offer OTC foreign exchange contracts or other types of CFDs to investors. The Canadian Filer has provided IIROC with an undertaking to comply with IIROC Acceptable Practices as established from time to time in offering OTC Contracts to investors. The Canadian Filer has not yet commenced offering OTC Contracts in Canada.

15. The Canadian Filer is required by IIROC to maintain a certain level of capital to address the business risks associated with its activities. The capital reporting required by IIROC (as per the calculation in the Joint Regulatory Financial Questionnaire (the **JRFQ**) and the Monthly Financial Reports to IIROC) is based predominantly on the generation of financial statements and calculations as to ensure capital adequacy. The Canadian Filer, as an IIROC member, is required to have a specified minimum capital which includes having any additional capital required with regards to margin requirements and other risks. This risk calculation is summarized as a risk adjusted capital calculation which is submitted in the Canadian Filer's JRFQ and required to be kept positive at all times.

Online Trading Platform

16. The Canadian Filer has established an execution-only division to offer OTC Contracts whereby clients can self-direct trades in OTC Contracts through an on-line trading platform (the **Trading Platform**).

17. Clients of the Canadian Filer can access the Trading Platform utilizing a proprietary order-entry system developed by Forex.com US and licensed to the Canadian Filer, or through Metatrader, a third-party order-entry system.

18. The Trading Platform is a key component in a comprehensive risk management strategy which will help the Canadian Filer's clients and the Canadian Filer to manage the risks associated with leveraged products. This risk management system has evolved over many years with the objective of meeting the mutual interests of all relevant parties (including, in particular, clients). These attributes and services are described in more detail below:

    (a) *Real-time account status and client reporting.* Clients are provided with a real-time view of their account status. This includes how tick-by-tick movements affect their account balances and required margins. Clients can view this information throughout the trading day by including it on their trading screen, and can also set up alerts that instruct the trading system to automatically send an email notifying them of key identified levels being hit in the market. Clients have the ability to monitor their account and the profit/loss of their positions in real time.

(b) *Fully automated risk management system.* Clients are instructed that they must have at the time of order entry, and must maintain at all times, the required margin against their position(s). The risk management functionality of the Trading Platform ensures that client positions are closed out when the client no longer maintains sufficient margin in their account to support the position, thereby preventing the client from being placed in a margin call situation or losing more than their stated risk capital or cumulative loss limit. This functionality also ensures that the Canadian Filer will not incur any credit risk vis-à-vis its customers in respect of OTC transactions.

(c) *Wide range of order types.* The Trading Platform also provides risk management tools such as stops, limits, and contingent orders. These tools are designed to help clients reduce the risk of loss.

(d) *Training programs and Practice Accounts.* Clients are provided with on-line user-friendly training programs and educational risk-free trading accounts. In addition, clients may contact Client Services via telephone, email or live chat with any questions they may have.

19. The Trading Platform will be similar to those developed for on-line brokerages in that the client trades without other communication with, or advice from, the dealer.

20. The Trading Platform is not a "marketplace" as defined in National Instrument 21-101 *Marketplace Operations* since a marketplace is any facility that brings together multiple buyers and sellers by matching orders in fungible contracts in a nondiscretionary manner. The Trading Platform does not bring together multiple buyers and sellers, rather it offers clients direct access to real-time currency rates and price quotes for the OTC Contracts.

21. The OTC Contracts are not transferable or fungible with other contracts or financial instruments.

22. The Canadian Filer will be the counterparty to trades by its clients in OTC Contracts (**OTC Transactions**); it will not act as an intermediary, broker or trustee in respect to the OTC Transactions. The Canadian Filer does not manage any discretionary accounts, nor does it provide any trading advice or recommendations regarding OTC Transactions.

23. The Canadian Filer manages the risk in its client positions by simultaneously placing an identical off-setting OTC trade on a back-to-back basis (an **Off-setting Transaction**) with a Canadian Filer Affiliate. In general, Forex.com UK will act as the counterparty to the Canadian Filer for CFDs and Forex.com US will act as the counterparty to the Canadian Filer for other OTC contracts with respect to Off-setting Transactions.

24. The Canadian Filer does not have an inherent conflict of interest with its clients since it does not profit on a position if the client loses on that position, and vice versa. Further, the Canadian Filer does not charge a trade commission; rather it is compensated by the "spread" between the bid and ask prices it offers. Any additional charges shall be fully disclosed to the client prior to trading.

25. Each of the Canadian Filer Affiliates is an "acceptable counterparty" or a "regulated entity" (as those terms are defined in the JRFQ) (the **Acceptable/Regulated Counterparty**). Each of the Canadian Filer Affiliates intends to rely on the exemption from dealer registration requirements set out in section 8.5 of NI 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) with respect to the Off-setting Transactions with the Canadian Filer.

26. In order to facilitate the distribution and offering of OTC Contracts to clients of the Canadian Filer in the manner described above, the Canadian Filer seek the Client Prospectus Relief to offering OTC Contracts to its clients without a prospectus, and the Canadian Filer Affiliates seek the Canadian Filer Prospectus Relief to offer the corresponding Off-setting Transactions without a prospectus.

27. The ability to lever an investment is one of the principal features of OTC Contracts. Leverage allows clients to magnify investment returns (or losses) by reducing the initial capital outlay required to achieve the same market exposure that would be obtained by investing directly in the underlying currency or instrument.

28. IIROC Rules and IIROC Acceptable Practices set out detailed requirements and expectations relating to leverage and margin for offerings of CFDs and other OTC Contracts. The degree of leverage may be amended in accordance with IIROC Rules and IIROC Acceptable Practices as may be established from time to time.

29. Pursuant to section 13.12 *Restriction on lending to clients* of NI 31-103, only those firms that are registered as investment dealers (a condition of which is to be a member of IIROC) may lend money, extend credit or provide margin to a client.

Structure of CFDs

30. A CFD is a derivative product that allows clients to obtain economic exposure to the price movement of an underlying instrument, such as a share, index, market sector, currency pair, treasury or commodity, without the need for ownership and physical settlement of the underlying instrument. Unlike certain OTC derivatives, such as forward contracts, CFDs do not require or oblige either the principal counterparty (being the Canadian Filer for the purposes of the Client Prospectus Relief) nor any agent (also being the Canadian Filer for the purposes of the Client Prospectus Relief) to deliver the underlying instrument.

31. The CFDs and OTC Contracts to be offered by the Canadian Filer will not confer the right or obligation to acquire or deliver the underlying security or instrument itself, and will not confer any other rights of shareholders of the underlying security or instrument, such as voting rights. Rather, a CFD is a derivative instrument which is represented by an agreement between a counterparty and a client to exchange the difference between the opening price of a CFD position and the price of the CFD at the closing of the position. The value of the CFD is generally reflective of the movement in prices at which the underlying instrument is traded at the time of opening and closing the position in the CFD.

32. CFDs allow clients to take a long or short position on an underlying instrument, but unlike futures contracts they have no fixed expiry date or standard contract size or an obligation for physical delivery of the underlying instrument.

33. CFDs allow clients to obtain exposure to markets and instruments that may not be available directly, or may not be available in a cost-effective manner.

OTC Contracts Distributed in the Applicable Jurisdictions

34. Certain types of OTC Contracts may be considered to be "securities" under the securities legislation of the Applicable Jurisdictions.

35. Investors wishing to enter into an OTC Contract with the Canadian Filer must open an account with the Canadian Filer.

36. Prior to a client's first trade in an OTC Contract and as part of the account-opening process, the Canadian Filer will provide the client with a separate risk disclosure document that clearly explains, in plain language, the transaction and the risks associated with the transaction (the **risk disclosure document**). The risk disclosure document includes the required risk disclosure set forth in Schedule A to the Regulations to the QDA and leverage risk disclosure required under IIROC Rules. The risk disclosure document contains disclosure that is substantially similar to the risk disclosure statement required for recognized options in OSC Rule 91-502 *Trades in Recognized Options* (which provides both registration and prospectus exemptions) (**OSC Rule 91-502**) and the regime for OTC derivatives contemplated by OSC SN 91-702 (as defined below) and proposed OSC Rule 91-504 OTC Derivatives (which was not adopted) (**Proposed Rule 91-504**). The Canadian Filer will ensure that, prior to a client's first trade in an OTC Contract, a complete copy of the risk disclosure document provided to that client has been delivered, or has previously been delivered, to the Principal Regulator.

37. Prior to the client's first OTC transaction and as part of the account opening process, the Canadian Filer will obtain a written or electronic acknowledgement from the client confirming that the client has received, read and understood the risk disclosure document. Such acknowledgement will be separate and prominent from other acknowledgements provided by the client as part of the account opening process.

38. As is customary in the industry, and due to the fact that this information is subject to factors beyond the control of the Canadian Filer (such as changes in IIROC Rules), information such as the underlying instrument listing and associated margin rates would not be disclosed in the risk disclosure document but will be available to the client at the time of account opening on both the Canadian Filer's website and the Trading Platform.

Satisfaction of the Registration Requirement

39. The role of the Canadian Filer as it relates to the offering of OTC Contracts (other than it being the principal under the OTC Contracts) will be limited to acting as an execution-only dealer. In this role, the Canadian Filer will, among other things, be responsible for approving all marketing, for holding all client funds and for client approval (including the review of know-your-client (KYC) due diligence and account opening suitability assessments).

40. IIROC Rules exempt member firms that provide execution-only services such as discount brokerage from the obligation to determine whether each trade is suitable for the client. However, IIROC has exercised its discretion to impose additional requirements on members proposing to trade in CFDs and OTC Contracts (namely the **IIROC Acceptable Practices** described in paragraph 14) which requires, among other things, that:

(a) applicable risk disclosure documents and client suitability waivers provided be in a form acceptable to IIROC;

(b) the firm's policies and procedures, amongst other things, require the Canadian Filer to assess whether trading in OTC Contracts is appropriate for a client before an account is approved to be opened. This account opening suitability process includes an assessment of the client's investment knowledge and trading experience; client identification, screening applicants and customers against lists of prohibited/blocked persons, and detecting and reporting suspicious trading and potential terrorist financing and money laundering activities to applicable enforcement authorities;

(c) the Canadian Filer's registered dealing representatives, as well as their registered supervisors who oversee the KYC and initial product suitability analysis will meet, or be exempt from, the proficiency requirements for futures trading and shall maintain appropriate IIROC registration; and

(d) cumulative loss limits for each client's account will be established (this is a measure normally used by IIROC in connection with futures trading accounts).

41. The OTC Contracts offered in Canada will be offered in compliance with applicable IIROC Rules and other IIROC Acceptable Practices.

42. IIROC limits the underlying instruments in respect which a member firm may offer OTC Contracts since only certain securities are eligible for reduced margin rates. For example, underlying equity securities must be listed or quoted on certain "recognized exchanges" (as that term is defined in IIROC Rules) such as the Toronto Stock Exchange or the New York Stock Exchange. The purpose of these limits is to ensure that OTC Contracts offered in Canada will only be available in respect of underlying instruments that are traded in well-regulated markets, in significant enough volumes and with adequate publicly available information, so that clients can form a sufficient understanding of the exposure represented by a given OTC Contract.

43. IIROC Rules prohibit the margining of OTC Contracts where the underlying instrument is a synthetic product (single U.S. sector or "mini-indices"). For example, Sector CFDs (i.e., basket of equities for the financial institutions industry) may be offered to non-Canadian clients; however, this is not permissible under IIROC Rules.

44. IIROC members seeking to trade OTC Contracts are generally precluded, by virtue of the nature of the contracts, from distributing CFDs that confer the right or obligation to acquire or deliver the underlying security or instrument itself (convertible CFDs), or that confer any other rights of shareholders of the underlying security or instrument, such as voting rights.

45. The Requested Relief, if granted, would substantially harmonize the position of the regulators in the Applicable Jurisdictions (together, the **Commissions**) on the offering of OTC Contracts to investors in the Applicable Jurisdictions with how those products are offered to investors in Quebec under the QDA. The QDA provides a legislative framework to govern derivatives activities within the province. Among other things, the QDA requires such products to be offered to investors through an IIROC member and the distribution of a standardized risk disclosure document rather than a prospectus in order to distribute such contracts to investors resident in Quebec.

46. The Requested Relief, if granted, would be consistent with the guidelines articulated by Staff of the Principal Regulator in OSC Staff Notice 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors* (**OSC SN 91-702**). OSC SN 91-702 provides guidance with regards to the distributions of CFDs, forex contracts and similar OTC derivative products to investors in the Jurisdiction.

47. The Principal Regulator has previously recognized that the prospectus requirement may not be well suited for the distribution of certain derivative products to investors in the Jurisdiction, and that alternative requirements, including requirements based on clear and plain language risk disclosure, may be better suited for certain derivatives.

48. In Ontario, both OSC Rule 91-502 and OSC Rule 91-503 *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario* (**OSC Rule 91-503**) provide for a prospectus exemption for the trading of derivative products to clients. The Requested Relief is consistent with the principles and requirements of OSC Rule 91-502, OSC Rule 91-503 and Proposed Rule 91-504.

49. The Filers submit that the Requested Relief, if granted, would harmonize the Principal Regulator's position on the offering of OTC Contracts with certain other foreign jurisdictions that have concluded that a clear, plain language risk disclosure document is appropriate for retail clients seeking to trade in foreign exchange contracts.

50. The Filers are of the view that requiring compliance with the prospectus requirement in order to enter into OTC Contracts with retail clients would not be appropriate since the disclosure of a great deal of the information required

under a prospectus and under the reporting issuer regime is not material to a client seeking to enter into an OTC Contract. The information to be given to such a client should principally focus on enhancing the client's appreciation of product risk including counterparty risk. In addition, most OTC Contracts are of short duration (positions are generally opened and closed on the same day and are in any event marked to market and cash settled daily).

51. The Canadian Filer is regulated by IIROC, which has a robust compliance regime including specific requirements to address market, capital and operational risks.

52. The Canadian Filer submits that the regulatory regimes developed by the AMF and IIROC for OTC Contracts adequately address issues relating to the potential risk to the clients of the Canadian Filer acting as counterparty. In view of these regulatory regimes, investors would receive little or no additional benefit from requiring the Canadian Filer to also comply with the prospectus requirement.

53. The Requested Relief in respect of each Applicable Jurisdiction is conditional on the Canadian Filer being registered as an investment dealer with the Commission in such Applicable Jurisdiction and maintaining its membership with IIROC and that all OTC transactions be conducted pursuant to IIROC Rules and in accordance with IIROC Acceptable Practices.

Non-Resident Undertaking

54. The Canadian Filer has been approved by IIROC specifically as a non-resident dealer member because its designated head office and principal business location for regulatory purposes is situated in Bedminster, New Jersey.

55. The Canadian Filer complies with all IIROC requirements for non-resident dealer members as set out in IIROC's paper, Regulatory Analysis of Non-Resident IDA Members, dated November 10, 2005, except, with IIROC's consent, Part 2, paragraph (g), which requires a non-resident dealer member to enter into an introducing and carrying broker arrangement (**IB/CB Arrangement**) with a resident dealer member of IIROC in accordance with IIROC Rule 35.

56. In lieu of having to enter into an IB/CB Arrangement, the Canadian Filer has provided IIROC with a non-resident undertaking (the **Non-Resident Undertaking**) which terms include, among other things, its agreement to:

    a. maintain custody of all customer monies in Canada with a Canadian financial institution that is an Acceptable Institution (as defined by IIROC) and such customer monies will be held in trust for the customers separate and apart from its own property;

    b. provide each customer with a copy in writing of its Non-Resident Disclosure (as approved by IIROC);

    c. provide each customer with the names and addresses of its agents for service of process in each of the provinces and territories of Canada;

    d. provide customers with the choice of law with respect to all contracts for securities trading and provide a waiver of its right to challenge the convenience of the forum chosen by the customer in any action brought against it;

    e. pay all compliance costs associated with the travel and accommodations of IIROC staff to perform a compliance review or investigation outside of Canada; and

    f. provide a facility within Ontario, through its Canadian-resident director, to make its books and records, including electronic records, readily accessible and to produce physical records for IIROC within a reasonable time if requested.

57. The Canadian Filer has determined that it complies with all requirements under NI 31-103 relating to non-resident registrants, including subsections 14.5 and 14.7 of NI 31-103, since all client assets (i.e., cash) will be held by the Canadian Filer, a registered dealer that is a member of an SRO and a member of CIPF and since the Canadian Filer will hold client assets in Canada separate and apart from its own property, in trust for clients and, in the case of cash, in a designated trust account at a Canadian financial institution or Schedule III bank.

Decision

The Principal Regulator is satisfied that the test set out in the Legislation to make the Decision is met.

The Decision of the Principal Regulator is that the Client Prospectus Relief and the Canadian Filer Prospectus Relief is granted provided that:

(a) all OTC Contracts traded with residents in the Applicable Jurisdictions shall be executed through the Canadian Filer;

(b) with respect to residents of an Applicable Jurisdiction, the Canadian Filer remains registered as a dealer in the category of investment dealer with the Principal Regulator and the Commission in such Applicable Jurisdiction and a dealer member of IIROC;

(c) all transactions in OTC Contracts with clients resident in the Applicable Jurisdictions shall be conducted pursuant to IIROC Rules imposed on members seeking to trade in OTC Contracts and in accordance with IIROC Acceptable Practices, as amended from time to time, and in accordance with the Non-Resident Undertaking;

(d) all transactions in OTC Contracts with clients resident in the Applicable Jurisdictions be conducted pursuant to the rules and regulations of the QDA and the AMF, as amended from time to time, unless and to the extent there is a conflict between i) the rules and regulations of the QDA and the AMF, and ii) the requirements of the securities laws of the Applicable Jurisdictions, the IIROC Rules and IIROC Acceptable Practices, in which case the latter shall prevail;

(e) prior to a client first entering into a transaction in an OTC Contract, the Canadian Filer has provided to the client the risk disclosure document described in paragraph 36 and has delivered, or has previously delivered, a copy of the risk disclosure document provided to that client to the Principal Regulator;

(f) prior to the client's first transaction in an OTC Contract and as part of the account opening process, the Canadian Filer has obtained a written or electronic acknowledgement from the client, as described in paragraph 37, confirming that the client has received, read and understood the risk disclosure document;

(g) the Canadian Filer has furnished to the Principal Regulator the name and principal occupation of its officers or directors, together with either the personal information form and authorization of indirect collection, use and disclosure of personal information provided for in National Instrument 41-101 *General Prospectus Requirements* or the registration information form for an individual provided for in Form 33-109F4 of National Instrument 33-109 *Registration Information Requirements* completed by any officer or director;

(h) the Canadian Filer shall promptly inform the Principal Regulator in writing of any material change affecting the Canadian Filer or a Canadian Filer Affiliate, being any change in the business, activities, operations or financial results or condition of the Canadian Filer or Canadian Filer Affiliate that may reasonably be perceived by a counterparty to a derivative to be material;

(i) the Canadian Filer shall promptly inform the Principal Regulator in writing if a self-regulatory organization or any other regulatory authority or organization initiates proceedings or renders a judgment related to disciplinary matters against the Canadian Filer or a Canadian Filer Affiliate concerning the conduct of activities with respect to OTC Contracts;

(j) within 90 days following the end of its financial year, the Canadian Filer shall submit to IIROC, and to the Principal Regulator upon request, the audited annual financial statements of the Canadian Filer; and

(k) the Requested Relief shall immediately expire upon the earliest of:

  (i) four years from the date that this Decision is issued;

  (ii) in respect of a subject Applicable Jurisdiction or Quebec, the issuance of an order or decision by a court, the Commission in such Applicable Jurisdiction, the AMF (in respect of Quebec) or other similar regulatory body that suspends or terminates the ability of the Canadian Filer to offer CFDs to clients in such Applicable Jurisdiction or Quebec; and

  (iii) with respect to an Applicable Jurisdiction, the coming into force of legislation or a rule by its Commission regarding the distribution of OTC derivatives to investors in such Applicable Jurisdiction (the **Interim Period**).

"Margot C. Howard"
Commissioner
Ontario Securities Commission

"Vern Krishna"
Commissioner
Ontario Securities Commission

2.1.4 March Networks Corporation – s. 1(10)

Headnote

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

Ontario Statutes

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

May 31, 2012

Heenan Blaikie LLP
Manulife Place
55 Metcalfe Street, suite 300
Ottawa, Ontario K1P 6L5

Attention: Paul Franco

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

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

As the Applicant has represented to the Decision Makers that:

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

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

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

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

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

"Shannon O'Hearn"
Manager, Corporate Finance
Ontario Securities Commission

2.1.5 Sea Dragon Energy Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption to provide more recent Form 51-101F1 information in an information circular. Filer required to include Form 51-101F1 information as at December 31, 2010. Filer granted relief to provide Form 51-101F1 information dated as at September 30, 2011 instead.

Applicable Legislative Provisions

NI 41-101 General Prospectus Requirements.
NI 51-102 Continuous Disclosure Obligations.

March 28, 2012

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

AND

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

AND

IN THE MATTER OF
SEA DRAGON ENERGY INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation)** that, pursuant to Section 13.1 of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**), the Filer be exempt, subject to certain conditions, from the requirement to provide under Item 14.2 of Form 51-102F5 *Information Circular* (**Form 51-102F5**), certain reserves data and other oil and gas disclosure relating to National Petroleum Company Egypt Limited (**NPC**) as required by paragraph 5.5(1)(a) of Form 41-101F1 *Information Required in a Prospectus* (**Form 41-101F1**) in the information circular to be sent to certain securityholders of the Filer (the **Information Circular**) in connection with an Acquisition (as defined herein) (the **Exemption** Sought).

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

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

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

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

Interpretation

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

Representations

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

The Filer and NPC

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act*. The Filer's head office is located in Calgary, Alberta.

2. The Filer is a reporting issuer or its equivalent in all of the provinces of Canada other than Québec (the **Reporting Jurisdictions**), and is not, to its knowledge, in default of its obligations pursuant to the securities legislation of the Reporting Jurisdictions.

3. NPC is a British Virgin Islands business company incorporated under the *BVI Business Companies Act, 2004* and is a wholly owned subsidiary of Golden Crescent Investments Ltd., a British Virgin Islands business company (**Golden Crescent**).

The Acquisition

4. On March 19, 2012, the Filer entered into an amended and restated share purchase agreement (the **Acquisition Agreement**) with Golden Crescent providing for the acquisition by the Filer of all of the issued and outstanding shares in the capital of NPC from Golden Crescent (the **Acquisition**). Upon completion of the Acquisition, NPC will become a wholly-owned subsidiary of the Filer, directly or indirectly.

5. Subject to any working capital adjustments made in accordance with the terms of the Acquisition Agreement, the consideration payable by the Filer will include, among other things, the issuance to Golden Crescent of: i) 437,500,000 common shares in the capital of the Filer at a deemed price of US$0.20 per share, and (ii) 60,000 convertible preferred shares at an issue price of US$1,000.00

per preferred share (collectively, the **Payment Shares**).

6. Completion of the Acquisition is subject to, among other things, the approval by the Filer's shareholders (the **Shareholders**) of a resolution approving certain matters including the Acquisition and the issuance of the Payment Shares to Golden Crescent in connection with the Acquisition (the **Share Issuance Resolution**). While the Acquisition itself does not require the approval of the Shareholders under applicable securities and corporate legislation, the policies of the TSX Venture Exchange (the **TSXV**) provide that shareholder approval is required for any acquisition which results in the creation of a new control person. Upon completion of the Acquisition and a private placement financing to be completed prior to the closing of the Acquisition, it is anticipated that Golden Crescent will hold more than 20% of the Filer's issued and outstanding common shares, and accordingly would be considered a "control person" under the policies of the TSXV. In addition, the Shareholders will be asked to vote upon a special resolution approving the consolidation of the Filer's common shares on a 10 for 1 basis (the **Share Consolidation Resolution**).

The Information Circular

7. The Filer intends to present the Share Issuance Resolution and the Share Consolidation Resolution to the Shareholders at a special meeting of shareholders on April 30, 2012 (the **Meeting**). Pursuant to Item 14.2 of Form 51-102F5, if, among other things, action is to be taken in respect of a significant acquisition, the disclosure required in the Information Circular in respect of the Meeting "must be the disclosure (including financial statements) prescribed under securities legislation and described in the form of prospectus that the entity would be eligible to use immediately prior to sending and filing the information circular …". With respect to NPC the disclosure is required to be in accordance with National Instrument 41-101 *General Prospectus Requirements*, and more specifically, under Form 41-101F1.

8. Item 5.5 of Form 41-101F1 requires, among other things, disclosure in accordance with Form 51-101F1 *Statement of Reserves Data and Other Oil and Gas Information* (the **Form 51-101F1 Information**). The Form 51-101F1 Information is required to be disclosed as at the end of the most recent financial year for which the Information Circular includes an audited balance sheet of the issuer. The Filer is required to include in the Information Circular an audited balance sheet as at December 31, 2010. The Filer is not yet required to include in the Information Circular an audited balance sheet as at December 31, 2011.

9. The Filer proposes to include, among its other required disclosure, the Form 51-101F1 Information as at September 30, 2011 rather than December 31, 2010 (the **Proposed Reserves Disclosure**). The Proposed Reserves Disclosure will give the Shareholders more recent information than if the Form 51-101F1 Information were dated as at December 31, 2010.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that the Filer includes the Proposed Reserves Disclosure in the Information Circular.

"Blaine Young"
Associate Director, Corporate Finance

2.1.6 MFC Industrial Ltd.

Multilateral Instrument 62-104, Part 6 Issuer Bids – Exemption from the formal Issuer Bid requirements – Issuer Bid – General – An issuer requires an exemption from all issuer bid requirements in order to purchase its common shares under an odd-lot purchase program – The issuer will only offer the program to shareholders holding less than 100 common shares; all odd-lot holders will be given the same information and will be treated identically; if successful, the repurchase program will reduce the administrative burden on the issuer; the repurchase price will be determined by a formula based on the market price for the shares.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am.
National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions.

March 20, 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
MFC INDUSTRIAL LTD.
(the Filer)

DECISION

Background

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

(a) the requirements in the Legislation relating to issuer bids (the issuer bid requirements) do not apply to the Filer's offer to purchase common shares of the Filer (Common Shares) from shareholders of the Company (Shareholders) who own fewer than 100 Common Shares (the Odd-Lot Holders) of the Filer pursuant to an odd-lot repurchase program (Issuer Bid Relief); and

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

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

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

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

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

Interpretation

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

Representations

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

1. the Filer exists under the laws of British Columbia and has a head office located in Vancouver, British Columbia;

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

3. the Filer's Common Shares are listed on the New York Stock Exchange (the NYSE) under the symbol “MIL”; the Filer’s Common Shares are not listed on any exchange in Canada;

4. the Filer’s authorized capital consists of an unlimited number of Common Shares, class A common shares and class A preference shares, issuable in series; on February 7, 2012, the Filer had 62,561,421 Common Shares issued and outstanding;

5. on January 13, 2012, registered and unregistered holders of Common Shares resident in Canada held approximately 1,390,096 Common Shares, representing approximately 2.22% of the Filer’s total issued and outstanding Common Shares;

6. on January 13, 2012, the Filer had approximately 5,699 registered and unregistered Odd-Lot Holders holding an aggregate of 162,247 Common Shares representing approximate 0.3% of the Filer’s total issued and outstanding Common Shares;

7. the Filer intends to offer to purchase and cancel all of the Common Shares held by the Odd-Lot Holders, including those holding such Common Shares in registered and unregistered form (the Program); the Program would be conducted through the Filer’s registrar and transfer agent; the Program would be commenced by the Filer through issuing a press release, which would include the relevant details of the Program;

8. after announcing the Program, the Filer would send to both registered and unregistered Odd-Lot Holders an information package consisting of a letter providing details of the Program and a letter of transmittal/response card to be completed by the Odd-Lot Holders that wish to tender their Common Shares to the Filer under the Program;

9. the Filer would offer the Program for a six week period, during which period both registered and unregistered Odd-Lot Holders would be able to notify the Filer through its transfer agent if they wish to participate in the Program; the Filer may extend the Program for an additional six week period, on the same terms, if the board of directors of the Filer determines that to do so would be in the best interests of the Filer;

10. Odd-Lot Holders resident in Canada will be treated identically to other Odd-Lot Holders;

11. the Program would be conducted in accordance with U.S. securities laws and the policies of the NYSE; the Filer has advised the NYSE of its intention of conducting the Program and the terms of the Program and the NYSE has not objected to the Program;

12. the Filer believes the Program would be beneficial to the Odd-Lot Holders as it is a voluntary program allowing Shareholders holding less than 100 Common Shares to dispose of such shares without incurring prohibitive brokerage and other fees;

13. the Filer believes that, if the Program is successful, both the Company and all of its securityholders would benefit from the potential cost-savings respecting annual mailings and other securityholder communications as a result of a reduced number of Shareholders;

14. under the Program, the Filer would offer Odd-Lot Holders an amount equal to the weighted average closing price of the Common Shares on the NYSE for the week prior to the week of receipt of Common Shares by the Filer under the Program; as such, no premium will be paid to Odd-Lot Holders who tender their Common Shares pursuant to the Program;

15. under Rule 13e-4(h)(5) of the *United States Securities Exchange Act of 1934*, the Program would be exempt from the “tender offer” rules in the United States; there is no similar applicable exemption from the formal issuer bid requirement in Canada; and

16. as the Common Shares are traded in the United States, the Company cannot obtain the information necessary to ascertain whether it can rely on the de minimus exemption from the formal issuer bid requirements contained in the Legislation.

Decision

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

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

(a) the Issuer Bid Relief is granted; and

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

(i) the date on which the Filer publicly files a press release announcing the details of the Program;

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

(iii) the date that is 60 days from the date of this decision.

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

2.2 Orders

2.2.1 Shallow Oil & Gas 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
SHALLOW OIL & GAS INC., ERIC O'BRIEN,
ABEL DA SILVA, ABRAHAM HERBERT GROSSMAN
also known as ALLEN GROSSMAN and KEVIN WASH

ORDER
(Section 127)

WHEREAS on January 16, 2008, the Ontario Securities Commission ("the Commission") issued a Temporary Order pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that: (i) all trading in securities by Shallow Oil & Gas Inc. ("Shallow Oil") shall cease and that all trading in Shallow Oil securities shall cease; and (ii) Eric O'Brien ("O'Brien"), Abel Da Silva ("Da Silva"), Gurdip Singh Gahunia, also known as Michael Gahunia ("Gahunia"), and Abraham Herbert Grossman, also known as Allen Grossman ("Grossman"), cease trading in all securities (the "Temporary Order");

AND WHEREAS on January 16, 2008, the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

AND WHEREAS on January 18, 2008, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, such hearing to be held on January 30, 2008 commencing at 2:00 p.m.;

AND WHEREAS hearings to extend the Temporary Order were held on January 30 and 31, and March 31, 2008. The Temporary Order was extended by the Commission on each date;

AND WHEREAS on June 11, 2008, the Commission issued a Notice of Hearing for June 18, 2008 to consider, among other things:

(a) the issuance of a temporary cease trade order against Marco Diadamo ("Diadamo"), Gord McQuarrie ("McQuarrie"), Kevin Wash ("Wash"), and William Mankofsky ("Mankofsky"); and,

(b) the extension of the original Temporary Order dated January 16, 2008;

AND WHEREAS on June 18, 2008, a hearing was held commencing at 10:00 a.m. and Staff and Grossman appeared, presented evidence and made submissions, and Diadamo, McQuarrie, and Mankofsky appeared before the panel of the Commission and made submissions as to the issuance of a temporary cease trade order against them;

AND WHEREAS on June 18, 2008, the panel of the Commission considered the evidence and submissions of Staff and Grossman, and the submissions of Diadamo, McQuarrie, and Mankofsky;

AND WHEREAS on June 19, 2008, a panel of the Commission ordered, pursuant to subsection 127(8) of the Act, that the Temporary Order as against Shallow Oil, O'Brien, Da Silva, and Grossman be extended until the conclusion of the hearing on the merits in this matter;

AND WHEREAS on June 19, 2008, a panel of the Commission ordered, pursuant to subsection 127(8) of the Act, that the Temporary Order as against Gahunia be extended until November 26, 2008;

AND WHEREAS on June 19, 2008, a panel of the Commission ordered, pursuant to subsection 127(5) of the Act, that Diadamo, McQuarrie, Wash, and Mankofsky cease trading in any securities (the "Second Temporary Order"), with the following exception:

Diadamo shall be permitted to trade in securities that are listed on a public exchange recognized by the Commission and only in his own existing trading accounts. Furthermore, any such trading by Diadamo shall be for his sole benefit and only through a dealer registered with the Commission.

AND WHEREAS on June 19, 2008, a panel of the Commission ordered, pursuant to subsection 127(8) of the Act, that the Second Temporary Order be extended until November 26, 2008 and that the hearing with respect to the Second Temporary Order in this matter be adjourned to November 25, 2008, at 2:30 p.m.;

AND WHEREAS on November 25, 2008, a hearing was held and the panel of the Commission ordered, pursuant to subsection 127(8) of the Act, that:

- the Temporary Order is extended as against Gahunia until the conclusion of the hearing on the merits in this matter and the Second Temporary Order is extended as against Diadamo, McQuarrie, Wash, and Mankofsky until the conclusion of the hearing on the merits in this matter; and,

- the hearing with respect to the Notice of Hearing dated June 11, 2008 and Staff's Statement of Allegations dated June 10, 2008 is adjourned to June 4, 2009 at 10:00 a.m. for a status hearing.

AND WHEREAS on May 12, 2009, the Commission approved a settlement agreement between McQuarrie and Staff of the Commission, and on July 24, 2009, the Commission approved a settlement agreement between Mankofsky and Staff of the Commission;

AND WHEREAS on June 4th and September 10th, 2009, and January 12th, 2010 status hearings were held before the Commission and, on each date, a panel of the Commission ordered that the hearing with respect to the Notice of Hearing dated June 11, 2008 and Staff's Statement of Allegations dated June 10, 2008 be adjourned;

AND WHEREAS on June 28th, 2010, a status hearing was held commencing at 10:00 a.m. and Staff appeared before the panel of the Commission and provided the panel of the Commission with a status update with respect to this matter;

AND WHEREAS on June 28th, 2010, none of the respondents attended and a panel of the Commission considered the submissions of Staff;

AND WHEREAS on June 28th, 2010, the Commission ordered that the hearing with respect to the Notice of Hearing dated June 11, 2008 and Staff's Statement of Allegations dated June 10, 2008 be adjourned to February 11, 2011 at 10:00 a.m. for the purpose of a status hearing;

AND WHEREAS on February 11, 2011, a status hearing was held and Staff appeared before the panel of the Commission and provided the panel of the Commission with a status update with respect to this matter;

AND WHEREAS on February 11, 2011, none of the respondents attended and a panel of the Commission considered the submissions of Staff;

AND WHEREAS on February 11, 2011, the Commission ordered that the hearing with respect to the Notice of Hearing dated June 11, 2008 and Staff's Statement of Allegations dated June 10, 2008 be adjourned to May 24, 2011 at 2:30 p.m., for the purpose of a status hearing and to consider setting dates for the hearing on the merits in this matter;

AND WHEREAS on May 24, 2011, a status hearing was held, and Staff and Diadamo attended and no other respondents attended, although properly served with notice of the hearing;

AND WHEREAS on May 24, 2011, Staff appeared before the panel of the Commission and provided the panel of the Commission with a status update with respect to this matter;

AND WHEREAS on May 24, 2011, scheduling of the hearing on the merits was discussed, and Diadamo consented to setting the dates for the hearing on the merits;

AND WHEREAS on May 24, 2011, it was ordered that the hearing on the merits shall commence on September 6, 2011, and shall continue on September 7, 9, and 12, 2011;

AND WHEREAS on May 24, 2011, it was further ordered that the parties attend before the Commission on July 26, 2011 at 2:00 p.m. for a pre-hearing conference;

AND WHEREAS on July 26, 2011, Staff appeared before the Commission for the pre-hearing conference, and no one appeared on behalf of the Respondents;

AND WHEREAS the Commission was satisfied that all parties had been properly served with notice of the hearing;

AND WHEREAS on July 26, 2011, it was ordered that the hearing be adjourned to August 16, 2011 at 3:30 p.m. for the purpose of continuing the pre-hearing conference;

AND WHEREAS on August 16, 2011, Staff appeared before the Commission for the pre-hearing conference, and no one appeared on behalf of the Respondents, although properly served with notice of the hearing;

AND WHEREAS on August 16, 2011, Staff informed the panel that Da Silva and O'Brien will be sentenced on October 19, 2011 in the related section 122 proceedings before the Ontario Court of Justice, and Staff requested that the hearing on the merits be adjourned until after the sentencing decision is rendered in the section 122 proceedings;

AND WHEREAS on August 16, 2011, it was ordered that the dates set down for the hearing on the merits be vacated;

AND WHEREAS on August 16, 2011, it was further ordered that the hearing be adjourned to November 4, 2011 at 10:00 a.m. for the purpose of continuing the pre-hearing conference;

AND WHEREAS on November 4, 2011, Staff appeared before the Commission for the pre-hearing conference, and no one appeared on behalf of the Respondents, although properly served with notice of the hearing;

AND WHEREAS Staff informed the panel that the sentencing hearing for Shallow Oil, Da Silva and O'Brien in the related section 122 proceedings before the Ontario Court of Justice was adjourned to November 15, 2011;

AND WHEREAS Staff requested that the pre-hearing conference be adjourned to December 15, 2011, pending the sentencing decision for Shallow Oil, Da Silva and O'Brien to be rendered in the section 122 proceedings;

AND WHEREAS on November 4, 2011, it was ordered that the hearing be adjourned to December 15, 2011 at 9:30 a.m. for the purpose of continuing the pre-hearing conference;

AND WHEREAS on December 15, 2011, it was ordered that the hearing on the merits shall commence on June 18, 2012, and shall continue on June 20, 21, and 22, 2012, or such further or other dates as may be agreed to by the parties and fixed by the Office of the Secretary;

AND WHEREAS on December 15, 2011, it was further ordered that the hearing be adjourned to March 27, 2012 at 9:00 a.m. for the purpose of continuing the pre-hearing conference;

AND WHEREAS on March 27, 2012, Staff appeared before the Commission for the pre-hearing conference, and no one appeared on behalf of the Respondents;

AND WHEREAS on March 27, 2012, it was ordered that the hearing be adjourned to April 26, 2012 at 10:00 a.m. for the purpose of continuing the pre-hearing conference;

AND WHEREAS on April 26, 2012, Staff appeared before the Commission for the pre-hearing conference, and no one appeared on behalf of the Respondents, although properly served with notice of the hearing;

AND WHEREAS on April 26, 2012, it was ordered that the hearing be adjourned to May 29, 2012 at 9:30 a.m. for the purposes of continuing the pre-hearing conference;

AND WHEREAS an Amended Notice of Hearing was issued on May 14, 2012 accompanied by an Amended Statement of Allegations filed by Staff with respect to Shallow Oil, O'Brien, Da Silva, Grossman and Wash;

AND WHEREAS Staff served Shallow Oil, O'Brien, Grossman and Da Silva with notice of the May 29, 2012 pre-hearing conference and the Commission is satisfied that Staff made sufficient attempts to serve Wash with notice of the pre-hearing conference, although Staff do not have the current address or contact information for Wash;

AND WHEREAS on May 29, 2012, Staff appeared before the Commission for the pre-hearing conference, and no one appeared on behalf of the Respondents;

AND WHEREAS on May 29, 2012, Staff indicated that they would be requesting, pursuant to Rule 11 of the Commission's *Rules of Procedure* (2010), 33 O.S.C.B. 8017, that all or substantially all of the hearing on the merits be conducted as a written hearing;

AND WHEREAS, pursuant to subsection 6(4) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "SPPA"), the hearing on the merits shall not be held as a written hearing if any party satisfies the Commission that there is good reason for not holding a written hearing;

AND WHEREAS if any party wishes to object to the hearing on the merits being held as a written hearing, such party may do so in writing prior to the commencement of the hearing on the merits on June 18, 2012, or may do so by way of oral submissions at the commencement of the hearing on the merits on June 18, 2012;

AND WHEREAS, pursuant to subsection 6(4) of the SPPA, if any party neither objects to the hearing on the merits being held as a written hearing nor participates in the hearing, the hearing may proceed without the participation of such party and the party will not be entitled to further notice of the proceeding;

IT IS ORDERED that the matter is adjourned to the hearing on the merits, which shall commence on June 18, 2012 at 10:00 a.m., at which time the panel for the hearing on the merits may consider Staff's request that the hearing on the merits be conducted as a written hearing.

DATED at Toronto this 29th day of May, 2012.

"Paulette L. Kennedy"

2.2.2 Bunting & Waddington Inc. et al.

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

AND

IN THE MATTER OF
BUNTING & WADDINGTON INC.,
ARVIND SANMUGAM, JULIE WINGET
AND JENIFER BREKELMANS

ORDER

WHEREAS on March 22, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") (the "Notice of Hearing") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on March 22, 2012, to consider whether it is in the public interest to make certain orders against Bunting & Waddington Inc. ("B&W"), Arvind Sanmugam ("Sanmugam"), Julie Winget ("Winget") and Jenifer Brekelmans ("Brekelmans") (collectively, the "Respondents");

AND WHEREAS on April, 13, 2012, Staff filed Affidavits of Service evidencing service of the Notice of Hearing and the Statement of Allegations on the Respondents;

AND WHEREAS on April 16, 2012, a first appearance hearing was held before the Commission and Staff, Winget and counsel for Brekelmans appeared in person, Sanmugam attended via teleconference and no one appeared for B&W;

AND WHEREAS Staff advised that it is preparing the disclosure in this matter and anticipates that it will deliver the disclosure in the next two to three weeks;

AND WHEREAS the Commission ordered that the hearing is adjourned to such date and time as set by the Office of the Secretary and agreed to by the parties, for a confidential pre-hearing conference;

AND WHEREAS the Commission is in receipt of correspondence from the parties and has considered the submissions therein;

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

IT IS ORDERED that a confidential pre-hearing conference will be held at 3:00 p.m. on June 19, 2012.

DATED at Toronto this 29th day of May, 2012.

"Edward P. Kerwin"

2.2.3 David Charles Phillips – ss. 127(1), 127(8)

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

AND

IN THE MATTER OF
DAVID CHARLES PHILLIPS

ORDER
(Subsections 127(1) and 127(8))

WHEREAS on May 15, 2012 the Ontario Securities Commission (the "Commission") issued an order (the "Temporary Order") pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that:

1. David Charles Phillips ("Phillips") shall cease trading in all securities;

2. any exemptions contained in Ontario securities law do not apply Phillips; and

3. the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission;

AND WHEREAS on May 16, 2012, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on May 30, 2012 at 2:30 p.m. (the "Notice of Hearing");

AND WHEREAS Staff of the Commission ("Staff") have served Phillips with copies of the Temporary Order, the Notice of Hearing, the Affidavit of Stephanie Collins sworn May 23, 2012, the Willsay Statement of Greg MacLeod, the Brief of Documents of Greg MacLeod and Staff's Factum and Brief of Authorities as evidenced by the Affidavit of Service of Lee Crann sworn May 29, 2012;

AND WHEREAS on May 30, 2012, Staff and counsel to Phillips appeared before the Commission to ask that the hearing of this matter be adjourned to June 6, 2012 and the Temporary Order extended;

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 hearing in this matter is adjourned to June 6, 2012 at 10:00 a.m.; and

(ii) the Temporary Order is extended until June 8, 2012 or until further order of the Commission.

DATED at Toronto this 30th day of May, 2012.

