The Ontario Securities Commission

OSC Bulletin

August 23, 2012

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

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1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

August 23, 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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Edward P. Kerwin	—	EPK
Vern Krishna	—	VK
Christopher Portner	—	CP
Judith N. Robertson	—	JNR
Charles Wesley Moore (Wes) Scott	—	CWMS

SCHEDULED OSC HEARINGS

August 28, 2012 2:30 p.m.	**David Charles Phillips and John Russell Wilson** s. 127 Y. Chisholm in attendance for Staff Panel: JDC
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: EPK
September 4, 2012 11:00 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
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: VK

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: VK
September 11, 2012 3:00 p.m.	**Systematech Solutions Inc., April Vuong and Hao Quach** s. 127 J. Feasby in attendance for Staff Panel: EPK
September 12, 2012 9:00 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: EPK
September 13, 2012 10:00 a.m.	**Paul Donald** s. 127 C. Price in attendance for Staff Panel: CP/PLK
September 18, 2012 10:00 a.m.	**Roger Carl Schoer** s. 21.7 C. Johnson in attendance for Staff Panel: JDC
September 18-19, 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
September 20, 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
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 21, 2012 10:00 a.m.	**Shaun Gerard McErlean and Securus Capital Inc.** s. 127 M. Britton in attendance for Staff Panel: VK/JDC
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.	**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

October 10, 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
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 29-31, 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 H. Craig/S. Schumacher in attendance for Staff Panel: JDC
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: EPK
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 8, 2012 10:00 a.m.	**Global RESP Corporation and Global Growth Assets Inc.** s. 127 D. Ferris in attendance for Staff Panel: JEAT

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
November 27-28, 2012 10:00 a.m.	**Simply Wealth Financial Group Inc., Naida Allarde, Bernardo Giangrosso, K&S Global Wealth Creative Strategies Inc., Kevin Persaud, Maxine Lobban and Wayne Lobban** s. 127 and 127.1 C. Johnson in attendance for Staff Panel: JDC
December 4, 2012 3:30 p.m.	**Global Consulting and Financial Services, Crown Capital Management Corporation, Canadian Private Audit Service, Executive Asset Management, Michael Chomica, Peter Siklos (Also Known As Peter Kuti), Jan Chomica, and Lorne Banks** s. 127 H. Craig/C. Rossi in attendance for Staff Panel: CP
December 5, 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
December 20, 2012 10:00 a.m.	**New Hudson Television Corporation, New Hudson Television L.L.C. & James Dmitry Salganov** s. 127 C. Watson in attendance for Staff Panel: TBA
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
February 1, 2013 10:00 a.m.	**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
February 4-11 and February 13, 2013 10:00 a.m.	**Alexander Christ Doulis (aka Alexander Christos Doulis, aka Alexandros Christodoulidis) and Liberty Consulting Ltd.** s. 127 J. Feasby in attendance for Staff Panel: TBA
March 18-25, March 27-28, April 1-5 and April 24-25, 2013 10:00 a.m.	**Peter Sbaraglia** s. 127 J. Lynch in attendance for Staff Panel: CP
April 29-May 6 and May 8-10, 2013 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: 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

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

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

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

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: TBA

TBA

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

s. 127

C. Johnson in attendance for Staff

Panel: TBA

TBA **Knowledge First Financial Inc.**

s. 127

M. Vaillancourt/D. Ferris in attendance for Staff

Panel: TBA

TBA **Heritage Education Funds Inc.**

s. 127

M. Vaillancourt/D. Ferris in attendance for Staff

Panel: TBA

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

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

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

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

1.1.2 Notice of Correction – Maitland Capital Ltd. et al.

In *Maitland Capital Ltd. (Re)* (2012), 35 O.S.C.B. 6489, the initials of the individuals identified as "Maitland Investor #1" and "Maitland Investor #2" were inadvertently omitted from paragraphs 31 and 37 respectively in the Reasons and Decision as published on July 12, 2012. The text omitted from paragraph 31 is "H. F." and the text omitted from paragraph 37 is "D. R.".

1.1.3 CSA Staff Notice 11-319 – Extension of Consultation Period – Consultation Paper 25-401: Potential Regulation of Proxy Advisory Firms

CSA Staff Notice 11-319
Extension of Consultation Period
Consultation Paper 25-401:
Potential Regulation of Proxy Advisory Firms

August 16, 2012

On June 21, 2012, the Canadian Securities Administrators published for comment Consultation Paper 25-401 *Potential Regulation of Proxy Advisory Firms* (the Consultation Paper). The Consultation Paper discusses certain concerns raised about the services provided by proxy advisory firms and their potential impact on Canadian capital markets and considers whether, and how, these concerns should be addressed by Canadian securities regulators. The comment period is scheduled to close on August 20, 2012. We have received feedback from several stakeholders that it would be beneficial for stakeholders to have additional time to review the Consultation Paper and prepare comments. We therefore are extending the comment period from August 20, 2012 to **September 21, 2012**.

Questions

Please refer your questions to any of the following people:

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1.1.4 CSA Staff Notice 11-318 – Guidance for Cease Trade Order Database Users

CSA Staff Notice 11-318
Guidance for Cease Trade Order Database Users

August 23, 2012

Introduction and Purpose

Staff of the Canadian Securities Administrators (CSA Staff or we) are publishing this Staff Notice (the Notice) to highlight recent and upcoming changes to the Cease Trade Order Database (CTO Database). It provides guidance to CTO Database users and, in particular, to members of the investment industry in Canada.

Background

A cease trade order (CTO or Order) is a decision issued by a provincial or territorial securities regulatory authority or similar regulatory body against a company or an individual. Orders are issued for different reasons such as failing to meet disclosure requirements or as a result of an enforcement action that involves an investigation of potential wrongdoing. The purpose of the CTO Database is twofold: provide stakeholders with a publicly searchable database containing all Orders issued by participating CSA members, regardless of whether their effect is temporary or indefinite, and disseminate such Orders to its subscribers.

The CTO Database classifies Orders as either "Active" or "Inactive":

- Active Orders are decisions that are in effect. An Active Order's status may be either issued or amended.
- An Inactive Order's status may be either expired or revoked. An expired CTO has reached its end date as specified in the Order. A revoked CTO has been revoked by the provincial or territorial securities regulatory authority which originally issued it.

The CTO Database includes both Active CTOs and CTOs that have become inactive following either their expiry or revocation. CTOs issued against companies that have since dissolved or been discontinued remain active until expressly revoked or until they have expired. This content allows for a comprehensive database with an ability to provide historical data.

Substance of Implemented Changes

1. Stock Symbols

Removal of stock symbols from the CTO Database: When an issuer is de-listed, stock symbols can be reused and reassigned to a new issuer. An issuer that is not subject to a CTO could be re-assigned the stock symbol of a cease-traded issuer that has been de-listed. These situations can create confusion among members of the investment industry when determining whether a trade can be executed, based solely on a stock symbol. Consequently, CSA staff has agreed that it would be preferable to have all stock symbols removed from the CTO Database.

2. Security Identifiers

Use of CUSIP numbers: The CTO Database uses the CUSIP number as a security identifier. These numbers are assigned by CUSIP Global Services, managed on behalf of the American Bankers Association by S&P Capital IQ, to securities trading in Canada and the United States. Other securities identifiers, such as SEDOL (which identifies securities trading in the United Kingdom) and ISIN (international security identifier which is formed by adding CA in front of the CUSIP number), are not available through the CTO Database.

The CUSIP number is nine characters long. The first six characters identify the issuer, the seventh and eighth characters identify the type of security and the last digit is used as a check digit. Historically, the CTO Database did not require a certain number of characters when entering the CUSIP number, which resulted in CUSIP numbers being entered inconsistently into the database. As a result, going forward, the CTO Database has been modified to require, and only provide, the first six digits of the CUSIP number when a CUSIP number is entered. Since Orders that ban trading in securities of an issuer generally apply to all the securities of the issuer, including additional CUSIP characters to identify the type of security was not deemed necessary.

The CUSIP numbers are automatically retrieved from a list provided by S&P Capital IQ. However, in some instances, when the company name is uploaded to the CTO Database it does not exactly match the company name on the S&P Capital IQ list. In these instances, no CUSIP number will be available through the CTO Database. Also, no CUSIP number will be assigned to Orders that ban trading by certain individuals and/or companies. It remains the obligation of users to conduct the necessary due

diligence to determine whether or not a specific trade can be executed. As such, we emphasize the importance of reading all decisions to fully understand their scope.

3. Date Format

Standardized Date Format: We have standardized the date format in the CTO Database for the Issued Date, the Expiry Date as well as for search results downloaded into an Excel spreadsheet. All of these dates are now under the same format: YYYY/MM/DD.

4. Company Names

Consistency in Company Names: We have implemented a mechanism to reduce as much as possible certain inconsistencies with respect to the format of company names. In spite of this modification to the CTO Database, sometimes these inconsistencies originate from the Orders themselves and under certain circumstances may continue to be unavoidable. Company names are entered in the database exactly as they appear on the Orders. If a company that is subject to a CTO changes its name, the CTO Database will not be changed unless there is an Order amending the original CTO.

5. French Spelling

French Spelling: The CTO Database includes CTOs against companies with French names. In the past, when users downloaded search results for Orders against companies with French names, the results were often displayed incorrectly due to the use of accents (e.g.“Systèmes Mécaniques Inc.” appeared in the search results spreadsheet as “SystÃ¨mes MÃ©caniques Inc.”). This problem has been corrected and downloaded search results should now display correctly.

6. Intra-day CTOs

Issuance of Intra-day CTOs: Under normal circumstances, dissemination of Orders through the CTO Database is automated. All Orders uploaded late at night or early in the morning are disseminated before the markets open and Orders uploaded during market hours are disseminated in the evening, once the markets close. However, some exceptional situations require Canadian securities regulatory authorities to issue cease trade Orders during market hours. The decision to disseminate an Order through the CTO Database during market hours rests entirely with the securities regulatory authority that issues the Order.

Upon receipt of a request from a securities regulatory authority to disseminate a CTO against a Canadian listed issuer during market hours, CSA staff will inform IIROC Market Surveillance staff before disseminating that Order to facilitate timely implementation and communication of a regulatory action.

7. Notifications

Notifications of Expiration of Orders: We have changed the date and time of these notifications. The database will now send emails notifying subscribers of the expiration of Orders between 11:45 p.m. ET and 11:58 p.m. ET on the same date the Order expires. Therefore, if an Order expires on May 25, 2012, it is uploaded into the CTO database with a May 25, 2012 expiration date and the database will send the notification on May 25, 2012 between 11:45 p.m. ET and 11:58 p.m. ET.

Members of the investment industry will need to review their internal protocols to determine whether this change has an impact on their systems. This change has no legal impact on the scope of decisions.

Substance of Upcoming Changes

1. Categories of Orders

Two Categories of Orders: Later this fall, CTOs will be classified into two new distinct groups:

(i) Orders that ban trading in securities of a reporting issuer or a non-reporting issuer, regardless of whether the Order resulted from a continuous disclosure default or an enforcement action, and;

(ii) Orders that ban trading by certain individuals and/or companies, regardless of whether the Order resulted from a continuous disclosure default of the issuer (such as a management cease trader order) or an enforcement action.

Some Orders may fall under both categories, in which circumstance, they will appear in both categories and two distinct notifications, one for each category, will be sent out to subscribers.

Orders classified under the first category ban trading in the securities of an issuer and those under the second category prevent certain individuals and/or companies from trading either in securities of a specific issuer or from trading in all securities.

This new categorization is intended as a tool to simplify the classification of Orders and enhance search results. However, it remains the obligation of users to conduct the necessary due diligence before trading to determine whether or not a specific trade can be executed. As such, we cannot overstate the importance of reading all decisions to fully understand their scope.

Questions

Please refer your questions to any of the following people:

Laura Belloni
Policy Manager
CSA Secretariat
Direct Line 514-864-9511
Direct Fax: 514-864-9512
Email: laura.belloni@acvm-csa.ca

Julie Mainville
Administrative Technician
CSA Secretariat
Direct Line: 514-864-0822
Direct Fax: 514-864-9512
Email: julie.mainville@acvm-csa.ca

Jonathan Taylor
Manager, CD Compliance & Market Analysis
Alberta Securities Commission
Direct Line: 403-297-4770
Direct Fax: 403-297-2082
Email: jonathan.taylor@asc.ca

April Penn
Assistance Manager, Financial Reporting, Corporate Finance
British Columbia Securities Commission
Direct Line: 604-899-6805
Toll free across Canada: 1-800-373-6393
Email: APenn@bcsc.bc.ca

Wayne Bridgeman
Senior Analyst – Corporate Finance
The Manitoba Securities Commission
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Alex Wu
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Tony Herdzik
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Saskatchewan Financial Services Commission
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Edvie Élysée
Analyst, Continuous Disclosure
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Ève Poirier
Secrétariat général
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Tel: 514-395-0337, ext. 2527
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1.2 Notices of Hearing

1.2.1 Mega-C Power Corporation 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
MEGA-C POWER CORPORATION, RENE PARDO,
GARY USLING, LEWIS TAYLOR SR.,
LEWIS TAYLOR JR., JARED TAYLOR,
COLIN TAYLOR AND 1248136 ONTARIO LIMITED

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN STAFF OF
THE ONTARIO SECURITIES COMMISSION
AND RENE PARDO

NOTICE OF HEARING
(Section 127)

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

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve a settlement agreement entered into between Staff of the Ontario Securities Commission and Rene Pardo.

DATED at Toronto this 15th day of August, 2012

"John Stevenson"
Secretary to the Commission

1.2.2 Knowledge First Financial Inc.

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

AND

IN THE MATTER OF
KNOWLEDGE FIRST FINANCIAL INC.

NOTICE OF HEARING

WHEREAS on August 10, 2012, the Ontario Securities Commission (the "Commission") issued a temporary order (the "Temporary Order") pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act");

AND WHEREAS the Temporary Order ordered terms and conditions imposed on the registration of Knowledge First Financial Inc. ("KFFI");

TAKE NOTICE THAT the Commission will hold a hearing ("the Hearing") pursuant to section 127 of the Act at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room on Tuesday, August 21, 2012 at 3:30 p.m., or as soon thereafter as the hearing can be held;

TO CONSIDER whether, in the opinion of the Commission, it is in the public interest, pursuant to subsections 127(7) and (8) of the Act, for the Commission to:

(a) extend the Temporary Order; and

(b) to make further orders as the Commission considers appropriate;

BY REASON OF such allegations and evidence 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;

A**ND 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 15th day of August, 2012.

"John Stevenson"
Secretary to the Commission

1.2.3 Heritage Education Funds Inc.

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

AND

IN THE MATTER OF
HERITAGE EDUCATION FUNDS INC.

NOTICE OF HEARING

WHEREAS on August 13, 2012, the Ontario Securities Commission (the "Commission") issued a temporary order (the "Temporary Order") pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act");

AND WHEREAS the Temporary Order ordered terms and conditions imposed on the registration of Heritage Education Funds Inc. ("HEFI");

TAKE NOTICE THAT the Commission will hold a hearing ("the Hearing") pursuant to section 127 of the Act at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room on Tuesday, August 21, 2012 at 3:30 p.m., or as soon thereafter as the hearing can be held;

TO CONSIDER whether, in the opinion of the Commission, it is in the public interest, pursuant to subsections 127(7) and (8) of the Act, for the Commission to:

(a) extend the Temporary Order; and

(b) to make further orders as the Commission considers appropriate;

BY REASON OF such allegations and evidence 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 15th day of August, 2012.

"John Stevenson"
Secretary to the Commission

1.3 News Releases

1.3.1 OSC and IIROC Extend Participation Form Deadline for ABCP Settlement Funds

OSC AND IIROC EXTEND PARTICIPATION FORM DEADLINE FOR ABCP SETTLEMENT FUNDS

August 21, 2012 (Toronto, ON) – The Ontario Securities Commission (OSC) and Investment Industry Regulatory Organization of Canada (IIROC) announced today the extension of the deadline for the submission of participation forms in connection with the distribution of settlement funds to eligible investors who purchased third-party Asset-Backed Commercial Paper (ABCP).

The original deadline for submission of participation forms was June 30, 2012. The OSC and IIROC have extended this deadline to October 26, 2012 in order to ensure that all investors who are eligible to participate in the distribution have an opportunity to do so by submitting a participation form.

The extension of the deadline will have the effect of delaying any distribution of the settlement funds until after October 26, 2012. The OSC and IIROC will provide further information on the distribution after the extended deadline.

The OSC and IIROC are, through Ernst & Young Inc. as Administrator, distributing approximately $59.875 million directly to investors who purchased ABCP from certain investment dealers during specific time periods. These monies were collected in enforcement settlements agreed to by these investment dealers.

Eligible investors are encouraged to submit a completed participation form to the Administrator by October 26, 2012. Additional information, including participation forms and eligibility requirements, is available in materials posted by the Administrator online at www.ey.com/ca/OSCIIROC-ABCP. Any investor questions on the distribution should be addressed directly to the Administrator at:

ERNST & YOUNG INC.

Phone (in Toronto): 416-943-3077
Phone (toll-free): 1-888-990-1636
Email: OSCIIROC-ABCP@ca.ey.com

The OSC is the regulatory body responsible for overseeing Ontario's capital markets. The OSC administers and enforces Ontario's securities and commodity futures laws. Its mandate is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.

IIROC is the national self-regulatory organization which oversees all investment dealers and trading activity on debt and equity marketplaces in Canada. IIROC sets high quality regulatory and investment industry standards, protects investors and strengthens market integrity while maintaining efficient and competitive capital markets.

For More Information:

ONTARIO SECURITIES COMMISSION

For Media Inquiries:
Carolyn Shaw-Rimmington
Manager, Public Affairs
416-593-2361
cshawrimmington@osc.gov.on.ca

For Investor Inquiries:
OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)
www.osc.gov.on.ca

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

For Media Inquiries:
Lucy Becker
Vice President, Public Affairs
416-943-5870
lbecker@iiroc.ca

For Investor Inquiries:
IIROC Complaints and Inquiries Centre
1-877-442-4322 (Toll Free)
www.iiroc.ca

ERNST & YOUNG INC., Administrator

Phone (in Toronto): 416-943-3077
Phone (toll-free): 1-888-990-1636
Email: OSCIIROC-ABCP@ca.ey.com

1.4 Notices from the Office of the Secretary

1.4.1 Mega-C Power Corporation et al.

FOR IMMEDIATE RELEASE
August 15, 2012

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

AND

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

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN STAFF OF
THE ONTARIO SECURITIES COMMISSION
AND RENE PARDO

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Ontario Securities Commission and Rene Pardo. The hearing will be held on August 17, 2012 at 10:00 a.m. in Hearing Room B on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated August 15, 2012 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:
media_inquiries@osc.gov.on.ca

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Media Relations Specialist
416-595-8934

For investor inquiries:

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

1.4.2 Knowledge First Financial Inc.

FOR IMMEDIATE RELEASE
August 15, 2012

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

AND

IN THE MATTER OF
KNOWLEDGE FIRST FINANCIAL INC.

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to be held on August 21, 2012 at 3:30 p.m. to consider whether, it is in the public interest, pursuant to subsections 127(7) and (8) of the Act, for the Commission to:

1. extend the Temporary Order; and

2. to make further orders as the Commission considers appropriate.

A copy of the Notice of Hearing dated August 15, 2012 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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1.4.3 Heritage Education Funds Inc.

FOR IMMEDIATE RELEASE
August 15, 2012

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

AND

IN THE MATTER OF
HERITAGE EDUCATION FUNDS INC.

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to be held on August 21, 2012 at 3:30 p.m. to consider whether, it is in the public interest, pursuant to subsections 127(7) and (8) of the Act, for the Commission to:

1. extend the Temporary Order; and

2. to make further orders as the Commission considers appropriate.

A copy of the Notice of Hearing dated August 15, 2012 is available at **www.osc.gov.on.ca**.

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1.4.4 Morgan Dragon Development Corp. et al.

FOR IMMEDIATE RELEASE
August 15, 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 September 20, 2012 at 10:00 a.m. to provide the panel with a status update.

A copy of the Order dated August 15, 2012 is available at **www.osc.gov.on.ca**.

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1-877-785-1555 (Toll Free)

1.4.5 Normand Gauthier et al.

FOR IMMEDIATE RELEASE
August 15, 2012

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

AND

IN THE MATTER OF
NORMAND GAUTHIER,
GENTREE ASSET MANAGEMENT INC.,
R.E.A.L. GROUP FUND III (CANADA) LP, AND
CANPRO INCOME FUND I, LP

TORONTO – The Commission issued an Order in the above named matter which provides that a confidential pre-hearing conference shall take place on September 10, 2012 at 9:00 a.m. or on such other date or at such other time as set by the Office of the Secretary and agreed to by the parties.

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

A copy of the Order dated August 15, 2012 is available at **www.osc.gov.on.ca**.

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1.4.6 Shaun Gerard McErlean and Securus Capital Inc.

FOR IMMEDIATE RELEASE
August 15, 2012

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

AND

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

TORONTO – The Commission issued an Order in the above named matter which provides that the sanctions and costs hearing shall proceed on September 21, 2012 at 10:00 a.m.

A copy of the Order dated August 13, 2012 is available at **www.osc.gov.on.ca**.

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

1.4.7 Firestar Capital Management Corp. et al.

FOR IMMEDIATE RELEASE
August 17, 2012

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

AND

IN THE MATTER OF
FIRESTAR CAPITAL MANAGEMENT CORP.,
KAMPOSSE FINANCIAL CORP.,
FIRESTAR INVESTMENT MANAGEMENT GROUP,
MICHAEL CIAVARELLA AND MICHAEL MITTON

TORONTO – The Commission issued an Order in the above named matter which provides that (i) the hearing be adjourned to October 18, 2012 at 2:00 p.m., or such other date and time as agreed to by the parties and confirmed by the Office of the Secretary, for the purpose of continuing the confidential pre-hearing conference; and (ii) that the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued until October 22, 2012, or until further order of the Commission.

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

A copy of the Order dated August 15, 2012 is available at **www.osc.gov.on.ca**.

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1.4.8 Colby Cooper Capital Inc. et al.

FOR IMMEDIATE RELEASE
August 17, 2012

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

AND

IN THE MATTER OF
COLBY COOPER CAPITAL INC.
COLBY COOPER INC.,
PAC WEST MINERALS LIMITED
JOHN DOUGLAS LEE MASON

TORONTO – The Commission issued an Order in the above named matter which provides that a confidential pre-hearing conference shall take place on October 12, 2012 at 10:00 a.m. or on such other date or at such other time as set by the Office of the Secretary and agreed to by the parties.

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

A copy of the Order dated August 16, 2012 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.9 Alexander Christ Doulis et al.

FOR IMMEDIATE RELEASE
August 20, 2012

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

AND

IN THE MATTER OF
ALEXANDER CHRIST DOULIS
(aka ALEXANDER CHRISTOS DOULIS,
aka ALEXANDROS CHRISTODOULIDIS)
and LIBERTY CONSULTING LTD.

TORONTO – The Commission issued an Order in the above named matter which provides that the Pre-Hearing Conference is adjourned and shall continue, pursuant to Rule 6 of the Commission's Rules of Procedure, on September 18, 2012, at 4:00 p.m., or such other date and time as is specified by the Secretary's Office and agreed to by the parties.

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

A copy of the Order dated August 17, 2012 is available at **www.osc.gov.on.ca**.

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JOHN P. STEVENSON
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1-877-785-1555 (Toll Free)

1.4.10 Empire Consulting Inc. and Desmond Chambers

FOR IMMEDIATE RELEASE
August 17, 2012

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

AND

IN THE MATTER OF
EMPIRE CONSULTING INC. AND
DESMOND CHAMBERS

TORONTO – Following the hearing on the merits, the Commission issued its Reasons and Decision in the above named matter.

A sanctions and costs hearing in the above named matter is scheduled for October 10, 2012 at 10:00 a.m. at the offices of the Commission located at 20 Queen Street West, 17th Floor, Toronto, Ontario.

A copy of the Reasons and Decision dated August 16, 2012 is available at **www.osc.gov.on.ca**.

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1.4.11 Mega-C Power Corporation et al.

FOR IMMEDIATE RELEASE
August 17, 2012

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

AND

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

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN STAFF OF
THE ONTARIO SECURITIES COMMISSION
AND RENE PARDO

TORONTO – Following a hearing held today, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and Rene Pardo.

A copy of the Order dated August 17, 2012 and Settlement Agreement dated August 15, 2012 are available at **www.osc.gov.on.ca**.

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JOHN P. STEVENSON
SECRETARY

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1-877-785-1555 (Toll Free)

1.4.12 New Found Freedom Financial et al.

FOR IMMEDIATE RELEASE
August 21, 2012

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

AND

IN THE MATTER OF
NEW FOUND FREEDOM FINANCIAL,
RON DEONARINE SINGH, WAYNE GERARD
MARTINEZ, PAULINE LEVY, DAVID WHIDDEN,
PAUL SWABY AND ZOMPAS CONSULTING

TORONTO – The Commission issued an Order in the above named matter which provides that the hearing on the merits shall commence at 10:00 a.m. and end at 2:30 p.m. on September 26 and October 2, 3, 10, 16 and 17, 2012.

A copy of the Order dated August 20, 2012 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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416-595-8934

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

1.4.13 International Strategic Investments et al.

FOR IMMEDIATE RELEASE
August 21, 2012

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

AND

IN THE MATTER OF
INTERNATIONAL STRATEGIC INVESTMENTS,
INTERNATIONAL STRATEGIC INVESTMENTS INC.,
SOMIN HOLDINGS INC., NAZIM GILLANI AND
RYAN J. DRISCOLL

TORONTO – The Commission issued an Order in the above named matter which provides that the confidential pre-hearing conference be adjourned to October 9, 2012 at 2:30 p.m. at which time the panel anticipates scheduling dates for a hearing on the merits in this matter.

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

A copy of the Order dated August 20, 2012 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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Media Relations Specialist
416-595-8934

For investor inquiries:

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

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Algonquin Credit Card Trust – s. 1(10)(a)(ii)

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.

Applicable Legislative Provisions

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

August 14, 2012

McCarthy Tétrault LLP
Box 46, Suite 3500
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Dear Sirs/Mesdames:

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

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

In this decision, "securityholder" means, for a security, the beneficial owner of the security.

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 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

(b) no securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

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

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

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

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

2.1.2 Fibrek inc. – s. 1(10)(a)(ii)

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.

Applicable Legislative Provisions

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

Translation

August 13, 2012

Fibrek inc.
656, boulevard René-Lévesque Ouest
Suite 700
Montréal (Québec)
H3B 1R2

Dear Sirs/Mesdames:

Re: Fibrek inc. (the Applicant) – application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Nunavut, Northwest Territories and Yukon (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.

In this decision, "securityholder" means, for a security, the beneficial owner of the security.

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 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

(b) no securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

(c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions of 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's status as a reporting issuer is revoked.

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

2.1.3 Miranda Technologies Inc. – s. 1(10)(a)(ii)

Headnote

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

Applicable Legislative Provisions

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

August 13, 2012

Miranda Technologies Inc.
3499 Douglas-B.-Floreani
Montreal, Québec
H4S 2C6

Re: Miranda Technologies Inc. (the "Applicant") – Application for a decision under the securities legislation of Québec, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut (the "Jurisdictions") that the Applicant is not a reporting issuer

Dear Sirs/Mesdames:

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.

In this decision, "securityholder" means, for a security, the beneficial owner of the security.

The Applicant has represented to the Decisions Makers that:

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

(b) no securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in *Regulation 21-101 respecting Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

(c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions of 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's status as a reporting issuer is revoked.

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

2.1.4 CI Investments Inc. et al.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of mutual fund mergers – approval required because mergers do not meet the criteria for pre-approval – certain mergers have differences in investment objectives – certain mergers not a "qualifying exchange" or a tax-deferred transaction under Income Tax Act – securityholders of terminating funds provided with timely and adequate disclosure regarding the mergers.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 5.5(1)(b), 5.5(3), 5.6.

August 15, 2012

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

AND

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

AND

IN THE MATTER OF
CI INVESTMENTS INC.
(the Filer)

AND

LAKEVIEW DISCIPLINED LEADERSHIP U.S. EQUITY FUND
CI JAPANESE CORPORATE CLASS
CI EUROPEAN FUND
CI EUROPEAN CORPORATE CLASS
SIGNATURE MORTGAGE FUND
CASTLEROCK CANADIAN STOCK FUND
CASTLEROCK CANADIAN BOND FUND
CASTLEROCK CANADIAN VALUE FUND
CASTLEROCK CONSERVATIVE PORTFOLIO
(each a Terminating Fund and, collectively, the Terminating Funds)

AND

CAMBRIDGE AMERICAN EQUITY CORPORATE CLASS
CI PACIFIC CORPORATE CLASS
CI INTERNATIONAL CORPORATE CLASS
SIGNATURE SHORT TERM BOND FUND
CAMBRIDGE CANADIAN EQUITY CORPORATE CLASS
SIGNATURE CANADIAN BOND FUND
CI CANADIAN INVESTMENT CORPORATE CLASS
PORTFOLIO SERIES CONSERVATIVE FUND
(each a Continuing Fund and, collectively, the Continuing Funds)

AND

CASTLEROCK CANADIAN STOCK FUND
CASTLEROCK CANADIAN BALANCED FUND
CASTELROCK TOTAL RETURN FUND
CASTLEROCK GLOBAL HIGH INCOME FUND

CASTLEROCK CANADIAN BOND FUND
CASTLEROCK MONEY MARKET FUND
CASTLEROCK CANADIAN VALUE FUND
CASTLEROCK CONSERVATIVE PORTFOLIO
CASTLEROCK BALANCED PORTFOLIO
CASTLEROCK BALANCED GROWTH PORTFOLIO
CASTLEROCK GROWTH PORTFOLIO
(collectively, the Terminating Castlerock Funds, and together with the Continuing Funds and the Terminating Funds, the Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Terminating Funds for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for approval of the merger (each a **Merger** and, collectively, the **Mergers**) of a Terminating Fund into its corresponding Continuing Fund under subsection 5.5(1)(b) of National Instrument 81-102 – *Mutual Funds* (**NI 81-102**) (the **Exemption Sought**).

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

1. the Ontario Securities Commission is the principal regulator for this application; and

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

Interpretation

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

Representations

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

Manager and Fund Information

1. The Filer is a corporation amalgamated under the laws of Ontario and is registered under the *Securities Act* (Ontario) as commodity trading manager and commodity trading counsel, investment counsel and portfolio manager, and as a limited market dealer.

2. The Filer is the manager of the Funds.

3. Each of Lakeview Disciplined Leadership U.S. Equity Fund, CI European Fund, Signature Mortgage Fund, Castlerock Canadian Stock Fund, Castlerock Canadian Bond Fund, Castlerock Canadian Value Fund, and Castlerock Conservative Portfolio (individually, a "**Terminating Trust Fund**" and, collectively, the "**Terminating Trust Funds**"), Signature Short Term Bond Fund, Signature Canadian Bond Fund, and Portfolio Series Conservative Fund are each open-end mutual fund trusts governed by a declaration of trust.

4. Each of CI Japanese Corporate Class, CI European Corporate Class (individually, a "**Terminating Corporate Fund**" and, collectively, the "**Terminating Corporate Funds**"), Cambridge American Equity Corporate Class, CI Pacific Corporate Class, CI International Corporate Class (to be renamed Signature International Corporate Class), Cambridge Canadian Equity Corporate Class and CI Canadian Investment Corporate Class is a mutual fund comprised of two or more classes of convertible special shares of CI Corporate Class Limited (the "**Corporation**").

5. The Corporation is a corporation incorporated under the laws of the Province of Ontario.

6. Each Fund is a mutual fund that is subject to the requirements of NI 81-102.

7. The Filer intends to merge each Terminating Fund into the Continuing Fund shown opposite its name in the table below:

Terminating Fund	Continuing Fund
Lakeview Disciplined Leadership U.S. Equity Fund	Cambridge American Equity Corporate Class
CI Japanese Corporate Class	CI Pacific Corporate Class
CI European Fund	CI International Corporate Class (to be renamed Signature International Corporate Class)
CI European Corporate Class	CI International Corporate Class (to be renamed Signature International Corporate Class)
Signature Mortgage Fund	Signature Short Term Bond Fund
Castlerock Canadian Stock Fund	Cambridge Canadian Equity Corporate Class
Castlerock Canadian Bond Fund	Signature Canadian Bond Fund
Castlerock Canadian Value Fund	CI Canadian Investment Corporate Class
Castlerock Conservative Portfolio	Portfolio Series Conservative Fund

8. Each Terminating Trust Fund currently distributes its securities in all the Jurisdictions pursuant to a simplified prospectus and annual information form dated July 27, 2011 (as amended, the "**Terminating Trust Funds Prospectuses**"). Each Terminating Corporate Fund currently distributes its securities in all the Jurisdictions pursuant to a simplified prospectus and annual information form dated July 27, 2011 (as amended, the "**Terminating Corporate Funds Prospectuses**"). Each Terminating Fund has applied for, and expects to receive, an order under the Legislation permitting it to continue distributing its securities under its current prospectus until October 1, 2012 in order that it may have sufficient time to implement its Merger.

9. The Funds are reporting issuers under the Legislation and are not on the list of defaulting reporting issuers maintained under the Legislation.

10. Each of the Funds follows the standard investment restrictions and practices established under the Legislation except to the extent that the Funds have received permission from the CSA to deviate therefrom.

Details of the Proposed Mergers

11. The proposed Mergers were announced in:

    (a) a press release dated May 28, 2012;

    (b) a material change report dated May 28, 2012; and

    (c) amendments to the Terminating Trust Funds Prospectuses and Terminating Corporate Funds Prospectuses dated May 28, 2012,

    each of which has been filed on SEDAR.

12. Due to the different structures of the Funds, the procedures for implementing the Mergers will vary. The specific steps (taking into account the particular features of each Fund) are as follows

    (a) With respect to the Merger of a Terminating Trust Fund into a Continuing Corporate Fund:

        (i) The value of the Terminating Fund's investment portfolio and other assets will be determined at the close of business on the effective date of the merger in accordance with the constating documents of the Terminating Fund and its Continuing Fund.

        (ii) The Continuing Fund will acquire substantially all of the investment portfolio and other assets of the Terminating Fund. In return, the Continuing Fund will issue to the Terminating Fund shares of the Continuing Fund having an aggregate net asset value equal to the value of the assets acquired.

        (iii) The Continuing Fund will not assume the Terminating Fund's liabilities. Instead, the Terminating Fund will retain sufficient assets to satisfy its estimated liabilities, if any, as of the date of the merger.

(iv) The Terminating Fund will declare, pay and automatically reinvest a distribution to its unitholders of net capital gains and income (if any).

(v) Immediately thereafter, the Terminating Fund will redeem all of its outstanding units at their net asset value and pay for them by delivering to its unitholders shares of an equivalent class of the Continuing Fund having an equal aggregate net asset value.

(vi) The Terminating Fund will be wound-up within 30 days following the merger

(b) With respect to the Merger of a Terminating Trust Fund into a Continuing Trust Fund:

(i) The value of the Terminating Trust Fund's investment portfolio and other assets will be determined at the close of business on the effective date of the Merger in accordance with the constating documents of the Terminating Trust Fund.

(ii) The Terminating Trust Fund will transfer substantially all of its assets to its corresponding Continuing Fund. In return, the Terminating Trust Fund will be issued units from its corresponding Continuing Fund having an aggregate net asset value equal to the value of the assets transferred to the Continuing Fund.

(iii) The Continuing Fund will not assume any of its Terminating Trust Fund's liabilities. Instead, the Terminating Trust Fund will retain sufficient assets to satisfy its estimated liabilities, if any, as of the date of the Merger.

(iv) The Terminating Trust Fund and its corresponding Continuing Fund will declare, pay and automatically reinvest a distribution of net capital gains and income (if any).

(v) Immediately thereafter, the Terminating Trust Fund will redeem all of its outstanding units at their net asset value and pay for them by delivering to its unitholders units of an Equivalent Class of its corresponding Continuing Fund (as more specifically described below) having an equal aggregate net asset value.

(vi) The Terminating Trust Fund will be wound-up within 30 days following its Merger.

(c) With respect to the Merger of a Terminating Corporate Fund into a Continuing Corporate Fund:

(i) Each outstanding share of the Terminating Corporate Fund will be exchanged for shares of Equivalent Classes of its corresponding Continuing Fund (as more specifically described below) based on their relative net asset values.

(ii) The assets and liabilities of CI Corporate Class Limited attributed to the Terminating Corporate Fund will be reallocated to its corresponding Continuing Fund.

(iii) As soon as reasonably possible following the Merger, the articles of incorporation of CI Corporate Class Limited will be amended to delete each Terminating Corporate Fund.

13. Although the procedures for implementing the Mergers may vary, the result of each Merger will be that investors in each Terminating Fund will cease to be securityholders in the Terminating Fund and will become securityholders in the corresponding Continuing Fund.

14. In the opinion of the Filer, the Mergers will be beneficial to securityholders of each Fund for the following reasons:

(a) it is expected that each Merger will reduce duplication and redundancy;

(b) in the case of the Mergers involving Lakeview Disciplined Leadership U.S. Equity Fund, CI European Fund, Castlerock Canadian Stock Fund and Castlerock Canadian Value Fund, investors in the Terminating Fund will become investors in the Corporation which will provide such investors with the opportunity to change mutual fund investments while deferring the realization of any taxable capital gains on their investments;

(c) following the Mergers, each Continuing Fund will have more assets, thereby allowing for increased portfolio diversification opportunities and a smaller proportion of assets set aside to fund redemptions; and

(d) each Continuing Fund will benefit from a larger profile in the marketplace.

15. As required by National Instrument 81-107 – *Independent Review Committee for Investment Funds*, CI presented the terms of the Mergers to the independent review committee of the Funds (the "**IRC**") for its review. The IRC determined that the decision of CI to complete the Mergers:

    (a) has been proposed by CI free from any influence by an entity related to CI and without taking into account any consideration relevant to an entity related to CI;

    (b) represents the business judgement of CI uninfluenced by considerations other than the best interest of the Funds;

    (c) is in compliance with CI's written policies and procedures relating to the Mergers; and

    (d) achieves a fair and reasonable result for the Funds.

16. CI is convening a special meeting (each, a "**Meeting**" and, collectively, the "**Meetings**") of the securityholders of each Terminating Fund in order to seek the approval of the securityholders of each Terminating Fund to complete its Merger, as required by subsection 5.1(f) of NI 81-102. The Meetings will be held on or about August 31, 2012.

17. In connection with the Meetings, CI has sent to such securityholders a management information circular, a related form of proxy and the simplified prospectus of its Continuing Fund (collectively, the "**Meeting Materials**") on August 9, 2012. The Meeting Materials were also filed on SEDAR on August 10, 2012. The management information circular contains the following information that CI has deemed to be material so that securityholders of the Terminating Funds may consider this information may consider this information before voting on the Proposed Mergers: (i) the differences between the Terminating Funds and the Continuing Funds; (ii) the tax implications of the Proposed Mergers; (iii) a statement that the securities of the Continuing Fund acquiring by securityholders upon the Proposed Mergers are subject to the same redemption charges to which their securities of the terminating funds were subject prior to the Proposed Merger; and (iv) the fact that securtiyholders can obtain, at no cost, the annual information form, the most recently filed fund facts, the most recent interim and annual financial statements, and the most recent management report of fund performance that have been made pubic by contacting the Manager or by accessing the documents on the Manager's website.

18. If all required approvals for each Merger are obtained, it is proposed that each Merger will occur after the close of business on or about September 7, 2012 (the **Effective Date**). The Filer therefore anticipates that a securityholder of a Terminating Fund will become a securityholder of its corresponding Continuing Fund after the close of business on the Effective Date.

19. Each Terminating Fund will be wound-up as soon as reasonably possible following its Merger.

20. The cost of effecting the Mergers (consisting primarily of proxy solicitation, printing, mailing, legal and regulatory fees) will be borne by the Filer. No sales charge will be payable by any securityholder in connection with the exchange of units of the Terminating Funds into the Continuing Funds.

21. Securityholders of each Terminating Fund will continue to have the right to redeem their securities of the Terminating Fund at any time up to the close of business on the Effective Date. Following each Merger, all optional plans (including pre-authorized purchase programs, automatic withdrawal plans, systematic switch programs and automatic rebalancing services) which were established with respect to the Terminating Fund will be re-established in comparable plans with respect to its Continuing Fund unless investors advise otherwise.

22. With the exception of the Merger set out in the chart below, each Terminating Fund has the same distribution policy as its Continuing Fund.

Terminating Fund	**Continuing Fund**
Castlerock Conservative Portfolio	Portfolio Series Conservative Fund

23. The Filer bears all of the operating expenses of the Funds (other than certain taxes, borrowing costs and certain new governmental fees) in return for fixed annual administration fees.

24. Investors pay a commission to their dealers when purchasing securities of any Fund on a front-end sales charge basis. The amount of the commission is negotiable between the investor and his or her dealer, but is not to exceed certain percentages. In all cases, the maximum front-end sales charge applicable to securities of a Continuing Fund is the same or lower than for the equivalent class of securities of its corresponding Terminating Fund.

25. All Funds have substantially similar arrangements with respect to switch fees.

26. All Funds calculate their net asset values daily at 4:00 p.m. (Toronto time). Net asset values per unit or share are calculated for each class of securities using similar methodologies and currencies. Assets and liabilities generally are valued in the same manner.

27. In the opinion of the Filer, a reasonable person may not consider the investment objectives of the Terminating Funds involved in the Mergers set out in the chart below to be substantially similar to the investment objectives of their respective Continuing Funds and, accordingly, such Mergers may not meet the criteria for pre-approved reorganizations under subsection 5.6(1)(a)(ii) of NI 81-102:

Terminating Fund	**Continuing Fund**
CI Japanese Corporate Class	CI Pacific Corporate Class
CI European Fund	CI International Corporate Class (to be renamed Signature International Corporate Class)
CI European Corporate Class	CI International Corporate Class (to be renamed Signature International Corporate Class)
Signature Mortgage Fund	Signature Short Term Bond Fund

28. In the opinion of the Filer, a reasonable person may not consider the fee structures of the Terminating Funds involved in the Mergers set out in the chart below to be substantially similar to their respective Continuing Funds and, accordingly, such Mergers may not meet the criteria for pre-approved reorganizations under subsection 5.6(1)(a)(ii) of NI 81-102:

Terminating Fund	**Continuing Fund**
Lakeview Disciplined Leadership U.S. Equity Fund Management Fee (Class A): 2.05% Management Fee (Class F): 1.05% Performance Fee Applies: Yes	Cambridge American Equity Corporate Class Management Fee (Class A): 2.00% Management Fee (Class F): 1.00% Performance Fee Applies: No

29. The Mergers set out in the chart below will not be implemented as either a “qualifying exchange” within the meaning of section 132.2 of the *Income Tax Act* (Canada) (the **Tax Act**) or a tax-deferred transaction under section 85(1), 85.1(1), 86(1) or 87(1) of the Tax Act. Consequently, these Mergers do not meet the criteria for pre-approved reorganizations under subsection 5.6(1)(b) of NI 81-102.

Terminating Fund	**Continuing Fund**
Signature Mortgage Fund	Signature Short Term Bond Fund
Castlerock Canadian Bond Fund	Signature Canadian Bond Fund
Castlerock Conservative Portfolio	Portfolio Series Conservative Fund
Lakeview Disciplined Leadership U.S. Equity Fund	Cambridge American Equity Corporate Class
CI European Fund	CI International Corporate Class (to be renamed Signature International Corporate Class)
Castlerock Canadian Stock Fund	Cambridge Canadian Equity Corporate Class
Castlerock Canadian Value Fund	CI Canadian Investment Corporate Class

30. The Filer may rely on an exemption dated November 25, 2004 (the **Prior Exemption**) from the financial statement delivery provision set out in subsection 5.6(1)(f)(ii) of NI 81-102 in respect of mergers of mutual funds managed by the Filer. The Filer has complied with the conditions of the Prior Exemption in respect of the Mergers.

31. In the opinion of the Filer, each Merger satisfies all of the criteria for pre-approved reorganizations and transfers set forth in section 5.6 of NI 81-102, except either the criteria contained in subsection 5.6(1)(a)(ii) of NI 81-102, subsection 5.6(1)(f)(ii) of NI 81-102 or subsection 5.6(1)(b) of NI 81-102.

Decision

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

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

"Raymond Chan"
Manager, Investment Funds Branch
Ontario Securities Commission

2.1.5 Invesco Canada Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from sections 2.3(f) and (h), 2.5(2)(a) and (c) of National Instrument 81-102 Mutual Funds to permit actively managed exchange-traded mutual funds to invest in gold ETFs, silver ETFs, gold/silver ETFs and silver, subject to a limit of 10% exposure in gold and silver, and certain conditions.

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – s. 19.1 of National Instrument 81-102 Mutual Funds – exemption from sections 2.8(1)(d) and (f)(i) NI 81-102 to permit actively managed exchange-traded mutual funds when they open or maintain a long position in a standardized future or forward contract or when they enter into or maintain an interest rate swap position and during the periods when the actively managed exchange-traded mutual funds are entitled to receive payments under the interest rate swap, to use as cover, an option to sell an equivalent quantity of the underlying interest of the standardized future, forward or swap – the relief will enhance returns to investors while still providing adequate safeguards.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.3(f) and (h), 2.5(2)(a) and (c), 2.8(1)(d), 2.8(1)(f)(i), 19.1.

August 3, 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
INVESCO CANADA LTD.
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") for an exemption, pursuant to 19.1 of National Instrument 81-102 *Mutual Funds* ("**NI 81-102**") from:

(a) sections 2.3(f), 2.3(h), 2.5(2)(a) and 2.5(2)(c) of NI 81-102 (the "**Gold/Silver Exemption Sought**") to permit PowerShares Tactical Bond ETF and any future actively-managed exchange-traded funds managed by the Filer that are subject to National Instrument 81-102 – *Mutual Funds* ("**NI 81-102**") other than money market funds as defined in NI 81-102 (together with the PowerShares Tactical Bond ETF, the "**PowerShares ETFs**") to invest up to 10% in the aggregate of each PowerShares ETF's net assets in:

(i) securities of exchange-traded funds ("**ETFs**") that seek to replicate (1) the performance of gold on an unlevered basis; or (2) the value of a specified derivative the underlying interest of which is gold on an unlevered basis ("**Gold ETFs**");

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

(iii) securities of ETFs that seek to replicate (1) the performance of silver on an unlevered basis; or (2) the value of a specified derivative the underlying interest of which is silver on an unlevered basis ("**Silver ETFs**");

(iv) securities of ETFs that seek to replicate (1) the performance of gold and silver on an unlevered basis; or (2) the value of specified derivatives the underlying interest of which are gold and silver on an unlevered basis ("**Gold/Silver ETFs**") and

(b) Sections 2.8(1)(d) and 2.8(1)(f)(i) of NI 81-102 (the "**Derivatives Exemption Sought**") to permit the PowerShares ETFs when they:

(i) open or maintain a long position in a debt-like security that has a component that is a long position in a forward contract or in a standardized future or forward contract; or

(ii) enter into or maintain a swap position and during the periods when the PowerShares ETF is entitled to receive payments under the swap,

to use as cover a right or obligation to sell an equivalent quantity of the underlying interest of the standardized future, forward or swap.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

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

Interpretation

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

Representations

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

The PowerShares ETFs

(a) The PowerShares ETFs are exchange-traded mutual funds established in Ontario for which the Filer is or will be the manager. The investment manager is or will be either the Filer or another entity appointed by the Filer as sub-advisor. The head office of the Filer is located in Toronto, Ontario.

(b) Invesco Advisers, Inc. ("**IAI**") and Invesco PowerShares Capital Management LLC, both affiliates of the Filer, will be the sub-advisors for PowerShares Tactical Bond ETF. IAI determines the allocations among asset classes and makes investment decisions for PowerShares Tactical Bond ETF.

(c) The investment objective and investment strategies of PowerShares Tactical Bond ETF are set out in its preliminary prospectus.

(d) In some cases, hedging of risk is permitted, including currency risks, whether the currency risk relates to income or equity securities or other securities.

(e) Each of the PowerShares ETFs is or will be (i) an open-end mutual fund established under the laws of Ontario; (ii) a reporting issuer under the securities laws of each of the provinces and territories of Canada; (iii) qualified for distribution in all provinces and territories of Canada; and (iv) not in default of securities legislation in any province or territory of Canada.

Gold/Silver Exemption Sought

(f) In connection with the Gold/Silver Exemption Sought each PowerShares ETF that includes, as part of its investment strategy, investments in gold and/or silver, will be permitted in accordance with its investment objectives and investment strategies to invest in Gold ETFs, Silver, Silver ETFs and Gold/Silver ETFs. The Gold ETFs, Silver ETFs and Gold/Silver ETFs are referred to herein collectively as the "**Underlying ETFs**".

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

(h) In the absence of the Gold/Silver Exemption Sought, an investment by the PowerShares ETFs in securities of the Underlying ETFs would be contrary to section 2.5(2)(c) of NI 81-102 as the Underlying ETFs are not reporting issuers in the local jurisdiction.

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

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

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

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

(m) An investment by a PowerShares ETF in the securities of the Underlying ETFs and/or Silver represent the business judgment of responsible persons uninfluenced by considerations other than the best interest of the PowerShares ETF.

(n) Any investment in a PowerShares ETF will be made in compliance with the custodian requirements in Part 6 of NI 81-102.

(o) the prospectus of each PowerShares ETF will disclose under the sections entitled:

(i) “Investment strategies”, the PowerShares ETF’s ability to invest in Silver and in the Underlying ETFs;

(ii) “Risk Factors”, the risks associated with the PowerShares ETF’s exposure to silver and gold;

(p) The silver certificates (“**Permitted Silver Certificates**”) that the PowerShares ETFs invest in will be certificates that represent silver that is:

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

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

(iii) held in Canada;

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

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

Derivatives Exemption Sought

(q) As part of its investment strategies, PowerShares Tactical Bond ETF may use specified derivatives in order to gain synthetic exposure to an issuer or class of issuers or to gain exposure to commodities.

(r) When specified derivatives are used for non-hedging purposes, the PowerShares ETFs will be subject to the cover requirements of NI 81-102.

(s) Sections 2.8(1)(d) and 2.8(1)(f)(i) of NI 81-102 do not permit covering long positions in futures and forwards and long positions in swaps for a period when a fund is entitled to receive payments under the swap, in whole or in part, with a right or obligation to sell an equivalent quantity of the underlying interest of the future, forward or swap. In other words, those sections of NI 81-102 do not permit the use of put options or short future, forward or swap positions to cover long future, forward or swap positions.

(t) Regulatory regimes in other countries recognize the hedging properties of options for all categories of derivatives, including long positions evidenced by standardized futures or forwards or in respect of swaps where a fund is entitled to receive payments from the counterparty, provided they are covered by an amount equal to the difference between the market price of a derivative holding and the strike price of the option that was bought or sold to hedge that derivative position. NI 81-102 effectively imposes the requirement to overcollateralize, since the maximum liability to a fund under the scenario described is equal to the difference between the market value of the long derivative position and the exercise price of the option. Overcollateralization imposes a cost on a mutual fund.

(u) Section 2.8(1)(c) of NI 81-102 permits a mutual fund to write a put option and to cover it by holding a right or obligation to sell an equivalent quantity of the underlying interest of the written put option. This position has similar risks as a long position in a future, forward or swap. Therefore, the Filer submits that the PowerShares ETFs should be permitted to cover a long position in a future, forward or swap with a put option or a short future position.

(v) The Filer has written policies and procedures relating to the use of derivatives by the PowerShares ETFs. The policies and procedures are reviewed annually by personnel in the Legal and Compliance departments. The Chief Compliance Officer of the Filer is responsible for maintaining the policies and procedures, oversight of the derivative strategies used by the PowerShares ETFs and monitoring and assessing compliance with all applicable legislation. The Chief Compliance Officer reports to the board of directors of the Filer on his compliance assessments. Limits and controls on the use of derivatives are part of the Filer's fund compliance regime and include reviews by analysts who ensure that the derivative positions of the PowerShares ETFs are within applicable policies.

(w) The derivative contracts entered into by the Filer or a sub-advisor on behalf of the PowerShares ETFs must be in accordance with the investment objectives and strategies of each of the PowerShares ETFs. The Filer and sub-advisors are also required to adhere to NI 81-102. The Filer sets and reviews the investment policies of the PowerShares ETFs which also allow the trading in derivatives.

(x) Without the Derivatives Exemption Sought, the PowerShares ETFs will not have the flexibility to enhance yield and to manage more effectively its exposure under specified derivatives.

Decision

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

The decision of the principal regulator under the Legislation is as follows.