"Edward P. Kerwin"

2.2.4 Nicholas David Reeves – ss. 127(1), 127(10)

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

AND

IN THE MATTER OF
NICHOLAS DAVID REEVES

ORDER
(Subsections 127(1) and 127(10))

WHEREAS on March 22, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") in respect of Nicholas David Reeves ("**Reeves**");

AND WHEREAS on March 22, 2012, Staff of the Commission ("**Staff**") filed a Statement of Allegations in respect of the same matter;

AND WHEREAS on May 30, 2012, the Commission held a hearing to consider whether it is in the public interest to make an inter-jurisdictional enforcement order against Reeves pursuant to subsections 127(1) and 127(10) of the Act;

AND WHEREAS Staff appeared and made oral submissions, supported by Staff's written submissions, Brief of Authorities and Application Record, which included: the Notice of Hearing issued by the Alberta Securities Commission (the "**ASC**") on June 21, 2010 with respect to Reeves (2010 ABASC 281); the Decision on the Merits in the matter of Reeves issued by the ASC on December 14, 2010 (2010 ABASC 572) (the "**ASC Merits Decision**"); and the Decision on Sanctions and Costs in the same matter issued by the ASC on February 28, 2011 (2011 ABASC 107) (the "**ASC Sanctions and Costs Decision**");

AND WHEREAS Reeves did not appear, although the Affidavit of Nancy Poyhonen, sworn May 29, 2012, indicates that he was served with notice of the hearing;

AND WHEREAS the Commission considered the submissions and materials before it;

AND WHEREAS Reeves is subject to an order made by the ASC, which is a securities regulatory authority, that imposed sanctions, conditions, restrictions or requirements on Reeves within the meaning of clause 4 of subsection 127(10) of the Act;

AND WHEREAS in the ASC Merits Decision, there is evidence that shows that Reeves solicited investment and sold securities on several occasions to at least one investor who was an Ontario resident;

AND WHEREAS in the ASC Merits Decision, the ASC found that Reeves (i) illegally distributed securities, contrary to section 110 of the Alberta *Securities Act*, R.S.A. 2000, c. S-4 (the "**ASA**"); (ii) made a misrepresentation contrary to subsection 92(4.1) of the ASA; (iii) perpetrated a fraud contrary to section 93 of the ASA; and (iv) acted contrary to the public interest;

AND WHEREAS in the ASC Sanctions and Costs Decision, the ASC ordered in the public interest, among other things, that:

(a) pursuant to subsections 198(1)(b) and (c) of the ASA, Reeves cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him, permanently, except that he is not precluded from trading in or purchasing securities through a registrant (who has first been given a copy of the ASC Sanctions and Costs Decision) in:

  (i) registered retirement savings plans, registered retirement income funds or tax-free savings accounts (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for Reeves' benefit;

  (ii) one other account for Reeves' benefit; or

(iii) both, provided that:

(1) the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer; and

(2) Reeves does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question;

(b) pursuant to subsections 198(1)(d) and (e) of the ASA, Reeves resign all positions he holds as a director or officer of any issuer, registrant or investment fund manager, and he is prohibited from becoming or acting as a director or officer (or both) of any issuer, registrant or investment fund manager, permanently;

(c) pursuant to subsection 198(1)(e.2) of the ASA, Reeves is prohibited from becoming or acting as a registrant, investment fund manager or promoter, permanently;

AND WHEREAS the Commission is entitled to make public interest orders under its jurisdiction recognized by subsection 127(10) of the Act, notwithstanding the fact that the underlying conduct occurred prior to the coming into force of subsection 127(10) of the Act on November 27, 2008;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order, pursuant to subsections 127(1) and 127(10) of the Act;

IT IS ORDERED THAT:

(a) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Reeves shall cease permanently, except that he is allowed to trade in securities through a registrant in:

(i) registered retirement savings plans, registered retirement income funds or tax-free savings accounts (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for Reeves' benefit;

(ii) one other account for Reeves' benefit; or

(iii) both, provided that:

(1) the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer; and

(2) Reeves does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question;

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Reeves is prohibited permanently, except that he is allowed to acquire securities through a registrant in:

(i) registered retirement savings plans, registered retirement income funds or tax-free savings accounts (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for Reeves' benefit;

(ii) one other account for Reeves' benefit; or

(iii) both, provided that:

(1) the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer; and

(2) Reeves does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question;

(c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Reeves permanently;

(d) pursuant to clause 7 of subsection 127(1) of the Act, Reeves shall resign any positions that he holds as a director or officer of an issuer;

(e) pursuant to clause 8 of subsection 127(1) of the Act, Reeves is prohibited from becoming or acting as a director or officer of an issuer permanently;

(f) pursuant to clause 8.1 of subsection 127(1) of the Act, Reeves shall resign any positions that he holds as a director or officer of a registrant;

(g) pursuant to clause 8.2 of subsection 127(1) of the Act, Reeves is prohibited from becoming or acting as a director or officer of a registrant permanently;

(h) pursuant to clause 8.3 of subsection 127(1) of the Act, Reeves shall resign any positions that he holds as a director or officer of an investment fund manager;

(i) pursuant to clause 8.4 of subsection 127(1) of the Act, Reeves is prohibited from becoming or acting as a director or officer of an investment fund manager permanently; and

(j) pursuant to clause 8.5 of subsection 127(1) of the Act, Reeves is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter permanently.

DATED at Toronto this 30th day of May, 2012.

"Edward P. Kerwin"

2.2.5 Sextant Capital Management Inc. et al. – ss. 127, 127.1

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

AND

**IN THE MATTER OF
SEXTANT CAPITAL MANAGEMENT INC.,
SEXTANT CAPITAL GP INC., OTTO SPORK,
KONSTANTINOS EKONOMIDIS, ROBERT LEVACK
AND NATALIE SPORK**

**ORDER
(Sections 127 and 127.1 of the Act)**

WHEREAS on May 12, 2010, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") (the "**Notice of Hearing**") in connection with an Amended Statements of Allegations filed by Staff of the Commission ("**Staff**") on April 1, 2010, to consider whether it is in the public interest to make certain orders against Sextant Capital Management Inc. ("**SCMI**"), Sextant Capital GP Inc. ("**Sextant GP**") (collectively, the "**Corporate Respondents**"), Otto Spork ("**Spork**"), Konstantinos (Dino) Ekonomidis ("**Ekonomidis**") and Natalie Spork (collectively, the "**Individual Respondents**"; together with the Corporate Respondents, the "**Respondents**") and Robert Levack;

AND WHEREAS on June 11, 2010, Staff filed an Amended Amended Statement of Allegations;

AND WHEREAS on June 1, 2010, the Commission approved a settlement agreement between Staff and Levak;

AND WHEREAS the Commission held the hearing on the merits which began in June, 2010 and continued over the course of approximately 16 days until December, 2010;

AND WHEREAS on May 17, 2011, the Commission issued its Reasons and Decision on the merits in this matter (the "**Merits Decision**");

AND WHEREAS the Commission is satisfied that Spork, SCMI and Sextant GP carried out a fraudulent investment scheme, that the Respondents breached their duties as investment fund managers, that the Corporate Respondents failed to maintain proper books and records and that by engaging in such conduct the Respondents have not complied with Ontario securities law and have acted contrary to the public interest, as described in the Merits Decision;

AND WHEREAS on April 18, 2012, the Commission held a hearing with respect to the sanctions and costs to be imposed in this matter;

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

IT IS ORDERED THAT:

1. With respect to the Corporate Respondents:

   (a) Pursuant to clause 1 of subsection 127(1) of the Act, SCMI's registration under the Act is terminated;

   (b) Pursuant to clause 2 of subsection 127(1) of the Act, SCMI and Sextant GP shall cease trading in securities permanently;

   (c) Pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by each of SCMI and Sextant GP is prohibited permanently; and

   (d) Pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to each of SCMI and Sextant GP permanently.

2. With respect to Otto Spork:

   (a) Pursuant to clause 1 of subsection 127(1) of the Act, Spork's registration under the Act is terminated;

   (b) Pursuant to clause 2 of subsection 127(1) of the Act, Spork shall cease trading in securities permanently;

   (c) Pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Spork is prohibited permanently;

   (d) Pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Spork permanently;

   (e) Pursuant to clause 6 of subsection 127(1) of the Act, Spork is hereby reprimanded;

   (f) Pursuant to clauses 7, 8.1, and 8.3 of subsection 127(1) of the Act, Spork shall resign all positions that he may hold as director or officer of an issuer, registrant or investment fund manager;

   (g) Pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, Spork is prohibited permanently from becoming or acting as director or officer of any issuer, registrant or investment fund manager;

(h) Pursuant to clause 8.5 of subsection 127(1) of the Act, Spork is prohibited permanently from becoming or acting as a registrant, as an investment fund manager, or as a promoter;

(i) Pursuant to clause 9 of subsection 127(1) of the Act, Spork shall pay an administrative penalty in the amount of $1,000,000, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;

(j) Pursuant to clause 10 of subsection 127(1) of the Act, Spork shall disgorge $6,350,000, obtained as a result of his non-compliance with Ontario securities law, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;

(k) Pursuant to section 127.1 of the Act, Spork shall pay $350,000 representing approximately 80% of the costs.

3. With respect to Dino Ekonomidis:

(a) Pursuant to clause 1 of subsection 127(1) of the Act, Ekonomidis' registration under the Act is terminated;

(b) Pursuant to clause 2 of subsection 127(1) of the Act, Ekonomidis cease trading in securities for ten (10) years;

(c) Pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Ekonomidis is prohibited for ten (10) years;

(d) Pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Ekonomidis for ten (10) years;

(e) Pursuant to clause 6 of subsection 127(1) of the Act, Ekonomidis is hereby reprimanded;

(f) Pursuant to clauses 7, 8.1, and 8.3 of subsection 127(1) of the Act, Ekonomidis shall resign all positions that he may hold as director or officer of an issuer, registrant or investment fund manager;

(g) Pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, Ekonomidis be prohibited for ten (10) years from becoming or acting as director or officer of any issuer, registrant or investment fund manager;

(h) Pursuant to clause 8.5 of subsection 127(1) of the Act, Ekonomidis be prohibited for ten (10) years from becoming or acting as a registrant, as an investment fund manager, or as a promoter;

(i) Pursuant to clause 9 of subsection 127(1) of the Act, Ekonomidis shall pay an administrative penalty in the amount of $250,000, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;

(j) Pursuant to clause 10 of subsection 127(1) of the Act, Ekonomidis shall disgorge $250,000, obtained as a result of his non-compliance with Ontario securities law, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;

(k) Pursuant to section 127.1 of the Act, Ekonomidis shall pay $65,000 representing approximately 15% of the costs.

4. With respect to Natalie Spork:

(a) Pursuant to clause 1 of subsection 127(1) of the Act, Natalie Spork's registration under the Act is terminated;

(b) Pursuant to clause 8.5 of subsection 127(1) of the Act, Natalie Spork is prohibited for three (3) years from becoming a registrant under the Act;

(c) Pursuant to clause 2 of subsection 127(1) of the Act, Natalie Spork cease trading in securities for three (3) years;

(d) Pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Natalie Spork is prohibited for three (3) years;

(e) Pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Natalie Spork for three (3) years;

(f) Pursuant to clause 6 of subsection 127(1) of the Act Natalie Spork is hereby reprimanded;

(g) Pursuant to clause 7 of subsection 127(1) of the Act, Natalie Spork shall resign all positions a director or officer of an issuer;

(h) Pursuant to clauses 8 and 8.2 of subsection 127(1) of the Act, Natalie

Spork is prohibited for five (5) years from becoming or acting as director or officer of any issuer or registrant;

(i) Pursuant to clause 9 of subsection 127(1) of the Act, Natalie Spork shall pay an administrative penalty in the amount of $50,000, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;

(j) Pursuant to clause 10 of subsection 127(1) of the Act, Natalie Spork shall disgorge $140,000, obtained as a result of his non-compliance with Ontario securities law, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;

(k) Pursuant to section 127.1 of the Act, Natalie Spork shall pay $20,000 representing approximately 5% of the costs.

DATED at Toronto this 1st day of June, 2012.

"James D. Carnwath"

2.2.6 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
(Hearing held on May 28, 2012)

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, and October 5, 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 "2012 Brown Adjournment Motion");

AND WHEREAS on February 14, 2012, the Commission heard submissions on the 2012 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 on February 27, 2012, the Commission issued an order that provides, in part, that the Hearing be adjourned on a peremptory basis and shall continue on April 4, 2012 and for 5 days thereafter as scheduled, with or without counsel;

AND WHEREAS on March 30, 2012, Brown sent an e-mail to the Office of the Secretary indicating that he was not capable of participating in the continuation of the Merits Hearing on April 4, 2012;

AND WHEREAS on April 4, 2012, the Commission heard submissions from Staff and Brown on the issue of whether the Merits Hearing should proceed on that date;

AND WHEREAS the Commission agreed to grant one final adjournment to Brown and ordered that the hearing shall commence on May 28, 2012 and shall continue for 7 days thereafter as scheduled;

AND WHEREAS on May 23, 2012, Brown sent a letter to the Commission indicating that he was medically unfit to participate in the continuation of the Merits Hearing on May 28, 2012 and requested a further adjournment in order that he may 1) cross-examine Staff witnesses by written interrogatories, 2) submit his own testimony by affidavit evidence, and 3) that he be allowed until the middle or end of September to submit his case;

AND WHEREAS on May 28, 2012, the Commission heard submissions from Staff and Brown on the issue of whether the Merits Hearing should be adjourned and on the requests made by Brown in his letter dated May 23, 2012;

AND WHEREAS the Commission considered the history of this proceeding, the Commission's statutory obligations, Brown's medical condition and evidence previously submitted in support thereof, and the importance of balancing Brown's private interest with the public interest in these proceedings;

AND WHEREAS the Commission found that in light of all of the salient considerations in this matter the public interest currently takes precedence over the private interests of Brown and as such it is in the public interest to make this order;

IT IS HEREBY ORDERED THAT:

1. The adjournment request is denied;

2. The Merits Hearing shall continue on the days previously scheduled with the exception of May 29, 2012, which is vacated;

3. Brown is permitted to submit to Staff written questions for Staff's witnesses by no later than 4:30 p.m. on May 29, 2012, which questions will be put to Staff's witnesses in oral cross-examination commencing on May 30, 2012;

4. Oral cross-examination of Staff's witnesses will begin on May 30, 2012 even if Brown does not submit written questions in advance of that date;

5. Brown is permitted to submit his own testimony by affidavit as requested by June 8, 2012, subject to the timing of the completion of the cross-examination of Staff's witnesses; and

6. The Merits Hearing will continue on May 30, 2012 at 9:00 a.m., as scheduled.

DATED at Toronto on this 1st day of June, 2012.

"Vern Krishna, Q.C."

"Margot C. Howard"

2.2.7 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
(Hearing held on May 30, 2012)

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, and October 5, 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 "2012 Brown Adjournment Motion");

AND WHEREAS on February 14, 2012, the Commission heard submissions on the 2012 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 on February 27, 2012, the Commission issued an order that provides, in part, that the Hearing be adjourned on a peremptory basis and shall continue on April 4, 2012 and for 5 days thereafter as scheduled, with or without counsel;

AND WHEREAS on March 30, 2012, Brown sent an e-mail to the Office of the Secretary indicating that he was not capable of participating in the continuation of the Merits Hearing on April 4, 2012;

AND WHEREAS on April 4, 2012, the Commission heard submissions from Staff and Brown on the issue of whether the Merits Hearing should proceed on that date;

AND WHEREAS the Commission agreed to grant one final adjournment to Brown and ordered that the hearing shall commence on May 28, 2012 and shall continue for 7 days thereafter as scheduled;

AND WHEREAS on May 23, 2012, Brown sent a letter to the Commission indicating that he was medically unfit to participate in the continuation of the Merits Hearing on May 28, 2012 and requested a further adjournment in order that he may 1) cross-examine Staff witnesses by written interrogatories, 2) submit his own testimony by affidavit evidence, and 3) that he be allowed until the middle or end of September to submit his case;

AND WHEREAS on May 28, 2012, the Commission heard submissions from Staff and Brown on the issue of whether the Merits Hearing should be adjourned and on the requests made by Brown in his letter dated May 23, 2012;

AND WHEREAS on May 28, 2012, the Commission denied Brown's request for an adjournment, allowed Brown's request to participate in writing, vacated May 29, 2012 to give Brown an extra day to prepare his questions for the cross-examination of Staff's witnesses, and ordered the Merits Hearing to proceed on May 30, 2012 and thereafter, as previously scheduled;

AND WHEREAS on May 29, 2012, Brown sent an email to the Commission indicating his intent to request that the panel reconsider its decision of May 28, 2012 and permit a further adjournment of this matter;

AND WHEREAS on May 30, 2012, the Commission heard submissions from Staff and Brown on the request for reconsideration made by Brown to adjourn the Merits Hearing as per his email dated May 29, 2012 and determined that a further adjournment is prejudicial to the public interest in these proceedings;

AND WHEREAS at the hearing on May 30, 2012 Brown confirmed that he will not be cross-examining any of Staff's witnesses during the dates currently scheduled for the Merits Hearing and as such Staff closed its case;

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. Brown's request for a further adjournment is denied;

2. Brown is permitted to submit his testimony to Staff by way of affidavit if he chooses to do so, as he requested, or by oral testimony on June 8, 2012 commencing at 11:00 a.m. either in-person or by videoconference;

3. If Brown submits his testimony by affidavit, he shall submit his affidavit to Staff by no later than 9:00 a.m. on June 8, 2012 and Staff shall commence its oral cross-examination of Brown at 11:00 a.m. either in-person or by video-conference;

4. Brown shall give Staff sufficient notice of whether he intends to participate on June 8, 2012 in-person or by videoconference in order that the proper technical arrangements are in place; and

5. The Merits Hearing will continue on June 8, 20, and 22, 2012 as previously scheduled.

DATED at Toronto on this 1st day of June, 2012.

"Vern Krishna"

"Margot C. Howard"

2.2.8 Peter Sbaraglia

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

AND

IN THE MATTER OF
PETER SBARAGLIA

ORDER

WHEREAS on February 24, 2011, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in relation to a Statement of Allegations filed by Staff of the Commission ("Staff") on February 24, 2011 with respect to Peter Sbaraglia ("Sbaraglia");

AND WHEREAS on March 31, 2011, the Commission heard submissions from Staff and counsel for Sbaraglia and adjourned the hearing to April 28, 2011;

AND WHEREAS on April 28, 2011, the Commission heard submissions from Staff and counsel for Sbaraglia and adjourned the hearing to June 7, 2011;

AND WHEREAS on June 7, 2011, the Commission heard submissions from Staff and counsel for Sbaraglia and adjourned the hearing to July 27, 2011;

AND WHEREAS on July 27, 2011, the Commission heard submissions from Staff and Sbaraglia and ordered that a pre-hearing conference in this matter take place on October 28, 2011;

AND WHEREAS on October 28, 2011, the Commission held a pre-hearing conference in this matter and heard submissions from Staff and counsel for Sbaraglia and adjourned the pre-hearing conference to November 25, 2011 on the consent of the parties;

AND WHEREAS on November 25, 2011, following a pre-hearing conference at which the Commission heard submissions from Staff and counsel for Sbaraglia, the Commission ordered that: Sbaraglia's motion regarding Staff's disclosure, if Sbaraglia determined to bring such a motion, be scheduled for January 24, 2012; the hearing on the merits commence on June 4, 2012 and continue until June 26, 2012, excluding June 5 and 19, 2012; and a pre-hearing conference be held on April 30, 2012;

AND WHEREAS on January 24, 2012, the Commission held a hearing with respect to a disclosure motion brought by Sbaraglia and ordered that the minimum time requirements under subrule 4.3(1) and rule 4.5 of the Ontario Securities Commission *Rules of Procedure* (2010), 33 O.S.C.B. 8017 (the "Rules") be extended by an additional 10 days;

AND WHEREAS on April 30, 2012, the Commission held a hearing with respect to a motion brought by counsel for Sbaraglia seeking an adjournment of the hearing on the merits, which was opposed by Staff, and the Commission ordered that: the hearing on the merits originally scheduled to commence on June 4, 2012 will commence on October 22, 2012 and continue until November 14, 2012, inclusive, with the exception of October 23, 2012 and November 5 and 6, 2012, on a peremptory basis with respect to Sbaraglia; a pre-hearing conference be held on June 4, 2012; and the extension of the minimum time requirements under subrule 4.3(1) and rule 4.5 of the Rules ordered on January 24, 2012 be set aside;

AND WHEREAS on June 4, 2012, the Commission held a pre-hearing conference and heard submissions from Staff and counsel for Sbaraglia;

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

IT IS ORDERED THAT a confidential pre-hearing conference will be held on July 4, 2012 at 10:00 a.m.

DATED at Toronto this 4th day of June, 2012.

"Christopher Porter"

2.2.9 Morgan Dragon Development Corp. 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
MORGAN DRAGON DEVELOPMENT CORP.,
JOHN CHEONG (aka KIM MENG CHEONG),
HERMAN TSE, DEVON RICKETTS
AND MARK GRIFFITHS

ORDER
(Section 127)

WHEREAS on March 22, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") (the "Notice of Hearing") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on March 22, 2012, to consider whether it is in the public interest to make certain orders against Morgan Dragon Development Corp. ("MDDC"), John Cheong (aka Kim Meng Cheong) ("Cheong"), Herman Tse ("Tse"), Devon Ricketts ("Ricketts") and Mark Griffiths ("Griffiths") (collectively, the "Respondents");

AND WHEREAS the Commission issued an Amended Notice of Hearing pursuant to sections 127 and 127.1 of the Act on March 26, 2012 (the "Amended Notice of Hearing");

AND WHEREAS on April 19, 2012, a first appearance hearing was held and the matter was adjourned to a confidential pre-hearing conference on June 4, 2012;

AND WHEREAS on April 25, 2012, the Commission was informed that a confidential pre-hearing conference would not be required and the Commission ordered that a hearing would take place on June 4, 2012 at 9:30 a.m. to provide the panel with a status update;

AND WHEREAS on June 4, 2012, a hearing was held and the Commission heard submissions from Staff and counsel for Cheong and MDDC;

AND WHEREAS Tse, Ricketts and Griffiths did not appear;

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

IT IS ORDERED that there will be a hearing on August 15, 2012 at 10:00 a.m. to provide the panel with a status update.

DATED at Toronto this 4th day of June, 2012.

"Edward P. Kerwin"

2.2.10 TJR Coatings Inc. – s. 144

Headnote

Application by an issuer for a revocation of a cease trade order – Issuer subject to cease trade order as a result of its failure to file financial statements – Issuer has brought its filings up-to-date – Issuer is otherwise not in default of applicable securities legislation, except for certain matters which it intends to remedy – Issuer is currently inactive, but intends to reactivate itself – Issuer has provided an undertaking to the Commission that it will not complete (a) a restructuring transaction involving, directly or indirectly, an existing or proposed, material underlying business which is not located in Canada, (b) a reverse takeover with a reverse takeover acquirer that has a direct or indirect, existing or proposed, material underlying business which is not located in Canada, or (c) a significant acquisition involving, directly or indirectly, an existing or proposed, material underlying business which is not located in Canada, unless the issuer files a preliminary prospectus and a final prospectus with the Ontario Securities Commission and obtains receipts for the preliminary prospectus and the final prospectus from the Director under the Act.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127(1), 127(5), 127(8), 144.

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

AND

IN THE MATTER OF
TJR COATINGS INC.

ORDER
(Section 144)

WHEREAS the securities of TJR Coatings Inc. (the "**Issuer**") are subject to a temporary cease trade order of the Director under the Act dated January 15, 2001 made under paragraph 2 of subsection 127(1) and subsection 127(5) of the Act, as extended by a further order of the Director dated January 26, 2001 made under subsection 127(8) of the Act (collectively, the "**Cease Trade Order**") ordering that trading in the securities of the Issuer cease until the Cease Trade Order is revoked by a further order of revocation;

AND WHEREAS the Issuer has made an application (the "**application**") to the Ontario Securities Commission (the "**Commission**") for revocation of the Cease Trade Order pursuant to section 144 of the Act;

AND WHEREAS the Issuer has represented to the Commission that:

1. The Issuer was incorporated on December 11, 1998 pursuant to the *Business Corporations Act* (Ontario) ("**OBCA**") under the name TJR Coatings Inc. The Issuer was dissolved on December 17, 2007 for failing to comply with the *Corporations Tax Act* (Ontario), but was revived on June 10, 2011.

2. The Issuer is a reporting issuer under the securities legislation of Ontario. The Issuer is not a reporting issuer in any other jurisdiction in Canada and is not subject to cease trade orders in any other jurisdiction.

3. The Issuer's authorized capital consists of an unlimited number of common shares (the "**Common Shares**"), of which 22,583,836 Common Shares are issued and outstanding. Other than the Common Shares, the Issuer has no securities, including debt securities, outstanding.

4. The Common Shares of the Issuer are not listed, quoted or traded on any exchange, marketplace or other facility in Canada or elsewhere. Prior to the Cease Trade Order, trading in Common Shares of the Issuer was reported to the Canadian Unlisted Board Inc. ("**CUB**") in accordance with the over-the-counter trading provisions in Part V1 of Regulation 1015 under the Act (the "**Regulation**"). Prior to the initiation of CUB's trade reporting facility on October 10, 2000, trading in Common Shares of the Issuer was reported to the Canadian Dealing Network Inc. ("**CDN**") in accordance with the Regulation (this component of CDN was referred to as the CDN Reported Market).

5. Prior to the Cease Trade Order, the Issuer carried on the business of developing and manufacturing a complete woodcare, restoration and coating protection system. Following its incorporation on December 11, 1998, the Issuer acquired 100% of the issued common shares of Noble House Coatings Inc. ("**NHCI**") on March 31, 1999. NHCI was a manufacturer and distributor of specialized wood coating products. On March 1, 2001, the Issuer discontinued the manufacturing and distribution operations of NHCI and entered into an exclusive distribution agreement with Primeline Products Corporation ("**Primeline**"). Manufacturing of products was outsourced to a third party on a contract basis. On November 1, 2001, NCHI discontinued all operations as a subsidiary of the Issuer. The Issuer's distribution agreement with Primeline ceased.

6. The Issuer has not carried on business since November 1, 2001. It has no material assets. It has no liabilities other than accounts payable, accrued liabilities and loans payable.

7. The Cease Trade Order was issued as a result of the Issuer's failure to file interim financial

statements for the interim period ended October 31, 2000.

8. In 2001 and 2002, the Issuer attempted to remedy its continuous disclosure defaults. On January 31, 2001, the Issuer filed interim financial statements for the interim period ended October 31, 2000. On November 16, 2001, the Issuer filed audited annual financial statements for the financial year ended January 31, 2001 and interim financial statements for the interim periods ended April 30, 2001 and July 31, 2001. On January 14, 2002, the Issuer filed amended audited annual financial statements for the financial year ended January 31, 2001, amended interim financial statements for the interim periods ended April 30, 2001 and July 31, 2001 and interim financial statements for the interim period ended October 31, 2001. On February 20, 2002, the Issuer filed amended audited annual financial statements for the financial year ended January 31, 2001 and amended interim financial statements for the interim periods ended April 30, 2001, July 31, 2001 and October 31, 2001.

9. The Issuer previously applied for revocation of the Cease Trade Order on November 21, 2001, but that application was later abandoned.

10. Subsequently, the Issuer failed to file audited annual financial statements for the financial years ended January 31, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010 and 2011 (the "**Annual Financial Statements**"), interim financial statements for all interim periods since October 31, 2001 (the "**Interim Financial Statements**") and, where applicable following the coming into force of such requirements, related management's discussion and analysis ("**MD&A**") and certificates under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the "**NI 52-109 Certificates**").

11. The Annual Financial Statements, Interim Financial Statements and related MD&A and NI 52-109 Certificates were not filed with the Commission due to a lack of funds to pay for the preparation and audit of the relevant financial statements.

12. In connection with the application, the Issuer has remedied certain of its continuous disclosure defaults. On September 29, 2011, the Issuer filed Interim Financial Statements and related MD&A and NI 52-109 Certificates for the interim periods ended April 30, 2011 and July 31, 2011. On October 28, 2011 and March 29, 2012, the Issuer filed copies of its articles and its by-laws. On December 20, 2011, the Issuer filed Interim Financial Statements and related MD&A and NI 52-109 Certificates for the interim period ended October 31, 2011. On May 23, 2012, the Issuer filed Annual Financial Statements and related MD&A and NI 52-109 Certificates for the financial years ended January 31, 2011, 2010 and 2009. On May 23, 2012, the Issuer paid outstanding participation fees, late fees and other fees. Furthermore, on May 30, 2012, the Issuer filed Annual Financial Statements and related MD&A and NI 52-109 Certificates for the financial year ended January 31, 2012 and paid related participation fees.

13. The Issuer has not filed any outstanding annual disclosure for the fiscal years ended January 31, 2002, 2003, 2004, 2005, 2006, 2007 and 2008, because the Issuer believes that the length of time that has elapsed since the date of the Cease Trade Order makes the filing of the outstanding disclosure for these periods of limited use to investors since the Issuer has not carried on business since November 1, 2001 and was inactive during the subsequent fiscal years.

14. Except for the Interim Financial Statements and related MD&A and NI 52-109 Certificates for the interim periods ended April 30, 2011, July 31, 2011 and October 31, 2011, the Issuer has not filed any outstanding Interim Financial Statements and related MD&A and NI 52-109 Certificates, because the Issuer believes that such Interim Financial Statements and related MD&A and NI 52-109 Certificates will not provide additional useful information concerning the present or future operations or financial circumstances of the Issuer since during the periods covered by such Interim Financial Statements the Issuer was inactive.

15. As a result of the filings described in paragraph 12 above and with the exceptions noted in paragraphs 13 and 14, the Issuer is up-to-date in its continuous disclosure filings with the Commission and has paid all outstanding participation fees, late fees and other fees and is not in default of any requirement in applicable securities legislation in any jurisdiction, except for (a) the existence of the Cease Trade Order, (b) failure to issue and file material change news releases and file material change reports in respect of the Cease Trade Order, the events leading up to the Issuer's cessation of business on November 1, 2001 (as described in paragraph 5 above), the departure of old directors and officers and the appointment of new directors and officers, (c) failure to comply with the delivery of financial statements and MD&A requirements in sections 4.6 and 5.6 of National Instrument 51-102 *Continuous Disclosure Obligations* ("**NI 51-102**"), (d) failure to comply with section 4.11 of NI 51-102 in respect of a change of auditor, and (e) the possible contravention of the Cease Trade Order described in paragraph 16 below. To remedy the defaults described in (c) and (d) above, the Issuer will include (i) copies of the Annual Financial Statements and related MD&A for the fiscal years ended January 31, 2012, 2011, 2010 and 2009

and the Interim Financial Statements and related MD&A for the interim periods ended April 30, 2011, July 31, 2011 and October 31, 2011 and (ii) a "reporting package" (as defined in section 4.11 of NI 51-102) for the change of auditor, with the management information circular for the next annual meeting of shareholders that will be sent to the registered holders and beneficial owners of its securities.

16. The last management information circular of the Issuer was dated October 17, 2001 and was in respect of an annual and special meeting of shareholders held on November 20, 2001. The circular proposed that the shareholders approve a resolution at the meeting authorizing the Issuer to enter into one or more private placements during the 12 month period commencing November 20, 2001 of such number of securities that would result in the issuer issuing or making issuable a number of common shares aggregating up to 100% of the number of the issued and outstanding common shares of the issuer as at October 17, 2001 (the "**2001 Private Placement Resolution**"). The 2001 Private Placement Resolution was passed at the meeting held on November 20, 2001. Insofar as the 2001 Private Placement Resolution may have been an act in furtherance of a trade, it may have contravened the terms of the Cease Trade Order. However, no securities of the Issuer were issued after the date of the Cease Trade Order and the Issuer did not enter into any agreements contemplating the issuance of securities after the date of the Cease Trade Order.

17. The Issuer has not held an annual meeting of shareholders since November 20, 2001 and therefore has been in default of the annual meeting requirements under the OBCA. The Issuer has provided the Commission with an undertaking that it will hold an annual meeting of shareholders within three months after the date on which the Cease Trade Order is revoked. All matters relating to the meeting will be conducted in accordance with the OBCA and applicable securities legislation.

18. Except for the events leading up to the Issuer's cessation of business on November 1, 2001 (as described in paragraph 5 above), the departure of old directors and officers and the appointment of new directors and officers, the Issuer has not had any "material changes" within the meaning of the Act since it was cease traded and is not otherwise in default of requirements to file material change reports under applicable securities legislation. The events leading up to the Issuer's cessation of business on November 1, 2001 are disclosed in the Issuer's MD&A for the financial years ended January 31, 2011, 2010 and 2009.

19. The Issuer's SEDAR profile and SEDI issuer profile supplement are up-to-date.

20. The Issuer is currently inactive and following the revocation of the Cease Trade Order, the Issuer intends to reactivate itself. The Issuer does not have any definitive plans in place for the operation of the business going forward. In particular, the Issuer is not presently considering, nor is it involved in any discussions relating to, an acquisition, a reverse takeover or similar transaction. However, it is the intention of management of the Issuer to investigate opportunities going forward. The Issuer has provided the Commission with an undertaking that it will not complete:

    (a) a restructuring transaction involving, directly or indirectly, an existing or proposed, material underlying business which is not located in Canada,

    (b) a reverse takeover with a reverse take-over acquirer that has a direct or indirect, existing or proposed, material underlying business which is not located in Canada,

    (c) a significant acquisition involving, directly or indirectly, an existing or proposed, material underlying business which is not located in Canada,

    unless

    (i) the Issuer files a preliminary prospectus and a final prospectus with the Ontario Securities Commission and obtains receipts for the preliminary prospectus and the final prospectus from the Director under the Act, and

    (ii) the preliminary prospectus and final prospectus contain the information required by applicable securities legislation.

21. Forthwith after the revocation of the Cease Trade Order, the Issuer will issue and file a news release and file a material change report on SEDAR disclosing the revocation of the Cease Trade Order and outlining the Issuer's future plans. The material change report will include disclosure on the Issuer's directors and officers, the Issuer's audit committee members, the Issuer's principal shareholder, what remedial continuous disclosure documents have been filed on SEDAR, and a description of the undertakings referred to in paragraphs 17 and 20 above. The news release and material change report will also disclose that a director is currently funding the Issuer by way of loans and the material change report will contain the disclosure required by subsection 5.2(1) of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* in respect of those related party transactions.

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

AND UPON being satisfied that to make this order would not be prejudicial to the public interest;

IT IS ORDERED, pursuant to section 144 of the Act, that the Cease Trade Order be and is hereby revoked.

DATED this 5th day of June, 2012.

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

2.3 Rulings

2.3.1 Hartford Investment Management Company – s. 74(1)

Headnote

Application to the Ontario Securities Commission for a ruling pursuant to subsection 74(1) of the Securities Act (Ontario) (the Act) for a ruling that the Applicant be exempted from the adviser registration requirements in subsection 25(3) of the Act. The Applicant will provide advice to affiliated insurance companies in Ontario only so long as that affiliate remains an affiliate of the Applicant.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(3), 74(1).

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

AND

IN THE MATTER OF
HARTFORD INVESTMENT MANAGEMENT COMPANY

RULING
(Subsection 74(1) of the Act)

UPON the Application (the **Application**) of Hartford Investment Management Company (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for a ruling pursuant to subsection 74(1) of the Act that the Applicant be exempted from the adviser registration requirements in subsection 25(3) of the Act;

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

AND UPON the Applicant having represented to the Commission as follows:

1. The Applicant is a corporation existing under the laws of the State of Delaware, based in Hartford, Connecticut and is registered as an adviser with the U.S. Securities and Exchange Commission pursuant to the *U.S. Investment Advisers Act of 1940*. The Applicant does not have an office or employees in Canada.

2. The Applicant provides investment advice and portfolio management services to investment companies, employee benefit plans, insurance companies and institutional accounts and, as of December 31, 2011, had assets under management of approximately $165 billion USD.

3. The Applicant is part of a corporate group of financial companies headquartered in the United

States known as 'The Hartford'. The Applicant is a sister company of both Hartford Life Insurance Company and Hartford Fire Insurance Company (collectively, the **Insurance Companies**), which are both U.S.-incorporated insurance companies that carry on business in Canada as federally licensed insurance companies with their Canadian head offices located in Ontario. The Applicant and the Insurance Companies are indirect subsidiaries of The Hartford Financial Services Group Inc. Accordingly, each of the Insurance Companies is an affiliate of the Applicant, as defined in the Act.

4. The Applicant wishes to provide investment advice and portfolio management services to the Insurance Companies, and the Insurance Companies wish to retain the Applicant to provide such investment advice and portfolio management services with respect to the portfolio assets of the Insurance Companies maintained in respect of their respective Canadian businesses. However, the Applicant wishes to provide such advice and services on a basis that would not require registration under the Act.

5. In the proposed advisory relationship between the Applicant and its affiliated Insurance Companies, the Applicant would be providing investment advice and portfolio management services almost exclusively with respect to Canadian securities (being the investment objectives of the Canadian portfolios of the Insurance Companies), rather than with respect to non-Canadian securities.

6. There is no requirement for employees of a corporation to be registered as advisers under the Act if the employees provide investment advice to their corporate employers with respect to the portfolio assets of such corporate employers. The Insurance Companies do not currently employ, nor do they wish to hire, individuals to provide investment advice with respect to their Canadian portfolio assets, but rather the Insurance Companies have decided to outsource the adviser function to the Applicant which is affiliated with the Insurance Companies. Outsourcing the investment function is permitted under the Canadian federal insurance company legislation.

7. The Canadian portfolio assets of the Insurance Companies that would be managed by the Applicant are owned by each of the respective Insurance Companies itself and there are no external stakeholders (such as, for example, holders of variable annuity contracts or segregated funds/separate accounts for policyholders) that have any direct interest in the performance of such portfolios.

8. Accordingly, there are no stakeholders in Ontario or elsewhere other than the Insurance Companies and their shareholders that will be directly affected by the results of the investment advice to be provided by the Applicant and, as such, it would not be prejudicial to the public interest to grant the relief requested by the Applicant.

9. Subsection 74(1) of the Act provides that an order may be issued subject to terms and conditions as the Commission may consider necessary.

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

IT IS RULED, pursuant to subsection 74(1) of the Act, that the Applicant is exempt from the adviser registration requirements of subsection 25(3) of the Act in respect of it acting as an adviser, provided that:

1. the Applicant provides investment advice and portfolio management services in Ontario only to its affiliates that are licensed or otherwise duly permitted or authorized to carry on business as an insurance company in Canada; and

2. with respect to any particular affiliate, the investment advice and portfolio management services are provided only as long as that affiliate remains an "affiliate" of the Applicant, as defined in the Act.

May 29, 2012

"Margot C. Howard"
Commissioner
Ontario Securities Commission

"Vern Krishna"
Commissioner
Ontario Securities Commission

2.3.2 Liberty Mutual Group Asset Management Inc. – s. 74(1)

Headnote

Application to the Ontario Securities Commission for a ruling pursuant to subsection 74(1) of the Securities Act (Ontario) (the Act) for a ruling that the Applicant be exempted from the adviser registration requirements in subsection 25(3) of the Act. The Applicant will provide advice to affiliated insurance companies in Ontario only so long as that affiliate remains an affiliate of the Applicant.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(3), 74(1).

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

AND

IN THE MATTER OF
LIBERTY MUTUAL GROUP ASSET MANAGEMENT INC.

RULING
(Subsection 74(1) of the Act)

UPON the Application (the **Application**) of Liberty Mutual Group Asset Management Inc. (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for a ruling pursuant to subsection 74(1) of the Act that the Applicant be exempted from the adviser registration requirements in subsection 25(3) of the Act;

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

AND UPON the Applicant having represented to the Commission as follows:

1. The Applicant is a corporation existing under the laws of the State of Delaware and is registered as an adviser with the U.S. Securities and Exchange Commission pursuant to the *U.S. Investment Advisers Act of 1940*. The Applicant does not have an office or employees in Canada.

2. The Applicant provides investment advice and portfolio management services to institutional investors and, as of December 31, 2011, had assets under management of approximately $65 billion USD.

3. The Applicant is part of a corporate group of financial companies headquartered in the United States known as 'Liberty Mutual Insurance'. The Applicant is a sister company of the Liberty Mutual Insurance Company, Employers Insurance Company of Wausau and Liberty Life Assurance Company of Boston (collectively, the **Insurance Companies**), which are U.S.-incorporated insurance companies that carry on business in Canada as federally licensed insurance companies with their Canadian head offices located in Ontario. The Applicant and the Insurance Companies are each direct or indirect wholly-owned subsidiaries of Liberty Mutual Group Inc. Accordingly, each of the Insurance Companies is an affiliate of the Applicant, as defined in the Act.

4. The Applicant wishes to provide investment advice and portfolio management services to the Insurance Companies, and the Insurance Companies wish to retain the Applicant to provide such investment advice and portfolio management services with respect to the portfolio assets of the Insurance Companies maintained in respect of their respective Canadian businesses. However, the Applicant wishes to provide such advice and services on a basis that would not require registration under the Act.

5. In the proposed advisory relationship between the Applicant and its affiliated Insurance Companies, the Applicant would be providing investment advice and portfolio management services primarily with respect to Canadian securities (as the portfolio assets of the Insurance Companies consist of a majority of Canadian securities on a regular basis), rather than with respect to non-Canadian securities.

6. There is no requirement for employees of a corporation to be registered as advisers under the Act if the employees provide investment advice to their corporate employers with respect to the portfolio assets of such corporate employers. The Insurance Companies do not currently employ, nor do they wish to hire, individuals to provide investment advice with respect to their Canadian portfolio assets, but rather the Insurance Companies have decided to outsource the adviser function to the Applicant which is affiliated with the Insurance Companies. Outsourcing the investment function is permitted under the Canadian federal insurance company legislation.

7. The Canadian portfolio assets of the Insurance Companies that would be managed by the Applicant are owned by each of the respective Insurance Companies itself and there are no external stakeholders (such as, for example, holders of variable annuity contracts or segregated funds/separate accounts for policyholders) that have any direct interest in the performance of such portfolios.

8. Accordingly, there are no stakeholders in Ontario or elsewhere other than the Insurance Companies and their direct and indirect owner, Liberty Mutual Group Inc., that will be directly affected by the

results of the investment advice to be provided by the Applicant and, as such, it would not be prejudicial to the public interest to grant the relief requested by the Applicant.

9. Subsection 74(1) of the Act provides that an order may be issued subject to terms and conditions as the Commission may consider necessary.

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

IT IS RULED, pursuant to subsection 74(1) of the Act, that the Applicant is exempt from the adviser registration requirements of subsection 25(3) of the Act in respect of it acting as an adviser, provided that:

1. the Applicant provides investment advice and portfolio management services in Ontario only to its affiliates that are licensed or otherwise duly permitted or authorized to carry on business as an insurance company in Canada; and

2. with respect to any particular affiliate, the investment advice and portfolio management services are provided only as long as that affiliate remains an "affiliate" of the Applicant, as defined in the Act.

May 29, 2012

"Margot C. Howard"
Commissioner
Ontario Securities Commission

"Vern Krishna"
Commissioner
Ontario Securities Commission

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Paul Azeff et al.

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

AND

IN THE MATTER OF
PAUL AZEFF, KORIN BOBROW,
MITCHELL FINKELSTEIN, HOWARD JEFFREY MILLER AND
MAN KIN CHENG (a.k.a. FRANCIS CHENG)

REASONS FOR DECISION ON A STAY MOTION
BY MITCHELL FINKELSTEIN AND
PREMATURITY CROSS-MOTION BY STAFF

Hearing:	November 10 and 11, 2011		
Decision:	May 31, 2012		
Panel:	Mary G. Condon	–	Vice-Chair and Chair of the Panel
	C. Wesley M. Scott	–	Commissioner
	Christopher Portner	–	Commissioner
Appearances:	Donna Campbell Tamara Center	–	For Staff of the Commission
	Jeffrey Larry Gordon Capern	–	For Mitchell Finkelstein

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REASONS FOR DECISION ON A STAY MOTION BY MITCHELL FINKELSTEIN AND PREMATURITY CROSS-MOTION BY STAFF

I. INTRODUCTION

[1] By Notice of Motion dated July 5, 2011, Mitchell Finkelstein ("**Finkelstein**") brought a motion for an order staying an enforcement proceeding against him (the "**Stay Motion**"), with prejudice to the right of Enforcement Staff ("**Staff**") of the Ontario Securities Commission (the "**Commission**" or the "**OSC**") to commence any fresh proceeding in relation to his alleged involvement in the trading of securities of six reporting issuers: Masonite International Corporation ("**Masonite**"), MDSI Mobile Data Solutions Inc. ("**MDSI**"), Placer Dome Inc. ("**Placer Dome**"), Dynatec Corporation ("**Dynatec**"), Legacy Hotels Real Estate Investment Trust ("**Legacy**") and IPC US Income Commercial REIT ("**IPC**") (each an "**Issuer**" and, collectively, the "**Issuers**") in breach of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), as well as his costs of the Stay Motion.

[2] Finkelstein seeks to stay the Commission's administrative proceeding brought by Staff in relation to his alleged tipping on six separate occasions. He makes this request on the basis that Staff "carried out its investigation in a manner which violated both its duty to act fairly and Mr. Finkelstein's fundamental right to a fair and proper 'Wells Process'". He further alleges that Staff failed to provide sufficient time and particulars to enable him to respond to Staff's enforcement notices sent to him on November 3, 2010 and on January 10, 2011 (respectively, the "**November Enforcement Notice**" and the "**January Enforcement Notice**" and together, the "**Enforcement Notices**") prior to the issuance of the Notice of Hearing and Amended Statement of Allegations against him on November 11, 2010, and the Amended Amended Statement of Allegations on April 18, 2011.

[3] Finkelstein was a successful and long-standing corporate finance and mergers and acquisitions lawyer at the Toronto law firm of Davies Ward Phillips & Vineberg LLP ("**Davies**") prior to the events described below. He submits that his career and professional and personal reputations were prejudiced by the issuance of the Notice of Hearing and the Amended Statement of Allegations.

[4] Finkelstein argues that Staff failed to meet the duty of fairness owed to him by not conducting a proper "Wells Process", and did so in a manner which abused Staff's own process and violated the fundamental principles of justice. Finkelstein submits

that Staff's conduct of the investigation, which is set out in detail below, "ought to offend a community observer's sense of fair play and decency".

[5] Staff's position is that potential respondents do not have a *right* to receive an enforcement notice prior to the issuance of a Statement of Allegations by Staff and a Notice of Hearing issued by the Commission. Unlike the "Wells Process" adopted in the United States (the "**U.S.**") by the Securities and Exchange Commission (the "**SEC**"), the delivery of an enforcement notice is not mandated by any legislation or any rule of practice in Ontario. It is the practice of Staff to provide respondents with a final opportunity to bring to the attention of Staff any circumstances that may influence Staff's decision to commence a proceeding. In Staff's submission, an enforcement notice is a final written notice of pending allegations. However, the decision as to whether or when to provide such an enforcement notice to a potential respondent remains wholly within Staff's discretion.

[6] In support of his Stay Motion, Finkelstein relies on the evidence of Jeffrey Larry ("**Larry**"), co-counsel for Finkelstein, which is set out in an affidavit sworn on July 5, 2011 (the "**Larry Affidavit**"). The Larry Affidavit was provided to highlight some critical milestones in Staff's investigation from the time of their first general inquiry into the matter until insider trading and tipping allegations were made, including events occurring *after* the commencement of the proceedings. The Larry Affidavit seeks to establish a direct connection between the conduct of Staff during their investigation and the time provided to Finkelstein to respond to the Enforcement Notices. In addition, Finkelstein relies on a Supplementary Affidavit sworn by Larry on October 28, 2011 (the "**Larry Supplementary Affidavit**"). Although not evidence, Finkelstein also provided us with a chronology to assist us in understanding the investigative steps taken by Staff in this matter.

[7] Staff also provided us with their detailed account of the steps undertaken in their investigation leading up to the investigation of Finkelstein in 2010 in the Affidavit of Jasmine Handanovic ("**Handanovic**"), a Staff investigator, sworn October 18, 2011 (the "**Handanovic Affidavit**"). Staff provided us with their chronology of the evidence received during the investigation prepared by Staff (the "**Investigation Chronology**") to illustrate the timing and scope of the investigation, a second chronology of the evidence received which contained key evidence relating to the investigation of Finkelstein (the "**Finkelstein Investigation Chronology**") and a Summary of Requests for Information and Interviews Conducted.

[8] In response to Finkelstein's Stay Motion, Staff brought a cross-motion to dismiss the Stay Motion on the grounds that the Stay Motion is premature (the "**Prematurity Motion**" and, together with the Stay Motion, the "**Motions**") and should more appropriately be argued at the hearing on the merits of this matter (the "**Merits Hearing**").

[9] Staff sought an order that the Stay Motion be heard and determined at the Merits Hearing. Alternatively, Staff submitted that in the event that we were to choose to hear the Stay Motion prior to the Merits Hearing, Staff would seek an order dismissing the Stay Motion on the grounds of prematurity, without prejudice to Finkelstein's right to renew his Stay Motion at the Merits Hearing, to be dealt with at the discretion of the Merits Hearing panel.

[10] At the outset of the hearing of the Motions (the "**Motions Hearing**"), the parties made submissions regarding the issue of whether we should hear the Prematurity Motion first, prior to the Stay Motion. In light of the serious grounds of unfairness and abuse of process in Staff's investigation alleged by Finkelstein in the Stay Motion, our view was that we should hear the Stay Motion first to have the benefit of a full factual context to assist us in making a determination about whether it was premature for us to make a decision to grant the order sought in the Stay Motion, in advance of the Merits Hearing. Having heard and considered the submissions from the parties on this point, we accepted Finkelstein's argument and determined that we should proceed by first hearing his Stay Motion, before hearing Staff's Prematurity Motion.

[11] We heard the Stay Motion on November 10 and 11, 2011, and the Prematurity Motion on November 11, 2011. We reserved our decision on November 11, 2011, at the conclusion of the Motions Hearing.

[12] We sought confirmation from the parties at the outset of the two-day Motions Hearing that the Motions Hearing and the documents filed on the record would be made public, absent any request for confidentiality. In particular, voluminous transcripts and exhibits of the compelled examinations of Finkelstein pursuant to section 13 of the Act on August 17, 2010 and October 25, 2010 (respectively, the "**August Interview**" and the "**October Interview**" and together, the "**Finkelstein Interviews**") were filed as part of Staff's motion record. We considered it important to ensure that there was no objection to the excerpts from the Finkelstein Interviews, conducted pursuant to section 13 of the Act, being read into the record:

> CHAIR: … I just want to address a housekeeping matter at the very beginning of this hearing, which is – which relates to the question of the confidentiality or otherwise of the record. It's the panel's understanding that all of the materials that have been submitted to us in relation to this matter are available to be released to the public, and I would just like clarification right at the beginning of the proceeding that that is, in fact, the case.
>
> MS. CENTER: Yes, that's fine with staff.
>
> MR. CAPERN: And that's fine with Mr. Finkelstein as well, Commissioner. Thank you.

> [Emphasis added]
>
> (Hearing Transcript dated November 10, 2011 at p. 4)

[13] Further, the parties did not make any request for confidentiality at any point during this two-day Motions Hearing. As described below, prior to reading into the record excerpts from the transcripts of the Finkelstein Interviews conducted by Staff pursuant to section 13 of the Act, Staff stated on three occasions that they would soon refer to the transcripts in their argument:

> I am going to ask you to go to the transcript, so I'm going to give you a heads-up warning that that will happen in a few minutes.
>
> …
>
> What I would like to do right now is I would like to start with the transcripts.
>
> …
>
> So now what I would like to do is actually get to the interview.
>
> (Hearing Transcript dated November 10, 2011 at pp. 117, 144 and 150)

We received no objection from Finkelstein to the reading-in of excerpts from the Finkelstein Interviews.

[14] Accordingly, references are made in our reasons and decision (the "**Reasons and Decision**") to transcripts of the Finkelstein Interviews conducted by Staff during their investigation.

[15] The Stay Motion raises novel and important issues including: (i) whether Staff have a duty to conduct a formal "Wells Process" such as the one adopted by the SEC; (ii) the requirements associated with this obligation, if applicable; and (iii) the consequences that should ensue in the event of a finding that Staff's investigation of a respondent was conducted in an unfair and abusive manner. As Finkelstein described in his factum (the "**Finkelstein Factum**"), at paras. 7 and 8:

> This motion presents the presiding panel with certain novel issues to consider and determine. These issues include Staff's duty to conduct a proper Wells Process, the content of that duty, and the repercussions in the event that there is a failure to conduct a Wells Process that affords appropriate procedural fairness to a proposed respondent.
>
> This motion provides a unique opportunity for the panel to deliver a clear and unequivocal direction to Staff about the proper conduct of Wells Processes. Given (i) the high stakes involved for affected persons, (ii) the importance of affording affected persons procedural fairness and (iii) Staff's inconsistent and unclear approach to conducting Wells Processes, the interests of justice require that the panel take up this opportunity.

[16] Having carefully considered the issues and reviewed the materials submitted, these are our Reasons and Decision on both the Stay Motion and the Prematurity Motion. The Stay Motion is dealt with from paragraphs 111 to 356 below. The analysis with respect to the Prematurity Motion begins at paragraph 357 below.

II. HISTORY OF THE PROCEEDING

[17] This proceeding was commenced by a Notice of Hearing and a Statement of Allegations in relation to Howard Jeffrey Miller ("**Miller**") and Man Kin Cheng (also known as Francis Cheng) ("**Cheng**") on September 22, 2010. This initial Statement of Allegations relates to alleged insider trading and tipping in, and conduct contrary to the public interest in relation to, securities of an Issuer, Masonite.

[18] On November 11, 2010, a second Notice of Hearing and an Amended Statement of Allegations were issued which added Paul Azeff ("**Azeff**"), Korin Bobrow ("**Bobrow**") and Finkelstein as respondents (Azeff, Bobrow, Finkelstein, Miller and Cheng will collectively be referred to as the "**Respondents**"). The scope of the allegations was expanded to include insider trading and tipping in, and conduct contrary to the public interest in relation to, three additional Issuers, Placer Dome, MDSI and Dynatec.

[19] Staff subsequently filed an Amended Amended Statement of Allegations on April 18, 2011. The Amended Amended Statement of Allegations alleges misconduct on the part of the Respondents relating to securities of two further Issuers, Legacy and IPC, in addition to the four Issuers identified at paragraphs 17 and 18 above.

[20] In the Amended Amended Statement of Allegations, Staff allege that, from November 2004 to August 2007 (the "**Material Time**"): (i) four of the Respondents, Azeff, Bobrow, Miller and Cheng, being persons in a special relationship with one or more of the Issuers, traded securities of one or more of the Issuers with the knowledge of a material fact or material change that had not been generally disclosed, contrary to subsection 76(1) of the Act; (ii) all of the Respondents, being persons in a special relationship with one or more of the Issuers, informed, other than in the necessary course of business, another person or company of a material fact or material change with respect to one or more of the Issuers before the material fact or material change had been generally disclosed, contrary to subsection 76(2) of the Act; and (iii) Azeff, Bobrow, Miller and Cheng recommended investing in one or more of the Issuers to family members, friends or clients, contrary to the public interest.

[21] A number of motions are expected to be scheduled after the Stay Motion and the Prematurity Motion with respect to Finkelstein have been disposed of. They include a motion by Azeff and Bobrow to compel records from a third party and a continuation of the disclosure motion by all of the Respondents which was first heard and adjourned on April 8, 2011 and was subsequently adjourned on June 1, 2011 and August 30, 2011.

III. THE FACTS AND EVENTS LEADING TO THE ISSUANCE OF THE NOTICE OF HEARING AND AMENDED STATEMENT OF ALLEGATIONS AGAINST FINKELSTEIN

[22] We set out below the facts and events leading to the issuance of the Notice of Hearing and Amended Statement of Allegations against Finkelstein. In doing so, we have relied on the Larry Affidavit and the Larry Supplementary Affidavit filed by Finkelstein, and the Handanovic Affidavit, the Investigation Chronology, the Finkelstein Investigation Chronology and the Summary of Requests for Information and Interviews Conducted filed by Staff. We are setting out the facts underlying the Motions in some detail, in part because the parties reviewed these facts at some length at the Motions Hearing and in part because they assist us in drawing conclusions with respect to the issues we are asked to determine. There are a number of discrepancies in the facts set out by the parties. We have therefore attempted to identify these discrepancies, and to reconcile the facts where necessary to establish a useful and fair background for the determination of the Motions.

A. THE 2005 MASONITE INQUIRY

[23] On December 22, 2004, Masonite announced publicly that it was being acquired by Kohlberg Kravis Roberts & Co., a U.S. private equity firm.

[24] Davies acted for Masonite on this transaction with a team of lawyers that included Finkelstein.

[25] In the Larry Affidavit, Larry gave evidence that Staff began investigating trading activity leading up to the December 22, 2004 announcement as early as January 2005 and that Staff requested certain information from Masonite including the identity of the lawyers who acted for it on the transaction. According to Larry, Finkelstein's name was provided to Staff together with other Davies lawyers who worked on this matter, but it does not appear that Staff took further steps to investigate Finkelstein at that time.

[26] In response, Staff provided their evidence surrounding Staff's inquiry into Masonite at that time. According to Staff, they opened a file at the beginning of January 2005 to investigate if insider trading or tipping occurred prior to the December 22, 2004 announcement by Masonite. Staff exchanged correspondence with Masonite and its counsel (Davies) in January 2005 and February 2005. Staff requested certain information from Masonite including the identity of the lawyers who acted for it on the transaction. Masonite responded to Staff on February 14, 2005 and provided Staff with Finkelstein's name, together with other Davies lawyers. The response also identified several other law firms that were involved in the transaction. At the time, Staff took the view that there was no evidence of insider trading or tipping and they closed the file on March 4, 2005.

B. INVESTIGATION INTO ALLEGED INSIDER TRADING ACTIVITIES

1. Miller/Cheng and Azeff/Bobrow

[27] In August 2007, as a result of their "internal analysis", Staff began investigating Miller. According to the Amended Amended Statement of Allegations, Miller was registered with the OSC and worked as an investment advisor with TD Waterhouse Canada Inc. ("**TD**"). Miller worked in the Toronto office of TD with Cheng, who, according to the Amended Amended Statement of Allegations, was registered with the Commission under the dealer category of investment dealer. Together, Miller and Cheng formed the "Miller/Cheng Advisory Group".

[28] According to Staff, the investigation initially focused on gathering information concerning the trading of Miller, his clients and his family. From September 2007 to November 2007, Staff received a large volume of documents relating to Miller, his family and many of his clients.

[29] Staff provided affidavit evidence that, in October 2007, as a result of Staff's analysis, suspicious trading was identified in the securities of three Issuers (including Masonite) by two investment advisors employed by CIBC World Markets Inc. ("**CIBC**")

in Montreal, namely, Azeff and Bobrow, and certain of their clients, including Howard Greenspoon ("**Greenspoon**") and his family members. According to the Amended Amended Statement of Allegations, both Azeff and Bobrow were registered with the OSC as dealing representatives. In oral submissions, Finkelstein took the position that Staff identified suspicious trading in 2007 and were aware of Azeff's alleged involvement at that time. However, Staff assert that there was no apparent connection at the time between the Toronto and Montreal trading and that Staff continued to focus on the Toronto trading.

[30] Staff presented further affidavit evidence that, in January 2008, also as a result of their analysis, Staff identified trading by a person named Man Leung Cheng who traded in advance of several takeover bids, one of which was Masonite. Man Leung Cheng had a TD brokerage account and placed trades through two registered representatives: Cheng and the Miller/Cheng Group. Staff determined that Man Leung Cheng and Cheng were brothers. According to Staff, they then expanded the investigation to include Man Leung Cheng.

[31] In Staff's evidence, in February 2008, the file was transferred from Surveillance to Investigations, Enforcement Branch, and in March 2008, Sherry Brown ("**Brown**"), a senior forensic accountant, was assigned to, and began working on, the file. Using the information gathered concerning the trading by Miller and Cheng and their families and clients, Brown began to analyze the trading, and to search publicly available information for common links between the companies, their advisors and the trading.

[32] Staff's evidence is that, on August 8, 2008, Brown met with Ben Eggers ("**Eggers**"), Director of TD Wealth Management Compliance ("**TD Compliance**"), to discuss the trading by Miller and Cheng and their families and clients. After the meeting, TD Compliance and TD Corporate Security & Investigations commenced an investigation into the trading of Miller and Cheng and their families and clients.

[33] We received evidence from Staff that, at the end of October 2008, Eggers provided Staff with further information regarding the TD investigation, and in November 2008, Staff sent a letter to TD Compliance requesting materials, evidence and reports from TD's investigation of Miller and Cheng. According to Staff, contained in the boxes of materials received from TD Compliance was an email sent on November 24, 2004 from Miller to a client which stated, "Call me I have a tip…Stock trades on TSX at around $34 – cash takeover of $40 Timing should be before xmas but you never know with lawyers…I'm long" and then confirmed to the client that the stock was Masonite.

[34] On November 18, 2008, the Commission issued a section 11 investigation order naming Miller, Heidi Lynn Bramson (Miller's spouse, defined in these reasons as "**Bramson**") and Cheng and citing possible breaches of subsections 76(1) and (2) of the Act (tipping and insider trading) as the grounds for issuing the order (the "**Miller/Cheng Investigation Order**").

[35] Beginning January 2009, Staff issued what they describe as "numerous summonses" under section 13 and directions under subsection 19(3) of the Act related to Miller and Cheng and their families, clients and friends including Leon Krantzberg ("**Krantzberg**"), a friend of Miller. The summonses and directions requested, among other things, account opening documents, monthly account statements, trade tickets, bank statements and supporting documentation, individual and business telephone records, computer hard drives, emails, title searches and land transfer documents.

[36] According to Staff's Investigation Chronology, on January 27, 2009, Staff obtained from CIBC copies of Krantzberg's account opening documents as well as annual trading summaries for the years 2004-2008, in respect of which Azeff and Bobrow were Krantzberg's investment advisors.

[37] Staff gave evidence that they surmised, as a result of analyzing this evidence, that there was a link between the trading in Toronto by Miller and Cheng, and the trading in Montreal by Azeff and Bobrow.

[38] Throughout 2009, Staff also conducted seven interviews, including the interview of Cheng on February 6, 2009. Among other things, Cheng gave evidence that the source of his information concerning Masonite was Miller. Finkelstein emphasizes in the Finkelstein Factum that, by the time of Cheng's interview, the impugned trading in Masonite was over four years old, and the limitation period in respect of such trading was approximately twenty-one (21) months away.

[39] Staff interviewed Miller on August 11, 2009 and September 3, 2009. Staff submit that, among other things, Miller gave evidence that the source of his information concerning Masonite was Krantzberg, and that he discussed investing in Dynatec with Krantzberg. Miller denied knowing Azeff. In oral submissions, counsel for Finkelstein criticized what he submitted was "unexplained delay" between the interview of Cheng in February 2009 and the interview of Miller in August 2009.

[40] Staff provided an enforcement notice to Miller and Cheng on April 27, 2010 (the "**Miller/Cheng Enforcement Notice**"). Staff initially requested that Miller and Cheng provide a response, if any, by May 14, 2010. Finkelstein submits that Miller, who was facing potential allegations in respect of only one transaction (Masonite), was subsequently given an extension to respond to the Miller/Cheng Enforcement Notice to September 22, 2010, an extension of almost four (4) months.

2. Staff Connect Azeff and Finkelstein

[41] According to the Larry Affidavit, the Investigation Chronology and the Summary of Requests for Information and Interviews Conducted, Staff also made requests relating to Azeff and Bobrow and their clients commencing in August 2009. In September 2009, Staff received Azeff's emails covering the period from July 2004 to August 2009 from CIBC.

[42] Although, according to Staff, Handanovic did not and could not provide evidence with respect to exactly when each of Azeff's emails (which covered a five-year period) was reviewed or analyzed by Staff, or exactly when the connection between Azeff and Finkelstein was made, Handanovic did state during cross-examination on the Handanovic Affidavit on October 28, 2011 that Staff became aware of the connection between Azeff and Finkelstein following their receipt of Azeff's emails. Handanovic further stated that upon receiving Azeff's emails on September 16, 2009, Brown, together with other members of Staff, reviewed the email communications between Azeff and Finkelstein.

[43] This evidence indicates that Finkelstein and Azeff have been friends for a number of years including the period they attended university together. Finkelstein participated in Azeff's wedding and Azeff was also Finkelstein's investment advisor.

[44] Staff's evidence is that, as a result of the evidence that was gathered and analyzed, their conclusion that there was a link between the trading in Toronto by Miller and Cheng and the trading in Montreal by Azeff and Bobrow was confirmed. Handanovic noted in the Handanovic Affidavit that both groups of investment advisors made trades in advance of several take-over bids, including Masonite in 2004 and Dynatec in 2007.

[45] With the assistance of the Autorité des Marchés Financiers (the "**AMF**"), Staff interviewed Krantzberg in Montreal on December 18, 2009. Among other things, Staff allege that Krantzberg confirmed that he provided information to Miller concerning Masonite and that Azeff was the source of his information concerning Masonite. Krantzberg denied knowing any of the Davies counsel representing Masonite, including Finkelstein. When told that he invested in Dynatec on the same day as Miller, Krantzberg said he "very possibly told [Miller] I bought Dynatec". Krantzberg also undertook to provide a list of securities that he discussed with Miller and Azeff.

[46] Staff dispute the suggestion made by Finkelstein that by the time Staff interviewed Krantzberg, Finkelstein appeared to be a focus of Staff's investigation. Staff pointed out that there is no evidence to support the statements made at paragraphs 52, 54 and 59 of the Finkelstein Factum that by the time Staff interviewed Krantzberg, Staff believed that "Mr. Finkelstein was connected with the Masonite trading" or that "Mr. Finkelstein appears to be a focus of Staff's investigation". Staff rely on the Investigation Chronology and the Finkelstein Investigation Chronology for support for their position that Finkelstein's foregoing assertions are not a correct interpretation of the facts.

[47] Staff conducted further interviews in January 2010 and February 2010. With the assistance of the AMF, Staff interviewed Azeff and Bobrow on February 24 and 25, 2010. Finkelstein submits at paragraph 57 of the Finkelstein Factum that the interviews of Bobrow and Azeff were originally scheduled for January 28 and 29, 2010, but those original dates were adjourned by Staff. Staff explained that the original interview dates of January 28 and 29, 2010 were adjourned due to an unanticipated conflict. According to Staff, Greenspoon, a client of Azeff, a lawyer and ultimately an interviewee, accompanied Bobrow to his scheduled interview on January 28, 2010 intending to represent Bobrow and Azeff. Staff were not aware that Greenspoon had been retained to act in that capacity until his appearance that day. Staff advised him that they intended to examine him as a witness which placed him in a position of conflict and required Azeff and Bobrow to find other counsel. The examinations of Azeff and Bobrow were adjourned to permit them to retain other counsel.

[48] At Azeff's interview, Staff questioned him about his relationship with Finkelstein, and put to Azeff certain email exchanges between himself and Finkelstein in 2004.

[49] Staff allege that, during the interview of Azeff, Azeff minimized his relationship and the extent of his contact with Finkelstein. According to Staff, Azeff described Finkelstein as a university friend who had a small RRSP account with him; said that they spoke "a couple of times a year about his account"; and said that, in 2004, they spoke "a few times a year…Christmas, birthdays, RSP season". Azeff denied knowing which law firm Finkelstein worked for, and when asked why Finkelstein was included in his wedding pictures, Azeff said that it was because he came from Toronto.

[50] Staff presented evidence that Azeff admitted discussing Masonite with Krantzberg and Greenspoon, but that he denied that there were any rumours Masonite was a takeover target, that he made comments about the matter or that he possessed any non-public information about the company.

[51] Staff received Azeff and Bobrow's responses to undertakings given at the interviews of them in March 2010 and April 2010.

C. THE INVESTIGATION OF FINKELSTEIN

1. Background

[52] Staff submit that it was after analyzing the information gathered over the course of the investigation, interviewing Bobrow and Azeff in February 2010 and reviewing their responses to undertakings in March 2010 and April 2010, that Staff resolved to approach Davies. During a meeting with senior representatives of Davies in May 2010, Staff made their first request for information by requesting Finkelstein's telephone and banking records at the end of June 2010.

[53] The Finkelstein Factum points out at paragraph 65 that up to this point "no one had advised Mr. Finkelstein that there were any concerns about his possible involvement in the matter. He was completely oblivious to the ongoing investigation".

[54] Staff gave evidence that, following their review and analysis of the responses received from Davies in June 2010 and July 2010 (which included information regarding document access), Staff continued to track the evidence, and made subsequent requests for information from Davies and other organizations, including telephone and banking records. In the Investigation Chronology and Summary of Request for Information and Interviews Conducted, Staff set out their requests for information up to the date of the delivery of the November Enforcement Notice and, subsequently, the issuance of the Notice of Hearing and Amended Statement of Allegations on November 11, 2010.

[55] It was put to us by Staff that the investigation as a whole had a much broader scope than the investigation of Finkelstein and that many other steps were being taken in relation to the broader investigation at the same time as steps were being taken in relation to the investigation of Finkelstein. According to Staff, they were continuing to gather information from a variety of sources at the same time they were gathering information from Davies. Staff suggested for example that, between September 13, 2010 and August 1, 2011, they conducted interviews of a further nine individuals, none of whom were directly related to Finkelstein or Davies.

[56] According to Larry at paragraph 31 of the Larry Affidavit, Staff confirmed in a letter to Finkelstein's counsel dated March 10, 2011 that most of the steps taken in connection with the investigation of Finkelstein were concluded by July 2010. Staff take the position that Larry's description of Staff's letter dated March 10, 2011 is incorrect and misleading. Handanovic's evidence is that Staff's letter does not state that most of the investigative steps taken in connection with the investigation of Finkelstein were concluded by July 2010, but merely states that following the interview of Azeff in February 2010, from April 2010 to July 2010, Staff took steps which focused on Finkelstein's conduct, including a meeting with Davies, requests for information from Davies and the interview of another Davies partner. Staff acknowledge in their March 10, 2011 letter that Finkelstein was considered a "person of interest" by them on August 4, 2010.

[57] Staff argue that the broader investigation and the investigation of Finkelstein were not complete in July 2010 and that they requested and received key pieces of evidence regarding Finkelstein up to the delivery of the November Enforcement Notice and the issuance of the Notice of Hearing and Amended Statement of Allegations.

[58] For example, with respect to information received from Davies, Handanovic stated in the Handanovic Affidavit that although Staff had received evidence from Davies by the end of July 2010 (including information about Finkelstein's document access), Staff continued to request, and Davies continued to provide, additional information to Staff in the subsequent weeks and months.

[59] She further stated in her affidavit evidence that although some telephone records were received regarding Finkelstein and Azeff's phone records in July 2010, additional telephone records and information were sought and received from Bell Canada, Davies, Research in Motion and Telus leading up to the provision of the November Enforcement Notice and prior to the issuance of the Amended Statement of Allegations and Notice of Hearing. According to Handanovic, some of these telephone records contained contacts between Finkelstein and Azeff that are directly relevant to Staff's allegations.

[60] Staff gave evidence that no banking records relating to Finkelstein were received by Staff by July 2010. Rather, banking records relating to Finkelstein were received by Staff from CIBC, TD, ING Direct Canada and AMEX Bank of Canada ("**AMEX**") from August 2010 to November 2010, leading up to the delivery of the November Enforcement Notice. Staff take the position that some of these banking records contained information directly relevant to Staff's allegations.

[61] In addition, Staff provided evidence that, in September 2010 and October 2010, Staff obtained relevant evidence from the restaurants where Finkelstein and Azeff are alleged to have met prior to cash being deposited by Finkelstein to his bank accounts.

2. Staff's First Contact with Finkelstein

[62] Finkelstein notes that, on August 2, 2010, the Miller/Cheng Investigation Order was revised. Finkelstein was not named in the revised order.

[63] On August 3, 2010, Staff first contacted Finkelstein and served him with a summons returnable on August 17, 2010. As indicated at paragraph 56 above, on August 4, 2010, Staff confirmed to Finkelstein's counsel that he was a "person of interest" in a possible insider trading and tipping case. On August 17, 2010, Staff first interviewed Finkelstein and questioned him in detail about allegations of tipping with respect to Masonite. Staff submit that Finkelstein was well aware that Staff were concerned about his conduct and also aware that his professional reputation was at stake, at the latest, from the time of the August Interview.

3. The Finkelstein Interviews

[64] As referenced at paragraphs 12 to 14 above, voluminous transcripts and exhibits of the Finkelstein Interviews, conducted pursuant to section 13 of the Act, were introduced into evidence in this Motions Hearing, upon confirmation that such materials would be made public and absent any objections from the parties. Relevant portions of the transcripts will now be referred to in our account of the facts. Our purpose in reproducing these excerpts is to assist in determining the question before us on the Stay Motion, which involves an assessment of the notice provided to Finkelstein about Staff's intention to issue a Notice of Hearing against him.

a. The August Interview

[65] Through counsel, Finkelstein scheduled the August Interview with Staff for August 17, 2010, the first available date proposed by Staff.

[66] Finkelstein submits that despite a request from his counsel, Staff did not provide him with any details in advance about the subject matter of the August Interview, nor did Staff provide him with an opportunity to review any documents in advance. Rather, Staff advised Finkelstein and his counsel that the subject matter of the August Interview "involved possible tipping and trading in advance of merger and acquisition transactions from 2003 onwards". Staff suggested that Finkelstein "go through his calendar to refresh his memory of the matters that he was involved in over [the preceding seven-year] period".

[67] Finkelstein attended the August Interview with his counsel. The August Interview lasted approximately three hours.

[68] Some of the questions and exhibits put to Finkelstein during the August Interview are as follows:

(a) Staff asked questions surrounding the Masonite transaction, including when Finkelstein became involved, the extent of his involvement, Masonite's threshold price, how the transaction would be structured and the target completion date (Transcript of the August Interview at Qus. 198, 209-210, 226-228, 238, 240-249, 267, 279 and 319). For example:

> 209 Q. Okay. So you are involved in the Masonite/KKR – advising Masonite on the KKR matter. What work were you doing? What services were you and Davies providing starting November 16th? Tell me how the assignment unfolded.
>
> …
>
> 210 Q. For this transaction, on November 16th, that period of time, how developed or how advanced were the negotiations between Masonite and KKR when you got involved?
>
> …
>
> 244 Q. As of that initial meeting, your initial involvement on the actual KKR matter, the Masonite and KKR matter, were you aware of management's minimum threshold of $40 per share?
>
> …
>
> 246 Q. So, you know, you start your involvement November 16th and by November 24th, the company's board is striking a special committee. In that time frame, did you have a sense of or were you aware of how the deal would be structured, and I say that from a cash or shares, how the $40 minimum would be paid? Did you have any sense of that?
>
> …
>
> 249 Q. Okay. In that same time frame, the November 16th to November 24th, and, you know, Masonite is striking the special committee, did you have any sense as to how quickly or slowly your client, Masonite, wanted the transaction to be completed? Assuming

> everybody came to agreement and all the terms got hammered out, was there a time frame that your client – expectations from your client?

(b) Staff asked questions regarding Finkelstein's relationship and contact with Azeff (Transcript of the August Interview at Qus. 123-146, 356-368, 373-377). For example:

> 123 Q. Okay. With respect to the CIBC account with Paul Azeff, how did you meet this investment advisor?
>
> …
>
> 128 Q. All right. So you say you and Mr. Azeff are close friends. You have been close friends since university. Have you remained in contact with him since your university days?
>
> …
>
> 356 …BY MS. CAMPBELL: In the last six months, have you spoken with Paul Azeff?
>
> …
>
> 357 Q. How frequently have you spoken to him, once a week, once a month?
>
> …
>
> 359 Q. And when you've spoken to him in the past, let's stick with 2010, in the past six to eight months, what have you discussed?

(c) Staff informed Finkelstein about the trading by the Miller/Cheng Group in Masonite from November 22, 2004 to December 22, 2004 (Transcript of the August Interview at Qus. 300 and 316; and Exhibit 6 on the August Interview):

> 316: Q. Okay. So the record is clear, and also for your information, Mr. Finkelstein, I have taken the data that you see here on these five pages and I've summarized it and that is what you see at the bottom. Those are my calculations at the bottom of page 5 of 5, and for this Miller/Cheng Group who started trading November 22nd and prior to the announcement on December 22nd, 2004, cancelling out any sells or any cancelled trading, they purchased 69,900 shares of Masonite. The net value was $2,376,000, calculates out to an average purchase price of $34 per share. We assume all of these people sold their shares based on the price of the first announcement of $40.20. This group's profit would have been $433,000 or 18 percent in a one-month period of time. The accounts on these five pages, there's a total – just over 40 different accounts, some of them by multiple – by the same individual, but 40 different accounts purchased in Masonite starting November 22nd and prior to the announcement, December 22nd, when it was issued December 22nd, 2004. And again, I will ask did you communicate with anyone outside of Masonite, KKR and their advisors anything to do with the Masonite/KKR transaction in advance of it being publicly announced?

(d) Staff showed Finkelstein the email chain between Miller and his client where Miller said to his client: "Call me I have a tip … Stock trades on TSX at around $34 – cash takeover of $40 Timing should be before xmas but you never know with lawyers" and then Miller confirmed to the client that the stock was Masonite (Transcript of the August Interview at Qus. 317 and 318; and Exhibit 7 on the August Interview):

> 318 Q. …This e-mail provides the e-mail exchange that Mr. Miller has with this client, particularly the 5:06 p.m. e-mail on page 2 provides specific details relating to the Masonite transaction…Mr. Miller had very specific information that had not been publicly disclosed. Do you know how Mr. Miller obtained this information?

(e) Staff informed Finkelstein about the trading by the Azeff/Bobrow Group in Masonite from November 19, 2004 to December 22, 2004 (Transcript of the August Interview at Qu. 321; and Exhibits 4 to 9 on the August Interview):

> 321 Q. …I am entering in as Exhibit 9 an 11-page document summarizing trading. The group we have referred to as the Azeff Group and this is select trading from November 19th, 2004, up to December 22nd, 2004, in advance of the announcement…Assuming all of these individuals were to sell based on the price offered in the initial announcement, December 22nd, 2004, the estimated profit on this groups of trading would be $3.6 million, a 20 percent profit. There are over 200 different accounts on these 11 pages that traded in Masonite in advance of the announcement.
>
> Mr. Finkelstein, did you discuss the Masonite transaction with Paul Azeff?
>
> [Emphasis added]

[69] Further, during the August Interview, Staff made the following summary statement:

> 372 … R. RADU: So, Mitch, we've been going quite a while here and we've sort of presented to you about 250 different accounts that have traded Masonite seemingly magically three days after you become involved and even more magically right before the big public announcement based on some pretty solid facts of the transaction, and the link we've made, subject to our investigation, is that two fraternity brothers, lifelong friends, yourself and Mr. Azeff. Is there anything you can help us out with in terms of understanding where Mr. Azeff got that understanding from? Can you suggest anything?

[70] The Larry Affidavit indicates that, at the end of the August Interview, Larry asked that "Staff contact me prior to taking any further steps including, in particular, commencing proceedings". In their investigation notes, Staff characterized this request as follows:

> Jeff asked us to keep in touch with him regarding the status of our investigation, and he respectfully requested that we give him a head's up before commencing an action against his client. We explained to him that our standard practice is to issue an Enforcement Notice to any individuals we are contemplating commencing a proceeding against – he would certainly be provided with notice before any action was commenced against his client.

b. The October Interview

[71] Staff did not contact Finkelstein again until October 18, 2010, two months after the August Interview. Finkelstein points out that, by then, the limitation period with respect to the Masonite transaction was less than a month away. At that time, Staff told Finkelstein's counsel that they wanted to interview Finkelstein a second time.

[72] Larry confirmed with Staff that his client would attend on October 25, 2010, the first available date proposed by Staff.

[73] According to Finkelstein, Staff once again did not provide him with any documentation to review in advance of the October Interview. Despite counsel's request, Staff also refused to advise of the specific transactions which would be covered in the October Interview.

[74] At the beginning of the October Interview, which lasted approximately five hours, Staff provided Finkelstein with a list of transactions that they intended to address in the interview. The list included the six Issuers, namely, Masonite, MDSI, Placer Dome, Dynatec, Legacy and IPC.

[75] In the Larry Affidavit, Larry stated that, during the course of the October Interview, Staff showed Finkelstein pieces of information and documentation that they gathered in connection with the investigation of Finkelstein as well as from the broader investigation relating to all Respondents. He described these pieces of information as having been selected from more than 500,000 documents that Staff apparently obtained during the course of their investigation.

[76] According to Larry, despite having indicated that they would do so, Staff did not ask any questions of Finkelstein relating to Legacy or IPC during the October Interview.

[77] Larry also gave evidence that Finkelstein requested but was not permitted to take with him copies of any of the documents or other information shown to him during the October Interview.

[78] Finkelstein alleges that, at no time during either the August Interview or the October Interview, did Staff advise that they intended to commence proceedings against Finkelstein, or that it was then incumbent on Finkelstein to come forward to persuade them that no proceedings should be commenced.

[79] Paragraph 99 of the Finkelstein Factum states that "Staff did not provide (and had never previously provided) any details whatsoever about its concerns relating to these other five issuers". Staff argue that a review of the transcript of the October Interview shows that this statement was not accurate.

[80] Staff rely on the following items put to Finkelstein during the October Interview in support of their position set out at paragraph 79 above (the specific questions and exhibit numbers are provided):

(a) Masonite transaction announced December 22, 2004 (Finkelstein was one of the counsel on this transaction)

(i) Finkelstein's calendar for January 2005 stated "lunch w/ client" on January 26, 2005 (Transcript of the October Interview at Qus. 132-134; and Exhibit 12 on the October Interview). Staff advised Finkelstein that he had lunch with Azeff at Bymark Restaurant on that date (Transcript of the October Interview at Qus. 131 and 138).

(ii) Cash deposits made to Finkelstein's accounts on January 27 and 28, 2005 (Transcript of the October Interview at Qus. 109-116; and Exhibits 10 and 11 on the October Interview).

(b) MDSI transaction announced July 29, 2005 (Finkelstein was NOT one of the counsel on this transaction)

(i) Nine documents accessed by Finkelstein on July 18 and 27, 2005 (Transcript of the October Interview at Qus. 299-329; and Exhibits 27 to 35 on the October Interview).

(ii) Trading by Azeff and his clients prior to announcement (Transcript of the October Interview at Qu. 326).

(iii) Telephone records of Finkelstein and Azeff showing calls between them on September 8 and 9, 2005, and that Finkelstein was in Montreal on these dates (Transcript of the October Interview at Qus. 349, 356-360; and Exhibits 41 to 43 on the October Interview).

(iv) A cash deposit made into Finkelstein's account on September 9, 2005 (Transcript of the October Interview at Qus. 96-108, 362-364; and Exhibit 9 on the October Interview).

(c) Placer Dome (Barrick) initial offer announced October 31, 2005 and revised offer announced on December 21, 2005 (Finkelstein was NOT one of the counsel on this transaction)

(i) Five documents accessed by Finkelstein on September 14 and 15, 2005 and on October 18, 2005 (Transcript of the October Interview at Qus. 329-341; and Exhibits 36 to 40 on the October Interview).

(ii) Telephone records of Finkelstein and Azeff showing calls between them during the period from September 2005 to November 2005 (Transcript of the October Interview at Qus. 346-352, 356-373; and Exhibits 41 to 45 on the October Interview).

(iii) Trading by Azeff and his clients prior to announcement (Transcript of the October Interview at Qu. 353).

(iv) Finkelstein's calendar for November 2005 stating "Reds – booth for 2" on November 30, 2005 (Transcript of the October Interview at Qus. 139-141; and Exhibit 13 on the October Interview), a Reds Restaurant reservation record for "Mitch Finkelstein" on November 30, 2005 (Transcript of the October Interview at Qus. 141-143 and 374; and Exhibit 14 on the October Interview) and an AMEX bill showing Azeff paid for the lunch (Transcript of the October Interview at Qus. 144-146; and Exhibit 15 on the October Interview).

(v) Cash deposits made to Finkelstein's accounts on December 2, 2005 (Transcript of the October Interview at Qus. 80-96, 374 and 375; and Exhibits 7 and 8 on the October Interview).

(d) Dynatec transaction announced April 20, 2007 (Finkelstein was NOT one of the counsel on this transaction)

(i) Nine documents accessed by Finkelstein on April 18 and 19, 2007 (Transcript of the October Interview at Qus. 167-244; and Exhibits 16 to 24 on the October Interview).

(ii) Finkelstein's telephone records showing that (a) he contacted Azeff on April 18, 2007, six minutes after accessing the first Dynatec document (Transcript of the October Interview at Qus. 247-252; and

Exhibit 25 on the October Interview), and (b) there were calls between Finkelstein and Azeff between April 10 and 27, 2007 (Transcript of the October Interview at Qus. 267-281; and Exhibit 26 on the October Interview).

(iii) Trading by Azeff's client on April 18, 2007, 16 minutes after the call to Azeff (Transcript of the October Interview at Qus. 191-194, 253 and 267).

(iv) Telephone records showing that Finkelstein was in Montreal on April 29 and 30, 2007 (Transcript of the October Interview at Qus. 149, 258-261; and Exhibit 25 on the October Interview).

(v) Cash deposits made to Finkelstein's accounts during the period from May 1 to 7, 2007 (Transcript of the October Interview at Qus. 40-78; and Exhibits 4 to 6 on the October Interview).

[81] Staff argue that with respect to the portion of the October Interview dealing with the Dynatec transaction, they summarized their concerns and Finkelstein confirmed his understanding of Staff's concerns as follows:

> 245 Q. So we have nine Dynatec documents that you accessed in a span of a little more than 24 hours. There's five on the 18th, four on the 19th that you weren't working on. You weren't working on Dynatec. You didn't bill any hours to Dynatec, and you believe it was for purposes of precedent value?
>
> A. Again, I don't recall specifically why I accessed them. I don't recall what I was working on at the time. I'm familiar with, at least, one transaction that I know I was working on which was a public M&A transaction of which a number of these things would have had some benefit to me. But do I have a specific recollection as to why I accessed them at that particular time? The answer is I don't.
>
> …
>
> 267 Q. So we have a sequence relating to the timing of Dynatec. At 12:48, you accessed a Dynatec document on your system at Davies. At 12:54 is your phone call to Mr. Azeff's cell phone on April 18th, 2007. So that was 6 minutes after your document access. 16 minutes after you call Paul Azeff, one of his clients starts buying Dynatec. Other Azeff clients buy Dynatec after that on April 18th, 2007.
>
> How did Paul know to invest in Dynatec two days prior to the announcement?
>
> A. You'll have to ask him. I don't know. It wasn't from me.
>
> …
>
> 287 Q. … See the difficulty we have here, Mr. Finkelstein, is pretty obvious. You accessed a document that you're not working on, that you're not billing any time to, not one, but nine different documents over a span of two days from the 18th of April through to the 19th of April.
>
> A. Mm-hmm.
>
> 288 Q. At 12:48, as Ms. Brown has said, was the first document you accessed. Then you made a phone call. The very next thing you do is you make a phone call using your cell from your office, not your phone from your office, but your cell phone when you were in your office.
>
> A. I don't know whether I was in my office.
>
> 289 Q. Well, you would had to have been 6 minutes prior because you accessed the document.
>
> A. Understood.
>
> 290 Q. So somewhere between 12:48 when you accessed the document and 12:54, you pick up your cell phone and you phone Mr. Azeff.
>
> A. Right.
>
> 291 Q. 16 minutes later, the first client, Howard Greenspoon – do you know him?

A. I know of him. I don't know him well. I know he's a friend of Paul's, yes.

292 Q. Well, he buys Dynatec under $4. And another fellow by the name of Leon Krantzberg – do you know him?

A. No.

293 Q. Anyway, he buys as well, as well as a number of other clients buy in the under $4 range. You continue to access documents for the remainder of the day right up until the last one at 3:12, documents that I'm having a difficult time imagining where you would use in precedents, but you suggest you might. And then that night you phone him and [*sic*] 7:10 at night, and you speak to him for 16 minutes from your home to his home.

A. Yes.

294 Q. The next day you go back and re-access more Dynatec documents on the 20th of April, excuse me the 19th. On the 20th, they announce that it's taken over, and it was somewhere around $8. The stock doubled. All these clients of Mr. Azeff made a lot of money. Do you see the difficulty we have here?

A. Yes, I do.

295 Q. Or maybe the difficulty you have here. There's no other explanation. Nobody else at Davies that I'm aware of – maybe you can help me – knows Mr. Azeff. Nobody else at Davies went to school with him as a fraternity brother. Nobody else at Davies was a personal friend of his. You are.

When we interviewed him, he did his best to distance himself from you which was completely bizarre. He did his best to distance himself from Ron Meisels. Why would he do that? We feel it's because you must have spoken to him about this. There's no other explanation for this.

A. I did not speak to him about this at all.

296 Q. I can only conclude that you've spoken to someone about it, and it got to Paul Azeff. They profited handsomely from this.