(a) The Gold/Silver Exemption Sought is granted provided that:

(i) the prospectus of each PowerShares ETF and all subsequent renewals will disclose under the sections entitled:

1. "Investment strategies", the PowerShares ETF's ability to invest in Silver and in the Underlying ETFs;

2. "Risk Factors", the risks associated with the PowerShares ETF's exposure to silver and gold;

3. "Exemptions and Approvals", the nature and terms of the Gold/Silver Exemption Sought;

(ii) the silver certificates that the PowerShares ETFs invest in will be certificates that represent silver that is:

1. available for delivery in Canada, free of charge, to or to the order of the holder of the certificate;

2. of a minimum fineness of 999 parts per 1,000;

3. held in Canada;

4. in the form of either bars or wafers; and

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

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

(iv) each PowerShares ETF does not purchase gold, permitted gold certificates, silver, Permitted Silver Certificates, Underlying ETFs or enter into specified derivatives the underlying interest of which is gold or silver if, immediately after the transaction, more than 10% of the net assets of such PowerShares ETF, taken

at market value at the time of transaction, would consist of gold, permitted gold certificates, silver, Permitted Silver Certificates, Underlying ETFs and underlying market exposure of specified derivatives linked to gold or silver;

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

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

(b) The Derivatives Exemption Sought is granted provided that:

(i) the prospectus of each PowerShares ETF and all subsequent renewals will disclose under the sections entitled "Exemptions and Approvals", the nature and terms of the Derivatives Exemption Sought;

(ii) when each of the PowerShares ETFs enters into or maintains a swap position for periods when the PowerShares ETFs would be entitled to receive fixed payments under the swap, the PowerShares ETFs hold:

1. cash cover in an amount that, together with margin on account for the swap and the market value of the swap, is not less than, on a daily mark-to-market basis, the underlying market exposure of the swap;

2. a right or obligation to enter into an offsetting swap on an equivalent quantity and with an equivalent term and cash cover that, together with margin on account for the position, is not less than the aggregate amount, if any of the obligations of the fund under the swap less the obligation of the PowerShares ETFs under such offsetting swap; or

3. a combination of the positions referred to in subparagraph (1) and (2) that is sufficient, without recourse to the other assets of the PowerShares ETF to enable the PowerShares ETF to satisfy its obligations under the swap;

(iii) when each of the PowerShares ETFs opens or maintains a long position in a debt-like security that has a component that is a long position in a forward contract, or in a standardized future or forward contract, the PowerShares ETF holds:

1. cash cover in an amount that, together with margin on account for the specified derivative and the market value of the specified derivative, is not less than, on a daily mark-to-market basis, the underlying market exposure of the specified derivative;

2. a right or obligation to sell an equivalent quantity of the underlying interest of the future or forward contract, and cash cover that, together with margin on account for the position, is not less than the aggregate amount, if any, by which the market price of the future or forward contract exceeds the strike price of the right or obligation to sell the underlying interest; or

3. a combination on the positions referred to in subparagraph (1) and (2) that is sufficient, without recourse to other assets of the PowerShares ETF to enable the PowerShares ETF to acquire the underlying interest of the future or forward contract;

(iv) the PowerShares ETFs will not (i) purchase a debt-like security that has an option component or an option; or (ii) purchase or write an option to cover any position under section 2.8(1)(b), (c), (d), (e) and (f) of NI 81-102, if immediately after the purchase or writing of such option, more than 10% of the net assets of the PowerShares ETFs, taken at market value at the time of the transaction, would be made up of (A) purchased debt-like securities that have an option component or purchased options, in each case, held by the PowerShares ETF for purposes other than hedging, or (B) options used to cover any positions under section 2.8(1)(b), (c), (d), (e) and (f) of NI 81-102; and

(v) this decision with respect to the Derivatives Exemption Sought will terminate on the coming into force of any securities legislation relating to the use as cover of a right or obligation to sell an equivalent quantity of the underlying interest of the standardized future, forward or swap in compliance with section 2.8 of NI 81-102.

"Darren McKall"
Manager, Investment Funds
Ontario Securities Commission

2.1.6 Trelawney Mining and Exploration Inc. – s. 1(10)(a)(ii)

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.

Applicable Legislative Provisions

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

August 17, 2012

Trelawney Mining and Exploration Inc.
401 Bay Street, Suite 3200, PO Box 153,
Toronto, ON M5H 2Y4

Dear Sirs/Mesdames:

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

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

In this decision, "securityholder" means, for a security, the beneficial owner of the security.

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 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

(b) no securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

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

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

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

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

2.1.7 Trelawney Augen Acquisition Corp. (formerly, Augen Gold Corp.) – s. 1(10)(a)(ii)

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.

Applicable Legislative Provisions

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

August 17, 2012

Trelawney Augen Acquisition Corp.
401 Bay Street, Suite 3200, PO Box 153,
Toronto, ON M5H 2Y4

Dear Sirs/Mesdames:

Re: Trelawney Augen Acquisition Corp. (formerly, Augen Gold Corp.) (the Applicant) – application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the Jurisdictions) that the Applicant is not a reporting issuer

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

In this decision, "securityholder" means, for a security, the beneficial owner of the security.

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 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

(b) no securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

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

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

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

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

2.1.8 Magma Metals Limited – 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).

August 20, 2012

Magma Metals Limited
Level 9, 553 Hay Street
Perth, Australia
6000

Dear Sirs/Mesdames:

Re: Magma Metals Limited (the Applicant) – application for a decision under the securities legislation of Ontario, Alberta, Saskatchewan, Manitoba, New Brunswick, and Nova Scotia (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.

In this decision, "securityholder" means, for a security, the beneficial owner of the security.

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 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

(b) no securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

(c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions of 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

2.2 Orders

2.2.1 Lithium One Inc. – s. 1(6) of the OBCA

Headnote

Filer deemed to have ceased to be offering its securities to the public under the OBCA.

Applicable Legislative Provisions

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 1(6).

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

AND

IN THE MATTER OF
LITHIUM ONE INC.
(the Applicant)

ORDER
(Subsection 1(6) of the OBCA)

UPON the application of the Applicant to the Ontario Securities Commission (the **Commission**) for an order pursuant to subsection 1(6) of the OBCA to be deemed to have ceased to be offering its securities to the public;

AND UPON the Applicant representing to the Commission that:

1. The Applicant is an "offering corporation" as defined in the OBCA, and has an authorized capital consisting of an unlimited number of common shares (**Common Shares**).

2. The head office of Applicant is located at 130 Adelaide Street West, Suite 1010, Toronto, Ontario, M5H 3P5.

3. On July 3, 2012, Galaxy Resources Limited (**Galaxy**), through its wholly-owned Canadian subsidiary Galaxy Lithium One Inc. (**Canco**), acquired all of the issued and outstanding Common Shares of the Applicant through a plan of arrangement under the OBCA (the **Arrangement**).

4. Holders of options and notes of the Applicant also received consideration for such securities and there are therefore no longer options or notes of the Applicant outstanding.

5. As of the date of this decision, all of the outstanding securities of the Applicant are beneficially owned, directly or indirectly, by one sole security holder, Canco, a direct wholly-owned subsidiary of Galaxy.

6. The Common Shares, traded under the symbol "LI", were delisted from the TSX Venture Exchange as of the close of trading on July 5, 2012.

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

10. The Applicant is not a reporting issuer or equivalent in any jurisdiction in Canada.

11. The Applicant has no intention to seek public financing by way of an offering of securities.

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

IT IS HEREBY ORDERED by the Commission pursuant to subsection 1(6) of the OBCA that the Applicant be deemed to have ceased to be offering its securities to the public for the purpose of the OBCA.

Dated: August 7, 2012

"Paulette L. Kennedy"
Commissioner
Ontario Securities Commission

"C. Wesley M. Scott"
Commissioner
Ontario Securities Commission

2.2.2 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, the Commission heard submissions from Staff and counsel for MDDC and Cheong, and the matter was adjourned to August 15, 2012 for a further status update;

AND WHEREAS on August 15, 2012, 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 September 20, 2012, at 10:00 a.m. to provide the panel with a status update.

DATED at Toronto this 15th day of August, 2012.

"Edward P. Kerwin"

2.2.3 Normand Gauthier 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
NORMAND GAUTHIER,
GENTREE ASSET MANAGEMENT INC.,
R.E.A.L. GROUP FUND III (CANADA) LP, AND
CANPRO INCOME FUND I, LP

ORDER
(Section 127)

WHEREAS on March 27, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsection 127(1) and section 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on March 27, 2012 in respect of Normand Gauthier ("Gauthier"), Gentree Asset Management Inc. ("Gentree"), R.E.A.L. Group Fund III (Canada) LP ("RIII") and CanPro Income Fund I, LP ("CanPro") (collectively the "Respondents");

AND WHEREAS the Respondents were served with the Notice of Hearing and Statement of Allegations on March 28, 2012;

AND WHEREAS the Notice of Hearing provided that a hearing would be held at the offices of the Commission on April 27, 2012;

AND WHEREAS at the attendance on April 27, 2012, Staff appeared and Gauthier appeared on behalf of himself and each of the other Respondents, and Gauthier confirmed that he and the other Respondents have retained counsel to represent the Respondents in this proceeding;

AND WHEREAS on April 27, 2012, at the request of Staff and with the agreement of Gauthier, the Commission ordered that a confidential pre-hearing conference take place on June 26, 2012;

AND WHEREAS on June 26, 2012, Staff and Counsel for the Respondents appeared before the Commission for a confidential pre-hearing conference, and at the request of Staff and with the agreement of Counsel for the Respondents, the Commission ordered that a further confidential pre-hearing conference take place on August 16, 2012 or such other date or at such other time as set by the Office of the Secretary and agreed to by the parties;

AND WHEREAS Staff and Counsel for the Respondents have agreed to reschedule the confidential pre-hearing conference to September 10, 2012 at 9:00 a.m., or such other date or at such other time as set by the Office of the Secretary and agreed to by the parties;

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 shall take place on September 10, 2012 at 9:00 a.m or such other date or at such other time as set by the Office of the Secretary and agreed to by the parties.

DATED at Toronto this 15th day of August, 2012.

"Edward P. Kerwin"

2.2.4 Shaun Gerard McErlean and Securus Capital Inc. – 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
SHAUN GERARD MCERLEAN AND
SECURUS CAPITAL INC.

ORDER
(Sections 127 and 127.1)

WHEREAS on December 8, 2010, the Ontario Securities Commission (the "Commission") issued an Amended Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, accompanied by a Statement of Allegations dated December 8, 2010 filed by staff of the Commission ("Staff") in respect of Shaun Gerard McErlean and Securus Capital Inc.;

AND WHEREAS a hearing on the merits in this matter was held before the Commission on November 14, 15, 16, 17, 21, 23 and 24, 2011, January 12, 2012, March 26, 28 and 30, 2012, April 2, 3, 5, 11 and 12, 2012 and June 18, 2012;

AND WHEREAS, following the hearing on the merits, the Commission issued its Reasons and Decision with respect to the merits on July 19, 2012;

AND WHEREAS, on July 19, 2012, the Commission ordered that Staff and Shaun Gerard McErlean attend before the Commission on August 13, 2012 for the purpose of scheduling a hearing with respect to sanctions and costs;

AND WHEREAS, on August 13, 2012, Staff and Shaun Gerard McErlean attended before the Commission to schedule a hearing with respect sanctions and costs;

IT IS ORDERED that the sanctions and costs hearing shall proceed on September 21, 2012 at 10:00 a.m.

Dated at Toronto this 13th day of August, 2012.

"Vern Krishna"

"James D. Carnwath"

2.2.5 Firestar Capital Management Corp. et al. – ss. 127(7), 127(8)

FOR IMMEDIATE RELEASE
August 17, 2012

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

AND

IN THE MATTER OF
FIRESTAR CAPITAL MANAGEMENT CORP.,
KAMPOSSE FINANCIAL CORP.,
FIRESTAR INVESTMENT MANAGEMENT GROUP,
MICHAEL CIAVARELLA AND MICHAEL MITTON

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

WHEREAS on December 10, 2004, 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 to consider whether it is in the public interest to extend the Temporary Orders made on December 10, 2004 ordering that trading in shares of Pender International Inc. by Firestar Capital Management Corp. ("Firestar Capital"), Kamposse Financial Corp. ("Kamposse"), Firestar Investment Management Group ("Firestar Investment"), Michael Mitton ("Mitton"), and Michael Ciavarella ("Ciaverella") (collectively, the "Respondents") cease until further order by the Commission;

AND WHEREAS on December 17, 2004, the Commission ordered that the hearing to consider whether to extend the Temporary Orders should be adjourned until February 4, 2005 and the Temporary Orders continued until that date;

AND WHEREAS on December 17, 2004, the Commission ordered that the Temporary Order against Michael Mitton should also be expanded such that Michael Mitton shall not trade in any securities in Ontario until the hearing on February 4, 2005;

AND WHEREAS a Notice of Hearing pursuant to sections 127 and 127.1 of the Act was issued on December 21, 2004 and a Statement of Allegations in this matter was filed on by Staff of the Commission ("Staff") issued on December 21, 2004;

AND WHEREAS on February 2, 2005, the hearing to consider whether to continue the Temporary Orders was adjourned until May 26, 2005 and the Temporary Orders were continued until May 26, 2005;

AND WHEREAS on March 9, 2005, the hearing to consider whether to continue the Temporary Orders was adjourned until June 29 and 30, 2005 and the Temporary Orders were continued until June 30, 2005;

AND WHEREAS on June 29, 2005, the hearing to consider whether to continue the Temporary Orders was adjourned until November 23 and 24, 2005 and the Temporary Orders were continued until November 24, 2005;

AND WHEREAS on November 21, 2005, the hearing to consider whether to continue the Temporary Orders was adjourned until January 30 and 31, 2006 and the Temporary Orders were continued until January 31, 2006;

AND WHEREAS on January 30, 2006, the hearing to consider whether to continue the Temporary Orders was adjourned until July 31, 2006 and the Temporary Orders were continued until July 31, 2006;

AND WHEREAS on July 31, 2006, the hearing to consider whether to continue the Temporary Orders was adjourned until October 12, 2006 and the Temporary Orders were continued until October 12, 2006;

AND WHEREAS Ciavarella and Mitton were charged on September 26, 2006 under the Criminal Code with offences of fraud, conspiracy to commit fraud, laundering the proceeds of crime, possession of proceeds of crime and extortion for acts related to this matter;

AND WHEREAS on October 12, 2006, the hearing to consider whether to continue the Temporary Orders was adjourned until October 12, 2007 and the Temporary Orders were continued until October 12, 2007;

AND WHEREAS Staff advised that on March 22, 2007, Mitton was convicted of numerous charges under the Criminal Code and sentenced to a term of imprisonment of seven years;

AND WHEREAS on October 12, 2007, the hearing to consider whether to continue the Temporary Orders was adjourned until March 31, 2008 and the Temporary Orders were continued until March 31, 2008;

AND WHEREAS on March 31, 2008, the hearing to consider whether to continue the Temporary Orders was adjourned until June 2, 2008 and the Temporary Orders were continued until June 2, 2008;

AND WHEREAS on June 2, 2008, the hearing to consider whether to continue the Temporary Orders was adjourned until December 1, 2008 and the Temporary Orders were continued until December 1, 2008;

AND WHEREAS on December 1, 2008, the hearing to consider whether to continue the Temporary Orders was adjourned until January 11, 2010 and the Temporary Orders were continued until January 11, 2010;

AND WHEREAS on January 11, 2010, the hearing to consider whether to continue the Temporary Orders was adjourned until March 7, 2011 and the Temporary Orders were continued until March 8, 2011;

AND WHEREAS on March 7, 2011, the hearing to consider whether to continue the Temporary Orders was adjourned until April 26, 2011 and the Temporary Orders were continued until April 27, 2011;

AND WHEREAS on April 26, 2011, the hearing to consider whether to continue the Temporary Orders was adjourned until May 31, 2011 and the Temporary Orders were continued until June 1, 2011;

AND WHEREAS on May 17, 2011, a settlement agreement in this matter between Staff and Ciavarella was approved by the Commission;

AND WHEREAS Staff advised that on May 18, 2011, the Criminal Code charges against Ciavarella before the Superior Court of Justice (Ontario) were stayed;

AND WHEREAS on May 31, 2011, Staff appeared before the Commission and no one appeared for any of the remaining Respondents;

AND WHEREAS on May 31, 2011, the Temporary Orders were continued against the remaining Respondents until July 28, 2011 and the hearing to consider whether to continue the Temporary Orders was adjourned until July 27, 2011;

AND WHEREAS on July 27, 2011, Staff appeared before the Commission and no one appeared for any of the remaining Respondents;

AND WHEREAS on July 27, 2011 Staff requested that the hearing be adjourned for one month for the purpose of exploring settlement with certain Respondents;

AND WHEREAS on July 27, 2011, the Commission ordered that the Temporary Orders in place as against Firestar Capital, Kamposse, Firestar Investment, and Mitton be further continued until August 30, 2011 and the hearing to consider whether to continue the Temporary Orders be adjourned to August 29, 2011;

AND WHEREAS on August 29, 2011, Staff and counsel for Firestar Capital and Firestar Investment appeared before the Commission and no one appeared on behalf of the other remaining Respondents;

AND WHEREAS the Commission was satisfied that Staff took reasonable efforts to serve the remaining Respondents with notice of the August 29, 2011 hearing;

AND WHEREAS on August 29, 2011, counsel for Firestar Capital and Firestar Investment advised the Panel that he had only recently been retained and requested additional time to consider his client's position and Staff did not oppose a short adjournment;

AND WHEREAS on August 29, 2011, the Commission ordered that the Temporary Orders in place as against Firestar Capital, Kamposse, Firestar Investment and Mitton be further continued until October 4, 2011 and

the hearing to consider whether to continue the Temporary Orders be adjourned to October 3, 2011;

AND WHEREAS on October 3, 2011, Staff and counsel for Firestar Capital and Firestar Investment appeared before the Commission and no one appeared on behalf of the other remaining Respondents;

AND WHEREAS the Commission was satisfied that Staff took reasonable efforts to serve the remaining Respondents with notice of the October 3, 2011 hearing;

AND WHEREAS on October 3, 2011, Staff requested that the hearing be adjourned to November 23, 2011, for the purpose of continuing to explore settlement with certain Respondents;

AND WHEREAS on October 3, 2011, the Commission ordered that the Temporary Orders in place as against Firestar Capital, Kamposse, Firestar Investment and Mitton be further continued until November 24, 2011, and the hearing to consider whether to continue the Temporary Orders be adjourned to November 23, 2011;

AND WHEREAS on November 23, 2011, Staff and counsel for Firestar Capital and Firestar Investment appeared before the Commission and no one appeared on behalf of the remaining Respondents;

AND WHEREAS the Commission was satisfied that Staff took reasonable efforts to serve the remaining Respondents with notice of the November 23, 2011 hearing;

AND WHEREAS on November 23, 2011, the Commission ordered that the Temporary Orders in place as against Firestar Capital, Kamposse, Firestar Investment and Mitton be further continued until January 31, 2012, and the hearing to consider whether to continue the Temporary Orders be adjourned to January 30, 2012;

AND WHEREAS on December 9, 2011, a settlement agreement between Staff and Mitton was approved by the Commission;

AND WHEREAS on January 30, 2012, Staff appeared before the Commission and no one appeared on behalf of the remaining Respondents;

AND WHEREAS the Commission was satisfied that Staff took reasonable efforts to serve the remaining Respondents with notice of the January 30, 2012 hearing;

AND WHEREAS on January 30, 2012, the Commission ordered that that the hearing be adjourned to March 29, 2012 at 10:00 a.m. for the purposes of a pre-hearing conference and that the Temporary Orders in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued until March 30, 2012;

AND WHEREAS on March 29, 2012, Staff and counsel to Firestar Capital and Firestar Investment appeared and commenced the pre-hearing conference and no one appeared on behalf of Kamposse;

AND WHEREAS on March 29, 2012, the Commission ordered that that the hearing be adjourned to June 20, 2012 at 9:00 a.m. for the purposes of continuing the confidential pre-hearing conference and that the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued until June 21, 2012;

AND WHEREAS on June 20, 2012, Staff and counsel to Firestar Capital and Firestar Investment appeared and continued the pre-hearing conference, but no one appeared on behalf of Kamposse;

AND WHEREAS on June 20, 2012, Staff requested that the Temporary Orders as against Firestar Capital, Kamposse, and Firestar Investment be extended, which was opposed by counsel to Firestar Capital and Firestar Investment;

AND WHEREAS on June 20, 2012, the Commission ordered that that the hearing be adjourned to August 15, 2012 for the purpose of continuing the confidential pre-hearing conference and that the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued until August 16, 2012;

AND WHEREAS on August 15, 2012, Staff and counsel to Firestar Capital and Firestar Investment appeared and continued the pre-hearing conference, but no one appeared on behalf of Kamposse;

AND WHEREAS on August 15, 2012, Staff requested that the Temporary Orders as against Firestar Capital, Kamposse, and Firestar Investment be extended, which was opposed by counsel to Firestar Capital and Firestar Investment;

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

IT IS ORDERED that the hearing be adjourned to October 18, 2012 at 2:00 p.m., or such other date and time as agreed to by the parties and confirmed by the Office of the Secretary, for the purpose of continuing the confidential pre-hearing conference;

IT IS FURTHER ORDERED that the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued until October 22, 2012, or until further order of the Commission.

DATED at Toronto this 15th day of August, 2012.

"Edward P. Kerwin"

2.2.6 Colby Cooper Capital 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
COLBY COOPER CAPITAL INC.
COLBY COOPER INC.,
PAC WEST MINERALS LIMITED
JOHN DOUGLAS LEE MASON

ORDER
(Section 127 of the Act)

WHEREAS on March 27, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 37, 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on March 27, 2012 in respect of Colby Cooper Capital Inc. ("CCCI"), Colby Cooper Inc. ("CCI"), Pac West Minerals Limited ("Pac West") and John Douglas Lee Mason ("Mason") (collectively, the "Respondents");

AND WHEREAS the Respondents were served with the Notice of Hearing and Statement of Allegations on March 28, 2012;

AND WHEREAS at the first attendance hearing on April 23, 2012, Staff and counsel for CCCI and Mason appeared, and counsel for CCCI and Mason advised the Commission that it had instructions to also appear on behalf of CCI and Pac West for that attendance;

AND WHEREAS on April 23, 2012, Staff requested that a confidential pre-hearing conference be scheduled, and counsel for the Respondents agreed, and the Commission ordered that a confidential pre-hearing conference take place on June 26, 2012;

AND WHEREAS on June 26, 2012, Staff and counsel for the Respondents appeared before the Commission, and at the request of Staff and with the agreement of counsel for the Respondents, the Commission ordered that a further confidential pre-hearing conference take place on August 16, 2012;

AND WHEREAS on August 16, 2012, Staff and counsel for the Respondents appeared before the Commission, and Staff requested that a further confidential pre-hearing conference be scheduled, and counsel for the Respondents agreed;

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 shall take place on October 12, 2012 at 10:00 a.m. or on such other date or at such other time as set by the Office of the Secretary and agreed to by the parties.

DATED at Toronto this 16th day of August, 2012.

"Edward P. Kerwin"

2.2.7 Alexander Christ Doulis et al. – s. 127 of the Act and OSC Rules of Procedure

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

AND

IN THE MATTER OF
ALEXANDER CHRIST DOULIS
(aka ALEXANDER CHRISTOS DOULIS,
aka ALEXANDROS CHRISTODOULIDIS)
and LIBERTY CONSULTING LTD.

ORDER
(Section 127 of the Securities Act;
Ontario Securities Commission Rules of Procedure
(2010), 33 O.S.C.B. 8017)

WHEREAS on January 14, 2011, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing, returnable on March 10, 2011, in relation to a Statement of Allegations brought by Staff of the Commission ("**Staff**") with respect to Alexander Christ Doulis (also known as Alexander Christos Doulis, also known as Alexandros Christodoulidis) ("**Doulis**") and Liberty Consulting Ltd. ("**Liberty**");

AND WHEREAS on March 10, 2011, the Commission heard an application by Staff for a temporary order, pursuant to section 127 of the Act, and the Commission reserved its decision;

AND WHEREAS on September 9, 2011, the Commission ordered (the "**Temporary Order**") that:

(1) Pursuant to paragraph 2 of subsection 127(1) of the Act and subsection 127(2) of the Act, Doulis and Liberty shall cease trading in any securities, except for the benefit of Doulis personally or that of his spouse, Sally Doulis;

(2) Pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Doulis and Liberty; and

(3) This Order shall take effect immediately and remain in effect until the completion of the Merits Hearing or until further order of the Commission.

AND WHEREAS on April 12, 2012, at a status update hearing, the Commission ordered that this matter should return before the Commission on May 29, 2012, at 10:00 a.m. for a Pre-Hearing Conference;

AND WHEREAS on May 29, 2012, the Pre-Hearing Conference was adjourned to June 12, 2012;

AND WHEREAS on June 12, 2012, on the consent of Staff and counsel for Doulis, the Pre-Hearing Conference was adjourned to June 26, 2012, at 2:00 p.m.;

AND WHEREAS on June 26, 2012, a Pre-Hearing Conference was held, and the Commission heard submissions from Staff and from counsel for Doulis;

AND WHEREAS Liberty did not appear;

AND WHEREAS on June 26, 2012, on the consent of Staff and counsel for Doulis, the hearing on the merits ("**Merits Hearing**") was scheduled for February 4, 5, 6, 7, 8, 11 and 13, 2013, and the Pre-Hearing Conference was adjourned to be continued on August 17, 2012;

AND WHEREAS on August 17, 2012, a Pre-Hearing Conference was held, and the Commission heard submissions from Staff and from counsel for Doulis;

AND WHEREAS Liberty did not appear;

AND WHEREAS Staff and counsel for Doulis agreed that the Pre-Hearing Conference should be adjourned and continued on September 18, 2012, at 4:00 p.m.;

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

IT IS HEREBY ORDERED THAT the Pre-Hearing Conference is adjourned and shall continue, pursuant to Rule 6 of the Commission's *Rules of Procedure*, on September 18, 2012, at 4:00 p.m., or such other date and time as is specified by the Secretary's Office and agreed to by the parties.

DATED at Toronto this 17th day of August, 2012.

"Christopher Portner"

2.2.8 Manulife Asset Management Limited et al. – s. 80 of the CFA

Headnote

Section 80 of the Commodity Futures Act (Ontario) – Relief from the adviser registration requirements of subsection 22(1)(b) of the CFA granted to sub-advisers not ordinarily resident in Ontario in respect of advice regarding trades in commodity futures contracts and commodity futures options, subject to certain terms and conditions – Relief mirrors exemption available in section 7.3 of OSC Rule 35-502 Non-Resident Advisers made under the Securities Act (Ontario).

Applicable Legislative Provisions

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 22(1)(b), 80.
Securities Act, R.S.O. 1990, c.S.5, as am.
Rule 35-502 Non-Resident Advisers.

August 14, 2012

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, CHAPTER C. 20, AS AMENDED
(the CFA)

AND

IN THE MATTER OF
MANULIFE ASSET MANAGEMENT LIMITED AND
MANULIFE ASSET MANAGEMENT (US) LLC AND
MANULIFE ASSET MANAGEMENT
(HONG KONG) LIMITED

ORDER
(Section 80 of the CFA)

UPON the application (the **Application**) of Manulife Asset Management Limited (the **Principal Adviser**) and Manulife Asset Management (US) LLC and Manulife Asset Management (Hong Kong) Limited (each, a **Sub-Adviser** and together, the **Sub-Advisers**) to the Ontario Securities Commission (the **Commission**) for an order:

(a) pursuant to subsection 78(1) of the CFA, revoking the exemption order granted by the Commission to Manulife Asset Management (US) LLC (formerly MFC Global Investment Management (U.S.), LLC), on November 23, 2009; and

(b) pursuant to section 80 of the CFA, that each Sub-Adviser, and any individuals engaging in, or holding themselves out as engaging in, the business of advising others when acting on behalf of the Sub-Adviser in respect of the Sub-Advisory Services (as defined below) be exempt, for a period of five years, from the adviser registration requirements of paragraph 22(1)(b) of the CFA when acting as a sub-adviser to the Principal Adviser in respect of the Clients (as defined below) in respect of commodity futures contracts and commodity futures options traded on commodity futures exchanges (collectively, the **Contracts**) and cleared through clearing corporations (as defined below);

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

AND UPON the Principal Adviser and the Sub-Advisers having represented to the Commission that:

Principal Adviser

1. The Principal Adviser is a corporation organized under the laws of Ontario with its head office located in Toronto, Ontario.

2. The Principal Adviser is registered under the *Securities Act* (Ontario) (the **OSA**) as an investment fund manager, as an adviser in the category of portfolio manager and as a dealer in the categories of mutual fund dealer and exempt market dealer. The Principal Adviser is also registered under the CFA as an adviser in the category of commodity trading manager.

3. To the best of the knowledge of the Principal Adviser, the Principal Adviser is not in default of securities legislation of Ontario.

Sub-Advisers

Manulife Asset Management (US) LLC

4. Manulife Asset Management (US) LLC (**MAM US**) is a limited liability company existing under the laws of the State of Delaware, United States with its head office located in Boston, Massachusetts.

5. MAM US is currently registered as an investment adviser with the U.S. Securities and Exchange Commission and is exempted from registration as a commodity trading adviser and commodity pool operator with the U.S. Commodity Futures Trading Commission.

Manulife Asset Management (Hong Kong) Limited

6. Manulife Asset Management (Hong Kong) Limited (**MAM HK**) is a company incorporated under the laws of Hong Kong with its head office located in Hong Kong.

7. MAM HK is currently licensed with the Securities and Futures Commission in Hong Kong to conduct various regulated activities in Hong Kong including advising in securities and futures contracts, dealing in securities, and asset management activities (managing portfolios of securities, including investment trading in futures contracts).

8. Neither of the Sub-Advisers is a resident of any province or territory of Canada.

9. Neither of the Sub-Advisers is registered in any capacity under the CFA or the OSA.

10. The Sub-Advisers and the Principal Adviser are affiliates, and are, respectively, direct and indirect subsidiaries of Manulife Financial Corporation.

Clients

11. The Principal Adviser is the investment manager of and/or provides discretionary portfolio management services in Ontario to (i) investment funds, the securities of which are qualified by prospectus for distribution to the public in Ontario and the other provinces and territories of Canada (the **Investment Funds**); (ii) pooled funds, the securities of which are sold on a private placement basis in Ontario and certain other provinces and territories of Canada pursuant to prospectus exemptions contained in National Instrument 45-106 *Prospectus and Registration Exemptions* (the Pooled Funds); (iii) managed accounts of clients who have entered into investment management agreements with the Principal Adviser (the **Managed Accounts**); and (iv) other Investment Funds, Pooled Funds and Managed Accounts that may be established in the future in respect of which the Principal Adviser engages a Sub-Adviser to provide portfolio advisory services (the **Future Clients**) (each of the Investment Funds, Pooled Funds, Managed Accounts and Future Clients being referred to individually as a **Client** and collectively as the **Clients**).

12. Certain of the Clients may, as part of their investment program, invest in Contracts.

13. The Principal Adviser acts, or will act, as a commodity trading manager in respect of such Clients.

Sub-Advisory Services

14. Each Sub-Adviser is or will be registered or licensed, or is or will be entitled to rely on appropriate exemptions from such registrations or licenses, to provide advice with respect to securities, futures contracts and futures options to the Principal Adviser and/or the Clients pursuant to the applicable legislation of its principal jurisdiction.

15. In connection with the Principal Adviser acting as an adviser to Clients in respect of the purchase or sale of Contracts, the Principal Adviser has retained or will retain, pursuant to a written agreement made between the Principal Adviser and each Sub-Adviser, each Sub-Adviser to act as a sub-adviser to the Principal Adviser by exercising discretionary authority on behalf of the Principal Adviser, in respect of all or a portion of the assets of the investment portfolio of the respective Client, which may include discretionary authority to buy or sell Contracts for the Client (the **Sub-Advisory Services**), provided that:

    (a) in each case, the Contracts must be cleared through an “acceptable clearing corporation” (as defined in National Instrument 81-102 *Mutual Funds*, or any successor thereto (**NI 81-102**)) or a clearing corporation that clears and settles transactions made on a futures exchange listed in Appendix A of NI 81-102; and

(b) such investments are consistent with the investment objectives and strategies of the applicable Client.

16. The written agreement between the Principal Adviser and each Sub-Adviser sets out or will set out the obligations and duties of each party in connection with the Sub-Advisory Services and permits or will permit the Principal Adviser to exercise the degree of supervision and control it is required to exercise over the Sub-Adviser in respect of the Sub-Advisory Services.

17. The relationship among the Principal Adviser, each Sub-Adviser and any Client satisfies, or will satisfy, the requirements of section 7.3 of Ontario Securities Commission Rule 35-502 *Non-Resident Advisers* (**Rule 35-502**).

18. Each Sub-Adviser will only provide the Sub-Advisory Services as long as the Principal Adviser is, and remains, registered under the CFA as an adviser in the category of commodity trading manager.

19. The Principal Adviser will deliver to the Clients all applicable reports and statements under applicable securities and derivatives legislation.

20. As would be required under section 7.3 of OSC Rule 35-502:

(a) the obligations and duties of each Sub-Adviser in connection with the Sub-Advisory Services will be set out in a written agreement with the Principal Adviser;

(b) the Principal Adviser will contractually agree with each Client to be responsible for any loss that arises out of the failure of the Sub-Adviser:

(i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Principal Adviser and the Client; or

(ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances (this obligation, together with the obligation in subparagraph (i), the **Assumed Obligations**) and

(c) the Principal Adviser cannot be relieved by any of the Clients from its responsibility for any loss that arises out of the failure of the Sub-Advisers to meet the Assumed Obligations.

21. The prospectus or similar offering document for each Client for which the Principal Adviser engages the Sub-Adviser to provide the Sub-Advisory Services includes or will include the following disclosure:

(a) a statement that the Principal Adviser is responsible for any loss that arises out of the failure of the Sub-Adviser to meet the Assumed Obligations; and

(b) a statement that there may be difficulty in enforcing any legal rights against the Sub-Adviser (or any individuals engaging in, or holding themselves out as engaging in, the business of advising others when acting on behalf of the Sub-Adviser in respect of the Sub-Advisory Services) because the Sub-Adviser is resident outside of Canada and all or substantially all of its assets are situated outside of Canada.

22. Prior to purchasing any securities of one or more of the Investment Funds or Pooled Funds directly from the Principal Adviser or entering into an investment management agreement with the Principal Adviser for a managed account, all investors of the Client who are Ontario residents will receive written disclosure prior to the purchasing of any Contracts for such Client that includes:

(a) a statement that the Principal Adviser is responsible for any loss that arises out of the failure of the Sub-Adviser to meet the Assumed Obligations; and

(b) a statement that there may be difficulty in enforcing any legal rights against the Sub-Adviser (or any individuals engaging in, or holding themselves out as engaging in, the business of advising others when acting on behalf of the Sub-Adviser in respect of the Sub-Advisory Services) because the Sub-Adviser is resident outside of Canada and all or substantially all of its assets are situated outside of Canada.

23. Paragraph 22(1)(b) of the CFA prohibits a person or company from acting as an adviser unless the person or company is registered as an adviser under the CFA, or is registered as a representative or as a partner or an officer of a registered adviser and is acting on behalf of a registered adviser. Under the CFA, “adviser” means a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to trading in “contracts”, and “contracts” means commodity futures contracts and commodity futures options.

24. By providing the Sub-Advisory Services, each Sub-Adviser and any individuals acting on behalf of the Sub-Adviser in respect of the Sub-Advisory Services will be engaging in, or holding himself, herself or itself out as engaging in, the business of advising others in respect of Contracts and, in the absence of being granted the requested relief, would be required to register as an adviser, or a representative of an adviser, as the case may be, under the CFA.

25. There is presently no rule under the CFA that provides an exemption from the adviser registration requirement in paragraph 22(1)(b) of the CFA for a person or company acting as an adviser in respect of commodity futures contracts and commodity futures options that is similar to the exemption from the adviser registration requirement in section 25(3) of the OSA for acting as an adviser (as defined in the OSA) in respect of securities that is provided under section 7.3 of Rule 35-502.

26. On November 23, 2009, the Commission granted MAM US (formerly MFC Global Investment Management (U.S.), LLC) an exemption from the adviser registration requirements of the CFA when acting as an adviser for the Principal Adviser (formerly Elliott & Page Limited) (the **Previous Order**). The Previous Order is scheduled to expire on November 23, 2012. MAM HK has not sought equivalent relief previously.

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

IT IS ORDERED, pursuant to section 80 of the CFA, that each Sub-Adviser and any individuals engaging in, or holding themselves out as engaging in, the business of advising others when acting on behalf of the Sub-Adviser in respect of the Sub-Advisory Services are exempt, for a period of five years, from the adviser registration requirements of paragraph 22(1)(b) of the CFA when acting as a sub-adviser to the Principal Adviser in respect of the Clients in respect of Contracts, provided that at the relevant time that such activities are engaged in:

(a) the Principal Adviser is registered under the CFA as an adviser in the category of commodity trading manager;

(b) the Sub-Adviser and any individuals engaging in, or holding themselves out as engaging in, the business of advising others when acting on behalf of the Sub-Adviser in respect of the Sub-Advisory Services are appropriately registered or licensed, or are entitled to rely on appropriate exemptions from such registrations or licences, to provide advice with respect to securities, futures contracts and futures options for the particular Client pursuant to the application legislation of their principal jurisdiction;

(c) the obligations and duties of the Sub-Adviser are set out in a written agreement with the Principal Adviser;

(d) the Principal Adviser has contractually agreed with the Clients to be responsible for any loss that arises out of any failure of the Sub-Adviser to meet the Assumed Obligations;

(e) the Principal Adviser cannot be relieved by any of the Clients from its responsibility for any loss that arises out of the failure of the Sub-Adviser to meet the Assumed Obligations;

(f) the prospectus or similar offering document for each Client for which the Principal Adviser engages the Sub-Adviser to provide the Sub-Advisory Services will include the following disclosure:

  (i) a statement that the Principal Adviser is responsible for any loss that arises out of the failure of the Sub-Adviser to meet the Assumed Obligations; and

  (ii) a statement that there may be difficulty in enforcing any legal rights against the respective Sub-Adviser (or any individuals engaging in, or holding themselves out as engaging in, the business of advising others when acting on behalf of the Sub-Adviser in respect of the Sub-Advisory Services) because the Sub-Adviser is resident outside of Canada and all or substantially all of its assets are situated outside of Canada; and

(g) prior to purchasing any securities of one or more of the Investment Funds or Pooled Funds directly from the Principal Adviser or entering into an investment management agreement with the Principal Adviser for a managed account, all investors of the Client who are Ontario residents will receive written disclosure prior to the purchasing of any Contracts for such Client that includes:

  (i) a statement that the Principal Adviser is responsible for any loss that arises out of the failure of the Sub-Adviser to meet the Assumed Obligations; and

  (ii) a statement that there may be difficulty in enforcing any legal rights against the Sub-Adviser (or any individuals engaging in, or holding themselves out as engaging in, the business of advising others

when acting on behalf of the Sub-Adviser in respect of the Sub-Advisory Services) because the Sub-Adviser is resident outside of Canada and all or substantially all of its assets are situated outside of Canada.

August 14, 2012

"Christopher Portner"
Commissioner
Ontario Securities Commission

"James Turner"
Vice-Chair
Ontario Securities Commission

2.2.9 Mega-C Power Corporation 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
MEGA-C POWER CORPORATION, RENE PARDO,
GARY USLING, LEWIS TAYLOR SR.,
LEWIS TAYLOR JR., JARED TAYLOR,
COLIN TAYLOR AND 1248136 ONTARIO LIMITED

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN STAFF OF
THE ONTARIO SECURITIES COMMISSION
AND RENE PARDO

ORDER
(Section 127)

WHEREAS on November 16, 2005, the Commission issued a Notice of Hearing accompanied by Staff's Statement of Allegations in relation to the Respondents and on February 6, 2007, the Commission issued an Amended Notice of Hearing pursuant to sections 127 and 127.1(1) and (2) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"),

AND WHEREAS Rene Pardo ("Pardo") entered into a settlement agreement dated August 15, 2012, (the "Settlement Agreement") in which he agreed to a settlement of the proceeding commenced by the Notice of Hearing dated November 16, 2005, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and Staff's Statement of Allegations, and upon hearing submissions from counsel for Staff and the Respondent;

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

IT IS ORDERED THAT:

1. The Settlement Agreement between Rene Pardo and Staff of the Commission is approved;

2. Pursuant to clause 2 of subsection 127(1) of the Act, Pardo shall cease trading in securities for a period of two years from the date of this Order of the Commission approving the Settlement Agreement, subject to the following exceptions:

   (i) Pardo shall be permitted to trade in securities through a registrant in 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 in which he has sole legal and beneficial ownership and interest, 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. Pardo does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question.

   (ii) Pardo shall be permitted to trade in the securities of Brainwave Research Corporation and Brainwave Products Inc. (the "Brainwave Entities"). In particular, he is permitted to sell his shares in those companies if and when either or both of them are acquired. He is also permitted to attend and participate in meetings and presentations, and perform all necessary functions ancillary to any sale or placement of securities in either of the Brainwave Entities: and

(iii) All of Pardo's trading in the securities of Brainwave shall be conducted in compliance with Ontario securities law, and with the advice and assistance of an Ontario law firm with the relevant expertise in the area of securities law and laws governing the distribution of securities;

3. Pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law will not apply to Pardo for a period of two years from the date of this Order of the Commission approving the Settlement Agreement, except with respect to trading of the securities of the Brainwave Entities as described in paragraph 2 above;

4. Pursuant to clause 6 of subsection 127(1) of the Act, Pardo is reprimanded;

5. Pursuant to clause 7 of subsection 127(1) of the Act, Pardo shall resign as director or officer of any issuer on the date of this Order of the Commission approving the Settlement Agreement, except for 503124 Ontario Ltd., the Brainwave Entities and Intelligent Creatures Inc. and its affiliates on the condition that he provides a copy of the Order approving the Settlement Agreement to the Board of Directors of these companies and to their legal counsel within 10 days of the date of this Order approving the Settlement Agreement; and

6. Pursuant to clause 8 of subsection 127(1) of the Act, Pardo shall, except as set out in paragraph 5 above, be prohibited from becoming or acting as director or officer of any issuer for a period of two years from the date of this Order approving the Settlement Agreement, except that he will be permitted to be or act as a director and/or officer of 503124 Ontario Ltd., the Brainwave Entities and Intelligent Creatures Inc. and its affiliates.

DATED at Toronto this 17th day of August, 2012.

"Edward P. Kerwin"

2.2.10 New Found Freedom Financial et al.

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

AND

IN THE MATTER OF
NEW FOUND FREEDOM FINANCIAL,
RON DEONARINE SINGH, WAYNE GERARD MARTINEZ, PAULINE LEVY, DAVID WHIDDEN, PAUL SWABY AND ZOMPAS CONSULTING

ORDER

WHEREAS on November 2, 2011, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on November 1, 2011 with respect to New Found Freedom Financial ("NFF"), Ron Deonarine Singh ("Singh"), Wayne Gerard Martinez ("Martinez"), Pauline Levy ("Levy"), David Whidden ("Whidden"), Paul Swaby ("Swaby") and Zompas Consulting ("Zompas");

AND WHEREAS the Notice of Hearing set a hearing in this matter for November 24, 2011;

AND WHEREAS the Commission ordered on November 24, 2011 that the hearing of this matter be adjourned to January 19, 2012 for a confidential pre-hearing conference;

AND WHEREAS the Commission ordered on January 19, 2012 that the hearing on the merits in this matter shall commence on September 24, 2012 and continue until October 19, 2012, with the exception of September 25 and October 9, 2012;

AND WHEREAS the Commission further ordered on January 19, 2012 that the hearing of this matter be adjourned to March 26, 2012 at 10:00 a.m. for a continued pre-hearing conference;

AND WHEREAS the Commission ordered on March 26, 2012 that the hearing of this matter be adjourned to August 20, 2012 at 10:00 a.m. for a continued pre-hearing conference;

AND WHEREAS the Commission held a pre-hearing conference on August 20, 2012;

AND WHEREAS the Commission heard submissions from counsel for Staff, counsel for Martinez and counsel for Singh;

AND WHEREAS no one appeared at the pre-hearing conference of behalf of Levy or Whidden;

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

IT IS HEREBY ORDERED THAT the hearing on the merits shall commence at 10:00 a.m. and end at 2:30 p.m. on September 26 and October 2, 3, 10, 16 and 17, 2012.

DATED at Toronto this 20th day of August, 2012.

"James E. A. Turner"

2.2.11 Options Clearing Corporation – s. 144

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

AND

IN THE MATTER OF
THE OPTIONS CLEARING CORPORATION
(OCC)

VARIATION TO THE INTERIM ORDER
(Section 144 of the Act)

WHEREAS the Ontario Securities Commission (**Commission**) issued an interim order dated March 1, 2011 pursuant to section 147 of the Act exempting OCC from the requirement to be recognized as a clearing agency under section 21.2(0.1) of the Act (**Interim Order**);

AND WHEREAS the Commission issued an order varying and restating the Interim Order dated August 19, 2011 (**Restated Interim Order**);

AND WHEREAS the Restated Interim Order will terminate on the earlier of (i) September 1, 2012 and (ii) the effective date of a subsequent order recognizing OCC as a clearing agency under subsection 21.2(0.1) of the Act or exempting it from the requirement to be recognized as a clearing agency under section 147 of the Act;

AND WHEREAS OCC has filed an application received on August 3, 2012 (**Application**) with the Commission pursuant to section 147 of the Act requesting that the Commission exempt OCC from the requirement to be recognized as a clearing agency under section 147 of the Act (**Subsequent Order**) and to vary the Restated Interim Order pursuant to section 144 of the Act to allow the Commission an opportunity to review the Application and determine whether to issue the Subsequent Order;

AND WHEREAS the Commission has received certain representations from OCC in connection with the Application;

AND WHEREAS the Commission has determined that it is not prejudicial to the public interest to vary the Restated Interim Order to extend OCC's interim exemption from the requirement to be recognized as a clearing agency pursuant to section 21.2(0.1) of the Act;

IT IS ORDERED, pursuant to section 144 of the Act, that the Restated Interim Order be varied by replacing the reference to "September 1, 2012" with a reference to "November 30, 2012."

DATED at Toronto this 14th day of August, 2012**.**

"Christopher Porter"

"James Turner"

2.2.12 International Strategic Investments et al. – s. 127 of the Act and Rule 6.7 of the OSC Rules of Procedure

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

AND

IN THE MATTER OF
INTERNATIONAL STRATEGIC INVESTMENTS,
INTERNATIONAL STRATEGIC INVESTMENTS INC.,
SOMIN HOLDINGS INC., NAZIM GILLANI AND
RYAN J. DRISCOLL

ORDER
(Section 127 of the Securities Act and Rule 6.7 of
Ontario Securities Commission
Rules of Procedure (2010), 33 O.S.C.B. 8017)

WHEREAS on March 6, 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 5, 2012, to consider whether it is in the public interest to make certain orders as against International Strategic Investments, International Strategic Investments Inc., (collectively, "ISI"), Nazim Gillani ("Gillani"), Ryan J. Driscoll ("Driscoll") and Somin Holdings Inc. ("Somin");

AND WHEREAS on April 3, 2012, a hearing was held before the Commission and Staff appeared and filed the Affidavit of Peaches A. Barnaby, sworn on March 29, 2012, evidencing service of the Notice of Hearing and the Statement of Allegations on ISI, Gillani and Driscoll;

AND WHEREAS counsel for ISI and Gillani and counsel for Driscoll appeared and made submissions;

AND WHEREAS on April 3, 2012, the Commission ordered that a status hearing take place on April 13, 2012, for Staff to update the Commission on the status of service on Somin (the "Status Hearing") and that a pre-hearing conference is scheduled for Wednesday, June 6, 2012 at 10:00 a.m.;

AND WHEREAS on April 13, 2012, the Status Hearing was held and Staff provided the Commission with the Affidavit of Peaches A. Barnaby, sworn April 10, 2012, outlining efforts of service on Somin;

AND WHEREAS on April 13, 2012, Staff and counsel for Gillani appeared and made submissions;

AND WHEREAS on April 13, 2012, the Status Hearing was adjourned to April 30, 2012 at 10:00 a.m. to determine whether service had been effected on Somin pursuant to Rule 1.5.1 of the Commission's *Rules of Procedure* (2010), 33 O.S.C.B. 8017;

AND WHEREAS on April 30, 2012, Staff and counsel for Gillani appeared and made submissions and no one appeared on behalf of Somin or ISI;

AND WHEREAS on April 30, 2012, Staff provided the Commission with the Affidavit of Peaches A. Barnaby, sworn April 27, 2012;

AND WHEREAS on April 30, 2012, Staff undertook to continue to serve Somin through David F. Munro and Nazim Gillani;

AND WHEREAS the Commission is satisfied that Somin has been served and accepts Staff's undertaking for future service;

AND WHEREAS on June 6, 2012, a confidential pre-hearing conference was held and Staff, counsel for Gillani and counsel for Driscoll appeared and made submissions and no one appeared on behalf of Somin or ISI;

AND WHEREAS on June 6, 2012, Staff agreed to continue to serve Somin through David F. Munro and Nazim Gillani personally;

AND WHEREAS on June 6, 2012, the Commission ordered that the confidential pre-hearing conference be adjourned to August 20, 2012;

AND WHEREAS on August 20, 2012, Staff, counsel for Gillani and counsel for Driscoll appeared before the Commission and made submissions and no one appeared on behalf of Somin or ISI;

IT IS ORDERED that the confidential pre-hearing conference be adjourned to October 9, 2012 at 2:30 p.m. at which time the panel anticipates scheduling dates for a hearing on the merits in this matter.

DATED at Toronto this 20th day of August, 2012.

"Mary G. Condon"

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Empire Consulting Inc. and Desmond Chambers – 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
EMPIRE CONSULTING INC. AND
DESMOND CHAMBERS

REASONS AND DECISION
(Sections 127 and 127.1 of the Act)

Hearing:	January 26 and 27, 2012 March 22, 2012		
Decision:	August 16, 2012		
Panel:	Edward P. Kerwin	–	Commissioner
Appearances:	Derek J. Ferris	–	For Staff of the Commission
	No one appeared for	–	Desmond Chambers
	the Respondents:	–	Empire Consulting Inc.

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REASONS AND DECISION

I. BACKGROUND

[1] This proceeding arises out of a Notice of Hearing issued on May 26, 2011 by the Ontario Securities Commission (the "**Commission**") and a Statement of Allegations filed by Staff of the Commission on the same day. An Amended Statement of Allegations was filed by Staff on October 31, 2011. A hearing was conducted before the Commission on January 26 and 27, 2012 and March 22, 2012 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 the respondents, Empire Consulting Inc. ("**Empire**") and Desmond Chambers ("**Chambers**") (collectively, the "**Respondents**") breached certain provisions of the Act and/or acted contrary to the public interest (the "**Merits Hearing**").

A. Preliminary Issues

i) Service

[2] Staff presented the Panel with evidence of telephone and e-mail correspondence between Staff and the Respondents regarding service of the Notice of Hearing, the Statement of Allegations, the Amended Statement of Allegations, as well as the matter of the attendance of the Respondents at the Merits Hearing.

[3] Staff provided affidavit evidence that describes Staff's correspondence with Chambers as set out, in part, as follows:

a) On April 11, 2011, Staff spoke with Chambers by telephone who advised Staff that he now resides in Mandeville, Jamaica. Chambers provided Staff with his e-mail address but refused to provide a mailing address.

b) On June 28, 2011, Staff sent the Notice of Hearing and Statement of Allegations by e-mail to the Respondents at the e-mail address provided by Chambers. Staff further telephoned Chambers that same day to advise him that these materials had been sent to him by e-mail. During that telephone call, Chambers advised that he did not plan on attending any proceedings before the Commission.

c) On July 4, 2011, Staff spoke with Chambers by telephone who continued to refuse to provide a mailing address and reiterated that he would not be attending any hearings before the Commission.

d) Staff worked diligently with the Jamaican Financial Services Commission from April 11, 2011 to July 25, 2011 to effect service of the Notice of Hearing and Statement of Allegations in hard copy with the assistance of the Jamaican police; however, the Jamaican authorities have been unable to locate Chambers.

e) On July 25, 2011, Chambers confirmed in a telephone conversation with Staff that he was in receipt of the Notice of Hearing and Statement of Allegations, but that he did not intend to attend the Merits Hearing.

f) On November 3, 2011, Staff sent a copy of the Amended Statement of Allegations to the Respondents by e-mail.

g) Staff provided Chambers with copies of the hearing brief, including all documents that Staff intended to produce or enter as evidence at the Merits Hearing, a list of witnesses that Staff intended to call to testify at the Merits Hearing and a summary of the evidence that the witness was expected to give at the hearing in advance of the Merits Hearing, by sending these materials to the Respondents by e-mail.

[4] Rule 1.5.1 (1)(f) of the *Rules of Procedure* of the Commission provides as follows:

> **1.5.1 Service of Documents on Parties – (1)** All documents required to be served under the Rules shall be served by one of the following methods:
>
> …
>
> (f) electronically to the facsimile number or e-mail address of the party or the representative of the party.

[5] This Panel is satisfied that Staff have met their service obligations under Rule 2.1(3) by serving the Notice of Hearing, Statement of Allegations, and Amended Statement of Allegations on the Respondents by emailing same to the e-mail address that was provided by Chambers, pursuant to pursuant to Rule 1.5.1(1)(f). The Panel notes that Chambers has acknowledged receipt of these initiating documents.

[6] This Panel is satisfied that Staff have met their service obligations under Rules 4.3 and 4.5 by serving the hearing brief, witness lists and witness statements on the Respondents by sending them electronically to the e-mail address that was provided by Chambers pursuant to Rule 1.5.1(1)(f).

ii) Failure of the Respondents to Appear

[7] Subsection 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, (the "**SPPA**") provides that:

> Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

[8] The Panel notes the following passage from *Administrative Law in Canada*:

> Where a party who has been given proper notice fails to respond or attend, the tribunal may proceed in the party's absence and the party is not entitled to further notice. All that the tribunal need establish, before proceeding in the absence of the party, is that the party was given notice of the date and place of the hearing. The tribunal need not investigate the reasons for the party's absence. (Sara Blake, *Administrative Law in Canada*, 5th ed. (Markham: LexisNexis, 2011) at p.32)

[9] The Respondents did not attend the Merits Hearing. As noted above, the Panel accepts Staff's evidence that the Respondents have been in receipt of the Notice of Hearing and Statement of Allegations since no later than July 25, 2011 and that Chambers indicated on July 25, 2011 and again as recently as January 25, 2012, that the Respondents had no intention of attending any hearing before the Commission. The Panel finds that the Respondents were given proper notice of the Merits Hearing, were well aware of the hearing dates in this matter, and were provided with sufficient time to prepare and attend and were also provided with the option of participating in the Merits Hearing by teleconference and have chosen not to do so.

[10] The Panel is satisfied that it is properly able to proceed with the Merits Hearing in the Respondents' absence in accordance with subsection 7(1) of the SPPA.

II. OVERVIEW OF THE HEARING

[11] Empire was a financial consulting firm that provided tax consulting, investment planning, and debt restructuring services to investors from approximately April 2007 to October 2009 (the "**relevant time**"). Chambers was the principal director and officer and sole signing authority for Empire. The Respondents launched the "D.E.S. program" or the "debt elimination strategy" program ("**DES**") whereby they advised clients to use funds borrowed against their homes to pay down other existing debts and to invest in a foreign exchange portfolio exclusively managed and controlled by the Respondents. The Respondents represented that the DES program would return 2% to 6% on investments per month and would enable investors to pay off their mortgages within 5 to 7 years.