A. I did not tell Paul or anybody else.

297 Q. Do you have any –

A. I don't have any explanation for why he buys his stock. That's a question for him. The only stocks that I'm aware of are the ones that I have in my account.

[Emphasis added]

[82] Staff summarized the meetings between Finkelstein and Azeff as follows:

147 Q. Let's just go back then to the January 26 at Bymark, January the 26th, 2005. And then two days later, you have $5,000 in cash deposited in the bank. Did you get that money from Mr. Azeff?

A. No.

148 Q. November 30, 2005, you have lunch with Mr. Azeff at Reds. Two days later on December the 2nd, you deposited $6100. Did you get that money from Mr. Azeff?

A. No.

149 Q. According to your records, your telephone records, you were in Montreal on April the 29th and 30th. You stayed at the Sherbrooke Hotel?

A. Okay.

…

BY MR. BOYLE:

151 Q. The next day, you deposited $13,000 in cash into your account in Toronto. Did you get that money from Mr. Azeff?

A. No.

152 Q. July the 16th, 2005, your phone records indicate that you were in Montreal, and I think one day later you made the deposit. Did you get any of this money from Mr. Azeff?

A. No, I did not.

153 Q. These meeting [*sic*] with Mr. Azeff, did he give you anything?

A. No.

154 Q. Did you provide Mr. Azeff with any information regarding mergers and acquisitions?

A. Absolutely not.

155 Q. On any of these occasions?

A. Never.

156 Q. So all of these are just coincidences that you happened to meet with Mr. Azeff in advance of you depositing all this cash? Is it a coincidence?

A. I did not get the cash from Paul.

[Emphasis added]

[83] Later, Staff summarized the document access issue for Finkelstein as follows:

343 Q. I think we have nine documents on MDSI, five on Barrick, either eight or nine on Dynatec. None of these three you billed any time to or played any role in. All three of these in advance of the deal going on, completing, you accessed these documents. All three of these Paul Azeff clients, Kory Bobrow, and clients buy shares, profit handsomely from it. Did you give any information to Mr. Bobrow or Mr. Azeff on either Place [*sic*] Dome, Barrick, MDSI, or Dynatec?

A. Absolutely not.

344 Q. Did you give any information on any of the deals that you worked on?

A. Absolutely not.

345 Q. Do you know if Mr. Azeff knows anyone else at Davies?

A. I do not.

[Emphasis added]

[84] At the conclusion of the October Interview, Staff concluded as follows:

385 Q. Well, I can try and knit it all together for you at least from what we see.

We see at a minimum – because there are more – there's six: Three you were directly related to; three you have accessed the documents and not just accessed them at any particular odd time but at the very worst time from our perspective which was right in the middle of the transactions going on.

Subsequent, not before, but subsequent to your accessing these documents we see phone calls to Mr. Azeff in the worst case, 6 minutes after you access the Dynatec document.

Subsequent to you accessing these documents, we see trading of a very small group, a very large amount of money, all of which were connected to Mr. Azeff and his partner Mr. Bobrow.

Then we see cash deposits by you, all one hundred dollar bills or the vast majority of them hundred dollar bills all subsequent to meetings or meeting up with Paul or having lunch with him at Bymark or having lunch with him at Reds, in many cases the very next day.

The method of deposit is interesting to say the least, bizarre possibly to say the worst but definitely interesting. I still haven't figured out why anyone would deposit half the money in one account, walk across the street, and deposit the other half in another account only to transfer the money from the first account over to the second. And you don't do that once; you do it many times.

Mr. Azeff tells us a completely different story about your relationship. We find that inexplicable. The accessing of the documents these are the only three that we know of that you weren't billing time to. At the very time you were accessing them, these deals were in play.

Do you have anything you can say to help us understand this?

A. I can only repeat that which I've said which is that I have not passed along any information, that my accessing of documents is consistent with my history at the firm, that I look at documents all the time for purposes of my practice either whether it's relevant for that particular day or a future day.

I have not communicated anything to Paul nor have I communicated anything to anybody else nor has he so called fished for information from me.

In terms of the timing of the meetings and the deposits, I don't have a specific answer as to why I deposited it when I did. I just did. As to my banking methods, those are my methods. I don't really have a method to my madness, but it is something that I have done, as you suggest, on a number of occasions.

That's all I have. I don't have any – if you look at all the other documents that I've accessed, all the dates on which I've done it, what I was working on, I can't sit here today and specifically say that there wasn't a more particular purpose for why I was looking at it that I could sit here today and recollect.

It's six years ago, some even longer. I'm sure that my access of documents runs into the tens if not hundreds of thousands. I don't know how many documents we have in our system, but I'm sure I look at a lot of them. That's part of our job.

In terms of my times and my calls, Paul and I call; sometimes we speak during the day; sometimes when it's too busy, we may talk at night. I can't explain for how he describes my relationship with him. That's for him to say. I view him as a friend, and how he characterizes me in the relationships that he has with his friends in Montreal I can't comment on.

That's what I can say.

[Emphasis added]

4. The Enforcement Notices

a. The November Enforcement Notice

[85] Finkelstein submits that, under section 129.1 of the Act, any proceedings in respect of Masonite needed to be commenced on or before November 16, 2010. He further submits that as Staff required some time internally, the effective deadline for deciding to commence a proceeding was November 10, 2010.

[86] Staff delivered the November Enforcement Notice to Larry at 3:50 p.m. on Wednesday, November 3, 2010.

[87] The November Enforcement Notice states:

> Based on our investigation, it appears that the following occurred. Mr. Finkelstein was in a special relationship with Masonite International Corporation ("Masonite"), and informed, not in the necessary course of business, another person of material facts with respect [*sic*] Masonite before the material facts were generally disclosed.
>
> Staff are currently of the view that by participating in this conduct, your client contravened section 76(2) of the Act, and acted contrary to the public interest. Therefore, we are currently contemplating commencing proceedings before the Commission to consider whether your client has engaged in conduct which warrants the Commission making an order against him. As you may be aware, the limitation period with respect to this conduct expires (at the earliest) on November 16, 2010.
>
> We also take this opportunity to advise that our investigation is ongoing, including but not limited to, Mr. Finkelstein's conduct with respect [*sic*] five (5) other issuers, namely: MDSI, Placer Dome, Dynatec, Legacy Hotels and IPC US (the "Issuers"). Based on our investigation, it appears that Mr. Finkelstein was in a special relationship with the Issuers and informed, not in the necessary course of business, another person of material facts with respect [*sic*] the Issuers before the material facts were generally disclosed.
>
> At this time you are invited to respond to this letter by providing us with any information that you want us to consider before we decide whether to commence proceedings….
>
> [Emphasis added]

[88] The November Enforcement Notice requested a response by Monday, November 8, 2010, five (5) days or three (3) business days later.

[89] Finkelstein describes the November Enforcement Notice as containing no description whatsoever of Staff's allegations concerning Finkelstein and not accompanied by any documentary or other evidence in support of the allegations contained in the Enforcement Notice. Finkelstein further submits that the November Enforcement Notice raised for the very first time the pending expiry of a limitation period with respect to Masonite.

[90] In the Larry Affidavit, Larry gave evidence that he immediately called Staff to take issue with the short time frame afforded to respond to the November Enforcement Notice and requested more time, but Staff counsel refused his request.

[91] According to Larry, Staff stated they could not allow Finkelstein any more time to respond because of the pending expiration of the limitation period with respect to Masonite. Staff further explained that they needed time to carry out various internal processes before they could issue a Notice of Hearing and could not extend the response period beyond the original response date of Monday, November 8, 2010.

[92] Despite having advised Finkelstein that no extension would be granted, later that day Staff extended the response deadline by approximately thirty-six hours to November 10, 2010 at 9:00 a.m.

[93] According to Larry, on November 5, 2010, Staff expanded the scope of the November Enforcement Notice by confirming that, in addition to Masonite, Finkelstein's response (if any) should address trading in the remaining five Issuers, namely, MDSI, Placer Dome, Dynatec, Legacy and IPC.

[94] Finkelstein alleges that Staff did not provide any details in the November Enforcement Notice about their concerns relating to the other five Issuers, and that the transactions in question by then dated from approximately three and one-half years to over five years previously. Finkelstein points out that this timing is in sharp contrast to the four-month period that was afforded to Miller to deliver a response relating to trading in just one Issuer.

[95] Unlike Masonite, there were no pending limitation periods relevant to the remaining five Issuers at the time the November Enforcement Notice was delivered by Staff.

[96] Finkelstein did not provide any response by the 9:00 a.m. deadline on November 10, 2010. Rather than responding to Staff within the prescribed timeframe, Finkelstein's counsel wrote to Staff to advise of Finkelstein's position that Staff had failed to engage in a proper "Wells Process" and had accordingly failed to meet the duty of fairness that was owed to Finkelstein.

[97] On November 11, 2010, eight days after the delivery of the November Enforcement Notice, Staff commenced proceedings against Finkelstein by issuing and publicizing the Notice of Hearing and the Amended Statement of Allegations.

[98] Notwithstanding that the November Enforcement Notice requested responses on six Issuers, the Notice of Hearing and Amended Statement of Allegations contained allegations only in respect of four Issuers – Masonite, MDSI, Placer Dome and Dynatec. There were no allegations at that time regarding IPC or Legacy.

[99] Following the commencement of proceedings, Finkelstein's relationship with Davies was terminated on the morning of November 11, 2010.

b. The January Enforcement Notice

[100] On January 10, 2011, Staff delivered to Finkelstein's counsel the January Enforcement Notice advising that Staff were contemplating the commencement of proceedings relating to his alleged conduct in respect of IPC and Legacy.

[101] The January Enforcement Notice states:

> In the Enforcement Notice served prior to the issuance of the amended Statement of Allegations, Staff advised that it had investigated the conduct of your client in relation to a number of issuers, including IPC US Real Estate Investment Trust ("IPC US") and Legacy Hotels Real Estate Investment Trust ("Legacy Hotels"). The amended Statement of Allegations issued November 11, 2010 did not include IPC US or Legacy Hotels.
>
> Staff continued to investigate IPC US and Legacy Hotels following the issuance of the amended Statement of Allegations. Based on our investigation, it appears that Mr. Finkelstein was in a special relationship with IPC US and Legacy Hotels (the "Issuers"), and informed, not in the necessary course of business, another person of material facts with respect to the Issuers before the material facts were generally disclosed.
>
> Staff are currently of the view that by participating in this conduct, your client contravened section 76(2) of the Act, and acted contrary to the public interest. Therefore, we are currently contemplating commencing proceedings before the Commission to consider whether your client has engaged in conduct which warrants the Commission making an order against him.
>
> At this time you are invited to respond to this letter by providing us with any information that you want us to consider before we decide whether to commence proceedings …

[102] Finkelstein submits that the January Enforcement Notice, like the November Enforcement Notice, did not provide any details about or description of the alleged conduct in question or the factual basis for the alleged violations. Similarly, no evidence accompanied the January Enforcement Notice. Staff's January Enforcement Notice simply invited Finkelstein to provide Staff with "any information that [Mr. Finkelstein want[ed] Staff] to consider before [Staff] decide whether to commence proceedings".

[103] Finkelstein takes issue with the fact that the January Enforcement Notice requested a reply by January 21, 2011 even though there was no time pressure to commence proceedings in respect of the IPC or Legacy transactions.

[104] Finkelstein, through counsel, advised Staff that Finkelstein could not, and would not, respond to the January Enforcement Notice unless Staff provided particulars relating to both IPC and Legacy.

[105] According to Finkelstein, without further communication to him or providing any requested details, Staff issued an Amended Amended Statement of Allegations on April 18, 2011 to include allegations against Finkelstein relating to both IPC and Legacy.

IV. ISSUES

[106] The motion framed by Finkelstein is as follows: Did Staff fail to conduct a proper and meaningful "Well Process" prior to the issuance of a Notice of Hearing and Amended Statement of Allegations with respect to Finkelstein, which resulted in a failure in the duty of fairness owed to Finkelstein in a manner which abused Staff's own process, and would justify us granting an order for a stay of proceedings as against Finkelstein?

[107] In particular, at paragraph 116 of the Finkelstein Factum, Finkelstein raises the following issues with respect to the "Wells Process":

(a) Are Staff obliged to conduct a "Wells Process" prior to issuing and publicizing a Notice of Hearing against a prospective respondent?

(b) If so, what is required by such a process?

(c) In the circumstances here, did Staff:

(i) fail to conduct a "Wells Process" at all?; or

(ii) conduct a "Wells Process" in a manner that was unfair, prejudicial and abusive?

(d) If so, is a stay of this proceeding the appropriate remedy?

[108] In response to Finkelstein's Stay Motion, Staff brought a cross-motion, the Prematurity Motion, which raises the issue of whether the Stay Motion was brought prematurely.

[109] Therefore, in order to determine the merits of the Stay Motion, we have to address:

(a) The requirements attached to the duty of fairness at the investigative stage, and in particular, whether Staff's conduct with respect to the Enforcement Notices they delivered was a breach of that duty;

(b) Whether Staff's conduct with respect to their investigation of Finkelstein amounted to an abuse of process; and

(c) Whether a stay would be an appropriate remedy based on our conclusions.

[110] We address the Prematurity Motion at paragraphs 357 to 387 below.

V. ANALYSIS

A. THE STAY MOTION

[111] In considering the merits of the Stay Motion, we have to first determine whether Staff failed to meet the duty of fairness imposed on them, or engaged in conduct that amounted to an abuse of process, that would provide sufficient grounds for the requested remedy.

[112] At paragraphs 113 to 130 below, we provide a general overview of the parties' submissions. We then canvass the more detailed submissions made by the parties on each of the issues identified at paragraph 109 above.

1. Positions of the Parties

a. Finkelstein's Submissions

[113] On this motion, Finkelstein seeks an order staying these proceedings against him. The grounds for Finkelstein's Stay Motion are that Staff failed to conduct a proper and meaningful "Wells Process" prior to issuing a Notice of Hearing and the Amended Statement of Allegations against him.

[114] Based on the facts described above, Finkelstein alleges that Staff fundamentally deprived Finkelstein of the only meaningful pre-Notice of Hearing procedural protection available to proposed respondents in Commission proceedings. Finkelstein submits that Staff thereby failed to meet the duty of fairness owed to him, and did so in a manner which abused their own investigative process and violated the fundamental principles of justice.

[115] According to Finkelstein, Staff's investigation of this matter was rife with lengthy and unexplained delays. Despite their own significant delays, on November 3, 2010, just days prior to the *de facto* expiry of the limitation period, Staff delivered the November Enforcement Notice to Finkelstein which contained no description whatsoever about what Finkelstein had allegedly done wrong (except to say "he tipped"). Staff then imposed upon him an impossible deadline to provide a response.

[116] Finkelstein argues that he could not, and did not, respond to the "Wells Notice" within the limited time afforded to him, and the Notice of Hearing was then issued on November 11, 2010. Finkelstein submits that Staff's conduct deprived him of any meaningful opportunity for deliberation and response prior to the issuance of the Notice of Hearing against him.

[117] According to Finkelstein, the Stay Motion provides a unique opportunity for the Commission to deliver a clear and unequivocal direction to Staff about the proper conduct of "Wells Processes", given: (i) the high stakes involved for affected persons; (ii) the importance of affording affected persons procedural fairness; and (iii) Staff's inconsistent and unclear approach to conducting "Wells Processes".

[118] Finkelstein submits that he brought the Stay Motion before the Commission as this is a case where the "proceedings under scrutiny are unfair to the point that they are contrary to the interest of justice". Further, he submits that "it is cases of this nature which afford courts and tribunals the opportunity to ensure that procedural fairness is done now and in the future, and that in pursuit of that goal, the interests of the proper administration of justice supercede [*sic*] any concerns about whether allegations of misconduct will be subject to further review through the conduct of a hearing. The merits of the case in these situations is irrelevant".

[119] According to Finkelstein, the prejudice and damage caused to him by Staff's conduct cannot be remedied other than by a stay of proceedings. Once the Notice of Hearing and Amended Statement of Allegations were issued, the procedural fairness rights afforded by the "Wells Process" were permanently and irremediably lost.

[120] Finkelstein takes the position that, in the circumstances, proceeding with this hearing would only aggravate the serious harm already caused by Staff's failure to meet their duty of fairness to Finkelstein. Allowing the proceedings to continue in these circumstances threatens to bring the OSC's enforcement regime and its administration of justice into disrepute.

b. Staff's Submissions

[121] Staff take the position that potential respondents in administrative proceedings before the Commission do not have a right to an enforcement notice. Unlike the "Wells Process" in the U.S., the provision of an enforcement notice, which is a final written notice of pending allegations, is not mandated by legislation or any rule of practice. It is the practice of Staff to provide potential respondent(s) with a final opportunity to bring to their attention any circumstances that may influence Staff's decision to commence a proceeding. The decision whether, and if so, when to provide an enforcement notice to a potential respondent remains wholly within Staff's discretion.

[122] Further, Staff submit that it is disingenuous to suggest that Finkelstein did not have adequate notice and particulars to respond to the Enforcement Notices in this matter. Staff point out that Finkelstein was interviewed twice (on August 17, 2010 and October 25, 2010) for a total of approximately eight and a half hours, 54 exhibits were put to him, and he was represented by counsel. During the Finkelstein Interviews, Staff put specific evidence to Finkelstein, synthesized the evidence for him, explained their concerns regarding his conduct and provided him with numerous opportunities to provide Staff with any information or explanations that he believed were relevant.

[123] Through the interview process, Finkelstein was fully informed and well aware of the particulars of the allegations described in the Enforcement Notices. In fact, Staff submit that Finkelstein received more particulars than were necessary to discharge any obligation that Staff may have had. Staff submit that they could have properly exercised their discretion not to provide an enforcement notice to Finkelstein in the circumstances.

[124] According to Staff, the responses provided by Finkelstein during the Finkelstein Interviews to questions regarding his conduct demonstrated that he understood Staff's concerns regarding his conduct. His responses were either blanket denials or explanations which, in Staff's view, failed to address the inculpatory nature of the evidence.

[125] The November Enforcement Notice was delivered to Finkelstein on November 3, 2010 and Staff initially requested a response by November 8, 2010. Later that day, at the request of Finkelstein's counsel, Staff extended the time provided to respond to November 10, 2010. Staff argue that by the time Finkelstein was provided with the November Enforcement Notice, he had been presented with full particulars of the conduct described in the November Enforcement Notice:

(a) In the case of Masonite, since the August Interview on August 17, 2010; and

(b) In the cases of MDSI, Placer Dome and Dynatec, since the October Interview on October 25, 2010.

[126] It is Staff's submission that Finkelstein also had received sufficient particulars to respond to the January Enforcement Notice relating to Legacy and IPC.

[127] Staff argue that Finkelstein never advised them that exculpatory information or documents existed at any time during or after the Finkelstein Interviews, after the delivery of the Enforcement Notices or after the commencement of proceedings against him. They further submit that no evidence has been tendered, and there is no reason to believe that, had Finkelstein been provided with more time or particulars, he would have provided a response to the Enforcement Notices.

[128] Staff submit that the drastic remedy of a stay of proceedings prior to calling evidence on the merits is the most extreme remedy possible and is not warranted in this case. Finkelstein has failed to demonstrate that the alleged prejudice he has suffered is an abuse of process which merits the granting of a stay.

[129] Further, Staff submit that a far greater prejudice to the public interest will occur if a stay is granted. The statutory mandate of the Commission to "foster fair and efficient capital markets and confidence in capital markets" will not be served by

staying allegations of tipping. The public interest in holding a hearing to determine whether Finkelstein engaged in tipping far outweighs his interest in obtaining a stay on the basis that there was allegedly insufficient time or particulars to respond to the Enforcement Notices.

[130] Finally, Staff submit that public confidence in the fairness of the capital markets requires a public Merits Hearing as does the public interest in ensuring that breaches of the Act will be brought before the Commission. To grant a stay in these circumstances would be to subordinate the public interest to an individual's interest. There is no conduct by Staff which warrants such a weighting in favour of Finkelstein.

2. Duty of Fairness

[131] The first issue raised by Finkelstein's Stay Motion is whether, and to what extent, a duty of fairness is owed to a respondent at the investigative stage of a proceeding. As noted above, Finkelstein submits that Staff's failure to conduct a proper "Wells Process" prior to the issuance of the Notice of Hearing and the Amended Statement of Allegations, their failure to provide sufficient time and particulars for Finkelstein to respond to the Enforcement Notices and their reliance on investigatory interviews to provide that notice violate the duty of fairness owed to Finkelstein.

[132] We therefore turn first to the parties' submissions on whether Staff are obliged to conduct a "Wells Process", and if so, what is required by such a process.

a. Positions of the Parties on the "Wells Process"

i. Finkelstein's Submissions

Are Staff obliged to conduct a "Wells Process" prior to issuing and publicizing a Notice of Hearing relating to a prospective respondent?

[133] In his Notice of Motion, Finkelstein states:

> The Commission's duty of fairness to persons under investigation includes a duty to conduct a fair, meaningful and proper Wells Process prior to the commencement of any proceeding against that person. Indeed, the right to a Wells Process is the most significant and meaningful right afforded to an individual under investigation by the Commission.
>
> [Emphasis added]

[134] Finkelstein's submissions regarding the "Wells Process" rely heavily on an article written by Paul S. Atkins and Bradley J. Bondi, "Evaluating the Mission: A Critical Review of the History and Evolution of the SEC Enforcement Program" (2008) 13 Fordham J. Corp. & Fin. L. 367 ("**Atkins and Bondi**"). Staff did not object to this article being filed in Finkelstein's Book of Authorities.

[135] The "Wells Process" emanated from an advisory committee set up in 1972 by the SEC (known as the Wells Committee) to evaluate its enforcement policies and practices. The Wells Committee made 43 recommendations, the most significant of which led to the creation of the so-called "Wells Process" and a respondent's opportunity to provide the SEC with a "Wells Submission". The Wells Committee "felt that the process of providing notice to prospective defendants and allowing them to respond to the allegations before the [SEC] formally charged them was critical to protecting their rights and ensuring overall fairness" (Atkins and Bondi, *supra* at p. 378).

[136] In late 1972, the SEC adopted the Wells Committee recommendations into its informal procedural rules and subsequently into the SEC's Enforcement Manual.

[137] Finkelstein argues that, like the SEC, the OSC has considerable power over individuals' lives and careers. It has broad investigation powers and the ability to commence proceedings before the OSC and the criminal courts against both registrants and non-registrant members of the public. The decision to issue and publish a Notice of Hearing can have a great impact on a respondent's life and career. This risk is particularly acute for professionals, including lawyers and accountants, for whom a reputation for honesty and integrity is of paramount importance.

[138] The interests of such individuals are dramatically and adversely affected by the decision of the OSC to issue a Notice of Hearing. According to Finkelstein, these are amongst the exact circumstances in which courts have determined that a regulator owes a duty of fairness to persons under investigation. Finkelstein submits that the content of this duty of fairness will vary taking into account the factors that the Supreme Court of Canada enunciated in *Baker v. Canada* (*Minister of Citizenship and Immigration*), [1999] 2 S.C.R. 817 ("***Baker***"), which include (among other factors) the importance of the decision to the affected individual.

[139] Finkelstein submits that in light of the broad investigative powers granted to the OSC, and given that protections afforded by the *Canadian Charter of Rights and Freedoms* (the "**Charter**") have been held not to apply to administrative proceedings at the OSC, the "Wells Process" is the most significant procedural fairness right afforded to an individual facing an investigation. The right to, and the proper conduct of, a "Wells Process" enhances the probability that an individual under investigation is treated fairly and safeguards against the OSC's considerable power and discretion. In short, the "Wells Process" is essential to fair play and the proper administration of justice at the OSC.

[140] It is Finkelstein's position that as early as 1991, the OSC expressly recognized the existence and importance of providing a potential respondent with a fair and meaningful opportunity to explain why the case against him should not proceed. The OSC stated:

> While we have not adopted the "Wells submission" formalities of the United States Securities and Exchange Commission, we expect staff counsel to provide the respondents with due opportunity during or at the conclusion of an investigation to state why, in respondents' view, the matter should not proceed to the [OSC] or to the courts.
>
> (*Re American Diversified Realty Fund Limited Partnership* (1991), 14 O.S.C.B. 551 ("***American Diversified***") at p. 588)

[141] According to Finkelstein, since at least the time of the *American Diversified* decision, Staff have incorporated the "Wells Process" into their practice and procedure on a regular basis.

[142] Finkelstein submits that in 2001, the OSC expressly and specifically endorsed the "Wells Process" in *Re YBM Magnex International Inc.* (2001), 24 O.S.C.B. 1961 ("***YBM (Gatti Motion)***"). Following the *YBM (Gatti Motion)* decision, the OSC's adherence to the "Wells Process" has only strengthened. Accordingly, prospective respondents, including Finkelstein in this case, have a legitimate expectation that Staff will conduct a proper "Wells Process" and ensure that prospective respondents receive the protection of this significant procedural right. Simply put, the "Wells Process" lies at the centre of the procedural fairness rights afforded to an individual under investigation by Staff.

[143] Finkelstein argues that, consistent with *American Diversified* and *YBM (Gatti Motion)*, a properly-conducted "Wells Process" is intended to afford a prospective respondent a real opportunity to avoid the publication of allegations that would destroy reputations and careers by persuading Staff that a Notice of Hearing should not be issued or by entering into a settlement with the OSC which may mitigate personal and professional harm significantly.

What is required by the "Wells Process" if Staff are obliged to conduct such a process?

[144] It is Finkelstein's submission that in order for a "Wells Process" to be fair and meaningful (and not the type of "empty exercise" cautioned against in *YBM (Gatti Motion)*, *supra* at p. 1966), prior to the issuance of a Notice of Hearing, Staff must provide an enforcement notice to a proposed respondent:

(a) "containing sufficient information to permit the proposed respondent to understand the case against him, including (at a minimum) a detailed summary of the allegations against him"; and

(b) "affording to the proposed respondent sufficient time to consider and evaluate all of his options including, where the prospective respondent chooses to do so, time to formulate a response to Staff in respect of the allegations".

[145] Finkelstein submits that Staff are obliged to plan for conducting a "Wells Process" prior to issuing proceedings against a proposed respondent. This necessarily includes being mindful of pending limitation periods and ensuring that all necessary steps are taken within an appropriate period of time to allow for a proper and meaningful "Wells Process" to be completed prior to the issuance of a Notice of Hearing.

ii. Staff's Submissions

Are Staff obliged to conduct a "Wells Process" prior to issuing and publicizing a Notice of Hearing relating to a prospective respondent?

[146] According to Staff, there are significant differences between the provision of an enforcement notice by Staff and the initiation of a "Wells Process" in the U.S. The "Wells Process" is a formal process with discrete and fixed requirements and its purpose is to elicit the recipient's position in a form which can be considered by the SEC when it decides whether to initiate an enforcement action. As Staff in Ontario are not required to seek authorization from the Commission to initiate a proceeding, the enforcement notice has a different purpose, which is to provide a potential respondent with a final opportunity to bring to the attention of Staff any circumstances that may influence Staff's decision to initiate a proceeding.

[147] Staff also point out that perhaps the most significant difference between the U.S. and Ontario positions is that while the "Wells Process" is mandated by legislation, the enforcement notice is not. The Legislature has not enacted any requirements comparable to the "Wells Process" in the Act or in the Regulations adopted under the Act and there are no guidelines for the process set out in the OSC's *Rules of Procedure* (2010), 33 O.S.C.B. 8017 (the "***Rules of Procedure***").

[148] Staff emphasize that they have the discretion to determine when and how they advise potential respondents of their concerns, whether and when to deliver an enforcement notice, and the appropriate response time to such a notice if one is provided. As such, they are not required to conduct a "Wells Process".

b. Positions of the Parties on the Enforcement Notices

[149] We turn now to outline the parties' submissions about whether the enforcement notices delivered by Staff comply with the duty of fairness owed to respondents at the investigation stage.

i. The November Enforcement Notice

Finkelstein's Submissions

[150] We have outlined above Finkelstein's submissions on the applicability of the "Wells Process" in Staff's investigative efforts. Finkelstein alleges that Staff fundamentally deprived him of the only meaningful pre-Notice of Hearing procedural protection available to proposed respondents in Commission proceedings.

[151] Finkelstein submits that he could not, and did not, respond to the November Enforcement Notice within the limited time afforded to him, and the Notice of Hearing was then issued on November 11, 2010. Finkelstein submits that Staff's conduct deprived him of any meaningful opportunity for deliberation and response prior to the issuance of the Notice of Hearing against him.

[152] The content of the November Enforcement Notice sent to Larry is set out above at paragraph 87.

[153] Finkelstein's submissions on the law relating to the duty of fairness and its application to the Stay Motion are set out at paragraphs 199 to 205 below.

Staff's Submissions

[154] Staff submit that contrary to paragraph 98 of the Finkelstein Factum, Larry was aware from November 3, 2010 (not November 5, 2010) that the November Enforcement Notice was meant to pertain to all six Issuers. On November 3, 2010, Tamara Center ("**Center**"), Senior Litigation Counsel in the Enforcement Branch, had a conversation with Larry. Staff submit that when it became clear that Larry believed that the November Enforcement Notice only pertained to Masonite, Center clarified that Staff were actually considering commencing proceedings with respect to all six Issuers named in the November Enforcement Notice, not just Masonite. Staff submit that out of an abundance of caution, and in order to remove any confusion, they sent a further letter on November 5, 2010 relating to the other five Issuers.

[155] It is Staff's position that, in the circumstances of this case, as Finkelstein was interviewed twice by Staff and asked direct, pointed and specific questions concerning his conduct, the content of the November Enforcement Notice was sufficiently particular to enable Finkelstein to respond within the time provided if he had chosen to do so.

ii. The January Enforcement Notice

Finkelstein's Submissions

[156] Finkelstein takes the position that the January Enforcement Notice "failed to provide any details or description whatsoever about the alleged conduct in question or the factual basis for the alleged violations".

[157] In oral submissions, Finkelstein further submitted that "in respect of these two issuers, there was no time pressure because there's no limitation period then looming, but Staff nevertheless demanded a response…by January the 21st, some ten days later" (Hearing Transcript dated November 10, 2011 at p. 84). Finkelstein pointed out that no "explanation on the timing" was provided to him before the issuance of the Amended Amended Statement of Allegations in April 2011 (Hearing Transcript dated November 10, 2011 at p. 85).

Staff's Submissions

[158] According to Staff, the January Enforcement Notice gave Finkelstein another opportunity to bring to the attention of Staff any circumstances which may have influenced Staff's decision to issue proceedings relating to Legacy and IPC. They submit that this notice was not required, but was provided as a courtesy.

[159] Staff submit that the circumstances surrounding the January Enforcement Notice are different because at the time that it was delivered, a proceeding had already been commenced against Finkelstein for tipping in relation to four other Issuers. This was not a situation where allegations were being issued against a respondent for the first time.

[160] Staff submit that in the circumstances, the level of particulars provided to Finkelstein regarding Legacy and IPC was sufficient to discharge any alleged requirement to provide Finkelstein with notice of the conduct which was at issue.

[161] Staff issued an Amended Amended Statement of Allegations adding allegations relating to tipping conduct in connection with the Legacy and IPC transactions on April 18, 2011. Once again, Staff submit that, from January 10, 2011 (the date of the January Enforcement Notice) to the date of the Amended Amended Statement of Allegations issued on April 18, 2011, neither Finkelstein nor his counsel provided Staff with any relevant information to consider.

[162] Staff submit that it is only reasonable to conclude that if Finkelstein possessed exculpatory evidence, or information or documents which would have affected Staff's decision whether to commence proceedings, he would have provided it to Staff even if it was provided after the proceedings were issued.

c. Positions of the Parties on the Finkelstein Interviews

[163] The parties also provided submissions on the role, if any, that the compelled interviews might play in satisfying any obligations that Staff might have to present clearly and fairly the nature of the allegations against a respondent before issuing a Notice of Hearing.

i. Finkelstein's Submissions

[164] Finkelstein submits that Staff attempt to rely exclusively on information relayed to Finkelstein and his counsel during the Finkelstein Interviews, conducted pursuant to section 13 of the Act, to satisfy their obligations under the "Wells Process". Staff initially made this assertion in a letter to Finkelstein's counsel, dated November 30, 2010, which stated as follows:

> Through the interview process, you and Mr. Finkelstein were made aware of the conduct which culminated in the issuance of the Enforcement Notice…
>
> Given the information which you and Mr. Finkelstein acquired as a result of the interview process, the time provided to respond to the Enforcement Notice was adequate.

[165] Finkelstein points out that, prior to the November 30, 2010 letter, Staff had never taken this position. In particular, at no time prior to or during the August Interview or October Interview did Staff suggest that they were discharging their obligations under the "Wells Process" by disclosing information to Finkelstein during the Finkelstein Interviews.

[166] According to Finkelstein, there is no authority for Staff's proposition that they can discharge their obligations under the "Wells Process" by relying on investigatory interviews. This "after-the-fact" rationalization highlights Staff's misapprehension that the "Wells Process" and the interview process are somehow intertwined. Finkelstein submits that investigatory interviews and the "Wells Process" are separate and distinct, and serve entirely different purposes. Investigatory interviews are Staff's opportunity to acquire information from a potential respondent who is compelled to attend and answer questions.

[167] Finkelstein argues that the decision of the Supreme Court of Canada in *British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 3 ("***Branch***") implies that the purpose of the compelled interview "is not, and cannot be, to inform a person under investigation of the case which needs to be met. Rather, the purpose is to elicit information from the investigated person to determine whether the OSC ought to issue an enforcement notice" and, in turn, where appropriate, a Notice of Hearing.

[168] Finkelstein submits that in order to conduct a proper "Wells Process", Staff have an obligation pursuant to their duty of fairness to present clearly and fairly the nature of the allegations against a potential respondent. This obligation is completely at odds with the purpose and discretionary nature of an interview at the investigation stage, during which Staff may use a variety of techniques in presenting and eliciting information.

[169] Further, he submits that it is inappropriate for Staff to suggest that he (or any potential respondent) should speculate about the nature of Staff's allegations from the evidence that Staff focus on during an investigatory interview. In this case, Staff

gathered more than a half-million documents from their lengthy investigation, showed Finkelstein only a selected few and refused to permit Finkelstein to take copies of any of these documents from the Finkelstein Interviews. Given the scope of the investigation, Finkelstein was not in a position to obtain this information independently, including historical telephone and banking records, in the short time afforded.

[170] While Staff state that it is "standard practice" not to provide an individual with documents because it will compromise the investigation, Staff cannot thereafter rely on the investigation to satisfy their separate obligations to present clearly and fairly the nature of the allegations against a potential respondent as part of the "Wells Process".

[171] Finkelstein submits that the fact that Staff subsequently commenced an amended proceeding against him in relation to Legacy and IPC without having disclosed any particulars of these allegations in the January Enforcement Notice or having asked any questions about them in the course of either the August Interview or the October Interview exposes the flaw and inconsistency in Staff's position that the Finkelstein Interviews somehow discharged Staff's obligation to disclose adequate information to Finkelstein about those allegations, as required in a properly-conducted "Wells Process".

[172] Finkelstein submits that it is inappropriate for Staff to suggest that, following the Finkelstein Interviews, Finkelstein had some obligation to approach Staff and discuss the evidence which had been gathered (or to imply that his failure to do so should be viewed negatively). According to Finkelstein, the "Wells Process" begins with the delivery of an enforcement notice, not with the conduct of investigatory interviews. A person who is interviewed may not even be the subject of an investigation and potential proceedings. For instance, Finkelstein was interviewed in furtherance of a section 11 investigation order against Miller and Cheng, and later Azeff, but not against himself.

[173] Finally, Finkelstein submits that a person who is interviewed cannot be expected or required to take any steps to approach Staff voluntarily (i.e. without the protections afforded by a compelled interview) when that individual does not even know whether it is Staff's intention to commence proceedings.

ii. Staff's Submissions

[174] Staff submit that it was always apparent to Finkelstein and his counsel that Staff were investigating potential tipping and trading conduct in relation to the Masonite takeover bid, which occurred in November 2004. At the August Interview, Finkelstein was asked numerous questions about Masonite, and the documents put to him referenced events from 2004, including Masonite's retainer of Davies on November 16, 2004.

[175] As set out at paragraph 70 above, at the end of the August Interview, Larry requested that "Staff contact me prior to taking any further steps including, in particular, commencing proceedings". Staff submit that this demonstrates that, at the time of the August Interview, Finkelstein's counsel already understood that Staff might be considering commencing an action against his client. As reproduced at paragraph 70 above, Staff's investigation notes indicate that, on August 17, 2010, they advised Larry that "our standard practice is to issue an Enforcement Notice to any individuals we are contemplating commencing a proceeding against – he would certainly be provided with notice before any action was commenced against his client".

[176] Staff argue that in light of the content of the August Interview, Finkelstein had full particulars of the conduct described in the November Enforcement Notice relating to Masonite from the date of the August Interview on August 17, 2010. He did not first learn of the particulars on November 3, 2010, as alleged by Finkelstein.

[177] In Staff's submission, a review of the complete transcript of the October Interview and all of the exhibits put to Finkelstein during the October Interview demonstrate that much of the evidence regarding Finkelstein's conduct described in the November Enforcement Notice and subsequently in the Amended Statement of Allegations was disclosed to him during the October Interview.

[178] Although Staff accept Finkelstein's characterization that they are "very selective" about what evidence they choose to present to or withhold from an interviewee, they rely on the broad discretion available to them with respect to this issue.

d. Law and Analysis

We must now determine whether Staff's duty of fairness to persons under investigation includes the duty to conduct a "Wells Process" prior to the commencement of any proceedings against that person. Alternatively, we must determine if the enforcement notices sent and the interviews conducted by Staff satisfied the duty of fairness owed to a respondent by Staff at the investigative stage of a proceeding.

i. "Wells Process"

Are Staff obliged to conduct a "Wells Process" prior to issuing and publicizing a Notice of Hearing relating to a prospective respondent?

The "Wells Process" under U.S. Securities Law

[180] In addition to the serious impact of the decision to issue a Notice of Hearing in the absence of proper procedural protections, Finkelstein submits that he had a legitimate expectation that Staff would follow a "Wells Process". Finkelstein argues that Staff have a long-standing practice of conducting "Wells Processes". In this case, Staff's investigation notes confirm that they advised Finkelstein's counsel on August 17, 2010 (approximately three months prior to the expiration of the limitation period) that it was Staff's "standard practice" to provide a potential respondent with an enforcement notice prior to commencing any proceedings. Finkelstein expected that this practice would not be a mere formality for Staff to strike off their list, or a perfunctory step for Staff to take moments before commencing a proceeding.

[181] In the U.S., enforcement actions are recommended by SEC staff and authorized by their commission. Before the decision to authorize an enforcement action is taken at the commission level, the "Wells Process" is initiated. The term "Wells Process" derives from procedures followed by SEC staff, set out in the SEC's Rules on Informal and Other Procedures, 17 C.F.R. §202 which form part of the Code of Federal Regulations. It consists of a "Wells Notice" (sent by SEC staff) and a "Wells Submission" (made by the recipient of the "Wells Notice"). The Securities Exchange Commission Division of Enforcement, Enforcement Manual dated August 2, 2011 (the "**SEC Enforcement Manual**"), Ch. 2.4, The Wells Process, Section. 2.4 at p. 24, indicates that the "Wells Notice":

(a) Identifies the specific charges SEC staff are considering recommending to the SEC;

(b) Advises the recipient of the "Wells Notice" of the opportunity to provide a voluntary statement, in writing or on videotape, arguing why the SEC should not bring an action against him or her, or bring facts to the attention of the SEC;

(c) Sets limits on the length of the submissions or videotapes (typically 40 pages or 12 minutes, respectively) as well as the time period allowed to make a voluntary statement responding to the "Wells Notice";

(d) Informs the recipient that the "Wells Submission" is made "with prejudice"; and

(e) Attaches copies of the "Wells Release", which established the "Wells Process".

[182] Staff point out that paragraph 166 of the Finkelstein Factum makes reference to the "Report of the Task Force on SEC Rules Relating to Investigations" (1987) 42 Bus. Law. 789 and their proposed Rule 8 that 30 days be set aside for a proper "Wells Process". Staff note that this document dates from 1986 and that the recommendation was never adopted by the SEC. The wording of rule 5(c) of the SEC's Rules on Informal and Other Procedures, 17 C.F.R. § 202.5(c) indicates that SEC staff will inform the individual of the amount of time that may be available to submit a response.

[183] Staff also point out that SEC staff have the discretion to *not* issue a "Wells Notice" in a variety of circumstances, including whether immediate enforcement action is necessary to protect investors, and may reject a "Wells Submission" because of length, lateness or attempts to qualify the "without prejudice" nature of the submission. There is also a post-"Wells Notice" process which permits SEC staff to allow a recipient access to non-privileged portions of the investigative file. This is done at SEC staff's discretion, on a case-by-case basis (SEC Enforcement Manual at pp. 23-25).

[184] Staff submit that in the U.S., where respondents have brought a motion to strike an enforcement action (which is the equivalent of a stay motion) because of a deficient or non-existent "Wells Process", the courts have dismissed such motions, on the basis that the respondent has the opportunity to present a full defence at the hearing on the merits despite an incomplete or no "Wells Process". It is only if the misconduct is egregious, occurs before the enforcement action is initiated and prejudices the ability to present a full defence that a motion to strike on such grounds would be granted (*Wellman v. Dickinson*, 79 F.R.D. 341 (S.D.N.Y. 1978) at pp. 352-353; and *Securities and Exchange Commission v. Cuban*, 2011 U.S. Dist. LEXIS 77549 at p. 27)

Doctrine of Legitimate Expectations in the Context of a "Wells Process"

[185] In the circumstances, and taking into account the OSC's position on the "Wells Process" dating back to its decision in *American Diversified*, however, Finkelstein argues that Staff breached Finkelstein's legitimate expectations that he would be afforded a proper and meaningful "Wells Process".

[186] The administrative law doctrine of legitimate expectations is "an extension of the rules of natural justice and procedural fairness" (See *Reference re Canada Assistance Plan (B.C.)*, [1991] 2 S.C.R. 525 at p. 557) and is one of the factors in the

procedural fairness analysis outlined in the *Baker* case (We discuss these factors in full at paragraphs 208 to 222 below). The doctrine, as applied in Canada, is based on the principle that "the 'circumstances' affecting procedural fairness take into account the promises or regular practices of administrative decision-makers, and that it will generally be unfair for them to act in contravention of representations as to procedure, or to backtrack on substantive promises without according significant procedural rights" (*Baker*, *supra* at para. 26).

[187] It also arises in situations where a public authority makes a "clear, unambiguous and unqualified" representation that the public authority will follow a certain procedure, provided the representation does not conflict with the institution's statutory duty (*Canada (Attorney General) v. Mavi*, [2011] 2 S.C.R. 504 ("***Mavi***") at para. 68).

[188] In considering the issue of Finkelstein's legitimate expectations with respect to a "Wells Process", we are aware that, in the context of an investigation under Part VI of the Act, the OSC's public interest mandate must include due consideration of the interests of the person under investigation (*Re X and A Co.* (2007), 30 O.S.C.B. 327 at para. 28).

[189] While Staff's U.S. counterparts have an obligation to comply with a "Wells Process", which has detailed requirements and forms part of the U.S. Code of Federal Regulations (described at paragraph 181 above), the OSC enforcement notice process is not mandated by any legislation or by the *Rules of Procedure*. In Ontario, the decision about whether and when to provide an enforcement notice in the later stages of an investigation remains within Staff's discretion, subject to the principles discussed below.

[190] As set out at paragraph 140 above, the Commission has previously stated:

> While we have not adopted the "Wells submission" formalities of the United States Securities and Exchange Commission, we expect staff counsel to provide the respondents with due opportunity **during** or at the conclusion of an investigation to state why, in respondents' view [*sic*], the matter should not proceed to the Commission or to the courts.
>
> [Emphasis added]
>
> (*American Diversified*, *supra* at p. 588)

[191] In both his written factum and oral submissions at the Motions Hearing, counsel for Finkelstein argued that Staff have incorporated the "Wells Process" as part of their procedure. He argued in oral submissions that in *YBM (Gatti Motion)* Staff referred to the enforcement notice process as the "Wells Process". Thus, counsel for Finkelstein stated in reference to *YBM (Gatti Motion)*:

> And what the panel does in this case is talk about the unique circumstances of what was the Wells process in effect in that case, and it was noteworthy for me, at least, that on that particular motion in 2001, Staff itself referred to this as the Wells process, at least according to the panel.
>
> (Hearing Transcript dated November 10, 2011 at pp. 32-33)

[192] The relevant paragraph of *YBM (Gatti Motion)* provides that:

> In the three-month period prior to issuing the Notice of Hearing, from August to October 1999, Staff advised the Applicant in considerable detail of its concerns regarding his involvement in this matter (in the motion, Staff referred to this as the "Wells Process")…
>
> (*YBM (Gatti Motion)*, *supra* at p. 1966)

[193] In Finkelstein's Factum, at paragraph 114, Finkelstein makes reference to Staff's use of the term "Wells Process" in the context of the investigation of Finkelstein. The paragraph states that "Staff referred to the process surrounding delivery of an enforcement notice as the 'U.S. Wells process'". We have reviewed the letter dated February 11, 2011 that was identified by Finkelstein as the location of this reference by Staff. The relevant portion of the letter states:

> Staff's view of the events leading up to the issuance of the Amended Statement of Allegations against your client as well as Staff's position concerning the U.S. Wells process is contained in earlier correspondence.

[194] Staff's reference to "the U.S. Wells Process" in the letter dated February 11, 2011 is in fact a reiteration of Staff's earlier position that the delivery of an enforcement notice is not akin to the "Wells Notice" and is therefore not subject to the specific procedural steps established by the U.S. Code of Federal Regulations. The earlier position taken by Staff can be found in their letter dated November 30, 2010, sent shortly after the delivery of the November Enforcement Notice:

> Unlike the Wells notice used by the Securities and Exchange Commission in the United States, an Enforcement Notice is not mandated by legislation or rules in Ontario or Canada. The opportunity to respond to an Enforcement Notice is a matter of practice, not law, and varies with the circumstances and nature of each case. It is Staff's position that there has been no "failure to conduct a proper Wells process", denial of natural justice or breach of procedural fairness in this case.
>
> [Emphasis added]

[195] We cannot accept Finkelstein's submission that "Staff has incorporated the Wells Process into its practice and procedure on a regular basis" and that "…the Wells Process lies at the centre of the procedural fairness rights afforded to an individual under investigation by the OSC". Although there was a reference to the "Wells Process" made by the panel in *YBM (Gatti Motion)*, it was described in quotations and was a comment made in passing about Staff's use of the phrase. In our view, this brief reference does not provide a sufficient basis for us to conclude that the "Wells Process" has been incorporated into Staff's procedures.

[196] In addition, the authorities cited by Finkelstein for the statements about the incorporation of the "Wells Process" into Ontario securities law quoted at paragraph 195 above are Joseph Groia and Pamela Hardie, *Securities Litigation and Enforcement* (Toronto: Thomson Carswell Canada Limited, 2007) at p. 81 and a paper by Linda L. Fuerst and Nadia Campion, *OSC Procedural Trends and Fairness* at p. 9. While the textbook and paper set out the authors' views on what the state of the law is or should be, we are of the view that these authorities are insufficient to support the propositions put forth by Finkelstein as to the incorporation of the "Wells Process" into Ontario law.

[197] We are satisfied that the formalities of the U.S. "Wells Process" and its requirements do not apply to the investigative stage of OSC administrative proceedings. Finkelstein has no legitimate expectation that the "Wells Process", as understood in the U.S., will be followed in Ontario. Accordingly, it is not necessary to address the remaining issues regarding the "Wells Process" raised by Finkelstein at paragraph 107 above.

[198] Nevertheless, the issue of whether Staff breached their duty of fairness to Finkelstein in their handling of the enforcement notice process in this case remains.

ii. Enforcement Notices

Legal Submissions of the Parties

[199] Finkelstein submits that courts have long recognized the importance of procedural fairness in the context of investigations that may lead to serious consequences for the person investigated. For example, as Lord Denning M.R. said (noting the well-established history of this principle as early as 1975):

> In all these cases it has been held that the investigating body is under a duty to act fairly: but that which fairness requires depends upon the nature of the investigation and the consequences which it may have on persons affected by it. The fundamental rule is that, if a person may be subjected to pains or penalties, or be exposed to prosecution or proceedings, or deprived of remedies or redress, or in some such way adversely afflicted by the investigation and report, then he should be told the case made against him and be afforded a fair opportunity of answering it.
>
> *(Regina v. Race Relations Board, ex parte Selvarajan*, [1975] 1 W.L.R. 1686 (C.A.) at p. 1694)

[200] Finkelstein relies on the more recent *Baker* decision of the Supreme Court of Canada for a statement of the analysis to be undertaken with respect to the duty of fairness. In *Baker*, the Supreme Court identified five non-exhaustive factors to consider when determining the content and extent of the duty (*Baker, supra* at paras. 23-27). These five non-exhaustive criteria used to determine the content and extent of the common law duty of procedural fairness in a given set of circumstances may be summarized as follows:

(a) The nature of the decision being made and the process followed in making it: Paragraph 23 of *Baker* states "The more the process provided for, the function of the tribunal, the nature of the decision-making body, and the determinations that must be made to reach a decision resemble judicial decision making, the more likely it is that procedural protections closer to the trial model will be required by the duty of fairness";

(b) The nature of the statutory scheme and the "terms of the statute pursuant to which the body operates": Greater procedural protections, for example, will be required when no appeal procedure is provided within the statute, or when the decision is determinative of the issue and further requests cannot be submitted;

(c) The importance of the decision to the individual or individuals affected: The more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be mandated;

(d) The legitimate expectations of the person challenging the decision: If the claimant has a legitimate expectation that a certain procedure will be followed, this procedure will be required by the duty of fairness; and

(e) The choices of procedure made by the agency itself: When the statute leaves to the decision-maker the ability to choose its own procedures, or when the agency has an expertise in determining what procedures are appropriate in the circumstances, important weight must be given to the choice of procedures made by the agency itself and its institutional constraints.

(*Baker*, *supra* at paras. 23-27)

[201] It is Finkelstein's position that four of the factors, listed at subparagraphs 200(b), (c), (d) and (e) above, confirm that, at a minimum, he was entitled to a fair and meaningful enforcement notice process. On the nature of the statutory scheme, set out at subparagraph 200(b), Finkelstein submits that the Commission has acknowledged in the context of an investigation under Part VI of the Act that the Commission's public interest mandate includes sufficient consideration of the interests of the person under investigation (*Re X and A Co.*, *supra* at para. 28).

[202] In oral submissions, counsel for Finkelstein focused on three other factors. With respect to the importance of the decision, set out at subparagraph 200(c), he submitted that "the OSC's obviously a body which has the potential to wield great influence over the lives and careers of people that are caught within its investigatory grasp, particularly those in the legal community and in the other professional communities" (Hearing Transcript dated November 10, 2011 at p. 18). Counsel for Finkelstein noted there is no suggestion from Staff that they disagree with his characterization. He further described Staff's decision to issue a Notice of Hearing against respondents as having "catastrophic effect on their careers, on their reputations, and on their lives" (Hearing Transcript dated November 10, 2011 at p. 22).

[203] With respect to the doctrine of legitimate expectations, set out at subparagraph 200(d), Finkelstein submitted that although the "Wells Process" was not formally incorporated "into a rule", there are legitimate expectations emanating from both the Commission's own practices and the specific representations that were made to Finkelstein in those circumstances (Hearing Transcript dated November 10, 2011 at p. 27). In oral submissions, counsel for Finkelstein pointed to the Enforcement Notices, which according to him offered Finkelstein an opportunity to engage in without-prejudice communications, as a recognition on the part of Staff that they have a duty to conduct a "Wells Process".

[204] As noted above, counsel for Finkelstein also referred to two Commission decisions, *American Diversified* and *YBM (Gatti Motion)*, as authorities for the proposition that the Commission has incorporated in its procedure a "Wells-like process" prior to the issuance of a Notice of Hearing (Hearing Transcript dated November 10, 2011 at p. 36). In addition, Finkelstein argued that Staff created legitimate expectations by representing to his counsel in "clear and unequivocal language" that "this particular process would be followed in this particular case" (Hearing Transcript dated November 10, 2011 at pp. 36 and 39).

[205] With respect to the choices of procedure made by the agency, set out at subparagraph 200(e), counsel for Finkelstein again relied on *American Diversified* and *YBM (Gatti Motion)* for the proposition that the Commission has made a choice to include a "Wells-like process" in its enforcement procedures. Based on all of the foregoing, Finkelstein argues that the "Wells Process" requires Staff to disclose with appropriate particularity the nature of the allegations against him and to afford him a reasonable opportunity to consider if and how he wishes to respond. These requirements were not met in this case.

[206] Staff submit that four of the five factors, listed at subparagraphs 200(a), (b), (d) and (e) above, suggest that a minimal duty of fairness is owed to Finkelstein at the investigative stage of the proceedings. Staff argue that the only factor which suggests a possible increased duty of fairness is the importance of the decision to Finkelstein.

[207] Staff point to the following factors in support of their submissions: (i) Staff do not have decision-making authority; (ii) Part VI of the Act contemplates an asymmetrical balance between Staff and the person being investigated; (iii) there was no affidavit filed on what Finkelstein expected and Staff did provide Enforcement Notices as represented; and (iv) there are no rules governing Staff's investigation. Although Staff do not dispute that the issuance of a Notice of Hearing is important, they submit that, in light of the two Finkelstein Interviews, he had sufficient time and particulars to respond to the Enforcement Notices.

Analysis of Fairness Requirements

[208] We take from *Baker* the proposition that a duty of procedural fairness applies to administrative decisions that affect the "rights, privileges or interests" of an individual (*Baker*, *supra* at para. 20). *Baker* also notes, however, that "The existence of a duty of fairness…does not determine what requirements will be applicable in a given set of circumstances" (*Baker*, *supra* at para. 21). As noted above, *Baker* enumerated a set of non-exhaustive criteria to be considered in determining the extent and

content of the duty, and we now proceed to consider these criteria in the context of Staff's handling of the enforcement notice process in this case.

[209] The first criterion identified by *Baker* is the nature of the decision being made. The more closely the decision resembles judicial decision-making, the higher the level of procedural fairness required. In this case, the powers being exercised by Staff culminating in the issuance of a Notice of Hearing are more analogous to the exercise of prosecutorial discretion than to judicial decision-making. At the Motions Hearing, Staff referred us to the Commission's holding in *Re Mega-C Power Corp.* (2010), 33 O.S.C.B. 8290 (the "***Mega-C Merits***") at para. 340 that "Staff has no decision-making power in carrying out an investigation. Following investigation, Staff's only power is to issue a Statement of Allegations, where appropriate, and to prove those allegations in a hearing before the Commission". Thus, Staff's decision-making with respect to issuing a Statement of Allegations as well as the presentation of their case against Finkelstein would be subjected to assessment by an independent panel of the Commission hearing the merits in this matter, in the course of determining whether Staff have made out the allegations advanced.

[210] Furthermore, in connection with the appropriate standard of review of prosecutorial discretion, where decisions taken by prosecutors to prosecute may ultimately result in significant penal consequences for an accused, the Supreme Court of Canada in *R. v. Power*, [1994] 1 S.C.R. 601 has said that prosecutorial discretion "is especially ill-suited to judicial review" (*R. v. Power*, *supra* at para. 34). The Supreme Court also stated:

> …the Attorney General is a member of the executive and as such reflects, through his or her prosecutorial function, the interest of the community to see that justice is properly done. The Attorney General's role in this regard is not only to protect the public, but also to honour and express the community's sense of justice. Accordingly, courts should be careful before they attempt to "second-guess" the prosecutor's motives when he or she makes a decision. Where there is conspicuous evidence of improper motives or of bad faith or of an act so wrong that it violates the conscience of the community, such that it would genuinely be unfair and indecent to proceed, then, and only then, should courts intervene to prevent an abuse of process which could bring the administration of justice into disrepute. Cases of this nature will be extremely rare.
>
> (*R. v. Power*, *supra* at para. 12)

[211] The Commission's comments in *YBM (Gatti Motion)* about the separation of the adjudicative function from the investigative/prosecutorial function further support the proposition that Staff's decision-making with respect to issuing a Statement of Allegations and Notice of Hearing should not lightly be subjected to review by the Commission by means of a motion such as the Stay Motion, but is better assessed in the context of adjudicating fully the merits of the allegations. In *YBM (Gatti Motion)*, the Commission noted:

> We are of the opinion that the Act contemplates what has been described in this motion as the common law approach, which separates as completely as possible the investigative/prosecutorial function from the adjudicative function. This is particularly important in enforcement matters, which have serious consequences to the respondents and therefore demand a high degree of adjudicative independence and neutrality. Furthermore, there are good policy reasons to separate the adjudicative function from the other two responsibilities. Public confidence in the independence of the Commission is enhanced, not only by maintaining impartiality, but also the appearance thereof. As such, we are satisfied that the involvement of Commissioners in a screening function prior to the Notice of Hearing being issued may undermine that public confidence.
>
> (*YBM (Gatti Motion)*, *supra* at p. 1965)

[212] The second criterion identified in *Baker* is "the nature of the statutory scheme" and the role of the particular decision within that scheme. *Baker* makes clear that "Greater procedural protections…will be required when no appeal procedure is provided within the statute, or when the decision is determinative of the issue and further requests cannot be submitted" (*Baker*, *supra* at para. 24). In this case, the Act is public interest legislation which seeks to protect investors and to maintain fair and efficient capital markets. More specifically, Part VI of the Act, which contains the Commission's investigation powers, reflects a balance between "conduct[ing] fair and effective investigations and giv[ing] those investigated assurance that investigations will be conducted with due safeguards to those investigated" (*Re X and A Co.*, *supra* at para. 28).

[213] It is notable that there are no statutory provisions governing the decision to commence proceedings before the Commission, and no statutory requirement to give respondents an opportunity to respond to the impending issuance of a Notice of Hearing and Statement of Allegations. This is in contrast to certain other Ontario statues such as the *Social Work and Social Service Work Act, 1998*, S.O. 1998, c. 31, discussed in *Silverthorne v. Ontario College of Social Workers & Social Services Workers*, [2006] O.J. No. 207 ("***Silverthorne***"), a case referred to us by Finkelstein. In considering the nature of the statutory

scheme as one of the factors that influences the content of procedural fairness owed to an investigated person in that case, the court noted that:

> The second consideration in determining the scope of the duty of procedural fairness is the statutory scheme. Here the [*Social Work and Social Service Work Act*] contemplates a level of procedural fairness in the complaints screening process, in that it requires notice to the member of the substance of the complaint against him or her and an opportunity for the individual to respond. However, it is noteworthy that s. 24(4) requires disclosure of "reasonable information about any allegations" in the complaint so that the member can respond. It does not require disclosure of all the information obtained during the course of the investigation of the complaint.
>
> (*Silverthorne*, *supra* at para. 17)

[214] Finally, while no opportunity is provided in the Act for respondents to appeal the decision to issue the Statement of Allegations, that decision is not determinative of the merits of the matter.

[215] The third criterion identified in *Baker* points to "the importance of the decision to the individual or individuals affected" as a significant factor affecting the content of the duty of fairness. Both parties to the Stay Motion acknowledge the importance to Finkelstein of the decision to issue the Notice of Hearing. As noted above, Finkelstein submits that his "career and professional and personal reputations were ruined by the issuance of the NOH". We agree that there are significant consequences to Finkelstein arising from having to face allegations of this nature, and that these consequences weigh in favour of recognizing the need for some degree of procedural protection. On the other hand, the ultimate consequences to Finkelstein's career and reputation are somewhat speculative, in the sense that if it were to be determined by an adjudicative panel's final decision that he did not breach Ontario securities law or engage in conduct contrary to the public interest, those negative consequences might well be significantly mitigated.

[216] The fourth factor enumerated by *Baker* posits that the legitimate expectations of the person challenging the decision may "determine what procedures the duty of fairness requires in given circumstances". The Supreme Court noted that it will generally be unfair for administrative decision-makers to "act in contravention of representations as to procedure, or to backtrack on substantive promises without according significant procedural rights" (*Baker*, *supra* at para. 26). We have found above at paragraph 197 that Finkelstein did not have a legitimate expectation that Staff would follow the kind of "Wells Process" employed by enforcement staff at the SEC. We must now address the issue of what his more general legitimate expectations were with respect to the provision of enforcement notices by OSC Staff.

[217] Staff impress upon us the fact that, while there is a practice of providing enforcement notices to respondents, the decision about whether and when to issue one remains solely within Staff's discretion, and that Staff could properly exercise that discretion by not issuing one at all. They submit that this would be appropriate, for example, where a potential respondent was already well aware of the particulars of the allegations to be made against him or her and has declined to cooperate in an interview. They further submit that notice of pending allegations could be provided in a number of ways, including through interviews, meetings with Staff or exchanges of correspondence. Meanwhile, Finkelstein points to the fact that Staff had advised him in August 2010 that it was their "standard practice" to provide an enforcement notice and that it was legitimate for Finkelstein to assume that this would not be a "mere formality" or a "perfunctory step".

[218] Staff did in fact send an Enforcement Notice, but initially only provided five days, or three business days, for a response. The issue therefore is whether Finkelstein had a legitimate expectation that the Enforcement Notice would follow a particular format or would allow Finkelstein a particular period of time to respond. We have noted above that no particular procedure for an enforcement notice is mandated by the Act or by the *Rules of Procedure*. Nor were we provided with evidence of a consistent practice of a minimum time requirement to respond or a particular level of detail to be provided in a notice.

[219] In *Mavi*, *supra* at para. 68, the Supreme Court of Canada stated the following with respect to legitimate expectations: "Where a government official makes representations within the scope of his or her authority to an individual about an administrative process that the government will follow, and the representations said to give rise to the legitimate expectations are clear, unambiguous and unqualified, the government may be held to its word, provided the representations are procedural in nature and do not conflict with the decision maker's statutory duty". The court also held in that case that, while undertakings made by the government gave rise to a legitimate expectation of notice being given before sponsorship debts were enforced, the duty of fairness owed to sponsors in sponsorship debt collection was "fairly minimal" (*Mavi*, *supra* at paras. 5 and 72).

[220] In this case, counsel for Finkelstein did not point us to any representations made by Staff as to the process to be followed in providing an enforcement notice that could be said to have reached the standard of being "clear, unambiguous and unqualified" with respect to the time for a response or the level of detail to be provided. In light of this, we are unable to conclude that Finkelstein had a legitimate expectation that the Enforcement Notices would offer a minimum period of time to respond or particular levels of detail.

[221] We are aware of the reminder in *YBM (Gatti Motion)*, *supra* at p. 1966 that the provision of an enforcement notice should not be an "empty exercise". In the circumstances at issue here, specific and pointed questions were posed to Finkelstein in the Finkelstein Interviews which should have left him with no doubt about Staff's concerns about his alleged behaviour or their view of the circumstances surrounding his relationship with Azeff. Finkelstein was given several days to respond to the November Enforcement Notice. In addition, counsel for Finkelstein simply asked at the end of the August Interview to be contacted before proceedings were launched. Counsel's request suggests both that he was alive to the possibility of proceedings being commenced against Finkelstein *and* that no specific procedure for advance notice about pending proceedings was contemplated by him. In light of these factors, we are of the view that the manner in which the November Enforcement Notice was provided was not an empty exercise, and satisfied Finkelstein's legitimate expectations.

[222] Finally, *Baker* requires that the procedural fairness analysis undertaken in a particular case should "take into account and respect the choices of procedure made by the agency itself", particularly when the statute allows the decision-maker to choose its own procedures, or when the agency has expertise in determining what procedures are appropriate. In the context of the Act, the statute accords a high level of discretion to Staff to decide whether to launch enforcement proceedings for adjudication by the tribunal or the courts. By virtue of section 11 of the Act, the Commission appoints Staff to undertake investigations into matters as it considers expedient for the "due administration of Ontario securities law or the regulation of the capital markets in Ontario". The Act does not include other provisions limiting the discretion of Staff with respect to the issuance of proceedings. As noted at paragraphs 146 and 226 of these reasons, the Act was amended in 1994 to remove any need for the Commission to oversee the commencement of proceedings by Staff.

[223] In addition, previous decisions of the Commission support Staff's position that the level of fairness required during the investigative stage is minimal and distinguishable from that owed during the adjudicative stage.

[224] In *Re YBM Magnex International Inc.* (2001), 24 O.S.C.B. 1061 ("***YBM (GMP Motion)***"), Griffiths McBurney & Partners, a respondent, argued that the procedural safeguards of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (the "**SPPA**") and the OSC's *Rules of Practice* (the predecessor to the *Rules of Procedure*) applied to investigations under Part VI of the Act. The Commission held that the procedural safeguards contained in the SPPA related to the conduct of a hearing and not the conduct of investigations, and that while Staff must act fairly in the conduct of an investigation, the procedural rights and investigative powers are not symmetrical as between public authorities and private defendants. The Commission concluded:

> … we cannot accept the Applicant's submissions that the investigative procedures under Part VI are unfair given the statutory framework and the nature of the respective roles as between Staff and private parties in the context of investigations under the *Securities Act*.
>
> (*YBM (GMP Motion)*, *supra* at p. 1063 affirmed in *Griffiths McBurney & Partners v. Ontario (Securities Commission)*, [2001] O.J. No. 2538 (Div. Ct.))

[225] In another decision made in the YBM proceeding, the *YBM (Gatti Motion)* decision referred to above, Daniel Gatti, one of three U.S. respondents, alleged unfairness during the investigative stage. As a resident of the U.S., he was not served with a section 13 order under the Act and, unlike Finkelstein, he could not be compelled to attend an interview. Staff conveyed their concerns to Gatti in writing and he responded over a three month period, at the end of which a proceeding was commenced against him and the other respondents. Gatti contended that the process was unfair and that Staff's letters indicated they had predetermined the matter. The Commission held:

> While [Gatti] is entitled to procedural fairness at this stage of the investigation, he is not necessarily entitled to the most favourable procedures that could possibly be imagined: *Branch*, *supra*. We have stated in the past that the requirements of natural justice and the common law duty of procedural fairness are flexible concepts that depend on a number of factors including the circumstances of the case, the nature of the investigation, the subject matter, and the statutory provisions under which the Commission is acting: *A.G. of Canada v. Inuit Tapiristat of Canada*, [1980] 2 S.C.R. 735.
>
> It would appear that the investigation was approaching its late phase. The allegations were clearly serious. There were many potential respondents. Staff had advised [Gatti] of the concerns and allegations against him. Staff gave [Gatti] the opportunity to make written submissions and meet with Staff with the participation of his counsel.
>
> While the process may not have been perfect, it was not, in our opinion an empty exercise. It afforded [Gatti] a real opportunity to present his case and have Staff consider it before issuing a Notice of Hearing naming [Gatti]. We are of the opinion that this process discharged the duty of procedural fairness owed to [Gatti] at this stage of the proceeding.
>
> [Emphasis added]
>
> (*YBM (Gatti Motion)*, *supra* at p. 1966).

[226] On appeal, one of the grounds argued was that Gatti was not given sufficient opportunity at the investigation stage to respond to the evidence against him. The Divisional Court dismissed the appeal, finding that the Statement of Allegations annexed to the Notice of Hearing provided the details of the allegations, and the duty of fairness at the investigative stage was "minimal":

> As to the first point, there is nothing in the present statute which requires the Commission to consider the adequacy of the investigation before a Notice of Hearing is issued. Section 11 of the Act authorizes the Commission to appoint one or more persons to make an investigation which occurred in this case. The fact that the Commission also enjoys a general power to delegate by bylaw subject to the approval of the Minister under s. 3.2 of the Act, does not, in our view, detract from the ability of the Commission to appoint investigators under section 11. Investigators so appointed are no longer mandated by the statute to report to the Commission except when requested to do so.
>
> The statutory scheme which has existed since 1994 differs significantly from the schemes in existence when the *Latimer* and *Malartic* cases were decided. Specifically, gone are the provisions which required "pre-charge approval" by the Commissioners.
>
> …
>
> It is apparent that the 1994 amendments in general were intended to isolate the Commissioners from the investigative and prosecutorial functions of the Commission.
>
> The duty of fairness is at this stage minimal. As Sharpe J. (as he then was) noted in *Glendale Securities Inc. v. OSC*, [1996] O.J. No. 2861, the scope for review of the act of issuing a Notice of Hearing while not wholly immune from review is limited. A Court would be justified to intervene if it were demonstrated that the Notice had been issued in bad faith, or for an improper purpose of [*sic*] that proceeding further would involve a failure of natural justice – none of which is demonstrated on the facts before us.
>
> As to the second point, in our view the Statement of Allegations annexed to the Notice of Hearing provides the details of the allegations staff hope to make out against the applicant, Gatti. The basis for the prosecution is clearly set out, but remains to be proved. Again, as already indicated, where the duty of fairness is minimal and there is no evidence of bad faith, improper purpose, etc., there is no basis for this Court's intervention.
>
> (*Gatti v. Ontario (Securities Commission)*, [2001] O.J. 1496 at paras. 4-5, 7-9 ("***Gatti***"))

[227] In summary, we recognize that the factors set out in *Baker* and *YBM (Gatti Motion)*, and in particular, the nature of the decision being made, the individual's legitimate expectations, the nature of the investigation, its subject matter, and the statutory provisions under which the Commission is acting, are all relevant when assessing the degree of fairness owed to Finkelstein at the investigative stage.

The November Enforcement Notice

[228] Taking all the circumstances into account, we are of the view that the content of the November Enforcement Notice was sufficiently particular to provide Finkelstein with notice of pending allegations and to enable him to respond within the time provided by Staff.

[229] In the first place, we find that Staff put Finkelstein on notice about their concerns during the investigation and provided him with an opportunity to respond to potential allegations. Finkelstein was interviewed twice by Staff. As highlighted above, he was asked direct, pointed and specific questions concerning his conduct during the Finkelstein Interviews. We note that Finkelstein made further submissions to us about Staff's use of the Finkelstein Interviews to assist them in discharging their duty of fairness to Finkelstein. We consider those submissions at paragraphs 246 to 257 below.

[230] Second, we find that Larry was aware from November 3, 2010 that the November Enforcement Notice was meant to pertain to all six Issuers. We accept Staff's evidence in the Handanovic Affidavit that, in a telephone conversation on November 3, 2010, Center clarified with Larry that Staff were contemplating making allegations against Finkelstein with respect to all six Issuers.

[231] It is also not disputed by the parties that Staff sent a letter to Finkelstein's counsel on November 5, 2010 confirming that Staff were inviting Finkelstein to respond and to provide Staff with any information that he wished Staff to consider not only about Masonite but also concerning his alleged conduct relating to the five other Issuers.

[232] Further, we were not provided with authority to support the statement at paragraph 134 of the Finkelstein Factum that, in advance of the publication of the Notice of Hearing, "Staff must provide the respondent with a meaningful summary of the allegations and evidence against him or her so that the individual can understand sufficiently the nature and strength of the potential charges". The citation for this statement is Kelly McKinnon, Paul Le Vay, Owen M. Rees and R. Paul Steep, "Effectively Challenging the Conduct of a Disciplinary Investigation", a paper prepared for a seminar by several lawyers which states that enforcement notices should set out "a summary of the alleged violations that OSC staff believes has occurred, and giving the respondent an opportunity to respond".

[233] We note that, according to the *Rules of Procedure*, the disclosure of supporting evidence is to be provided within a particular timeframe in advance of the hearing. There are no specific disclosure obligations with respect to supporting evidence in advance of the publication of the Notice of Hearing or Statement of Allegations.

[234] We also note that Azeff and Bobrow were provided with the same level of particulars as Finkelstein received. In addition, Azeff and Bobrow were initially given a similar timeframe to respond to the enforcement notices sent to them. They were initially requested to provide any response to the notice by November 8, 2010. On November 8, 2010, Staff communicated to counsel for Azeff and Bobrow by email that they were prepared to extend the deadline to respond to the notice until November 10, 2010.

[235] In contrast, Finkelstein points to the fact that Miller was provided with an almost four-month extension to respond to the Miller/Cheng Enforcement Notice sent to Miller, as support for his argument that Staff fell below the requirements of the duty of fairness with respect to himself. Finkelstein also acknowledges that the question of how much time is adequate to respond to an enforcement notice is in part a fact-specific question. In this connection, we received affidavit evidence that privileged discussions and correspondence took place between Staff and Miller during this period.

The January Enforcement Notice

[236] The November Enforcement Notice delivered on November 3, 2010 related to Legacy and IPC. However, the Amended Statement of Allegations issued on November 11, 2010 did not allege any unlawful conduct relating to these two Issuers. On January 10, 2011, Staff provided Finkelstein with a second Enforcement Notice, namely, the January Enforcement Notice. Staff argue that the January Enforcement Notice gave Finkelstein another opportunity to bring to the attention of Staff any circumstances which may have influenced Staff's decision to issue proceedings relating to the Legacy and IPC transactions.

[237] The circumstances surrounding the January Enforcement Notice are somewhat different because at the time that the January Enforcement Notice was delivered a proceeding had already been commenced against Finkelstein for alleged tipping in relation to four other Issuers. This was not a situation where allegations were being made against a respondent for the first time.

[238] Further, the allegations relating to Legacy and IPC were additional incidents of similar conduct already the subject of the Amended Statement of Allegations. The conduct alleged relating to Legacy and IPC in the January Enforcement Notice demonstrated the same alleged pattern of conduct previously outlined in the Amended Statement of Allegations as follows:

> 1. The Respondents, Mitchell Finkelstein ("Finkelstein"), Paul Azeff ("Azeff") and Korin Bobrow ("Bobrow") engaged in an illegal insider tipping and trading scheme over the course of a four year period from November 2004 to May 2007 (the "Relevant Period").
>
> 2. During the Relevant Period, Finkelstein, who practices corporate law in Toronto, sought out and acquired material, non-public information concerning pending corporate transactions that he would communicate to Azeff, in breach of section 76(2) of the Securities Act, R.S.O. 1990, c.S.5, as amended (the "Act").
>
> …
>
> 13. During the Relevant Period, Finkelstein actively sought out and acquired material, non-public information about potential corporate transactions through his role as a lawyer at Davies either by:
>
> (a) acting as counsel to reporting issuers on pending corporate transactions; and/or
>
> (b) by conducting searches on the documents management system at Davies for material, non-public information related to pending transactions for which he did not personally serve as counsel.
>
> (Amended Statement of Allegations at paras. 1, 2, 13 and 14)

[239] In addition, as set out above at paragraphs 74 and 84 above, during the October Interview, Staff put Finkelstein on notice that they were concerned about potential tipping and trading in connection with six mergers and acquisitions, which included Legacy and IPC. Staff presented Finkelstein with a list of the six transactions and their announcement dates, and the list was made an exhibit to the examination. At the beginning of the October Interview, Staff stated:

> 2 Q. The names on this list are the list, in fact, where there have been mergers and acquisitions or where Davies has represented clients involving with these deals. In every one of these occasions, we have information that tells us that Paul Azeff and his clients traded in advance of the announcement date. I'll walk through some of them here.
>
> …
>
> 3 Q. Okay. So on this list, there's only Masonite, Inn Vest [one of the bidders for Legacy], and IPC that you represented?
>
> [Emphasis added]

[240] Finkelstein submits in the Finkelstein Factum at paragraph 110 that "despite stating at the outset of the October 25, 2010 interview that Staff intended to ask Mr. Finkelstein about issues surrounding IPC US and Legacy Hotels, in fact, Staff asked no questions about those transactions". We find that, during the October Interview, Staff asked Finkelstein questions about his involvement in each of the six transactions and Finkelstein confirmed that he worked on the Masonite, Legacy and IPC transactions. For example, Staff asked the following questions about the IPC transaction:

> 245 Q. So we have nine Dynatec documents that you accessed in a span of a little more than 24 hours. There's five on the 18th, four on the 19th that you weren't working on. You weren't working on Dynatec. You didn't bill any hours to Dynatec, and you believe it was for purposes of precedent value?
>
> A. Again, I don't recall specifically why I accessed them. I don't recall what I was working on at the time. I'm familiar with, at least, one transaction that I know I was working on which was a public M&A transaction of which a number of these things would have had some benefit to me. But do I have a specific recollection as to why I accessed them at that particular time? The answer is I don't.
>
> 246 Q. That deal you were working on was IPC?
>
> A. That one was certainly ongoing at that time that I recall. I would have to go back and look at my dockets as to whether there was other things or potential deals. I don't know. It's tough to put it – I can't recall specifically why I look at every single document that I do.
>
> …
>
> 313 Q. Were you working on IPC back in 2005, July?
>
> A. I was working on IPC from the date that we took it public in…I don't remember the exact date, 2001.

[241] The Legacy and IPC transactions were referred to during the October Interview, and at the conclusion of that interview, Staff reiterated that the conduct being investigated related to all six Issuers which had been put to Finkelstein at the beginning of the October Interview.

[242] Finkelstein's concerns about the January Enforcement Notice as set out at paragraph 109 of the Finkelstein Factum are that despite the lack of time pressure, Staff required a response by January 21, 2011 and the notice "failed to provide any details or description whatsoever about the alleged conduct in question or the factual basis for the alleged violations".

[243] However, we find that as a result of the interview process and the particulars set out in the Amended Statement of Allegations, Finkelstein was aware that Staff were investigating a pattern of conduct alleged to be comprised of: (i) Finkelstein tipping Azeff on transactions on which Davies was retained; (ii) communications between Finkelstein and Azeff by telephone; and (iii) Azeff trading in the securities of the Issuers shortly after such telephone communications.

[244] In the circumstances, the level of particulars provided to Finkelstein in the January Enforcement Notice regarding Legacy and IPC as set out at paragraph 101 above was sufficient to discharge any requirement to provide Finkelstein with notice of the conduct which was at issue.

[245] While Staff requested a reply by January 21, 2011, the Amended Amended Statement of Allegations was not issued until April 18, 2011 which afforded Finkelstein almost three months in which to take steps with respect to the Enforcement Notice provided.

iii. The Finkelstein Interviews

[246] The transcript of the August Interview, which is excerpted at paragraphs 68 and 69 above, shows that Finkelstein was asked specific questions that related directly to the allegations ultimately made by Staff and was shown relevant exhibits.

[247] In light of the content of the August Interview, Finkelstein had full particulars of the alleged conduct described in the November Enforcement Notice relating to Masonite from the date of the August Interview on August 17, 2010. He did not first learn of the particulars on November 3, 2010, as alleged by Finkelstein.

[248] Similarly, a review of the complete transcript of the October Interview and all of the exhibits put to Finkelstein during the October Interview demonstrate that much of the evidence regarding his alleged conduct described in the November Enforcement Notice and subsequently in the Amended Statement of Allegations was disclosed to him during the October Interview.

[249] As set out at paragraphs 74, 80 to 84 and 239 to 241 above, throughout the October Interview, Staff provided their interpretation of the evidence for Finkelstein, summarized the conduct being investigated and explained Staff's concerns regarding his conduct.

[250] Our reading of the interview transcripts (including the questions and answers underlined at paragraphs 68 and 81 to 84 above) leads us to the conclusion that neither Finkelstein nor his counsel could have doubted the nature of Staff's interest in his conduct. There were two interviews in which Staff provided Finkelstein with explanations of Staff's theory of the case against Finkelstein, specific and repeated references to key pieces of evidence and opportunities to provide Staff with answers to the pointed questions which were posed. While it may be a factor unique to this set of circumstances, we note that Finkelstein was a corporate finance and mergers and acquisitions lawyer at a prominent securities law firm and we think it reasonable to infer that he would be familiar with the prohibitions against insider trading and tipping under the Act. By the time the November Enforcement Notice was sent on November 3, 2010, Staff had informed Finkelstein in great detail about their concerns regarding his conduct. Indeed, we note that counsel for Finkelstein characterized the October Interview as one in which Staff "put accusation after accusation to Mr. Finkelstein".

[251] However, Finkelstein argues that Staff cannot rely on information communicated through interviews to discharge their duty of fairness to Finkelstein prior to the publication of the Notice of Hearing. He submits that "There is no authority at the OSC for Staff's proposition that it can discharge its obligations under the Wells Process by relying on investigatory interviews" and Staff "cannot…rely on the *investigation* to satisfy its completely separate obligations to present clearly and fairly the nature of the allegations against a potential respondent as part of the Wells Process". According to Finkelstein, it was the enforcement notice, and it can never be the interview process, that triggers the "Wells Process". He submitted to us that the enforcement notice is the only triggering event which could be used to discharge Staff's duty of fairness to a respondent.

[252] We were not provided with authority for the proposition that the enforcement notice is the only vehicle by which Staff can discharge their procedural fairness obligations. In our view, Staff's investigation, including any investigatory interviews conducted by Staff, can form part of the overall context in which a potential respondent receives notice of pending allegations against him or her.

[253] For example, in *YBM (Gatti Motion)*, discussed at paragraph 225 above, the Commission found that correspondence between Staff and Gatti over a period of three months during the "late phase" of the investigation satisfied Staff's duty of procedural fairness. The Commission held that during this process, "Staff gave [Gatti] the opportunity to make written submissions and meet with Staff with the participation of his counsel". Accordingly, the process in that case "afforded [Gatti] a real opportunity to present his case and have Staff consider it before issuing a Notice of Hearing naming [Gatti]" (*YBM (Gatti Motion)*, *supra* at p. 1966). Cases such as *YBM (Gatti Motion)*, affirmed by the Divisional Court in *Gatti*, indicate that some latitude is given to Staff in Ontario as to how to fulfill notice requirements with respect to pending allegations.

[254] Our conclusion that the Finkelstein Interviews could form part of the notice of pending allegations provided to Finkelstein by Staff is also consistent with *Baker*, which indicates that the duty of fairness can be discharged in a variety of ways, depending on how determinative the decision at issue is, how significant to the individual, what specific procedures are required by the decision-makers' governing statute and the legitimate expectations of the individual involved.

[255] At the Motions Hearing, counsel for Finkelstein submitted that, following the August Interview, Finkelstein was not aware of Staff's intention to commence proceedings:

> Nothing on that date would have triggered any sense on Mr. Finkelstein's part that the Staff were interested – were doing anything other than trying to figure out what had happened on Masonite.
>
> (Hearing Transcript dated November 10, 2011 at p. 90)

[256] We reject this submission. In the circumstances, including the fact that counsel for Finkelstein asked Staff whether Finkelstein was a "person of interest" in August 2010 and that counsel asked Staff at the end of the August Interview to contact him prior to commencing proceedings, we are unable to accept that Finkelstein was not aware of the possibility, following the August Interview, that Staff were contemplating proceedings against him.

[257] Counsel for Finkelstein further argued in oral submissions that the Finkelstein Interviews could not serve as notice to Finkelstein because no section 11 order was ever issued against him. In light of our finding that Finkelstein was aware from the Finkelstein Interviews that Staff were investigating patterns of alleged tipping and trading by a number of the Respondents, we find that the fact that Finkelstein was not named in a section 11 order did not impair the process.

e. Conclusion on the Duty of Fairness

[258] We are satisfied that the U.S. "Wells Process" and its requirements do not apply to OSC enforcement proceedings. While the case law has established that there is a duty of fairness owed to a respondent during the investigative stage of a matter, it is clearly distinguishable from the procedural fairness requirements at the adjudicative stage and was described by the Divisional Court in *Gatti* as "minimal".

[259] In this case, we are of the view that Staff discharged their duty of fairness and afforded Finkelstein a degree of procedural protection by informing him of the nature of the case against him in the Finkelstein Interviews and in Enforcement Notices and by giving him an opportunity to provide an explanation of his conduct and provide information to Staff prior to the issuance of the Amended Statement of Allegations.

[260] While Staff have acknowledged their practice of providing a potential respondent with a final opportunity to bring to the attention of Staff any circumstances which may influence Staff's decision to issue a Notice of Hearing and a Statement of Allegations, we accept that they retain a discretion, subject to the requirements of minimal procedural fairness, to implement the practice in a variety of ways, and to take a variety of factors into account, including the state of the investigation, the nature and type of allegations and their seriousness (*YBM (Gatti Motion)*, *supra* at p. 1966). While the November Enforcement Notice may have been Finkelstein's last opportunity to provide information to Staff before the publication of the Notice of Hearing, it was preceded by other opportunities. In our view, the process followed by Staff prior to the issuance of the Notice of Hearing was fair.

3. Abuse of Process

a. Finkelstein's Submissions

[261] In his Notice of Motion, Finkelstein states:

> The Commission abused its own process and breached its duty of fairness to Mr. Finkelstein by failing to conduct a fair, meaningful and proper Wells Process prior to the commencement of the proceedings against Mr. Finkelstein. In acting as it did, the Commission wholly disregarded its obligations of procedural fairness and due process owing to Mr. Finkelstein.

[262] Finkelstein alleges that the conduct of Staff that amounted to an abuse of process had a number of aspects. These are: (i) Staff's delay in their investigation of his conduct; (ii) Staff's failure to conduct a "Wells Process" as a result of the pending limitation period with respect to Masonite; and (iii) the improper use of interviews to both inform Finkelstein of Staff's allegations against him and to incriminate him.

i. Delay

[263] Finkelstein argues that the "extraordinary delay" in investigating him reduced the time available for Staff to conduct a proper "Wells Process" and prevented him from having sufficient time to respond. Finkelstein argues that it is Staff's duty to plan and carry out their investigation in order to ensure that sufficient time is allowed for a proper "Wells Process". In oral argument, counsel for Finkelstein reiterated that there were "numerous and lengthy delays in the investigation" (Hearing Transcript dated November 10, 2011 at p. 55).

[264] Finkelstein argues that Staff were aware of suspicious trading in Masonite as early as January 2005, within days or weeks of the announcement that Masonite made on December 22, 2004. However, Staff did not take any further steps at that

time to investigate Finkelstein or anyone in respect of trading in shares of Masonite until August 2007, when they began investigating Miller.

[265] Finkelstein points to a number of what he characterizes as unexplained delays in Staff's investigation, including that (i) Staff did not request copies of Miller and Cheng's email records until November 2008, a delay of nine months from the time the file was transferred to the Enforcement Branch in February 2008; (ii) Staff did not interview Miller until August 11, 2009, a delay of over six months from the interview of Cheng on February 6, 2009; (iii) Staff did not request Azeff's email records until August 2009 although Staff had received information that Krantzberg had accounts with Azeff in January 2009; and (iv) Staff did not interview Krantzberg until December 18, 2009, a further four-month delay following the first interview of Miller on August 11, 2009.

[266] Further, Finkelstein asserts that Staff were aware of the connection between Finkelstein and Azeff from and after the receipt of Azeff's emails in September 2009, and certainly by the date of the interview of Krantzberg in December 2009 in which Staff put questions to Krantzberg about Finkelstein's role in the Masonite transaction. Finkelstein points out that Staff did not interview Bobrow and Azeff until February 2010 and did not approach Davies to make their first request for information until May 2010, three months following the interviews of Bobrow and Azeff.

ii. The "Wells Process" and the Limitation Period

[267] Finkelstein submits that Staff failed to conduct a proper "Wells Process" because of both their self-induced investigative delays and the resulting pressing limitation period in respect of Masonite. Finkelstein submits that Staff cannot rely on the pending limitation period, of which they failed to be mindful and which was a circumstance of their own making, to excuse the truncated "Wells Process". Furthermore, the expiring limitation period in respect of Masonite was entirely irrelevant to Finkelstein's alleged conduct in relation to the other Issuers referred to in the Notice of Hearing, but it nevertheless significantly affected Staff's handling of the enforcement notice process. Specifically, there was a failure to provide a "clear and meaningful summary of the evidence and allegations" against Finkelstein in those Enforcement Notices.

iii. The Finkelstein Interviews

[268] It is Finkelstein's position that Staff's conduct in the Finkelstein Interviews constituted an abuse of process because the purpose of compelled interviews cannot be to incriminate a person or to inform a person under investigation of the case that needs to be met. Rather, the purpose is to elicit information from the investigated person to determine whether the OSC ought to deliver an enforcement notice and, in turn, to issue a Notice of Hearing.