[12] This proceeding relates to Empire and Chambers, the principal director and officer of Empire and sole signing authority of Empire's bank accounts, who together received at least $1,493,108 from 26 identifiable investors in Ontario.

[13] Staff allege that, during the relevant time, the Respondents acted as advisers and traded in investment contracts without being registered to do so under the Act. Staff further allege that, during the relevant time, the Respondents did not comply with prospectus requirements pursuant to the Act nor did they qualify for any exemptions from doing so. Staff allege that the Respondents fraudulently enticed investors with misleading profit projection tables, false information about the state of their investments and the profitability of Empire, by using investor funds for personal purposes, and by causing Empire to use new investor funds to repay amounts to previous investors. Staff also allege that, as a director and officer of Empire, Chambers authorized, permitted and acquiesced in the commission of breaches of the Act by Empire contrary to the public interest.

III. THE PARTIES

A. The Respondents

[14] Empire was incorporated in Ontario pursuant to the *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "**OBCA**") on September 1, 2005. There is no record of Empire having been registered under the Act at any time.

[15] Chambers is a self-described investment consultant and was a director, officer and the sole signing authority of Empire at all times. Chambers lived in Ontario during the relevant time. He was registered under the Act as a mutual fund salesperson from 1989 to 2003. There is no record of Chambers having been registered under the Act during the relevant time.

B. Other Relevant Players

[16] Hummingbird Financial Corporation ("**Hummingbird**") is a company that provides bookkeeping and taxation services and was incorporated in Ontario pursuant to the OBCA on April 19, 2006. Hummingbird shared office space with Empire at a shared-facility location called Canadian Executive Centre at 10 Kingsbridge Garden Circle in Mississauga, Ontario.

[17] Norman Nelson ("**Nelson**") is the president and director of Hummingbird. Nelson is a former mutual funds dealer and salesperson and currently is licensed through the Financial Services Commission of Ontario to sell life insurance, which he does from time to time. Nelson was a director of Empire during part of the relevant time from November 2007 to February 2008, at which point he resigned from Empire's board.

IV. THE ALLEGATIONS

A. Trading without Registration

[18] In the Amended Statement of Allegations, Staff allege that, during the relevant time, the Respondents received approximately $1.6 million from 33 clients for the purpose of investing in a foreign exchange ("**Forex**") trading program and that, in doing so, the Respondents engaged in trading in investment contracts and as such were required to be registered under the Act. Staff allege that the Respondents' trading activities were contrary to subsection 25(1)(a) of the Act pre-September 28, 2009 and contrary to subsection 25(1) of the Act post-September 28, 2009.

B. Acting as an Advisor without Registration

[19] Staff allege that the Respondents received instructions from investor-clients to act on their behalf in matters associated with the management and direction of their Forex investment portfolios and "to actively manage all aspects of the portfolios" and, in doing so, acted as advisers to approximately 33 clients without being registered with the Commission.

[20] Staff allege that in light of the failure of the Respondents to be registered, the Respondents' advisory activities were contrary to subsection 25(1)(c) of the Act pre-September 28, 2009 and contrary to formerly subsection 25(3) post-September 28, 2009.

C. Illegal Distribution

[21] Staff allege that, during the relevant time, the Respondents distributed investment contracts without filing a prospectus or obtaining a receipt from the Director nor were they exempted from doing so. As such, Staff allege that the Respondents' activities were contrary to subsection 53(1) of the Act.

D. Fraudulent Conduct

[22] Staff allege in the Amended Statement of Allegations that the Respondents engaged in acts, practices or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on investors that were contrary to the public interest in breach of subsection 126.1(b) of the Act by:

a) Representing that principal payments were guaranteed and locked in for one year in order to attract investors;

b) Creating misleading tables indicating investments would compound at interest rates of 2% to 6% per month in order to induce clients to invest with the Respondents;

c) Using $692,307 of new investor funds to pay for investor repayments and returns to other investors;

d) Using approximately $300,000 of investor funds for the Respondents' personal expenses including rent for his condominium and office, vehicle lease payments, food, liquor, and clothing; and

e) Making misrepresentations to clients including but not limited to:

   (i) That their portfolios had achieved specific rates of return on their investments as specified in various investor-clients' statements;

   (ii) The value of their portfolios were increasing;

(iii) That all principal investments were in a Forex trading program;

(iv) That profits from the Forex program were being used to pay down clients' outstanding debts;

(v) That the DES program would eliminate the investor-clients' debts in five to seven years while simultaneously building their retirement portfolios; and

(vi) That Forex trading provides above average returns with less risk.

E. Conduct Contrary to the Public Interest

[23] Staff allege that Chambers, in his capacity as director and officer of Empire, authorized, permitted or acquiesced in Empire's breaches of sections 25, 53 and 126.1 of the Act, contrary to section 129.2 of the Act.

[24] Staff allege that, in light of all of the allegations listed above and Chambers' alleged breach of section 129.2 of the Act, the Respondents have acted contrary to the public interest.

V. ISSUES

[25] This matter raises the following issues for consideration:

a) Did the Respondents trade in securities without being registered contrary to subsection 25(1)(a) of the Act pre-September 28, 2009 and subsection 25(1) of the Act post-September 28, 2009?

b) Did the Respondents engage in activity such that they acted as advisors without being registered contrary to subsection 25(1)(c) of the Act pre-September 28, 2009 and subsection 25(3) of the Act post-September 28, 2009?

c) Did the Respondents distribute securities without meeting the proper requirements or exemptions contrary to subsection 53(1) of the Act?

d) Did the Respondents engage or participate in acts, practices or courses of conduct relating to securities in respect of Empire that the Respondents knew or reasonably ought to have known perpetrated a fraud on persons contrary to subsection 126.1(b) of the Act?

e) Did Chambers, in his capacity as director and officer of Empire, authorize, permit or acquiesce in the commission of violations by Empire of sections 25, 53, and 126.1 of the Act contrary to section 129.2 of the Act?

VI. EVIDENCE AND FINDINGS

A. Evidence Submitted at the Hearing

[26] This was an electronic hearing. In total, Staff filed 106 exhibits. The first four exhibits consisted of four volumes of documents that were provided in electronic form. The fifth exhibit was a compilation of affidavits and exhibits sworn by Raymond Daubney ("**Daubney**"), the lead investigator with the Enforcement branch of the Commission with respect to the investigation into Chambers and Empire (the "**Daubney Affidavits**"). The Daubney Affidavits provide details of Staff's communications with Chambers over the last year. Further, more recent communications between Daubney and Chambers were entered as exhibits 6 and 7. Exhibit 8 was the Affidavit of Michelle Hammer, an investigator with the Case Assessment Unit of the Enforcement branch of the Commission sworn January 23, 2012 (the "**Hammer Affidavit**"). The remaining 98 exhibits consisted of documents that can be found in the first four binders of documents (the first four exhibits) and included, in part:

a) Investor documents;

b) Transcripts of Staff's interviews with Chambers;

c) E-mail correspondence between Staff and Chambers;

d) Corporate documents and registration certificates for all relevant individuals and entities;

e) Tables prepared by Staff summarizing Empire's receipt and application of investor funds;

f) Trading records of Empire's nine different trading accounts with three different foreign exchange trade companies in the United States: HotSpot FXR L.L.C. ("**HotSpot**"), Global Forex Trading, and Forex Capital Markets LLC ("**FXCM**"); and

g) Copies of the Respondents' bank records with The Toronto-Dominion Bank (the "**TD Bank records**").

[27] In addition to filing these exhibits, Staff called six witnesses which included four investor witnesses, Daubney, and Nelson. Staff also submitted evidence of its seventh witness, Michelle Hammer, by way of the Hammer Affidavit, as referred to above.

[28] The evidence given by the investor witnesses was consistent as between each of them. Each investor testified that Chambers induced them into investing with Empire under the promise of receiving 3% to 4% monthly returns on their investments. Each investor testified that Chambers told them they would be debt-free in 5 to 7 years of investing with the DES program. Each investor testified that they signed an authorization for Empire to manage all aspects of their investment portfolio (the "**Empire Authorizations**") but that after signing the Empire Authorizations, the investors were given little or no updates on their investments other than verbal representations by Chambers that their portfolio was increasing in value. Each investor further testified that as of December 2009 Chambers was unreachable and, by January 2010, they each received a copy of an e-mail from Chambers indicating that their money is gone (the "**Chambers E-mail**"). The Chambers E-mail, dated January 24, 2010, has in its "re" line: "I will make good to you, please pe [*sic*] patient with me" and reads in part as follows:

> On behalf of Empire Consulting Inc., I regret to inform the closure of business effective immediately and the need to hand over all corporate activities & client related files to a Receiver & Trustee in Bankruptcy.
>
> …
>
> In attempts to satisfy total liabilities of approximately $1,250,000, I am currently out of the country seeking financial solutions that would allow for the means & methods for repayment of monies owing to all of you. However, this process will take time.

[29] None of the investor witnesses has heard from Chambers or Empire since the date of the Chambers E-mail.

[30] Nelson testified that he met Chambers through their shared office facilities and that he ultimately was engaged by Chambers to provide bookkeeping services for Empire, which included reconciling bank accounts, producing financial statements, and filing tax returns. He testified that he assisted Chambers in creating an excel-based software to help determine the necessary calculations for the DES program planned by Empire. Notwithstanding that Nelson stated that he was not involved in the investment side of the DES program, he gave evidence that he accompanied Chambers on a trip to Orlando, Florida to meet with a foreign exchange trader named Tom Flora to discuss Flora's trading record and a management fee structure. Nelson testified that his role was to act as a third party witness to the discussions with Tom Flora and that the result of that meeting was that Mr. Flora was retained to be a trade manager for Empire on the FXCM and, ultimately, the HotSpot accounts.

[31] Nelson testified that Empire's books and records were very poorly kept and that it was difficult to distinguish between business and personal expenses. He noted that Chambers' personal expenses for his clothing, apartment, and food were all run through Empire. Nelson indicated that he was uncomfortable with Empire's poor administration and the way Chambers evasively dealt with his clients. It is for these reasons that Nelson says he resigned from his position as a director of Empire very shortly after his appointment. Nelson also gave evidence that he only learned of Chambers' grandiose promises of investment returns after such investments were made.

[32] Daubney testified that from reviewing the documents he received through Nelson's cooperation in the investigation, he was able to determine that Chambers and Empire held three bank accounts with The Toronto-Dominion Bank. Accordingly, Daubney summonsed the TD Bank records during the course of his investigation, which included a USD account and a CAD account held by Empire (the "**Empire bank records**"), as well as a personal bank account for Chambers (the "**Chambers bank records**"). The Empire bank records showed that Chambers was Empire's sole signatory on its bank accounts and that Chambers described himself on the account opening documents as an "investment consultant". The Empire bank records included photocopies of cheques deposited into and withdrawn from its accounts as well as records of all wire transfers. Daubney testified that from the Empire bank records he was able to decipher the total amount of investor funds deposited into Empire's account and to whom Empire made payments, as well as the transfer of funds to various foreign exchange trading accounts located in the United States.

[33] As part of his investigation, Daubney cross-referenced various sources of information including the TD Bank records, the investment contracts between Empire and its investors, investor interviews, and surveys taken of known investors, in order to prepare a list of Empire's investors and the amount of funds that was both invested in and redeemed from Empire. Daubney

maintained that because Empire did not have a complete set of records he had to piece together information and cross-reference various sources.

[34] Based on his review of all of the sources mentioned above, Daubney was able to clearly identify that the Respondents received at least CAD $1,493,108 from investors, of which approximately $680,602 was returned to investors. He looked at the various foreign exchange trading accounts (the "**Forex Accounts**") and determined that Empire's trades resulted in the following losses:

Forex Account	Total Overall Loss
Hotspot FXR L.L.C.	($70,188.48)
Global Forex Trading	($130,461.46)
Forex Capital Markets LLC	($295,887.53)

[35] On January 25, 2012, one day before the commencement of the Merits Hearing in this matter, Daubney spoke with Chambers by telephone, after which Chambers sent Daubney an e-mail (the "**Chambers 2012 E-mail**"), which states, in part, as follows:

> When I became aware of the delema [*sic*] I was in I started to try to cover up the problem by lying to you all which compounded the problem exponentially because each lie I told had to be covered by another and so on and so on.
>
> …
>
> I am profoundly sorry for those events and as I have said many times I WILL repay every cent that all of you lost.

[36] The Panel finds that the evidence presented at the Merits Hearing was convincing and uncontroverted. Most persuasive was the investors' evidence describing their individual experience with Chambers and Empire, which was consistent with one another and with the books and records that Staff were able to obtain and examine. We further note that the investors' evidence, the books and records of Empire, and the TD Bank records were consistent with Nelson's account of the business of Empire and the way in which Chambers conducted himself as principal of Empire.

[37] The Panel notes that although Staff indicated that they had been able to trace a figure of approximately $1.6 million received from 33 investors, as stated in the Amended Statement of Allegations, that had been deposited into the Empire bank accounts, the evidence at the Merits Hearing identified for the Panel only $1,493,108 that can specifically be traced to 26 investors.

VII. THE LAW AND ANALYSIS

Standard of Proof

[38] There is only one civil standard of proof and that is proof on a balance of probabilities. The balance of probabilities standard requires the trier of fact to decide whether it is more likely than not that an alleged event occurred. The Supreme Court of Canada has held that the evidence must be sufficiently clear, convincing and cogent to satisfy this standard of proof: *F.H. v. McDougall*, [2008] 3 S.C.R. 41 at paras. 40 and 46.

[39] The standard of proof in administrative proceedings in the civil standard of a balance of probabilities. The Supreme Court of Canada's findings regarding standard of proof has been adopted by the Commission in many of its decisions: *Re Sunwide Finance Inc.* (2009), 32 O.S.C.B. 4671 at paras. 26-28; *Re Al-Tar Energy Corp.* (2010), 33 O.S.C.B. 5535 at paras. 32-34 ("***Al-Tar***").

A. Trading without Registration

Did the Respondents engage in unregistered trading of securities contrary to subsection 25(1)(a) of the Act pre-September 28, 2009 and subsection 25(1) of the Act post-September 28, 2009?

[40] Staff allege that the Respondents breached subsections 25(1)(a) and 25(1) of the Act during the relevant time. On September 28, 2009, the Act was amended, which falls within the relevant time, and so it is important to consider the wording of the Act both before and after the amendment came into effect.

[41] Prior to September 28, 2009, subsection 25(1)(a) of the Act read as follows:

> 25. (1) No person or company shall,
>
> (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer …
>
> …
>
> and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[42] As of September 28, 2009, subsection 25(1) came into force and provides as follows:

> 25. (1) Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in or hold himself, herself or itself out as engaging in the business of trading in securities unless the person or company,
>
> (a) is registered in accordance with Ontario securities law as a dealer; or
>
> (b) is a representative registered in accordance with Ontario securities law as a dealing representative of a registered dealer and is acting on behalf of the registered dealer.

[43] The language of subsection 25 has become more broad as a result of the 2009 amendments; accordingly, if the Panel determines that the evidence indicates that the Respondents' actions prior to September 28, 2009 were contrary to the predecessor provision then the same behaviour post-September 28, 2009 must also be in violation of the broader wording of the Act. The same does not hold true in reverse; namely, acts that are found to be in contravention of the amended subsection 25(1) of the Act post-September 28, 2009 are not necessarily in contravention of subsection 25(1)(a) pre-September 28, 2009. In this case, Staff have alleged that the Respondents' behaviour and activities were the same throughout the relevant time.

[44] The phrase "engaging in the business of trading" indicates that the Commission must find a business purpose in determining whether a person or company is trading in securities pursuant to section 25 of the Act, as amended. In making this determination, the Commission must consider Companion Policy 31-103 at section 1.3, which provides as follows:

> **Business trigger for trading and advising**
>
> We refer to trading or advising in securities for a business purpose as the "business trigger" for registration.
>
> We look at the type of activity and whether it is carried out for a business purpose to determine if an individual or firm must register. We consider the factors set out below, among others, to determine if the activity is for a business purpose. For the most part, these factors are from case law and regulatory decisions that have interpreted the business purpose test for securities matters.

[45] The policy goes on to enumerate the following factors:

a) Engaging in activities similar to a registrant;

b) Intermediating trades or acting as a market maker;

c) Directly or indirectly carrying on the activity with repetition, regularity or continuity;

d) Being, or expecting to be, remunerated or compensated; and

e) Directly or indirectly soliciting.

[46] The policy notes that the enumerated factors are not exhaustive and that no one factor on its own will determine whether an individual or firm is in the business of trading or advising in securities.

[47] It is also important in this case to consider the definition of the words "security", "trade" and "trading" as these terms appear in section 25 of the Act. Subsection 1(1) of the Act sets out the following definitions for these terms:

> "security" includes,
>
> …
>
> (n) any investment contract;
>
> …
>
> whether any of the foregoing relate to an issuer or proposed issuer.
>
> "trade" or "trading" includes,
>
> (a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise …
>
> …
>
> (e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing;

[48] This Commission has held that the inclusion of the word "indirectly" in the definition of "trade" or "trading" reflects the intention by the Legislature to capture conduct which seeks to avoid registration requirements by doing indirectly that which is prohibited directly (*Re Momentas Corp.* (2006), 29 O.S.C.B. 7408 at para. 79 ("***Momentas***")). It has also held that a respondent who accepts investors' funds for the purpose of an investment carries out an act in furtherance of a trade (*Re Lett* (2004), 27 O.S.C.B. 3215 at paras. 48-51 and 64 ("***Lett***")).

[49] An act is also in furtherance of a trade if there is a sufficient proximate connection between the act and the trade in securities:

> There is no bright line separating acts, solicitations and conduct indirectly in furtherance of a trade from acts, solicitations and conduct not in furtherance of a trade. Whether a particular act is in furtherance of an actual trade is a question of fact that must be answered in the circumstances of each case. A useful guide is whether the activity in question had a sufficient proximate connection to an actual trade. (*Re Costello* (2003), 26 O.S.C.B. 1617 at para. 47)

[50] Examples of activities that have fallen within the scope of "acts in furtherance of a trade" are set out in *Momentas* at paragraph 80 and include but are not limited to: a) Preparing and disseminating materials describing investment programs; b) Preparing and disseminating forms of agreements for signature of the investors; c) Conducting information sessions with groups of investors; and d) Meeting with individual investors (the "***Momentas* Factors**").

[51] A key issue in this hearing is whether the signed letters by Empire's investors authorizing Empire "to actively manage all aspects" of each investor's portfolio, referred to above as the Empire Authorizations, constitute "investment contracts" under the definition of securities in subsection 1(1) of the Act. If they are investment contracts, the registration requirements of the Act apply.

[52] The term "investment contract" is not defined in the Act. The three-pronged test for determining an investment contract is enunciated in *Re Universal Settlements International Inc.* (2006), 29 O.S.C.B. 7880 ("***Universal***") at paragraph 9 and can be set out as follows:

(i) An investment of funds with a view to profit;

(ii) In a common enterprise; and

(iii) Where the profits are derived from the undeniably significant efforts of persons other than the investors.

[53] The three-pronged test for an investment contract, which was cited by the Commission in Universal was adopted by the Supreme Court of Canada in *Pacific Coast Coin Exchange of Canada v. Ontario (Securities Commission)*, [1978] 2 S.C.R. 112 at paras. 39 and 46 ("***Pacific Coast***").

Investment of Funds

[54] It is clear from the investor documents entered into evidence, the investors' testimony, and from Chambers' own e-mail to the Commission sent during the course of the investigation dated December 22, 2009 (the "**Chambers 2009 E-mail**") in which he explains the business of Empire, that in this case the first prong of the test is met. An investment of money has been made by Empire's investors with an intention to profit. Throughout the Chambers 2009 E-mail, Chambers repeatedly refers to his clients as "investors", describes the DES program, and explains the movement of investor funds to the Forex accounts. It is difficult to conclude anything other than that the Empire Authorizations involved the investment of funds with a view to profit – namely – to eliminate the investors' debts and facilitate their retirement.

Common Enterprise and Profits Derived from the Efforts of Others

[55] The Supreme Court of Canada has determined that the second and third prongs of the test are so interwoven that they can be addressed together. In describing the test of common enterprise, the Court held as follows:

> … such an enterprise exists when it is undertaken for the benefit of the supplier of capital (the investor) and of those who solicit the capital (the promoter). In this relationship, the investor's role is limited to the advancement of money, the managerial control over the success of the enterprise being that of the promoter; therein lies the community. In other words, the "commonality" necessary for an investment contract is that between the investor and the promoter. There is no need for the enterprise to be common to the investors between themselves. (*Pacific Coast*, *supra* at para. 50)

[56] It is clear from the investor documents and the oral testimony given by the investors at the Merits Hearing that the role of the investor in Empire's DES program was limited to the advancement of money. Once the money was transferred to Empire, Chambers maintained full control over the success of the investment, as permitted by the Empire Authorizations. The managerial control over the success of Empire sat with Empire and Chambers exclusively. The success of the Forex investments was dependent upon the efforts of Empire and Chambers alone but for a benefit to accrue to both Empire and the investors. It is this Commission's view that for the foregoing reasons the test of common enterprise is clearly met in this case.

[57] With respect to the third prong and the dependence of the Empire investors upon Empire for the making of profits, this prong is met on the face of the Empire Authorizations whereby the investors relinquish all control over their funds to Empire. Upon transfer of funds, the investors are left with nothing more than a claim as against Empire. Investors are not able withdraw their funds or move them around between Forex accounts. Many investors gave evidence at the Merits Hearing that even upon requesting the return of their investment funds, they were not able to regain control over their own assets. It is clear that the end result of the investment made by each customer is dependent upon the quality of the expertise and efforts brought by Empire. If Empire does not properly invest the funds, the investors would likely be left with nothing.

[58] In OSC Staff Notice 91-702 – *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors in Ontario* ("**SN 91-702**") – Staff provides guidance to the public on, among other things, the securities law and other regulatory requirements applicable when offering foreign exchange contracts to investors in Ontario "whether through the internet or otherwise." Staff of the Commission communicated the view that such vehicles, when offered to investors in Ontario, engage the purposes of the Act and constitute "investment contracts" and "securities" for the purposes of Ontario securities law. This view is consistent with our finding in this case that the Respondents' relationship with its investors as reflected in the Empire Authorizations constitute "investment contracts" and therefore constitute "securities" and are subject to the applicable registration requirements in the Act.

Breach of Subsections 25(1)(a)/ 25(1)

[59] Having determined that the Empire Authorizations constitute investment contracts and, therefore, securities, pursuant to the Act, the Commission also finds that the Respondents have breached subsection 25(1)(a) of the Act pre-September 28, 2009 and subsection 25(1) of the Act post-September 28, 2009.

[60] The section 139 certificates tendered into evidence show that neither Chambers nor Empire was registered with the Commission and that there were no registration exemptions available to either of them. Further, the evidence presented at the Merits Hearing satisfies the factors set out in Companion Policy 31-103 as referred to above, as well as the *Momentas* Factors, establishing that the Respondents engaged in acts in the business of trading in securities without being registered to do so under the Act. Examples of this include, but are not limited to:

(i) Chambers facilitated the transfer of funds from at least 26 investors and accepted such funds by depositing them into Empire's bank account on the premise of creating investment portfolios for each investor;

(ii) Chambers gave presentations to potential investors about the DES program;

(iii) Chambers met with individual investors;

(iv) The Respondents prepared and disseminated materials describing the DES program;

(v) The Respondents prepared and disseminated the Empire Authorizations for signature of the investors;

(vi) Empire took a fee from each investor's portfolio upfront and compensated Chambers on a regular basis;

(vii) The Respondents opened Forex accounts and transferred investor monies to these accounts in the United States and maintained full control over the application and distribution of these monies; and

(viii) The Respondents regularly represented to its investors that their monies were increasing in value with a view to inducing further investments or maintaining investor confidence.

[61] In light of all of the forgoing, the Panel finds that the Respondents have engaged in the business of trading in securities by way of investment contracts without being registered to do so in contravention of subsection 25(1)(a) of the Act pre-September 28, 2009 and subsection 25(1) of the Act post-September 28, 2009.

B. Acting as an Advisor without Registration

Did the Respondents Act as an Advisor without being registered contrary to subsection 25(1)(c) of the Act pre-September 28, 2009 and subsection 25(3) of the Act post-September 28, 2009?

[62] Subsection 1(1) of the Act defines "adviser" as "a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities."

[63] The amendments to subsection 25(3) effective as of September 28, 2009 added the availability of an exemption as well as the same "business trigger" language as found in subsection 25(1) above and addressed in Companion Policy 31-103. The provision otherwise remained essentially the same in that it prohibits a person from engaging in the business of advisory activities without proper registration or exemption, as follows:

> 25 (3) Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in the business of, or hold himself, herself or itself out as engaging in the business of, advising anyone with respect to investing in, buying or selling securities unless the person or company,
>
> (a) is registered in accordance with Ontario securities law as an adviser;
>
> (b) is a representative registered in accordance with Ontario securities law as an advising representative of a registered adviser and is acting on behalf of the registered adviser; or
>
> (c) is a representative registered in accordance with Ontario securities law as an associate advising representative of a registered adviser and is acting on behalf of the registered adviser under the supervision of a registered advising representative of the registered adviser.

[64] In order to find that the Respondents have acted in breach of subsection 25(1)(c) prior to September 28, 2009 and subsection 25(3) post-September 28, 2009 after the amendment came into force, this Commission must conclude that the Respondents both acted as an advisor and, after September 28, 2009, engaged in the business of advising with respect to investing, buying or selling securities, as noted in the Act.

[65] In *Re Maguire* (1995), 18 O.S.C.B. 4623 at pages 3 and 4, this Commission adopted the reasons of the British Columbia Securities Commission in *Re Donas*, BCSC Weekly Summary, April 7, 1995, 39 at p. 44, where it explained when a person's actions will result in the requirement for registration under the Act:

> The nature of the information given or offered by a person is the key factor in determining whether that person is advising with respect to investment in or the purchase or sale of securities. A person who does nothing more than provide factual information about an issuer and its business activities is not advising in securities. A person who recommends an investment in an issuer or the purchase or sale of an issuer's securities, or who distributes or offers an opinion on the investment merits of an issuer or an issuer's securities, is advising in securities. If a person advising in securities is distributing or offering the advice in a manner that reflects a business purpose, the person is required to be registered under the Act.

In *Re Costello* (2004), 242 D.L.R. 4th 301 at para. 59, the Divisional Court cites a decision of the British Columbia Securities Commission which explains the low threshold to be met in determining whether a business purpose exists:

> In *Hrappstead, Re*, the business purpose element was satisfied even though there was no evidence that any investors had acted on Hrappstead's advice or that he had received a payment of any kind in return for his advice. Hrappstead, under a business name, held information sessions with members of the public and distributed material about "High Yield Investment Programs" which were represented as possibly earning very high returns from 4% per month to 100% per month. He recommended a particular investment to the investigating under cover police officer, but could not accept her proffered investment because he had no actual program available at the time. The Commission held he went well beyond merely giving information; he gave his opinion on the merits and recommended the investment. As to his business purpose, "one need look no further than what he stood to receive if the Investment Programs were successful: a commission equal to one half of the astronomical returns that he stated the Investment Programs would generate."

[66] Empire was in the business of giving of advice with respect to debt elimination and the creation, management and direction of investment portfolios. The investor witnesses gave evidence that Chambers personally met with them to recommended the DES program and promoted Empire as a safe investment vehicle.

[67] As noted above, in SN 91-702, Staff of the OSC provides guidance on, among other things, the securities law and other regulatory requirements applicable when offering products such as Forex contracts. In particular, Part V of SN 91-702, provides as follows:

> Staff's view is that CFD's [and Forex contracts], when offered to investors in Ontario, engage the purposes of the Act and constitute "investment contracts" and "securities" for the purposes of Ontario securities law.

[68] The SN 91-702 further states at Part VI as follows:

> 1. *Registration Requirement*
>
> *General.* Any person or company that acts as a dealer or adviser with respect to securities must register under the Act as either a dealer or adviser, respectively. As such, engaging in or holding oneself out as engaging in the business of trading or advising with respect to CFDs [and Forex contracts] triggers the dealer and adviser registration requirements in the Act.

[69] This Panel accepts Staff's submission that Chambers' dealings with investors, and the terms of the Empire Authorizations to manage all aspects of their investment portfolios, is akin to the provision of services by an advising representative of a portfolio manager with full trading discretion in client accounts. Empire and Chambers stood to gain, and did in fact gain, upon the transfer of investor funds into their control. The Respondents engaged in the business of trading and advising with respect to the Empire Authorizations and as such triggered the dealer and adviser registration requirements in the Act. At no time, however, was Empire or Chambers registered as an advisor pursuant to the Act. Accordingly, the Commission finds that the Respondents have acted contrary to subsection 25(3) post-September 28, 2009 and its predecessor subsection 25(1)(c) pre-September 28, 2009.

C. Illegal Distribution

Did the Respondents distribute securities without meeting the proper requirements or exemptions to do so contrary to subsection 53(1) of the Act?

[70] Subsection 53(1) of the Act provides as follows:

> No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director.

[71] As noted above, the term "trade" includes any sale or disposition of a security for valuable consideration and any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance thereof. This Panel has already found that the Respondents were trading in investment contracts, which constitute securities pursuant to the Act. The next question for the Panel to consider then is whether the Respondents' trading was a "distribution" without a prospectus.

[72] The section 139 certificates submitted into evidence clearly establish that no prospectus was filed with the Commission and no receipts were issued by the Commission in respect of this matter. The only issue to determine is whether a "distribution" took place.

[73] The term "distribution" is defined in subsection 1(1) of the Act as follows:

> "distribution", where used in relation to trading in securities, means,
>
> (a) a trade in securities of an issuer that have not been previously issued…

[74] It is clear on the face of the Empire Authorizations and the Chambers E-mail that each investment contract entered into with a new investor constituted a trade that had not been previously issued. Accordingly, this Panel finds that the activities of the Respondents constituted a distribution of securities for which no prospectus was filed or receipt obtained, contrary to subsection 53(1) of the Act.

D. Fraudulent Conduct

Did the Respondents engage or participate in acts, practices or courses of conduct relating to securities in respect of Empire that the Respondents knew or reasonably ought to have known perpetrated a fraud on persons contrary to subsection 126.1(b) of the Act?

[75] Subsection 126.1(b) of the Act provides as follows:

> 126.1 A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities, derivatives or the underlying interest of a derivative that the person or company knows or reasonably ought to know,
>
> …
>
> (b) perpetrates a fraud on any person or company.

[76] In *Al-Tar*, *supra*, the Commission adopted, for the purposes of the interpretation of fraud in subsection 126.1(b) of the Act, the British Columbia Court of Appeal's interpretation of fraud as set forth in *Anderson v. British Columbia (Securities Commission*) (2004) BCCA 7 at para. 27 ("***Anderson***"), wherein Justice Mackenzie held that such a fraud provision includes a prohibition against participation in transactions where participants know or ought to know that fraud is being perpetrated by others as well as against those who participate in perpetrating the fraud itself.

[77] The test adopted by this Commission to determine whether an act of fraud pursuant to subsection 126.1(b) has taken place is taken from *R. v. Théroux*, [1993] 2 S.C.R. 5 at 24 ("***Théroux***"), where Madam Justice McLachlin summarizes the elements as follows:

> ***Actus Reus***
>
> … the *actus reus* of the offence of fraud will be established by proof of:
>
> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
>
> 2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.

[78] The *actus reus* part of the offence requires proof of two elements: a dishonest act and a deprivation. With respect to the first element, the dishonest act, the term "other fraudulent means" has been held to include the use of corporate funds for personal purposes, non-disclosure of important facts, exploiting the weakness of another, unauthorized diversion of funds, and unauthorized arrogation of funds or property: *Théroux*, *supra* at para. 15.

[79] The second element, deprivation, is established by proof that the dishonest act caused detriment, prejudice, or risk of prejudice to the economic interests of the victim: *Théroux*, *supra* at paras. 13 and 24. Actual economic loss is not required; rather, proof of prejudice or the risk of prejudice to or the imperiling of an economic interest is sufficient to establish this element of fraud: *Théroux*, *supra* at para. 14. "Risk of prejudice" includes the act of inducing an alleged victim through dishonesty and taking some form of economic action, even if that action did not cause economic loss: *Maple Leaf* at paras. 314 and 315. It is not necessary to prove that a respondent received an economic benefit or gain from the conduct: *Théroux*, *supra* at para. 16.

[80] In this case, the evidence submitted at the Merits Hearing establishes the *actus reus* part of the offence of fraud. All of the investor witnesses gave evidence that Chambers had persuaded them to increase their existing debt by increasing their mortgages and handing their excess funds obtained from such mortgages to Empire for investment purposes. At all times, Chambers led the Empire investors to believe that their principal investments were guaranteed and that their portfolios were increasing in value notwithstanding that the Forex Accounts were almost entirely unprofitable. The Empire bank records and the Chambers bank records, which were all under the exclusive control of Chambers, clearly show the transfer of investor funds into the Empire bank accounts and ultimately to Chambers' account, to cash, to the Forex Accounts, or to payback other investors, and that the funds quickly disappeared. Some investors gave evidence that Chambers pressured them to invest more funds than they had originally agreed to and to increase their risk exposure on their investments. In doing so, this Panel finds that the Respondents exploited the weaknesses of the investors. The Empire investors appeared to this Panel to be modest, hard-working individuals who naively trusted and relied upon the Respondents' false representations to their detriment.

Mens Rea

[81] In addition to establishing the act of fraud, there must be enough evidence to demonstrate that the mental element, the *mens rea*, of fraud exists. McLachlin J. notes in *Théroux*, *supra* at paragraph 24 that the *mens rea* of fraud is established by proof of:

> 1. subjective knowledge of the prohibited act; and
>
> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

[82] McLachlin J. also cites at paragraph 31 a salient passage from the British Columbia Court of Appeal's decision in *R. v. Long* (1990), 61 C.C.C. (3d) 156 at p. 174:

> … the mental element of the offence of fraud must not be based on what the accused thought about the honesty or otherwise of his conduct and its consequences. Rather, it must be based on what the accused knew were the facts of the transaction, the circumstances in which it was undertaken and what the consequences might be of carrying it to a conclusion. [underlining in original]

[83] The first element of *mens rea* required to establish fraud, subjective knowledge, can be inferred from the totality of the evidence. It does not require direct evidence of the respondent's knowledge at the time of the alleged fraud. The second element, subjective knowledge that the act could cause deprivation, requires proof that the respondent was reckless or willfully blind to the consequence of his or her conduct. A sincere belief that no risk or deprivation would materialize does not vitiate fraud: *Maple Leaf*, *supra* at paragraphs 318-321.

[84] Further, this Commission has accepted that it is sufficient to show that a corporation's directing mind knew or reasonably ought to have known that the acts of the corporation perpetrated a fraud in order to prove a breach of subsection 126.1(b) of the Act: *Al-Tar*, *supra* at paragraph 221.

[85] The *mens rea* element is met in this case. The totality of the evidence establishes that the Respondents' actions indicate that they must have had subjective knowledge of their actions. The Respondents engaged in activities that can only be characterized as deceit. The uncontroverted investors' testimony was clear. The Respondents represented to investors that their principal investments were guaranteed and that their portfolios were increasing in value at a time when Empire did not turn any profit and investor funds were not being applied as represented.

[86] The portfolio values were carelessly misrepresented. For example, one investor couple was advised that their investment of $85,000 grew to $121,005.44 between February 2009 and July 2009, representing a 42.35% rate of return in five months at a time when Empire was only achieving negative performance on its Forex Accounts. This is the kind of egregious misrepresentation made to investors that was heard throughout the Merits Hearing. The Respondents continuously misrepresented to investors that their investments were growing at incredible rates at a time when the only returns achieved by Empire were negative returns.

[87] Notwithstanding that Empire was unprofitable, Chambers was using investor funds for personal expenses when Empire was consistently losing on its investments in the Forex Accounts.

[88] The Respondents knew that their investors were risking their personal savings and, in most cases, their only asset, their principal residence, in the hopes of being debt free and making an easier life for themselves. The Respondents knew, by the design of the DES program, that this risk was in place and that any mismanagement of investor funds could result in significant deprivation to them. The Respondents' actions can only be described as reckless or, at best, willfully blind to the

consequences of their actions. In either case, the two prongs for the mens rea element of fraud are clearly met, namely subjective knowledge of the prohibited act and knowledge that such act could cause deprivation to Empire's investors.

[89] Applying the principles set out above, this Panel concludes that the Respondents are guilty of committing fraud as set out in subsection 126.1(b) of the Act.

E. Conduct Contrary to the Public Interest

Did Chambers, in his capacity as director and officer of Empire, authorize, permit or acquiesce in the commission of violations of sections 25, 53, and 126.1 of the Act contrary to section 129.2 of the Act?

[90] Staff alleges that Chambers, being a director and officer of Empire, should be held accountable pursuant to section 129.2 of the Act which provides as follows:

> 129.2 For the purposes of this Act, if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario securities law, whether or not any proceeding has been commenced against the company or person under Ontario securities law or any order has been made against the company or person under section 127.

[91] This Commission has determined that the threshold for finding a director or officer liable pursuant to section 129.2 of the Act is low:

> Although these terms have been interpreted to include some form of knowledge or intention, the threshold for liability under section 122 and 129.2 is a low one, as merely acquiescing the conduct or activity in question will satisfy the requirement of liability. The degree of knowledge of intention found in each of the terms "authorize", "permit" and "acquiesce" varies significantly. "Acquiesce" means to agree or consent quietly without protest. "Permit" means to allow, consent, tolerate, give permission, particularly in writing. "Authorize" means to give official approval or permission, to give power or authority or to give justification. (*Momentas* at paragraph 118)

[92] Chambers essentially *was* Empire. He was the mastermind behind the DES program – "DES" being an abbreviation of his name, "Desmond," as well as the acronym for the "Debt Elimination Strategy" program. Chambers was in charge of marketing the DES program offered by Empire, met with potential investors personally, facilitated the movement of their funds from the equity in their homes to Empire's bank account, and he was the sole signatory of the Empire bank accounts. Chambers used some of the Empire investor funds to pay for personal expenses and to pay other investors' returns on their investments. For the foregoing reasons, it is apparent that Chambers authorized, permitted, and acquiesced in all aspects of Empire's business.

[93] The Panel has found that Empire has not complied with Ontario securities law by virtue of the violations of sections 25, 52, and 126.1(b) of the Act by Empire. In light of the evidence referred to herein, this Panel finds that Chambers, as director, officer and directing mind of Empire, authorized, permitted and acquiesced in the non-compliance with Ontario securities law by Empire by virtue of Empire's commission of the violations of sections 25, 53, and 126.1(b) of the Act and accordingly, Chambers is deemed to also have not complied with Ontario securities law, contrary to section 129.2 of the Act.

VIII. CONCLUSION

[94] Accordingly, this Panel finds that the Respondents acted contrary to the public interest and contravened Ontario securities law through the following breaches of the Act:

a) The Respondents traded in securities without being registered to trade in securities in circumstances where no exemptions were available to them in accordance with Ontario securities law, contrary to subsection 25(1)(a) (pre-September 28, 2009) and subsection 25(1) (post-September 28, 2009) of the Act;

b) The Respondents acted as advisors with respect to investing in, buying or selling securities without being registered to do so and where no exemptions were available to them, contrary to subsection 25(1)(c) (pre-September 28, 2009) and subsection 25(3) (post-September 28, 2009) of the Act;

c) The Respondents distributed securities without filing a preliminary prospectus and prospectus and without receiving receipts issued by the Director, contrary to subsection 53(1) of the Act;

d) The Respondents engaged in acts relating to securities that they knew or reasonably ought to have known perpetrated a fraud on investors, contrary to subsection 126.1(b) of the Act; and

e) Chambers, in his capacity as director and officer of Empire, authorized, permitted and acquiesced in Empire's non-compliance with Ontario securities law, contrary to section 129.2 of the Act.

[95] The Respondents are directed to appear before the Commission on October 10, 2012 at 10:00 a.m. for a sanctions and costs hearing.

Dated at Toronto this 16th day of August, 2012.

"Edward P. Kerwin"

3.1.2 Mega-C Power Corporation et al.

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

AND

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

SETTLEMENT AGREEMENT BETWEEN STAFF OF THE
ONTARIO SECURITIES COMMISSION AND RENE PARDO

I. INTRODUCTION

1. By Notice of Hearing dated November 16, 2005 (the "Notice of Hearing") with a Statement of Allegations filed by Staff of the Commission ("Staff") on the same date, as amended by Amended Notice of Hearing dated February 6, 2007, the Ontario Securities Commission ("the Commission") announced that it proposed to hold a hearing to consider whether, pursuant to s. 127 and s. 127.1(1) and (2) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended ("the Act"), it is in the public interest to, among other things, make an Order:

(a) under clause 2 of s. 127(1) of the Act, that trading in securities by the Respondent, Rene Pardo ("Pardo"), cease permanently or for such other period as specified by the Commission;

(b) under clause 3 of s. 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to Pardo permanently or for such a period as the Commission may order;

(c) under clause 6 of s. 127(1) of the Act, that Pardo be reprimanded;

(d) under clause 7 of s. 127(1) of the Act, that Pardo, if acting as a director or officers of any issuer resign one or more positions that he may hold as a director or officer of an issuer;

(e) under clause 8 of s. 127(1) of the Act, that Pardo is prohibited from becoming or acting as director or officer of any issuer;

(f) under clause 10 of s. 127(1) of the Act, that Pardo disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law;

(g) under s. 127.1 of the Act, that Pardo pay the costs of Staff's investigation and the costs of, or related to, the proceeding that are incurred by or on behalf of the Commission; and

(h) such further orders as the Commission considers appropriate.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff recommends settlement of the proceeding initiated in respect of the Respondent, Pardo, in accordance with the terms and conditions set out below. Pardo agrees to the settlement on the basis of the facts agreed to in Part IV and consents to the making of an Order in the form attached as Schedule "A" on the basis of those facts.

3. The terms of this settlement agreement, including the attached Schedule "A" and Schedule "B" (collectively, the "Settlement Agreement") will be released to the public only if and when the Settlement Agreement is approved by the Commission.

III. ACKNOWLDGEMENT

4. For the purpose of this settlement only, Pardo agrees with the facts set out in Part IV as well as the Supplementary Statement of Facts attached to this Agreement and marked as Schedule "B". Pardo expressly denies that this Settlement Agreement is intended to be an admission of civil liability by Pardo to any person or company and Pardo expressly denies any such admission of civil liability.

IV. STATEMENT OF FACTS

5. Staff acknowledges that Pardo was co-operative during the investigation of this matter and during the process of reaching settlement.

Background

6. Mega-C Power Corporation ("Mega-C"), formerly known as Net Capital Ventures Corporation, was incorporated in the State of Nevada on February 26, 2001. At all material times, Mega-C's principal offices were located in Vaughan, Ontario. Mega-C purported to be in the business of developing and commercializing a hybrid capacitor/battery (the "Technology").

7. Pardo was a founder of Mega-C and at all material times was the President, CEO and a director of the corporation. Pardo has never been registered in any capacity whatsoever with the Commission.

8. NetProfitEtc. Inc. ("NetProfit") was controlled and operated by Pardo and the Respondent, Gary Usling. Pardo also held a number of holding companies which he owned and controlled, including 503124 Ontario Inc.

Unregistered Trading and Prohibited Representations

9. As of September 2003, Mega-C issued from treasury approximately 14.5 million shares, 12.3 million of which were issued to Pardo and/or NetProfit. Of those 12.3 million shares, Pardo was directly involved in further transfers to in excess of approximately 1000 investors either on his own or in conjunction with other respondents.

10. Between August, 2001 and the Summer of 2003, Pardo along with others held demonstrations of the Technology.

11. In order to effect trades in Mega-C shares, Pardo (along with others) made representations that Mega-C shares were freely tradable and would be listed in the near future on a stock exchange, contrary to section 38(3) of the Act. Further, on occasion, Pardo (along with others) represented that Mega-C shares would be repurchased if the shareholder wanted their investment returned, contrary to section 38(1) of the Act.

12. Pardo states that he did not intend nor understand that the sale of shares was part of any loan program offered by Mega-C.

Illegal Distribution

13. At no time did Mega-C file a preliminary prospectus or prospectus with the Commission and obtain the appropriate receipts from the Director, as required by section 53 of the Act.

U.S. Bankruptcy Proceedings

14. On April 6, 2004, Mega-C was petitioned for relief under Chapter 11 of Title 11 of the U.S. Bankruptcy Code. On May 13, 2004, the U.S. Bankruptcy Court in Nevada entered an Order granting Mega-C relief under Chapter 11 of the Bankruptcy Code (In Re: Mega-C Power Corporation, Case Number BK-N-04-50962-GWZ).

15. Pardo has represented to Staff that he is not in a position to effect any meaningful restitution to Ontario shareholders and based on a statement provided by Pardo, Staff are satisfied that a costs order would not be collectable. Pardo, directly or indirectly, through any corporate entity, will not receive any financial consideration whatsoever from the reorganization or settlement of the Chapter 11 proceedings.

Acknowledgements

16. Pardo admits and acknowledges that his conduct described herein was contrary to the public interest.

17. Pardo admits and acknowledges that his conduct described herein contravened section 25 of the Act and that no exemptions were available to him.

18. Pardo admits and acknowledges that his conduct described herein contravened section 53 of the Act and that no exemptions were available to him.

19. Pardo admits and acknowledges that his conduct described herein contravened subsections 38(1) and 38(3) of the Act.

Respondent's Facts

20. For the purposes of this Statement of Agreed Facts, Staff do not dispute the following facts as Pardo's position. This admission by Staff in relation to Pardo does not bind Staff for the purpose of this proceeding against the remaining Respondents in this proceeding.

21. Pardo received informal legal advice which he understood to indicate that there was no legal impediment to the trading of shares of Mega-C in Ontario.

22. Pardo recognizes that he was not sufficiently diligent in the manner in which obtained the legal advice he obtained and the manner in which he interpreted that legal advice.

V. TERMS OF SETTLEMENT

23. Pardo agrees to settle this matter on the basis of the following terms of settlement:

(a) pursuant to clause 2 of subsection 127(1) of the Act, Pardo shall cease trading in securities for a period of two years from the date of an Order of the Commission approving this Settlement Agreement, subject to the following exceptions:

(i) Pardo shall be permitted to trade in securities through a registrant in 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 in which he has sole legal and beneficial ownership and interest, 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. Pardo does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question;

(ii) Pardo shall be permitted to trade in the securities of Brainwave Research Corporation and Brainwave Products Inc. (the "Brainwave Entities"). In particular, he is permitted to sell his shares in those companies if and when either or both of them are acquired. He is also permitted to attend and participate in meetings and presentations, and perform all necessary functions ancillary to any sale or placement of securities in either of the Brainwave Entities; and

(iii) All of Pardo's trading in securities of the Brainwave Entities shall be conducted in compliance with Ontario securities law, and with the advice and assistance of an Ontario law firm with the relevant expertise in the area of securities law and laws governing the distribution of securities;

(b) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law will not apply to Pardo for a period of two years from the date of an Order of the Commission approving this Settlement Agreement, except with respect to trading of the securities of the Brainwave Entities as described in paragraph 23(a) above;

(c) pursuant to clause 6 of subsection 127(1) of the Act, Pardo shall be reprimanded;

(d) pursuant to clause 7 of subsection 127(1) of the Act, Pardo shall resign as director or officer of any issuer on the date of an Order of the Commission approving this Settlement Agreement, except for 503124 Ontario Inc., the Brainwave Entities and Intelligent Creatures Inc. and its affiliates, on the condition that he provides a copy of the Order approving this Settlement Agreement to the Board of Directors of these companies and to their legal counsel within 10 days of the Order approving this Settlement Agreement; and

(e) pursuant to clause 8 of subsection 127(1) of the Act, Pardo shall, except as set out in subparagraph (d) above, be prohibited from becoming or acting as director or officer of any issuer for a period of two years from the date of the Order approving this Settlement Agreement, except he will be permitted to be or act as a director and/or officer of 503124 Ontario Inc., the Brainwave Entities and Intelligent Creatures Inc. and its affiliates.

VI. STAFF COMMITMENT

24. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Pardo in relation to the facts set out in Part IV of this Settlement Agreement.

25. If this settlement is approved by the Commission and at any subsequent time Pardo fails to honour the terms of settlement contained in paragraph 23 of this Settlement Agreement, Staff reserve the right to bring proceedings against Pardo based on the facts set out in Part IV of this Settlement Agreement, and based on the breach of this Settlement Agreement.

VII. APPROVAL OF SETTLEMENT

26. Approval of this Settlement Agreement shall be sought at a hearing of the Commission (the "Settlement Hearing") scheduled for August 17, 2012 at 10:00 a.m.

27. Counsel for Staff and counsel for Pardo may refer to any part or all of this Settlement Agreement at the Settlement Hearing. Staff and Pardo agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.

28. If this Settlement Agreement is approved by the Commission, Pardo agrees to waive his rights under the Act to a full hearing, judicial review or appeal of the matter.

29. Whether or not the Settlement Agreement is approved by the Commission, Pardo agrees that he will not, in any proceeding, refer to or rely on the Settlement Agreement, the settlement discussions and negotiations, or the process of approval of this Settlement Agreement as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

30. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or an Order in the form attached as Schedule "A" is not made by the Commission:

(a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff and Pardo leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Pardo;

(b) Staff and Pardo shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations of Staff, as amended by the Amended Notice of Hearing, unaffected by this Settlement Agreement or the settlement discussion/negotiations; and

(c) the terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person, except with the written consent of Staff and Pardo or as may be required by law.

31. Except as required above, this Settlement Agreement and its terms will be treated as confidential by Staff and Pardo until approved by the Commission, and forever if, for any reason whatsoever, this Settlement Agreement is not approved by the Commission, except with the written consent of Staff and Pardo, or as may be required by law.

32. Any obligations of confidentiality attaching to this Settlement Agreement shall terminate upon approval of this settlement by the Commission.

33. Staff and Pardo agree that, if this Settlement Agreement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.

VIII. EXECUTION OF SETTLEMENT AGREEMENT

34. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

35. A facsimile copy of any signature shall be as effective as an original signature.

Dated at Toronto this 15th day of August, 2012.

"Michael Meredith" _____ *"Rene Pardo"* _____
Witness **Rene Pardo**

Dated at Toronto this 15th day of August, 2012.

STAFF OF THE ONTARIO SECURITIES COMMISSION

"Tom Atkinson"
Tom Atkinson
Director of Enforcement

SCHEDULE "A"

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

AND

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

ORDER

WHEREAS on November 16, 2005, the Commission issued a Notice of Hearing accompanied by Staff's Statement of Allegations in relation to the Respondents and on February 6, 2007, the Commission issued an Amended Notice of Hearing pursuant to sections 127 and 127.1(1) and (2) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"),

AND WHEREAS Rene Pardo entered into a settlement agreement dated August 15, 2012, (the "Settlement Agreement") in which he agreed to a settlement of the proceeding commenced by the Notice of Hearing dated November 16, 2005, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and Staff's Statement of Allegations, and upon hearing submissions from counsel for Staff and the Respondent;

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

IT IS ORDERED THAT:

1. The Settlement Agreement between Rene Pardo and Staff of the Commission is approved;

2. Pursuant to clause 2 of subsection 127(1) of the Act, Pardo shall cease trading in securities for a period of two years from the date of this Order of the Commission approving the Settlement Agreement, subject to the following exceptions:

   (i) Pardo shall be permitted to trade in securities through a registrant in 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 in which he has sole legal and beneficial ownership and interest, 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. Pardo does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question.

   (ii) Pardo shall be permitted to trade in the securities of Brainwave Research Corporation and Brainwave Products Inc. (the "Brainwave Entities"). In particular, he is permitted to sell his shares in those companies if and when either or both of them are acquired. He is also permitted to attend and participate in meetings and presentations, and perform all necessary functions ancillary to any sale or placement of securities in either of the Brainwave Entities: and

   (iii) All of Pardo's trading in the securities of Brainwave shall be conducted in compliance with Ontario securities law, and with the advice and assistance of an Ontario law firm with the relevant expertise in the area of securities law and laws governing the distribution of securities;

3. Pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law will not apply to Pardo for a period of two years from the date of this Order of the Commission approving the Settlement Agreement, except with respect to trading of the securities of the Brainwave Entities as described in paragraph 2 above;

4. Pursuant to clause 6 of subsection 127(1) of the Act, Pardo is reprimanded;

5. Pursuant to clause 7 of subsection 127(1) of the Act, Pardo shall resign as director or officer of any issuer on the date of this Order of the Commission approving the Settlement Agreement, except for 503124 Ontario Ltd., the Brainwave Entities and Intelligent Creatures Inc. and its affiliates on the condition that he provides a copy of the Order approving the Settlement Agreement to the Board of Directors of these companies and to their legal counsel within 10 days of the date of this Order approving the Settlement Agreement; and

6. Pursuant to clause 8 of subsection 127(1) of the Act, Pardo shall, except as set out in paragraph 5 above, be prohibited from becoming or acting as director or officer of any issuer for a period of two years from the date of this Order approving the Settlement Agreement, except that he will be permitted to be or act as a director and/or officer of 503124 Ontario Ltd., the Brainwave Entities and Intelligent Creatures Inc. and its affiliates.

DATED at Toronto this 17th day of August, 2012.

_____

SCHEDULE "B"

SUPPLEMENTARY STATEMENT OF FACTS

1. The Commission commenced an enforcement proceeding against the Respondents in November of 2005.

2. The hearing of the matter was set to commence on September 30, 2009. Rene Pardo was unrepresented at all events and attendances before the Commission that are relevant to this chronology.

3. On September 9, 2009, the Commission heard various motions made by the parties. At the conclusion of that attendance, the Chair of the panel exhorted the parties to try and settle.

4. On September 17, 2009, the Commission approved a Settlement Agreement between Staff and the Respondent Gary Usling.

5. Rene Pardo entered into a Settlement Agreement with Staff on September 28, 2009. The Commission issued a Notice of Hearing in connection with the Commission's consideration of that Settlement Agreement. The settlement hearing was set for the next day, September 29, 2009.

6. On September 29, 2009, the settlement panel declined to consider the Settlement Agreement and referred the matters that arose at the settlement hearing to the merits panel on the main hearing, set to commence on September 30, 2009.