[269] In oral argument, counsel for Finkelstein argued that the October Interview was conducted for the purpose of incriminating Finkelstein and thereby violated Finkelstein's constitutional rights. In his submission, the appropriate reading of the Supreme Court of Canada decision in *Branch* is that investigators can compel potential respondents to answer questions related to broader inquiries that might be in the public interest but cannot pose questions that could force interviewees to incriminate themselves. In particular, he submitted that:

> Branch says that the purpose of the interview has to be in furtherance of the investigation, has to be investigatory in nature, because when you call people into a room under the white lights and you put things to them – and I'm going to talk about some of the things that they put to Mr. Finkelstein, some of them at the time three and five years old, and asked for immediate responses to them. When you seek to incriminate somebody in that environment you step outside the proper purpose of the compelled interview under the Securities Act and you conduct the interview in a manner which is inappropriate and unlawful. The interview has to be for the purposes of the investigation, not for the purpose of incrimination.
>
> (Hearing Transcript dated November 11, 2011 at pp. 118-119)

[270] Secondly, according to Finkelstein, the OSC has "double[d] down" in its abuse of the investigative process by now claiming that the improper October Interview can be seen as the means by which they disclosed their case to Finkelstein (Hearing Transcript dated November 11, 2011 at p. 119). Counsel for Finkelstein submits that, if the case against Finkelstein is allowed to proceed, it will send a message to securities enforcement defence lawyers that they should not advise clients to cooperate with OSC investigators. In Finkelstein's submission, "People will look at the Finkelstein case, and they will say…you're going to do a Finkelstein on us'" (Hearing Transcript dated November 11, 2011 at p. 140).

b. Staff's Submissions

[271] Staff take the position that (i) there was no delay in investigating Finkelstein's conduct; (ii) it was not improper for Staff to have commenced proceedings close to the limitation period; and (iii) Staff did not use the interviews improperly.

i. Delay

[272] It is Staff's position that a review of the Handanovic Affidavit as well as the Investigation Chronology clearly establish that there was no delay in investigating Finkelstein's conduct.

[273] According to Staff, the evidence relied upon makes it clear that the investigative steps taken by Staff were guided by following the evidence, and that the evidence of Finkelstein's conduct did not emerge until 2010. In particular, they submit that the evidence adduced by Staff demonstrates that:

(a) Staff's investigation into Masonite commenced in August 2007, not in January 2005;

(b) The investigation focused on the Toronto investment advisors, Miller and Cheng and their families and clients for the entire year in 2008 and the first part of 2009;

(c) The investigation expanded to include the Montreal investment advisors, Azeff and Bobrow, in August 2009;

(d) Azeff and Bobrow were interviewed in February 2010 and their answers to undertakings were received in March 2010 and April 2010;

(e) Staff's initial request for information from Davies was made in May 2010 and the investigation of Finkelstein was not complete in July 2010; and

(f) Staff requested and received key pieces of evidence relating to Finkelstein up to the date of the November Enforcement Notice.

[274] Staff argue that the Investigation Chronology also demonstrates that many other investigative steps were being taken concurrently with the investigation of Finkelstein. Further, there were many requests for information made by Staff which may not have ultimately resulted in key evidence, but which Staff still had to review and analyze once received to determine their relevance. According to Staff, the Investigation Chronology suggests that:

(a) The Finkelstein Investigation Chronology, a second chronology presented to us by Staff and defined at paragraph 7 above, demonstrates that Staff's investigation began focusing on Finkelstein in May 2010;

(b) Staff began receiving evidence from Davies in June 2010;

(c) Staff began receiving telephone records relating to Finkelstein and Azeff in July 2010;

(d) No banking information or information from restaurants where Finkelstein and Azeff are alleged to have met had been received by Staff at the time of the August Interview on August 17, 2010; and

(e) Relevant information was still being gathered between August 2010 and November 2010.

[275] Staff submit that the extent of the investigation undertaken by them is also illustrated by the Summary of Requests for Information and Interviews Conducted. This summary shows that, between September 2007 and November 2010, Staff:

(a) Issued 60 summonses under section 13 of the Act;

(b) Issued 27 subsection 19(3) directions;

(c) Made 10 other requests for information;

(d) Interviewed 20 individuals; and

(e) Gathered and analyzed in excess of 500,000 documents.

ii. The "Wells Process" and the Limitation Period

[276] Staff submit that the length of the limitation period set out in section 129.1 of the Act is a recognition that investigations into securities law breaches can be long and complex. Further, in providing Staff with six years to commence a proceeding, the Legislature recognized that in the course of investigating breaches of the Act, evidence of conduct spanning several years could form the basis of a proceeding before the Commission and the courts.

[277] The purpose of the Act is to protect investors and the capital markets from unfair, improper or fraudulent practices, such as tipping. Staff submit that the Legislature clearly intended that if Staff become aware of unfair, improper or fraudulent practices that occurred up to six years previously, such conduct should be brought before the Commission or the courts. Staff submit that there is nothing improper about commencing a proceeding close to the expiry of the limitation period.

iii. The Finkelstein Interviews

[278] Staff take the position that, through the Finkelstein Interviews, Finkelstein and his counsel were informed of the specific alleged conduct which culminated in the delivery of the November Enforcement Notice and the subsequent issuance of the Amended Statement of Allegations. They argue that in light of the information that Finkelstein and his counsel acquired during the interview process, the particulars and time provided to respond to the Enforcement Notices were adequate in the circumstances of this case.

[279] Staff submit that the alleged purpose of an interview is not relevant to the consideration of whether Finkelstein was, in fact, apprised of details of Staff's concerns through the interview process in this matter.

[280] Staff reject Finkelstein's submissions concerning the restrictions on compelled interviews which he argues are imposed by the *Branch* case. In response to the oral arguments by Finkelstein's counsel that Finkelstein's constitutional rights were violated by the October Interview, Staff take the position that "a fair reading of Branch is that the right to not be incriminated is in other proceedings, such as criminal proceedings…[Staff's] reading of Branch is that incrimination and derivative use immunity is proceedings outside that in which the interview occurs" (Hearing Transcript dated November 11, 2011 at p. 143).

c. The Law

[281] In order to address the abuse of process arguments raised by Finkelstein with respect to (i) Staff's delay in investigating Finkelstein; (ii) Staff's failure to conduct a "Wells Process" due to pending limitation concerns; and (iii) the improper use of compelled interviews by Staff, we find it necessary to review the law relating to (1) the threshold requirements to establish abuse of process; (2) delay in pursuing proceedings; and (3) the framework established for the conduct of interviews under Part VI of the Act. We address each of these topics below.

(1) Abuse of Process

[282] To establish abuse of process, the moving party must demonstrate that the proceedings (i) are oppressive or vexatious; and (ii) violate the fundamental principles of justice underlying the community's sense of fair play and decency. The criteria are cumulative. In the leading case on abuse of process, *R. v. Regan*, [2002] 1 S.C.R. 297 at para. 50, LeBel J. stated:

> L'Heureux-Dubé J. also acknowledged the existence of a residual category of abuse of process in which the individual's right to a fair trial is not implicated. She described this category, which is invoked in the present appeal, as follows in *O'Connor*, at para. 73:
>
> > This residual category does not relate to conduct affecting the fairness of the trial or impairing other procedural rights enumerated in the Charter, but instead addresses the panoply of diverse and sometimes unforeseeable circumstances in which a prosecution is conducted in such a manner as to connote unfairness or vexatiousness of such a degree that it contravenes fundamental notions of justice and thus undermines the integrity of the judicial process.
>
> L'Heureux-Dubé J. thus held that now, when the courts are asked to consider whether the judicial process has been abused, the analysis under the common law and the Charter will dovetail (see *O'Connor*, at para. 71). In this manner, while it acknowledged that the focus of the Charter had traditionally been the protection of individual right [*sic*], the *O'Connor* decision reflected and accommodated the earlier concepts of abuse of process, described at common law as proceedings "unfair to the point that they are contrary to the interest of justice" (*R. v. Power*, [1994] 1 S.C.R. 601, at p. 616), and as "oppressive treatment" (*R. v. Conway*, [1989] 1 S.C.R. 1659, at p. 1667). In an earlier judgment, McLachlin J. (as she then was) expressed it this way:
>
> > ... abuse of process may be established where: (1) the proceedings are oppressive or vexatious; and, (2) violate the fundamental principles of justice underlying the community's sense of fair play and decency. The concepts of oppressiveness and vexatiousness underline the interest of the accused in a fair trial. But the doctrine evokes as well the public interest in a fair and just trial process and the proper administration of justice. I add that I would read these criteria cumulatively.
>
> (*R. v. Scott*, [1990] 3 S.C.R. 979, at p. 1007)

[283] The burden is on the moving party to prove the abuse of process on a balance of probabilities. A claim of abuse of process is necessarily fact specific as it expresses society's changing views about what is unfair or oppressive (*R. v. D.(E.)*, [1990] O.J. No. 958 (C.A.) at para. 22).

[284] Meanwhile, as noted above, it is well established that investigative authorities, in both the criminal and securities regulation contexts, determine the nature and the scope of an investigation. The subject of the prosecution is entitled to the product of that investigation but is not entitled to dictate its nature or scope. There is no duty requiring the breadth of the investigation to be such that it satisfies a respondent (*R. v. Darwish,* [2010] O.J. No. 604 (C.A.) at para. 39; and *Xanthoudakis v. Ontario Securities Commission*, 2011 ONSC 4685 (Div. Ct.) at para. 66).

[285] Again as noted in the Supreme Court of Canada's decision in *R. v. Power*, the exercise of discretion to lay charges should not be the subject of review by the courts except in very rare cases. The Supreme Court of Canada has recognized that discretion is an essential feature of the criminal justice system (*R. v. Beare*, [1988] 2 S.C.R. 387 at p. 410). While the Criminal Code provides no guidelines for the exercise of discretion by the police or prosecutors, the day-to-day operations of law enforcement and the criminal justice system "depends upon the exercise of that discretion" (*R. v. Beare*, *supra* at p. 411). The existence of prosecutorial discretion does not offend the principles of fundamental justice (*R. v. Power*, *supra* at para. 36, citing *R*. v. *Beare*, *supra* per La Forest J). It is also well established that prosecutorial discretion must be exercised in the public interest (*R. v. Power*, *supra* at para. 31 citing Donna C. Morgan, "Controlling Prosecutorial Powers – Judicial Review, Abuse of Process and Section 7 of The Charter" (1986-87), 29 Crim. L.Q. 15 at pp. 18-19).

[286] These principles were illustrated in the administrative law context in *Re Proprietary Industries Inc.*, [2005] A.S.C.D. No. 1045, aff'd, [2010] A.J. No. 1468 (A.B.C.A.) ("***Proprietary Industries***"), a decision of the Alberta Securities Commission, where the respondents made a number of allegations concerning the conduct of an investigation. The panel made the following findings:

> We believe it is important that Staff be allowed a fair degree of discretion in conducting investigations and presenting enforcement cases to the Commission.
>
> This conclusion is consistent with the approach taken by the courts in the context of criminal law, exemplified by the following comments of L'Heureux-Dubé J., for the majority, in *R. v. Power*, [1994] 1 S.C.R. 601 (at paras. 16-17):
>
> > …courts should be careful before they attempt to 'second-guess' the prosecutor's motives when he or she makes a decision. Where there is conspicuous evidence of improper motives or of bad faith or of an act so wrong that it violates the conscience of the community, such that it would genuinely be unfair and indecent to proceed, then, and only then, should courts intervene to prevent an abuse of process which could bring the administration of justice into disrepute. Cases of this nature will be extremely rare.
>
> Therefore, Staff's conduct of an investigation and its subsequent conduct of a hearing, including its determination of which witnesses to call, are matters of prosecutorial discretion. It follows that however well (or poorly) an investigation is carried out, and however competently Staff present their case, it is not the function of a hearing panel, except in the most egregious of circumstances, to enter into the investigative or prosecutorial process or to substitute our opinions in these matters.
>
> (*Proprietary Industries*, *supra* at paras. 111-113)

[287] In *Gatti*, the Divisional Court considered an abuse of process argument based on an alleged failure to follow Commission procedure before commencing a proceeding. In that case, the Divisional Court held that the scope of review of Staff's decision to commence a proceeding was limited:

> A Court would be justified to intervene if it were demonstrated that the Notice had been issued in bad faith, or for an improper purpose of [*sic*] that proceeding further would involve a failure of natural justice – none of which is demonstrated on the facts before us.
>
> (*Gatti*, *supra* at para. 8)

(2) Delay

[288] The specific issue of whether delay can constitute an abuse of process has been considered in an administrative justice context. In *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307 ("***Blencoe***"), the respondent before the British Columbia Human Rights Commission brought a motion to stay the proceedings against him, alleging that a delay of more than two years in processing the complaints against him amounted to an abuse of process. The issuance of the

proceeding forced Blencoe to resign his position as a Cabinet minister and a member of his party's caucus, and caused humiliation and suffering to his family. He and his wife required medical care for severe depression. Blencoe considered himself unemployable because of the outstanding complaints (*Blencoe*, *supra* at paras. 17-18).

[289] In *Blencoe*, Bastarache J., writing for the majority, stated:

> In order to find an abuse of process, the court must be satisfied that, "the damage to the public interest in the fairness of the administrative process should the proceeding go ahead would exceed the harm to the public interest in the enforcement of the legislation if the proceedings were halted" (Brown and Evans, *supra*, at p. 9-68). According to L'Heureux-Dubé J. in *Power*, *supra*, at p. 616, "abuse of process" has been characterized in the jurisprudence as a process tainted to such a degree that it amounts to one of the clearest of cases. In my opinion, this would apply equally to abuse of process in administrative proceedings. For there to be abuse of process, the proceedings must, in the words of L'Heureux-Dubé J., be "unfair to the point that they are contrary to the interests of justice" (p. 616). "Cases of this nature will be extremely rare" (*Power*, *supra*, at p. 616). In the administrative context, there may be abuse of process where conduct is equally oppressive.
>
> (*Blencoe, supra* at para. 120)

[290] The Supreme Court held that the delay at issue did not amount to an abuse of process. A finding of abuse of process required "actual prejudice of such magnitude that the public's sense of decency and fairness is affected" (*Blencoe*, *supra* at para. 133).

[291] In *Mega-C Merits*, the Commission has considered abuse of process on the grounds of delay. Having examined the facts underlying the motion for a stay of proceedings, the Commission found that no such grounds existed and dismissed the respondents' motion for a stay of proceedings (See *Mega-C Merits*, *supra* at paras. 293-300).

[292] We note that in the context of the Act, limitation periods are dealt with in section 129.1. In accordance with that section, the relevant limitation period runs from the date of the occurrence of the last event on which the proceeding is based, not the date on which Staff become aware of possible breaches of the Act.

[293] Section 129.1 of the Act states:

> Except where otherwise provided in this Act, no proceeding under this Act shall be commenced later than six years from the date of the occurrence of the last event on which the proceeding is based.

[294] As noted at paragraph 87 above, the November Enforcement Notice refers to the date of expiry of the relevant limitation period as November 16, 2010.

(3) The Law on the Conduct of Interviews under the Act

[295] Section 11 of the Act provides broad scope for the exercise of the Commission's investigation power. Subsection 11(1) of the Act states:

> The Commission may, by order, appoint one or more persons to make such investigation with respect to a matter as it considers expedient,
>
> (a) for the due administration of Ontario securities law or the regulation of the capital markets in Ontario; or
>
> (b) to assist in the due administration of the securities or derivatives laws or the regulation of the capital markets in another jurisdiction.

[296] Section 13 of the Act allows an investigator appointed under section 11 to summon and enforce the attendance of any person and to compel him or her to testify on oath or otherwise, and to produce documents and other things. Subsection 13(1) of the Act states:

> A person making an investigation or examination under section 11 or 12 has the same power to summon and enforce the attendance of any person and to compel him or her to testify on oath or otherwise, and to summon and compel any person or company to produce documents and other things, as is vested in the Superior Court of Justice for the trial of civil actions, and the refusal of a person to attend or to answer questions or of a person or company to produce such documents or

> other things as are in his, her or its custody or possession makes the person or company liable to be committed for contempt by the Superior Court of Justice as if in breach of an order of that court.

[297] As noted above, in *Re X and A Co.*, the Commission discussed the provisions relating to the Commission's investigation powers in Part VI of the Act and specifically section 17 of Part VI of the Act. The Commission noted that:

> Section 17, unlike s. 127, is part of Part VI of the Act which has a narrow purpose relating to investigations and compelled testimony. Accordingly, the term "public interest" in s. 17 of the Act should be interpreted in the context of Part VI of the Act: to enable the Commission to conduct fair and effective investigations and to give those investigated assurance that investigations will be conducted with due safeguards to those investigated, thus encouraging their cooperation in the process.
>
> (*Re X and A Co.*, *supra* at para. 28.)

[298] The Commission in that case further described the functions and the limitations of section 13 of the Act:

> The power of compulsion in s. 13 of the Act is extraordinary. It gives the Commission meaningful and powerful tools to use in its investigation of matters. Part VI, however, has limitations and protections with respect to confidentiality, and the possible use of compelled testimony. From this, we discern that the public interest referred to in s. 17 relates to a balancing of the integrity and efficacy of the investigative process and the right of those investigated to their privacy and confidences, all in the context of certain proceedings taken or to be taken by the Commission under the Act.
>
> (*Re X and A Co.*, *supra* at para. 31)

[299] Much of the case law interpreting the scope of section 13 of the Act has been framed by the question of the applicability of Charter protection to investigations under the Act. The issue of whether sections 7, 11 and 13 of the Charter apply to restrict the testimony and evidence that may be compelled in connection with Commission proceedings has been addressed by the Commission in *Re Boock* (2010), 33 O.S.C.B. 1589 ("***Boock***").

[300] In *Boock*, the issue before the Commission was whether compelled testimony and evidence obtained from Boock who was a respondent in a Commission administrative proceeding, which evidence had been obtained for purposes of an investigation by the SEC, should be disclosed to co-respondents in the Commission proceeding notwithstanding an undertaking given by Staff to Boock that it would not be used by the Commission or Staff in a Commission proceeding. One of the arguments raised by Boock against such disclosure was that by compelling his testimony and evidence, and permitting the use of that testimony and evidence in the Commission administrative proceeding, Staff were forcing him to incriminate himself contrary to sections 7, 11 and 13 of the Charter and that this was fundamentally unfair.

[301] On this question, the Commission drew a distinction between administrative proceedings and quasi-criminal/criminal proceedings and noted that proceedings before the Commission under section 127 of the Act are administrative proceedings:

> The Supreme Court of Canada stated in *Pezim* that "it is important to note from the outset that the [Securities Act] is regulatory in nature. In fact, it is part of a much larger framework which regulates the securities industry throughout Canada. Its primary goal is the protection of the investor, but other goals include capital market efficiency and ensuring public confidence in the system …" (*Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557).
>
> This Proceeding is an administrative proceeding under section 127 of the Act, not a criminal proceeding, or a quasi-criminal proceeding under section 122 of the Act, in which penal sanctions may be imposed.
>
> In *Branch*, the Supreme Court of Canada considered whether two officers of a company could be compelled by the [British Columbia Securities Commission] to give testimony. The officers argued that doing so violated their privilege against self-incrimination under section 7 of the *Charter*. In rejecting that argument, the Court emphasized the distinction between the regulatory role of the [British Columbia Securities Commission] and the objective of criminal prosecution. L'Heureux-Dubé J., in her concurring reasons, stated:
>
> > To recapitulate, although the distinction may often be difficult to draw, courts must try to differentiate between unlicensed fishing expeditions that are intended to unearth and prosecute criminal conduct, and actions undertaken by a regulatory agency, legitimately within its powers and jurisdiction and in furtherance of important public purposes that

> cannot realistically be achieved in a less intrusive manner. Whereas the former may run afoul of s. 7 of the Charter, the latter do not.
>
> (*Branch*, *supra*, at para. 81.)

(*Boock*, *supra* at paras. 89-91)

[302] The Commission in *Boock* then held that compelling testimony and evidence in connection with Commission administrative proceedings does not offend sections 7 and 11 of the Charter. The question is whether the "predominant purpose" of the interview is to incriminate a respondent *in a quasi-criminal or criminal proceeding*:

> In determining whether testimony and evidence can be compelled from a person "the crucial question is whether the predominant purpose for seeking the evidence is to obtain incriminating evidence against the person compelled to testify or rather some legitimate public purpose" (*Branch*, *supra*, at para. 7). In *Branch*, the Court concluded that the [British Columbia Securities Commission] compelled the relevant testimony for a legitimate public purpose in regulating capital markets. Similarly in *Brost (C.A.) and Johnson v. British Columbia (Securities Commission)* [1999] B.C.J. No. 1885 ("***Johnson (C.A.)***"), the Alberta and British Columbia Courts of Appeal affirmed, respectively, the admissibility of compelled evidence in administrative hearings. The Commission has the same public purpose to protect investors and regulate capital markets in this Province. Staff is bringing this Proceeding in furtherance of those objectives.
>
> The onus is on Boock to show that the purpose of the Compelled Evidence was to "incriminate" him. The British Columbia Court of Appeal addressed this issue in *Johnson (C.A.)*:
>
> > Merely because a person is compelled to give information that may be used against him at an administrative hearing does not mean that he is "incriminating" himself, as Branch makes clear ... The onus is on the applicant to show that the purpose of the hearing is to incriminate him or gather evidence that will be used to incriminate him, in a criminal or quasi-criminal proceeding.
> >
> > (*Johnson (C.A.)*, *supra*, at para. 9.)
>
> …
>
> While we recognise that the sanctions that may be imposed by the Commission in an administrative proceeding can have significant regulatory and economic consequences to a respondent, those sanctions are not penal in nature and no respondent can be incarcerated by the Commission in the exercise of its jurisdiction under section 127 of the Act. The Commission has concluded that "a hearing under section 127 of the Act, including a hearing in which an administrative penalty is sought, is fundamentally regulatory. It does not meet the 'criminal by nature' characterization of the offence" (*Rowan*, *supra*, at para. 40; see also *R. v. White*, [1999] 2 S.C.R. 417).
>
> …
>
> It is clear that the predominant purpose for obtaining the Compelled Evidence was to assist the SEC in an administrative and not a criminal investigation. That purpose is apparent from the terms of the Section 11 SEC Order. Similarly, the question we are addressing is whether the Compelled Evidence should be disclosed to the Co-Respondents for potential use in this Proceeding….That use, however, would clearly be in connection with a regulatory proceeding and not a criminal or quasi-criminal proceeding.
>
> (*Boock*, *supra* at paras. 94-95, 97 and 100)

[303] The Commission observed that section 13 of the Charter provides use and derivative use immunity in any subsequent criminal prosecution:

> Section 13 of the *Charter* provides that a witness in any proceeding has the right not to have any incriminating evidence so given used to incriminate the witness in any other proceedings, except a prosecution for perjury or for giving contradictory evidence. If the Compelled Evidence is used in this Proceeding, Boock will have the benefit of use and derivative use immunity in respect of any

use of the Compelled Evidence in any subsequent criminal prosecution, if one were to occur. The Commission recognised this protection in *Glendale* where it stated:

> No criminal or quasi-criminal proceedings are currently pending against Parr, and we were advised by Ms. Blake, counsel for Staff, that none are contemplated. Even if such proceedings are hereafter commenced, section 13 of the Charter will prevent evidence given by Parr in these proceedings from being used to incriminate him in the subsequent proceedings, and he will be entitled, under section 7 of the Charter, to claim derivative use immunity.
>
> (*Glendale*, *supra*, at 6287.)

(*Boock*, *supra* at para. 101)

[304] The Commission concluded that the use of Boock's compelled evidence against him in the Commission proceeding would not be unfair or contrary to the protection against self-incrimination provided by sections 7, 11 and 13 of the Charter. Accordingly, the Commission allowed the disclosure of Boock's compelled evidence to the co-respondents and held that "the Co-Respondents are entitled to make such use of the Compelled Evidence in the hearing on the merits as they may propose, subject to the overriding discretion of the Panel hearing the matter on the merits to decide on what basis they will permit the use of the Compelled Evidence as evidence at that hearing" (*Boock*, *supra* at para. 114).

d. Analysis

i. Delay

[305] As we noted above, there is some lack of clarity in the Investigation Chronology with respect to the time Finkelstein became a "focus" of Staff's investigation. It does appear to be the case, however, that Staff first became aware of some connection between Azeff and Finkelstein as a result of reviewing Azeff's emails which Staff received in September 2009, though Bobrow and Azeff continued to preoccupy Staff's investigative efforts until early 2010. We were shown evidence to demonstrate that Staff began investigating Finkelstein actively, collecting telephone, banking and computer access records for him in June 2010. Most of the evidence on which Staff seek to rely to establish an exchange of information between Finkelstein and Azeff was received from external service providers, and was gathered commencing in June 2010.

[306] Meanwhile, Staff had a previous investigation into Masonite which was closed on March 4, 2005. This circumstance does not constitute an extraordinary delay with respect to the present proceedings. We accept the proposition that Staff had insufficient evidence to proceed at that point.

[307] Even if we accepted that Staff were inefficient in pursuing their investigation of Finkelstein's alleged involvement once his name emerged in September 2009, any delays were not material in light of the overall investigation and fall far short of an abuse of process. This enforcement matter involved a complex and broad investigation of a number of possible respondents in two cities. Staff have satisfied us that they followed the evidence as it emerged and there is no allegation of bad faith with respect to the conduct of the investigation.

[308] In our view, the OSC administrative proceeding against Finkelstein should not be stayed because the evidence allegedly implicating Finkelstein in this matter only emerged in a form satisfactory to Staff in the months leading to the expiry of a limitation period in 2010.

ii. The "Wells Process" and the Limitation Period

[309] We recognize that Staff are entitled to use discretion when conducting their investigations and when exercising their discretion to commence a proceeding against alleged wrongdoers in Ontario's capital markets. As noted in *Glendale Securities Inc.* v. *Ontario (Securities Commission)*, [1996] O.J. No. 2861 (Ont. Ct. Gen. Div.) (leave to appeal dismissed, [1996] O.J. No. 3454) at para. 5, the standard imposed on Staff's conduct in the course of an investigation is not higher than that imposed upon Crown counsel in criminal proceedings, where no notice is provided to the accused that a proceeding is going to be commenced (see also *Proprietary Industries*, *supra* at paras. 111-113).

[310] Finkelstein submits that the "truncated Wells Process" was the result of investigative delays and the impending limitation period. We have considered the circumstances that led to the delivery of the November Enforcement Notice and have concluded that the process followed by Staff was adequate for the purposes of satisfying procedural fairness requirements. As indicated at paragraphs 258 to 260 above, we do not find that there was a failure of natural justice in the circumstances of this case.

[311] An abuse of process may be found in circumstances in which a prosecution is conducted in such a manner as to connote unfairness or vexatiousness of such a degree that it contravenes fundamental notions of justice, undermining the integrity of the judicial process (*R. v. Regan*, *supra* at para. 50). We do not find that any of these circumstances are present in this case. Staff's actions in the face of the looming expiry of the limitation period were not oppressive and did not violate fundamental principles of justice. Ultimately, Staff initiated the proceeding against Finkelstein within the time permitted by the Act.

[312] Further, we note that Finkelstein was given some time to respond to the November Enforcement Notice. On November 3, 2010, Finkelstein was initially given five days, until November 8, 2010, to respond to the November Enforcement Notice. The initial response period was subsequently extended for two additional days, until November 10, 2010. Staff's conduct in this regard does not reach the threshold of being oppressive or vexatious and does not violate the fundamental principles of justice. In light of this, we do not find that an abuse of process occurred.

iii. The Finkelstein Interviews

[313] With respect to Finkelstein's submissions in support of his position that the October Interview violated his Charter rights, we reject Finkelstein's interpretation of the *Branch* decision, based on our analysis and endorsement of the *Boock* decision above. The law does not prevent the use of interview testimony against respondents in administrative proceedings, but it cannot be gathered predominantly for the purpose of incrimination in criminal or quasi-criminal proceedings.

[314] Finkelstein also alleges that it is an abuse of process for Staff to suggest that they can use compelled interviews with potential respondents as a mechanism for providing those respondents with notice about impending allegations.

[315] Staff did not specifically advise Finkelstein during either of the Finkelstein Interviews that they intended to commence proceedings against him. Nor did they suggest during the Finkelstein Interviews that they were discharging "their obligations under the Wells Process" by disclosing information to Finkelstein during the Finkelstein Interviews. Finkelstein argues that Staff have a broad discretion about what information they choose to include, and importantly, not include in an interview, so that it would be inconsistent for Staff to use the interviews to satisfy any enforcement notice obligations.

[316] In particular, Finkelstein argues that the fact that Staff asked no questions of Finkelstein in relation to Legacy and IPC in either of the Finkelstein Interviews, yet included them in the Amended Amended Statement of Allegations "exposes the inherent flaw and inconsistency in Staff's position". Finkelstein further points out that persons who are interviewed cannot be expected to approach Staff voluntarily following the interview "when that individual does not even know whether it is Staff's intention to commence proceedings", since that intention only becomes clear with the delivery of an enforcement notice.

[317] In a context in which there is no specific statutory formulation of a notice requirement, we find that it is not an abuse of process for Staff to suggest that they partially satisfied the fairness requirements imposed on them in the course of their interview of Finkelstein. The Divisional Court in *Gatti* endorsed the proposition that, in the absence of evidence of bad faith, improper purpose or a failure of natural justice, there was limited scope for review of Staff's conduct. No such evidence was presented to us.

[318] As discussed at paragraphs 250 and 256 above, we find it difficult to accept that Finkelstein could not have deduced the nature or implications of the allegations Staff were concerned about from the questions Staff put to him in the Finkelstein Interviews. In this case, the Finkelstein Interviews are clearly part of the context in which Finkelstein later received the Enforcement Notices. It is clear from reviewing the transcripts of the Finkelstein Interviews that the subject matter of the Enforcement Notices provided to Finkelstein did not come "out of the blue". As noted above, although it is clear that Staff spent far less time asking about the Legacy and IPC transactions during the Finkelstein Interviews, we reject the submission that Staff asked Finkelstein no questions about Legacy and IPC.

[319] In summary, upon reviewing the transcripts of the Finkelstein Interviews along with the text of the Enforcement Notices against the background of the criteria to be satisfied in order to find that an abuse of process has occurred, we find that the position Staff advance with respect to the compelled interviews is not oppressive or vexatious and does not violate "the fundamental principles of justice underlying the community's sense of fair play and decency" (*R. v. Regan*, *supra* at para. 50).

e. Conclusion

[320] In light of the foregoing, we do not find that there was an abuse of process in this matter. The threshold for finding an abuse of process as established by the relevant case law is extremely high and the conduct of Staff at issue here does not meet this threshold. It was not oppressive or vexatious and this is not one of the "extremely rare" situations in which an abuse of process should be found. We are not satisfied that this case meets the test articulated in *Blencoe* whereby "the damage to the public interest in the fairness of the administrative process should the proceeding go ahead would exceed the harm to the public interest in the enforcement of the legislation if the proceedings were halted" (*Blencoe*, *supra* at para. 120).

[321] Although the issuance of the Notice of Hearing and Amended Statement of Allegations resulted in prejudice to Finkelstein, this prejudice is not prejudice "of such magnitude that the public's sense of decency and fairness is affected" (*Blencoe*, *supra* at para. 133). *Blencoe* held that "some amount of stress and stigma attached to the proceedings must be accepted…when dealing with the regulation of a business, profession, or other activity" (*Blencoe*, *supra* at para. 96). Further, any prejudice suffered is not irremediable in that Finkelstein may be able to restore his reputation if Staff are unable to prove the allegations against him on a balance of probabilities at the Merits Hearing.

[322] There is no evidence on this motion that the conduct of Staff in their investigation, the provision of the Enforcement Notices or the issuance of a Notice of Hearing and the Amended Statement of Allegations against Finkelstein was prompted by bad faith or an improper motive or purpose. We accept that there is considerable complexity involved in uncovering material that would be required to substantiate the allegations in this matter, including the review of over 500,000 documents, investigations of relationships among multiple potential respondents and analysis of trading patterns. Nor do we find that the conduct of Staff during the Finkelstein Interviews amounted to an abuse of process.

4. The Test for Granting a Stay

[323] As set out above, we did not find any grounds which would justify us considering the test for granting a stay of proceedings in this case.

[324] However, given the significance of the issues raised by the Stay Motion, we consider it helpful to turn our minds to the issue of whether a stay would have been the appropriate remedy in the event that we had found such grounds.

a. Positions of the Parties

i. Finkelstein' Submissions

[325] Finkelstein submits that where there has been an abuse of process, a stay of proceedings is the appropriate remedy in two categories of cases: (i) when the impugned conduct will affect the fairness of the hearing; or (ii) when the impugned conduct will bring the administration of justice into disrepute.

[326] According to Finkelstein, it is the second, or "residual", category of cases that is at issue on this Stay Motion. Under the residual category, the Supreme Court of Canada confirmed in *R. v. O'Connor*, [1995] 4 S.C.R. 411 ("***O'Connor***") at para. 75 that a court will grant a stay when:

> (a) The prejudice caused by the abuse in question will be manifested, perpetuated or aggravated through the conduct of the trial, or by its outcome; and
>
> (b) No other remedy is reasonably capable of removing that prejudice.

[327] Finkelstein points out that the reason the court will grant a stay of proceedings in this second category of cases is not because the hearing itself may be unfair, but because continuing with the proceedings would violate fundamental principles of justice and undermine the community's sense of fair play and decency. Indeed, granting the stay in these cases "is the manifestation of the court's disapproval of the state's conduct…In this way, the benefit to the accused is really a derivative one" (*R. v. Mack*, [1988] 2 S.C.R. 903 at para. 78).

[328] As L'Heureux-Dubé J. explained in *O'Connor*, a stay of proceedings in these circumstances:

> … addresses the panoply of diverse and sometimes unforeseeable circumstances in which a prosecution is conducted in such a manner as to connote unfairness or vexatiousness of such a degree that it contravenes fundamental notions of justice and thus undermines the integrity of the judicial process.
>
> (*O'Connor*, *supra* at para. 73)

[329] As the Supreme Court of Canada held in *R. v. Regan*, there are two types of cases which fall within the residual category: (i) those in which the stay will provide a "prospective" remedy that will be of benefit to society as a whole; and (ii) those "exceptional" or "relatively very rare" cases in which "the past misconduct is 'so egregious that the mere fact of going forward in the light of it will be offensive'" (*R. v. Regan*, *supra* at para. 55). Finkelstein submits that, for the reasons described below, the present case falls within the type of case where the stay will have a prospective and lasting benefit.

[330] Finkelstein submits that the OSC has expressly recognized that it has the authority to grant a stay of proceedings where the proceedings are unfair to the point that they are contrary to the interest of justice (*Re Glendale Securities Inc.*, (1996) 19 O.S.C.B. 3874 at p. 3877).

[331] It is Finkelstein's position that proceeding to a hearing will aggravate the harm already suffered by him. Because of the OSC's failure to provide him with a meaningful "Wells Process", Finkelstein lost the opportunity to prevent or at least mitigate the serious reputational harm that resulted from the publicity attracted by the Notice of Hearing and the Amended Statement of Allegations. This harm would only be aggravated if a hearing were to proceed, as it would inevitably attract renewed media interest, compounding the prejudice to Finkelstein.

[332] Finkelstein argues that granting a stay in this matter would send a strong message to Staff that an individual's right to a proper and meaningful "Wells Process" must be respected. As the OSC has affirmed, providing persons who are under investigation with appropriate safeguards is not only beneficial to these individuals but also furthers the OSC's mandate by encouraging persons subject to investigation to cooperate with Staff, which will presumably lead to more efficient and more effective investigations. In this sense, the stay will not simply remedy the wrong done in this case, but also ensure lasting prospective benefits.

[333] Finally, Finkelstein takes the position that there is no ability in the present case to repair or remedy Staff's abuse of process. Rather, once the Notice of Hearing and the Amended Statement of Allegations were issued against him, Finkelstein lost permanently and irremediably the fundamental right to a fair and just "Wells Process" and thereby the ability to protect against damage to his personal and professional reputation, which has been forever tarnished.

[334] According to Finkelstein, this is therefore one of the "clearest of cases" where a stay must be granted.

ii. Staff's Submissions

[335] Staff submit that there was no abuse of process in this case. The threshold for finding an abuse of process is extremely high and Staff's conduct at issue on this Stay Motion fails to meet this required threshold. The conduct of Staff was not "oppressive or vexatious" and this is not one of the "extremely rare" cases when an abuse of process should be found.

[336] Staff further submit that the harm to the public in not having this matter heard on the merits far outweighs any alleged damage to the public interest in the fairness of the administrative process. Staff submit that the public's "sense of decency and fairness" would be affected if this matter does not get heard on the merits.

[337] In response to Finkelstein's allegation that the only remedy for the abuse of process which he has suffered is a stay of proceedings with prejudice to Staff's right to commence a fresh proceeding, Staff point out that a stay remedy is only one remedy for an abuse of process, but the most drastic one: "'that ultimate remedy'...It is ultimate in the sense that it is final. Charges that are stayed may never be prosecuted; an alleged victim will never get his or her day in court; society will never have the matter resolved by a trier of fact" (*R. v. Regan*, *supra* at para. 53).

[338] Staff submit that if a stay is granted, Staff's allegations against Finkelstein will never be brought to a hearing on the merits and Staff's allegations will never be subjected to adjudication which, they submit, would not be in the public interest.

b. Law and Analysis

[339] A stay of proceedings will only be granted as a remedy for abuse of process when the very high threshold of the "clearest of cases" is met. In particular, a stay of proceedings will only be appropriate when the two criteria enumerated in *O'Connor* are met, namely that (a) the prejudice caused by the abuse in question will be manifested, perpetuated or aggravated through the conduct of the hearing or by its outcome; and (b) no other remedy is reasonably capable of removing that prejudice (*O'Connor*, *supra* at para. 75).

[340] The first criterion is critically important and reflects that a stay of proceedings is a *prospective* remedy:

> A stay of proceedings does not redress a wrong that has already been done. It aims to prevent the perpetuation of a wrong that, if left alone, will continue to trouble the parties and the community as a whole in the future … The mere fact that the state has treated an individual shabbily in the past is not enough to warrant a stay of proceedings … There may be exceptional cases in which the past misconduct is so egregious that the mere fact of going forward in the light of it will be offensive. But such cases should be relatively rare.
>
> (*Canada (Minister of Citizenship and Immigration) v. Tobiass*, [1997] 3 S.C.R. 391 ("***Tobiass***") at para. 91; and *R. v. Regan, supra* at para. 55)

[341] A stay of proceedings is tantamount to an acquittal in that it effectively brings the proceedings to a final conclusion in favour of the accused (*R. v. D.(E.)*, *supra* at para. 22). Therefore, a stay should be granted where "compelling an accused to stand trial would violate those fundamental principles of justice which underlie the community's sense of fair play and decency" and where the proceedings are "oppressive or vexatious" (*R. v. Regan*, *supra* at para. 210).

[342] In *R. v. D.(E.)*, *supra* at paras. 22 and 23, the Court of Appeal stated:

> A stay of proceedings is tantamount to an acquittal in that it effectively brings the proceedings to a final conclusion in favour of the accused (*R. v. Jewitt*, [1985] 2 S.C.R. 128....The facts upon which a finding of abuse of process is based are critical (*R. v. Young*, *supra*, p. 551 O.R., p. 32 C.C.C.). The burden is on the accused to prove the abuse of process on a balance of probabilities (*R. v. Miles of Music Ltd.*, *supra*). The accused must show that allowing the state to proceed against him would violate the community's sense of fair play and decency or that his trial would be an oppressive proceeding. A claim of abuse of process is necessarily fact specific as it expresses society's changing views about what is unfair or oppressive. In *Re Potma and R.* (1983), 41 O.R. (2d) 43…(C.A.) [leave to appeal to S.C.C. refused (1983), 41 O.R. (2d) 43n…], Robins J.A., at p. 52 O.R…said:
>
> > "Fundamental justice", like "natural justice" or "fair play", is a compendious expression intended to guarantee the basic right of citizens in a free and democratic society to a fair procedure. The principles or standards of fairness essential to the attainment of fundamental justice are in no sense static, and will continue as they have in the past to evolve and develop in response to society's changing perception of what is arbitrary, unfair or unjust.
>
> A finding of abuse of process requires a delicate balancing of rights and interests, not in the abstract, but in the context of society's changing perception of what is fair and just. Here, the trial judge held that it was offensive to the principles of fair play and decency to allow the complainants to change their minds three years after the police had informed the accused that charges would not be laid. More specifically, he held that it was unfair to allow the complainants to change their minds when the accused had heeded the police warning not to contact them.

[343] In *R. v. Power*, the Supreme Court of Canada held that a stay of proceedings for abuse of process should only be granted in the "clearest of cases" which "[amount] to conduct which shocks the conscience of the community and is so detrimental to the proper administration of justice that it warrants judicial intervention". This requires "overwhelming evidence that the proceedings under scrutiny are unfair to the point that they are contrary to the interest of justice" (*R. v. Power*, *supra* at paras. 10-12; and *Re Glendale Securities Inc.*, *supra* at p. 3877).

[344] Finkelstein alleges that Staff improperly sent the Enforcement Notices without providing sufficient time or particulars to enable him to respond, and the conduct associated with the issuance of proceedings was an abuse of process. We found above that Staff's conduct was not improper and certainly does not meet the threshold of improper conduct described by the case law as "oppressive" or "vexatious" so as to justify the drastic remedy of a stay of proceedings.

[345] Finkelstein has failed to demonstrate that this is one of those "clearest of cases" which would justify a stay. Staff's conduct in providing Finkelstein with eight days to respond to the November Enforcement Notice, after two in-depth interviews, cannot be said to "[shock] the conscience of the community" and be "so detrimental to the proper administration of justice that it warrants judicial intervention". Further, in contrast to *R. v. Mack*, we are of the view that the "maintenance of public confidence in the legal and judicial process" does not require the granting of a stay in this case (*R. v. Mack*, *supra* at para. 78).

[346] The prejudice asserted by Finkelstein appears to be reputational damage caused by the issuance of the proceedings against him. Finkelstein is seeking to stay the proceedings based on the *prior* conduct of Staff. Further, reputational damage has been found not to be an abuse of process which merits the granting of a stay:

> One must also remember that the humiliation flowing from properly laid charges, while unpleasant, is not an abuse of process.
>
> *(R. v. Regan*, *supra* at para. 107)

[347] We are unable to conclude that the issuance of allegations gives rise to irreparable reputational harm. In *Xanthoudakis v. Ontario Securities Commission*, [2009] O.J. No. 1873 ("***Xanthoudakis (2009)***"), the appellants sought to stay Commission proceedings pending the appeal of a 2009 Commission decision refusing to stay the proceedings. The appellants alleged they would suffer irreparable harm to their reputations if adverse findings were made against them. The Divisional Court held:

> While it is a reasonable inference that reputations could be affected by adverse findings on the merits given the nature of the allegations, the nature and extent of that harm is speculative: *Noble v. Noble*, [2002] O.J. No. 4997 at para. 16 (S.C.J.). Such an argument – based solely on the nature of the allegations – would mean that any professional conduct or regulatory proceeding based upon integrity or wrongdoing would automatically qualify as irreparable harm. The impact upon reputation

> of any adverse findings, as well as the issue of bias, can be fully and appropriately dealt with in this court on appeal.
>
> (*Xanthoudakis (2009)*, *supra* at para. 26)

[348] The oral submissions made by counsel for Finkelstein at the Motions Hearing also raised the issue of whether Finkelstein suffered prejudice because he was deprived of a "second channel", which counsel for Finkelstein described as "without-prejudice communications, settlement discussions with Staff, with a view to determining whether or not you can come to a resolution of a matter prior to the issuance of a notice of hearing" (Hearing Transcript dated November 10, 2011 at p. 27). In this regard, we received no information as to whether attempts to settle this matter ever took place and, accordingly, it would be inappropriate for us as a panel to speculate on this issue.

[349] With respect to the second criterion to consider when determining whether a stay is the appropriate remedy (that no other remedy is reasonably capable of removing the prejudice), we find that Finkelstein has failed to demonstrate that no other remedy is reasonably capable of removing the prejudice.

[350] Indeed, any reputational damage that has been caused to Finkelstein will not be cured by the granting of a stay. Finkelstein will have the opportunity to present a full defence at the Merits Hearing and any damage to Finkelstein's reputation can potentially be mitigated by successfully defending against the allegations set out in the Amended Amended Statement of Allegations at the Merits Hearing.

[351] Where there is uncertainty as to whether an abuse is sufficient to warrant the remedy of a stay, a third criterion is then considered. This is the stage where the trier of fact balances the interests of granting a stay against the interest that society has in holding a hearing to have a final decision on the merits.