7. On September 30, 2009, the merits panel declined to consider the Settlement Agreement, and declined to remit consideration of the Settlement Agreement to another panel.

8. As a result, over the next 6 months Rene Pardo was required to participate in a 58-day hearing of the case against him and those other Respondents who had not settled.

9. On September 7, 2010, the merits panel released its Decision on the merits and found Rene Pardo had violated the *Securities Act*.

10. In Reasons dated January 26, 2011, the merits panel imposed sanctions on Rene Pardo. At no time did the merits panel consider the Settlement Agreement Rene Pardo had reached with Staff of the Commission on September 28, 2009.

11. On November 10, 2011, Rene Pardo was successful in his application for judicial review before the Divisional Court. The Commission's finding that Rene Pardo had breached the *Securities Act* and the Commission's Decision imposing sanctions on him were both quashed.

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
Sembiosys Genetics Inc.	20 Aug 12	31 Aug 12		
Aerocast Inc.	17 Aug 12	29 Aug 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
China Wind Power International Corp.	8 Aug 12	20 Aug 12	20 Aug 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
China Wind Power International Corp.	8 Aug 12	20 Aug 12	20 Aug 12		

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Chapter 6

Request for Comments

6.1.1 Proposed Amendments to OSC Rule 13-502 Fees and Companion Policy 13-502CP Fees

REQUEST FOR COMMENTS
PROPOSED AMENDMENTS TO OSC RULE 13-502 FEES
AND COMPANION POLICY 13-502CP FEES

August 23, 2012

Introduction

The current fee structure under the OSA and the *Commodity Futures Act* was established in 2003. The OSC re-evaluates its fee levels and resets its fees every three years.

The Commission is publishing for a 90-day comment period proposed amendments (the Proposed Amendments) to OSC Rule 13-502 Fees (the Current Rule) made under the Securities Act (OSA), together with proposed changes (the Proposed CP Changes) to Companion Policy 13-502CP. In this Notice, the proposed versions of the Current Rule and the Companion Policy are referred to as the Proposed Rule and the Proposed CP, respectively. The Proposed Amendments and the Proposed CP Changes are referred to collectively as the Proposed Materials.

The Proposed Materials are available on the Commission's website (www.osc.gov.on.ca). Related proposed changes to OSC Rule 13-503 (*Commodity Futures Act*) Fees are also being published for comment in this Bulletin.

The OSC, as a self-funded agency, strives to operate on a cost-recovery basis and is dependent on fees from market participants. The fee structure is designed to recover the OSC's costs to provide protection to investors and promote efficient capital markets that are aligned with global markets.

Capital markets have become increasingly interconnected by technology, business models, investment flows and human interactions. The breadth and volume of market activity is expanding in step with rapid technological innovations, including high-frequency trading, and the proliferation of new products, such as exchange-traded funds. Capital travels faster within multiple marketplaces that span jurisdictional borders, relying on advanced infrastructure platforms and trading systems. Emerging market countries have a growing influence on international capital flows and are leveraging technology to open new marketplaces.

Increasingly, the OSC must deal with regulatory matters that are international, not only provincial or national, in their scope, such as the oversight of emerging markets issuers and the regulation of over-the-counter derivatives. The OSC and authorities in other countries often face similar challenges that require collaborative, not individual, policy responses. More so than ever before, the OSC regulates within the context of a global marketplace, which underlines the imperative of engaging with our international counterparts, especially through the International Organization of Securities Commissions (IOSCO), to deliver proactive regulation. In the face of complex international investigations and changing markets, we know we need to enhance our efficiency and effectiveness. The Enforcement Branch is increasing its expertise in conducting multi-jurisdictional investigations, which are costly and present challenges related to geography, access to records and inter-agency co-operation.

The OSC and securities regulators around the world must come to grips with this new reality as it presents challenges to certain traditional approaches to regulation, especially the need to understand and regulate complex trading strategies and products as well as cross-border matters in compliance and enforcement. The interconnectedness of markets also creates systemic risk within the wider financial framework, and securities regulators have assumed a key role in maintaining its stability. The OSC, working with the Bank of Canada, federal Department of Finance, Office of the Superintendent of Financial Institutions and the Canadian Securities Administrators (CSA), has kept Canada on schedule to meet its G20 commitments to mitigate systemic risk, in particular, by developing regulatory regimes for OTC derivatives. The OSC works with the CSA to sustain a more efficient national system that supports the Canada-wide interests of investors, market participants and the economy. As an active CSA member, the OSC co-operates with its provincial and territorial counterparts on numerous national initiatives to harmonize the regulation of Canada's capital markets.

This is the environment in which the OSC regulates the capital markets of Ontario. Global pressures to increase regulatory efforts continue to drive the OSC's cost structure. The OSC is mandated to provide protection to investors and foster confidence in the fairness and efficiency of markets while operating in the context of fast-moving changes to market structures, technology, investment products and the global regulatory regime. The OSC faces a very difficult task to balance pressures to

apply more resources to multiple areas of growing responsibility, against its desire to limit the rate of fee increases for market participants who continue to face challenging market conditions. The OSC must raise fees because its scope to reallocate resources cannot provide the capacity needed to meet the increasing regulatory demands, both national and international, that continue to generate cost pressures for the OSC. Other regulators are facing similar pressures and have been forced to increase fees significantly (e.g., SEC – 24%). The OSC must raise its fees to fund additional resources to ensure that it has the appropriate institutional capacity, expertise and skills to deal with these issues and challenges. With the proposed fee changes set out below OSC revenues are projected to increase by 14.8% in 2013/2014.

The on-going feedback received by us on Commission fees charged suggests that they are considered by market participants to be a modest component of their overall cost structures. The input sought by the Commission includes whether any part of the proposals put forth today would, if implemented, change this assessment.

We request comments on the Proposed Materials by November 21, 2012.

Substance and Purpose of the Proposed Materials

The OSC collects fees from market participants under the current fee rule through participation fees and activity fees.

Participation fees are based on the cost of a broad range of regulatory services that cannot be practically or easily attributed to individual activities or entities and are intended to serve as a proxy for the market participant's use of the Ontario capital markets. Participation fee levels are set using a tiered structure. Fees for issuers are based on average market capitalization in a fiscal year. Fees for registrants are based on their annual Ontario revenues. Participation fees are set based on estimates of OSC operating costs for upcoming periods.

Two additional categories of participation fees are proposed, increasing the categories from two to four. Participation fees for reporting issuers continue to be referred to as corporate finance participation fees and those for registrants and certain unregistered capital market participants continue to be referred to as capital markets participation fees. The two additional categories of participation fees proposed comprise fees for specified regulated entities, such as exchanges, alternative trading systems (ATSs), clearing agencies and trade repositories, and for designated rating organizations.

Activity fees are generally charged where a document of a designated class is filed. Estimates of the direct cost of Commission resources used in undertaking the activities listed in Appendix C of the Current Rule are considered in determining these fees (e.g., reviewing prospectuses, registration applications and applications for discretionary relief). Generally, the activity fee charged for filing a document of a particular class is based on the average cost to the Commission of reviewing documents of the class. Under the Proposed Rule, there is also provision in narrow circumstances for charging a variable cost-based fee for certain filings by entities such as exchanges, ATSs and clearing agencies, in light of the high degree of variability of the resources used on these filings.

The Proposed Amendments make adjustments to the current rule so that the fees charged by the Commission are aligned more closely with actual Commission's costs. New activity and participation fees are proposed in areas where workload has increased and more resources are being targeted.

To allow for the greater predictability of fee revenues, the Proposed Amendments for corporate finance and capital markets participation fees provide that the fees be determined by referencing historical market capitalization or revenue data (rather than current data). In addition, that reference point is proposed to be the basis for fees for the anticipated three-year period of the Proposed Rule. The OSC undertakes to carefully monitor these changes and the participation fees collected and consider, on an on-going basis, any adjustments to the fee rule that may be warranted in order to better align the Commission's costs and revenues.

The Proposed CP Changes reflect the Proposed Amendments.

Further details on the Proposed Amendments and the Proposed CP Changes are provided below under the headings "Summary of Proposed Amendments" and "Summary of Proposed CP Changes".

Anticipated Costs and Benefits and Supplementary Information

The proposed amendments to the OSC rule are needed to address a number of other challenges. Key issues with the current rule include the following:

- Fees needing to evolve with changing OSC areas of work focus
- Fairness of share of fees among registrants and issuers

- Predictability of OSC fee revenues
- Increase in Reserve Fund

Fees needing to evolve with changing OSC areas of work focus

The OSC's areas of work have changed significantly since the fee rule was first introduced in 2003. Trading on marketplaces is faster and innovative investment products are proliferating. The OSC continues to build the necessary tools, expertise and flexibility to regulate a rapidly changing market landscape. Where practical the OSC needs to try to align its fees to new areas of oversight that are generating costs. For example, OSC efforts and resources focused on oversight of evolving market structures and products have increased significantly. As previously noted, we are proposing new participation fees for designated rating organizations and various market infrastructure entities (e.g., exchanges and clearing agencies). The new "market oversight" fees are required to recover costs in these areas that are consuming more resources.

The increases proposed for many activity fees reflects higher OSC costs as well as changes in the complexity of much of the work. This has resulted in greater time/resource requirements for certain activities. It is important to note that fewer than 20% of the OSC's activity fees were changed when they were reset in 2010.

Fairness of share of fees among registrants and issuers

The OSC is focused on trying to ensure fairness in the balance of fees paid between issuers and registrants. Difficulties in allocating certain OSC costs (e.g. enforcement costs) among these groups, and the fact that costs can change materially between these groups from year to year, make it very difficult to justify a specific allocation and suggest that the most defensible fee allocation among these groups may be an equal share. The current fee rule included fee increases of 9% for registrants and 17% for issuers to bring the balance closer to 50%/50%. With these increases, the relative share of revenues among registrants and issuers is approximately 60% and 40%, respectively. The current proposed fee increases of 7.9% per year for registrants and 15.5% per year for issuers are proposed to continue this transition toward more equal relative shares of fees paid.

Predictability of OSC Fee Revenues

Currently, participation fees are based on projected market capitalization (issuers) or Ontario revenues (registrants). The "projected" aspect of the current model reduces predictability of participation fees. Predictability is reduced further because these participation fees may fluctuate as market capitalization or Ontario revenues change for market participants.

The Proposed Rule addresses these issues by generally basing these participation fees on historical data, rather than on-going current data, in determining the size of market participants for the purposes of these fees. The Proposed Rule would set these fees for the three-year fee cycle based on the market capitalization or revenues for the most recent fiscal year prior to May 1, 2012. Using this historical data will reduce the risk that the revenues from these fees will produce significant surpluses or deficits for the Commission, and will assist market participants in their cash-flow planning.

Under this approach market participants who see a decline in their operations across the three-year fee cycle will not see any reduction in their fees and those who experience growth will avoid increased fees. However, this impact is not expected to be significant as it will be moderated by the tier structure in the fee rule under which it would take a significant change in business performance to move more than one tier during the three years.

Increase in Reserve Fund

The OSC has authority to hold a general reserve of up to $20 million. When the reserve fund was approved by the Minister of Finance in 1999, $20 million represented approximately six months or 50% of annual OSC operating expenses. Today this reserve represents only 20% of annual operating expenses and it is no longer sufficient to fund the OSC's cash requirements throughout the year. The OSC currently manages in-year shortfalls through a credit facility.

When fees were last set in 2010 the OSC considered the market conditions at that time and decided to draw down its surplus to reduce the impact of fee increases on market participants. During the last three years the OSC operating surplus was reduced through planned deficits and it is expected to be approximately $7 million on March 31, 2013. The OSC needs to rebuild its surplus to position itself to deal with emerging responsibilities (e.g. derivatives), to provide flexibility when setting fees in the future and to deal with multi-year investment horizons.

To achieve its goal to be a proactive 21st century regulator, the OSC needs a fiscal framework that provides flexibility to address emerging challenges. The ability of the OSC to adjust quickly to changing circumstances and regulatory challenges is constrained by the practice of setting fees every three years and the length of the process required to implement changes to fees. The OSC needs a reserve that is sufficient to allow it to deal with unforeseen cost increases or revenue shortfalls that could materially impair its ability to operate. The proposed fee increases would allow the OSC to rebuild its reserve to a level

consistent with those maintained by other securities regulators that are self-funded (e.g., the British Columbia Securities Commission and the Alberta Securities Commission). A higher reserve would better position the OSC to manage its seasonal cash flow needs and to make multi-year investments. It would also provide the much needed flexibility to respond to a growing global regulatory agenda and to address emerging issues such as regulation of derivatives and emerging markets investigations. Any income earned on the reserve balance would be available to reduce future revenue requirements. In addition, the OSC would avoid interest costs on the current credit facility.

Financial Impact of the Proposed Changes

Since the current fee model was established in 2003, OSC fee increases have not kept pace with costs of regulation. The direct link between costs and fees has been weakened because the OSC decided to freeze fees for one year in 2009 and has used its surpluses over the last few years to keep fee increases below levels required for full cost recovery. The total amount of fees collected from market participants in the 2011/2012 fiscal year was only 3.1% higher than the total amount of fees collected in 2005/2006 fiscal year. Current participation fee rates for all issuers, as well as for most registrants with less than $3 million in annual revenues, are lower than the fee rates in place in 2003.

The size of fee increases required reflects the influence of a number of factors. As noted above, when fees were last reset in 2010, in recognition of the difficult market conditions and to reduce the burden on market participants, the OSC decided to draw down its surplus so that fees could be set at rates that were below levels required to recover its costs. As a result, increasing revenues by 6.9% from current levels would be required just to offset the OSC's current operating deficit and bring the OSC to full cost recovery. This fee proposal is based on the assumption of OSC costs increasing by 5% in each of the next three years. These increases factor in general inflation, as well as the need to continue to address emerging market challenges. The Commission believes that fee increases must be large enough to address the current operating deficit, the projected growth in operating costs and the need to rebuild the OSC's reserve to ensure emerging demands can be addressed.

Under the proposal, on average the total participation fees paid by market participants will rise by 7.9% per year for registrants and 15.5% per year for issuers from the participation fees paid in 2012/2013.

In reviewing its fee requirements the OSC has made every effort to consider the current market environment. To facilitate the provision of fee relief to the smallest market participants, the OSC proposes to split the lowest participation fee tier for both issuers and registrants into two tiers. This approach is responsive to current challenging market conditions and is aligned with the OSC's objective of supporting small and medium enterprises. As a result, 45% of issuers and 55% of registrants will be paying the same or lower participant fees.

The proposed fee changes will allow the OSC to generate an additional $23 million in surplus over three years. In combination with the OSC's expected $7 million surplus at March 2013, this would provide a total of $30 million to fund its operations and would move the OSC towards being able to internally fund its operations without the use of a credit facility. The ultimate goal would be to fund a General Reserve limited to up to 50% of the average expenditures to fund OSC operations for its most recent fiscal year. This would bring the OSC operating reserve to a level consistent with those that are maintained by other securities regulators that are self-funded. Forecast OSC operating results for the 2012/13 fiscal year and the next three fiscal years are set out below.

	2012/2013	2013/2014	2014/2015	2015/2016
		$ Thousands		
Total Revenues	93,524	107,360	117,570	129,175
less Expenses	99,986	105,000	110,250	115,765
Net Shortfall	-6,462	2,360	7,320	13,410
OSC Surplus Opening	13,485	7,023	9,383	16,703
OSC Surplus Closing	7,023	9,383	16,703	30,113

Summary of the Proposed Amendments

The Proposed Amendments are described in detail below.

Use of pre-May, 2012 information in determining market participant size

Under the Current Rule, a participation fee for a reporting issuer is determined with reference to its capitalization for its last completed fiscal year. Under the Proposed Rule, a participation fee for a reporting issuer is determined with reference to its capitalization for its "reference fiscal year".

Similarly, a participation fee for a registrant firm or unregistered investment fund manager under the Current Rule is determined with reference to its specified Ontario revenues for its last completed fiscal year. Under the Proposed Rule, a participation fee for a registrant firm or unregistered investment fund manager is determined with reference to its specified Ontario revenues for its "reference fiscal year".

Under section 1.1 of the Proposed Rule, a market participant's "reference fiscal year" is its last fiscal year ending before May 1, 2012, assuming:

- It was a reporting issuer, registrant firm or unregistered investment fund manager at the end of that fiscal year; and
- If it became a reporting issuer in that fiscal year as a result of receiving a prospectus receipt, all or substantially all of its securities were listed and quoted on a marketplace at the end of that fiscal year.

As a consequence of the way in which "reference fiscal year" is used in the Proposed Rule, these participation fees are generally fixed for three years, with reference to data from a market participant's "reference fiscal year".

If the assumptions described do not apply, a market participant's "reference fiscal year" is its "previous fiscal year" (as defined in section 1.1 of the Current Rule), which in general terms is its last completed fiscal year. Where a market participant's "reference fiscal year" is its "previous fiscal year", the result is that the market participant's size is determined with reference to the same time period as it is under the Current Rule. For a registrant that is required to calculate its fees based on its previous fiscal year, this means that it will use its annual financial statements each year as a basis for the information required in Form 13-502F4.

To take into account these amendments, numerous consequential amendments have been made to the Forms in the Proposed Rule.

The main objective of these amendments is to enable the better matching of the Commission's revenues and expenditures. The proposed amendments eliminate the need to forecast market conditions in determining the anticipated fee revenues for each participation fee tier since, with the use of the reference fiscal year, participation fees will generally be known and will be predictable over the life of the Proposed Rule. This provides more stability for the benefit of the Commission and market participants.

Corporate finance participation fees

One additional tier is proposed for reporting issuers with under $10 million of capitalization, with a lower participation fee of $800 initially being provided for this tier. Those reporting issuers with capitalization between $10 million and $25 million are initially proposed to remain subject to a $960 participation fee. The $800 and $960 participation fees would be increased as shown in Appendix A of the Proposed Rule in the last two years of the three-year fee cycle. Participation fees for reporting issuers within higher tiers of capitalization would increase by 15.5% annually throughout the three-year fee cycle.

The capitalization on which participation fees are based for Class 1, Class 3B and Class 3C reporting issuers is generally determined as the average monthly closing price throughout the reference fiscal year. Under the Proposed Amendments, this amount is adjusted so that the closing prices at the month ends before an issuer becomes a reporting issuer are ignored in determining capitalization for this purpose. However, to provide relief in respect of its first full year as a reporting issuer, the Proposed Amendments also pro-rate the applicable participation fee to reflect the portion of the reference fiscal year during which the issuer was not a reporting issuer.

The treatment of Class 3B issuers is clarified by the addition of Appendix B.1 in the Proposed Rule, which allows the text in subsection 2.2(3) of the Proposed Rule to be simplified.

Capital markets participation fees

One additional tier is proposed for participants with under $250,000 of specified Ontario revenues, with a lower participation fee of $800 initially being provided for this tier. Those participants with revenues between $250,000 and $500,000 are initially proposed to remain subject to a $1,035 participation fee. The $800 and $1,035 participation fees would be increased as shown in Appendix B of the Proposed Rule in the last two years of the three-year fee cycle. Participation fees for participants within higher tiers of revenue would increase by 7.9% annually throughout the three-year fee cycle.

Capital market participation fees are imposed on registered firms, as well as unregistered investment fund managers. For this purpose, the definition of "unregistered investment fund manager" in section 1.1 of the Proposed Rule would be amended to exclude unregistered investment fund managers with no place of business in Ontario that act for one or more investment funds if one or more of the following apply:

- none of the managed funds have security holders resident in Ontario;
- neither the investment fund manager nor any of the managed funds has, at any time after September 27, 2012, actively solicited residents in Ontario to purchase securities of any of the managed funds.

Participation fees for specified regulated entities

New Part 3.1 and Appendix B.1 of the Proposed Rule will establish participation fees for specified market operators (including exchanges), ATSs, clearing agencies and trade repositories. The fees vary from $8,750 to $500,000 per calendar year and are payable, beginning in 2013, on April 30. New entrants are only required to pay these fees for a calendar year if, on April 15 of that calendar year, they fit within the organizations described and carry on business in Ontario. Payments will be accompanied by a completed Form 13-502F7.

The fees proposed for ATSs would be lower than those for recognized exchanges because recognized exchanges have more functions that the OSC is responsible for overseeing (for example, they have a listing function) and part of the oversight of ATS's is conducted by another regulatory agency (the Investment Industry Regulatory Organization of Canada (IIROC)).

Participation fees for these regulated entities are being introduced to recover the Commission's cost of oversight. In determining these fees, the Commission took into account the activities of these entities that should be subject to oversight (e.g., matching, netting and novation carried out by clearing agencies), historical costs of overseeing different types of entities and the projected costs of implementing an enhanced oversight program for certain entities (e.g. recognized exchanges and clearing agencies under Maple Group Acquisition Corp.).

Participation fees for a recognized exchange for a year would be based on its market share as calculated based on the previous 12 months ending on March 31 of the year. Where a person or company operates a market or facility that is either recognized under the Act as an exchange or regulated under the person or company's recognition order, or has one or more recognized exchanges that are subsidiaries, the group would be charged one participation fee based on the group's aggregate market share. Market share will be determined to be the highest of the group's share of the

(a) total dollar value of trades of exchange-traded securities, as defined in National Instrument 21-101 *Marketplace Operation*;

(b) total trading volume of exchange-traded securities, as defined in that Instrument; and

(c) total number of trades of exchange-traded securities, as defined in that Instrument.

Late fees are proposed on any late payment of these participation fees (one-tenth of one percent per business day on unpaid amounts). As with other similar late fees determined under sections 2.5 and 3.6, late fees under $10 are effectively waived for administrative convenience.

In some cases, a specified regulated entity may be liable for a participation fee under Part 2 or Part 3. Section 1.3 of the Proposed Rule ensures that each of the participation fees under Parts 2 to 3.2 represent independent liabilities.

Participation fees for designated rating organizations

Part 3.2 of the Proposed Rule will provide that designated rating organization must pay a $15,000 annual participation fee. The payment is made after the completion of each financial year, at the time of the filing of the organization's Form 25-101F1 Designated Rating Organization Application and Annual Filing. The payment will be accompanied by a completed Form 13-502F8.

The same type of late fee as proposed in connection with specified regulated entities is likewise proposed in connection with designated rating organizations.

Late fees for late filing of forms

Under the Current Rule, the $100 per day fee for the late filing of documents listed in section A of Appendix D is subject to a $5,000 annual aggregate cap. Among the documents listed in that section, in relation to a reporting issuer, are Forms 45-501F1 and 45-106F1 (dealing with reports of prospectus-exempt distributions).

New Forms 13-502F7 and 13-502F8 are proposed to be added to the list of forms specified in section A of Appendix D.

Under the Proposed Amendments, the same daily $100 late fee applies to all issuers for the late filing of these forms. However, Forms 45-501F1 and 45-106F1 would now be referred to in section A.1 (rather than section A) of Appendix D and would be subject to a separate $5,000 annual aggregate cap.

Activity fees

(i) Adjustments in Amounts of Existing Activity Fees

There are a number of changes in the amounts of existing activity fees, made in order to better match the Commission's costs for specified activities and to reduce increases that would otherwise be required in the setting of participation fees. Proposed increases in activity fees reflect increases in OSC costs as well as increases in the complexity of much of the OSC's work which has resulted in greater time/resource requirements for certain activities.

The following fees are proposed to increase from $3,250 to $3,750:

- The fee for filing a preliminary or pro forma prospectus in Form 41-101F1 (Appendix C (A) 1);
- The fee for filing a preliminary short form prospectus in Form 44-101F1, or in connection with a MJDS distribution in the U.S.(Appendix C (A) 3);
- The base fee for the filing by an investment fund of a preliminary or pro forma prospectus in Form 41-101F2 (Appendix C (A) 4 (b)); and

The fee for reviewing a novel linked note supplement in relation to a specified derivative (Appendix C (A) 5).

With regard to the last fee described immediately above, the Proposed Amendments would extend this fee to any review of a supplement in relation to a specified derivative (i.e., the fee would not be limited to linked note supplements). This extension is proposed because any supplement qualifying the distribution of a novel specified derivative is subject to review under the pre-clearance requirement in section 4.2 of National Instrument 44-102 *Shelf Distributions* (NI 44-102). The Proposed Amendments would also impose a $500 fee (Appendix C (A) 6) in connection with the filing of a prospectus supplement in relation to a linked note. The $500 fee would not be limited to linked note supplements subject to review under the pre-clearance requirement in section 4.2 of NI 44-102.

The additional fee for a preliminary or pro forma prospectus of a resource issuer that is accompanied by technical reports is proposed to be increased from $2,000 to $2,500.

The base fee for the filing of a rights offering circular in Form 45-101F is proposed to increase from $2,000 to $3,750 (Appendix C (B) 3).

The base fee for an application for relief, approval or recognition specified in Appendix C (E) 1 is proposed to increase from $3,250 to $4,500 (or, in the case of application under multiple sections, from $5,000 to $7,000). However, it is proposed that applications for recognition of an exchange or clearing agency and exemptions from such recognition be no longer subject to this fee. Instead, these fees would now be provided under Appendix C (E.1).

The fee for application for relief under the Proposed Rule is proposed to increase from $1,500 to $1,750 (Appendix C (E) 2).

The base fee for the filing of a take-over bid or issuer bid circular under subsection 94.2(2), (3) or (4) of the OSA is proposed to increase from $4,000 to $4,500 (Appendix C (G) 1).

An issuer's fee for an application under subsection 1(10) of the OSA not to be treated as a reporting issuer under the OSA is proposed to increase from nil to $1,000 (Appendix C (E) 4).

The following fee adjustments are proposed to fees for registration-related activities:

- fee for new registration of a firm is proposed to increase from $600 to $1,200 (Appendix C (H) 1);
- fee for change in registration category is proposed to increase from $600 to $700 (Appendix C (H) 2);
- fee for registration resulting from an amalgamation of firm proposed to decrease from $2,000 to $1,000 (Appendix C (H) 5); and
- fee for notice required under section 11.9 or 11.10 of National Instrument 31-103 is proposed to increase from $3,000 to $3,500 (Appendix C (I)).

(ii) Changes in Fee Structure in Relation to Exchanges, Clearing Agencies and ATSs

As noted above, OSC efforts and resources focused on evolving market structures and related oversight have increased significantly. The OSC believes that, where practical, it is fair and necessary to amend activity fees to better recover the costs of applications of exchanges and clearing agencies for recognition under the OSA, for exemptions from recognition and for variations.

In setting the amount of these activity fees, we have taken into account the average historical hours spent by OSC staff in particular matters and the past costs incurred in processing large applications that were unusual and involved significant policy considerations (e.g., Maple). We also have taken into account fees charged by other jurisdictions for similar activities.

Under Appendix C (E.1), the fee for applications for recognition by exchanges and clearing agencies would be increased to $100,000 and the fee for exemption from recognition under the OSA for those organizations would be increased to $75,000. An additional fee of $100,000 would be charged in four cases, in connection with each application that:

- reflects a merger of an exchange or clearing agency,
- reflects an acquisition of a major part of the assets of an exchange or clearing agency,
- involves the introduction of a new business that would significantly change the risk profile of an exchange or clearing agency, or
- reflects a major reorganization or restructuring of an exchange or clearing agency.

The same additional $100,000 fee would be charged under Appendix C (E) in connection with applications to vary an order that reflect the circumstances described above.

A new fee of $50,000 is proposed under Appendix C (E.2) in order to conduct a review of the initial Form 21-101F2 of a new ATS.

Further, provision is made in proposed section 4.1.1 of the Proposed Rule for a variable cost-based fee to be charged in connection with any filing described in section E, E.1 or E.2 of Appendix C from an exchange, ATS or clearing agency if the “designated cost” of the work on the filing exceeds $300,000. For this purpose, the “designated cost” of work done would be equal to the product of the number of hours worked on the filing by non-managerial professional OSC staff and $140, plus the cost of external services used by the Commission on the filing. Once the $300,000 threshold is reached the Commission would be entitled to issue invoices to recoup the OSC’s cost of processing the filing. The special activity fee is not intended to apply frequently and would only apply to very special circumstances, such as the recently completed “Maple recognition”. Further elaboration of the process contemplated in connection with variable cost-based activity fees is set out in the Proposed CP.

With these changes in fee structure, it is intended to recover at least part of the OSC costs of certain filings that involve significant policy considerations, and thus additional resources to process. The Commission believes that, in the right circumstances, firms should pay for regulatory work that is performed where the benefit of that activity would primarily accrue to the fee payer concerned, rather than the work being paid for by other fee payers. Further, the fee payable should be consistent with the complexity of a filing.

(iii) Exempt Distribution Reports

The Current Rule provides an exemption from the $500 fee otherwise applying in connection with the filing of Forms 45-501F1 and 45-106F1 for issuers that are subject to participation fees (Appendix C (B) 2). There is a similar exemption for investment funds if their investment fund managers are subject to participation fees. It is proposed to eliminate these exemptions in order to reflect the incremental cost to the Commission for the review of these forms.

(iv) Information Requests to the Commission

Section K of Appendix C sets out the fees that the Commission charges for retrieving and copying records, mostly of a public nature.

It is proposed to update this section to refer to copies made in any format (rather than photocopies). It is proposed to express the $0.50 charge as applying per image (rather than per page).

It is also proposed to adjust the amount of fee charged for a search of the Commission's public records to reflect required retrieval time. The fee is proposed to be changed from a $150 flat fee to a $7.50 charge for each 15 minutes of search time.

Additional technical changes

The Proposed Amendments also include some non-material technical changes.

Proposed CP Changes

The purpose of the Proposed CP Changes is to clarify the Commission's view of the application of the Proposed Amendments, as well as to address the additional issues described below and to make a number of non-material technical changes.

Section 4.1 of the Proposed CP deals with the passing on of capital markets participation fees. The Commission takes the position that these participation fees should be paid by, and borne by, those who are charged the participation fees.

Section 4.4 of the Proposed CP clarifies the Commission's position as to when filings by unregistered capital market participants are made by paper copy.

Section 4.7 of the Proposed CP is meant to clarify the Commission's position as to the meaning of "active" solicitation, which is relevant in the context of the definition of "unregistered investment fund manager".

Part 6 of the Proposed CP elaborates on the process foreseen in the event that a variable cost-based activity fee is charged under section 4.1.1 of the Proposed Rule.

Authority for the Proposed Amendments

Paragraph 43 of subsection 143(1) of the OSA authorizes the Commission to make rules "Prescribing the fees payable to the Commission, including those for filing, for applications for registration or exemptions, for trades in securities, in respect of audits made by the Commission, and in connection with the administration of Ontario securities law."

Alternatives Considered

The Commission did not consider any alternatives to rule amendments in the development of the Proposed Amendments.

Unpublished Materials

The Commission has not relied on any significant unpublished study, report, decision or other written materials in putting forward the Proposed Materials.

How to Provide Your Comments

You must provide your comments in writing by November 21, 2012. If you are not sending your comments by email, you should also send an electronic file containing the submissions (in Windows format, Microsoft Word).

Please send your comments to the following address:

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

The Commission will publish written comments received unless the Commission approves a commenter's request for confidentiality or the commenter withdraws its comment before the comment's publication.

Questions

Please refer your questions to:

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Text of the Proposed Materials

Annex A provides a blackline showing the impact of the Proposed Amendments on the Current Rule.

Annex B sets out a blackline showing the impact of the Proposed CP Changes on the Companion Policy.

ANNEX A
BLACKLINE SHOWING PROPOSED CHANGES TO
ONTARIO SECURITIES COMMISSION
RULE 13-502 FEES

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Form 13-502F8	Designated Rating Organizations – Participation Fee

PART 1 – INTERPRETATION

1.1 Definitions – In this Rule

"capitalization" means the amount determined in accordance with section 2.7, 2.8, 2.9 or 2.10;

"capital markets activities" means

(a) activities for which registration under the Act or an exemption from registration is required,

(b) acting as an investment fund manager, or

(c) activities for which registration under the *Commodity Futures Act*, or an exemption from registration under the *Commodity Futures Act*, is required;

"Class 1 reporting issuer" means a reporting issuer that is incorporated or organized under the laws of Canada or a jurisdiction in Canada and that, at the end of its previous fiscal year, has securities listed or quoted on a marketplace in Canada or the United States of America;

"Class 2 reporting issuer" means a reporting issuer that is incorporated or organized under the laws of Canada or a jurisdiction in Canada other than a Class 1 reporting issuer;

"Class 3A reporting issuer" means

(a) a reporting issuer that is not incorporated or organized under the laws of Canada or a jurisdiction in Canada and that, at the end of its previous fiscal year, has no securities listed or quoted on a marketplace located anywhere in the world, or

(b) a reporting issuer that is not incorporated or organized under the laws of Canada or a jurisdiction in Canada and that, at the end of its previous fiscal year,

(i) has securities listed or quoted on a marketplace anywhere in the world,

(ii) has securities registered in the names of persons or companies resident in Ontario representing less than 1% of the market value of all outstanding securities of the reporting issuer for which the reporting issuer or its transfer agent or registrar maintains a list of registered owners,

(iii) reasonably believes that persons or companies who are resident in Ontario beneficially own less than 1% of the market value of all its outstanding securities,

(iv) reasonably believes that none of its securities traded on a marketplace in Canada during its previous fiscal year, and

(v) has not issued any of its securities in Ontario in the last 5 years, other than

(A) to its employees or to employees of one or more of its subsidiary entities, or

(B) pursuant to the exercise of a right previously granted by it or its affiliate to convert or exchange its previously issued securities without payment of any additional consideration;

"Class 3B reporting issuer" means a reporting issuer

(a) that is not incorporated or organized under the laws of Canada or a jurisdiction in Canada,

(b) that is not a Class 3A reporting issuer, and

(c) whose trading volume in its previous fiscal year of securities listed or quoted on marketplaces in Canada was less than the trading volume in its previous fiscal year of its securities listed or quoted on marketplaces outside Canada;

"Class 3C reporting issuer" means a reporting issuer

(a) that is not incorporated or organized under the laws of Canada or a jurisdiction in Canada, and

(b) whose trading volume in its previous fiscal year of securities listed or quoted on marketplaces in Canada was greater than the trading volume in its previous fiscal year of its securities listed or quoted on marketplaces outside Canada;

"IIROC" means the Investment Industry Regulatory Organization of Canada;

"marketplace" has the meaning ascribed to that term in National Instrument 21-101 *Marketplace Operation*;

"MFDA" means the Mutual Fund Dealers Association of Canada;

"net assets" means total assets minus total liabilities, using the meanings ascribed to those terms under the accounting standards pursuant to which the entity's financial statements are prepared under Ontario securities law;

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

"Ontario allocation factor" has the meaning that would be assigned by the first definition of that expression in subsection 1(1) of the *Taxation Act, 2007* if that definition were read without reference to the words "ending after December 31, 2008";

"Ontario percentage" means, for a fiscal year of a participant

(a) if the participant is a company that has a permanent establishment in Ontario in the fiscal year, the participant's Ontario allocation factor for the fiscal year expressed as a percentage and determined on the assumption that the participant had a taxation year that coincided with the fiscal year and is resident in Canada for the purposes of the ITA,

(b) if paragraph (a) does not apply and the participant would have a permanent establishment in Ontario in the fiscal year if the participant were a company, the participant's Ontario allocation factor for the fiscal year expressed as a percentage and determined on the assumption that the participant is a company, had a taxation year that coincided with the fiscal year and is resident in Canada for the purposes of the ITA, and

(c) in any other case, the percentage of the participant's total revenues for the fiscal year attributable to capital markets activities in Ontario;

"parent" means a person or company of which another person or company is a subsidiary entity;

"participant" means a person or company;

"permanent establishment" has the meaning provided in Part IV of the regulations under the ITA;

"previous fiscal year" of a participant in respect of a participation fee means,

(a) where the participation fee is payable by a reporting issuer under section 2.2 and the required date of payment is determined with reference to the required date or actual date of filing of financial statements for a fiscal year under Ontario securities law, that fiscal year,

(b) where the participation fee becomes payable by a firm under subsection 3.1(1) on December 31 of a calendar year, the last fiscal year of the participant ending in the calendar year, and

(c) where the participation fee is payable by an unregistered investment fund manager under subsection 3.1(2) no more than 90 days after the end of a fiscal year, that fiscal year;

"reference fiscal year" of a participant in respect of a participation fee means,

(a) the participant's last fiscal year ending before May 1, 2012, if

(i) the participant was a reporting issuer, registrant firm or unregistered capital markets participant at the end of the fiscal year, and

(ii) if the participant became a reporting issuer in that fiscal year under clause (b) of the definition of "reporting issuer" in subsection 1(1) of the Act, all or substantially all of its securities were listed or quoted on a marketplace at the end of that fiscal year, and

(b) in any other case, the previous fiscal year in respect of the participation fee;

"registrant firm" means a person or company registered under the Act as a dealer, adviser or investment fund manager;

"specified Ontario revenues" means, for a registrant firm or an unregistered capital markets participant, the revenues determined under section 3.3, 3.4 or 3.5;

"subsidiary entity" has the meaning ascribed to "subsidiary" under the accounting standards pursuant to which the entity's financial statements are prepared under Ontario securities law;

"unregistered capital markets participant" means,

(a) an unregistered investment fund manager; or

(b) an unregistered exempt international firm;

"unregistered exempt international firm" means a dealer or adviser that is not registered under the Act and is

(a) exempt from the dealer registration requirement and the underwriter registration requirement only because of section 8.18 [*International dealer*] of NI 31-103;

(b) exempt from the adviser registration requirement only because of section 8.26 [*International adviser*] of NI 31-103; or

(c) exempt from each of the dealer registration requirement, the underwriter registration requirement and the adviser registration requirement only because of sections 8.18 [*International dealer*] and 8.26 [*International adviser*] of NI 31-103; and

"unregistered investment fund manager" means a person or company that acts as an investment fund~~manager and is not registered under the Act.~~ manager for one or more investment funds and is not registered as an investment fund manager in accordance with Ontario securities law, but does not include a person or company that does not have a place of business in Ontario if one or more of the following apply:

(a) none of those investment funds have security holders resident in Ontario;

(b) the person or company and those investment funds have not, at any time after September 27, 2012, actively solicited residents in Ontario to purchase securities of any of those investment funds.

1.2 Interpretation of "listed or quoted" – In this Rule, a reporting issuer is deemed not to have securities listed or quoted on a marketplace that lists or quotes the reporting issuer's securities unless the reporting issuer or an affiliate of the reporting issuer applied for, or consented to, the listing or quotation.

1.3 Liability for multiple participation fees – For greater certainty, the liability of a person or company for a payment under any of Parts 2 to 3.1 of this Rule does not affect the liability of that person or company under any other of those Parts.

PART 2 – CORPORATE FINANCE PARTICIPATION FEES

Division 1: General

2.1 Application – This Part does not apply to an investment fund if the investment fund has an investment fund manager.

2.2 Participation Fee

(1) A reporting issuer must, after each of its fiscal years, pay the participation fee shown in Appendix A opposite the capitalization of the reporting issuer for its ~~previous~~reference fiscal year, as its capitalization is determined under section 2.7, 2.8 or 2.10.

(2) Despite subsection (1), a Class 3A reporting issuer must pay a participation fee of $960.*

**Note: The $960 amount in subsection 2.2(2) is proposed to rise to $1,110, effective April 7, 2014, and to $1,280, effective April 6, 2015.*

(3) Despite subsection (1), a Class 3B reporting issuer must pay ~~a~~ the participation fee shown in Appendix A.1 opposite the capitalization of the reporting issuer for its reference fiscal year, as its capitalization is determined under section 2.9. ~~equal to the greater of~~

~~(a) $960, and~~

~~(b) 1/3 of the participation fee shown in Appendix A opposite the capitalization of the reporting issuer for its previous fiscal year, as its capitalization is determined under section 2.9.~~

(3.1) Despite subsections (1) and (3), the participation fee of a reporting issuer must, if its capitalization for its reference fiscal period is affected by the application of subsection 2.7(2) or 2.9(2) and its reference fiscal period coincides with its previous fiscal year in respect of the participation fee, be calculated by multiplying

(a) the amount of that participation fee determined without reference to this subsection, by

(b) the number of entire months in the previous fiscal year remaining after it became a reporting issuer divided by the lesser of

(i) 12, and

(ii) the number of entire months in the previous fiscal year.

(4) Despite subsections (1) to (3), a participation fee is not payable by a participant under this section if the participant became a reporting issuer in period that begins immediately after the time that would otherwise be the end of the previous fiscal year in respect of the participation fee and ends at the time the participation fee would otherwise required to be paid under section 2.3.

2.3 Time of Payment – A reporting issuer must pay the participation fee required under section 2.2 by the earlier of

(a) the date on which its annual financial statements are required to be filed under Ontario securities law, and

(b) the date on which its annual financial statements are filed.

2.4 Disclosure of Fee Calculation – At the time that it pays the participation fee required by this Part,

(a) a Class 1 reporting issuer must file a completed Form 13-502F1,

(b) a Class 2 reporting issuer must file a completed Form 13-502F2,

(c) a Class 3A reporting issuer must file a completed Form 13-502F3A,

(d) a Class 3B reporting issuer must file a completed Form 13-502F3B, and

(e) a Class 3C reporting issuer must file a completed Form 13-502F3C.

2.5 Late Fee

(1) A reporting issuer that is late in paying a participation fee under this Part must pay an additional fee of one-tenth of one percent of the unpaid portion of the participation fee for each business day on which any portion of the participation fee remains due and unpaid.

(2) The amount determined under subsection (1) in respect of the late payment of a participation fee by a reporting issuer is deemed to be nil if the amount otherwise determined under subsection (1) in respect of the late payment of participation fee is less than $10.

2.6 Participation Fee ~~Exemption~~Exemptions for Subsidiary Entities

(1) Section 2.2 does not apply to a reporting issuer that is a subsidiary entity in respect of a participation fee determined with reference to the subsidiary entity's capitalization for the subsidiary entity's ~~previous~~reference fiscal year if

(a) at the end of that ~~previous~~reference fiscal year, a parent of the subsidiary entity was a reporting issuer,

(b) the accounting standards pursuant to which the parent's financial statements are prepared under Ontario securities law require the consolidation of the parent and the subsidiary entity,

(c) the parent has paid a participation fee applicable to the parent under section 2.2 determined with reference to the parent's capitalization for the parent's ~~previous~~reference fiscal year,

(d) the capitalization of the subsidiary entity for its ~~previous~~reference fiscal year was included in the capitalization of the parent for the parent's ~~previous~~reference fiscal year, and

(e) the net assets and total revenues of the subsidiary entity for its ~~previous~~reference fiscal year represented more than 90 percent of the consolidated net assets and total revenues of the parent for the parent's ~~previous~~reference fiscal year.

(2) Section 2.2 does not apply to a reporting issuer that is a subsidiary entity in respect of a participation fee determined with reference to the subsidiary entity's capitalization for the subsidiary entity's ~~previous~~reference fiscal year if

(a) at the end of that ~~previous~~reference fiscal year, a parent of the subsidiary entity was a reporting issuer,

(b) the accounting standards pursuant to which the parent's financial statements are prepared under Ontario securities law require the consolidation of the parent and the subsidiary entity,

(c) the parent has paid a participation fee applicable to the parent under section 2.2 determined with reference to the parent's capitalization for the parent's ~~previous~~reference fiscal year,

(d) the capitalization of the subsidiary entity for its ~~previous~~reference fiscal year was included in the capitalization of the parent for the parent's ~~previous~~reference fiscal year, and

(e) throughout the previous fiscal year of the subsidiary entity, the subsidiary entity was entitled to rely on an exemption, waiver or approval from the requirements in subsections 4.1(1), 4.3(1) and 5.1(1) and sections 5.2 and 6.1 of National Instrument 51-102 *Continuous Disclosure Obligations*.

(3) If, under subsection (1) or (2), a reporting issuer has not paid a participation fee, the reporting issuer must file a completed Form 13-502F6 at the time it is otherwise required to pay the participation fee under section 2.3.

2.6.1 Participation Fee Estimate for Class 2 Reporting Issuers

(1) If the annual financial statements of a Class 2 reporting issuer are not available by the date referred to in section ~~2.3,~~2.3 and the issuer's reference fiscal year coincides with its previous fiscal year, the Class 2 reporting issuer must, on that date,

(a) file a completed Form 13-502F2 showing a good faith estimate of the information required to calculate its capitalization as at the end of the previous fiscal year, and

(b) pay the participation fee shown in Appendix A opposite the capitalization estimated under paragraph (a).

(2) A Class 2 reporting issuer that estimated its capitalization under subsection (1) must, when it files its annual financial statements for the previous fiscal year,

(a) calculate its capitalization under section 2.8,

(b) pay the participation fee shown in Appendix A opposite the capitalization calculated under section 2.8, less the participation fee paid under subsection (1), and

(c) file a completed Form 13-502F2A.

(3) If a reporting issuer paid an amount under subsection (1) that exceeds the participation fee calculated under section (2), the issuer is entitled to a refund from the Commission of the amount overpaid.

Division 2: Calculating Capitalization

2.7 Class 1 reporting issuers

(1) The capitalization of a Class 1 reporting issuer for its ~~previous~~reference fiscal year is the total of

(a) the average market value over the ~~previous~~reference fiscal year of each class or series of the reporting issuer's securities listed or quoted on a marketplace, calculated by multiplying

(i) the total number of securities of the class or series outstanding at the end of the ~~previous~~reference fiscal year, by

(ii) except as provided by subsection (2), the simple average of the closing prices of the class or series on the last trading day of each month of the ~~previous~~reference fiscal year in which the class or series were listed or quoted on the marketplace

(A) on which the highest volume in Canada of the class or series was traded in the ~~previous~~reference fiscal year, or

(B) if the class or series was not traded in the ~~previous~~reference fiscal year on a marketplace in Canada, on which the highest volume in the United States of America of the class or series was traded in the ~~previous~~reference fiscal year, and

(b) the market value at the end of the ~~previous~~reference fiscal year, as determined by the reporting issuer in good faith, of each class or series of securities of the reporting issuer not valued on the last trading day of any month under paragraph (a), if any securities of the class or series

(i) were initially issued to a person or company resident in Canada, and

(ii) trade over the counter or, after their initial issuance, are otherwise generally available for purchase or sale by way of transactions carried out through, or with, dealers.

(2) If a person or company becomes a reporting issuer under clause (b) of the definition of "reporting issuer" in subsection 1(1) of the Act in its reference fiscal year, the reference in subparagraph (1)(a)(ii) to "each month" does not include each month ending before securities of the person or company were listed or quoted on a marketplace.

2.8 Class 2 reporting issuers

(1) The capitalization of a Class 2 reporting issuer for its ~~previous~~reference fiscal year is the total of all of the following items, as shown in its audited statement of financial position as at the end of the previous fiscal year:

(a) retained earnings or deficit;

(b) contributed surplus;

(c) share capital or owners' equity, options, warrants and preferred shares;

(d) non-current borrowings, including the current portion;

(e) finance leases, including the current portion;

(f) non-controlling interest;

(g) items classified on the statement of financial position as non-current liabilities, and not otherwise referred to in this subsection;

(h) any other item forming part of equity not otherwise referred to in this subsection.

(2) Despite subsection (1), a reporting issuer may calculate its capitalization using unaudited annual financial statements if it is not required to prepare, and does not ordinarily prepare, audited annual financial statements.

(3) Despite subsection (1), a reporting issuer that is a trust that issues only asset-backed securities through pass-through certificates may calculate its capitalization using the monthly filed distribution report for the last month of its ~~previous~~reference fiscal year, if the reporting issuer is not required to prepare, and does not ordinarily prepare, audited annual financial statements.

2.9 Class 3B reporting issuers

(1) The capitalization of a Class 3B reporting issuer for its ~~previous~~reference fiscal year is the total of each value of each class or series of securities of the reporting issuer listed or quoted on a marketplace, calculated by multiplying

(a) the number of securities of the class or series outstanding at the end of the ~~previous~~reference fiscal year, by

(b) except as provided by subsection (2), the simple average of the closing prices of the class or series on the last trading day of each month of the ~~previous~~reference fiscal year in which the class or series were quoted on the marketplace on which the highest volume of the class or series was traded in the ~~previous~~reference fiscal year.

(2) If a person or company becomes a reporting issuer under clause (b) of the definition of "reporting issuer" in subsection 1(1) of the Act in its reference fiscal year, the reference in paragraph (1)(b) to "each month" does not include each month ending before securities of the person or company were listed or quoted on a marketplace.

2.10 Class 3C reporting issuers – The capitalization of a Class 3C reporting issuer is determined under section 2.7, as if it were a Class 1 reporting issuer.

2.11 Reliance on Published Information

(1) Subject to subsection (2), in determining its capitalization for purposes of this Part, a reporting issuer may rely on information made available by a marketplace on which securities of the reporting issuer trade.

(2) If a reporting issuer reasonably believes that the information made available by a marketplace is incorrect, subsection (1) does not apply and the issuer must make a good faith estimate of the information required.

PART 3 – CAPITAL MARKETS PARTICIPATION FEES

3.1 Participation Fee

(1) On December ~~31,~~31 of each calendar year, registrant firms and unregistered exempt international firms must pay the participation fee shown in Appendix B opposite the firm's specified Ontario revenues for its ~~previous~~reference fiscal year, as those revenues are calculated under section 3.3, 3.4 or 3.5.

(2) Not later than 90 days after the end of each of its fiscal ~~year~~years, if at any time in the fiscal year a person or company was an unregistered investment fund manager, the fund manager must pay the participation fee shown in Appendix B opposite the fund manager's specified Ontario revenues for ~~the~~its reference fiscal year, as those revenues are calculated under section 3.4.

(3) The participation fee otherwise required from a person or company under subsection (2) not later than 90 days after the end of its fiscal year is not required if the person or company

(a) ceased at any time in the fiscal year to be an unregistered investment fund manager, and

(b) the person or company did not become a registrant firm at that time.

(4) Despite subsection (2), where a person or company ceases at any time in a calendar year to be an unregistered investment fund manager and at that time becomes a registrant firm, the participation fee payable under subsection (2) not later than 90 days after the end of its last fiscal year ending in the calendar year is deemed to be the amount determined by the formula

A x B/365

in which,

"A" is equal to the amount, if any, that would be the participation fee payable under subsection (2) not later than 90 days after the end of that fiscal year if this section were read without reference to this subsection, and

"B" is equal to the number of days in that calendar year ending after the end of that fiscal year.

3.2 Disclosure of Fee Calculation

(1) By December 1, registrant firms and unregistered exempt international firms must file a completed Form 13-502F4 showing the information required to determine the participation fee due on December 31.

(1.1) Despite subsection (1), if at a particular time after December 1 and in a calendar year, a firm becomes registered or provides notification that it qualifies as an unregistered exempt international firm, the completed Form 13-502F4 must be filed as soon as practicable after the particular time.

(2) At the time that it pays any participation fee required under subsection 3.1(2), an unregistered investment fund manager must file a completed Form 13-502F4 showing the information required to determine the participation fee.

3.3 Specified Ontario Revenues for IIROC and MFDA Members

(1) The specified Ontario revenues for its ~~previous~~reference fiscal year of a registrant firm that was an IIROC or MFDA member at the end of the ~~previous~~reference fiscal year is calculated by multiplying

(a) the registrant firm's total revenue for its ~~previous~~reference fiscal year, less the portion of that total revenue not attributable to capital markets activities, by

(b) the registrant firm's Ontario percentage for its ~~previous~~reference fiscal year.

(2) For the purpose of paragraph (1)(a), "total revenue" for a ~~previous~~reference fiscal year means,

(a) for a registrant firm that was an IIROC member at the end of the ~~previous~~reference fiscal year, the amount shown as total revenue for the ~~previous~~reference fiscal year on Statement E of the Joint Regulatory Financial Questionnaire and Report filed with IIROC by the registrant firm, and

(b) for a registrant firm that was an MFDA member at the end of the ~~previous~~reference fiscal year, the amount shown as total revenue for the ~~previous~~reference fiscal year on Statement D of the MFDA Financial Questionnaire and Report filed with the MFDA by the registrant firm.

3.4 Specified Ontario Revenues for Others

(1) The specified Ontario revenues of a registrant firm for its ~~previous~~reference fiscal year that was not a member of IIROC or the MFDA at the end of the ~~previous~~reference fiscal year or of an unregistered exempt international firm for its ~~previous~~reference fiscal year is calculated by multiplying

(a) the firm's gross revenues, as shown in the audited financial statements prepared for the ~~previous~~reference fiscal year, less deductions permitted under subsection (3), by

(b) the firm's Ontario percentage for the ~~previous~~reference fiscal year.

(2) The specified Ontario revenues of an unregistered investment fund manager for its ~~previous~~reference fiscal year is calculated by multiplying

(a) the fund manager's gross revenues, as shown in the audited financial statements for the ~~previous~~reference fiscal year, less deductions permitted under subsection (3), by

(b) the fund manager's Ontario percentage for the ~~previous~~reference fiscal year.

(3) For the purpose of paragraphs (1)(a) and (2)(a), a person or company may deduct the following items otherwise included in gross revenues for the ~~previous~~reference fiscal year:

(a) revenue not attributable to capital markets activities;

(b) redemption fees earned on the redemption of investment fund securities sold on a deferred sales charge basis;

(c) administration fees earned relating to the recovery of costs from investment funds managed by the person or company for operating expenses paid on behalf of the investment fund by the person or company;

(d) advisory or sub-advisory fees paid during the ~~previous~~reference fiscal year by the person or company to

(i) a registrant firm, as "registrant firm" is defined in this Rule or in Rule 13-503 *(Commodity Futures Act) Fees*, or

(ii) an unregistered exempt international firm;

(e) trailing commissions paid during the ~~previous~~reference fiscal year by the person or company to a registrant firm described in paragraph (d).

(4) Despite subsection (1), a registrant firm or an unregistered exempt international firm may calculate its gross revenues using unaudited financial statements, if it is not required to prepare, and does not ordinarily prepare, audited financial statements.

(5) Despite subsection (2), an unregistered investment fund manager may calculate its gross revenues using unaudited financial statements if it is not required to prepare, and does not ordinarily prepare, audited financial statements.

3.5 Estimating Specified Ontario Revenues for Late Fiscal Year End

(1) If the reference fiscal year of a registrant firm or unregistered exempt international firm in respect of a participation fee under subsection 3.1(1) coincides with the previous fiscal year in respect of the participation fee and the annual financial statements of ~~a~~the registrant firm or unregistered exempt international firm for the previous fiscal year have not been completed by December 1 in the calendar year in which the previous fiscal year ends, the firm must,

(a) ~~by the time~~on or before December 1 in that calendar year ~~specified in section 3.2,~~ file a completed Form 13-502F4 showing a good faith estimate of the information required to calculate its specified Ontario revenues as at the end of the ~~previous~~ fiscal year, and

(b) on December 31 in that calendar year, pay the participation fee shown in Appendix B opposite the specified Ontario revenues estimated under paragraph (a).

(2) A registrant firm or unregistered exempt international firm that estimated its specified Ontario revenues under subsection (1) must, when its annual financial statements for the previous fiscal year have been completed,

(a) calculate its specified Ontario revenues under section 3.3 or 3.4, as applicable,

(b) determine the participation fee shown in Appendix B opposite the specified Ontario revenues calculated under paragraph (a),

(c) complete a Form 13-502F4 reflecting the annual financial statements, and

(d) if the participation fee determined under paragraph (b) differs from the corresponding participation fee paid under subsection (1), the firm must, not later than 90 days after the end of the previous fiscal year,

(i) pay the amount, if any, by which

(A) the participation fee determined without reference to this section,

exceeds

(B) the corresponding participation fee paid under subsection (1),

(ii) file the Form 13-502F4 completed under paragraph (c), and

(iii) file a completed Form 13-502F5.

(3) If a registrant firm or unregistered exempt international firm paid an amount under subsection (1) that exceeds the corresponding participation fee determined without reference to this section, the firm is entitled to a refund from the Commission of the excess.

3.6 Late Fee

(1) A participant that is late in paying a participation fee under this Part must pay an additional fee of one-tenth of one percent of the unpaid portion of the participation fee for each business day on which any portion of the participation fee remains due and unpaid.

(2) The amount determined under subsection (1) in respect of the late payment of a participation fee by a participant is deemed to be nil if

(a) the participant pays an estimate of the participation fee in accordance with subsection 3.5(1), or

(b) the amount otherwise determined under subsection (1) in respect of the late payment of participation fee is less than $10.

PART 3.1 – PARTICIPATION FEES FOR SPECIFIED REGULATED ENTITIES

3.1.1 Payment of Participation Fee

(1) Each specified market operator must pay annually the participation fee specified in Column C of Appendix B.1 for each specified period except that, if there is a group of specified market operators each of which is related to each other, the obligation under this Part and Appendix B.1 must be determined as if the group were a single entity in which case each specified market operator in the group is jointly and severally liable in respect of the obligation.

(2) For the purposes of subsection (1) and Appendix B.1,

(a) "Canadian trading share" for a specified period is the greatest of:

(i) the share in the specified period of the total dollar values of trades of exchange-traded securities;

(ii) the share in the specified period of the total trading volume of exchange-traded securities; and

(iii) the share in the specified period of the total number of trades of exchange-traded securities;

(b) a "specified market operator" is a person or company that, on April 15 of the calendar year in which the payment under subsection (1) is required,

(i) is recognized under the Act as an exchange,

(ii) operates a market or facility recognized under the Act as an exchange or, pursuant to a recognition order under the Act, a market or facility similar to a market, or

(iii) has one or more subsidiaries that are recognized exchanges under the Act; and

(c) a "specified period" in respect of a payment required to be made under this section by April 30 of a calendar year, is the period beginning on April 1 of the previous calendar year and ending on March 31 of the calendar year.

(3) Each person or company named or described, or in section B, C, E or F in Column B, of Appendix B.1 must pay annually the participation fee specified for the person or company in Column C of Appendix B.1.

(4) Each clearing agency recognized under section 21.2 of the Act must pay annually the total fee determined by aggregating the fees in Column C for the services in rows D3 to D8 that are provided by it.

(5) Each payment described in subsection (1), (3) or (4) must be made no later than April 30 of each calendar year and be accompanied by a completed Form 13-502F7.

(6) With regard to persons or companies described in any of rows B2, C1, C2, C3, C4, D1, E1 or F1 of Appendix B.1, subsections (2) and (3) do not apply for a calendar year unless the person or company is so described on April 15 of that calendar year and carries on business in Ontario at that time.

3.1.2 Late fee

(1) A person or company that is late paying a participation fee under this Part must pay an additional fee of one-tenth of one percent of the unpaid portion of the participation fee for each business day on which any portion of the participation fee remains due and unpaid.

(2) The amount determined under subsection (1) in respect of the late payment of a participation fee by a person or company is deemed to be nil if the amount otherwise determined under subsection (1) in respect of the late payment of the participation fee is less than $10.

PART 3.2 – PARTICIPATION FEES FOR DESIGNATED RATING ORGANIZATIONS

3.2.1 Payment of Participation Fee

(1) Each designated rating organization must pay a participation fee of $15,000 after the completion of each financial year.

(2) The payment must be made no later than the earlier of:

(a) the time at which the designated rating organization files a completed Form 25-101FI *Designated Rating Organization Application and Annual Filing* in respect of the financial year, and

(b) the time at which the designated rating organization is required by National Instrument 25-101 *Designated Rating Organizations* to file a completed Form 25-101F1 *Designated Rating Organization Application and Annual Filing* in respect of the financial year.

(3) The payment must be accompanied by a completed Form 13-502F8.

3.2.2 Late fee

(1) A designated rating organization that is late paying a participation fee under this Part must pay an additional fee of one-tenth of one percent of the unpaid portion of the participation fee for each business day on which any portion of the participation fee remains due and unpaid.

(2) The amount determined under subsection (1) in respect of the late payment of a participation fee by a designated rating organization is deemed to be nil if the amount otherwise determined under subsection (1) in respect of the late payment of the participation fee is less than $10.

PART 4 – ACTIVITY FEES

4.1 Activity Fees – General – A person or company that files a document or takes an action listed in Appendix C must, concurrently with filing the document or taking the action, pay the activity fee shown in Appendix C opposite the description of the document or action.

4.1.1 Special Circumstances

(1) If the designated cost, in connection with an application referred to in section E or E.1 of Appendix C from an exchange or clearing agency or in connection with a review referred to in section E.2 of that Appendix, is greater than $300,000, the Commission must

(a) issue one or more invoices to the person or company for an amount equal to the difference between that designated cost and the total fee charged in respect of the application or review under section E, E.1 or E.2 of Appendix C, in which case the amount specified in each invoice is deemed to be part of the fee for that matter and become payable, 30 days after the receipt of a the invoice, by the person or company, or

(b) despite section E (2) of Appendix C, request that the Director consider or reconsider under section 6.1 the extent to which this section applies.

(2) No invoice shall be issued under subsection (1) in relation to work performed by staff of the Commission more than twelve months before the invoice is issued or in relation to services performed by a third party more than twelve months after a bill for those services was rendered.

(3) For the purposes of subsection (1) the "designated cost" of work in relation to a matter is the total of:

(a) the product of $140 and the number of complete hours worked by a specified member of the staff of the Commission in connection with the matter and, for the purposes of this paragraph, a specified member of the staff is a member of staff of the Commission who is engaged by the Commission for their expertise and knowledge in any combination of law, accounting and the markets, but does not include managers, assistant directors and executives; and

(b) the cost to the Commission of services provided by third parties contracted in connection with the matter.

(4) An invoice under subsection (1) in respect of a matter must

(a) to the extent it reflects work done by staff of the Commission,

(i) specify the number of complete hours worked by each individual on the matter to the extent that those hours were relevant in the determination of the portion of the amount invoiced under subsection (1),

(ii) specify the dates on which those hours were worked, and

(iii) describe in general terms the work performed during those hours, and

(b) to the extent it reflects the cost described in paragraph (3)(b), describe in general terms the services provided for those costs.

4.1.2 Information Request

Section 4.1 does not apply with regard to requests to the Commission under section K of Appendix C but the Commission must only fulfill a request under that section upon full payment of the applicable fee.

4.2 Investment Fund Families – Despite section 4.1, only one activity fee must be paid for an application made by or on behalf of two or more investment funds that have

(a) the same investment fund manager, or

(b) investment fund managers that are affiliates of each other.

4.3 Late Fee

(1) A person or company that files a document listed in item A or A.1 of Appendix D after the document was required to be filed must, concurrently with filing the document, pay the late fee shown in Appendix D opposite the description of the document.

(2) Subsection (1) does not apply to the late filing of Form 13-502F4 by an unregistered investment fund manager.

(3) A person or company that files a Form 55-102F2 *Insider Report* after it was required to be filed must pay the late fee shown in item B of Appendix D upon receiving an invoice from the Commission.

PART 5 – CURRENCY CONVERSION

5.1 **Canadian Dollars** – If a calculation under this Rule requires the price of a security, or any other amount, as it was on a particular date and that price or amount is not in Canadian dollars, it must be converted into Canadian dollars using the daily noon exchange rate for that date as posted on the Bank of Canada website.

PART 6 – EXEMPTION

6.1 **Exemption** – The Director may grant an exemption from the provisions of this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 7 – REVOCATION AND EFFECTIVE DATE

APPENDIX A –
CORPORATE FINANCE PARTICIPATION FEES
(OTHER THAN CLASS 3A AND CLASS 3B ISSUERS)

Capitalization for the ~~Previous~~Reference Fiscal Year	Participation Fee (effective April 1, 2013)	Participation Fee (effective April 7, 2014)	Participation Fee (effective April 6, 2015)
under $10 million	$800	$925	$1,060
$10 million to under $25 million	$960	$1,110	$1,280
$25 million to under $50 million	$~~2,080~~2,400	$2,770	$3,200
$50 million to under $100 million	$~~5,125~~5,925	$6,850	$7,900
$100 million to under $250 million	$~~10,700~~12,350	$14,260	$16,470
$250 million to under $500 million	$~~23,540~~27,200	$31,420	$36,300
$500 million to under $1 billion	$~~32,850~~37,950	$43,850	$50,650
$1 billion to under $5 billion	$~~47,600~~54,980	$63,500	$73,350
$5 billion to under $10 billion	$~~61,300~~70,800	$81,770	$94,444
$10 billion to under $25 billion	$~~71,600~~82,700	$95,520	$110,330
$25 billion and over	$~~80,600~~93,100	$107,550	$124,220

APPENDIX A.1
CORPORATE FINANCE PARTICIPATION FEES FOR CLASS 3B ISSUERS

Capitalization for the Reference Fiscal Year	Participation Fee (effective April 1, 2013)	Participation Fee (effective April 7, 2014)	Participation Fee (effective April 6, 2015)
under $10 million	$800	$925	$1,060
$10 million to under $25 million	$960	$1,110	$1,280
$25 million to under $50 million	$1,110	$1,280	$1,470
$50 million to under $100 million	$1,975	$2,280	$2,630
$100 million to under $250 million	$4,120	$4,760	$5,500
$250 million to under $500 million	$9,060	$10,460	$12,090
$500 million to under $1 billion	$12,650	$14,600	$16,860
$1 billion to under $5 billion	$18,325	$21,160	$24,450
$5 billion to under $10 billion	$23,600	$27,260	$31,780
$10 billion to under $25 billion	$27,570	$31,850	$36,780
$25 billion and over	$31,000	$35,800	$41,350

APPENDIX B – CAPITAL MARKETS PARTICIPATION FEES

Specified Ontario Revenues for the ~~Previous~~Reference Fiscal Year	Participation Fee (effective April 1, 2013)	Participation Fee (effective April 7, 2014)	Participation Fee (effective April 6, 2015)
under $250,000	$800	$925	$1,060
$250,000 to under $500,000	$1,035	$1,115	$1,200
$500,000 to under $1 million	$~~3,240~~3,500	$3,775	$4,075
$1 million to under $3 million	$~~7,250~~ 7,825	$8,440	$9,110
$3 million to under $5 million	$~~16,325~~ 17,615	$19,000	$20,500
$5 million to under $10 million	$~~33,000~~ 35,610	$38,425	$41,460
$10 million to under $25 million	$~~67,400~~ 72,725	$78,470	$84,670
$25 million to under $50 million	$~~101,000~~ 108,980	$117,590	$126,880
$50 million to under $100 million	$~~202,000~~ 217,960	$235,180	$253,760
$100 million to under $200 million	$~~335,400~~ 361,900	$390,490	$421,340
$200 million to under $500 million	$~~679,900~~ 733,625	$791,580	$854,100
$500 million to under $1 billion	$~~878,000~~ 947,360	$1,022,200	$1,103,000
$1 billion to under $2 billion	$~~1,107,300~~ 1,195,000	$1,289,400	$1,391,250
$2 billion and over	$~~1,858,200~~ 2,000,000	$2,158,000	$2,328,500

APPENDIX B.1
PARTICIPATION FEES FOR SPECIFIED REGULATED ENTITIES
Part 3.1 of the Rule

Row (Column A)	Specified Person or Company (Column B)	Participation Fee (Column C)
	A. Specified Market Operators	
A1	Each specified market operator with a Canadian trading share for the specified period of up to 5%.	$30,000
A2	Each specified market operator with a Canadian trading share for the specified period of 5% to up to 15%.	$50,000
A3	Each specified market operator with a Canadian trading share for the specified period of 15% to up to 25%.	$135,000
A4	Each specified market operator with a Canadian trading share for the specified period of 25% to up to 50%.	$275,000
A5	Each specified market operator with a Canadian trading share for the specified period of 50% to up to 75%.	$400,000
A6	Each specified market operator with a Canadian trading share for the specified period of 75% or more.	$500,000
	B. Exchanges Exempt from Recognition under the Act	
B1	Each exchange that is exempted by the Commission from the application of subsection 21(1) of the Act	$15,000
	C. Alternative Trading Systems	
C1	Each alternative trading system only for equity	$17,000
C2	Each alternative trading system only for debt	$17,000
C3	Each alternative trading system only for securities lending	$8,750
C4	Each alternative trading system not described in Row C1, C2 or C3	$17,000
	D. Clearing Agencies Recognized under the Act	
D1	Each clearing agency recognized under section 21.2 of the Act	
D2	Total determined by aggregating fees in respect of each of the following services, to the extent applicable, provided by a recognized clearing agency to Ontario participants in the market:	
D3	Matching services, being the provision of facilities for comparing data respecting the terms of settlement of a trade or transaction	$10,000
D4	Netting services, being the provision of facilities for the calculation of the mutual obligations of participants for the exchange of securities and/or money	$20,000
D5	Settlement services, being services that ensure that securities are transferred finally and irrevocably from one participant to another in exchange for a corresponding transfer of money and/or *vice versa*	$20,000
D6	Acting as a central clearing counterparty by providing novation services, if the Commission does not place reliance on another regulator for direct oversight	$150,000
D7	Acting as a central clearing counterparty by providing novation services, if the Commission places reliance on another regulator for direct oversight	$70,000
D8	Depositary services, being the provision of centralized facilities as a depository for securities	$20,000

Row (Column A)	Specified Person or Company (Column B)	Participation Fee (Column C)
	E. Clearing Agencies Exempt from Recognition under the Act	
E1	Each clearing agency that is exempted by the Commission from the application of subsection 21.2(1) of the Act	$15,000
	F. Trade Repositories	
F1	Each trade repository designated under subsection 21.2.2(1) of the Act	$30,000

APPENDIX C – ACTIVITY FEES

Document or Activity		Fee
A.	**Prospectus Filing**	
1.	Preliminary or Pro Forma Prospectus in Form 41-101F1 (including if PREP procedures are used) *Notes:* *(i) This applies to most issuers.* *(ii) Each named issuer should pay its proportionate share of the fee in the case of a prospectus for multiple issuers (other than in the case of investment funds).*	~~$3,250~~3,750
2.	Additional fee for Preliminary or Pro Forma Prospectus of a resource issuer that is accompanied by ~~engineering~~technical reports	~~$2,000~~2,500
3.	Preliminary Short Form Prospectus in Form 44-101F1 (including if shelf or PREP procedures are used) or a Registration Statement on Form F-9 or F-10 filed by an issuer that is incorporated or that is organized under the laws of Canada or a jurisdiction in Canada in connection with a distribution solely in the United States under MJDS as described in the companion policy to NI 71-101 *The Multijurisdictional Disclosure System*	~~$3,250~~3,750
4.	Prospectus Filing by or on behalf of certain investment funds	
	(a) Preliminary or Pro Forma Simplified Prospectus and Annual Information Form in Form 81-101F1 and Form 81-101F2 *Note: Where a single prospectus document is filed on behalf of more than one investment fund, the applicable fee is payable for each investment fund.*	$400
(b)	Preliminary or Pro Forma Prospectus in Form 41-101F2 *Note: Where a single prospectus document is filed on behalf of more than one investment fund and the investment funds do not have similar investment objectives and strategies, ~~$3,250~~3,750 is payable for each investment fund.*	The greater of (i) ~~$3,250~~3,750 per prospectus, and (ii) $650 per investment fund in a prospectus.
5.	Review of prospectus supplement in relation to a specified derivative (as defined in National Instrument 44-102 *Shelf Distributions*) ~~for which the amount payable is determined with reference to the price, value or level of an underlying interest that is unrelated to the operations or securities of the issuer~~	~~$3,250~~3,750
6.	Filing of prospectus supplement in relation to a specified derivative (as defined in National Instrument 44-102 *Shelf Distributions*) for which the amount payable is determined with reference to the price, value or level of an underlying interest that is unrelated to the operations of securities of the issuer	$500
B.	**Fees relating to exempt distributions under OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* and NI 45-106 *Prospectus and Registration Exemptions***	
1.	Application for recognition, or renewal of recognition, as an accredited investor	$500

Document or Activity	Fee
~~2. Forms 45-501F1 and 45-106F1~~ ~~(a)~~ 2. Filing of a Form 45-501F1 or Form 45-106F1 for a distribution of securities of an issuer ~~that is not an investment fund and is not subject to a participation fee~~ ~~(b) Filing of a Form 45-501F1 or Form 45-106F1 for a distribution of securities of an issuer that is an investment fund, unless the investment fund has an investment fund manager that is subject to a participation fee~~	$500
3. Filing of a rights offering circular in Form 45-101F	~~$2,000~~3,750 (plus $2,000 if neither the applicant nor an issuer of which the applicant is a wholly owned subsidiary is subject to, or is reasonably expected to become subject to, a participation fee under this Rule)
C. Provision of Notice under paragraph 2.42(2)(a) of NI 45-106 *Prospectus and Registration Exemptions*	$2,000
D. Filing of Prospecting Syndicate Agreement	$500
E. Applications for Relief, Approval or Recognition	
1. Any application for relief, approval or recognition to which section H does not apply that is under an eligible securities section, being for the purpose of this item any provision of the Act, the Regulation or any Rule of the Commission not listed in item E(2), E(3), or E(4) below~~.~~ nor section E.1 or E.2 *Note: The following are included in the applications that are subject to a fee under this item:* *(i) recognition of ~~an exchange under section 21 of the Act, a self-regulatory organization under section 21.1 of the Act, a clearing agency under section 21.2 of the Act~~ or a quotation and trade reporting system under section 21.2.1 of the Act;* *(ii) approval of a compensation fund or contingency trust fund under section 110 of the Regulation;* *(iii) approval of the establishment of a council, committee or ancillary body under section 21.3 of the Act;* *(iv) deeming an issuer to be a reporting issuer under subsection 1(11) of the Act;* *(v) except as listed in item E.~~(4)~~(b), applications by a person or company under subsection 144(1) of the Act; and* *(vi) except as provide in section E.1, exemption applications under section 147 of the Act.*	~~$3,250~~4,500 for an application made under one eligible securities section and ~~$5,000~~7,000 for an application made under two or more eligible securities sections (plus $2,000 if none of the following is subject to, or is reasonably expected to become subject to, a participation fee under this Rule or OSC Rule 13-503 (*Commodity Futures Act*) *Fees*: (i) the applicant; (ii) an issuer of which the applicant is a wholly owned subsidiary; (iii) the investment fund manager of the applicant)~~.~~. (plus an additional fee of $100,000 in connection with each particular application by a person or company under subsection 144(1) of the Act in respect of an application described in section E.1 if the particular application (a) reflects a merger of an exchange or clearing agency, (b) reflects an acquisition of a major part of the assets of an exchange or clearing

Document or Activity	Fee
	agency, (c) involves the introduction of a new business that would significantly change the risk profile of an exchange or clearing agency, or (d) reflects a major reorganization or restructuring of an exchange or clearing agency).
2. An application for relief from ~~any of the following:~~ ~~(a)~~ this Rule~~;~~	$~~1,500~~1,750
2.1 An application for relief from any of the following: (~~b~~a) NI 31-102 *National Registration Database*; (~~c~~b) NI 33-109 *Registration Information*; (~~d~~c) section 3.11 [*Portfolio manager – advising representative*] of NI 31-103; (~~e~~d) section 3.12 [*Portfolio manager – associate advising representative*] of NI 31-103; (~~f~~e) section 3.13 [*Portfolio manager – chief compliance officer*] of NI 31-103; (~~f.1~~) section 3.14 [*Investment fund manager – chief compliance officer*] of NI 31-103; (g) section 9.1 [*IIROC membership for investment dealers*] of NI 31-103; (h) section 9.2 [*MFDA membership for mutual fund dealers*] of NI 31-103.	$1,500
3. An application for relief from any of the following: (a) section 3.3 [*Time limits on examination requirements*] of NI 31-103; (b) section 3.5 [*Mutual fund dealer – dealing representative*] of NI 31-103; (c) section 3.6 [*Mutual fund dealer – chief compliance officer*] of NI 31-103; (d) section 3.7 [*Scholarship plan dealer – dealing representative*] of NI 31-103 (e) section 3.8 [*Scholarship plan dealer – chief compliance officer*] of NI 31-103, (f) section 3.9 [*Exempt market dealer – dealing representative*] of NI 31-103,	$800

Document or Activity	Fee
(g) section 3.10 [*Exempt market dealer – chief compliance officer*] of NI 31-103.	
4. Application ~~(a)~~ under ~~clause~~subclause 1(10)(~~b~~a)(ii) of the Act~~,~~	$1,000
4.1 Application (a) under section 30 or subsection 38(3) of the Act or subsection 1(6) of the *Business Corporations Act*; (b) under section 144 of the Act for an order to partially revoke a cease-trade order to permit trades solely for the purpose of establishing a tax loss, as contemplated under section 3.2 of National Policy 12-202 *Revocation of a Compliance-related Cease Trade Order*; and (c) other than a pre-filing, where the discretionary relief or regulatory approval is evidenced by the issuance of a receipt for the applicants' final prospectus (such as certain applications under NI 41-101 or NI 81-101).	Nil
5. Application for approval under subsection 213(3) of the *Loan and Trust Corporations Act*	$1,500
6. (a) Application made under subsection 46(4) of the *Business Corporations Act* for relief from the requirements under Part V of that Act (b) Application for consent to continue in another jurisdiction under paragraph 4(b) of Ont. Reg. 289/00 made under the *Business Corporations Act* *Note*: *These fees are in addition to the fee payable to the Minister of Finance as set out in the Schedule attached to the Minister's Fee Orders relating to applications for exemption orders made under the Business Corporations Act to the Commission*.	$400
E.1 Market Regulation Recognitions and Exemptions (a) Application for recognition of an exchange under section 21 of the Act; (b) Application for exemption from the recognition of an exchange under section 21 of the Act; (c) Application by clearing agencies for recognition under section 21.2 of the Act; (d) Application for exemption from the recognition of a clearing agency under section 21.2 of the Act;	$100,000 $75,000 $100,000 $75,000 (plus an additional fee of $100,000 in connection with each such application that (a) reflects a merger of an exchange or clearing agency,

Document or Activity		Fee
		(b) reflects an acquisition of a major part of the assets of an exchange or clearing agency, (c) involves the introduction of a new business that would significantly change the risk profile of an exchange or clearing agency, or (d) reflects a major reorganization or restructuring of an exchange or clearing agency).
E.2 Alternative Trading Systems Review of the initial Form 21-101F2 of a new alternative trading system		$50,000
F.	**Pre-Filings** *Note: The fee for a pre-filing under this section will be credited against the applicable fee payable if and when the corresponding formal filing (e.g., an application or a preliminary prospectus) is actually proceeded with; otherwise, the fee is nonrefundable.*	The fee for each pre-filing is equal to the applicable fee that would be payable if the corresponding formal filing had proceeded at the same time as the pre-filing.
G.	**Take-Over Bid and Issuer Bid Documents**	
1.	Filing of a take-over bid or issuer bid circular under subsection 94.2(2),(3) or (4) of the Act	$4,0004,500 (plus $2,000 if neither the offeror nor an issuer of which the offeror is a wholly-owned subsidiary is subject to, or reasonably expected to become subject to, a participation fee under this Rule)
2.	Filing of a notice of change or variation under section 94.5 of the Act	Nil
H.	**Registration-Related Activity**	
1.	New registration of a firm in one or more categories of registration	$6001,200
2.	Change in registration category *Note: This includes a dealer becoming an adviser or vice versa, or changing a category of registration within the general categories of dealer or adviser. A dealer adding a category of registration, such as a dealer becoming both a dealer and an adviser, is covered in the preceding item.*	$600700
3.	Registration of a new representative on behalf of a registrant firm *Notes:* *(i) Filing of a Form 33-109F4 for a permitted individual as defined in NI 33-109 does not trigger an activity fee.*	$200 per individual

Document or Activity		Fee
	(ii) If an individual is registering as both a dealer and an adviser, the individual is required to pay only one activity fee. *(iii) A registration fee will not be charged if an individual makes an application to register with a new registrant firm within three months of terminating employment with his or her previous registrant firm if the individual's category of registration remains unchanged.*	
4.	Change in status from not being a representative on behalf of a registrant firm to being a representative on behalf of the registrant firm	$200 per individual
4.1	Registration as a chief compliance officer or ultimate designated person of a registrant firm, if the individual is not registered as a representative on behalf of the registrant firm	$200 per individual
5.	Registration of a new registrant firm, or the continuation of registration of an existing registrant firm, resulting from or following an amalgamation of one or more registrant firms	~~$2,000~~1,000
6.	Application for amending terms and conditions of registration	$500
I.	**Notice required under section 11.9 [*Registrant acquiring a registered firm's securities or assets*] or 11.10 [*Registered firm whose securities are acquired*] of NI 31-103**	~~$3,000~~3,500
J.	**Request for certified statement from the Commission or the Director under section 139 of the Act**	$100
K.	**Requests to the Commission**	
1.	Request for a ~~photocopy~~copy (in any format) of Commission public records	$0.50 per ~~page~~image
2.	Request for a search of Commission public records	~~$150~~7.50 for each 15 minutes search time spent by any person
3.	Request for one's own ~~Form 4~~ individual registration form.	$30

APPENDIX D – ADDITIONAL FEES FOR LATE DOCUMENT FILINGS

Document	Late Fee
A. Fee for late filing of any of the following documents: (a) Annual financial statements and interim financial reports; (b) Annual information form filed under NI 51-102 *Continuous Disclosure Obligations* or NI 81-106 *Investment Fund Continuous Disclosure*; ~~(c) Form 45-501F1 or Form 45-106F1 filed by a reporting issuer;~~ (d) Notice under section 11.9 [*Registrant acquiring a registered firm's securities or assets*] of NI 31-103, (e) Filings for the purpose of amending Form 3 or Form 4 under the Regulation or Form 33-109F4 or Form 33-109F6 under NI 33-109 *Registration Information*, including the filing of Form 33-109F1; (f) Any document required to be filed by a registrant firm or individual in connection with the registration of the registrant firm or individual under the Act with respect to (i) terms and conditions imposed on a registrant firm or individual, or (ii) an order of the Commission; (f.1) Form 13-502F1; (f.2) Form 13-502F2; (f.3) Form 13-502F3A; (f.4) Form 13-502F3B; (f.5) Form 13-502F3C; (g) Form 13-502F4; (h) Form 13-502F5; (i) Form 13-502F6;~~.~~ (j) Form 13-502F7; (k) Form 13-502F8	$100 per business day (subject to a maximum aggregate fee of $5,000 (i) per fiscal year, for a reporting issuer, for all documents required to be filed within a fiscal year of the issuer, and (ii) for a registrant firm or an unregistered capital markets participant, for all documents required to be filed by the firm within a calendar year) *Note: Subsection 4.3(2) of this Rule exempts unregistered investment fund managers from the late filing fee for Form 13-502F4.*
A.1 Fee for late filing Forms 45-501F1 and 45-106F1	$100 per business day (subject to a maximum aggregate fee of $5,000 per fiscal year, for an issuer, for all Forms 45-501F1 and 45-106F1, required to be filed within a fiscal year of the issuer).
B. Fee for late filing of Form 55-102F2 – *Insider Report*	$50 per calendar day per insider per issuer (subject to a maximum of $1,000 per issuer within any one year beginning on April 1st and ending on March 31st.)

Document	Late Fee
	The late fee does not apply to an insider if (a) the head office of the issuer is located outside Ontario, and (b) the insider is required to pay a late fee for the filing in a jurisdiction in Canada other than Ontario.

FORM 13-502F1
CLASS 1 REPORTING ISSUERS – PARTICIPATION FEE

Reporting Issuer Name: _____

End date of last completed fiscal year: _____

End date of reference fiscal year: _____
(A reporting issuer's reference fiscal year is the reporting issuer's last fiscal year ending before May 1, 2012, provided that it was a reporting issuer at the end of that fiscal year and, if it became a reporting issuer in that year as a consequence of a prospectus receipt, all or substantially all of it securities were listed or quoted on a marketplace at the end of that fiscal year. In any other case, it is the reporting issuer's last completed fiscal year.)

Market value of listed or quoted securities:

Total number of securities of a class or series outstanding as at the end of the issuer's ~~last completed~~reference fiscal year	(i)	
Simple average of the closing price of that class or series as of the last trading day of each month in the ~~last completed fiscal year (See~~ reference fiscal year, computed with reference to clauses 2.7(1)(a)(ii)(A) and (B) and subsection 2.7(2) of the Rule~~)~~	(ii)	
Market value of class or series	(i) X (ii) =	(A)
(Repeat the above calculation for each other class or series of securities of the reporting issuer that was listed or quoted on a marketplace in Canada or the United States of America at the end of the ~~last completed~~reference fiscal year)		(B)

Market value of other securities not valued at the end of ~~the last completed fiscal year~~any trading day in a month:(See paragraph 2.7(1)(b) of the Rule)

(Provide details of how value was determined)	(C)
(Repeat for each other class or series of securities to which paragraph 2.7(1)(b) of the Rule applies)	(D)

Capitalization for the ~~last completed~~reference fiscal year

(Add market value of all classes and series of securities) (A) + (B) + (C) + (D) =

Participation Fee (determined without reference to subsections 2.2(3.1) of the Rule)

(From Appendix A of the Rule, select the participation fee beside the capitalization calculated above)	(iii)
Did the issuer become a reporting issuer in the previous fiscal year as a result of a prospectus receipt? If **no**, participation fee equals (iii) amount above.	(iii)
If yes, prorate (iii) amount as calculated in subsection 2.2(3.1) of the Rule to determine participation fee.	(iv)

Late Fee, if applicable

(As determined under section 2.5 of the Rule)

FORM 13-502F2
CLASS 2 REPORTING ISSUERS – PARTICIPATION FEE

Reporting Issuer Name: _____

End date of last completed fiscal year: _____

End date of reference fiscal year: _____
(A reporting issuer's reference fiscal year is the reporting issuer's last fiscal year ending before May 1, 2012, provided that it was a reporting issuer at the end of that fiscal year and, if it became a reporting issuer in that year as a consequence of a prospectus receipt, all or substantially all of it securities were listed or quoted on a marketplace at the end of that fiscal year. In any other case, it is the reporting issuer's last completed fiscal year.)

Financial Statement Values:

(Use stated values from the audited financial statements of the reporting issuer as of the end of its ~~last completed~~reference fiscal year)

Retained earnings or deficit	(A)
Contributed surplus	(B)
Share capital or owners' equity, options, warrants and preferred shares (whether such shares are classified as debt or equity for financial reporting purposes)	(C)
Non-current borrowings (including the current portion)	(D)
Finance leases (including the current portion)	(E)
Non-controlling interest	(F)
Items classified on the statement of financial position as non-current liabilities (and not otherwise listed above)	(G)
Any other item forming part of equity and not set out specifically above	(H)

Capitalization for the ~~last completed~~reference fiscal year

(Add items (A) through (H)) ____

Participation Fee

(From Appendix A of the Rule, select the participation fee beside the capitalization calculated above) ____

Late Fee, if applicable

(As determined under section 2.5 of the Rule) ____

FORM 13-502F2A
ADJUSTMENT OF FEE PAYMENT
FOR CLASS 2 REPORTING ISSUERS

Reporting Issuer Name: _____

Fiscal year end date used to calculate capitalization: _____

State the amount paid under subsection 2.6.1(1) of Rule 13-502: _____(i)

Show calculation of actual capitalization based on audited financial statements:

Financial Statement Values:

Retained earnings or deficit	(A)
Contributed surplus	(B)
Share capital or owners' equity, options, warrants and preferred shares (whether such shares are classified as debt or equity for financial reporting purposes)	(C)
Non-current borrowings (including the current portion)	(D)
Finance leases (including the current portion)	(E)
Non-controlling interest	(F)
Items classified on the statement of financial position as non-current liabilities (and not otherwise listed above)	(G)
Any other item forming part of equity and not set out specifically above	(H)

Capitalization

(Add items (A) through (H)) ____

Participation Fee

(From Appendix A of the Rule, select the participation fee beside the capitalization calculated above) (ii)

Refund due (Balance owing)

(Indicate the difference between (i) and (ii)) (i) – (ii) = ____

FORM 13-502F3A
CLASS 3A REPORTING ISSUERS – PARTICIPATION FEE

Reporting Issuer Name: _____
(Class 3A reporting issuer cannot be incorporated or organized under the laws of Canada or a province or territory of Canada)

Fiscal year end date: _____

Indicate, by checking the appropriate box, which of the following criteria the issuer meets:

(a) At the fiscal year end date, the issuer has no securities listed or quoted on a marketplace located anywhere in the world; or ☐

(b) at the fiscal year end date, the issuer

(i) has securities listed or quoted on a marketplace anywhere in the world,

(ii) has securities registered in the names of persons or companies resident in Ontario representing less than 1% of the market value of all outstanding securities of the issuer for which the issuer or its transfer agent or registrar maintains a list of registered owners,

(iii) reasonably believes that persons or companies who are resident in Ontario beneficially own less than 1% of the market value of all its outstanding securities,

(iv) reasonably believes that none of its securities traded on a marketplace in Canada during its previous fiscal year, and

(v) has not issued any of its securities in Ontario in the last 5 years, other than

(A) to its employees or to employees of its subsidiary entities, or

(B) pursuant to the exercise of a right previously granted by it or its affiliate to convert or exchange its previously issued securities without payment of any additional consideration. ☐

Participation Fee $960*

(From subsection 2.2(2) of the Rule)

** Note: The $960 amount is proposed to rise to $1,110, effective April 7, 2014, and to $1,280, effective April 6, 2015.*

Late Fee, if applicable

(As determined under section 2.5 of the Rule) ____

FORM 13-502F3B
CLASS 3B REPORTING ISSUERS – PARTICIPATION FEE

Reporting Issuer Name: _____

End date of last completed fiscal year: _____

End date of reference fiscal year: _____
(A reporting issuer's reference fiscal year is the reporting issuer's last fiscal year ending before May 1, 2012, provided that it was a reporting issuer at the end of that fiscal year and, if it became a reporting issuer in that year as a consequence of a prospectus receipt, all or substantially all of it securities were listed or quoted on a marketplace at the end of that fiscal year. In any other case, it is the reporting issuer's last completed fiscal year.)

Market value of securities:

	(i)		
Total number of securities of a class or series outstanding as at the end of the issuer's ~~last completed~~reference fiscal year	_____		
Simple average of the closing price of that class or series as of the last trading day of each month of the ~~last completed fiscal year (See section~~reference fiscal year, computed with reference to paragraph 2.9(1)(b) and subsection 2.9(2) of the Rule)	(ii) _____		
Market value of class or series	(i) x (ii) = _____	(A)	
(Repeat the above calculation for each other listed or quoted class or series of securities of the reporting issuer)		(B)	
		_____	
Capitalization for the ~~last completed~~reference fiscal year	(A) + (B) =	_____	
(Add market value of all classes and series of securities)			
Participation Fee Otherwise Determined			
		(C)	
(From Appendix A A.1 of the Rule, select the participation fee beside the capitalization calculated above)		_____	

Participation Fee Payable

Did the issuer become a reporting issuer in the previous fiscal year as a result of a prospectus receipt?

If **no**, participation fee equals (C) amount above. _____(C)

If yes, prorate (C) amount as calculated in subsection 2.2(3.1) of the Rule. _____(D)

~~**Participation Fee Payable**~~

~~1/3 of (C) or $960, whichever is greater~~
~~(See subsection 2.2(3) of the Rule)~~

Late Fee, if applicable
(As determined under section 2.5 of the Rule) ____

FORM 13-502F3C
CLASS 3C REPORTING ISSUERS – PARTICIPATION FEE

Reporting Issuer Name: _____

End date of last completed fiscal year: _____

End date of reference fiscal year: _____
(A reporting issuer's reference fiscal year is the reporting issuer's last fiscal year ending before May 1, 2012, provided that it was a reporting issuer at the end of that fiscal year and, if it became a reporting issuer in that year as a consequence of a prospectus receipt, all or substantially all of it securities were listed or quoted on a marketplace at the end of that fiscal year. In any other case, it is the reporting issuer's last completed fiscal year.)

Section 2.10 of the Rule requires Class 3C reporting issuers to calculate their market capitalization in accordance with section 2.7 of the Rule.

Market value of listed or quoted securities:

Total number of securities of a class or series outstanding as at the end of the issuer's ~~last completed~~reference fiscal year		(i) _____	
Simple average of the closing price of that class or series as of the last trading day of each month of the ~~last completed fiscal year (See~~ reference fiscal year, computed with reference to clauses 2.7(1)(a)(ii)(A) and (B) and subsection 2.7(2) of the Rule~~)~~		(ii)	
Market value of the class or series	(i) x (ii) =	_____	(A)
(Repeat the above calculation for each other class or series of securities of the reporting issuer that was listed or quoted on a marketplace in Canada or the United States of America at the end of the ~~last completed~~reference fiscal year)			(B) _____
Market value of other securities not valued at the end of any trading day in a month:			(C)
(See paragraph 2.7(1)(b) of the Rule)			_____
(Provide details of how value was determined)			
(Repeat for each other class or series of securities to which paragraph 2.7(1)(b) of the Rule applies)			(D) _____
Capitalization for the ~~last completed~~reference fiscal year	(A) + (B) + (C) + (D) =		(E)
(Add market value of all classes and series of securities)			_____

Participation Fee (determined without reference to subsections 2.2(3.1) of the Rule)

(From Appendix A of the Rule, select the participation fee beside the capitalization calculated above)	_____
Did the issuer become a reporting issuer in the previous fiscal year as a result of a prospectus receipt? If **no**, participation fee equals (E) amount above.	_____ (E)
If yes, prorate (E) amount as calculated in subsection 2.2(3.1) of the Rule to determine participation fee.	_____ (F)

Late Fee, if applicable

As determined under section 2.5 of the Rule)

FORM 13-502F4
CAPITAL MARKETS PARTICIPATION FEE CALCULATION

General Instructions

1. This form must be completed and returned to the Ontario Securities Commission by December 1 each year, as per section 3.2 of OSC Rule 13-502 *Fees* (the Rule), except in the case where firms register after December 1 in a calendar year or provide notification after December 1 in a calendar year of their status as exempt international firms. In these exceptional cases, this ~~Form~~form must be filed as soon as practicable after December 1.

2. This form is to be completed by firms registered under the *Securities Act* or by firms that are registered under both the *Securities Act* and the *Commodity Futures Act*. This form is also completed by exempt international firms relying on section 8.18 [international dealer] and 8.26 [international adviser] of NI 31-103, as well as by firms that are unregistered investment fund managers (as defined in the Rule).

3. For firms registered under the *Commodity Futures Act*, the completion of this form will serve as an application for the renewal of both the firm and all its registered individuals wishing to renew under the *Commodity Futures Act*.

4. IIROC members must complete Part I of this ~~Form~~form and MFDA members must complete Part II. Exempt international firms, unregistered investment fund managers and registrant firms that are not IIROC or MFDA members must complete Part III.

5. The components of revenue reported in each Part should be based on accounting standards pursuant to which an entity's financial statements are prepared under Ontario securities law ("Accepted Accounting Standards"), except that revenues should be reported on an unconsolidated basis.

6. IIROC Members may refer to Statement E of the Joint Regulatory Financial Questionnaire and Report for guidance.

7. MFDA members may refer to Statement D of the MFDA Financial Questionnaire and Report for guidance.

8. Participation fee revenue will be based on the portion of total revenue that can be attributed to Ontario for the firm's ~~most recently completed~~reference fiscal year~~, which is generally referred to in the Rule as its "previous~~. A firm's reference fiscal year is generally its last fiscal year ending before May 1, 2012. For further detail, see the definition of "reference fiscal year" in section 1.1 of the Rule.

9. If a firm's permanent establishments are situated only in Ontario, all of the firm's total revenue for a fiscal year is attributed to Ontario. If permanent establishments are situated in Ontario and elsewhere, the percentage attributed to Ontario for a fiscal year will ordinarily be the percentage of the firm's taxable income that is allocated to Ontario for Canadian income tax purposes for the same fiscal year. For firms that do not have a permanent establishment in Ontario, the percentage attributable to Ontario will be based on the proportion of total revenues generated from capital markets activities in Ontario.

10. All figures must be expressed in Canadian dollars and rounded to the nearest thousand.

11. Information reported on this questionnaire must be certified by two members of senior management in Part IV to attest to its completeness and accuracy. However, it is acceptable to provide certification of this nature by only one member of senior management in cases of firms with only one officer and director.

~~12. There are a number of references in this form to "relevant fiscal year". The "relevant fiscal year" is generally a firm's last completed fiscal year. However, if good faith estimates for a fiscal year are provided in this Form pursuant to section 3.5 of the Rule, the relevant fiscal year is the fiscal year for which the good faith estimates are provided.~~

1. Firm Information

Firm NRD number: _____

Firm legal name: _____

2. Contact Information for Chief Compliance Officer

Please provide the name, e-mail address, phone number and fax number for your Chief Compliance Officer.

Name: _____

E-mail address: _____

Phone: _____ Fax: _____

3. Membership Status (one selection)

☐ The firm is a member of the Mutual Fund Dealers Association (MFDA).

☐ The firm is a member of the Investment Industry Regulators Organization of Canada (IIROC).

☐ The firm does not hold membership with the MFDA nor IIROC.

4. Financial Information

Is the firm providing a good faith estimate under section 3.5 of the Rule?

☐ Yes ☐ No (one selection)

If no, end date of ~~last completed~~reference fiscal year: _____/____/___
yyyy mm dd

If yes, end date of fiscal year for which the good faith estimate is provided:

_____/____/___
yyyy mm dd

~~Note: The fiscal year identified above is referred to below as the relevant fiscal year.~~

5. Participation Fee Calculation

		~~Relevant~~Reference fiscal year $
	Note: Dollar amounts stated in thousands, rounded to the neared thousand.	
Part I – IIROC Members		
1.	Total revenue for ~~relevant~~reference fiscal year from Statement E of the Joint Regulatory Financial Questionnaire and Report	
2.	Less revenue not attributable to capital markets activities	
3.	Revenue subject to participation fee (line 1 less line 2)	
4.	Ontario percentage for ~~relevant~~reference fiscal year (See definition of "Ontario percentage" in the Rule)	%
5.	Specified Ontario revenues (line 3 multiplied by line 4)	
6.	Participation fee (From Appendix B of the Rule, select the participation fee opposite the specified Ontario revenues calculated above)	
Part II – MFDA Members		
1.	Total revenue for ~~relevant~~reference fiscal year from Statement D of the MFDA Financial Questionnaire and Report	
2.	Less revenue not attributable to capital markets activities	
3.	Revenue subject to participation fee (line 1 less line 2)	

4.	Ontario percentage for ~~relevant~~reference fiscal year (See definition of "Ontario percentage" in the Rule)	%
5.	Specified Ontario revenues (line 3 multiplied by line 4)	
6.	Participation fee (From Appendix B of the Rule, select the participation fee opposite the specified Ontario revenues calculated above)	

Part III – Advisers, Other Dealers, and Unregistered Capital Markets Participants

Notes:

1. Gross revenue is defined as the sum of all revenues reported on the audited financial statements, except where unaudited financial statements are permitted in accordance with subsection 3.4(4) or (5) of the Rule. Audited financial statements should be prepared in accordance with Accepted Accounting Standards, except that revenues should be reported on an unconsolidated basis. Items reported on a net basis must be adjusted for purposes of the fee calculation.

2. Redemption fees earned upon the redemption of investment fund units sold on a deferred sales charge basis are permitted as a deduction from total revenue on this line.

3. Administration fees permitted as a deduction are limited solely to those that are otherwise included in gross revenue and represent the reasonable recovery of costs from the investment funds for operating expenses paid on their behalf by the registrant firm or unregistered capital markets participant.

4. Where the advisory services of a registrant firm, within the meaning of this Rule or OSC Rule 13-503 (*Commodity Futures Act*) *Fees*, or of an exempt international firm, are used by the person or company to advise on a portion of its assets under management, such sub-advisory costs are permitted as a deduction on this line to the extent that they are otherwise included in gross revenues.

5. Trailer fees paid to registrant firms described in note 4 are permitted as a deduction on this line to the extent they are otherwise included in gross revenues.

1.	Gross revenue for ~~relevant~~reference fiscal year (note 1)	
Less the following items:		
2.	Revenue not attributable to capital markets activities	
3.	Redemption fee revenue (note 2)	
4.	Administration fee revenue (note 3)	
5.	Advisory or sub-advisory fees paid to registrant firms or exempt international firms (note 4)	
6.	Trailer fees paid to registrant firms (note 5)	
7.	Total deductions (sum of lines 2 to 6)	
8.	Revenue subject to participation fee (line 1 less line 7)	
9.	Ontario percentage for ~~relevant~~reference fiscal year (See definition of "Ontario percentage" in the Rule)	%
10.	Specified Ontario revenues (line 8 multiplied by line 9)	
11.	Participation fee (From Appendix B of the Rule, select the participation fee beside the specified Ontario revenues calculated above)	

Part IV – Management Certification

Where available, we have examined the financial statements on which the participation fee calculation is based and certify that, to the best of our knowledge, the financial statements present fairly the revenues of the firm for the period ended as noted under Financial Information above, and that the financial statements have been prepared in agreement with the books of the firm.

We certify that the reported revenues of the firm are complete and accurate and in accordance with generally accepted accounting principles.

	Name and Title	Signature	Date
1.	_____	_____	_____
2.	_____	_____	_____

FORM 13-502F5
ADJUSTMENT OF FEE FOR REGISTRANT FIRMS AND UNREGISTERED EXEMPT INTERNATIONAL FIRMS

Firm name: _____

End date of last completed fiscal year: _____

Note: Subsection 3.5(2) of the Rule requires that this ~~Form~~form must be filed concurrent with a completed Form 13-502F4 that shows the firm's actual participation fee calculation.

1. Estimated participation fee paid under subsection 3.5(1) of the Rule: _____

2. Actual participation fee calculated under paragraph 3.5(2)(b) of the Rule: _____

3. Refund due (Balance owing): _____

   (Indicate the difference between lines 1 and 2)

FORM 13-502F6
SUBSIDIARY ENTITY EXEMPTION NOTICE

Name of Subsidiary Entity: _____

Name of Parent: _____

End Date of Subsidiary Entity's ~~Last Completed~~Reference Fiscal Year: _____

End Date of Subsidiary Entity's Reference Fiscal Year: _____

(A subsidiary entity's reference fiscal year is generally its last fiscal year ending before May 1, 2012, provided that it was a reporting issuer at the end of that fiscal year. In any other case, it is the subsidiary entity's last completed fiscal year.)

Indicate below which exemption the subsidiary entity intends to rely on by checking the appropriate box:

1. Subsection 2.6(1) ☐

The reporting issuer (subsidiary entity) meets the following criteria set out under subsection 2.6(1) of the Rule:

a) at the end of the subsidiary entity's ~~last completed~~reference fiscal year, the parent of the subsidiary entity was a reporting issuer;

b) the accounting standards pursuant to which the parent's financial statements are prepared under Ontario securities law require the consolidation of the parent and the subsidiary entity;

c) the parent has paid a participation fee required with reference to the parent's market capitalization for the parent's ~~last completed~~reference fiscal year;

d) the market capitalization of the subsidiary entity for the ~~last completed~~reference fiscal year was included in the market capitalization of the parent for the ~~last completed~~reference fiscal year; and

e) the net assets and total revenues of the subsidiary entity for its ~~last completed~~reference fiscal year represented more than 90 percent of the consolidated net assets and total revenues of the parent for the parent's ~~last completed~~reference fiscal year.

	Net Assets for ~~last completed~~reference fiscal year	**Total Revenues for ~~last completed~~reference fiscal year**	
Reporting Issuer (Subsidiary Entity)	_____	_____	(A)
Reporting Issuer (Parent)	_____	_____	(B)
Percentage (A/B)	_____%	_____%	

2. Subsection 2.6(2) ☐

The reporting issuer (subsidiary entity) meets the following criteria set out under subsection 2.6(2) of the Rule:

a) at the end of the subsidiary entity's ~~last completed~~reference fiscal year, the parent of the subsidiary entity was a reporting issuer;

b) the accounting standards pursuant to which the parent's financial statements are prepared under Ontario securities law require the consolidation of the parent and the subsidiary entity;

c) the parent has paid a participation fee required with reference to the parent's market capitalization for the parent's ~~last completed~~reference fiscal year;

d) the market capitalization of the subsidiary entity for the ~~last completed~~reference fiscal year was included in the market capitalization of the parent for the ~~last completed~~reference fiscal year; and

e) throughout the ~~last completed~~previous fiscal year of the subsidiary entity, the subsidiary entity was entitled to rely on an exemption, waiver or approval from the requirements in subsections 4.1(1), 4.3(1) and 5.1(1) and sections 5.2 and 6.1 of NI 51-102 *Continuous Disclosure Obligations*.

FORM 13-502F7
SPECIFIED REGULATED ENTITIES – PARTICIPATION FEE

Name of Specified Regulated Entity: _____

Applicable calendar year: _____ (2013 or later)

Type of Specified Regulated Entity:
(check one)

☐ Specified market operator, including recognized exchange

☐ Exempt exchange

☐ Alternative trading system

☐ Recognized clearing agency

☐ Exempt clearing agency

☐ Trade Repository

Participation Fee for applicable calendar year (From Part 3.1 of the Rule and Appendix B.1)	$
Late Fee, if applicable (From section 3.1.2 of the Rule)	$

FORM 13-502F8
DESIGNATED RATING ORGANIZATIONS – PARTICIPATION FEE

Name of Designated Rating Organization: _____

Fiscal year end date: _____

Participation Fee in respect of the fiscal year	$15,000
(From subsection 3.2.1(1) of the Rule)	
Late Fee, if applicable	
(From section 3.2.2 of the Rule)	

ANNEX B
BLACKLINE SHOWING PROPOSED CHANGES TO
ONTARIO SECURITIES COMMISSION
COMPANION POLICY 13-502CP FEES

TABLE OF CONTENTS

ONTARIO SECURITIES COMMISSION
PROPOSED COMPANION POLICY 13-502CP FEES

PART 1 – PURPOSE OF COMPANION POLICY

1.1 Purpose of Companion Policy – The purpose of this Companion Policy is to state the views of the Commission on various matters relating to OSC Rule 13-502 *Fees* (the "Rule"), including an explanation of the overall approach of the Rule and a discussion of various parts of the Rule.

PART 2 – PURPOSE AND GENERAL APPROACH OF THE RULE

2.1 Purpose and General Approach of the Rule

(1) The purpose of the Rule is to establish a fee regime that creates a clear and streamlined fee structure.

(2) The fee regime of the Rule is based on the concepts of "participation fees" and "activity fees".

2.2 Participation Fees

(1) Reporting issuers, registrant firms and unregistered capital markets participants, as well as specified regulated entities and designated rating organizations, are required to pay participation fees annually. For the purposes of the Rule, "unregistered capital markets participants" are defined to mean "unregistered investment fund managers" and "unregistered exempt international firms". ~~The~~Subject to exceptions applying to an investment fund manager that has no place of business in Ontario, the Rule defines an "unregistered investment fund manager" to mean an "investment fund manager" that is not registered under the Act. (The term "investment fund manager" is defined in subsection 1(1) of the Act to mean "a person or company that directs the business, operations or affairs of an investment fund".)

The Rule defines "unregistered exempt international firms" to mean a dealer or adviser that is not registered under the Act and is:

(a) exempt from the dealer registration requirement and the underwriter registration requirement only because of section 8.18 [International dealer] of NI 31-103;

(b) exempt from the adviser registration requirement only because of section 8.26 [*International adviser*] of NI 31-103; or

(c) exempt from ~~the~~ each of the dealer registration requirement, the underwriter registration requirement and the adviser registration requirement only because of sections 8.18 [*International dealer*] and 8.26 [*International adviser*] of NI 31-103.

The term "dealer" is, in turn, defined in subsection 1(1) of the Act to mean "a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in securities". Similarly, an adviser is defined in that subsection to mean "a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities".

(1.1) Participation fees are designed to cover the Commission's costs not easily attributable to specific regulatory activities. The participation fee required of a market participant under Parts 2 of 3 of the Rule is based on a measure of the market participant's size, which is used as a proxy for its proportionate participation in the Ontario capital markets. In the case of a reporting issuer, the participation fee is based on the issuer's capitalization, which is used to approximate its proportionate participation in the Ontario capital markets. In the case of a registrant firm or unregistered capital markets participant, the participation fee is based on the firm's revenues attributable to its capital markets activity in Ontario.

(~~2~~1.2) Participation fees under Part 3.1 of the Rule are generally fixed annual amounts payable each calendar year, In the case of specified regulated entities to which Part 3.1 of the Rule applies, participation fees are generally specified for a particular organization or type of organization in Appendix B.1. The level of participation fees for recognized clearing agencies is determined by references to the services they provide.

(1.3) Participation fees for designated rating organizations under Part 3.2 of the Rule are $15,000 per fiscal year.