[352] In *R. v. Regan*, *supra* at para. 57, the Supreme Court stated:

> Finally, however, this Court in *Tobiass* instructed that there may still be cases where uncertainty persists about whether the abuse is sufficient to warrant the drastic remedy of a stay. In such cases, a third criterion is considered. This is the stage where a traditional balancing of interests is done: "it will be appropriate to balance the interests that would be served by the granting of a stay of proceedings against the interest that society has in having a final decision on the merits". In these cases, "an egregious act of misconduct could [never] be overtaken by some passing public concern [although]...a compelling societal interest in having a full hearing could tip the scales in favour of proceeding" (*Tobiass*, at para. 92).

[353] In *Re Mega-C Power Corp.* (2010), 33 O.S.C.B. 8245 ("***Mega-C (2007)***") at para. 76, the Commission stated:

> In addition, before a stay can be granted, it is necessary to balance the interests of granting a stay against the interest that society has in holding a hearing to have a final decision on the merits (*R. v. Regan*, *supra* at para. 57; and *Regina v. E.D.* (1990) 57 C.C.C. (3d) 151 at para. 23).

[354] As noted in *Regan* and *Tobiass*, in certain cases, where it is unclear whether the abuse is sufficient to warrant a stay, a compelling societal interest in having a full hearing could tip the scales in favour of proceeding (*Tobiass*, *supra* at para. 92).

[355] Although the allegations against Finkelstein may ultimately not be sustained by Staff, there is a compelling public interest in effective enforcement of insider trading and tipping prohibitions which, in our view, outweighs the interest of Finkelstein in obtaining the remedy of a stay on the grounds that he did not have enough time or particulars to respond to the Enforcement Notices.

c. Conclusion

[356] In light of the serious allegations of insider trading and tipping in this matter, we believe that the harm to the public in not having this matter heard and adjudicated on the merits outweighs any alleged damage to the public interest in the fairness of the administrative process caused by Staff's actions with respect to the Enforcement Notices.

B. THE PREMATURITY MOTION

1. The Issue

[357] The issue before the Commission on this cross-motion is whether Finkelstein's Stay Motion ought to be adjourned until the Merits Hearing, to be dealt with at the discretion of the Merits Hearing panel.

2. Positions of the Parties

a. Staff's Submissions

[358] It is Staff's position that the Stay Motion is premature. Staff seek an order that the Stay Motion be heard and determined at the Merits Hearing. Alternatively, in the event that the panel chooses to hear the Stay Motion prior to the Merits Hearing, Staff seek an order dismissing the Stay Motion on the grounds of prematurity, without prejudice to Finkelstein's right to renew his Stay Motion at the Merits Hearing, to be dealt with at the discretion of the Merits Hearing panel.

[359] Staff argue that the courts in the criminal and administrative law context (including securities regulation) have consistently held that motions such as the Stay Motion ought to be heard within the context of the hearing or trial. Further, the case law has repeatedly held that a trier of fact should not address a stay motion in isolation because a complete factual foundation is essential for a proper determination of the issue. According to Staff, the case law is clear that the Commission must defer the decision to assess the degree and extent of alleged prejudice to the respondent of proceeding with this matter in the context of the evidence as a whole.

[360] Staff submit that the Commission must hear and weigh all of the evidence Staff obtained in the investigation to make findings in response to Finkelstein's allegations about unfairness and abuse of process. To do otherwise would result in a decision based on an incomplete factual record.

[361] Staff take the position that the evidence on which they rely in response to the Stay Motion will not be unique or distinct from the evidence to be tendered at the Merits Hearing. Therefore, hearing the Stay Motion as a pre-hearing motion, prior to the Merits Hearing, would not be an efficient use of the tribunal's resources and would not be the most expeditious and cost-effective method to make a determination with respect to the Stay Motion.

[362] Staff submit that seeking the extreme relief of a stay of proceedings is a factor which points towards deferring the motion to the hearing on the merits (*Mega-C (2007), supra* at para. 72). The Ontario Court of Appeal has also emphasized that a motion for a stay should normally be decided after the trial is completed and once all of the relevant evidence has been adduced (*R. v. Dikah*, [1994] O.J. No. 858 (C.A.) at para. 34; *R. v. François* (1993), 15 O.R. (3d) 627 (C.A.) at p. 629; and *Mega-C (2007)*, *supra* at para. 76). Staff submit that in light of the extraordinary remedy sought by Finkelstein, the Merits Hearing panel must consider all of the relevant evidence before making any findings.

[363] The Supreme Court of Canada has held that, with rare exceptions, a trial judge is empowered to reserve on any application until the end of the case (*R. v. DeSousa*, [1992] 2 S.C.R. 944 at para. 17).

[364] In applying the principles enunciated by the Supreme Court, the courts have repeatedly held in a wide variety of circumstances that motions for a stay due to abuse of process should be reserved until the end of trial. Staff referred us to a number of relevant cases. They include cases in which:

(a) Investigatory misconduct was alleged to have arisen through the use of and payment to an undercover agent to surreptitiously obtain evidence from the accused (*R. v. Dikah, supra*);

(b) The investigating police officers intentionally delayed charging an accused with criminal offences for 13 months due to their workload, but where no finding of bad faith or oblique motive was made (*R. v. Francois*, *supra*); and

(c) Lost evidence was alleged to have infringed an accused's right to full answer and defence (*R. v. La*, [1997] 2 S.C.R. 680; and *R. v. Foster*, [2001] N.B.J. No. 163 (N.B.C.A.)).

[365] Staff also referred us to *R. v. Lawrence*, where the accused brought an application to stay the proceedings due to delay and on the basis that the conduct of the police investigation amounted to abuse of process and a violation of their Charter rights. Despite finding that the investigation was an abuse of process, the court deferred a decision on the stay motion until the conclusion of the case for the Crown in order to determine the extent of the prejudice in the circumstances of the case. At trial, Halley J. held that the prejudice to the applicants caused by the abuse of process fell short of the magnitude required for a stay of proceedings (*R. v. Lawrence*, [2006] N.J. No. 343 (Nfld. Sup. Crt. – T.D.) at paras. 27, 32, 38-39; and *R. v. Lawrence*, [2006] N.J. No. 344 (Nfld. Sup. Crt. – T.D.) at paras. 1-2 and 8).

[366] Staff also rely on *Mitchell v. Ontario (Securities Commission)*, [1998] O.J. No. 1537 (Div. Crt.) ("***Mitchell***"). *Mitchell* involved a judicial review of decisions made by the Commission, including a decision not to stay the proceedings. In that case, the Divisional Court held that even where the matters are not criminal in nature and do not raise constitutional issues, the policy considerations of not fragmenting proceedings by interlocutory motions and discouraging constitutional adjudication without a factual foundation are nevertheless apt when dealing with judicial review of an administrative tribunal decision. Staff submit that

these policy considerations are also applicable when considering preliminary motions before the Commission (*Mitchell*, *supra* at paras. 5 and 6).

[367] Staff further submit that the Commission has generally taken the position that stays are an extraordinary remedy and a panel should wait until the end of the hearing to make a determination regarding a stay (*Mega-C (2007)*, *supra* at para. 80; and *Re Deutsche Bank Securities Ltd*. (2011), 34 O.S.C.B. 10333 ("***Deutsche Bank***") at para. 73).

[368] In one of the stay motions brought in the *Mega-C* matter, the moving parties alleged a series of circumstances that, together, raised issues about Staff's conduct of the investigation and proceeding. The moving parties alleged that Staff's conduct was improper and threw the Commission's process into disrepute (*Re Mega-C Power Corp.* (2010), 33 O.S.C.B. 8285 ("***Mega-C (2008)***") at paras. 5 and 6). In dismissing the motion, the Commission noted that it had been presented with submissions based on limited affidavit evidence, without the benefit of hearing the evidence directly from the witnesses and the opportunity to assess that evidence in the factual context of the hearing on the merits. The Commission held that the opportunity to assess the evidence in the context of a hearing on the merits was "necessary since questions of credibility, the propriety of the conduct of Staff and the integrity of the Commission as a whole are at issue" (*Mega-C (2008)*, *supra* at para. 11).

[369] In *Re Belteco Holdings Inc.* (1997), 20 O.S.C.B. 2921 ("***Belteco***"), the respondent brought a motion before the Commission seeking a dismissal of the allegations due to systemic bias reflected in a lack of procedural fairness, lack of good faith in all aspects of the investigation and abuse of prosecutorial discretion. The Commission dismissed the application relating to systemic bias and found that the facts fell short of abuse of process. The Divisional Court, affirming this decision, allowed the applicant to renew the application as the hearing proceeded should new facts arise (*Belteco*, *supra* at paras. 3.02, 3.14 and 3.15; *Mitchell*, *supra* at para. 8).

[370] In *Re Glendale Securities Inc.,* Louis Shefsky brought a motion for a stay of proceedings, in part, alleging abuse of process in respect of the conduct of an interview leading to an admission by Shefsky. The Commission held that the conduct surrounding the interview did not amount to an abuse of process such that the proceedings should be stayed. The Commission held that Staff's actions could be raised when, and if, Staff sought to introduce the evidence obtained in the interview where evidence of that conduct would go to the questions of admissibility of, or the weight to be given to that evidence (*Re Glendale Securities Inc.*, *supra* at p. 3879). In dismissing the application for judicial review, Sharpe J. rejected the argument that there were grounds for halting the proceedings before the Commission, but noted that the applicants could not be precluded from advancing these arguments in the future course of proceedings (*Glendale Securities Inc. v. Ontario (Securities Commission)*, *supra* at para. 8).

[371] Staff submit that the relief they are seeking on the Prematurity Motion will secure the most just, expeditious and cost-effective determination of the Prematurity Motion and Stay Motion as contemplated by subrule 1.2(3) of the *Rules of Procedure* and Section 2 of the SPPA.

b. Finkelstein's Submissions

[372] Finkelstein argues that his Stay Motion involves events leading up to and crystallizing with the issuance of the Notice of Hearing and the Amended Statement of Allegations on November 11, 2010. The Stay Motion is completely distinct from and unrelated to the underlying merits of the case.

[373] Finkelstein submits that all of the facts necessary to adjudicate this issue are before the panel on the Stay Motion. There will be no additional or better evidence about these events on a full hearing of this case on its merits. There are no serious issues of credibility and the facts relevant to the Stay Motion are largely undisputed by the parties. Only the interpretation of these facts and the application of the law are at issue in the Stay Motion. In these circumstances, the case law is clear that there is no reason not to hear the Stay Motion at this time.

[374] According to Finkelstein, Staff are nevertheless intent on trying to shield their conduct from scrutiny and avoid the Stay Motion. Staff earlier tried, and failed, to argue at a pre-hearing conference on August 30, 2011 before Commissioner Kerwin that their Prematurity Motion should be scheduled as a standalone motion in advance of the Stay Motion. Finkelstein argues that Commissioner Kerwin properly refused Staff's request and ordered that both issues be heard together.

[375] In the pre-hearing conference, Commissioner Kerwin referred counsel in this matter to the Commission's decision in *Re Boyle* (2006), 29 O.S.C.B. 3365 ("***Boyle***"). Finkelstein argues that *Boyle*, like the present case, was procedural in nature and did not require any consideration of the merits. Also like the present case, *Boyle* raised a "purely legal dispute".

[376] Finkelstein further submits that the present case is completely distinguishable from *Mega-C (2007)* because the alleged abuses underlying the stay argument in *Mega-C (2007)* were evidentiary in nature. That is, it was unknown at the time of the motion whether and to what extent the impugned evidence would be sought to be tendered or ruled admissible at the hearing on the merits in that matter and whether and for what purpose any impugned evidence would fit within the context of Staff's evidence as a whole. Finkelstein submits that this is not the case here, because the facts underlying the allegations in this case

are entirely irrelevant to a proper determination of the issue of whether Staff's alleged failure to afford Finkelstein fundamental protections offended community standards of decency and fair play.

[377] Finkelstein submits that Staff are now trying to urge this panel to allow them to make their "prematurity argument" before Finkelstein's right to be heard on his Stay Motion.

3. Law and Analysis

[378] The Commission, and each hearing panel in particular, are "masters of their own procedure" and have broad discretion which must be exercised with due regard to all of the circumstances, interests and rights of the parties. In exercising its discretion, the Commission must have concern for not unduly "judicializing" its process. Administrative proceedings are intended to be less formal and more procedurally flexible than those of the courts (*Mega-C (2007)*, *supra* at paras. 32 and 34).

[379] There can be no "hard and fast" rules that govern the exercise of a Commission panel's discretion. Each case is unique, and a Commission panel's discretion should not be encumbered by generalities (*Mega-C (2007), supra* at para. 38).

[380] In *Mega-C (2007)*, *supra* at para. 34 the Commission outlined a number of questions that could guide the analysis of whether or not a determination of a motion was premature. These are:

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

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

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

[381] In *Boyle*, the OSC considered whether the limitation period had expired before a Notice of Hearing was issued and concluded:

> We see no benefit in delaying our decision on the motion until after a hearing on the merits. There are no facts relevant to the motion that are in dispute or that need to be clarified through further evidence.
>
> … even if the evidence in a hearing on the merits were to prove all the events referenced in the Statement of Allegations, that would not change the reality that the allegations of wrongdoing in the Statement of Allegations are not based on a last event subsequent to the limitation date.
>
> (*Boyle*, *supra* at paras. 57-58)

[382] We accept Finkelstein's submission that the present case is more analogous to the situation in *Boyle* than to those at issue in *Mega-C (2007)* or *Deutsche Bank*. In cases such as *Boyle*, the interests of administrative efficiency and fairness, and the *Rules of Procedure* themselves, demand that, if a matter can be disposed of without resort to a lengthy and costly proceeding, it ought to be.

[383] In *Mega-C (2007)*, the alleged abuses underlying the stay argument were evidentiary in nature. Those allegations (as with any allegations about impugned evidence) necessitated a full hearing on the merits in order for the panel to consider and evaluate the extent to which the impugned evidence was relevant. In deciding that the motion was premature, the panel reasoned, at para. 93, that:

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

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

[384] Similarly, in *Deutsche Bank*, *supra* at para. 75, the panel found:

> … the extent of any prejudice to DBSL's ability to make full answer and defence can only be assessed by the IIROC Hearing Panel in the context of the IIROC Merits Hearing. At that time, IIROC Staff will have set out its theory of the case and disclosed the evidence on which it intends to rely, and DBSL will have prepared its defence, had an opportunity to attempt to secure the attendance of certain Non-Compellable Witnesses on a voluntary basis, and obtained transcript evidence from Non-Compellable Witnesses who refuse to attend on a voluntary basis. The IIROC Hearing Panel will then be able to consider the actual prejudice to DBSL's right to make full answer and defence caused by specific refusals of Non-Compellable Witnesses to testify. Any such decision made by an IIROC hearing panel would be reviewable by the Commission pursuant to section 21.7 of the Act at that time.

[385] In the present case, there is no suggestion that Staff's conduct at the investigative stage of the proceeding has affected Finkelstein's ability to have a fair Merits Hearing. Rather, the issue is whether Staff's past conduct in and of itself breached Finkelstein's right to procedural fairness or was an abuse of process.

[386] In our view, in accordance with the questions posed in *Mega-C (2007)* outlined at paragraph 380 above for determining whether a stay motion should be heard in advance of the hearing on the merits (which were answered in the negative in the *Mega-C (2007)* case itself), we are able to resolve the issues in the Stay Motion in advance of the Merits Hearing. We consider it more fair and efficient to resolve those issues in advance of commencing the Merits Hearing.

4. Conclusion

[387] For these reasons, we agree with Finkelstein and found that the Stay Motion was not prematurely brought, and that we could make a determination based on the extensive factual background provided by the parties and the nature of the issues we were asked to decide.

C. REQUEST FOR COSTS AGAINST STAFF

[388] In the Notice of Motion, Finkelstein requests that he be awarded the costs of the Stay Motion.

[389] Staff submit that there is no provision in the Act or the *Rules of Procedure* which authorizes the Commission to make an order for costs against Staff. More specifically, section 127.1 of the Act and rule 18.1 of the *Rules of Procedure*, which govern costs awards in Commission proceedings, do not give the panel the authority to make an order for costs against Staff. In fact, it is only Staff who are entitled to seek costs, including the costs of a motion, at the end of a hearing, in accordance with section 127.1 of the Act and rule 18.1 of the *Rules of Procedure*.

[390] Further, Staff submit that the Commission does not have inherent authority to make a costs order against them. This issue was considered by the Commission in its decision in *Re Tindall* (2000), 23 O.S.C.B. 6889. In its reasons, the Commission stated:

> … we are of the opinion that s. 127.1 does not provide the Commission with the authority to make an award of costs in favour of a respondent, nor does this authority flow from any inherent authority to make such an order.
>
> (*Re Tindall*, *supra* at para. 76)

[391] We agree with Staff's submissions that we do not have jurisdiction to award costs to Finkelstein under section 127.1 of the Act.

VI. CONCLUSION

[392] For all these reasons, we conclude that both the Stay Motion and the Prematurity Motion are dismissed.

[393] The request for costs by Finkelstein is also dismissed.

DATED at Toronto this 31th day of May, 2012.

"*Mary G. Condon*"
Mary G. Condon

"*C. Wesley M. Scott*"
C. Wesley M. Scott

"*Christopher Portner*"
Christopher Portner

3.1.2 Sextant Capital Management Inc. et al. – ss. 127, 127.1

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

AND

IN THE MATTER OF
SEXTANT CAPITAL MANAGEMENT INC.
SEXTANT CAPITAL GP INC., OTTO SPORK,
KONSTANTINOS EKONOMIDIS, ROBERT LEVACK
AND NATALIE SPORK

REASONS FOR DECISION ON SANCTIONS AND COSTS
(Sections 127 and 127.1 of the Act)

Hearing:	April 18, 2012		
Decision:	June 1, 2012		
Panel:	James D. Carnwath, Q.C.	–	Commissioner and Chair of the Panel
Appearances:	Jay Naster	–	For Otto Spork, Konstantinos Ekonomidis and Natalie Spork
	Tamara Center Brendan van Niejenhuis	–	For Staff of the Commission
	No one appeared	–	For Sextant Capital Management Inc. or Sextant Capital GP Inc.

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I. HISTORY OF THE PROCEEDING

[1] This is a hearing before the Ontario Securities Commission (the "**Commission**") pursuant to sections 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 an order with respect to sanctions and costs (the "**Sanctions and Costs Hearing**") against Sextant Capital Management Inc. ("**SCMI**"), Sextant Capital GP Inc. ("**Sextant GP**") (collectively, the "**Corporate Respondents**"), Otto Spork ("**Spork**"), Konstantinos (Dino) Ekonomidis ("**Ekonomidis**") and Natalie Spork (collectively, the "**Individual Respondents**"; together with the Corporate Respondents, the "**Respondents**").

[2] The Sanctions and Costs Hearing was held following a hearing on the merits which began in June, 2010 and continued over the course of approximately 16 days until December, 2010 (the "**Merits Hearing**"). The decision on the merits was issued on May 17, 2011 (34 O.S.C.B. 5863)(the "**Merits Decision**").

[3] Upon reviewing all the evidence, the applicable law and the submissions made, the merits panel concluded in the Merits Decision, *above* at para. 285, that:

(a) Spork, SCMI and Sextant GP breached section 126.1 of the *Act*;

(b) the Respondents breached section 116 of the *Act*;

(c) SCMI, Spork, Ekonomidis, and Natalie Spork breached section 2.1 of Rule 31-505;

(d) SCMI and Sextant GP breached section 19 of the *Act*; and

(e) By engaging in conduct described above, the Respondents acted contrary to the public interest.

[4] Prior to the Merits Hearing, Robert Levack ("**Levack**"), who was also named as a respondent in this matter, settled with the Commission (*Re Sextant Capital Management Inc. et al* (2010), 33 O.S.C.B. 5045).

[5] On April 18, 2012, Staff of the Commission ("**Staff**") appeared at the Sanctions and Costs Hearing and made oral submissions. The submissions were supported by Staff's Written Submissions on sanctions and costs dated September 9, 2011, a Bill of Costs, the Affidavit of Anne Paiement, sworn September 9, 2011, with respect to costs, Briefs of Authorities, and Staff's Compendium. Counsel for Spork, Ekonomidis and Natalie Spork filed a Respondents' Compendium on April 18, 2012, appeared at the Sanctions and Costs Hearing and made oral submissions. SCMI and Sextant GP, were and continue to be in receivership, and did not appear or make submissions.

[6] The Panel notes that the Respondents received notice of the Sanctions and Costs Hearing. In accordance with subsection 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, the Panel was entitled to proceed in the absence of the Corporate Respondents.

II. SANCTIONS AND COSTS REQUESTED

i. Staff's Position

[7] Staff has requested that the following orders be made against the Corporate Respondents:

(a) SCMI's registration under the *Act* be terminated, pursuant to clause 1 of subsection 127(1) of the *Act*;

(b) SCMI and Sextant GP be permanently prohibited from becoming registered under the *Act*, pursuant to clause 1 of subsection 127(1) of the *Act*;

(c) SCMI and Sextant GP cease trading in securities permanently, pursuant to clause 2 of subsection 127(1) of the *Act*;

(d) the acquisition of any securities by each of SCMI and Sextant GP is prohibited permanently, pursuant to clause 2.1 of subsection 127(1) of the *Act*; and

(e) any exemptions contained in Ontario securities law do not apply to each of SCMI and Sextant GP permanently, pursuant to clause 3 of subsection 127(1) of the *Act*.

[8] Staff has requested that the following orders be made against the Individual Respondents:

(a) Spork, Ekonomidis and Natalie Spork's registration under the *Act* be terminated, pursuant to clause 1 of subsection 127(1) of the *Act*;

(b) Spork be permanently prohibited, Ekonomidis be prohibited for ten (10) years, and Natalie Spork be prohibited for five (5) years from becoming registered under the *Act*, pursuant to clause 1 of subsection 127(1) of the *Act*;

(c) Spork cease trading in securities permanently, Ekonomidis cease trading in securities for ten (10) years, and Natalie Spork cease trading in securities for five (5) years, pursuant to clause 2 of subsection 127(1) of the *Act*;

(d) the acquisition of any securities by Spork is prohibited permanently, by Ekonomidis is prohibited for ten (10) years, and by Natalie Spork is prohibited for five (5) years, pursuant to clause 2.1 of subsection 127(1) of the *Act*;

(e) any exemptions contained in Ontario securities law do not apply to Spork permanently, to Ekonomidis for ten (10) years, and to Natalie Spork for five (5) years, pursuant to clause 3 of subsection 127(1) of the *Act*;

(f) Spork, Ekonomidis and Natalie Spork be reprimanded, pursuant to clause 6 of subsection 127(1) of the *Act*;

(g) Spork and Ekonomidis resign all positions as directors or officers of an issuer, registrant or investment fund manager, pursuant to clauses 7, 8.1, and 8.3 of subsection 127(1) of the *Act*;

(h) Natalie Spork resign all positions she may hold as a director or officer of an issuer, pursuant to clause 7 of subsection 127(1) of the *Act*;

(i) Spork be prohibited permanently and Ekonomidis be prohibited for ten (10) years from becoming or acting as officers or directors of any issuer, registrant or investment fund manager, pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the *Act*;

(j) Natalie Spork be prohibited for five (5) years from becoming or acting as an officer or director of any issuer or registrant, pursuant to clauses 8 and 8.1 of subsection 127(1) of the *Act*;

(k) Spork be prohibited permanently and Ekonomidis be prohibited for ten (10) years from becoming or acting as a registrant, investment fund manager, or as a promoter, pursuant to clause 8.5 of subsection 127(1) of the *Act*;

(l) Spork pay $1,000,000, Ekonomidis pay $250,000 and Natalie Spork pay $50,000 as an administrative penalty, pursuant to clause 9 of subsection 127(1) of the *Act*;

(m) Spork disgorge $6,750,000, Ekonomidis disgorge $325,000 and Natalie Spork disgorge $165,000 as an administrative penalty, pursuant to clause 10 of subsection 127(1) of the *Act*; and

(n) Spork pay $350,000 representing 80% of the costs, Ekonomidis pay $65,000 representing 15% of the costs, and Natalie Spork pay $20,000 representing 15% of the costs, pursuant to section 127.1 of the *Act.*

[9] In Staff's submission, the sanctions requested are appropriate in light of the conduct of the Respondents and take into account multiple breaches of the *Act*. In addition, Staff submits that their proposed sanctions will both deter the Respondents as well as like-minded individuals from involvement in similar conduct in the future.

ii. Respondents' Position

[10] Mr. Naster, counsel for Spork, Ekonomidis and Natalie Spork, submits that the Individual Respondents are entitled to the application of a principle of sentencing often expressed as "the maximum penalty is reserved for the worst offence and the worst offender". Since Spork, for example, was found to have engaged in a course of conduct which he knew or ought to have known perpetrated a fraud, it is not known whether he "knew" or "ought to have known" the consequences of his conduct.

[11] Therefore, Mr. Naster says that Spork is entitled to be sentenced as having acted in circumstances where he "ought to have known" his conduct was contrary to the *Act*. This view leads Mr. Naster to make submissions about the context of Spork's actions, which he claims attracts a lesser degree of culpability and a lesser sanction than if Spork knew his actions were fraudulent. On this analysis, Mr. Naster submits Spork cannot be the "worst offender". He is unable to provide any authority for this proposition in its application to an administrative tribunal.

iii. The Levack Settlement

[12] As mentioned above, Mr. Levack entered into a settlement agreement with the Commission. In my view, any sanctions imposed on the Respondents should be proportionate and take into consideration the sanctions imposed on the settling respondent in this matter. The following sanctions and costs were ordered against Mr. Levack:

- Levack's registration is terminated;
- Levack is to resign from one or more positions he holds as director or officer of a registrant, issuer or investment fund manager;

- Levack is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager for a period of 10 years;

- Levack is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of 10 years;

- Levack is to pay an administrative penalty of $15,000, to be allocated under s. 3.4(2)(b) of the *Act* or for the benefit of third parties.

III. SANCTIONS ANALYSIS

[13] The submission of Mr. Naster which draws a distinction for sanctioning purposes between a respondent who "knew" or "ought to have known" he or she was breaching the *Act*, confuses the principles of sentencing in a criminal law context with the imposition of sanctions in a regulatory context. In *Gordon Capital Corp. v. Ontario (Securities Commission)*, 1991 CarswellOnt 947, 50 O.A.C. 258 at para. 28, the Divisional Court found as follows:

The general legislative purpose of the Act and the OSC's role thereunder is to preserve the integrity of the capital markets of Ontario and protect the investing public. In this context, the proceedings against Gordon and Bond under subs. 26(1) of the Act are properly characterized as regulatory, protective or corrective. The primary purpose of the proceedings is to maintain standards of behaviour and regulate the conduct of those who are licensed to carry on business in the securities industry. The proceedings are not criminal or quasi-criminal in their design or punitive in their object. This distinction has been made in a number of cases involving proceedings of a regulatory or public protective nature such as that under subs. 26(1) of the Act[.]

[14] Pursuant to section 1.1 of the *Act*, the Commission's mandate is to: (i) provide protection to investors from unfair, improper or fraudulent practices; and (ii) foster fair and efficient capital markets and confidence in capital markets. As stated by the Supreme Court of Canada in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission*, [2001] 2 S.C.R. 132, the Commission's public interest mandate is neither remedial nor punitive; instead, it is protective and preventive, and it is intended to prevent future harm to Ontario's capital markets (at para. 42).

[15] Deterrence is an important factor that the Commission could consider when determining appropriate sanctions. In *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672, the Supreme Court of Canada explained that deterrence is "…an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventive" (at para. 60). This procedure is indifferent as to the degree of culpability, but rather focuses on the harm done and the deterrence that is appropriate.

1. Specific Sanctioning Factors Applicable in this matter

[16] It is well established in the Commission's jurisprudence that, in determining the appropriate sanctions, the Commission is guided by the factors set out in *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 at para. 26; and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at pp. 7746-7747). In determining the appropriate sanctions, I have taken into account those factors summarized in the following subparagraphs.

a) Seriousness of allegations: The securities law violations committed by each of the Respondents were serious and their behaviour was egregious. In the Merits Decision it was found that Spork, SCMI and Sextant GP perpetrated a fraud on investors contrary to s. 126.1 of the *Act*, all Respondents breached their duties as investment fund managers contrary to s. 116 of the *Act,* SCMI, Spork, Ekonomidis and Natalie Spork, breached their duties pursuant to s. 2.1 of Rule 31-505 to deal fairly, honestly and in good faith with clients, and the Corporate Respondents failed to maintain proper books and records contrary to s. 19 of the *Act*. Fraud, in particular, is among the most egregious securities law violations (*Re Al-Tar Energy Corp.* (2010), 33 OSCB 5535 at para 214).

b) Respondents' experience in the marketplace: All of the Respondents, except Sextant GP, were registrants with the Commission. A registrant is expected to have a higher level of awareness of duties than a non-registrant (*Re Rowan* (2009), 33 O.S.C.B. 91 ("***Re Rowan***") at para. 145; *Re Norshield* (2010), 33 O.S.C.B. 7171 at paras. 84 and 85). The Respondents failed to act in a manner expected of a registrant.

c) Level of activity in the marketplace: Since 2006, at least 246 Canadian investors invested in Sextant Canadian Fund. Third party investors invested $23 million (Merits Decision, *above* at para. 76). The amounts raised by the Respondents were substantial and caused significant financial losses that could undermine investor confidence.

d) Respondents' recognition of seriousness of improprieties: Staff submits that the Respondents provide no basis to conclude that they have recognized the seriousness of their improprieties, and that despite facing serious allegations the Respondents failed to testify. I do not consider this to be an aggravating factor. A

respondent's acknowledgement of certain conduct may be a mitigating factor, but failure to do so should not be construed as an aggravating factor.

e) Specific and general deterrence: Given the seriousness of the conduct and the magnitude of the effect on the capital markets, it is important that the Respondents and like-minded individuals implicated in acts of undervaluation, misclassification of transactions and the taking of advance fees should be deterred from doing so in the future by imposing appropriate sanctions which reflect the harm done to investors in this case.

f) Size of profit gained or loss avoided from illegal conduct: The Sextant Canadian Fund paid management fees totalling $602,831 and performance fees totalling $6,331,356, which Spork benefitted from directly or indirectly (Merits Decision, *above* at para. 237). I find that as a result of his non-compliance Ekonomidis received $326,353 made up of "bonus" in the amount of $86.353 and "certified cheques" in the amount of $240,000 (Staff's Sanctions Hearing Compendium, Tab 11 at p. 260). I also find that as a result of her non-compliance Natalie Spork received $168,075 made up of "bonus" in the amount of $28,075 and "certified cheques" in the amount of $140,000 (Staff's Sanctions Hearing Compendium, Tab 11 at p. 263). The Individual Respondents should not be allowed to profit from breaches of Ontario securities law.

g) Effect of sanctions on respondent's ability to participate without check in capital markets: The gravity of the Respondents' conduct and risk to the capital markets warrants prevention from their participation, either temporarily or permanently. As confirmed by the Divisional Court, "[p]articipation in the capital markets is a privilege, not a right" (*Erikson v. Ontario (Securities Commission),* [2003] O.J. No. 593 (Sup. Ct.) at para. 56).

h) Sanctions imposed on settling respondent: As noted above at paragraph 12, Levack's registration was terminated and he was ordered to resign from positions he holds as director or officer of a registrant, issuer or investment fund manager. Levack was also prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager for a period of 10 years and prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of 10 years. Levack was further ordered to pay an administrative penalty of $15,000. This amount reflects his acknowledgement of wrongdoing, his cooperation with Staff and the absence of evidence that he personally participated in non-compliance. These are mitigating factors for the settling respondent which do not apply to other Respondents.

2. Trading and Other Market Prohibitions

[17] Staff submits it would be appropriate to order that the registration of all Respondents be terminated and that the Respondents be prohibited from becoming registered for certain periods of time. Further Staff seeks orders that the Corporate Respondents and Spork cease trading in securities and be prohibited from acquiring securities and that exemptions contained in Ontario securities law not apply to them permanently. Staff seeks a cease trade order, ban on acquisition of securities and ban on the application of Ontario securities law exemptions for 10 years in the case of Ekonomidis and for 5 years in the case of Natalie Spork. Staff further requests that Spork and Ekonomidis be prohibited from becoming or acting as a registrant, investment fund manager or promoter permanently in the case of Spork and for 10 years in the case of Ekonomidis.

[18] According to Staff, the Respondents cannot be trusted to participate in Ontario's capital markets unless their participation is restricted and in a limited capacity. At the Sanctions and Costs Hearing, no submissions, oral or written, were made with respect to length or appropriateness of market prohibitions on behalf of the Respondents.

[19] I find the Respondents cannot be trusted to participate in the capital markets. The Respondents raised $23 million from investors through the sale of securities in contravention of the *Act* (Merits Decision, *above* at para. 76). This scheme was found to be fraudulent and affected at least 246 Canadian investors (Merits Decision, *above* at para. 285; Staff's Sanctions Hearing Compendium, Tab 2: Receiver's Report at para. 6). Furthermore, the Individual Respondents were found to have breached their duties to act fairly to clients (Merits Decision, *above* at para. 285). Given this misconduct, the Respondents should not be permitted to trade in or acquire securities or rely on exemptions.

[20] To protect the public, I find that it is appropriate to impose the market prohibitions on the Respondents as requested by Staff for Spork and Ekonomidis. I find that three year bans would be more appropriate for Natalie Spork given her limited role. With respect to the Corporate Respondents, I agree that their registration should be terminated and market prohibitions should be imposed permanently.

3. Director and Officer Bans

[21] Staff requests that the Spork and Ekonomidis resign all positions that they may hold as a director or officer of an issuer, registrant or investment fund manager and that they be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager permanently in the case of Spork and for ten years in the case of Ekonomidis. Staff further requests that Natalie Spork resign all positions that she may hold as a director or officer of an issuer and be prohibited from becoming or acting as a director or officer of any issuer or registrant for five years.

[22] Staff submits that the 10 year ban for Ekonomidis is consistent with the sanction imposed in the settlement with Levack given the similarities in their experiences and roles in the company. Counsel for Ekonomidis takes issue with this characterization and submits that Ekonomidis was a salesman involved in marketing and selling the Sextant Fund. He noted that Levack, who was an integral part of the operations, did not testify that Ekonomidis was second in command. Mr. Naster also submitted that Natalie Spork's role was administrative only.

[23] In the Merits Decision, the panel found that Spork and the Corporate Respondents, of which Spork was the directing mind, conducted this fraudulent scheme resulting from: (i) wrongful inflation of the "market price" of a company in which Sextant Funds became a major investor,; (ii) advanced payments; and (iii) mischaracterization of a payment to Spork's private holding company (Merits Decision, *above*, at paras. 236, 241-242 and 243). In past cases, the Commission has issued permanent director or officer bans for a fraudulent scheme where a smaller number of investors were harmed and fewer funds were raised (*Re Al-Tar Energy Corp.* (2011), 34 O.S.C.B. 447 ("***Al-Tar Sanctions Decision***") at paras. 12 and 82; *Re Maple Leaf Investment Fund Corp.* (2012), 35 O.S.C.B. 3075 at paras. 12 and 55). In my view, the imposition of permanent director and officer bans requested by Staff will ensure that Spork will not be placed in a position of control or trust with respect to any issuer, registrant or investment fund manager in the future.

[24] I agree with Staff that the director and officer bans sought for Ekonomidis are proportionate given his involvement in the scheme and particularly having breached his duties as an investment fund manager (Merits Decision, *above* at para. 285).

[25] Despite having participated in the scheme in an administrative role, it is not disputed that Natalie Spork was in fact the registered Officer and Director (Non-Advising, Non-Trading) and Ultimate Responsible Person with SCMI and was given the title of President and Secretary of SCMI in May, 2008 (Merits Decision, *above* at para. 15). I find that a 5 year director and officer ban would appropriately take into account her breach of the duties imposed on an investment fund manager (Merits Decision, *above* at para. 285).

4. Reprimand

[26] I find it appropriate for the Individual Respondents to be reprimanded given the multiple breaches of Ontario securities law, which for Spork included fraud and for all Respondents included failure to deal fairly, honestly and in good faith with clients and in the best interests of the investment fund (Merits Decision, *above* at para. 285). A reprimand will provide the appropriate censure of their misconduct and will impress on the public the importance of complying with the *Act*. The Individual Respondents are hereby reprimanded for the conduct set out in the Merits Decision.

5. Disgorgement

[27] Subsection 127(1)10 of the *Act* provides that a person or company that has not complied with Ontario securities law can be ordered to disgorge to the Commission "any amounts obtained" as a result of the non-compliance. When determining the appropriate disgorgement orders, I am guided by a non-exhaustive list of factors set out in *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 ("***Limelight Sanctions Decision***") at para. 52, including:

(a) whether an amount was obtained by a respondent as a result of non-compliance with the Act;

(b) the seriousness of the misconduct and the breaches of the Act and whether investors were seriously harmed;

(c) whether the amount that a respondent obtained as a result of non-compliance with the Act is reasonably ascertainable;

(d) whether the individuals who suffered losses are likely to be able to obtain redress; and

(e) the deterrent effect of a disgorgement order on the respondents and other market participants.

[28] In Staff's submission at the Commission should order that Spork disgorge $6.75 million, Ekonomidis disgorge $325,000 and Natalie Spork disgorge $165,000, pursuant to subsection 3.4(2)(b) of the *Act*. Staff explained that "while staff could properly request disgorgement of the whole amount obtained [from] investors, so the whole $23 million, staff has confined its request to the profits in this case" (Hearing Transcript of April 18, 2012 at pp. 41 and 53). Staff submits that Spork should disgorge the profits made from performance and management fees. In calculating profits obtained by Ekonomidis and Natalie Spork, Staff took into account figures identified as "bonus" or "certified cheque", but not salary (Hearing Transcript of April 18, 2012 at pp. 26, 28 and 53).

[29] Mr. Naster submits that monetary sanctions sought against Natalie Spork are "harsh and excessive" given her limited involvement in this matter. Mr. Naster also submits that the sanctions Staff is seeking against Ekonomidis are "very very serious" given the role he played in sales and marketing of the fund. Counsel for the Individual Respondents questioned the inclusion of "certified cheques" and noted that bonuses were employment bonuses and that there was no evidence they were tied to

performance of the Sextant Fund or due to non-compliance (Hearing Transcript of April 18, 2012 at pp. 142-143). It was shown that Levack testified to having received a bonus in the range of $80,000, yet his settlement did not require disgorgement. Mr. Naster's interpretation is that Levack was either allowed to profit, or it was determined that the bonus was not obtained as a direct result of a breach of the *Act* (Hearing Transcript of April 18, 2012 at pp. 144-146; Respondent's Compendium, Tab 32 at p. 199). Staff replied that the bonus figures were still appropriate in the circumstances, taking into account the case law and the conduct (Hearing Transcript of April 18, 2012 at p. 153).

[30] Mr. Naster also submits that the disgorgement order should be considered in context of the receivership and the settlement between the receiver and the Spork Group, which includes the Individual Respondents. Counsel submits that the receiver was to settle indebtedness owed to the related companies and that the Commission was approached with the terms of settlement. Staff's response in this respect is that the receiver ultimately only obtained $500,000 and "so there is has not been full indemnification … If you were inclined to recognize the settlement payment … reduce the disgorgement order by that amount … there is no reason why staff shouldn't be able to pursue the shortfall" (Hearing Transcript of April 18, 2012 at pp. 153 and 156).

[31] I accept Staff's suggestion that the amounts to be disgorged should be reduced by the $500,000 the receiver collected. I find that the reduction should be divided amongst the Individual Respondents in a manner that appropriately reflects their conduct in violation of Ontario securities laws. Accordingly, reductions shall be made in the following manner: (i) $400,000, representing 80 percent of the amount, shall be removed from the disgorgement amount sought for Spork; (ii) $75,000, representing 15 percent of the amount shall be removed from the disgorgement amount sought for Ekonomidis; and (iii) $25,000, representing 5 percent of the amount shall be removed from the disgorgement amount sought for Natalie Spork. Therefore, Spork shall disgorge $6.35 million, Ekonomidis shall disgorge $250,000 and Natalie Spork shall disgorge $140,000 obtained as a result of their non-compliance.

6. Administrative Penalty

[32] Staff seeks orders for an administrative penalty against Spork in the amount of $1,000,000 and against Ekonomidis in the amount of $250,000. Staff's written submissions are contradictory against Natalie Spork, at one point seeking an administrative penalty in the amount of $50,000 (Staff's Written Submissions at para. 14) and later requesting an administrative penalty in the amount of $100,000 (Staff's Written Submissions at para. 99). Oral submissions seemed to indicated Staff's pursuit of the $50,000 penalty (Hearing Transcript of April 18, 2012 at p. 12), but Mr. Naster seemed to understand that the amount sought was $100,000(Hearing Transcript of April 18, 2012 at p. 12). In light of the confusion, I proceed on the basis most favourable to the respondent and assume that Staff is seeking $50,000.

[33] Staff relies upon the *Limelight Sanctions Decision, above* at para. 67, which states:

> The purpose of an administrative penalty is to deter the particular respondents from engaging in the same or similar conduct in the future and to send a clear deterrent message to other market participants that the conduct in question will not be tolerated in Ontario capital markets.

[34] Staff also cited the *Al-Tar Sanctions Decision, above* at paras. 47-55 as an example of a Commission decision relating to fraud in which the panel ordered penalties ranging from $200,000 to $750,000 because "to be a deterrent, the amount of an administrative penalty must bear some reference to the amount raised from investors". Further, the penalty "may not act as a sufficient deterrent if its magnitude is inadequate compared with the benefit obtained by non-compliance" (*Re Rowan*, *above* at para. 74).

[35] I find that it would be appropriate for Spork to pay an administrative penalty of $1 million, Ekonomidis to pay $250,000 and Natalie Spork to pay $50,000 for their failures to comply with Ontario securities law.

IV. COSTS

[36] Pursuant to subsections 127.1(1) and 127.1(2) of the *Act*, the Commission has discretion to order a person or company to pay the costs of an investigation and hearing if the Commission is satisfied that the person or company has not complied with the *Act* or has not acted in the public interest. Rule 18.2 of the Commission's *Rules of Procedure* (2010), 33 O.S.C.B. 8017 (the "***Rules of Procedure***") sets out a number of factors a Panel may consider in exercising its discretion to order costs.

[37] Staff seeks costs of $440,788.38 (Hearing Transcript of April 18, 2012 at p. 58; Staff's Bill of Costs, Tab 1). For rounding purposes, Staff requests that: (i) Spork pay $350,000, representing approximately 80 percent of costs sought; (ii) Ekonomidis pay $65,000, representing approximately 15 percent of costs sought; and (iii) Natalie Spork pay $20,000, representing approximately 5 percent of costs sought. The total costs sought includes the time of a senior litigator, one outside counsel, a forensic accountant, and an investigator. The total does not include investigation costs, litigation costs in connection with the receivership, or time spent in preparation and attendance at the Sanctions and Costs Hearing.

[38] In support of this request, Staff provided written submissions, an affidavit of Anne Paiement dated September 9, 2011 and detailed dockets (as required by Rule 18.1(2)(b) of the Commission's *Rules of Procedure*). These timesheets provided dates, numbers of hours worked and details of the tasks performed by each of the individuals listed in the bill of costs.

[39] Mr. Naster submitted that the panel should take into account additional costs borne by the Individual Respondents that were caused by allegations that Spork had forged letters of intent. Mr. Naster submits that despite knowing as early as August, 2009 that those allegations were unfounded, Staff did not disclose the information to defence counsel until the eve of the hearing in June, 2010.

[40] I agree with Staff's conservative estimate of costs and allocation amongst the Respondents. I find that it would be appropriate for Spork to pay $350,000, Ekonomidis to pay $65,000 and Natalie Spork to pay $20,000 in costs.

V. CONCLUSION

[41] I consider that it is important in this case to: (1) impose sanctions that reflect the seriousness of the securities law violations that occurred in this matter; and (2) impose sanctions that not only deter the Respondents but also like-minded people from engaging in future conduct that violates securities law.

1. Corporate Respondents

[42] I make the following orders against the Corporate Respondents:

(a) Pursuant to clause 1 of subsection 127(1) of the *Act*, SCMI's registration under the *Act* is terminated;

(b) Pursuant to clause 2 of subsection 127(1) of the *Act*, SCMI and Sextant GP shall cease trading in securities permanently;

(c) Pursuant to clause 2.1 of subsection 127(1) of the *Act,* the acquisition of any securities by each of SCMI and Sextant GP is prohibited permanently; and

(d) Pursuant to clause 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law do not apply to each of SCMI and Sextant GP permanently.

2. Otto Spork

[43] I make the following orders against Spork:

(a) pursuant to clause 1 of subsection 127(1) of the *Act*, Spork's registration under the *Act* is terminated;

(b) pursuant to clause 2 of subsection 127(1) of the *Act,* Spork shall cease trading in securities permanently;

(c) pursuant to clause 2.1 of subsection 127(1) of the *Act,* the acquisition of any securities by Spork is prohibited permanently;

(d) pursuant to clause 3 of subsection 127(1) of the *Act,* any exemptions contained in Ontario securities law do not apply to Spork permanently;

(e) pursuant to clause 6 of subsection 127(1) of the *Act,* Spork is hereby reprimanded;

(f) pursuant to clauses 7, 8.1, and 8.3 of subsection 127(1) of the *Act,* Spork shall resign all positions that he may hold as director or officer of an issuer, registrant or investment fund manager;

(g) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the *Act,* Spork is prohibited permanently from becoming or acting as director or officer of any issuer, registrant or investment fund manager;

(h) pursuant to clause 8.5 of subsection 127(1) of the *Act,* Spork is prohibited permanently from becoming or acting as a registrant, as an investment fund manager, or as a promoter;

(i) pursuant to clause 9 of subsection 127(1) of the *Act,* Spork shall pay an administrative penalty in the amount of $1,000,000, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the *Act*;

(j) pursuant to clause 10 of subsection 127(1) of the *Act*, Spork shall disgorge $6,350,000, obtained as a result of his non-compliance with Ontario securities law, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the *Act*;

(k) pursuant to section 127.1 of the *Act*, Spork shall pay $350,000 representing approximately 80% of the costs.

3. Dino Ekonomidis

[44] I make the following orders against Ekonomidis:

(a) pursuant to clause 1 of subsection 127(1) of the *Act,* Ekonomidis' registration under the *Act* is terminated;

(b) pursuant to clause 2 of subsection 127(1) of the *Act*, Ekonomidis cease trading in securities for ten (10) years;

(c) pursuant to clause 2.1 of subsection 127(1) of the *Act,* the acquisition of any securities by Ekonomidis is prohibited for ten (10) years;

(d) pursuant to clause 3 of subsection 127(1) of the *Act,* any exemptions contained in Ontario securities law do not apply to Ekonomidis for ten (10) years;

(e) pursuant to clause 6 of subsection 127(1) of the *Act,* Ekonomidis is hereby reprimanded;

(f) pursuant to clauses 7, 8.1, and 8.3 of subsection 127(1) of the *Act,* Ekonomidis shall resign all positions that he may hold as director or officer of an issuer, registrant or investment fund manager;

(g) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the *Act*, Ekonomidis be prohibited for ten (10) years from becoming or acting as director or officer of any issuer, registrant or investment fund manager;

(h) pursuant to clause 8.5 of subsection 127(1) of the *Act,* Ekonomidis be prohibited for ten (10) years from becoming or acting as a registrant, as an investment fund manager, or as a promoter;

(i) pursuant to clause 9 of subsection 127(1) of the *Act,* Ekonomidis shall pay an administrative penalty in the amount of $250,000, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the *Act*;

(j) pursuant to clause 10 of subsection 127(1) of the *Act*, Ekonomidis shall disgorge $250,000, obtained as a result of his non-compliance with Ontario securities law, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the *Act*;

(k) pursuant to section 127.1 of the *Act*, Ekonomidis shall pay $65,000 representing approximately 15% of the costs.

4. Natalie Spork

[45] I make the following orders against Natalie Spork:

(a) pursuant to clause 1 of subsection 127(1) of the *Act,* Natalie Spork's registration under the *Act* is terminated;

(b) pursuant to clause 8.5 of subsection 127(1) of the *Act,* Natalie Spork is prohibited for three (3) years from becoming a registrant under the *Act*;

(c) pursuant to clause 2 of subsection 127(1) of the *Act,* Natalie Spork cease trading in securities for three (3) years;

(d) pursuant to clause 2.1 of subsection 127(1) of the *Act,* the acquisition of any securities by Natalie Spork is prohibited for three (3) years;

(e) pursuant to clause 3 of subsection 127(1) of the *Act,* any exemptions contained in Ontario securities law do not apply to Natalie Spork for three (3) years;

(f) pursuant to clause 6 of subsection 127(1) of the *Act* Natalie Spork is hereby reprimanded;

(g) pursuant to clause 7 of subsection 127(1) of the *Act,* Natalie Spork shall resign all positions a director or officer of an issuer;

(h) pursuant to clauses 8 and 8.2 of subsection 127(1) of the *Act,* Natalie Spork is prohibited for five (5) years from becoming or acting as director or officer of any issuer or registrant;

(i) pursuant to clause 9 of subsection 127(1) of the *Act,* Natalie Spork shall pay an administrative penalty in the amount of $50,000, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the *Act*;

(j) pursuant to clause 10 of subsection 127(1) of the *Act*, Natalie Spork shall disgorge $140,000, obtained as a result of his non-compliance with Ontario securities law, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the *Act*;

(k) pursuant to section 127.1 of the *Act*, Natalie Spork shall pay $20,000 representing approximately 5% of the costs.

[46] I will issue a separate order giving effect to my decision on sanctions and costs.

Dated this 1st day of June, 2012.

"James D. Carnwath"

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
Coltstar Ventures Inc.	18 May 12	30 May 12	30 May 12	
IBI Corporation	22 May 12	04 Jun 12	04 Jun 12	
Knightscover Media Corp.	30 May 12	11 Jun 12		
TJR Coatings Inc.	15 Jan 01	26 Jan 01	26 Jan 01	5 Jun 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
Knightscove Media Corp.	04 May 12	16 May 12	18 May 22	30 May 12	30 May 12

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
Knightscove Media Corp.	04 May 12	16 May 12	18 May 22	30 May 12	30 May 12

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Chapter 7

Insider Reporting

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

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

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

Chapter 8

Notice of Exempt Financings

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

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
05/18/2012	61	407 East Development Group General Partnership - Bonds	571,296,000.00	N/A
04/19/2012	23	88 Capital Corp. - Units	591,000.00	7,387,500.00
03/15/2012	83	Abacus Mining & Exploration Corp. - Units	3,178,299.96	14,446,818.00
03/30/2012	72	Altair Ventures Incorporated - Units	1,934,051.24	8,791,142.00
05/11/2012	81	American Residential Properties Inc. - Common Shares	233,975,140.00	1,455,000.00
03/29/2012	25	Arctic Star Exploration Corp. - Units	1,652,799.90	5,509,333.00
04/19/2012 to 04/27/2012	6	Ares Corporate Opportunities Fund IV L.P. - Limited Partnership Interest	897,957,000.00	910,000,000.00
05/16/2012	1	Bank of Montreal - Debt	5,051,000.00	1.00
04/26/2012	31	Calico Resources Corp./ - Units	1,922,700.00	5,665,000.00
03/29/2012	81	Canadian Oil Sands Limited - Notes	695,119,477.00	700,000.00
03/28/2012	39	Castle Resources Inc. - Common Shares	10,000,115.36	15,083,444.00
05/01/2012	1	ColCan Energy Corp. - Common Shares	3,042,294.90	10,140,983.00
05/07/2012 to 05/10/2012	5	Colwood City Centre Limited Partnership - Notes	155,000.00	120,000.00
04/30/2012	22	Discovery-Corp Enterprises Inc. - Units	552,000.00	N/A
05/10/2012	12	Ecuador Bancorp Inc. - Common Shares	70,000.00	700,000.00
04/26/2012	4	Energold Drilling Corp. - Common Shares	19,908,000.00	3,900,000.00
05/01/2012	1	Flatiron Market Neutral L.P. - Limited Partnership Units	50,000.00	33.04
05/01/2011 to 04/30/2012	1	Franklin Templeton 2020 Conservative Portfolio - Units	3,976,432.92	408,657.04
05/01/2011 to 04/30/2012	1	Franklin Templeton 2020 Growth Portfolio - Units	2,007,712.02	220,132.25
05/01/2011 to 04/30/2012	1	Franklin Templeton 2020 Moderate Portfolio - Units	11,997,684.10	1,261,194.52
05/01/2011 to 04/30/2012	1	Franklin Templeton 2030 Growth Portfolio - Units	3,055,959.01	344,761.45
05/01/2011 to 04/30/2012	1	Franklin Templeton 2030 Moderate Portfolio - Units	8,007,442.57	862,500.62
05/01/2011 to 04/30/2012	1	Franklin Templeton 2040 Conservative Portfolio - Units	1,954,642.61	192,973.41

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
05/01/2011 to 04/30/2012	1	Franklin Templeton 2040 Growth Portfolio - Units	2,591,454.01	299,621.36
05/01/2011 to 04/30/2012	1	Franklin Templeton 2040 Moderate Portfolio - Units	3,779,780.96	421,812.80
05/01/2011 to 04/30/2012	1	Franklin Templeton Retirement Portfolio - Units	5,346,194.71	529,911.62
05/01/2011 to 04/30/2012	1	Franklin Templeton 2030 Conservative Portfolio - Units	2,787,034.03	275,051.64
04/25/2012	3	Galaxy Capital Corp. - Units	266,920.02	1,482,889.00
03/21/2012	2	Golden Predator Corp. - Common Shares	262,500.00	770,000.00
03/21/2012	35	Golden Predator Corp. - Flow-Through Shares	11,831,979.76	13,758,116.00
06/02/2011 to 04/25/2012	10	HSBC Canadian Dollar Liquidity Fund - Common Shares	237,491,600.52	237,491,600.52
04/30/2012 to 05/01/2012	2	IGW Diversified Redevelopment Fund Limited Partnership - Units	70,000.00	70,000.00
03/07/2012	30	ImmunoVaccine Inc. - Common Shares	2,788,201.50	9,294,005.00
05/03/2012	1	iStar Financial Inc. - Notes	1,480,200.00	N/A
04/30/2012	4	iStopOver Inc. - Debentures	166,666.66	166,666.66
05/17/2012	1	Kaya W.F.G. (Jombi) Mensing 36 - Warrants	1,147,631.34	335.00
05/15/2012	2	LTP financing Inc. - Bonds	234,000.00	234.00
01/31/2012	8	Manitou Gold Inc. - Flow-Through Shares	0.00	175,000.00
04/13/2012	1	Merrill Lynch International & Co. C.V. - Warrants	1,351,243.38	N/A
03/29/2012	33	Microbix Biosystems Inc. - Units	781,250.00	2,893,516.00
04/25/2012	11	Montana Gold Mining Company Inc. - Units	170,000.00	3,400,000.00
05/03/2012	62	MPT Mustard Products & Technologies Inc. - Common Shares	1,552,500.00	3,105,000.00
05/04/2012	2	New Enterprise Associated 14, L.P. - Limited Partnership Interest	34,538,000.00	2.00
05/15/2012 to 05/16/2012		Noble Mineral Exploration Inc. - Common Shares		3,830,000.00
05/04/2012	9	Oak Ridge Resources Ltd. - Common Shares	270,000.00	2,700,000.00
03/05/2012	18	Oroco Resource Corp. - Units	820,000.00	3,280,000.00
03/01/2012	6	Polaris Minerals Corporation - Warrants	0.00	13,200,000.00
02/17/2012	66	Pretium Resources Inc. - Flow-Through Shares	23,125,000.00	1,250,000.00
05/08/2012	153	Raging River Exploration Inc. - Special Warrants	35,000,000.00	17,500,000.00
04/27/2012	15	Range Royalty Trust - Trust Units	3,451,102.00	203,006.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
04/30/2012 to 05/10/2012	13	Redstone Investment Corporation - Notes	1,620,000.00	N/A
12/22/2011	2	Republic Goldfields Inc. - Common Shares	292,970.00	58,594.00
12/22/2011	3	Republic Goldfields Inc. - Flow-Through Units	65,500.15	385,295.00
12/22/2011	3	Republic Goldfields Inc. - Units	165,000.15	1,100,001.00
03/09/2012	52	Sierra Madre Developments Inc. - Units	2,446,287.50	32,050,500.00
05/01/2012	4	Souche Holding Inc. - Debentures	175,000.00	237,500.00
03/08/2012	39	Sprylogics International Corp. - Common Shares	1,242,490.00	13,805,444.00
05/10/2012	1	Starcore International Mines Ltd. - Common Shares	360,000.00	1,000,000.00
04/20/2012	1	Starwood Property Trust Inc. - Common Shares	12,990,937.52	634,800.00
02/09/2012	52	Strateco Resources Inc. - Flow-Through Shares	9,999,988.00	16,025,620.00
03/09/2012	19	Strongbow Exploration Inc. - Common Shares	1,157,000.00	8,900,000.00
02/23/2012	8	Tembec Industries Inc. - Notes	13,479,750.00	8.00
05/14/2012 to 05/23/2012	62	The Newport Balanced Fund - Trust Units	878,703.57	N/A
05/14/2012 to 05/23/2012	18	The Newport Cdn Eqty Fund - Trust Units	695,049.48	N/A
05/14/2012 to 05/23/2012	21	The Newport Fixed Income Fund - Trust Units	951,795.52	N/A
05/14/2012 to 05/23/2012	18	The Newport Glbl Equity Fund - Trust Units	428,601.31	N/A
05/14/2012 to 05/23/2012	53	The Newport Yield Fund - Trust Units	1,937,941.98	N/A
05/01/2012	2	Transcept Pharmaceuticals, Inc. - Common Shares	354,204.00	40,000.00
05/18/2012	4	Trez Capital Finance Fund III Limited Partnership - Limited Partnership Interest	55,000,000.00	55,000,000.00
05/11/2012	3	Tricon XII Limited Partnership - Limited Partnership Units	10,000,000.00	200.00
01/24/2012	1	Trueclaim Exploration Inc. - Common Shares	18,000.00	200,000.00
09/12/2011	4	Trueclaim Exploration Inc. - Common Shares	6,900.00	60,000.00
08/24/2011 to 08/26/2011	1	Trueclaim Exploration Inc. - Common Shares	4,050.00	32,500.00
07/18/2011	1	Trueclaim Exploration Inc. - Common Shares	26,000.00	200,000.00
04/30/2012 to 05/04/2012	55	UBS AG, Jersey Branch - Certificates	17,231,734.98	55.00
04/30/2012 to 05/03/2012	9	UBS AG, Zurich - Certificates	3,671,459.96	9.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
05/04/2012	3	Uragold Bay Resources Inc. - Units	66,000.00	66.00
05/04/2012	11	Walton MD Gardner Woods LP - Limited Partnership Units	417,400.20	42,200.00
04/13/2012	43	Walton NC Westlake Investment Corporation - Common Shares	781,450.00	78,145.00
05/17/2012	15	Walton Westphalia Development Corporation - Units	1,470,000.00	147,000.00
05/10/2012	19	Walton Westphalia Development Corporation - Units	616,000.00	61,600.00
02/13/2012	2	White Tiger Gold Ltd. - Units	936,000.00	1,200,000.00
02/09/2012 to 03/02/2012	6	White Tiger Gold Ltd. - Units	2,539,236.00	4,454,800.00
03/09/2012	66	Zincore Metals Inc. - Units	5,405,000.00	27,025,000.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Bank of Nova Scotia, The
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated May 29, 2012
NP 11-202 Receipt dated May 29, 2012
Offering Price and Description:
$8,000,000,000.00:
Debt Securities (subordinated indebtedness)
Preferred Shares
Common Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1914225

Issuer Name:
Batero Gold Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated June 1, 2012
NP 11-202 Receipt dated June 1, 2012
Offering Price and Description:
$6,314,555.00 - 9,714,700 Common Shares and 4,857,350 Common Share Purchase Warrants Issuable on Exercise of 9,714,700 Outstanding Special Warrants
Underwriter(s) or Distributor(s):
Raymond James Ltd.
Cormark Securities Inc.

Promoter(s):
Brandon Rook
Project #1919300

Issuer Name:
Castlerock Enhanced Yield Fund
Castlerock Canadian Dividend Fund
Castlerock Canadian Growth Companies Fund
Castlerock Capital Appreciation Fund
(Class E and O Units
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated May 30, 2012
NP 11-202 Receipt dated June 4, 2012
Offering Price and Description:
Class E and Class O Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
CI Investments Inc.
Project #1916630

Issuer Name:
CARDS II Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated June 1, 2012
NP 11-202 Receipt dated June 1, 2012
Offering Price and Description:
Up to $11,000,000,000.00 - Credit Card Receivables Backed Notes
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Promoter(s):
Canadian Imperial Bank of Commerce
Project #1919036

Issuer Name:
Cortex Business Solutions Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated May 30, 2012
NP 11-202 Receipt dated May 30, 2012
Offering Price and Description:
$6,000,000.00 - 30,000,000 Common Shares Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
CORMARK SECURITIES INC.
STONECAP SECURITIES INC.
WOLVERTON SECURITIES LTD.
Promoter(s):
-
Project #1916089

Issuer Name:
Credit Suisse AG
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated May 30, 2012
NP 11-202 Receipt dated May 31, 2012
Offering Price and Description:
.$4,000,000,000.00 - Medium Term Notes (Unsecured)
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1916642

Issuer Name:
Creststreet Resource Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated May 29, 2012
NP 11-202 Receipt dated June 1, 2012
Offering Price and Description:
2013N, 2013Q, 2013N(II) and 2013Q(II) Series Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
Creststreet Asset Management Limited
Project #1916371

Issuer Name:
CU Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Base Shelf Prospectus dated May 31, 2012
NP 11-202 Receipt dated May 31, 2012
Offering Price and Description:
$2,600,000,000.00 - Debentures (Unsecured)
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
SCOTIA CAPITAL INC.
Promoter(s):
-
Project #1918823

Issuer Name:
Lazard Global Convertibles Plus Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated May 31, 2012
NP 11-202 Receipt dated May 31, 2012
Offering Price and Description:
$* (* Units) Maximum $10.00 per Unit
Underwriter(s) or Distributor(s):
TD Securities Inc.
CIBC World Markets Inc.
Promoter(s):
Marquest Asset Management Inc.
Project #1918686

Issuer Name:
Manabi S.A.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated June 4, 2012
NP 11-202 Receipt dated June 4, 2012
Offering Price and Description:
US$ * - * Common Shares in the form of Global Depositary Shares (and evidenced by * Global Depositary Receipts)
Price: U.S.$ *per Global Depositary Share
Underwriter(s) or Distributor(s):
Credit Suisse Securities (Canada), Inc.
Goldman Sachs Canada Inc.
BMO Nesbitt Burns Inc.
Promoter(s):
-
Project #1919523

Issuer Name:
Matrix American Dividend Growth Fund (Corporate Class)
Matrix International Income Balanced Fund
Matrix Monthly Pay Fund
Matrix Tax Deferred Income Fund
Principal Regulator - British Columbia
Type and Date:
Preliminary Simplified Prospectuses dated May 30, 2012
NP 11-202 Receipt dated June 1, 2012
Offering Price and Description:
Series T8 Shares and Class T8 Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Growth Works Capital Ltd.
Project #1918987

Issuer Name:
National Bank of Canada
Principal Regulator - Quebec
Type and Date:
Preliminary Base Shelf Prospectus dated June 1, 2012
NP 11-202 Receipt dated June 5, 2012
Offering Price and Description:
CDN$3,500,000,000.00 - Medium Term Notes – Debt Securities (Unsubordinated Indebtedness)
Underwriter(s) or Distributor(s):
NATIONAL BANK FINANCIAL INC.
CIBC WORLD MARKETS INC.
DESJARDINS SECURITIES INC.
RBC DOMINION SECURITIES INC.
Promoter(s):
-
Project #1919241

Issuer Name:
New Moon Minerals Corp.
Principal Regulator - Manitoba
Type and Date:
Preliminary Long Form Prospectus dated May 25, 2012
NP 11-202 Receipt dated May 29, 2012
Offering Price and Description:
Minimum Offering to raise gross proceeds of $1,400,000 through the issuance of
8,033,333 NFT Units at a price of $0.15 per NFT Unit
and a further 1,300,000 NFT Units or FT Shares
at a price of $0.15 per NFT Unit or FT Share
Maximum Offering to raise gross proceeds of $2,100,000 through the issuance of
8,700,000 NFT Units at a price of $0.15 per NFT Unit
and a further 5,300,000 NFT Units or FT Shares
at a price of $0.15 per NFT Unit or FT Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
Richard Rivet
Andrew Gracie
Project #1912768

Issuer Name:
Partners Real Estate Investment Trust
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated May 30, 2012
NP 11-202 Receipt dated May 30, 2012
Offering Price and Description:
$20,017,000.00 - 2,705,000 Units Price: $7.40 per Unit
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
CANACCORD GENUITY CORP.
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
MACQUARIE CAPITAL MARKETS CANADA LTD.
RAYMOND JAMES LTD.
M PARTNERS INC.
Promoter(s):
-
Project #1916754

Issuer Name:
Premium Brands Holdings Corporation
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated May 30, 2012
NP 11-202 Receipt dated May 30, 2012
Offering Price and Description:
$50,000,000.00 - 5.70% Convertible Unsecured Subordinated Debentures Price: $1,000.00 per Debenture
Underwriter(s) or Distributor(s):
NATIONAL BANK FINANCIAL INC.
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
CANACCORD GENUITY CORP.
LAURENTIAN BANK SECURITIES INC.
PI FINANCIAL CORP.
Promoter(s):
-
Project #1916942

Issuer Name:
RIOCAN REAL ESTATE INVESTMENT TRUST
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated June 1, 2012
NP 11-202 Receipt dated June 1, 2012
Offering Price and Description:
$3,000,000,000.00:
Debt Securities
(Senior Unsecured)
Units
Preferred Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1919114

Issuer Name:
Russell Core Plus Fixed Income Class
Russell Global High Income Bond Class
Russell LifePoints All Equity Class Portfolio
Russell LifePoints All Equity Portfolio
Russell LifePoints Balanced Class Portfolio
Russell LifePoints Balanced Growth Class Portfolio
Russell LifePoints Balanced Growth Portfolio
Russell LifePoints Balanced Income Class Portfolio
Russell LifePoints Balanced Income Portfolio
Russell LifePoints Balanced Portfolio
Russell LifePoints Conservative Income Class Portfolio
Russell LifePoints Conservative Income Portfolio
Russell LifePoints Fixed Income Class Portfolio
Russell LifePoints Fixed Income Portfolio
Russell LifePoints Long-Term Growth Class Portfolio
Russell LifePoints Long-Term Growth Portfolio
Russell Short Term Income Class
Russell Short Term Income Pool
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated May 28, 2012
NP 11-202 Receipt dated May 30, 2012
Offering Price and Description:
Series A, B, E, F, O, F-3, I-3 Units and
Series B, E, F, O, F-3, I-3, US Dollar Hedged Series B, US Dollar Hedged Series F Shares
Underwriter(s) or Distributor(s):
Russell Investments Canada Limited
Promoter(s):
Russell Investments Canada Limited
Project #1914780

Issuer Name:
Short Term Investment Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated May 25, 2012
NP 11-202 Receipt dated May 29, 2012
Offering Price and Description:
Class F, O and P Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
SEI Investments Canada Company
Project #1914405

Issuer Name:
SnipGold Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated May 28, 2012
NP 11-202 Receipt dated May 29, 2012
Offering Price and Description:
OF UP TO 18,276,143 RIGHTS TO SUBSCRIBE FOR UP TO 6,092,047 UNITS AT A PRICE OF $0.75 PER UNIT
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1913548

Issuer Name:
The Toronto-Dominion Bank
Type and Date:
Preliminary Base Shelf Prospectus dated May 30, 2012
Receipted on May 30, 2012
Offering Price and Description:
U.S. $15,000,000,000.00 - Senior Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1915773

Issuer Name:
Timbercreek Senior Mortgage Investment Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated May 29, 2012
NP 11-202 Receipt dated May 31, 2012
Offering Price and Description:
Minimum Offering: $* (* Class A Shares); Maximum Offering: $100,000,000 (10,000,000 Class A Shares)
Price: $10.00 per Class A Share
Underwriter(s) or Distributor(s):
Raymond James Ltd.
TD Securities Inc.
CIBC World Markets Inc.
Promoter(s):
Timbercreek Asset Management Ltd.
Project #1918554

Issuer Name:
5N Plus Inc.
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated May 30, 2012
NP 11-202 Receipt dated May 30, 2012
Offering Price and Description:
$20,001,200.00 - 6,452,000 Units Price: $3.10 per Unit
Underwriter(s) or Distributor(s):
NATIONAL BANK FINANCIAL INC.
GMP SECURITIES L.P.
TD SECURITIES INC.
HSBC SECURITIES (CANADA) INC.
CIBC WORLD MARKETS INC.
CORMARK SECURITIES INC.
M PARTNERS INC.
NCP NORTHLAND CAPITAL PARTNERS INC.
STONECAP SECURITIES INC.
VERSANT PARTNERS INC.
Promoter(s):
-
Project #1911028

Issuer Name:
Series of the following classes of BMO Global Tax Advantage Funds Inc.
BMO Short-Term Income Class
(BMO Guardian Short-Term Income Class Advisor Series and
BMO Guardian Short-Term Income Class Series H)
BMO American Equity Class
(BMO Guardian American Equity Class Advisor Series,
BMO Guardian American Equity Class Series H,
BMO Guardian American Equity Class Series F and
BMO Guardian American Equity Class Series I)
BMO Canadian Equity Class
(BMO Guardian Canadian Equity Class Advisor Series,
BMO Guardian Canadian Equity Class Series H and
BMO Guardian Canadian Equity Class Series F)
BMO Dividend Class
(BMO Guardian Dividend Class Advisor Series and
BMO Guardian Dividend Class Series H)
BMO Global Dividend Class
(BMO Guardian Global Dividend Class Advisor Series,
BMO Guardian Global Dividend Class Series H,
BMO Guardian Global Dividend Class Series F and
BMO Guardian Global Dividend Class Series T5)
BMO Global Energy Class
(BMO Guardian Global Energy Class Advisor Series)
BMO Global Equity Class
(BMO Guardian Global Equity Class Advisor Series)
BMO Greater China Class
(BMO Guardian Greater China Class Advisor Series)
BMO International Value Class
(BMO Guardian International Value Class Advisor Series and
BMO Guardian International Value Class Series F)
BMO Sustainable Climate Class
(BMO Guardian Sustainable Climate Class Advisor Series and
BMO Guardian Sustainable Climate Class Series H)
BMO Sustainable Opportunities Class
(BMO Guardian Sustainable Opportunities Class Advisor Series and
BMO Guardian Sustainable Opportunities Class Series H)
BMO Asian Growth and Income Class
(BMO Guardian Asian Growth and Income Class Advisor Series and
BMO Guardian Asian Growth and Income Class Series H)
BMO SelectClass Security Portfolio
(BMO Guardian SelectClass Security Portfolio Advisor Series,
BMO Guardian SelectClass Security Portfolio Series H,
BMO Guardian SelectClass Security Portfolio Series T5 and
BMO Guardian SelectClass Security Portfolio Series T8)
BMO SelectClass Balanced Portfolio
(BMO Guardian SelectClass Balanced Portfolio Advisor Series,
BMO Guardian SelectClass Balanced Portfolio Series H,
BMO Guardian SelectClass Balanced Portfolio Series T5 and
BMO Guardian SelectClass Balanced Portfolio Series T8)
BMO SelectClass Growth Portfolio
(BMO Guardian SelectClass Growth Portfolio Advisor Series,

BMO Guardian SelectClass Growth Portfolio Series H,
BMO Guardian SelectClass Growth Portfolio Series T5 and
BMO Guardian SelectClass Growth Portfolio Series T8)
BMO SelectClass Aggressive Growth Portfolio
(BMO Guardian SelectClass Aggressive Growth Portfolio Advisor Series,
BMO Guardian SelectClass Aggressive Growth Portfolio Series H and
BMO Guardian SelectClass Aggressive Growth Portfolio Series T5)
BMO Canadian Tactical ETF Class
(BMO Guardian Canadian Tactical ETF Class Advisor Series,
BMO Guardian Canadian Tactical ETF Class Series I,
BMO Guardian Canadian Tactical ETF Class Series F and
BMO Guardian Canadian Tactical ETF Class Series T6)
BMO Global Tactical ETF Class
(BMO Guardian Global Tactical ETF Class Advisor Series,
BMO Guardian Global Tactical ETF Class Series I,
BMO Guardian Global Tactical ETF Class Series F and
BMO Guardian Global Tactical ETF Class Series T6)
BMO Security ETF Portfolio Class
(BMO Guardian Security ETF Portfolio Class Advisor Series,
BMO Guardian Security ETF Portfolio Class Series I,
BMO Guardian Security ETF Portfolio Class Series F and
BMO Guardian Security ETF Portfolio Class Series T6)
BMO Balanced ETF Portfolio Class
(BMO Guardian Balanced ETF Portfolio Class Advisor Series,
BMO Guardian Balanced ETF Portfolio Class Series I,
BMO Guardian Balanced ETF Portfolio Class Series F and
BMO Guardian Balanced ETF Portfolio Class Series T6)
BMO Growth ETF Portfolio Class
(BMO Guardian Growth ETF Portfolio Class Advisor Series,
BMO Guardian Growth ETF Portfolio Class Series I,
BMO Guardian Growth ETF Portfolio Class Series F and
BMO Guardian Growth ETF Portfolio Class Series T6)
BMO Aggressive Growth ETF Portfolio Class
(BMO Guardian Aggressive Growth ETF Portfolio Class Advisor Series,
BMO Guardian Aggressive Growth ETF Portfolio Class Series I,
BMO Guardian Aggressive Growth ETF Portfolio Class Series F and
BMO Guardian Aggressive Growth ETF Portfolio Class SeriesT6)
BMO LifeStage 2017 Class
(BMO Guardian LifeStage 2017 Class Advisor Series,
BMO Guardian LifeStage 2017 Class Series H and
BMO Guardian LifeStage 2017 Class Series I)
BMO LifeStage 2020 Class
(BMO Guardian LifeStage 2020 Class Advisor Series,
BMO Guardian LifeStage 2020 Class Series H and
BMO Guardian LifeStage 2020 Class Series I)
BMO LifeStage 2025 Class
(BMO Guardian LifeStage 2025 Class Advisor Series,
BMO Guardian LifeStage 2025 Class Series H and
BMO Guardian LifeStage 2025 Class Series I)
BMO LifeStage 2030 Class
(BMO Guardian LifeStage 2030 Class Advisor Series,
BMO Guardian LifeStage 2030 Class Series H and
BMO Guardian LifeStage 2030 Class Series I)
BMO LifeStage 2035 Class
(BMO Guardian LifeStage 2035 Class Advisor Series,
BMO Guardian LifeStage 2035 Class Series H and
BMO Guardian LifeStage 2035 Class Series I)
BMO LifeStage 2040 Class
(BMO Guardian LifeStage 2040 Class Advisor Series,
BMO Guardian LifeStage 2040 Class Series H and
BMO Guardian LifeStage 2040 Class Series I)
Series of units of:
BMO Money Market Fund
(BMO Guardian Money Market Fund Advisor Series and
BMO Guardian Money Market Fund Series F)
BMO U.S. Dollar Money Market Fund
(BMO Guardian U.S. Dollar Money Market Fund Advisor Series)
BMO Bond Fund
(BMO Guardian Bond Fund Advisor Series)
BMO Global Strategic Bond Fund
(BMO Guardian Global Strategic Bond Fund Advisor Series and
BMO Guardian Global Strategic Bond Fund Series F)
BMO Target Enhanced Yield ETF Portfolio
(BMO Guardian Target Enhanced Yield ETF Portfolio Advisor Series)
BMO Target Yield ETF Portfolio
(BMO Guardian Target Yield ETF Portfolio Advisor Series)
BMO Laddered Corporate Bond Fund
(BMO Guardian Laddered Corporate Bond Fund Advisor Series)
BMO Mortgage and Short-Term Income Fund
(BMO Guardian Mortgage and Short-Term Income Fund Advisor Series and
BMO Guardian Mortgage and Short-Term Income Fund Series F)
BMO U.S. High Yield Bond Fund
(BMO Guardian U.S. High Yield Bond Fund Advisor Series)
BMO World Bond Fund
(BMO Guardian World Bond Fund Advisor Series)
BMO U.S. Dollar Monthly Income Fund
(BMO Guardian U.S. Dollar Monthly Income Fund Advisor Series,
BMO Guardian U.S. Dollar Monthly Income Fund Series F and
BMO Guardian U.S. Dollar Monthly Income Fund SeriesT5)
BMO North American Dividend Fund
(BMO Guardian North American Dividend Fund Advisor Series)
BMO Precious Metals Fund
(BMO Guardian Precious Metals Fund Advisor Series)
BMO Resource Fund
(BMO Guardian Resource Fund Advisor Series and
BMO Guardian Resource Fund Series F)
BMO Special Equity Fund
(BMO Guardian Special Equity Fund Advisor Series and
BMO Guardian Special Equity Fund Series F)
BMO Global Infrastructure Fund
(BMO Guardian Global Infrastructure Fund Advisor Series,
BMO Guardian Global Infrastructure Fund Series F and
BMO Guardian Global Infrastructure Fund Series T5)
BMO Emerging Markets Fund
(BMO Guardian Emerging Markets Fund Advisor Series)
BMO European Fund
(BMO Guardian European Fund Advisor Series and

BMO Guardian European Fund Series T5)
BMO Dividend Fund
(BMO Guardian Dividend Fund Advisor Series and
BMO Guardian Dividend Fund Series T5)
BMO Enhanced Equity Income Fund
(BMO Guardian Enhanced Equity Income Fund Advisor Series)
BMO Asset Allocation Fund
(BMO Guardian Asset Allocation Fund Advisor Series,
BMO Guardian Asset Allocation Fund Series F and
BMO Guardian Asset Allocation Fund Series T5)
BMO LifeStage Plus 2022 Fund
(BMO Guardian LifeStage Plus 2022 Fund Advisor Series)
BMO LifeStage Plus 2025 Fund
(BMO Guardian LifeStage Plus 2025 Fund Advisor Series)
BMO LifeStage Plus 2026 Fund
(BMO Guardian LifeStage Plus 2026 Fund Advisor Series)
BMO LifeStage Plus 2030 Fund
(BMO Guardian LifeStage Plus 2030 Fund Advisor Series)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated May 28, 2012
NP 11-202 Receipt dated May 30, 2012
Offering Price and Description:
Advisor Series, Series H, Series F, Series I, Series T5, Series T6 and Series T8
Underwriter(s) or Distributor(s):
BMO INVESTMENTS INC.
BMO Investments Inc.
Promoter(s):
BMO INVESTMENTS INC.
Project #1892658

Issuer Name:
Brookfield Infrastructure Partners L.P.
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated May 30, 2012
NP 11-202 Receipt dated May 30, 2012
Offering Price and Description:
US$1,000,000,000.00 - Limited Partnership Units Preferred Limited Partnership Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1854752

Issuer Name:
Cameco Corporation
Principal Regulator - Saskatchewan
Type and Date:
Final Base Shelf Prospectus dated May 29, 2012
NP 11-202 Receipt dated May 29, 2012
Offering Price and Description:
$1,000,000,000.00:
COMMON SHARES
FIRST PREFERRED SHARES
SECOND PREFERRED SHARES
WARRANTS
SUBSCRIPTION RECEIPTS
DEBT SECURITIES
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1910421

Issuer Name:
Cominar Real Estate Investment Trust
Principal Regulator - Quebec
Type and Date:
Final Base Shelf Prospectus dated May 29, 2012
NP 11-202 Receipt dated May 29, 2012
Offering Price and Description:
$750,000,000.00 - Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1911056

Issuer Name:
Dundee Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated June 4, 2012
NP 11-202 Receipt dated June 4, 2012
Offering Price and Description:
$324,428,300.00 - 9,037,000 REIT Units, Series A PRICE: $35.90 per Unit
Underwriter(s) or Distributor(s):
TD Securities Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Canaccord Genuity Corp.
Dundee Securities Ltd.
Brookfield Financial Corp.
Desjardins Securities Inc.
HSBC Securities (Canada) Inc.
National Bank Finanical Inc.
Promoter(s):
-
Project #1913157

Issuer Name:
ELA Trust
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 30, 2012
NP 11-202 Receipt dated May 31, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
EXCEL FUNDS MANAGEMENT INC.
Project #1897527

Issuer Name:
Excel Latin America Bond Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 30, 2012
NP 11-202 Receipt dated May 31, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
GMP SECURITIES L.P.
RAYMOND JAMES LTD.
DESJARDINS SECURITIES INC.
MACQUARIE PRIVATE WEALTH INC.
DUNDEE SECURITIES LTD.
MACKIE RESEARCH CAPITAL CORPORATION
MANULIFE SECURITIES INCORPORATED
SHERBROOKE STREET CAPITAL (SSC) INC.
UNION SECURITIES LTD.
Promoter(s):
EXCEL FUNDS MANAGEMENT INC.
Project #1897524

Issuer Name:
Genworth MI Canada Inc.
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated May 31, 2012
NP 11-202 Receipt dated May 31, 2012
Offering Price and Description:
$1,500,000,000.00:
Debt Securities
Preferred Shares
Common Shares
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1909443

Issuer Name:
Series A, F and I Units of:
Jov Leon Frazer Bond Fund (formerly Jov Bond Fund)
Jov Leon Frazer Dividend Fund
Series A, F, I and T Units of:
Jov Leon Frazer Preferred Equity Fund
Jov Hahn Conservative ETF Portfolio (formerly Jov Conservative ETF Portfolio)
Jov Hahn Income & Growth ETF Portfolio (formerly Jov Income & Growth ETF Portfolio)
Jov Hahn Growth ETF Portfolio (formerly Jov Growth ETF Portfolio
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated May 25, 2012
NP 11-202 Receipt dated June 4, 2012
Offering Price and Description:
Series A, F, I and T Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
JovFinancial Solutions Inc.
Project #1891304

Issuer Name:
Marquis Institutional Canadian Equity Portfolio
Marquis Institutional Global Equity Portfolio
(Series A, I, O, T and V Units)
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated May 2, 2012 to the Simplified Prospectuses and Annual Information Form dated December 7, 2011
NP 11-202 Receipt dated May 31, 2012
Offering Price and Description:
Series A, I, O, T and V Units
Underwriter(s) or Distributor(s):
GCIC Ltd.
Promoter(s):
GCIC LTD.
Project #1818180

Issuer Name:
MLF Trust
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 30, 2012
NP 11-202 Receipt dated May 31, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Scotia Managed Companies Administration Inc.
Project #1897935

Issuer Name:
Moneda LatAm Fixed Income Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 30, 2012
NP 11-202 Receipt dated May 31, 2012
Offering Price and Description:
Maximum: $100,000,000.00 - 10,000,000 Class A Units and/or Class U Units @ $10.00/Class A Units and/or Class U Units Minimum Issue: $20,000,000 - 2,000,000 Class A Units and/or Class U Units @ 10.00/Class A Units and/or Class U Units
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
CANACCORD GENUITY CORP.
GMP SECURITIES L.P.
MACQUARIE PRIVATE WEALTH INC.
RAYMOND JAMES LTD.
DUNDEE SECURITIES LTD.
MANULIFE SECURITIES INCORPORATED
UNION SECURITIES LTD.
Promoter(s):
SCOTIA MANAGED COMPANIES ADMINISTRATION INC.
Project #1896875

Issuer Name:
New Flyer Industries Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated May 29, 2012
NP 11-202 Receipt dated May 29, 2012
Offering Price and Description:
US$65,000,000.00 - 6.25% Convertible Unsecured Subordinated Debentures Price: US$1,000 per Debenture
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
SCOTIA CAPITAL INC.
CANACCORD GENUITY CORP.
PI FINANCIAL CORP.
Promoter(s):
-
Project #1910372

Issuer Name:
RBC Institutional Cash Fund
RBC Institutional Government - Plus Cash Fund
RBC Institutional Long Cash Fund
RBC Institutional US$ Cash Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated May 29, 2012
NP 11-202 Receipt dated May 30, 2012
Offering Price and Description:
Series I, Series J and Series O units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1895753

Issuer Name:
SMC Man AHL Alpha Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 25, 2012
NP 11-202 Receipt dated May 29, 2012
Offering Price and Description:
Class A Units and Class F units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Scotia Managed Companies Administration Inc.
Project #1893419

Issuer Name:
Series A, Series F and Series I Shares (unless otherwise indicated) of:
Sprott Canadian Equity Class
Sprott Energy Class
Sprott Gold and Precious Minerals Class
Sprott Resource Class
Sprott Silver Equities Class
Sprott Small Cap Equity Class
Sprott Tactical Balanced Class (Series T and Series FT Shares also available)
Sprott Diversified Yield Class (Series T and Series FT Shares also available)
Sprott Short-Term Bond Class
Sprott Gold Bullion Class
Sprott Silver Bullion Class
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated May 25, 2012
NP 11-202 Receipt dated May 30, 2012
Offering Price and Description:
Series A, Series F, Series I, Series T and Series FT Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
SPROTT ASSET MANAGEMENT LP
Project #1894802

Issuer Name:
Taylor North American Equity Opportunities Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 29, 2012
NP 11-202 Receipt dated May 30, 2012
Offering Price and Description:
Maximum: $100,000,000.00 - 10,000,000 Units @ $10/Units; Minimum: $20,000,000.00 - 2,000,000 Units @ $10/Unit
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
CANACCORD GENUITY CORP.
GMP SECURITIES L.P.
MACQUARIE PRIVATE WEALTH INC.
RAYMOND JAMES LTD.
DESJARDINS SECURITIES INC.
DUNDEE SECURITIES LTD.
MACKIE RESEARCH CAPITAL CORPORATION
MANULIFE SECURITIES INCORPORATED
Promoter(s):
BROMPTON FUNDS LIMITED
Project #1893696

Issuer Name:
Top 20 Dividend Trust
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 29, 2012
NP 11-202 Receipt dated May 31, 2012
Offering Price and Description:
Maximum: $100,000,000.00 -10,000,000 Units @ $10.00/Unit Minimum: $35,000,000.00 - 3,500,000 Units @ @10.00/Unit
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
CANACCORD GENUITY CORP.
GMP SECURITIES L.P.
MACQUARIE PRIVATE WEALTH INC.
RAYMOND JAMES LTD.
DESJARDINS SECURITIES INC.
DUNDEE SECURITIES LTD.
MANULIFE SECURITIES INCORPORATED
Promoter(s):
SCOTIA MANAGED COMPANIES ADMINISTRATION INC.
Project #1897166

Issuer Name:
UBS (Canada) Global Allocation Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated May 28, 2012
NP 11-202 Receipt dated May 30, 2012
Offering Price and Description:
Series D Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
UBS Global Asset Management (Canada) Co
Project #1893312

Issuer Name:
ABCOURT MINES INC.
Principal Jurisdiction - Quebec
Type and Date:
Preliminary Short Form Prospectus dated May 17, 2012
Withdrawn on May 29, 2012
Offering Price and Description:
Minimum Offering: $1,500,000.00 or 13,636,363 Units; Maximum Offering: $3,000,000.00 or 27,272,727 Units Price: $0.11 per Unit
Underwriter(s) or Distributor(s):
Industrial Alliance Securities Inc.
Promoter(s):
-
Project #1909463

Issuer Name:
Casa Minerals Inc
Principal Jurisdiction - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated February 21, 2012
Closed on May 30, 2012
Offering Price and Description:
Minimum of 8,666,666 Common Shares Up to a Maximum of 13,333,333 Common Shares Price: $0.15 per Common Share inimum of $1,300,000 up to a Maximum of $2,000,000
Underwriter(s) or Distributor(s):
UNION SECURITIES LTD.
Promoter(s):
Farshad Shirvani
Project #1860988

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Business	Lysander Funds Limited	Investment Fund Manager and Exempt Market Dealer	May 29, 2012
New Registration	Carlisle Capital Mortgage Corporation	Exempt Market Dealer	June 1, 2012
Change in Registration Category	Propel Capital Corporation	From Investment Fund Manager and Exempt Market Dealer to Investment Fund Manager, Exempt Market Dealer and Portfolio Manager ON	June 4, 2012

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