(2) Participation fees under Parts 2 and 3 are determined with reference to capitalization or revenue from a market participant's "~~previous~~reference fiscal year"~~, which is essentially~~. As defined in section 1.1 of the Rule ~~as the~~, a market participant's "reference fiscal year" is generally the market participant's last fiscal year ending before May 1, 2012. There are two exceptions:

(a) where the market participant was **not** a reporting issuer, registrant firm or unregistered investment fund manager at the end of that fiscal year; and

(b) where the participant became a reporting issuer in that fiscal year by reason of being issued a receipt under the Act and all or substantially of its securities were not listed or quoted on a marketplace at the end of that fiscal year.

In these two cases, the participant's reference fiscal year is its last completed fiscal year at or before the time the participation fee is required to be paid~~.~~ (which is defined in section 1.1 of the Rule as the market participant's "previous fiscal year"). In cases where the participant falls within an exception described in paragraph (a) or (b) above, the participation fee is determined with reference to the "previous fiscal year" (which advances from year to year), rather than with reference to a static "reference fiscal year". For example, for the purposes of subsection 3.1(1) of the Rule, if a new firm is registered in Ontario in 2013 and has annual fiscal years ending on March 31, its reference fiscal years for the 2013, 2014 and 2015 calendar years would be March 31, 2013, 2014 and 2015 respectively.

2.3 Application of Participation Fees – Although participation fees are determined ~~by using~~ with reference to information from a fiscal year of the payor ending before the time of their payment, ~~both corporate finance and capital markets participation fees~~they are applied to the costs of the Commission of regulating the ongoing participation in Ontario's capital markets of the payor and other market participants.

2.4 Registered Individuals – The participation fee is paid at the firm level under the Rule. ~~That is~~ For example, a "registrant firm" is required to pay a participation fee, not an individual who is registered as a representative of the firm.

2.5 Activity Fees – Activity fees are generally charged where a document of a designated class is filed. Estimates of the direct cost of Commission resources expended in undertaking the activities listed in Appendix C of the Rule are considered in determining these fees (e.g., reviewing prospectuses, registration applications, and applications for discretionary relief). Generally, the activity fee charged for filing a document of a particular class is based on the average cost to the Commission of reviewing documents of the class.

2.5.1 Additional Activity Fees in Special Circumstances –Variable cost-based activity fees for certain applications and reviews specified in sections E, E.1 and E.2 of Appendix C, involving exchanges, alternative trading systems and clearing agencies, may be payable where the "designated cost" of work exceeds $300,000. The additional fee is levied to help recover the Commission's costs in non-routine, novel or complex regulatory filings. The administration of these additional fees is addressed in Part 6 of this Policy.

2.6 Registrants under the *Securities Act* and the *Commodity Futures Act*

(1) The Rule imposes an obligation to pay a participation fee on registrant firms, defined in the Rule as a person or company registered under the Act as a dealer, adviser or investment fund manager. An entity so registered may also be registered as a dealer or adviser under the *Commodity Futures Act*. Given the definition of "capital markets activities" under the Rule, the revenue of such an entity from its *Commodity Futures Act* activities must be included in its calculation of revenues when determining its fee under the Rule. Section 2.8 of OSC Rule 13-503 *(Commodity Futures Act) Fees* exempts such an entity from paying a participation fee under that rule if it has paid its participation fees under the *Securities Act* Rule.

(2) Note that dealers and advisers registered under the *Commodity Futures Act* are subject to activity fees under OSC Rule 13-503 *(Commodity Futures Act) Fees* even if they are not required to pay participation fees under that rule.

2.7 No Refunds

(1) Generally, a person or company that pays a fee under the Rule is not entitled to a refund of that fee. For example, there is no refund available for an activity fee paid in connection with an action that is subsequently abandoned by the payor of the fee. Also, there is no refund available for a participation fee paid by a reporting issuer, registrant firm or unregistered capital markets participant that loses that status later in the fiscal year in respect of which the fee was paid.

(2) An exception to this principle is provided in subsections 2.6.1(3) and 3.5(3) of the Rule. These subsections allow for a refund where a registrant firm overpaid an estimated participation fee.

(3) The Commission will also consider requests for adjustments to fees paid in the case of incorrect calculations made by fee payors.

2.8 Indirect Avoidance of Rule – The Commission may examine arrangements or structures implemented by market participants and their affiliates that raise the suspicion of being structured for the purpose of reducing the fees payable under the Rule. For example, the Commission will be interested in circumstances in which revenues from registrable activities carried on by a corporate group are not treated as revenues of a registrant firm, thereby possibly artificially reducing the firm's specified Ontario revenues and, consequently, its participation fee.

PART 3 – CORPORATE FINANCE PARTICIPATION FEES

3.1 Application to Investment Funds – Part 2 of the Rule does not apply to an investment fund if the investment fund has an investment fund manager. The reason for this is that under Part 3 of the Rule an investment fund's manager must pay a capital markets participation fee in respect of revenues generated from managing the investment fund.

3.2 Late Fees – Section 2.5 of the Rule requires a reporting issuer to pay an additional fee when it is late in paying its participation fee. Reporting issuers should be aware that the late payment of participation fees may lead to the reporting issuer being noted in default and included on the list of defaulting reporting issuers available on the Commission's website.

3.3 Exemption for Subsidiary Entities – Under section 2.6 of the Rule, an exemption from participation fees is available to a reporting issuer that is a subsidiary entity if, among other requirements, the parent of the subsidiary entity has paid a participation fee applicable to the parent under section 2.2 of the Rule determined with reference to the parent's capitalization for the parent's fiscal year. For greater certainty, this condition to the exemption is not satisfied in circumstances where the parent of a subsidiary entity has paid a fixed participation fee in reliance on subsection 2.2(2) or (3) of the Rule in lieu of a participation fee determined with reference to the parent's capitalization for its fiscal year.

3.4 Determination of Market Value

(1) Section 2.7 of the Rule requires the calculation of the capitalization of a Class 1 reporting issuer to include the total market value of classes of securities that may not be listed or quoted on a marketplace, but trade over the counter or, after their initial issuance, are otherwise generally available for sale. Note that the requirement that securities be valued in accordance with market value excludes from the calculation securities that are not normally traded after their initial issuance. In addition, also note that, if the issuer became a reporting issuer pursuant to clause (b) of the definition of "reporting issuer" in subsection 1(1) of the Act in its reference year because of being issued a prospectus receipt, month-end valuations do not include those before the issuer's securities were listed or quoted on a marketplace.

(2) When determining the value of securities that are not listed or quoted in any relevant month, a reporting issuer should use the best available source for pricing the securities. That source may be one or more of the following:

(a) pricing services,

(b) quotations from one or more dealers, ~~or~~

(c) prices on recent transactions.

(3) Note that market value calculation of a class of securities included in a calculation under section 2.7 of the Rule includes all of the securities of the class, even if some of those securities are still subject to a hold period or are otherwise not freely tradable.

(4) If the closing price of a security on a particular date is not ascertainable because there is no trade on that date or the marketplace does not generally provide closing prices, a reasonable alternative, such as the most recent closing price before that date, the average of the high and low trading prices for that date, or the average of the bid and ask prices on that date is acceptable.

3.5 Owners' Equity and Non-Current Borrowings – A Class 2 reporting issuer calculates its capitalization on the basis of certain items reflected in its audited statement of financial position. Two such items are "share capital or owners' equity" and "non-current borrowings, including the current portion". The Commission notes that "owners' equity" is

designed to describe the equivalent of share capital for non-corporate issuers, such as partnerships or trusts. "Non-current borrowings" is designed to describe the equivalent of long term debt or any other borrowing of funds beyond a period of twelve months.

3.6 Identification of Non-Current Liabilities – If a Class 2 reporting issuer does not present current and non-current liabilities as separate classifications on its statement of financial position, the reporting issuer will still need to classify these liabilities for purposes of its capitalization calculation. In these circumstances non-current liabilities means total liabilities minus current liabilities, using the meanings ascribed to those terms under the accounting standards pursuant to which the entity's financial statements are prepared under Ontario securities law.

PART 4 – CAPITAL MARKETS PARTICIPATION FEES

4.1 Passing on of Participation Fees Capital markets participation fees are payable annually by registrant firms and "unregistered exempt international firms", as defined in section 1.1 of the Rule. The capital markets participation fees represent, in general, their costs of participating in Ontario's capital markets and should be paid and borne by them.

4.2 Filing Forms under Section 3.5 of the Rule – If the estimated participation fee paid under subsection 3.5(1) of the Rule by a registrant firm or unregistered exempt international firm does not differ from its true participation fee determined under paragraph 3.5(2)(b) of the Rule, the registrant firm is not required to file either a Form 13-502F4 or a Form 13-502F5 under paragraph 3.5(2)(d) of the Rule.

4.24.3 Late Fees – Section 3.6 of the Rule prescribes an additional fee if a participation fee is paid late. The Commission and the Director will, in appropriate circumstances, consider tardiness in the payment of fees as a matter going to the fitness for registration of a registrant firm. The Commission may also consider measures in the case of late payment of fees by an unregistered capital markets participant, such as: in the case of an unregistered investment fund manager, prohibiting the manager from continuing to manage any investment fund or cease trading the investment funds managed by the manager; or, in the case of an unregistered exempt international firm, making an order pursuant to section 127 of the Act, that the corresponding exemptions from registration requirements under which the firm acts do not apply to the firm (either permanently or for such other period as specified in the order).

4.34.4 Form of Payment of Fees – Registrant firms pay through the National Registration Database. Unregistered ~~capital markets participants~~investment fund managers make filings and pay fees under Part 3 of the Rule by paper copy. The filings and payment for unregistered investment fund managers should be addressed to the Ontario Securities Commission (Attention: Manager, Investment Funds). The filings and payments for unregistered exempt international firms should be sent to the Ontario Securities Commission (Attention: Manager, Registrant Regulation).

4.44.5 "Capital markets activities"

(1) A person or company must consider its capital markets activities when calculating its participation fee. The term "capital markets activities" is defined in the Rule to include "activities for which registration under the Act or an exemption from registration is required". The Commission is of the view that these activities include, without limitation, carrying on the business of trading in securities, carrying on the business of an investment fund manager, providing securities-related advice or portfolio management services. The Commission notes that corporate advisory services may not require registration or an exemption from registration and would therefore, in those contexts, not be capital markets activities.

(2) The definition of "capital markets activities" also includes activities for which registration or an exemption from registration under the *Commodity Futures Act* is required. The Commission is of the view that these activities include, without limitation, trading in commodity futures contracts, carrying on the business of providing commodity futures contracts-related advice and portfolio management services involving commodity futures contracts.

4.54.6 Permitted Deductions – Subsection 3.4(3) of the Rule permits certain deductions to be made for the purpose of calculating specified Ontario revenues for unregistered capital markets participants and registrant firms. The purpose of these deductions is to prevent the "double counting" of revenues that would otherwise occur.

~~**4.6 Application to Non-resident Unregistered Investment Fund Managers** – For greater certainty, the Commission is of the view that Part 3 of the Rule applies to non-resident unregistered investment fund managers managing investment funds distributed in Ontario on a prospectus exempt basis.~~

4.7 Active solicitation – For the purposes of the definition of "unregistered investment fund manager" in section 1.1 of the Rule, "active solicitation" refers to intentional actions taken by the investment fund or the investment fund manager to encourage a purchase of the fund's securities, such as pro-active, targeted actions or communications that are initiated

by an investment fund manager for the purpose of soliciting an investment. Actions that are undertaken by an investment fund manager at the request of, or in response to, an existing or prospective investor who initiates contact with the investment fund manager would not constitute active solicitation.

4.74.8 Change of Status of Unregistered Investment Fund Managers – Subsection 3.1(4) of the Rule reduces the participation fee otherwise payable after the end of a fiscal year under subsection 3.1(2) of the Rule by an unregistered investment fund manager that becomes a registrant firm. The reduction takes into account the imposition of a participation fee payable by registrant firms under subsection 3.1(1) of the Rule on December 31 of a calendar year and generally prevents the imposition of total participation fees in excess of total participation fees that would have been charged had there been no change of registration status.

4.84.9 Confidentiality of Forms – The material filed under Part 3 of the Rule will be kept confidential. The Commission is of the view that the material contains intimate financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of the principle that the material be available for public inspection.

PART 5 –OTHER PARTICIPATION FEES

5.1 General – Participation fees are also payable annually by specified regulated entities and designated rating organizations under Parts 3.1 and 3.2 of the Rule.

5.2 Specified Regulated Entities – The calculation of participation fees under Part 3.1 of the Rule is generally determined with reference to named entities or classes or entities. The entities or classes, and their level of participation fees, are set out in Appendix B.1 of the Rule.

5.3 Designated Rating Organizations- The participation fees for designated rating organizations are a flat $15,000 per fiscal year.

PART 6 –VARIABLE COST-BASED ACTIVITY FEE PAYABLE IN SPECIAL CIRCUMSTANCES

6.1 General – A variable cost-based activity fee may be charged under section 4.1.1 of the Rule with regard to specified applications and reviews described in sections E, E.1 and E.2 of Appendix C (relating to exchanges, alternative trading systems and clearing agencies), but only where the designated cost of the work is $300,000 or greater. It is expected that variable cost-based activity fees will only apply in rare cases.

6.2 Standard activity fees – Each filer will be required to pay the fee associated with the relevant matter described in section E, E.1 or E.2 of Appendix C. If OSC staff expect that a particular filing described in section E, E.1 or E.2 of Appendix C may be one to which the variable cost-based activity fee may apply due to its anticipated complexity, the filer will be so advised. OSC staff would also advise the applicant as to the expected scale and duration of the work it anticipates.

6.3 Designated cost of work – As set out in subsection 4.1.1(4) of the Rule, the designated cost of work done by OSC staff is the product of $140 and the number of complete hours worked by specified OSC staff in connection with the specified filing. A filer is also responsible for any fees incurred by the Commission in retaining external legal counsel or external experts in relation to the matter under review.

6.4 Instalments – Depending on the circumstances, a filer may be required to pay the variable cost-based activity fee in instalments. The amount and frequency of the instalments depends on the complexity of the filing, the expected duration of the review, the internal Commission resources necessary for completion of the review, the amount of the activity fee already paid by the applicant and any other relevant consideration. Such factors will be discussed with the filer at the time when OSC staff identify that the additional fee may be applicable. These terms may be reconsidered and/or revised during the course of the review period, as appropriate.

6.5 **Draft invoices** – OSC staff intend to provide draft invoices relating to variable cost-based fees, prior to issuing the final invoices required by the Rule. The purpose of issuing a draft invoice is to give the filer an opportunity to put forward any basis as to why the fee reflected on the draft invoice should be lowered. If the filer does not make a submission within 30 days of receiving the draft invoice, the corresponding final invoice may be issued once reviewed first by the Director and then by Commission. Both the draft and final invoices would be expected to meet the requirements set out in subsection 4.1.1(5) of the Rule.

6.6 Review – The Director and the Commission may evaluate the fairness and appropriateness of amounts set out in a draft invoice in considering whether or not to lower the fee reflected on the draft invoice, giving consideration to any submission made by the filer in response to a draft invoice described in section 6.5 and other factors including:

(a) the complexity of the matter;

(b) the reasonableness of the time expended;

(c) the expertise that was required, including whether external counsel or experts were retained by the Commission;

(d) the filer's expectation as to fees based on estimate provided; and

(e) any action taken by OSC staff, by external counsel or experts or by the applicant which caused a notable increase in the amount of work required.

6.1.2 Proposed Amendments to OSC Rule 13-503 (Commodity Futures Act) Fees and Companion Policy 13-503CP (Commodity Futures Act) Fees

REQUEST FOR COMMENTS
PROPOSED AMENDMENTS TO
OSC RULE 13-503 (COMMODITY FUTURES ACT) FEES
AND COMPANION POLICY 13-503CP (COMMODITY FUTURES ACT) FEES

August 23, 2012

Introduction

The Commission is publishing for a 90-day comment period proposed amendments (the Proposed Amendments) to OSC Rule 13-503 *(Commodity Futures Act) Fees* (the Current Rule) made under the *Commodity Futures Ac*t (CFA), together with proposed changes (the Proposed CP Changes) to Companion Policy 13-503CP. In this Notice, the proposed versions of the Current Rule and the Companion Policy are referred to as the Proposed Rule and the Proposed CP, respectively. The Proposed Amendments and the Proposed CP Changes are referred to collectively as the Proposed Materials.

The Proposed Materials are available on the Commission's website (www.osc.gov.on.ca). Related proposed changes to the *Securities Act* are being published today for comment in this Bulletin.

The on-going feedback received by us on Commission fees charged suggests that they are considered by market participants to be a modest component of their overall cost structures. The input sought by the Commission includes whether any part of the proposals put forth today would, if implemented, change this assessment.

We request comments on the Proposed Materials by November 21, 2012.

Substance and Purpose of the Proposed Materials

The Proposed Amendments are consistent with the Current Rule. That is, under the Proposed Rule, registrant firms would continue to be required to pay fees reflecting the Commission's costs of regulating activities governed by the *Commodity Futures Act* (CFA).

The two main types of fees charged under the Current Rule are participation fees and activity fees.

Participation fees are designed to cover the Commission's costs not easily attributable to specific regulatory activities. The participation fee required of a CFA registrant is a measure of the CFA registrant's size, which is used as proxy for its proportionate participation in the Ontario capital markets. However, a CFA registrant is not required to pay a participation fee under the Current Rule or Proposed Rule if it is subject to a capital markets participation fee under OSC Rule 13-502 *Fees*. As set out below, it is proposed to increase participation fees over three years.

Activity fees are generally charged where a document of a designated class is filed. Estimates of the direct cost of Commission resources expended in undertaking the activities listed in Appendix B of the Current Rule and the Proposed Rule are considered in determining these fees (e.g., reviewing registration applications and applications for discretionary relief). Generally, the activity fee charged for filing a document of a particular class is based on the average cost to the Commission of reviewing documents of the class. We are proposing to increase some of our activity fees where the complexity of the work and the costs of our resources have increased. Under the Proposed Rule, there is also provision in narrow circumstances for charging a variable cost-based fee for certain applications by CFA exchanges and clearing houses, in light of the high degree of variability of the costs in these applications.

The Proposed Amendments make adjustments so that the fees charged by the Commission are aligned more closely with the Commission's costs. In order to allow for the greater predictability of fee revenues, the Proposed Amendments applicable to CFA registrant participation fees provide for those fees to be determined by reference to historical data (rather than on-going current data) and for that reference point to be the basis for fees for the anticipated three-year period of the Proposed Rule.

The Proposed CP Changes reflect the Proposed Amendments.

Further details on the Proposed Amendments and the Proposed CP Changes are provided below under the headings "Summary of Proposed Amendments" and "Summary of Proposed CP Changes".

Anticipated Costs and Benefits and Supplementary Information

Financial information relevant to fees established under both the CFA and the *Securities Act* is contained in the notice in the Bulletin on proposed amendments to OSC Rule 13-502 Fees.

Summary of the Proposed Amendments

The Proposed Amendments are described in greater detail below.

Use of pre-May, 2012 information in determining market participant size

Under the Current Rule, a participation fee for a CFA registrant is determined with reference to its specified Ontario revenues for its last completed fiscal year. Under the proposed Rule, a participation fee for a CFA registrant is determined with reference to its specified Ontario revenues for its "reference fiscal year".

Under section 1.1 of the Proposed Rule, a CFA registrant's "reference fiscal year" is its last fiscal year ending before May 1, 2012, assuming it was a registrant firm at the end of that fiscal year. As a consequence of the way in which "reference fiscal year" is used in the Proposed Rule, the participation fee is generally fixed for three years, with reference to data from a CFA registrant's "reference fiscal year".

Where the CFA registrant did not have the required status at the end of that fiscal year, its "reference fiscal year" is its "previous fiscal year" (as defined in section 1.1 of the Rule), which in general terms is its last completed fiscal year. Where a CFA registrant's "reference fiscal year" is its "previous fiscal year", the result is that the registrant's size is determined with reference to the same time period as it is under the Current Rule. For a CFA registrant that is required to calculate its fees based on its previous fiscal year, this means that it will use its annual financial statements each year as a basis for the information required in Form 13-503F1.

To take into account this amendment, numerous consequential changes have also been made to Form 13-503F1.

The main objective of this amendment is to enable the better matching of the Commission's revenues and expenditures. The proposed amendment eliminates the need to forecast market conditions in determining the fees for each participation fee tier since, with the use of the reference fiscal year, participation fees will be known and be predictable over the life of the Proposed Rule. This provides more stability for the benefit of the Commission and for CFA registrants.

Participation fees

One additional tier is proposed for CFA registrants with under $250,000 of specified Ontario revenues, with a lower participation fee of $800 initially being provided for this tier. Those participants with revenues between $250,000 and $500,000 are initially proposed to remain subject to a $1,035 participation fee. The $800 and $1,035 participation fees would be increased as shown in Appendix A of the Rule in the last two years of the three-year fee cycle. Participation fees for CFA registrants within higher tiers of revenue would increase by 7.9% annually throughout the three-year fee cycle.

Activity fees

(i) Adjustments in Amounts of Existing Activity Fees

There are number of changes in the amounts of existing activity fees, made in order to better match the Commission's costs for specified activities and to reduce increases that would otherwise be required in the setting of participation fees. Proposed increases in activity fees reflect increases in OSC costs as well as increases in the complexity of much of the OSC's work which has resulted in greater time/resource requirements for certain activities.

The base fee for an application under a CFA section for relief, approval or recognition specified in Appendix B (A) 1 is proposed to increase from $3,250 to $4,500 (or, in the case of an application under multiple sections, from $5,000 to $7,000). However, it is proposed that applications for recognition/registration of an exchange or clearing house and exemptions from such recognition/registration be no longer subject to this fee. Instead, these fees would now be provided under Appendix B (A.1). No fee would be charged in connection with recognitions under section 16 of the CFA, approvals under section 18 of the CFA or applications under subsection 78(1) of the CFA that are made in conjunction with corresponding recognitions/approvals/applications under the Securities Act.

The fee for application for relief under the Proposed Rule is proposed to increase from $1,500 to $1,750 (Appendix B (A) 3).

The following fee adjustments are proposed to fees for registration-related activities:

- fee for new registration of a firm is proposed to increase from $600 to $1,200 (Appendix B (B) 1);
- fee for change in registration category is proposed to increase from $600 to $700 (Appendix B (B) 2);
- fee for registration resulting from an amalgamation of firm proposed to decrease from $2,000 to $1,000 (Appendix B (B) 5);
- fee for approval under subsection 9(3) of the Regulation 90 under the CFA (requiring the approval of the Director before a CFA registrant, or a partner, officer or associate of a CFA registrant, has a direct or indirect interest in any other CFA registrant)
    - increased from $1,000 to $3,500 for consistency with corresponding proposed fee in OSC Rule 13-502 (Appendix C (I)), and
    - eliminated if a notice covering the same circumstances is required under section 11.9 or 11.10 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Requirements*.

(ii) Changes in Fee Structure in Relation to Exchanges and Clearing Houses

Under Appendix B (A.1), the fee for stand-alone CFA applications for recognition/registration by exchanges and clearing houses would be increased to $100,000 and the fee for exemption from registration under the CFA for exchanges would be increased to $75,000. An additional fee of $100,000 would be charged in four cases, in connection with each such application that:

- reflects a merger of an exchange or clearing house,
- reflects an acquisition of a major part of the assets of an exchange or clearing house,
- involves the introduction of a new business that would significantly change the risk profile of an exchange or clearing house, or
- reflects a major reorganization or restructuring of an exchange or clearing house.

The same additional $100,000 fee would be charged under Appendix B (A) in connection with stand-alone CFA applications to vary applications reflecting the circumstances described above.

In the event that applications described above are in conjunction with corresponding applications under the *Securities Act*, the base activity fee would be limited to $20,000 and there would be no additional CFA fee of $100,000.

Further, provision is made in section 3.1.1 of the Proposed Rule for a variable cost-based CFA fee to be charged in connection with an application described in section A or A.1 of Appendix B from an exchange or clearing house if the "designated cost" of the work on the application exceeds $300,000. For this purpose, the "designated cost" of work done by OSC staff would be equal to product of the the number of hours worked on the application by non-managerial professional OSC staff and $140, plus the cost of external services used by the Commission on the application. Once the $300,000 threshold is reached, the Commission would be entitled to issue invoices to recoup the OSC's cost of processing the application. The special activity fee is not intended to apply frequently and would only apply to very special circumstances, such as the recently completed "Maple recognition". Further elaboration of the process contemplated in connection with variable cost-based activity fees is set out in the Proposed CP.

(iii) Information Requests to the Commission

Section E of Appendix B sets out the fees that the Commission charges for retrieving and copying records, mostly of a public nature.

It is proposed to update this section to refer to copies made in any format (rather than photocopies). It is proposed to express the $0.50 charge as applying per image (rather than per page).

It is also proposed to adjust the amount of fee charged for a search of the Commission's public records to reflect required retrieval time. The fee is proposed to be changed from a $150 flat fee to a $7.50 charge for each 15 minutes of search time.

Additional technical changes

The Proposed Amendments also include some non-material technical changes.

Proposed CP Changes

The purpose of the Proposed CP Changes is to clarify the Commission's view of the application of the Proposed Amendments, as well as to address the additional issue described below and to make a number of non-material technical changes.

Section 3.1 of the Proposed CP deals with the passing on of participation fees. The Commission takes the position that these participation fees should be paid by, and borne by, those who are charged the participation fees. A similar change is reflected in proposed section 4.1 of Companion Policy 13-502CP, which is also being published for comment today.

Part 4 of the Proposed CP elaborates on the process foreseen in the event that an variable cost-based activity fee is charged under proposed section 3.1.1 of the Rule.

Authority for the Proposed Amendments

Paragraph 25 of subsection 65(1) of the CFA authorizes the Commission to make rules "Prescribing the fees payable to the Commission, including those for filing, for applications for registration or exemptions, for trades in contracts, in respect of audits made by the Commission and in connection with the administration of Ontario commodity futures law."

Alternatives Considered

The Commission did not consider any alternatives to rule amendments in the development of the Proposed Amendments..

Unpublished Materials

The Commission has not relied on any significant unpublished study, report, decision or other written materials in putting forward the Proposed Materials.

How to Provide Your Comments

You must provide your comments in writing by November 21, 2012. If you are not sending your comments by email, you should also send an electronic file containing the submissions (in Windows format, Microsoft Word).

Please send your comments to the following address:

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

The Commission will publish written comments received unless the Commission approves a commenter's request for confidentiality or the commenter withdraws its comment before the comment's publication.

Questions

Please refer your questions to:

Allison McBain
Registration Supervisor, Compliance and Registrant Regulation
(416) 593-8164
amcbain@osc.gov.on.ca

Simon Thompson
Senior Legal Counsel, General Counsel's Office
(416) 593-8261
sthompson@osc.gov.on.ca

Nikhil Verghese
Accountant, Market Regulation
(416) 593-8927
nverghese@osc.gov.on.ca

Text of the Proposed Materials

Annex A provides a blackline showing the impact of the Proposed Amendments on the Current Rule.

Annex B provides a blackline showing the impact of the Proposed CP Changes.

ANNEX A
BLACKLINE SHOWING PROPOSED CHANGES TO
RULE 13-503 (COMMODITY FUTURES ACT) FEES

TABLE OF CONTENTS

ONTARIO SECURITIES COMMISSION
RULE 13-503 (COMMODITY FUTURES ACT) FEES

PART 1 – DEFINITIONS

1.1 Definitions – In this Rule

"CFA" means the *Commodity Futures Act*;

"CFA activities" means activities for which registration under the CFA or an exemption from registration is required;

"IIROC" means the Investment Industry Regulatory Organization~~ of Canada and, where context requires, includes the Investment Dealers Association~~ of Canada;

"Ontario allocation factor" has the meaning that would be assigned by the first definition of that expression in subsection 1(1) of the *Taxation Act, 2007* if that definition were read without reference to the words "ending after December 31, 2008";

"Ontario percentage" means, for a fiscal year of a registrant firm

(a) if the registrant firm is a company that has a permanent establishment in Ontario in the fiscal year, the registrant firm's Ontario allocation factor for the fiscal year expressed as a percentage and determined on the assumption that the registrant firm had a taxation year that coincided with the fiscal year and is resident in Canada for the purposes of the ITA,

(b) if paragraph (a) does not apply and the registrant firm would have a permanent establishment in Ontario in the fiscal year if the registrant firm were a company, the registrant firm's Ontario allocation factor for the fiscal year expressed as a percentage and determined on the assumption that the registrant firm is a company, had a taxation year that coincided with the fiscal year and is resident in Canada for the purposes of the ITA, and

(c) in any other case, the percentage of the registrant firm's total revenues for the fiscal year attributable to CFA activities in Ontario;

"permanent establishment" has the meaning provided in Part IV of the regulations under the ITA;

"previous fiscal year" of a registrant firm in respect of a participation fee that becomes payable under section 2.2 on December 31 of a calendar year, the last fiscal year of the registrant firm ending in the calendar year;

"reference fiscal year" of a registrant firm in respect of a participation fee means,

(a) the participant's last fiscal year ending before May 1, 2012, if the firm was a registrant firm at the end of the fiscal year, and

(b) in any other case, the previous fiscal year in respect of the participation fee;

"registrant firm" means a person or company registered as a dealer or an adviser under the CFA; and

"specified Ontario revenues" means the revenues determined in accordance with section 2.4, 2.5 or 2.6.

PART 2 – PARTICIPATION FEES

2.1 Application – This Part does not apply to a registrant firm that is registered under the *Securities Act* and that has paid its participation fee under Rule 13-502 *Fees* under the *Securities Act*.

2.2 Participation Fee – On December ~~31, a~~31 of each calendar year, registrant ~~firm~~firms must pay the participation fee shown in Appendix A opposite the registrant firm's specified Ontario revenues for its ~~previous~~reference fiscal year, as that revenue is calculated under section 2.4 or 2.5.

2.3 Disclosure of Fee Calculation

(1) By December 1, ~~a~~ registrant ~~firm~~firms must file a completed Form 13-503F1 showing the information required to determine the participation fee due on December 31.

(2) Despite subsection (1), if at a particular time after December 1 and in a calendar year, a firm becomes registered, the completed Form 13-503F1 must be filed as soon as practicable after the particular time.

2.4 Specified Ontario Revenues for IIROC Members

(1) The specified Ontario revenues for its ~~previous~~reference fiscal year of a registrant firm that was an IIROC member at the end of the ~~previous~~reference fiscal year is calculated by multiplying

(a) the registrant firm's total revenue for its ~~previous~~reference fiscal year, less the portion of that total revenue not attributable to CFA activities, by

(b) the registrant firm's Ontario percentage for its ~~previous~~reference fiscal year.

(2) For the purpose of paragraph (1)(a), "total revenue" for a ~~previous~~reference fiscal year means the amount shown as total revenue for the previous fiscal year on Statement E of the Joint Regulatory Financial Questionnaire and Report filed with IIROC by the registrant firm.

2.5 Specified Ontario Revenues for Others

(1) The specified Ontario revenues of a registrant firm that was not an IIROC member at the end of its ~~previous~~ refererence fiscal year is calculated by multiplying

(a) the registrant firm's gross revenues, as shown in the audited financial statements prepared for the ~~previous~~reference fiscal year, less deductions permitted under subsection (2), by

(b) the registrant firm's Ontario percentage for the ~~previous~~reference fiscal year.

(2) For the purpose of paragraph (1)(a), a registrant firm may deduct the following items otherwise included in gross revenues for the reference fiscal year:

(a) revenue not attributable to CFA activities,

(b) ~~-~~advisory or sub-advisory fees paid during the ~~previous~~reference fiscal year by the registrant firm to

(i) a person or company registered as a dealer or an adviser under the CFA or under the *Securities Act*, or

(ii) an unregistered exempt international firm, as defined in Rule 13-502 *Fees* under the *Securities Act*.

2.6 Estimating Specified Ontario Revenues for Late Fiscal Year End

(1) If the reference fiscal year of a registrant firm in respect of a participation fee under subsection 3.1(1) coincides with the previous fiscal year in respect of the participation fee and the annual financial statements of a registrant firm for the previous fiscal year have not been completed by December 1 in the calendar year in which the previous fiscal year ends, the registrant firm must,

(a) ~~by the time~~on or before December 1 in that calendar year ~~specified in section 2.3,~~ file a completed Form 13-503F1 showing a good faith estimate of the information required to calculate its specified Ontario revenues as at the end of the fiscal year, and

(b) on December 31 in that calendar year, pay the participation fee shown in Appendix A opposite the specified Ontario revenues estimated under paragraph (a).

(2) A registrant firm that estimated its specified Ontario revenues under subsection (1) must, when its annual financial statements for the previous fiscal year have been completed,

(a) calculate its specified Ontario revenues under section 2.4 or 2.5, as applicable,

(b) determine the participation fee shown in Appendix A opposite the specified Ontario revenues calculated under paragraph (a),

(c) complete a Form 13-503F1 reflecting the annual financial statements, and

(d) if the participation fee determined under paragraph (b) differs from the participation fee paid under subsection (1), the registrant firm must, not later than 90 days after the end of the previous fiscal year,

(i) pay the amount, if any, by which

(A) the participation fee determined without reference to this section,

exceeds

(B) the corresponding participation fee paid under subsection (1),

(ii) file the Form 13-503F1 completed under paragraph (c), and

(iii) file a completed Form 13-503F2.

(3) If a registrant firm paid an amount paid under subsection (1) that exceeds the corresponding participation fee determined without reference to this section, the registrant firm is entitled to a refund from the Commission of the excess.

2.7 Late Fee

(1) A registrant firm that is late in paying a participation fee under this Part must pay an additional fee of one-tenth of one percent of the unpaid portion of the participation fee for each business day on which any portion of the participation fee remains due and unpaid.

(2) The amount determined under subsection (1) in respect of the late payment of a participation fee by a registrant firm is deemed to be nil if

(a) the registrant firm pays an estimate of the participation fee in accordance with subsection 2.6(1), or

(b) the amount otherwise determined under subsection (1) in respect of the late payment of participation fee is less than $10.

PART 3 – ACTIVITY FEES

3.1 Activity Fees

A person or company that files a document or takes an action listed in Appendix B must, concurrently with filing the document or taking the action, pay the activity fee shown in Appendix B opposite the description of the document or action.

3.1.1 Special Circumstances

(1) If the designated cost, in connection with an application referred to in section A or A.1 of Appendix B from an exchange or clearing house, is greater than $300,000, the Commission must

(a) issue one or more invoices to the person or company for an amount equal to the difference between that designated cost and the total fee charged in respect of the application under section A or A.1 of Appendix B, in which case the amount specified in each invoice is deemed to be part of the fee for that matter and become payable, 30 days after the receipt of a the invoice, by the person or company, or

(b) despite section A(3) of Appendix C, request that the Director consider or reconsider under section 5.1 the extent to which this section applies.

(2) No invoice shall be issued under subsection (1) in relation to work performed by staff of the Commission more than twelve months before the invoice is issued or in relation to services performed by a third party more than twelve months after a bill for those services was rendered.

(3) For the purposes of subsection (1) the "designated cost" of work in relation to a matter is the total of:

(a) the product of $140 and the number of complete hours worked by a specified member of the staff of the Commission in connection with the matter and, for the purposes of this paragraph, a specified member of the staff is a member of staff of the Commission who is engaged by the Commission for their expertise and knowledge in any combination of law, accounting and the markets, but does not include managers, assistant directors and executives; and

(b) the cost to the Commission of services provided by third parties contracted in connection with the matter.

(4) An invoice under subsection (1) in respect of a matter must

(a) to the extent it reflects work done by staff of the Commission,

(i) specify the number of complete hours worked by each individual on the matter to the extent that those hours were relevant in the determination of the portion of the amount invoiced under subsection (1),

(ii) specify the dates on which those hours were worked, and

(iii) describe in general terms the work performed during those hours, and

(b) to the extent it reflects the cost described in paragraph (3)(b), describe in general terms the services provided for those costs.

3.1.2 Information Request

Section 3.1 does not apply with regard to requests to the Commission under section E of Appendix B but the Commission must only fulfill a request under that section upon full payment of the applicable fee.

3.2 **Late Fee** – A person or company that files a document listed in Appendix C after the document was required to be filed must, concurrently with filing the document, pay the late fee shown in Appendix C opposite the description of the document.

PART 4 – CURRENCY CONVERSION

4.1 **Canadian Dollars** – If a calculation under this Rule requires the price of a security, or any other amount, as it was on a particular date and that price or amount is not in Canadian dollars, it must be converted into Canadian dollars using the daily noon exchange rate for that date as posted on the Bank of Canada website.

PART 5 – EXEMPTION

5.1 **Exemption** – The Director may grant an exemption from the provisions of this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 6 – REVOCATION AND EFFECTIVE DATE

APPENDIX A – PARTICIPATION FEES

Specified Ontario Revenues for the ~~Previous~~Reference Fiscal Year	Participation Fee (effective April 1, 2013)	Participation Fee (effective April 7, 2014)	Participation Fee (effective April 6, 2015)
under $250,000	$800	$925	$1,060
$250,000 to under $500,000	$1,035	$1,115	$1,200
$500,000 to under $1 million	$~~3,240~~3,500	$3,775	$4,075
$1 million to under $3 million	$~~7,250~~ 7,825	$8,440	$9,110
$3 million to under $5 million	$~~16,325~~ 17,615	$19,000	$20,500
$5 million to under $10 million	$~~33,000~~ 35,610	$38,425	$41,460
$10 million to under $25 million	$~~67,400~~ 72,725	$78,470	$84,670
$25 million to under $50 million	$~~101,000~~ 108,980	$117,590	$126,880
$50 million to under $100 million	$~~202,000~~ 217,960	$235,180	$253,760
$100 million to under $200 million	$~~335,400~~ 361,900	$390,490	$421,340
$200 million to under $500 million	$~~679,900~~ 733,625	$791,580	$854,100
$500 million to under $1 billion	$~~878,000~~ 947,360	$1,022,200	$1,103,000
$1 billion to under $2 billion	$~~1,107,300~~ 1,195,000	$1,289,400	$1,391,250
$2 billion and over	$~~1,858,200~~ 2,000,000	$2,158,000	$2,328,500

APPENDIX B - ACTIVITY FEES

Document or Activity	Fee
A. Applications for relief, approval and recognition	
1. Any application for relief, regulatory approval or recognition under an eligible CFA section, being for the purpose of this item any provision of the CFA or any Regulation or OSC Rule made under the CFA not listed in item A.2 or A.~~3.~~3 nor section A.1. *Note: The following are included in the applications that are subject to a fee under this item:* *(i) recognition of ~~an exchange under section 34 of the CFA,~~ a self-regulatory organization under section 16 of the CFA ~~or a clearing house under section 17 of the CFA~~;* *~~(ii) registration of an exchange under section 15 of the CFA;~~* *(iii) approval of the establishment of a council, committee or ancillary body under section 18 of the CFA;* *(~~iv~~iii) applications by a person or company under subsection 78(1) of the CFA; and* *(iv) except as provided in section A.1, exemption applications under section 80 of the CFA.*	$~~3,250~~4,500 for an application made under one eligible CFA section and $~~5,000~~7,000 for an application made under two or more eligible CFA sections (plus $2,000 if none of the following is not subject to, or is not reasonably expected to become subject to, a participation fee under this Rule or OSC Rule 13-502 under the *Securities Act*: (i) the applicant; (ii) an issuer of which the applicant is a wholly owned subsidiary; (iii) the investment fund manager of the applicant)~~.~~ (plus an additional fee of $100,000 in connection with each particular application by a person or company under subsection 78(1) of the CFA in respect of an application described in section A.1 that is not in conjunction with a corresponding application under subsection 144(1) of the *Securities Act* if the particular application (a) reflects a merger of an exchange or clearing house, (b) reflects an acquisition of a major part of the assets of an exchange or clearing house, (c) involves the introduction of a new business that would significantly change the risk profile of an exchange or clearing house, or (d) reflects a major reorganization or restructuring of an exchange or clearing house.) Despite the above, ~~if an application is made under at least one eligible securities section described in Appendix C(E) 1 of OSC Rule 13-502 and at least one eligible CFA section, the fee in respect of the application is equal to the amount, if any, by which~~ the fee under this Item for a recognition described in Note (i) of the first column, an approval described in Note (ii) of the first column or an application described in Note (iii) of the first column does not apply where the

Document or Activity	Fee
	recognition, approval or application is in conjunction with a recognition, approval or application under the *Securities Act*. ~~(a) the fee that would have been charged under Appendix C(E) 1 of OSC Rule 13-502 in respect of the application if each eligible CFA section were an eligible securities section~~ ~~exceeds~~ ~~(b) the fee charged under Appendix C(E) 1 of OSC Rule 13-502 in respect of the application.~~
2. Application under (a) Section 24 or 40 or subsection 36(1) or 46(6) of the CFA, and (b) Subsection 27(1) of the Regulation to the CFA.	Nil
3. An application for relief from ~~any of the following~~ ~~(a)~~ this Rule~~;~~.	~~$1,500~~$1,750
4. An application for relief from any of the following: (b~~a~~) OSC Rule 31-509 *(Commodity Futures Act) National Registration Database*; (e~~b~~) OSC Rule 33-505 *(Commodity Futures Act) Registration Information*; (d~~c~~) Subsection 37(7) of the Regulation to the CFA.	$1,500
A.1 Market Regulation Recognitions and Exemptions	
(a) Application for registration or recognition of an exchange under section 15 or 34 of the CFA if the application is not made in conjunction with the application for recognition of an exchange under the *Securities Act*;	$100,000
(b) Application for registration or recognition of an exchange under section 15 or 34 of the CFA if the application is made in conjunction with the application for recognition of an exchange under the *Securities Act*;	$20,000
(c) Application for exemption from registration of an exchange under section 80 of the CFA if the application is not made in conjunction with the application for exemption from the recognition of an exchange under the *Securities Act*;	$75,000

Document or Activity	Fee
(d) Application for exemption from registration of an exchange under section 80 of the CFA if the application is made in conjunction with the application for exemption from the recognition of an exchange under the *Securities Act*;	$20,000
(e) Application for recognition of a clearing house under section under section 17 of the CFA if the application is not made in conjunction with the application for recognition of a clearing agency under the *Securities Act*;	$100,000
(f) Application for recognition of a clearing house under section under section 17 of the CFA if the application is made in conjunction with the application for recognition of a clearing agency under the *Securities Act*.	$20,000 (plus, in connection with each such application described in paragraph (a), (c) or (e) of this Item, an additional fee of $100,000 if the application (a) reflects a merger of an exchange or clearing house, (b) reflects an acquisition of a major part of the assets of an exchange or clearing house, (c) involves the introduction of a new business that would significantly change the risk profile of an exchange or clearing house, or (d) reflects a major reorganization or restructuring of an exchange or clearing house).
B. Registration-Related Activity	
1. New registration of a firm in one or more categories of registration	$~~600~~1,200
2. Change in registration category *Note: This includes a dealer becoming an adviser or vice versa, or changing a category of registration within the general category of adviser. A dealer adding a category of registration, such as a dealer becoming both a dealer and an adviser, is covered in the preceding section.*	$~~600~~700
3. Registration of a new director, officer or partner (trading or advising), salesperson or representative *Notes:* *(i) Registration of a new non-trading or non-advising director, officer or partner does not trigger an activity fee.* *(ii) If an individual is registering as both a dealer and an adviser, the individual is required to pay only one activity fee.*	$200 per individual

Document or Activity			Fee
		(iii) A registration fee will not be charged if an individual makes application to register with a new registrant firm within three months of terminating employment with his or her previous registrant firm if the individual's category of registration remains unchanged.	
	4.	Change in status from a non-trading or non-advising capacity to a trading or advising capacity	$200 per individual
	5.	Registration of a new registrant firm, or the continuation of registration of an existing registrant firm, resulting from or following an amalgamation of one or more registrant firms	~~$2,000~~1,000
	6.	Application for amending terms and conditions of registration	$500
C.	**Application for Approval of the Director under Section 9 of the Regulation to the CFA** *Note: No fee for an approval under subsection 9(3) of the Regulation to the CFA is payable if a notice covering the same circumstances is required under section 11.9 or 11.10 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Requirements.*		~~$1,500~~3,500
D.	**Request for Certified Statement from the Commission or the Director under Section 62 of the CFA**		$100
E.	**Requests of the Commission**		
	1.	Request for a ~~photocopy~~copy (in any format) of Commission public records	$0.50 per ~~page~~image
	2.	Request for a search of Commission public records	~~$150~~7.50 for each 15 minutes search time spent by any person
3.	Request for one's own ~~Form 7~~individual registration form.		$30
F.	**Pre Filings of Applications** *Note: The fee for a pre-filing of an application will be credited against the applicable fee payable if and when the corresponding formal filing is actually proceeded with; otherwise, the fee is nonrefundable.*		The fee for each pre-filing of an application is equal to the applicable fee that would be payable if the corresponding formal filing had proceeded at the same time as the pre-filing.

APPENDIX C – ADDITIONAL FEES FOR LATE DOCUMENT FILINGS

Document	Late Fee
Fee for late filing of any of the following documents: (a) Annual financial statements and interim financial reports; (b) Report under section 15 of the Regulation to the CFA; (c) Report under section 17 of the Regulation to the CFA; (d) Filings for the purpose of amending Form 5 ~~or Form 7~~ under the Regulation to the CFA or Form 33-506F4 or Form 33-506F6 under OSC Rule 33-506, including the filing of Form 33-506F1; (e) Any document required to be filed by a registrant firm or individual in connection with the registration of the registrant firm or individual under the CFA with respect to (i) terms and conditions imposed on a registrant firm or individual, or (ii) an order of the Commission; (f) Form 13-503F1; (g) Form 13-503F2.	$100 per business day (subject to a maximum of $5,000 for a registrant firm for all documents required to be filed within a calendar year)

FORM 13-503F1
(COMMODITY FUTURES ACT)

PARTICIPATION FEE CALCULATION

General Instructions

1. This form must be completed by firms ~~only~~ registered under the *Commodity Futures Act* ~~and~~but not under the *Securities Act*. It must be returned to the Ontario Securities Commission by December 1 each year pursuant to section 2.3 of Rule 13-503, except in the case where firms register late in a calendar year (after December 1). In this exceptional case, this ~~Form~~form must be filed as soon as practicable after December 1.

2. The completion of this form will serve as an application for the renewal of your firm and all its registered individuals wishing to renew under the *Commodity Futures Act*.

3. IIROC members must complete Part I of this ~~Form~~form. All other registrant firms must complete Part II. Everyone completes Part III.

4. The components of revenue reported in this ~~Form~~form should be based on accounting standards pursuant to which an entity's financial statements are prepared under Ontario securities law ("Accepted Accounting Standards"), except that revenues should be reported on an unconsolidated basis.

5. IIROC Members may refer to Statement E of the Joint Regulatory Financial Questionnaire and Report for guidance.

6. Participation fee revenue will be based on the portion of total revenue that can be attributed to Ontario for the firm's most ~~recently completed~~ reference fiscal year, which is generally referred to the Rule as its "previous fiscal year". A firm's reference fiscal year is generally its last fiscal year ending before May 1, 2012. For further detail, see the definition of "reference fiscal year" in section 1.1 of the Rule.

7. If a firm's permanent establishments are situated only in Ontario, all of the firm's total revenue for a fiscal year is attributed to Ontario. If permanent establishments are situated in Ontario and elsewhere, the percentage attributed to Ontario for a fiscal year will ordinarily be the percentage of the firm's taxable income that is allocated to Ontario for Canadian income tax purposes for the same fiscal year. For firms that do not have a permanent establishment in Ontario, the percentage attributable to Ontario will be based on the proportion of total revenues generated from CFA activities in Ontario.

8. All figures must be expressed in Canadian dollars and rounded to the nearest thousand.

9. Information reported on this questionnaire must be certified by two members of senior management in Part IV to attest to its completeness and accuracy. However, it is acceptable to provide certification of this nature by only one member of senior management in cases of firms with only one officer and director.

~~10. There are a number of references in this form to "relevant fiscal year". The "relevant fiscal year" is generally a firm's last completed fiscal year. However, if good faith estimates for a fiscal year are provided in this Form pursuant to section 2.6 of the Rule, the relevant fiscal year is the fiscal year for which the good faith estimates are provided.~~

1. Firm Information

Firm NRD number: _____

Firm legal name: _____

2. Contact Information for Chief Compliance Officer

Please provide the name, e-mail address, phone number and fax number for your Chief Compliance Officer.

Name: _____

E-mail address: _____

Phone: _____ Fax: _____

3. Membership Status

☐ The firm is a member of the Investment Industry Regulators Organization of Canada (IIROC).

☐ The firm does not hold membership with IIROC.

4. Financial Information

Is the firm providing a good faith estimate under section 2.6 of the Rule?

☐ Yes ☐ No

If no, end date of ~~last completed~~reference fiscal year: _____/____/___
yyyy mm dd

If yes, end date of fiscal year for which the good faith estimate is provided: ____/____/___
yyyy mm dd

~~*Note: The fiscal year identified above is referred to below as the relevant fiscal year.*~~

5. Participation Fee Calculation

Note: Dollar amounts stated in thousands, rounded to the neared thousand.

	~~Relevant~~ Fiscal~~Reference~~Fiscal Year $
Part I – IIROC Members	
1. Total revenue for ~~relevant~~reference fiscal year from Statement E of the Joint Regulatory Financial Questionnaire and Report	
2. Less revenue not attributable to CFA activities	
3. Revenue subject to participation fee (line 1 less line 2)	
Part II – Other Registrants	

Notes:

1. Gross Revenue is defined as the sum of all revenues reported on the audited financial statements prepared in accordance with Accepted Accounting Standards, except that revenues should be reported on an unconsolidated basis. Items reported on a net basis must be adjusted for purposes of the fee calculation. Gross revenues are reduced by amounts not attributable to CFA activities.

2. Where the advisory or sub-advisory services of another registrant firm, or of an exempt international firm under Rule 13-502 *Fees* of the *Securities Act*, are used by the registrant firm to advise on a portion of its assets under management, such advisory or sub-advisory costs are permitted as a deduction on this line to the extent that they are otherwise included in gross revenues.

1. Gross revenue for ~~relevant~~reference fiscal year (note 1)	
Less the following items:	
2. Amounts not attributable to CFA activities	
3. Advisory or sub-advisory fees paid to other registrant firms or to exempt international firms under Rule 13-502 (Fees) of the *Securities Act* (note 2)	
4. Revenue subject to participation fee (line 1 less lines 2 and 3)	

Part III – Calculating Specified Ontario Revenues

1. Gross revenue for ~~relevant~~reference fiscal year subject to participation fee
   (line 3 from Part I or line 4 from Part II)
2. Ontario percentage for ~~relevant~~reference fiscal year
   (See definition of "Ontario percentage" in the Rule) %
3. Specified Ontario revenues
   (line 1 multiplied by line 2)
4. Participation fee
   (From Appendix A of the Rule, select the participation fee
   opposite the specified Ontario revenues calculated above)

Part IV – Management Certification

Where available, we have examined the financial statements on which the participation fee calculation is based and certify that, to the best of our knowledge, the financial statements present fairly the revenues of the firm for the period ended as noted under **Financial Information** above, and that the financial statements have been prepared in agreement with the books of the firm.

We certify that the reported revenues of the firm are complete and accurate and in accordance with generally accepted accounting principles.

	Name and Title	**Signature**	**Date**
1.	_____	_____	_____
2.	_____	_____	_____

FORM 13-503F2
(COMMODITY FUTURES ACT)

ADJUSTMENT OF FEE PAYMENT

Firm Name: _____

~~**Fiscal Year End:**~~ **End date of last completed fiscal year:** _____

Note: Subsection 2.6(2) of the Rule requires that this ~~Form~~form must be filed concurrent with a completed Form 13-503F1 that shows the firm's actual participation fee calculation.

1. Estimated participation fee paid under subsection 2.6(1) of the Rule: _____

2. Actual participation fee calculated under paragraph 2.6(2)(b) of the Rule: _____

3. Refund due (Balance owing): _____
   (Indicate the difference between lines 1 and 2)

ANNEX B
BLACKLINE SHOWING CHANGES PROPOSED TO
COMPANION POLICY 13-503CP
(COMMODITY FUTURES ACT) FEES

TABLE OF CONTENTS

ONTARIO SECURITIES COMMISSION
COMPANION POLICY 13-503CP
(COMMODITY FUTURES ACT) FEES

PART 1 – PURPOSE OF COMPANION POLICY

1.1 Purpose of Companion Policy – The purpose of this Companion Policy is to state the views of the Commission on various matters relating to OSC Rule 13-503 *(Commodity Futures Act) Fees* (the "Rule"), including an explanation of the overall approach of the Rule and a discussion of various parts of the Rule.

PART 2 – PURPOSE AND GENERAL APPROACH OF THE RULE

2.1 Purpose and General Approach of the Rule

(1) The general approach of the Rule is to establish a fee regime that is consistent with the approach of OSC Rule 13-502 (the "OSA Fees Rule"), which governs fees paid under the *Securities Act*. Both rules are designed to create a clear and streamlined fee structure.

(2) The fee regime of the Rule is based on the concepts of "participation fees" and "activity fees".

2.2 Participation Fees

(1) Registrant firms are required to pay participation fees annually. Participation fees are designed to cover the Commission's costs not easily attributable to specific regulatory activities . The participation fee required of each market participant is based on a measure of the market participant's size, which is used as a proxy for its proportionate participation in the Ontario capital markets.

(2) Participation fees are determined with reference to gross revenue from a firm's "~~previous~~reference fiscal year"~~, which is essentially~~. As defined in section 1.1 of the Rule~~ as the~~, a firm's "reference fiscal year" is generally the firm's last fiscal year ending before May 1, 2012. However, if the firm was not a registrant at the end of that fiscal year, the "reference fiscal year" is its last completed fiscal year before the participation fee is required to be paid. (which is defined in section 1.1 of the Rule as the firm's "previous fiscal year").

2.3 Application of Participation Fees – Although participation fees are determined ~~by using~~with reference to information from a fiscal year of a registrant firm ending before the time of the payment, participation fees are applied to the costs of the Commission of regulating the ongoing participation in Ontario's capital markets of the firm and other firms.

2.4 Registered Individuals – The participation fee is paid at the firm level under the Rule. ~~That is~~For example, a "registrant firm" is required to pay a participation fee, not an individual who is registered as a salesperson, representative, partner, or officer of the firm.

2.5 Activity Fees – Activity fees are generally charged where a document of a designated class is filed. Estimates of the direct cost of Commission resources expended in undertaking the activities listed in Appendix B of the Rule are considered in determining these fees (e.g., reviewing registration applications and applications for discretionary relief). Generally, the activity fee charged for filing a document of a particular class is based on the average cost to the Commission of reviewing documents of the class.

2.5.1. **Additional Activity Fees in Special Circumstances** –Variable cost-based activity fees for certain applications specified in sections A and A.1 of Appendix B, involving CFA exchanges and clearing houses, may be payable where the "designated cost" of work exceeds $300,000. The additional fee are levied to help recover the Commission's costs in non-routine, novel or complex regulatory applications. The administration of these additional fees is addressed in Part 4 of this Policy.

2.6 Registrants under the CFA and the *Securities Act*

(1) A registrant firm that is registered both under the CFA and the *Securities Act* is exempted by section 2.1 of the Rule from the requirement to pay a participation fee under the Rule if it is current in paying its participation fees under the OSA Fees Rule. The registrant firm will include revenues derived from CFA activities as part of its revenues for purposes of determining its participation fee under the OSA Fees Rule.

(2) A registrant firm that is registered both under the CFA and the *Securities Act* must pay activity fees under the CFA Rule even though it pays a participation fee under the OSA Fees Rule.

2.7 No Refunds

(1) Generally, a person or company that pays a fee under the Rule is not entitled to a refund of that fee. For example, there is no refund available for an activity fee paid in connection with an action that is subsequently abandoned by the payor of the fee. Also, there is no refund available for a participation fee paid by a registrant firm whose registration is terminated later in the year for which the fee was paid.

(2) An exception to this principle is provided in subsection 2.6(3) of the Rule. This provision allows for a refund where a registrant firm overpaid an estimated participation fee.

(3) The Commission will also consider requests for adjustments to fees paid in the case of incorrect calculations made by fee payors.

2.8 Indirect Avoidance of Rule – The Commission may examine arrangements or structures implemented by registrant firms and their affiliates that raise the suspicion of being structured for the purpose of reducing the fees payable under the Rule. For example, the Commission will be interested in circumstances in which revenues from registrable activities carried on by a corporate group are not treated as revenues of a registrant firm, thereby possibly artificially reducing the firm's specified Ontario revenues and, consequently, its participation fee.

2.9 Confidentiality of Forms The material filed under the Part 2 of the Rule will be kept confidential. The Commission is of the view that the material contains intimate financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of the principle that the material be available for public inspection

PART 3 – PARTICIPATION FEES

3.1 Passing on of Participation Fees Participation fees are payable annually by registrant firms. The participation fees represent, in general, their costs of participating in Ontario's capital markets and should be paid and borne by them.

3.2 Filing Forms under Section 2.6 – If the estimated participation fee paid under subsection 2.6(1) by a registrant firm does not differ from its true participation fee determined under subsection 2.6(2), the registrant firm is not required to file either a Form 13-503F1 or a Form 13-503F2 under subsection 2.6(3).

~~3.2~~3.3 Late Fees – Section 2.7 of the Rule prescribes an additional fee if a participation fee is paid late. The Commission and the Director will, in appropriate circumstances, consider tardiness in the payment of fees as a matter going to the fitness for registration of a registrant firm.

~~3.3~~3.4 "CFA Activities" – Calculation of the participation fee involves consideration of the CFA activities undertaken by a person or company. The term "CFA activities" is defined in section 1.1 of the Rule to include "activities for which registration under the CFA or an exemption from registration is required". The Commission is of the view that these activities include, without limitation, trading in commodity futures contracts, providing commodity futures contracts-related advice and portfolio management services involving commodity futures contracts.

PART 4 –VARIABLE COST-BASED ACTIVITY FEE PAYABLE IN SPECIAL CIRCUMSTANCES

4.1 **General** – A variable cost-based activity fee may be charged under section 3.1.1 of the Rule with regard to specified applications described in sections A and A.1 of Appendix B (relating to exchanges and clearing houses), but only where the designated cost of the work is $300,000 or greater. It is expected that variable cost-based activity fees will only apply in rare cases.

4.2 **Standard activity fees** – Each applicant will be required to pay the fee associated with the relevant matter described in section A or A.1 of Appendix B. If OSC staff expect that a particular application described in section A or A.1 of Appendix B may be one to which the variable cost-based activity fee may apply due to its anticipated complexity, the applicant will be so advised. OSC staff would also advise the applicant as to the expected scale and duration of the work it anticipates.

4.3 **Designated cost of work** – As set out in subsection 3.1.1(3) of the Rule, the designated cost of work done by OSC staff is the product of $140 and the number of complete hours worked by specified OSC staff in connection with the specified application. An applicant is also responsible for any fees incurred by the Commission in retaining external legal counsel or external experts in relation to the matter under review.

4.4 **Instalments** – Depending on the circumstances, an applicant may be required to pay the variable cost-based activity fee in instalments . The amount and frequency of the instalments depends on the complexity of the application, the expected duration of the review, the internal Commission resources necessary for completion of the review, the amount

of the activity fee already paid by the applicant and any other relevant consideration. Such factors will be discussed with the applicant at the time when OSC staff identify that the additional fee may be applicable. These terms may be reconsidered and/or revised during the course of the review period, as appropriate.

4.5 **Draft invoices** – OSC staff intend to provide draft invoices relating to variable cost-based fees, prior to issuing the final invoices required by the Rule. The purpose of issuing a draft invoice is to give the applicant an opportunity to put forward any basis as to why the fee reflected on the draft invoice should be lowered. If the applicant does not make a submission with 30 days of receiving the draft invoice, the corresponding final invoice may be issued once reviewed first by the Director and then by the Commission. Both the draft and final invoices would be expected to meet the requirements set out in subsection 3.1.1(4) of the Rule.

4.6 **Review** – The Director and the Commission may evaluate the appropriateness of amounts set out in a draft invoice, giving consideration to any submission made by the applicant in response to a draft invoice described in section 4.5 and other factors including:

(a) the complexity of the matter;

(b) the reasonableness of the time expended;

(c) the expertise that was required, including whether external counsel or experts were retained by the Commission;

(d) the applicant's expectation as to fees based on estimate provided; and

(e) any action taken by OSC staff, by external counsel or experts or by the applicant which caused a notable increase in the amount of work required;

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
08/06/2012	3	Advanced Micro Devices, Inc. - Notes	2,496,500.00	3.00
07/04/2012	101	Banyan Capital Partners Fund III Limited Partnership - Units	5,350,000.00	535,000.00
07/20/2012	29	Bearing Resources Ltd. - Flow-Through Shares	400,000.00	2,000,000.00
06/27/2012	2	Biodel Inc. - Common Share Purchase Warrant	471,394.46	195,000.00
05/30/2012 to 06/04/2012	25	Bukit Energy Inc. - Preferred Shares	16,164,676.00	7,184,300.00
06/29/2012 to 07/12/2012	10	B.E.S.T. Active Fund 16 LP - Limited Partnership Units	1,093,000.00	N/A
07/31/2012	20	Calyx Bio-Ventures Inc. - Units	277,500.00	1,110,000.00
02/22/2011	27	Canshale Corp. - Common Shares	1,344,925.00	5,139,700.00
07/03/2012	5	Capital Direct I Income Trust - Trust Units	135,000.00	13,500.00
07/12/2012	5	CareVest First MIC Fund Inc. - Preferred Shares	50,000.00	N/A
07/05/2012	5	Celeste Copper Corporation - Units	62,040.25	689,335.00
08/14/2012	1	Centric Health Corporation - Common Shares	500,000.00	782,227.00
07/12/2012	4	Clearframe Solutions Corp. - Common Shares	126,000.00	840,000.00
07/17/2012 to 07/20/2012	9	Colwood City Centre Limited Partnership - Notes	433,200.00	433,200.00
06/29/2012	19	Commonwealth Silver and Gold Mining Inc. - Units	425,600.00	425,600.00
07/16/2012	1	Darwin Receivables Trust - Note	1,400,000.00	1.00
03/22/2012	13	Direct Media Technologies Inc. - Units	1,045,313.50	261,250.00
06/15/2012 to 06/20/2012	44	Donnycreek Energy Inc. - Common Shares	5,331,000.50	3,001,177.00
05/23/2012	26	DynaCurrent Technologies Inc. - Common Shares	2,000,328.50	2,667,103.00
06/20/2012	5	Ecuador Bancorp Inc. - Common Shares	40,000.00	400,000.00
07/24/2012	1	Empresas ICA, S.A.B.de C.V. - Note	151,591.86	1.00
08/09/2012	8	Exclamation Investments Corporation - Common Shares	252,500.00	252,500.00
08/08/2012	54	Feronia Inc. - Debentures	2,959,775.30	2,959,775.00
06/13/2012	18	First Graphite Corp. - Units	349,000.00	1,396,000.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
07/13/2012	5	FoodChek Systems Inc. - Units	59,994.00	19,998.00
07/13/2012	3	HOMESTAKE RESOURCE CORPORATION - Common Shares	675,000.00	2,700,000.00
07/25/2012	14	Horizon Holdings Inc. - Debentures	150,000,000.00	150,000.00
08/03/2012 to 08/07/2012	3	Huldra Silver Inc. - Common Shares	2,521,600.20	2,334,815.00
08/03/2012 to 08/07/2012	23	Huldra Silver Inc. - Flow-Through Shares	1,419,680.40	1,183,067.00
07/05/2012	6	International PBX Ventures Ltd. - Units	56,000.00	700,000.00
07/20/2012	6	Iskander Energy Corp. - Special Warrants	2,050,000.00	1,025,000.00
07/17/2012	2	Lennar Corporation - Notes	3,042,288.00	2.00
07/11/2012	2	Mayfield XIV, L.P. - Limited Partnership Interest	15,292,500.00	N/A
06/28/2012	9	Melkior Resources Inc. - Units	155,000.00	625,000.00
06/28/2012	8	Melkior Resources Inc. - Units	310,000.00	1,555,000.00
07/10/2012	1	Meritage Homes Corporation - Common Shares	1,020,265.31	2,645,000.00
07/24/2012	4	Morgan Stanley - Notes	34,397,111.90	4.00
06/28/2012	1	Myca Health Inc. - Common Shares	250,000.00	62,500.00
07/10/2012	3	N-Dimension Solutions Inc. - Preferred Shares	3,900,000.00	0.00
06/15/2012	7	NADG Lakewood (Canadian) Limited Partnership - Units	3,175,640.00	12.40
07/26/2012 to 08/03/2012	3	Newport Balanced Fund - Trust Units	70,300.00	N/A
07/26/2012 to 08/03/2012	1	Newport Canadian Equity Fund - Trust Units	2,000.00	N/A
07/26/2012 to 08/03/2012	2	Newport Fixed Income Fund - Trust Units	85,000.00	N/A
07/26/2012 to 08/03/2012	8	Newport Strategic Yield Fund - Trust Units	418,162.80	N/A
07/26/2012 to 08/03/2012	8	Newport Yield Fund - Trust Units	365,041.57	N/A
06/30/2012	9	Newstart Financial Inc. - Notes	440,000.00	9.00
05/31/2012	2	Newstart Financial Inc. - Notes	115,000.00	2.00
06/27/2012	26	Northwest Plaza Commercial Trust - Units	1,699,999.00	1,699,999.00
07/16/2012	2	Obsidian Strategics Inc. - Debentures	500,000.00	10.00
07/11/2012 to 07/19/2012	80	OmniArch Capital Corporation - Bonds	2,908,728.00	N/A
07/02/2012 to 07/10/2012	30	OmniArch Capital Corporation - Bonds	1,069,427.00	N/A

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
07/03/2012	3	Oriental Financial Group Inc. - Preferred Shares	5,050,000.00	5,000.00
07/20/2012	2	Pennant Pure Yield Fund - Trust Units	400,000.00	40,000.00
07/20/2012	2	Pennant Pure Yield Fund - Trust Units	260,000.00	26,000.00
07/20/2012	58	Pennant Pure Yield Fund - Trust Units	1,287,300.00	128,730.00
05/31/2012	1	Premier Royalty Corporation - Debenture	9,400,000.00	1.00
07/06/2012 to 07/11/2012	53	Premier Royalty Corporation - Debentures	11,500,000.00	53.00
07/30/2012	1	Prescient Mining Corp. - Common Shares	11,250.00	150,000.00
11/23/2011 to 06/19/2012	72	Quadrexx Asset Management Inc. - Limited Partnership Units	1,422,000.00	75.00
07/20/2012	5	Redbourne Realty Fund II Inc. - Common Shares	1,320,832.00	1,320.83
06/15/2012	10	Skyline Apartment Real Estate Investment Trust - Units	1,370,468.00	110,951.00
07/26/2012	27	Sphere 3D Inc. - Common Shares	970,679.60	1,141,976.00
08/01/2012	1	Stacey Muirhead Limited Partnership - Limited Partnership Units	10,000.00	325.56
07/16/2012	73	Taipan Resources Inc - Common Shares	11,550,200.00	100,000.00
04/01/2012	3	The Presbyterian Church in Canada - Units	346,581.74	33.88
06/01/2012	1	The Toronto United Church Council - Notes	70,000.00	70,000.00
06/13/2012	5	Threshold Power Trust - Units	2,311,876.00	N/A
07/09/2012	1	Threshold Power Trust - Units	256,875.00	N/A
06/01/2012	37	Timbercreek Senior Mortgage Investment Corporation - Common Shares	4,981,000.00	478,100.00
03/13/2012 to 07/12/2012	19	Trend Auto Lease LP - Units	11,814,997.50	135,333.00
07/20/2012	1	Unique Solutions Design Ltd. - Note	25,000,000.00	1.00
07/23/2012	1	US Bancorp - Note	10,200,000.00	1.00
07/31/2012	30	Vertex Fund - Trust Units	1,497,126.59	N/A
07/31/2012	5	Vertex Managed Value Portfolio - Trust Units	1,589,663.77	N/A
07/11/2012	1	ViXS Systems Inc. - Preferred Shares	2,000,000.00	1,988,072.00
06/21/2012	28	Walton MD Gardner Woods Investment Corporation - Common Shares	1,067,030.00	106,703.00
06/14/2012	44	Walton MD Gardner Woods Investment Corporation - Common Shares	982,640.00	98,264.00
06/14/2012	4	Walton NC Westlake LP - Limited Partnership Units	742,894.50	72,266.00
06/14/2012	91	Walton Westphalia Development Corporation - Units	1,855,750.00	185,575.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
07/20/2012	6	Westland Kirkland Mining Inc. - Units	1,690,011.05	4,828,603.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Atlas Financial Holdings, Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated August 13, 2012
NP 11-202 Receipt dated August 14, 2012
Offering Price and Description:
Up to $ Treasury Offering (Up to Ordinary Voting Shares) and
Up to $ Secondary Offering (Up to Restricted Voting Shares)
Price: $ per Ordinary Voting Share and
$ per Restricted Voting Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1943640

Issuer Name:
Avigilon Corporation
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated August 17, 2012
NP 11-202 Receipt dated August 17, 2012
Offering Price and Description:
$23,000,000.00 - 3,593,750 common shares; Price: $6.40 per common share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
PI Financial Corp.
Clarus Securities Inc.
Versant Partners Inc.
Promoter(s):
-
Project #1946337

Issuer Name:
Crescent Point Energy Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated August 15, 2012
NP 11-202 Receipt dated August 15, 2012
Offering Price and Description:
$550,220,000.00 - 13,420,000 Common Shares; Price: $41.00 per Common Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
FirstEnergy Capital Corp
National Bank Financial Inc.
GMP Securities L.P.
Macquarie Capital Markets Canada Ltd.
Peters & Co. Limited.
Promoter(s):
-
Project #1945283

Issuer Name:
Dundee Industrial Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated August 17, 2012
NP 11-202 Receipt dated August 17, 2012
Offering Price and Description:
$ * - * Units; Price: $10.00 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.
GMP SECURITIES L.P.
NATIONAL BANK FINANCIAL INC.
Promoter(s):
DUNDEE PROPERTIES LIMITED PARTNERSHIP
Project #1946226

Issuer Name:
Dundee International Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated August 17, 2012
NP 11-202 Receipt dated August 17, 2012
Offering Price and Description:
$71,740,000.00 - 6,800,000 Units; PRICE: $10.55 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.
GMP SECURITIES L.P.
HSBC SECURITIES (CANADA) INC.
NATIONAL BANK FINANCIAL INC.
Promoter(s):
-
Project #1946235

Issuer Name:
Enbridge Income Fund Holdings Inc.
Principal Regulator - Alberta
Type and Date:
Amendment and Restated Preliminary Shelf Prospectus dated August 14, 2012
NP 11-202 Receipt dated August 14, 2012
Offering Price and Description:
$500,000,000.00 - * COMMON SHARES
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1908378

Issuer Name:
Immunovaccine Inc.
Principal Regulator - Nova Scotia
Type and Date:
Preliminary Base Shelf Prospectus dated August 20, 2012
NP 11-202 Receipt dated August 20, 2012
Offering Price and Description:
$10,000,000.00; Preferred Shares, Common Shares, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1946793

Issuer Name:
Pathfinder Convertible Debenture Fund
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated August 13, 2012
NP 11-202 Receipt dated August 15, 2012
Offering Price and Description:
Maximum $* (* Units), Price: $* per Offered Unit; Minimum Purchase: *● Offered Units
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Middlefield Capital Corporation
Raymond James Ltd.
Macquarie Private Wealth Inc.
Dundee Securities Ltd.
Promoter(s):
-
Project #1945240

Issuer Name:
Portland Advantage Fund
Portland Canadian Balanced Fund
Portland Canadian Focused Fund
Portland Global Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated August 17, 2012
NP 11-202 Receipt dated August 21, 2012
Offering Price and Description:
Series A, F, G and T Units
Underwriter(s) or Distributor(s):
Portland Private Wealth Services Inc.
Portland Private Wealth Services Inc.
Promoter(s):
Portland Investment Counsel Inc.
Project #1946743

Issuer Name:
Sherritt International Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated August 16, 2012
NP 11-202 Receipt dated August 20, 2012
Offering Price and Description:
$500,000,000.00; Debt Securities Common Shares, Subscription Receipts Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1946640

Issuer Name:
Sprott Power Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated August 14, 2012
NP 11-202 Receipt dated August 14, 2012
Offering Price and Description:
$30,000,000.00 - 6.75% Extendible Convertible Unsecured Subordinated Debentures; Price: $1,000.00 per debenture
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
TD Securities Inc.
National Bank Financial Inc.
NCP Northland Capital Partners Inc.
Stifel Nicolaus Canada Inc.
Macquarie Capital Markets Canada Ltd.
Promoter(s):
Jeffrey Jenner
Project #1944350

Issuer Name:
Tourmaline Oil Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated August 14, 2012
NP 11-202 Receipt dated August 14, 2012
Offering Price and Description:
$116,000,000.00 - 4,000,000 Common Shares; Price: $29.00 per Common Share
Underwriter(s) or Distributor(s):
Peters & Co. Limited
Scotia Capital Inc.
FirstEnergy Capital Corp.
National Bank Financial Inc.
Stifel Nicolaus Canada Inc.
CIBC World Markets Inc.
TD Securities Inc.
Cormark Securities Inc.
Promoter(s):
-
Project #1944430

Issuer Name:
True North Apartment Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated August 17, 2012
NP 11-202 Receipt dated August 20, 2012
Offering Price and Description:
$50,001,700.00 - 11,710,000 Subscription Receipts each representing the right to receive one Unit; Price: $4.27 per Subscription Receipt
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
RAYMOND JAMES LTD.
TD SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
BMO NESBITT BURNS INC.
CANACCORD GENUITY CORP.
DESJARDINS SECURITIES INC.
DUNDEE SECURITIES LTD.
GMP SECURITIES L.P.
Promoter(s):
STARLIGHT INVESTMENTS LTD.
Project #1946540

Issuer Name:
TTU Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Non-Offering Prospectus dated August 15, 2012
NP 11-202 Receipt dated August 15, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Scotia Managed Companies Administration Inc.
Project #1945231

Issuer Name:
ARC Resources Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated August 15, 2012
NP 11-202 Receipt dated August 15, 2012
Offering Price and Description:
$300,000,250.00 - 12,685,000 Common Shares; Price: $23.65 per Common Share
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Firstenergy Capital Corp.
National Bank Financial Inc.
Macquarie Capital Markets Canada Ltd.
Barclays Capital Canada Inc.
Credit Suisse Securities (Canada) Inc.
Merrill Lynch Canada Inc.
Peters & Co. Limited
Raymond James Ltd.
Promoter(s):
-
Project #1940915

Issuer Name:
Atlantic Power Corporation
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated August 17, 2012
NP 11-202 Receipt dated August 20, 2012
Offering Price and Description:
Cdn$750,000,000.00 - Common Shares
Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1940805

Issuer Name:
CI Short-Term US$ Corporate Class
Portfolio Series Conservative Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated August 10, 2012 to the Simplified Prospectus and Annual Information Form dated July 26, 2012
NP 11-202 Receipt dated August 16, 2012
Offering Price and Description:
Class E and O Shares and Class AT6 Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
CI Investments Inc.
Project #1915829

Issuer Name:
Family Group Education Savings Plan
Family Single Student Education Savings Plan
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated August 17, 2012
NP 11-202 Receipt dated August 20, 2012
Offering Price and Description:
Scholarship Plan Trust Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Knowledge First Foundation
Project #1921522, 1921519

Issuer Name:
Flex First Plan
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated August 17, 2012
NP 11-202 Receipt dated August 20, 2012
Offering Price and Description:
Scholarship Plan Trust Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Knowledge First Foundation
Project #1921509

Issuer Name:
Horizons Advantaged Equity Fund Inc.
Type and Date:
Amendment #1 dated July 30, 2012 to the Long Form Prospectus dated February 2, 2012
Receipted on August 16, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
CFPA Sponsor Inc.
Project #1844194

Issuer Name:
Preferred Share Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated August 16, 2012
NP 11-202 Receipt dated August 17, 2012
Offering Price and Description:
Maximum $50,264,200.00 (4,460,000 Units); Price: $11.27 per Unit; Maximum Offering: 4,460,000 Units
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
MacQuire Private Weatlh Inc.
Raymond James Ltd.
Promoter(s):
First Asset Investment Management Inc.
Project #1942505

Issuer Name:
RBC Private Short-Term Income Pool
RBC Private Canadian Bond Pool
RBC Private Canadian Corporate Bond Pool
RBC Private Global Bond Pool
RBC Private Income Pool
RBC Private Canadian Dividend Pool
RBC Private Canadian Growth and Income Equity Pool
RBC Private Canadian Equity Pool
RBC Private Canadian Value Equity Pool
RBC Private O'Shaughnessy Canadian Equity Pool
RBC Private Core Canadian Equity Pool
RBC Private Canadian Mid Cap Equity Pool
RBC Private U.S. Equity Pool
RBC Private U.S. Value Equity Pool
RBC Private U.S. Value Equity Currency Neutral Pool
RBC Private O'Shaughnessy U.S. Value Equity Pool
RBC Private U.S. Growth Equity Pool
RBC Private O'Shaughnessy U.S. Growth Equity Pool
RBC Private U.S. Large Cap Equity Pool
RBC Private U.S. Large Cap Equity Currency Neutral Pool
RBC Private U.S. Mid Cap Equity Pool
RBC Private U.S. Small Cap Equity Pool
RBC Private International Equity Pool
RBC Private EAFE Equity Pool
RBC Private Overseas Equity Pool
RBC Private European Equity Pool
RBC Private Asian Equity Pool
RBC Private Global Dividend Growth Pool
RBC Private World Equity Pool
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated August 17, 2012
NP 11-202 Receipt dated August 20, 2012
Offering Price and Description:
Series O, Series F and Series T units
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc.
The Royal Trust Company
Promoter(s):
-
Project #1933389

Issuer Name:
Tanq Capital Corporation
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated August 17, 2012
NP 11-202 Receipt dated August 20, 2012
Offering Price and Description:
$400,000.00 - 4,000,000 Common Shares Price: $0.10 per Common Share Minimum Subscription (per subscriber): $100.00 (1,000 Common Shares) Maximum Subscription (per subscriber): $8,000.00 (80,000 Common Shares)
Underwriter(s) or Distributor(s):
Raymond James Ltd.
Promoter(s):
-
Project #1936109

Issuer Name:
Gateway Casinos & Entertainment Limited
Principal Jurisdiction - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated May 18, 2012
Amended and Restated Preliminary Long Form Prospectus dated June 12, 2012
Withdrawn on August 14, 2012
Offering Price and Description:
$ * - * Common Shares
Price: $ * per Common Share
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
BMO NESBITT BURNS INC.
J.P. MORGAN SECURITIES CANADA INC.
SCOTIA CAPITAL INC.
CIBC World Markets Inc.
GMP Securities LP
Goldman Sachs Canada Inc.
Macquarie Capital Markets Canada Ltd.
Morgan Stanley Canada Limited
Raymond James Ltd.
Canaccord Genuity Corp.
Promoter(s):
-
Project #1910511

Issuer Name:
LIBERTY MINES INC.
Principal Jurisdiction - Ontario
Type and Date:
Preliminary Short Form Prospectus dated June 26, 2012
Withdrawn on August 16, 2012
Offering Price and Description:
$10,000,000 - * Units
Price: $ * per Unit
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
-
Project #1926146

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Brookvest Capital Corporation	Exempt market Dealer	August 16, 2012
Change in Registration Category	QV Investors Inc.	From: Portfolio Manager To: Portfolio Manager and Investment Fund Manager	August 16, 2012
Change in Registration Category	Aegon Capital Management Inc.	From: Portfolio Manager and Exempt Market Dealer to To: Portfolio Manager, Exempt Market Dealer and Investment Fund Manager	August 20, 2012

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Chapter 13

SROs, Marketplaces and Clearing Agencies

13.3 Clearing Agencies

13.3.1 OSC Notice and Request for Comment – The Options Clearing Corporation – Application for Exemption from Recognition as a Clearing Agency

OSC NOTICE AND REQUEST FOR COMMENT

THE OPTIONS CLEARING CORPORATION

APPLICATION FOR EXEMPTION FROM RECOGNITION AS A CLEARING AGENCY

A. Background

The Options Clearing Corporation (OCC) has applied (Application) to the Commission for an order pursuant to section 147 of the *Securities Act* (Ontario) (Act) to exempt OCC from the requirement to be recognized as a clearing agency in subsection 21.2(0.1) of the Act. Among other factors set out in the Application, the exemption is being sought on the basis that OCC is subject to an appropriate regulatory and oversight regime in its home jurisdiction of the United States (U.S.) by the Securities and Exchange Commission and the Commodity Futures Trading Commission.

OCC was organized under the laws of the state of Delaware and was founded in 1973. It currently clears and settles transactions in options and futures made on U.S. securities and futures exchanges, and stock loans.

In reviewing the Application, staff followed the process and assessed the Application against the criteria set out in OSC Staff Notice 24-702 *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies* (Staff Notice).

B. Draft Order

In the Application, OCC describes how it addresses each of the criteria set forth in Appendix A to the Staff Notice. Subject to comments received, staff propose to recommend to the Commission that it grant OCC an exemption order with terms and conditions in the form of the proposed draft order (Draft Order).

The Draft Order requires OCC to comply with various terms and conditions, including relating to:

1. Regulation of OCC
2. Filing requirements
3. Submission to jurisdiction and agent for service
4. Information sharing

C. Comment Process

The Commission is publishing for public comment the Application and Draft Order. We are seeking comment on all aspects of the Application and Draft Order.

You are asked to provide your comments in writing, via e-mail and delivered on or before **September 22, 2012** addressed to the attention of the Secretary of the Commission, Ontario Securities Commission, 20 Queen Street West, Toronto, Ontario, M5H 3S8, e-mail: comments@osc.gov.on.ca.

The confidentiality of submissions cannot be maintained as comments received during the comment period will be published.

Questions may be referred to:

Timothy Baikie
Senior Legal Counsel, Market Regulation
Tel.: 416-593-8136
tbaikie@osc.gov.on.ca

STIKEMAN ELLIOTT

Stikeman Elliott (NY) LLP Canadian Barristers & Solicitors
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Direct: (212) 845-7475
E-mail: tdoherty@stikeman.com

August 17, 2012

Ontario Securities Commission
20 Queen Street West
Suite 1903
Toronto, Ontario
Canada M5H 3S8

Attention: Timothy Baikie, Senior Legal Counsel, Market Regulation

Dear Mr. Baikie:

Re: The Options Clearing Corporation Application for Relief

We are Canadian counsel to The Options Clearing Corporation ("**OCC**") in connection with this amended application to the Ontario Securities Commission ("**OSC**") (i) for an exemption from section 21.2(0.1) of the *Securities Act* (Ontario) ("**OSA**") pursuant to section 147 of the OSA relating to OCC's business as a clearing agency with respect to options, futures, options on futures and stock loan transactions as more fully described herein, and (ii) for a further variation of the March 1, 2011 interim order pursuant to section 144 of the OSA to extend the termination date to the earlier of (a) November 30, 2012, and (b) the effective date of a subsequent order exempting OCC from the requirement to be recognized as a clearing agency pursuant to section 21.2(0.1) of the OSA.

PART I INTRODUCTION

1. OCC Services to Ontario Residents

OCC currently has five (5) direct OCC clearing members that have a head office or principal place of business in Ontario (collectively, "**Ontario Clearing Members**"). Additionally, OCC currently has one (1) approved clearing bank with a head office or principal place of business in Ontario. As an OCC approved clearing bank, the bank provides settlement services for exchange transactions on behalf of the five (5) Ontario Clearing Members. Such services may include, but not be limited to, the payment and release of margin, payment and rebate of fees, and the payment and withdrawal of option premiums.

OCC initiates no direct contact with Canadian clients of Ontario Clearing Members. OCC does not have any office or maintain other physical installations in Ontario or any other Canadian province or territory.

OCC currently offers a wide range of clearing products to the Ontario-resident clearing members described above, including the following:

(i) Options on equity securities (including exchange-traded funds);

(ii) Options on stock indices (including volatility indices);

(iii) Foreign currency options;

(iv) Interest rate options (cash settled options on the yields of United States ("**U.S.**") Treasury securities);

(v) Credit default options;

(vi) Interest rate futures;

(vii) Security futures, including single stock futures and narrow - based stock index futures;

(viii) Broad-based stock index, volatility and variance futures;

(ix) Options on commodity futures; and

(x) Stock loan transactions.

2. Background to the Application

On January 10, 2011, OCC applied for an order from the OSC for an exemption on an interim basis from the requirement to be recognized as a clearing agency. The OSC granted the order on March 1, 2011, and subsequently varied the order on August 19, 2011 to extend the termination date to the earlier of (i) September 1, 2012, and (ii) the effective date of a subsequent order exempting OCC from the requirement to be recognized as a clearing agency pursuant to section 21.2(0.1) of the OSA. OCC currently carries on business in Ontario pursuant to the March 1, 2011 interim order, as varied on August 19, 2011.

OCC submitted this application to the OSC for (i) relief pursuant to section 147 of the OSA exempting OCC from the requirement to be recognized as a clearing agency pursuant to section 21.2(0.1) of the OSA, and (ii) for a further variation of the March 1, 2011 interim order pursuant to section 144 of the OSA to extend the termination date to the earlier of (a) November 30, 2012, and (b) the effective date of a subsequent order exempting OCC from the requirement to be recognized as a clearing agency pursuant to section 21.2(0.1) of the OSA. Part III of this application explains how OCC meets the relevant criteria for recognition and exemption for clearing agencies set out in Appendix A to OSC Staff Notice 24-702 – *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies*.

PART II BACKGROUND

1. Regulatory Oversight of OCC

A. United States

Founded in 1973, OCC is the world's largest equity derivatives clearing organization ("**DCO**"). OCC is a corporation organized under the laws of the state of Delaware. OCC is registered as a derivatives clearing agency under Section 17A of the U.S. *Securities Exchange Act of 1934*, as amended ("**Exchange Act**") and as a DCO under section 7a-1 of the U.S. *Commodity Exchange Act* ("**CEA**"). OCC has been designated by the U.S. Financial Stability Oversight Council ("**FSOC**") as a "systematically important" financial market utility under Title VIII of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* ("**Dodd-Frank**").

In the U.S., OCC operates under the jurisdiction of both the Securities and Exchange Commission ("**SEC**") and the Commodity Futures Trading Commission ("**CFTC**"). Under the SEC's jurisdiction, OCC clears or is qualified to clear transactions in "standardized options," as defined in SEC regulations. These include options on common stocks and other equity issues, stock indices (including volatility, variance, and strategy-based indices), foreign currencies, interest rate composites, and credit default options. Credit default options relate to the credit risk presented by one or more specified debt securities (i.e., reference obligation(s)), of one or more specified issuers or guarantors (i.e., each a reference entity), and are automatically exercised and pay a fixed cash settlement amount if a credit event is confirmed for one or more reference obligations of a reference entity prior to expiration of the option. Under SEC jurisdiction, OCC also clears futures on single equity issues and narrow-based stock indices ("**security futures**"). As a registered DCO under CFTC jurisdiction, OCC offers clearing and settlement services for transactions in commodity futures (i.e., futures other than security futures) and options on commodity futures. OCC also intends to clear OTC derivatives beginning in late 2012 or in the first quarter of 2013.

The derivatives contracts traded on U.S. exchanges, of which OCC is also the nominal "issuer", are sold by regulated foreign market participants worldwide. OCC is primarily regulated by the SEC and CFTC in the U.S. OCC is not subject to regulatory oversight by any other foreign securities or futures regulatory authority in any jurisdiction outside the U.S., including in the United Kingdom, Continental Europe, and Australia, or by any other Canadian provincial or territorial securities regulatory authority.

OCC is registered as a clearing agency with the SEC and as a DCO with the CFTC. The Exchange Act establishes conditions that registered clearing agencies must satisfy relating to, among other things, the clearing agency's capacity to promptly and accurately clear and settle transactions, safeguarding of funds and securities, enforcement of the clearing agency's rules, equitable allocation of fees and charges among participants, and avoiding any unnecessary burden on competition. Similarly, the CEA establishes core principles with which registered DCOs must comply relating to, among other things, financial resources, appropriate admission and eligibility standards for participants, risk management, timely completion of settlements, ensuring the safety of funds and enforcement of the DCO's rules.

OCC is subject to examination by both the SEC and CFTC, and virtually all OCC rule changes are filed with both regulatory agencies. However, because the overwhelming majority of OCC's business relates to clearing securities, the CFTC historically has deferred to the SEC as the lead regulator except in connection with matters specifically related to the clearing of transactions in commodity futures, options on such futures or other products subject to the CFTC's jurisdiction and compliance with the CEA and the CFTC's regulations thereunder. Following OCC's designation by FSOC as a "systematically important" financial market utility, the SEC is now OCC's supervisory agency.

B. Canada

In Canada, OCC has received exemptions or relief from the following Canadian jurisdictions:

Alberta	The Alberta Securities Commission has designated OCC as an "acceptable clearing corporation" for purposes of Alberta Securities Commission Blanket Order 91-503 *Over-the-Counter Derivatives Transactions and Commodity Contracts*.
British Columbia	The British Columbia Securities Commission has issued BC Instrument 21-501 *Recognition of exchanges, self-regulatory bodies, and jurisdictions*, which recognizes certain U.S. exchanges for which OCC clears.
Manitoba	The Manitoba Securities Commission has granted an order (Order No. 5575) for an exemption from the application of section 37 of *The Securities Act* (Manitoba) with respect to any options cleared by OCC and that currently trade or may trade on a U.S. exchange.
New Brunswick	The New Brunswick Securities Commission has granted an order (Order No. 2005-80306) for an exemption from the application of sections 45 and 71 of the *Securities Act* (New Brunswick) with respect to trades in any options, futures and options on futures cleared by OCC that currently, or may in the future, trade on any or all of certain prescribed U.S. exchanges.
Newfoundland and Labrador	The Prince Edward Island Director of Securities has designated OCC as a "Recognized Clearing Organization" for purposes of Blanket Order No. 26.
Nova Scotia	The Nova Scotia Securities Commission issued a ruling on July 20, 2005 that sections 31 and 58 of the *Securities Act* (Nova Scotia) shall not apply to trades in any options, futures and commodity options cleared by OCC that currently, or may in the future, trade on any or all of certain prescribed U.S. exchanges, provided that each trade is conducted through a Nova Scotia dealer.
Ontario	The Ontario Securities Commission has granted an interim order exempting OCC from the requirement in subsection 21.2(0.1) of the OSA to be recognized as a clearing agency.
Prince Edward Island	The Prince Edward Island Registrar of Securities has issued a ruling on July 30, 2005 that sections 2 and 8 of the *Securities Act* (Prince Edward Island) shall not apply to trades in any options, futures and commodity options cleared by OCC that currently, or may in the future, trade on any or all of certain prescribed U.S. exchanges, provided that each trade is conducted through a Prince Edward Island dealer.
Quebec	The Autorité des marches financiers has issued a decision (Decision No. 2010-PGD-0206) granting an exemption from the qualification and authorization requirements concerning the creation or marketing of derivatives pursuant to the *Derivatives Act* (Quebec) ("**QDA**").
Saskatchewan	The Saskatchewan Financial Services Commission has issued General Ruling/Order 11-901 *Recognition Order*, which recognizes certain U.S. exchanges for which OCC clears.

In Alberta, British Columbia and Saskatchewan, exchange-traded security futures, broad-based stock index futures and options thereon are covered by the definition of "exchange contracts" under their respective securities legislation. In addition, registered dealers in each of these provinces are permitted to trade exchange-traded futures and options on futures provided that such futures and options are listed on a "recognized exchange" and the registered dealer provides clients with the specified risk disclosure document. As a result, OCC is not required to register with any of the securities commissions of these provinces or prepare and file any documentation in connection with OCC's U.S. clearing activities in respect of exchange-traded security futures, broad-based stock index futures and options thereon that it intends to clear for Canadian registered dealers. However, OCC has received relief from the securities commissions of these provinces with respect to updating the list of "recognized exchanges" that they each maintain.

In New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador, the securities legislation of these provinces either does not regulate the trading of exchange-traded futures contracts and options on futures contracts or does not recognize OCC as a recognized clearing corporation for the purposes of clearing these products. However, OCC has

received exemptions from the obligations contained in the securities legislation of each of these provinces in respect of OCC's clearing activities for Canadian dealers.

In Manitoba and Ontario, exchange-traded futures contracts and options on futures contracts are covered by the definition of "commodity futures contract" and "commodity futures option" under their respective commodities futures legislation. Additionally, physically-settled securities futures, cash-settled security futures and broad-based stock index futures and options may be considered to be securities, and therefore subject to the securities legislation of these provinces. OCC has received exemptions from the registration and prospectus requirements under the securities legislation of Manitoba and Ontario with respect to security futures, broad-based index futures, options on security futures and options on broad-based index futures.

In Quebec, the QDA governs transactions involving both over-the-counter and exchange-traded derivatives, which includes Canadian and non-Canadian listed futures, options on futures and security options, and imposes a qualification requirement on a person, other than a recognized regulated entity, who creates or markets a derivative before the derivative is offered to the public. OCC has received an exemption from certain requirements of the QDA in connection with its business and operations as a clearing house, subject to conditions.

2. Ownership of OCC

OCC is owned equally by the following five (5) participant securities exchanges that trade options, all of which are currently registered with the SEC:

(i) Chicago Board Options Exchange;

(ii) International Securities Exchange;

(iii) NYSE Amex (formerly the American Stock Exchange);

(iv) NYSE Arca (formerly the Pacific Stock Exchange); and

(v) NASDAQ OMX PHLX (formerly the Philadelphia Stock Exchange).

Prior to becoming a participant securities exchange, each of the options exchanges above was registered as a national securities exchange under the Exchange Act, and (i) had effective rules for the trading of option contracts in accordance with the provisions of the Exchange Act and the rules and regulations of the SEC thereunder, (ii) had purchased the number of shares of the common stock of OCC set forth in Article VIIA, Section 2 of OCC's By-Laws, (iii) had executed a stockholders agreement as described in Article VIIA, Section 3 of OCC's By-Laws, and (iv) had furnished OCC with such information OCC requested concerning the operations, the management, the rules and the membership of such exchange and such other information as OCC required to amend or make current any registration statement of OCC filed with the SEC or other regulatory authority.

Until 2002, options exchanges that wished to have OCC clear for them were required to purchase stock in OCC. In 2002, the SEC approved a rule change eliminating that requirement.

In addition to the five (5) stockholder exchanges, OCC also has the following five (5) non-equity participant exchanges, as well as a number of futures exchanges:

(i) BATS Exchange, Inc.;

(ii) C2 Options Exchange, Inc.;

(iii) Nasdaq OMX BX, Inc.;

(iv) The Nasdaq Stock Market, LLC; and

(v) BOX Options Exchange, LLC.

Pursuant to OCC's By-Laws, the non-equity participant exchanges are required to hold promissory notes. There is no similar requirement for the stockholder exchanges.

Pursuant to OCC's By-Laws, any securities exchange or securities association registered under the Exchange Act, which (i) has effective rules for the trading of option contracts in accordance with the provisions of the Exchange Act and the rules and regulations of the SEC thereunder, (ii) has purchased a Promissory Note of OCC as required pursuant to Article VIIB, Section 2 of OCC's By-Laws, (iii) has executed a noteholders agreement as described in Article VIIB, Section 3 of OCC's By-Laws, and (iv) has furnished OCC with such information as OCC may reasonably request concerning the operations, the

management, the rules and the membership of such exchange or association and such other information as OCC may require to amend or make current any registration statement of OCC filed with the SEC or other regulatory authority, shall be qualified for participation in OCC as a "Non-Equity Exchange".

OCC currently clears options traded on the U.S. securities exchanges named above, security futures traded on OneChicago, LLC, and commodity futures and in some cases options on commodity futures traded on four (4) U.S. futures exchanges. OCC also clears stock loan transactions executed on a broker-to-broker basis and on AQS, an electronic trading platform regulated by the SEC as an automated trading system and by the U.S. Financial Industry Regulatory Authority ("**FINRA**") as a broker-dealer.

OCC operates as a not-for-profit industry utility and refunds excess revenues to its members.

3. Products Cleared by OCC

OCC currently clears the products listed in "Part I – Introduction".

New Equity options with standard contract terms are submitted to OCC under the Options Listing Procedures Plan guidelines without oversight by OCC Product Development Staff. All new non-equity options and futures products are evaluated by OCC staff for clearance and settlement by OCC according to the following general guidelines:

1. Does the product fit within existing Regulatory frameworks?

Staff will review OCC and Exchange rules, the Options Disclosure Document, and any jurisdictional issues presented by the product.

2. Does OCC require systemic or processing changes relating to the new product?

Staff will review OCC risk management systems and policies, clearing, settlement & collateral systems and processes.

3. Is the clearing community ready to process the product?

Staff will investigate and required modifications to Clearing Member risk management, clearing, settlement & collateral systems and processes.

The process for reviewing and approving a new product starts with a participant exchange notifying OCC that it would like to list a new product. The exchange will be asked to supply product specifications, draft rule filings, and additional pertinent information on the derivative and the underlying asset. Staff performs an initial review of the materials submitted by the requesting exchange, and may request further information and/or clarification, as needed. OCC Product Development Staff will, at a minimum, consider the following high level areas when analyzing the new product:

- Exchange Capability & Eligibility
- Product Set-Up
    - Underlying Instrument
    - Option Product and Series
    - Futures Product and Contract
- New and replacement Series / futures contract processing
- Product daily pricing issues
    - Option Prices
    - Futures Prices
    - Underlying Prices

- Ability for OCC and Clearing Members to process the product within their automated systems, including the following key clearing functions:
    - Trade Processing & Balancing
    - Post Trade Processing & Balancing
    - Cash transactions and settlement
    - OCC CM Account Capability & Eligibility
    - Position Accounting
    - Window Control
    - Margins & Risk Management
    - Exercise/Assignment and Expiration Processing
    - Delivery Settlement
    - Billing
    - Clearing data transmissions

OCC Product Development staff will review each of these areas, as well as, any other impacts or novel features that the new product may impose and discuss them with the appropriate parties. The process may be interactive with the exchange and potentially other involved parties such as participant banks, vendors, service bureaus, and Clearing Members until all issues are resolved.

After all of the above steps have been completed and the exchange has completed its rule making, operational and systems updates, OCC presents new products to its Board for approval to file rules.

4. OCC Members

OCC has approximately 120 clearing members who are U.S. registered broker-dealers, futures commission merchants and non-U.S. securities firms.

PART III APPLICATION OF APPROVAL CRITERIA TO OCC

1. Governance

1.1 The governance structure and governance arrangements of the clearing agency ensures:

1.1 (a) effective oversight of the clearing agency:

OCC's governance structure dates from 1975, when it was converted from a wholly-owned subsidiary of the Chicago Board Options Exchange ("**CBOE**") to an industry utility that clears for all U.S. options exchanges. OCC's stock is owned equally by five (5) U.S. options exchanges.

Effective as of March 2012, OCC's board of directors consists of 18 members:

- Nine (9) Member Directors nominated by a seven (7) member Nominating Committee composed of one (1) Public Director and six (6) Clearing Member representatives;
- Five (5) Exchange Directors, appointed by OCC's five (5) stockholder exchanges;
- Three (3) Public Directors unaffiliated with any exchange or broker-dealer; and
- OCC's Chairman, who serves ex officio as OCC's Management Director.

This board structure is supported by charter and by-law provisions and a stockholders' agreement obligating the stockholder exchanges to vote their shares (i) for the candidates for Member Director nominated by the Nominating Committee,

(ii) for the candidates for the following year's Nominating Committee nominated by the current year's Nominating Committee, (iii) for the person nominated by the Chairman, with the approval of the board of directors, for Public Director, and (iv) for OCC's Chairman as Management Director. The Nominating Committee holds irrevocable proxies to vote the exchanges' shares as required by these provisions.

The board has three (3) standing committees: the Performance Committee, the Membership/Risk Committee, and the Audit Committee. The Performance Committee is responsible for evaluating the performance of OCC and its management and overseeing employee compensation and benefits. The Membership/Risk Committee is responsible for overseeing the administration of OCC's membership requirements and risk management systems, and for periodically reviewing such requirements and systems and making recommendations to the board. The Audit Committee is responsible for overseeing management's conduct of OCC's financial reporting process, system of internal control, and auditing and accounting processes.

OCC believes that the board committee structure described above, the industry background and expertise of its Member Directors and Exchange Directors, and its heavily regulated status as both a securities clearing agency regulated by the SEC and a DCO regulated by the CFTC, together ensure effective oversight. OCC expects to be designated by the newly-organized Financial Stability Oversight Council ("**FSOC**") as a "designated financial market utility," in which case it will also become subject to supervision by the Board of Governors of the Federal Reserve System.

OCC's Management is under the general direction of its Board of Directors. OCC's Board ordinarily holds five (5) regularly scheduled meetings and several special meetings as needed annually to address specific issues. OCC's Board is active and engaged, and specific areas of OCC's activities are subject to the additional oversight of the Performance Committee, the Membership/Risk Committee, and the Audit Committee, whose membership is in each case suited to the functions of the particular committee.

1.1 (b) the clearing agency's activities are in keeping with its public interest mandate

OCC's Mission and Values Statement states that:

"The Options Clearing Corporation is a customer-driven clearing organization that delivers world-class risk management, clearance and settlement services at a reasonable cost; and provides value-added solutions that support and grow the markets we serve."

The fact that a majority of OCC's directors are drawn from its clearing members is consistent with its mandate as a customer-driven organization. OCC is operated as a nonprofit market utility, refunding any excess profits to its clearing members. Because it is the members who use OCC's services and pay OCC's fees, their representatives on OCC's board have an incentive to ensure that OCC delivers quality clearance and settlement services at a reasonable cost, consistent with its mandate. Because the consequences of any failure of OCC's risk management systems will be borne by clearing members, who support OCC's multibillion dollar clearing fund, OCC's Member Directors have an incentive to ensure that OCC has state-of-the-art risk management systems, also consistent with its mandate. At the same time, OCC's Exchange Directors have an incentive to ensure that OCC properly supports the markets that it serves. OCC's governance structure is thus calculated to ensure that its activities are in keeping with its public interest mandate.

OCC calculates monthly clearing fees for all Clearing Members and collects fees directly from the Clearing Member. OCC does not have any requirements on how Clearing Members should charge their customers. Likewise, when there are excess profits, OCC refunds the profits to the Clearing Members allocated based on clearing fees collected. OCC does not have any requirements on how the Clearing Members use their refund.

1.1 (c) fair, meaningful and diverse representation on the governing body (Board) and any committees of the Board, including a reasonable proportion of independent directors

OCC is engaged in a highly specialized business, and benefits greatly from the industry expertise of its Member Directors and Exchange Directors. However, both the SEC and the CFTC have proposed rules that could require OCC to add a substantial number of independent directors and alter the composition of its Membership/Risk Committee. OCC has filed comment letters with both the SEC and the CFTC regarding the proposed rules in which OCC has identified various concerns that it has with respect to the proposals, in particular the requirements relating to independent directors (in the case of the SEC) or public directors (in the case of the CFTC) as they apply to a not-for-profit, market utility such as OCC. While OCC would prefer that the SEC and CFTC modify the proposed rules in the manner set forth in OCC's comment letters, OCC will of course comply with the rules that are ultimately adopted as applicable.

OCC's comment letter to the SEC can be found at http://www.sec.gov/comments/s7-27-10/s72710-76.pdf. OCC's comment letter to the CFTC is included as Appendix II to the SEC comment letter.

1.1 (d) a proper balance among the interests of the owners and the different entities seeking access (participants) to the clearing, settlement and depository services and facilities (settlement services) of the clearing agency

As was noted above, five (5) of OCC's eighteen (18) directors are appointed by stockholders and nine (9) by participants. OCC believes that this strikes an appropriate balance between the interests of owners and participants.

Section 17A(b)(3)(C) of the Exchange Act prohibits the SEC from registering a clearing agency unless the SEC determines that:

"The Rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administrators of its affairs."

This requirement is very similar to the OSC's criterion 1.1(d). The SEC has determined that OCC's Rules satisfy its registration requirements, including Section 17A(3)(C).

In order to address the requirement of fair representation, OCC's charter and by-laws require that nine (9) of OCC's eighteen (18) directors be directors, senior officers, principals, or general partners of clearing member organizations. Candidates for Member Director must be nominated either by the Nominating Committee, which is composed of one (1) Public Director and six (6) Clearing Member representatives, or by a petition signed by a specified number of clearing members.

The Nominating Committee is composed of seven (7) members, consisting of one (1) Public Director and six (6) members who represent clearing member organizations ("Non-Director Members"). The Public Director member serves for a term of three (3) years. The six (6) Non-Director Members are divided into two (2) equal classes elected for staggered two (2) year terms. Prior to each annual meeting of stockholders, the Nominating Committee nominates a slate of nominees for election to the class of Member Directors and to the class of Nominating Committee members whose terms expire at that meeting. In selecting such nominees, the Nominating Committee seeks to achieve balanced representation among Clearing Members, giving due consideration to the various business activities of different categories of Clearing Members and their geographical distribution. No person who is associated with the same Clearing Member Organization as a member of the Nominating Committee may be nominated by the Nominating Committee for a position as a Member Director or a Non-Director Member of the Nominating Committee for the ensuing year.

Clearing Members also have the right to nominate additional candidates for Member Director by filing a petition signed by a specified number of clearing members.

Each director is obligated as a matter of corporate law to act in good faith to promote the interests of OCC. This is true even if the director was elected to the Board because of his or her affiliation with a clearing member or an exchange.

1.1 (e) the clearing agency has policies and procedures to appropriately identify and manage conflicts of interest;

In 2004, OCC adopted a Code of Conduct for OCC Directors that reminds directors of their duty of loyalty to OCC, defines "conflict of interest," requires disclosure of conflicts of interest, and requires conflicted directors to recuse themselves from a discussion and/or vote if requested by the chair of the meeting.

The Code of Conduct has been adopted by the Board of Directors in order to reinforce and enhance OCC's commitment to doing business lawfully and ethically. The General Counsel is responsible for the monitoring and overseeing compliance by the directors and board committee members with the Code of Conduct. Additionally, the individual Member Directors and Exchange Directors are subject to a code of conduct with their respective regulated organizations.

All directors are required to comply with the Code of Conduct and annually certify that they have read and understood its contents and the consequences of non-compliance. The communication and certification is conducted at the Board's Annual Meeting. In certain extraordinary situations, a waiver of a provision of the Code of Conduct may be granted by the Chairman of the Board. Any such waiver must be promptly reported to the entire Board and disclosed as required by any applicable laws, rules and regulations.

Directors are required to communicate to the General Counsel or the Chairman of the Board any concerns, in good faith, that there has been a breach of a provision of the Code of Conduct. The Board (or its designee) has the independence and authority to utilize the services of any OCC personnel or retain any third party consultants and/or advisors determined to be appropriate under the circumstances to assist in the investigation of the violation. The Board shall determine appropriate and timely action to be taken in the event of a violation of the Code of Conduct, taking into account the nature and severity of the violation.

1.1 (f) each director or officer of the clearing agency, and each person or company that owns or controls, directly or indirectly, more than 10 percent of the clearing agency is a fit and proper person; and

OCC is not presently subject to any direct requirement to ensure that directors, officers, and 10% holders are "fit and proper" persons, but OCC certainly believes this to be the case. All of OCC's directors are well-known within the securities industry. Member Directors associated with registered broker-dealers are subject to fitness requirements in that capacity. Exchange Directors are all senior officers of stockholder exchanges, and the backgrounds of the Public Director and the Management Director are well known to OCC's management. OCC routinely conducts background checks on all new hires, including officers, and would not employ a candidate if a background check revealed that he or she was not a "fit and proper" person.

Proposed SEC rules would require clearing agencies to adopt governance standards (i) clearly articulating the roles and responsibilities of directors and board committee members, (ii) specifying director qualifications, (iii) specifying disqualifying factors, and (iv) specifying policies and procedures for periodic review by the board or a committee of the performance of individual directors.

Proposed CFTC rules would require DCOs, including OCC, to establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the DCO, any other party with direct access to the DCO's clearance and settlement activities, and parties affiliated with any of the foregoing.

OCC intends to comply with the proposed SEC and CFTC governance requirements described above. OCC has filed fitness standards to comply with the DCO rules, which are already in effect.

1.1 (g) there are appropriate qualifications, limitation of liability and indemnity provisions for directors and officers of the clearing agency

Qualifications for OCC directors are set forth in Article III of OCC's By-Laws. OCC has no formal qualifications for officers. Determinations as to whether a prospective officer is qualified for the position are made on a case by case basis.

Indemnification provisions for directors and officers are set forth in Article X of OCC's By-Laws, and OCC carries US$40 million of directors' and officers' liability insurance. Provisions exculpating directors, to the extent permitted by the Delaware General Corporation Law, from monetary liability to OCC or its stockholders for breach of fiduciary duty are set forth in Article VIII of OCC's Certificate of Incorporation.

2. Fees

2.1 All fees imposed by the clearing agency are equitably allocated. The fees do not have the effect of creating unreasonable barriers to access.

OCC's fees are the same for all products and clearing members, and OCC believes that its fees are the lowest of any DCO in the world. After refunds, OCC's average fee for 2010 was 1.8 cents per 100-share contract, which is far too low to constitute a barrier to access.

Section 17A(b)(3)(D) of the Exchange Act prohibits the SEC from registering a clearing agency unless the SEC determines that:

> *"The rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants."*

This requirement is quite similar to the OSC's criterion 2.1(a). As noted above, the SEC has determined that OCC's Rules satisfy its registration requirements, including Section 17A(3)(C), and OCC's current fees are substantially lower than the fees in effect when the SEC made that determination.

2.2 The process for setting fees is fair and appropriate, and the fee model is transparent.

OCC's policy is to set fees at the beginning of each year at a level conservatively estimated to cover its expenses. To do so, OCC's policy is to maintain a retained earnings balance equal to or greater than 45% of the prior year's cash operating expense. Fees and fee schedules are, at a minimum, reviewed annually to ensure that OCC revenue will exceed operating expenses for the current year.

OCC's Schedule of Fees is transparent and fully disclosed on its public website at: http://www.optionsclearing.com/membership/schedule-of-fees/.

Historically, OCC has paid a refund back to the clearing membership once all retained earnings and capital expenditure requirements are met. This refund is approved by the Board of Directors.

3. Access

3.1 The clearing agency has appropriate written standards for access to its services.

OCC's membership standards are set forth in Article V of its By-Laws. Initial and ongoing financial requirements for clearing membership are set forth in Chapter III of its Rules.

A clearing member applicant must be a broker-dealer or futures commission merchant ("**FCM**") with the SEC or CFTC, or a non-U.S. securities firm. U.S. broker-dealer applicants that desire to clear transactions in security futures must also either be fully registered or notice registered as U.S. FCMs. Fully registered U.S. FCMs may become clearing members of OCC for the purpose of clearing futures, options on futures and commodity options. FCMs that desire to clear transactions in security futures must also either be fully registered or notice registered as U.S. broker-dealers.

Non-U.S. firms may also become OCC clearing members. All non-U.S. firms are required to submit financial reports. Non-U.S. firms of certain countries are permitted to file financial statements consistent with the financial responsibility standards of their home countries (e.g., a Canadian clearing member firm that elects to be admitted as an exempt Non-U.S. Clearing Member may file a copy of its Joint Regulatory Financial Questionnaire and Report ("**JRFQR**") in accordance with the Investment Industry Regulatory Organization of Canada ("**IIROC**") rules instead of filing the financial reports applicable to U.S. clearing members). All other non-U.S. firms must meet the same financial reporting requirements as U.S. clearing members.

A clearing member applicant must meet minimum net capital requirements. This includes a minimum requirement equal to the greater of US$2.5 million in initial net capital, 12.5% of aggregate indebtedness or 5% of aggregate debit items (in the case of a registered broker-dealer) or US$2.5 million in adjusted net capital (in the case of a registered FCM). In the case of a Canadian clearing member that has been admitted as an exempt Non-U.S. Clearing Member, the Canadian clearing member must maintain an early warning reserve (as determined in accordance the JRFQR) of not less than the greater of US$2 million or 2% of the Canadian clearing member's total margin required (as determined in accordance with the JRFQR). In addition, a clearing member applicant must have qualified staff and adequate facilities to self-clear options and interface with OCC and other clearing members. All clearing members must maintain adequate facilities and personnel to transact business in an orderly manner with OCC and its clearing members. For applicants with limited in-house operational capabilities, OCC accepts a facilities management relationship, an arrangement whereby one clearing member (the managed firm) authorizes another clearing member (the managing firm) to provide certain back-office services on its behalf. The arrangement is evidenced by a Facilities Management Agreement, which specifies services to be performed and the responsibilities of each party. Managing clearing members must also meet higher than normal financial requirements.

After submitting an application, a Pre-membership Examination is conducted by representatives from OCC's Regulation Department. The session consists of an examination of the firm's books and records and interviews with the firm's principals and compliance staff.

In addition, an Operations Orientation is conducted by representatives of OCC's Membership/Operations Services area. The meeting addresses OCC procedures, time frames, reports, input forms, exercise and assignment, exercise-by-exception ("**Ex-by-Ex**") procedures, OCC financial and operational services and general OCC information. Specifics of different option products are also reviewed.

A clearing member of OCC is also subject to ongoing requirements for clearing membership. OCC monitors the ongoing creditworthiness of its clearing members. Each member firm is required to file monthly financial statements with OCC's Financial Surveillance Department. The clearing member's financial condition is then evaluated in relation to predefined standards that are reviewed annually by the Membership/Risk Committee. Clearing members are also required to submit annual audited financial statements to OCC staff.

OCC has a financial reporting requirement known as an "early warning" notice. The early warning requirement imposes an obligation on clearing members to promptly notify OCC of certain material adverse changes in its financial condition.

OCC's surveillance staff also employs a variety of automated systems to continuously monitor the operational and financial condition of each clearing member in relation to general market conditions and such clearing member's exposure to market risk. First, OCC identifies those clearing members whose financial or operational condition has deteriorated over time by analyzing the trends in key financial ratios evidenced in monthly financial statements. Then, OCC identifies clearing members whose uncollateralized position risk exposure relative to capital proves excessive. The ultimate goal of the analysis is to provide corrective action in the form of higher margin requirements, reductions in the clearing member's positions, increased capital or some combination of these corrective actions.

There are no material differences in terms of membership standards and financial requirements between Canadian and U.S. Clearing Members.

3.2 The access standards and the process for obtaining, limiting and denying access are fair and transparent. A clearing agency keeps records of:

(a) each grant of access including, for each participant, the reasons for granting such access, and

(b) each denial or limitation of access, including the reasons for denying orlimiting access to an applicant.

OCC believes that its access standards are fair and transparent. The process for reviewing membership applications and granting or denying access is set forth in detail in Article III, Section 2 of OCC's By-Laws. The process for obtaining membership at OCC consists of three (3) phases: documentation, a site visit, and approval.

Documentation

The application for OCC clearing membership must include the following documentation:

- OCC Pre-Qualification Online Application;
- Appropriate paperwork received from Pre-Qualification;
- FOCUS Report;
- Audited financial statements;
- Findings of securities and commodities regulators;
- US$4,000 non-refundable qualification fee; and
- Brief resumes of staff responsible for purchase and sale statements, positions reconciliation and margin.

Site Visit

A Pre-membership Examination is conducted by representatives from OCC's Regulation Department. The session consists of an examination of the firm's books and records and interviews with the firm's principals and compliance staff.

An Operations Orientation is conducted by representatives of OCC's Membership/Operations Services area. The meeting addresses OCC procedures, time frames, reports, input forms, exercise and assignment, Ex-by-Ex procedures, OCC financial and operational services and general OCC information. Specifics of different option products are also reviewed.

Approval

The Applicant's designated examining authority ("**DEA**") is contacted for pertinent information relative to the firm's request for membership with OCC.

The findings of OCC staff from the meetings noted above and the comments from the DEA are submitted to OCC's Membership/Risk Committee (which is comprised of members of OCC's Board of Directors) and then to OCC's Board of Directors for membership approval. The membership application process may take up to twelve (12) weeks after receipt of a completed membership application.

OCC staff recommendations on membership applications, including the reasons therefor, are presented to OCC's Membership/Risk Committee and the briefing books containing those recommendations are preserved along with the minutes of the meeting. Denials of access are reviewable by the SEC under Section 19(f) of the Exchange Act.

4. Rules and Rulemaking

4.1 The clearing agency's rules are designed to govern all aspects of the settlement services offered by the clearing agency, and

(a) are not inconsistent with securities legislation,

(b) do not permit unreasonable discrimination among participants, and

(c) do not impose any burden on competition that is not necessary or appropriate.

OCC has comprehensive rules governing all aspects of its services. All of its rules must be filed with the SEC and the CFTC, and most rules filed with the SEC require affirmative approval. Rules that do not require affirmative approval are generally subject to abrogation by the SEC or the CFTC.

OCC's Rules are not inconsistent with securities legislation, do not permit unreasonable discrimination among participants, and do not impose any burden on competition that is not necessary or appropriate. Section 17A(b)(3)(F) of the Exchange Act prohibits the SEC from registering a clearing agency unless it determines that the clearing agency's rules "are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency." Section 17A(b)(3)(I) of the Exchange Act requires a determination that "[t]he rules of the clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title." The SEC would disapprove or abrogate a rule that it considered to be inconsistent with U.S. securities legislation, including the quoted language.

4.2 The clearing agency's rules and the process for adopting new rules or amending existing rules should be transparent to participants and the general public.

OCC's process for adopting and amending rules is entirely transparent. In most cases, OCC staff makes a written recommendation to the board of directors, explaining the need for the rule or amendment ("**rule change**"), and the board either votes on the proposed rule change (sometimes with changes agreed upon at the meeting) or defers it to a future meeting. Where a proposed rule change falls within the jurisdiction of a Board committee, staff makes its recommendation to the committee, and the committee in turn makes a recommendation to the Board.

When the Board approves a rule change, the rule change is filed with the SEC and the CFTC and posted to OCC's public website. The SEC publishes the rule change for comment in the *Federal Register*. Any written comments are published on the SEC's website. The SEC then determines whether to approve the rule change, or, in the case of a rule change filed for immediate effectiveness, whether to abrogate it.

The CFTC publishes the proposed rule change on its website. If OCC certifies that the rule change complies with the CEA and the CFTC's regulations thereunder, the rule change becomes effective automatically, subject to being stayed or altered by the CFTC. If OCC requests affirmative CFTC approval, the rule change becomes effective 45 (or, in certain cases, 90) days after filing unless the CFTC disapproves it within that period.

4.3 The clearing agency monitors participant activities to ensure compliance with the rules.

OCC regularly monitors clearing members' compliance with its financial requirements. Clearing members are required to file monthly financial reports with OCC. OCC staff monitors profits and losses, net capital, and other financial criteria that might negatively impact the member's financial condition. These criteria are reviewed on an absolute and trend basis not only to identify rule violations, but also to preemptively identify members approaching rule violations. More frequent reporting can be imposed in management's discretion. On a daily basis, OCC monitors position risk, periodically revaluing members' portfolios during the course of the day. If adverse market developments erode more than 50% of a member's risk margin, OCC may call for additional margin on an intraday basis. OCC's response to any violation is dependent on the nature of the violation and OCC's assessment of the situation. Non-financial requirements are generally of an operational nature, and noncompliance would ordinarily come to OCC's attention in the course of OCC's normal day-to-day operations.

In addition to the monitoring efforts associated with OCC's financial requirements, OCC continually monitors clearing member compliance with operational deadlines which include window timeframes, file submissions, and proper documentation. OCC tracks any outstanding operational issues in a database and notifies clearing members of any concerns or issues that require remediation. OCC also conducts routine visits with clearing members which includes, to the extent necessary, a discussion of any patterns of operational issues, to ensure that remedial steps are being taken by the clearing member and to ensure there is no impact to OCC's operational timeframes and data dissemination.

4.4 The rules set out appropriate sanctions in the event of non-compliance by participants.

OCC Rule 1201 provides that:

*"The Corporation [OCC] may censure, suspend, expel or limit the activities, functions or operations of any Clearing Member for any violation of the By-Laws and Rules or its agreements with the Corporation [OCC]. The Corporation [OCC]may, in addition to or in lieu of such sanctions, impose a fine on any Clearing Member for any violation of the By-Laws or Rules or procedures of or its agreements with the Corporation [OCC] or the correspondent clearing corporation [National Securities Clearing Corporation ("**NSCC**"), which handles settlements of equity option exercises], or for any*

neglect or refusal by such person to comply with any applicable order or direction of the Corporation [OCC] or the correspondent clearing corporation, or for any error, delay or other conduct embarrassing the operations of the Corporation [OCC], or for not providing adequate personnel or facilities for its transactions with the Corporation [OCC] or the correspondent clearing corporation."

5. Due Process

5.1 For any decision made by the clearing agency that affects an applicant or a participant, including a decision in relation to access, the clearing agency ensures that:

(a) an applicant or a participant is given an opportunity to be heard or make representations; and

(b) the clearing agency keeps a record of, gives reasons for, and provides for appeals or reviews of, its decisions.

Article V, Section 2 of OCC's By-Laws provides extensive due process protections, satisfying criterion 5.1, for denials of membership. OCC Rule 1202 provides similar due process protections for the imposition of sanctions on a clearing member. Rule 305(c) provides due process protections for the imposition of operational restrictions on a clearing member.

A. Membership Denials

Applications for membership are reviewed by OCC's Membership/Risk Committee which recommends approval or disapproval to the Board of Directors. If the Membership/Risk Committee proposes to recommend to the Board of Directors that an application for clearing membership be disapproved, it first provides the applicant with a written statement of its proposed recommendation and the specific grounds therefor, and affords the applicant an opportunity to be heard and to present evidence on its own behalf. If, after an opportunity to be heard, the Membership/Risk Committee still proposes to recommend disapproval, the Membership/Risk Committee shall make its recommendation to the Board of Directors in writing, accompanied by a statement of the specific grounds therefor, and a copy thereof shall be furnished to the applicant on request.

The Board of Directors independently reviews any recommendation by the Membership/Risk Committee, and may, in its discretion, if the applicant so requests, afford the applicant a further opportunity to be heard and to present evidence. If the Board of Directors disapproves the application, written notice of its decision, accompanied by a statement of the specific grounds therefor, is delivered to the applicant. An applicant shall have the right to present such evidence as it may deem relevant to its application. A verbatim record shall be kept of any hearing held pursuant hereto.

B. Imposition of Operational Restrictions

Under OCC's Rules, the Chairman, the Management Vice Chairman, or the President of OCC may determine that the financial or operational condition of a Clearing Member makes it necessary or advisable to impose certain restrictions on the Clearing Member's transactions, positions or activities. Such actions taken are subject to review by the Membership/Risk Committee of OCC upon a request for review submitted by the Clearing Member within five (5) days of the date such action is taken. At the hearing, the Clearing Member shall be afforded an opportunity to be heard and to present evidence in its behalf and may be represented by counsel. A verbatim record of the hearing is prepared and the cost of the transcript may, in the discretion of the Membership/Risk Committee, be charged in whole or in part to the Clearing Member if the Membership/Risk Committee does not modify the action taken by the Chairman, the Management Vice Chairman, or President. The Clearing Member shall be notified in writing of the outcome of the Membership/Risk Committee's review.

C. Imposition of Sanctions

OCC may sanction any clearing member for any violation of OCC's By-Laws and OCC's Rules or the clearing member's agreements with OCC through censure, suspension, expulsion or placing limits on the activities, functions or operations of the clearing member. OCC may also impose a fine on any clearing member in addition to or in lieu of such sanctions. Under Rule 1102 of OCC's Rules, OCC may summarily suspend any clearing member which: (i) has been and is expelled or suspended from any self-regulatory organization; (ii) fails to make any delivery of cash, securities or other property to OCC in a timely manner as required by OCC's By-Laws or Rules; (iii) fails to make delivery of funds or securities to another clearing member required pursuant to OCC's By-Laws or Rules; (iv) fails to make any delivery of funds or securities to the correspondent clearing corporation in a timely manner, has appointed an Appointed Clearing Member to act on its behalf and such Appointed Clearing Member fails to make any delivery of funds or securities to the correspondent clearing corporation in a timely manner or effects settlement at the correspondent clearing corporation in a timely manner; (v) is in such financial or operating difficulty that OCC determines and notifies the clearing member's regulatory agency and the SEC or CFTC that suspension is necessary for the protection of OCC, other clearing members or the general public; or (vi) in the case of a Non-U.S. Clearing Member, has been expelled or suspended by its Non-U.S. Regulatory Agency or any securities exchange or clearing organization of which it is a member. OCC may also summarily suspend a clearing member that is in default of payment

of funds or any other obligation in respect of sets of cross-margining accounts (Rule 707 of OCC's Rules) or in respect of an internal non-proprietary cross margining account (Article VI, subsection 25(g) of OCC's By-Laws).

Before imposing any sanction, OCC provides the person against whom the sanction is sought to be imposed ("**Respondent**") with a concise written statement of the charges against the Respondent. The Respondent is provided fifteen (15) days after the service of such statement to file a written answer thereto, either admitting or denying each allegation contained in the statement of charges and may also contain any defense which the Respondent wishes to submit. Allegations contained in the statement of charges which are not denied in the answer shall be deemed to have been admitted. Any defense not raised in the answer shall be deemed to have been waived.

If an answer is not filed within the time prescribed or any extension that may been granted, OCC shall furnish to the Respondent a final request for an answer, specifying a time prior to which an answer must be filed and a sanction which will be imposed if an answer is not filed within that time. If an answer is not filed prior to the time so specified, the charges against the Respondent shall be deemed to have been admitted, and the sanction specified in the final request shall be imposed without further proceedings and the Respondent shall be notified thereof in writing. If an answer is timely filed, the Secretary of OCC shall (unless the Respondent and OCC shall have stipulated to the imposition of an agreed sanction) schedule an early hearing before a Disciplinary Committee composed of the Vice Chairman of the Board of Directors (or such other director as the Board of Directors shall designate in his place), who will act as Chairman of the Committee, and two (2) other directors appointed by the Chairman of the Committee.

The Respondent shall be given not less than three (3) days advance notice of the place and time of such hearing. At the hearing, the Respondent shall be afforded the opportunity to be heard and to present evidence in his behalf and may be represented by counsel. A verbatim record of the hearing shall be prepared and the cost of the transcript may, in the discretion of the Disciplinary Committee, be charged in whole or in part to the Respondent in the event any sanction is imposed on the Respondent. As soon as practicable after the conclusion of the hearing, the Disciplinary Committee shall furnish the Respondent and the Board of Directors with a written statement of its decision. If the decision shall have been to impose a disciplinary sanction, the written statement shall set forth (i) any act or practice in which the Respondent has been found to have engaged, or which the Respondent has been found to have omitted; (ii) the specific provisions of the statutory rules of OCC which any such act, practice or omission has been deemed to violate; and (iii) the sanction imposed and the reasons therefor.

In the event that a Disciplinary Committee censures, fines, suspends, expels or limits the activities, functions or operations of any Respondent, any affected person may apply for review to the Board of Directors, by written motion filed with the Secretary of OCC within five (5) business days after issuance of the Disciplinary Committee's written statement of its decision. The granting of any such motion shall be within the sole discretion of the Board of Directors. In addition, the Board of Directors may determine to review any such action by a Disciplinary Committee on its own motion, including operational actions (i.e., actions that relate to the operations of a Respondent).

Review by the Board of Directors shall be on the basis of the written record of the proceedings in which the sanction was imposed, but the Board of Directors may, in its discretion, afford the Respondent a further opportunity to be heard or to present evidence. A verbatim record shall be kept of any such further proceedings. Based upon such review, the Board of Directors may affirm, reverse or modify, in whole or in part, the decision of the Disciplinary Committee. The Respondent shall be notified in writing of the decision of the Board of Directors and if the decision shall have been to affirm or modify the imposition of any disciplinary sanction, the Respondent shall be given a written statement setting forth (i) any act or practice in which the Respondent has been found to have engaged, or which the Respondent has been found to have omitted; (ii) the specific provisions of the statutory rules of OCC which any such act, practice or omission has been deemed to violate; and (iii) the sanction imposed and the reasons therefor.

Any action taken by a Disciplinary Committee shall be deemed to be final upon (i) expiration of the time provided for the filing of a motion for review, or any extension thereof granted to the Respondent; or (ii) if a motion for review is timely filed, when the Respondent is notified of the denial of the motion or the decision of the Board of Directors on review, as the case may be. When any sanction imposed hereunder becomes final, (i) OCC shall notify the Respondent in writing that the imposition thereof may be subject to review by the appropriate regulatory agency for the Respondent pursuant to Section 19(d)(2) of the Exchange Act and the rules and regulations of such appropriate regulatory agency thereunder or, (ii) in the case of disciplinary proceedings concerning solely the Respondent's activities as a futures commission merchant, OCC shall notify the Respondent in writing that the imposition thereof may be subject to review by the appropriate regulatory agency for the Respondent pursuant to the provisions of Section 8c of the CEA; with respect to Non-U.S. Clearing Members, such review shall lie solely with the SEC. If, on the other hand, the Board of Directors elects on its own motion to review any action by a Disciplinary Committee, such action shall not be deemed final until the Respondent is notified of the decision of the Board of Directors on review.

6. Risk Management

6.1 The clearing agency's settlement services are designed to minimize systemic risk.

OCC's role as a central counterparty for U.S. listed derivatives is primarily to minimize systemic risk. OCC novates the contracts that it clears, becoming the seller to the buyer and the buyer to the seller. In doing so, OCC assumes the obligations of its members, guaranteeing that the terms of the contracts are met. Substituting OCC minimizes systemic risk by providing increased assurance that the assumed obligations will be settled and minimizing the potential ripple effect that default by one member could have on others in a market without a central counterparty. The ways in which OCC minimizes systemic risk are discussed below.

6.2 The clearing agency has appropriate risk management policies and procedures and internal controls in place.

OCC enjoyed a AAA counterparty credit rating from Standard & Poor's ("S&P") from 1993 until 2011. In August 2011, S&P continued its lockstep approach of linking the ratings of a number of financial institutions and instruments to its rating of U.S. sovereign debt. Following the downgrade of U.S. sovereign debt to AA+, S&P also downgraded OCC to AA+. That rating continues to be based on the strength of OCC's risk management. In its most recent rating report, dated March 29, 2012, S&P states:

> *"Standard & Poor's considers OCC's enterprise risk management to be strong. The clearinghouse manages clearing risk through what we consider as a comprehensive set of financial safeguards including rigorous admission standards and clearing member surveillance activities, the collection of high-quality collateral, and mutualization of risk among its financially strong clearing members in the form of a clearing fund and the power to assess members for funds to cover losses of a defaulting clearing member. This would include its planned OTC clearing activities."*

The full text of S&P's report, which discusses OCC's risk management in some detail, is available on OCC's public website: http://www.optionsclearing.com/components/docs/about/sp_rating.pdf

OCC also believes that it has appropriate internal controls in place. OCC's 2011 annual report contains a report by OCC's independent accountants, Deloitte & Touche ("**Deloitte**"), in which they conclude that:

> *"In our opinion, management's assertion that the Corporation [OCC] maintained effective internal control over clearing and settlement of options and futures transactions cleared by the Corporation [OCC] for the year ended December 31, 2011, is fairly stated, in all material respects, based on criteria established in the "Internal Control-Integrated Framework" issued by COSO."*

The annual report is available on OCC's public website at: http://www.optionsclearing.com/components/docs/about/annual-reports/occ_2011_annual_report.pdf

6.3 Without limiting the generality of the foregoing, the clearing agency's services or functions are designed to achieve the following objectives:

6.3.1 Where the clearing agency acts as a central counterparty, it rigorously controls the risks it assumes.

OCC controls the risks that it assumes as a central counterparty through a three-tiered risk management system consisting of rigorous membership standards, a state-of-the-art margin system, and a substantial clearing fund.

Membership Standards

The first line of defense consists of OCC's initial and ongoing membership standards. Firms are reviewed for minimum net capital, minimum profitability, operational systems and staffing. For a more detailed description of OCC's membership standards, please refer to Paragraph 3.1.

Margin

OCC's second line of defense against clearing member default is a clearing member's margin deposits. Margin refers to cash, letters of credit, eligible U.S. and Canadian government securities, debt securities of eligible government-sponsored enterprises, corporate debt and equity securities, money market fund shares or other forms of eligible collateral deposited by a clearing member to satisfy its margin requirement with OCC. At the end of 2011, OCC held approximately US$76.3 billion in aggregate clearing member margin deposits.

OCC's Rules state that clearing members representing options sellers or futures holders must collateralize positions either by making a deposit in lieu of margin (in the case of options) or by depositing margin in one or more of the forms listed above.

All margin deposits except letters of credit are held at securities depositories or banks. All obligations and non-cash margin deposits are marked to market daily. OCC haircuts the value of securities held as margin to provide a cushion against price fluctuations.

OCC was the first clearing organization in the world to develop a margin system based on options price theory and modern portfolio theory. In 2006, OCC introduced a new proprietary risk management system, System for Theoretical Analysis and Numerical Simulations ("**STANS**"), as a replacement to the TIMS methodology. OCC's margin system measures clearing member position risk and establishes margin requirements, which provides protection to clearing members and OCC against possible defaults.

The total margin requirement for an account consists of two (2) parts: the Net Asset Value ("**NAV**") calculation or mark to market component, which is the cost to liquidate a position at current market prices; and the risk component, which provides a cushion to cover two-day market risk. The additional risk component covers the market risk portion of the total margin requirement by means of dynamic expected shortfall ("**ES**") risk measures. These measures are obtained from a large-scale Monte Carlo implementation of a copula-based approach with heavy-tailed marginal distributions.

STANS simulates a set of 10,000 hypothetical market scenarios to produce a profit/loss distribution for each distinct clearing member portfolio. These simulated scenarios incorporate information extracted from the historical behavior of each individual security (risk factor) as well as its relationship to the behavior of other securities (risk factors). Scenarios are generated for more than 7,000 risk factors, including a broad range of individual equities, exchange-traded funds, stock indices, currencies and commodity products. OCC uses a dynamic model to update volatilities on a daily basis. Dependence among risk factors is reflected in three (3) ways. The base case is historical copula-based dependence, estimated from the historical data. The base case is supplemented by stress test simulations for single stock risk factors assuming perfectly correlated and independent (zero correlated) scenarios. The portfolio margin (risk) requirement is a function of ES measures from different dependence structure simulations. The ES measure is the mean beyond the Value at Risk cut-off level and reflects the expected tail loss. The total margin requirement for a given portfolio is the sum of NAV and risk component as described above.

Long securities options positions carried in clearing members' customers' accounts are segregated from other positions, free of any lien in favour of OCC, unless the clearing member submits spread instructions to OCC designating customer long positions to be released from segregation. A clearing member may only submit such instructions if it simultaneously carries a short position in options for the same customer and the margin required to be deposited by the customer on the short position has been reduced as a result of carrying the long position.

OCC continuously monitors intra-day price changes and is empowered to issue intra-day margin calls, should market or other conditions warrant such action. The net asset value of every account is recalculated multiple times throughout the day using start-of-day positions and current market prices and losses are compared to start-of-day risk requirements. If losses exceed a predetermined threshold, an intra-day margin call is initiated to collect the full amount of the loss.

STANS and Portfolio Revaluation enable OCC to maintain adequate but not excessive margin requirements. Inadequate collateral requirements threaten market integrity while excessive requirements discourage trading and reduce liquidity. All of OCC's risk management systems and policies are continually monitored and enhanced. Backtesting results are reviewed daily, and the overall adequacy of OCC's margin methodology is reviewed at least yearly.

The STANS RISK application is available to all clearing members via a secure Web site and it allows them to measure, monitor and manage the level of risk exposure of their portfolios. It is also designed to be used as a flexible risk analysis tool to identify areas of increased risk and dependence and to offer a new set of analytical tools to analyze the risk of clearing members' portfolios at much more detailed levels. OCC staff uses dynamic functionality in the application to recalculate risk exposure using hypothetical changes to clearing member portfolios.

OCC operates cross-margin programs with the Chicago Mercantile Exchange Inc. ("**CME**") and ICE Clear US, Inc., which provide for the calculation of margins for eligible index options, options on exchange-traded fund shares, futures and options on futures as if they were held within a single account. OCC also offers internal cross-margining for intermarket hedge positions where OCC is the clearing house on both the securities and futures side. OCC is currently seeking regulatory approval to add security futures to such cross-margin programs, as applicable.

Cross-margining involves a sophisticated analysis of the economic risk inherent in a clearing member's intermarket positions when viewed on a combined basis. This analysis results in overall savings in clearing member margin requirements. At the end of 2007, the cross-margin program reduced participants' combined daily margin requirements by approximately US$3.2 billion, while enhancing the financial integrity of the clearance and settlement system. Cross-margining increases the pricing

efficiency and liquidity of options and futures markets while decreasing the over-collateralization of intermarket hedged position risk at the clearinghouse level.

Clearing Fund

The third line of defense against clearing member default is the members' contributions to the Clearing Fund. A member's Clearing Fund deposit is based on its proportionate share of positions, computed monthly. Clearing Fund deposits must be in the form of cash or government securities, as the Clearing Fund is intended to provide OCC with a pool of highly liquid assets. The entire Clearing Fund is available to cover potential losses in the event that a defaulting member's margin and Clearing Fund deposits are inadequate or not immediately available to fulfill that member's outstanding financial obligations. The Clearing Fund may also be used to reimburse OCC for losses sustained due to the failure of a bank or another clearing organization to meet an obligation to OCC. At the end of 2011, OCC's Clearing Fund totaled nearly US$2.9 billion.

The overall size of the Clearing Fund is based upon total margin requirements and open interest and can be replenished via additional assessments upon its clearing members. Therefore, OCC's Clearing Fund expands and contracts in size in relation to market exposure. An individual clearing member's Clearing Fund deposit is based on the relative size of its open positions, subject to a minimum required deposit. In most instances, the minimum required deposit is US$150,000. In May 2012, the sizing of the clearing fund will change from being calculated as a percentage of total aggregate margins to a scenario based approach that models the default of our largest member under stressed market conditions.

The Clearing Fund mutualizes the risk of default among all clearing members. Losses are charged on a proportionate basis against all other Clearing Member's contributions. The proportionate share is a fraction calculated as a respective members' computed contribution to the clearing fund divided by the sum of all clearing members' computed contributions to the clearing fund. Therefore, each clearing member is required to share proportionately in any Clearing Fund assessment.

Clearing Members that become insolvent will be suspended by OCC and no further trades will be accepted on behalf of the member. Existing positions will be closed-out, and collateral will be liquidated in order to satisfy outstanding obligations.

In the event of a default that requires the use of the Clearing Fund, Clearing Members are obligated to replenish their contribution via assessment. If, after the first replenishment, a Clearing Member wishes to withdraw from OCC, they will only be allowed to do so after closing out or transferring all of their open positions.

In the unlikely event that Clearing Fund deposits prove to be inadequate to cover OCC's losses, each clearing member may be assessed an additional amount equal to the amount of its initial deposit. A clearing member is liable for further assessments until the balance of OCC's losses are covered or the clearing member has withdrawn from membership in OCC.

6.3.2 The clearing agency minimizes principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.

OCC does not handle any physical settlements itself, but either uses a correspondent clearinghouse (equity option exercises, like stock trades, are settled at NSCC) or arranges for settlement to take place directly between two (2) clearing members on a delivery vs. payment basis (*e.g.*, physical settlement of treasury futures). In either situation steps are taken to minimize principal risk. Principal risk refers to the potential loss associated with the failure of a counterparty to fulfill its obligations.

6.3.3 Final settlement occurs no later than the end of the settlement day. Intraday or real-time finality is provided where necessary to reduce risks.

Early each morning, OCC presents drafts to approved settlement banks, directing the bank to (i) debit the accounts of specified clearing members and credit OCC's account with the settlement amounts owed by the respective clearing members, and (ii) debit OCC's account and credit the accounts of specified clearing members with the settlement amounts owed by OCC to those clearing members. By agreement, a bank's acceptance of OCC's draft irrevocably obligates it to complete the settlement. The deadline for accepting drafts on clearing member accounts is 9:00 a.m. Chicago time, although banks ordinarily accept OCC's drafts substantially in advance of that time. Final (irrevocable) settlement thus occurs by 9:00 a.m. Chicago time, although interbank transfers moving funds from banks where OCC is a net payee to banks where OCC is a net payor occur later the same day.

In cases where OCC's markets experience extraordinary intraday volatility OCC may issue margin calls against members' accounts where excessive risk is observed. By rule our members must satisfy these margin calls in cash within one (1) hour of being notified of the call. Failure to meet margin calls in a timely manner may result in suspension of the Clearing Member.

6.3.4 Where the clearing agency extends intraday credit to participants, including a clearing agency that operates net settlement systems, it institutes risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle.

OCC maintains a US$2 billion syndicated credit facility, secured by Treasury securities held as clearing fund deposits, to provide emergency liquidity. OCC's immediate liquidity demands are typically the result of settlement obligations arising from trades initiated the prior trading day or from the expiration of cash settled index option contracts. In order to determine the size of its committed credit facility, OCC reviews its historically largest settlements and looks to set the facility such that it would have provided coverage adequate to most of the largest liquidity demands produced by a single family of firms defaulting at the same time.

Since 2007, individual settlements have exceeded that amount fewer than ten (10) times. In addition to the credit facility, OCC would have access to its own operating cash, cash clearing fund deposits, and any cash margin deposited by the defaulting clearing member. In addition, OCC was designated by FSOC as a "systemically important" financial market utility on June 18, 2012, and subsequently it is possible for OCC to obtain emergency liquidity from the Federal Reserve System, secured by clearing fund assets not otherwise pledged. As a result of this designation, discount and borrowing privileges granted under Title VIII of Dodd-Frank must comply with section 10B of the *Federal Reserve Act*.

6.3.5 Assets used to settle the ultimate payment obligations arising from securities transactions carry little or no credit or liquidity risk. If central bank money is not used, steps are to be taken to protect participants in settlement services from potential losses and liquidity pressures arising from the failure of the cash settlement agent whose assets are used for that purpose.

OCC is unable at this time to effect settlements using central bank money. Clearing members choose from a list of OCC approved settlement banks through which they effect settlements with OCC, and assume the risk of the selected bank's insolvency prior to settlement. Clearing Members choose a settlement bank for each account. All transactions for a particular account are required to use that same settlement bank. OCC's approval process includes review of the bank's capitalization, regulatory standing and compliance with minimum Basel standards. OCC reviews the capitalization, owner's equity, and credit rating of settlement banks prior to approval. OCC also monitors the capital level of settlement banks on a quarterly basis and for timely performance on an on-going basis.

OCC has nine (9) U.S. Settlement Banks, and three (3) EURO Settlement Banks (JPMorgan Chase Bank, N.A. (London), BMO Harris Bank N.A. and Brown Brothers Harriman and Co.). The EURO banks are also U.S. Dollar Settlement Banks. Choice of Settlement Bank can be switched overnight, provided the member has accounts open at the respective bank.

6.3.6 If the clearing agency establishes links to settle cross-border trades, it designs and operates such links to reduce effectively the risks associated with cross-border settlements.

Not applicable. OCC does not maintain links to settle cross-border trades.

6.4 The clearing agency engaging in activities not related to settlement services carries on such activities in a manner that prevents the spillover of risk to the clearing agency that might affect its financial viability or negatively impact any of the participants in the settlement service.

Not applicable. OCC does not engage in any activities not related to its role as a central counterparty.

7. Systems And Technology

7.1 For its settlement services systems, the clearing agency:

(a) develops and maintains

(i) reasonable business continuity and disaster recovery plans,

OCC maintains robust business continuity and disaster recovery plans. First, OCC maintains a primary data processing center based in the south-western region of the U.S. and has established an alternate business center at a different location than the primary data center that is staffed with personnel who have daily responsibility for business functions and production support. The alternative business center also serves as OCC's storage bunker facility. OCC uses synchronous data replication technology between OCC's primary data center and its alternate business center (*i.e.*, bunker). This technology ensures each write is acknowledged by both the primary and secondary data store before the next write command is accepted.

Second, OCC has a dedicated alternate data processing center located in the Midwest U.S. Independent from the alternate data center, OCC has also established its primary business operations facility in Chicago, Illinois, which is supported by a series of redundant power sources.

Third, OCC has a dedicated business user recovery site in the Chicago suburbs, separate from the alternate data processing center, where certain Chicago based employees could relocate in the event that OCC's Chicago offices become unavailable. OCC also uses the business user recovery site under certain Homeland Security alert levels to disperse its staff.

Fourth, OCC currently maintains sufficient personnel in both geographic locations to independently handle all of OCC's critical clearance, settlement and risk management processes if so required. Additionally, key OCC staff has the capability to securely connect to either data center or either business center from outside of OCC facilities.

Fifth, OCC maintains communication and storage networks that are supported by redundant systems to ensure re-routing in the event of outages from network failure or catastrophe.

Sixth, OCC maintains a multi-level Business Continuity Program, in which each level of documented plan is designed to provide the necessary processes, procedures and assignments for critical business continuance with minimal service level impacts. The plans cover company-wide, management team and departmental matters.

Seventh, OCC's Disaster Recovery group operates a Disaster Recovery Testing Program to ensure OCC's ability to recover and resume processing after a disaster in accordance with parameters established in the *Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System* ("**Interagency Paper on U.S. Financial System**"). OCC's policy is to perform Disaster Recovery/Business Continuity ("**DR/BC**") testing at least quarterly and within one (1) month of significant systems and/or infrastructure upgrades. Historically, OCC conducts nine (9) or ten (10) DR/BC tests annually. The 2011 DR/BC schedule included fifteen test events.

(ii) an adequate system of internal control,

OCC maintains an effective system of internal control. See the discussion of criterion 6.2 above.

(iii) adequate information technology general controls, including controls relating to information systems operations, information security, change management, problem management, network support, and system software support;

OCC maintains adequate information technology general controls, including controls relating to information systems operations, information security, change management, problem management, network support, and system software support. Documentation of information technology controls, including those referred to in criterion 7.1(a)(iii), is routinely reviewed by OCC's internal auditors. In addition, please note that the independent accountants' report on internal controls quoted in the discussion of criterion 6.2 above related to "internal control over clearing and settlement of options and futures transactions cleared by [OCC]." The accountants' examination included "obtaining an understanding of the internal control over clearing and settlement of options and futures transactions cleared by [OCC and] testing and evaluating the design and operating effectiveness of the internal control . . . ." That examination therefore also included review of documentation for information technology controls.

(b) on a reasonably frequent basis, and in any event, at least annually, and in a manner that is consistent with prudent business practice,

(i) makes reasonable current and future capacity estimates,

(ii) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner,

(iii) tests its business continuity and disaster recovery plans;

Capacity Testing

The SEC requires self-regulatory organizations ("**SROs**") under its jurisdiction, including registered clearing agencies, to take appropriate measures to ensure that their systems "have the capacity to accommodate current and reasonably anticipated future trading volume levels adequately and to respond to localized emergency conditions". SROs are required to establish comprehensive planning and assessment programs to:

- establish current and future capacity estimates;
- conduct capacity stress tests periodically; and
- assess whether the affected systems can perform adequately in light of estimated capacity levels and possible threats to the systems.

OCC's policy is to evaluate capacity at least annually. This is done each October by determining (i) whether transaction volume during the past twelve (12) months exceeded OCC's previous high transaction volume day; or (ii) whether there have been significant changes to OCC's technology systems since the last High Volume Test ("**HVT**"). If either of these conditions exist, OCC will schedule a HVT to be conducted during the next yearly test schedule. The HVT will be performed to ensure that OCC maintains sufficient systems capacity (2.5 times OCC's prior high transaction volume) to process transaction volume (*e.g.*, if record daily transaction volume is 2.2 million transactions, the HVT will test OCC's ability to process 5.5 million transactions). If neither of the above conditions occurs, then a HVT will be conducted at least every other year. The last HVT was conducted March 5-6, 2011. OCC has not exceeded capacity on any one day.

Recovery Testing

As described in paragraph 7.1(a)(i), OCC's Disaster Recovery group operates a Disaster Recovery Testing Program to ensure OCC's ability to recover and resume processing after a disaster in accordance with parameters established in the Interagency Paper on U.S. Financial System. OCC's policy is to perform Disaster Recovery/Business Continuity ("DR/BC") testing at least quarterly and within one (1) month of significant systems and/or infrastructure upgrades. Historically, OCC conducts nine (9) or ten (10) DR/BC tests annually. The 2011 DR/BC schedule included fifteen test events.

Other than planned testing, there have been no incidents that have required the relocation of processing to the alternate data center.

(c) promptly notifies the regulator of any material systems failures.

Under the SEC's Automation Review Policy, OCC is required to give the SEC prompt notice of any significant systems problems or other operational impediments, including timely information on the nature, impact, and cause of the problem and steps OCC is taking to mitigate the damage and prevent a recurrence.

7.2 The clearing agency annually engages a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards regarding its compliance with section 7.1(a).

OCC's business continuity plan, disaster recovery plan and technology general controls are reviewed by OCC's Internal Audit department. In addition, IT internal controls are reviewed by the IT Controls Compliance team to ensure adequacy of controls in these areas.

OCC's independent auditors provide the aforementioned opinion based on a requirement contained in SEC Release No. 34-16900, Regulation of Clearing Agencies.

OCC annually engages its independent auditors to review and report on its internal controls. Their most recent report is included in OCC's 2010 annual report, which is available on OCC's public website at:
http://www.optionsclearing.com/components/docs/about/annual-reports/occ_2011_annual_report.pdf

OCC does not engage any third party to report specifically on the matters covered in criteria 7.1(a)(i) and (iii), but certain aspects of these matters may be reviewed as part of the audit of internal controls described in section 9.1 of this Application.

8. Financial Viability and Reporting

8.1 The clearing agency has sufficient financial resources for the proper performance of its functions and to meet its responsibilities and allocates sufficient financial and staff resources to carry out its functions as a clearing agency in a manner that is consistent with any regulatory requirements.

OCC believes that it has sufficient financial resources for the proper performance of its functions and to meet its responsibilities. At the beginning of each year, OCC sets clearing fees based on a conservative volume forecast, with the intent of returning any excess profits to its clearing members through clearing fee refunds. For the 2008-2011 period, refunds amounted to US$64,651,000 (2008), US$57,928,000 (2009), US$38,363,000 (2010) and US$79,629,667 (2011). OCC has the ability to manage retained earnings by adjusting refund amounts. Since 1998, OCC has had a policy of maintaining a retained earnings balance equal to 45% of the prior year's cash operating expenses. In 2009, OCC reviewed that policy with the

assistance of an investment banker, and concluded that the policy continued to be adequate for OCC's working capital and routine capital expenditure needs. If expenses were to exceed the amounts budgeted, or if OCC's Performance Committee were to approve an unbudgeted project, the effect would be to reduce the amount of the current year's refund, so profits not yet refunded provide an additional financial resource.

OCC is satisfied that it allocates sufficient financial and staff resources to carry out its functions as a clearing agency in a manner that is consistent with applicable regulatory requirements.

9. Operational Reliability

9.1 The clearing agency has procedures and processes to ensure the provision of accurate and reliable settlement services to participants.

Quality Standards

OCC has procedures and processes to ensure the provision of accurate and reliable settlement services to participants, and has done so for nearly 40 years. At the beginning of each year, OCC's Board approves Quality Standards against which the performance of OCC's systems and staff is measured.

The OCC 2012 Quality Standards consist of 43 processing commitments across the four (4) following categories:

1. **Data Integrity**: Standards focused on the accurate presentation and production of twelve (12) reports, eighteen (18) records, eighteen (18) screens, five (5) web-based reports and twelve (12) customer offered services.

2. **System Availability**: Standards that measure the availability of five (5) specific services and specific websites within a given timeframe.

3. **Data Timeliness**: Service Levels that ensure that data processing and delivery are completed within defined timeframes during daily and expiration processing.

4. **Telephone and Recorded Calls Availability**: Ensures critical telecommunication services are available to support operations.

At each Performance Committee meeting during the course of the year, management reviews performance goals in each of the above categories since the last report. At year end, performance against Quality Standards is one of the factors considered by the Performance Committee in establishing incentive compensation pools and awarding incentive compensation to senior management.

Internal Audit Department

The Internal Audit Department operates under a charter approved by the OCC Audit Committee, and reports functionally to the Audit Committee and administratively to OCC's Chairman and Chief Executive Officer. The department is currently comprised of eight (8) full time positions, including a First Vice President, two (2) managers, four (4) senior IS auditors and an associate auditor. Each member of the department has a bachelor's degree and is certified; certain department members hold two (2) or more certifications and advanced degrees.

The primary focus of the Internal Audit Department's testing is on core clearing and settlement operations, risk management and supporting information technology areas. In addition, other areas within the company are tested by Internal Audit using a risk-based approach.

An audit report is issued at the completion of each audit project. The audit report includes management action plans in response to items raised by Internal Audit, and such items are tracked through resolution. The Audit Committee is provided with periodic updates on management's progress addressing audit recommendations.

Internal Control Reporting

As a registered clearing agency, OCC has a longstanding internal control reporting requirement under SEC Release 34-16900 (June 1980). To meet that requirement, each year OCC obtains an attestation report from Deloitte regarding management's assertion on the effectiveness of OCC's internal control. The form of report issued in connection therewith has evolved over the years as professional auditing and attestation standards issued by the American Institute of Certified Public Accountants have been updated.

In 2004, in parallel with public company efforts pursuant to the *Sarbanes-Oxley Act of 2002*, OCC created an initial baseline of structured documentation to support management's assessment of internal controls over clearing and settlement operations using criteria specified in the Committee of Sponsoring Organizations' ("**COSO**") *Internal Control Integrated Framework* ("**COSO Framework**"). This information consisted of matrixes, with links to underlying documentation in support of internal control activities performed by OCC staff. Several internal control matrixes across three (3) broad areas were created, as follows:

- **Enterprise Level Controls**: This matrix encompasses many business areas within OCC and covers the following four (4) areas of the COSO Framework – Control Environment, Risk Assessment, Information and Communication and Monitoring (the COSO "Control Activities" area is covered in the core clearing and settlement and information technology control matrixes, which are discussed below).

- **Core Clearing and Settlement Controls**: This includes four (4) matrixes covering Positions Processing, Prices and Margins, Master File Maintenance, and Collateral and Settlement.

- **Information Technology Controls**: This includes six (6) matrix areas including Change Management, Development and Implementation, Production Operations, Technology Infrastructure, Business Continuity and D/R, and Security.

This documentation comprises the equivalent of OCC's internal control "books and records" in support of management's assertion regarding internal control over clearing and settlement operations. The internal control books and records are maintained on an ongoing basis. OCC's Project Management Office ("**PMO**") has the responsibility for ensuring these matrixes are maintained. The PMO works with departments throughout OCC to verify the controls and documentation are reviewed and validated on an annual basis unless there's been a major implementation that affects existing controls.

Ongoing, internal control documentation is tested by OCC's Internal Audit department, and is made available to Deloitte, in line with their practices for performing an audit of internal control over clearing and settlement operations.

10. Protection of Assets

10.1 The clearing agency has established accounting practices, internal controls, and safekeeping and segregation procedures to protect the assets that are held by the clearing agency.

OCC has established accounting practices, internal controls, and safekeeping and segregation procedures to protect the assets that it holds. Positions that clearing members hold for customers are required to be held in segregated customers' accounts at OCC. Proprietary positions are required to be held in separate firm accounts.

OCC adheres to all SEC and CFTC regulatory rules that require separation of firm and customer assets. OCC maintains multiple accounts, at each of its banks, in accordance with the rules set forth by the regulatory agencies. A segregation of duties exists across multiple departments within OCC along with controls in each department. These controls are audited on a regular basis by internal and external auditors.

11. Outsourcing

11.1 Where the clearing agency has outsourced any of its key functions, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices. The outsourcing arrangement provides regulatory authorities with access to all data, information, and systems maintained by the third party service provider required for the purposes of regulatory oversight of the agency.

OCC has not outsourced any of its key functions.

12. Information Sharing and Regulatory Cooperation

12.1 For regulatory purposes, the clearing agency cooperates by sharing information or otherwise with the Commission and its staff, self-regulatory organizations, exchanges, quotation and trade reporting systems, alternative trading systems, other clearing agencies, investor protection funds, and other appropriate regulatory bodies.

OCC cooperates with all appropriate regulatory bodies, sharing information on both a formal and informal basis. On a monthly basis OCC shares the results of its surveillance activities for common members with other DEAs or exchanges including FINRA, CME and CBOE, and receives like information in return. In addition OCC transmits various trade and post-trade activity for surveillance purposes to various regulators and exchanges.

With regard to applicants that are domiciled in Canada, OCC contacts IIROC for a positive recommendation prior to granting approval. IIROC's role would be limited to that of any DEA. OCC staff would take the comments of an applicant's respective DEA into consideration when preparing its recommendation to the Membership/Risk Committee, though final approval rests with the Membership/Risk Committee. OCC does not provide the results of its surveillance activities for Canadian clearing members to IIROC on a regular basis.

13. Enclosures

In support of this application, we enclose the following:

(i) a verification statement from OCC confirming our authority to prepare and file this application and confirming the truth of the facts contained herein at Appendix "A"; and

(ii) a draft form of order.

If you have any questions or require anything further please do not hesitate to contact us.

Respectfully,

Terence W. Doherty

TWD/mm

cc: James E. Brown, *The Options Clearing Corporation*

[DRAFT ONLY]

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

AND

IN THE MATTER OF
THE OPTIONS CLEARING CORPORATION

ORDER
(Section 147 of the Act)

WHEREAS The Options Clearing Corporation (**OCC**) has filed an application dated August 17, 2012 (**Application**) with the Ontario Securities Commission (**Commission**) requesting an order pursuant to section 147 of the Act exempting OCC from the requirement to be recognized by the Commission as a clearing agency pursuant to section 21.2(0.1) of the Act.

AND WHEREAS OCC has represented to the Commission that:

1.1 OCC is a corporation organized under the laws of the state of Delaware and was founded in 1973.

1.2 OCC is registered as a clearing agency under Section 17A of the United States (**U.S.**) Securities Exchange Act of 1934 (**Exchange Act**) and as a derivatives clearing organization (**DCO**) under Section 7a-1 of the U.S. Commodity Exchange Act (**CEA**). It has been designated by the U.S. Financial Stability Oversight Council as a "systematically important" financial market utility under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

1.3 In the U.S., OCC operates under the jurisdiction of both the Securities and Exchange Commission (**SEC**) and the Commodity Futures Trading Commission (**CFTC**). Under the SEC's jurisdiction, OCC clears or is qualified to clear transactions in "standardized options," as defined in SEC regulations. These include options on common stocks and other equity issues, stock indices (including volatility, variance, and strategy-based indices), foreign currencies, interest rate composites, and credit default options. Under SEC jurisdiction, OCC also clears futures on single equity issues and narrow-based stock indices (**security futures**). As a registered DCO under CFTC jurisdiction, OCC offers clearing and settlement services for transactions in commodity futures (*i.e.*, futures other than security futures) and options on commodity futures.

1.4 The Exchange Act establishes conditions that registered clearing agencies must satisfy relating to, among other things, the clearing agency's capacity to promptly and accurately clear and settle transactions, safeguarding of funds and securities, enforcement of the clearing agency's rules, equitable allocation of fees and charges among participants, and avoiding any unnecessary burden on competition. Similarly, the CEA establishes core principles with which registered DCOs must comply relating to, among other things, financial resources, appropriate admission and eligibility standards for participants, risk management, timely completion of settlements, ensuring the safety of funds and enforcement of the DCO's rules.

1.5 Because the overwhelming majority of OCC's business relates to clearing securities, the CFTC historically has deferred to the SEC as the lead regulator except in connection with matters specifically related to the clearing of transactions in commodity futures, options on such futures or other products subject to the CFTC's jurisdiction and compliance with the CEA and the CFTC's regulations thereunder.

1.6 In Quebec, OCC has received an exemption from certain requirements of the *Derivatives Act* (Quebec) in connection with its business and operations as a clearing house, subject to conditions.

1.7 OCC is owned equally by the following five participant securities exchanges that trade options, all of which are currently registered with the SEC:

(i) Chicago Board Options Exchange;

(ii) International Securities Exchange;

(iii) NYSE Amex (formerly the American Stock Exchange)

(iv) NYSE Arca (formerly the Pacific Stock Exchange); and

(v) NASDAQ OMX PHLX (formerly the Philadelphia Stock Exchange).

1.8 In addition to the five stockholder exchanges, OCC also performs clearing and settlement functions for other securities and futures exchanges.

1.9 OCC currently clears options traded on the U.S. securities exchanges named above, security futures traded on OneChicago, LLC, and commodity futures and in some cases options on commodity futures traded on four U.S. futures exchanges. OCC also clears stock loan transactions executed on a broker-to-broker basis and on AQS, an electronic trading platform regulated by the SEC and by the U.S. Financial Industry Regulatory Authority as an automated trading system. OCC intends to clear OTC derivatives beginning in late 2012 or the first quarter of 2013.

1.10 OCC operates as a not-for-profit industry utility and refunds excess revenues to its members (**Clearing Members)**.

1.11 OCC currently clears the following products:

(i) Options on equity securities (including exchange-traded funds);

(ii) Options on stock indices (including volatility indices);

(iii) Foreign currency options;

(iv) Interest rate options (cash settled options on the yields of U.S. Treasury securities);

(v) Credit default options;

(vi) Interest rate futures;

(vii) Security futures, including single stock futures and narrow-based stock index futures;

(viii) Broad-based stock index, volatility and variance futures;

(ix) Options on commodity futures; and

(x) Stock loan transactions.

1.12 OCC does not have any office or maintain other physical installations in Ontario or any other Canadian province or territory.

1.13 OCC has approximately 120 Clearing Members, who are U.S. registered broker-dealers, futures commission merchants and non-U.S. securities firms.

1.14 OCC allows entities that have a head office or principal place of business in Ontario and dealers that are registered in Ontario that meet the criteria set out in its Rules (collectively, **Ontario Clearing Members**) to become Clearing Members.

1.15 OCC currently has five Clearing Members that are Ontario Clearing Members.

1.16 Additionally, OCC currently has one approved clearing bank with a head office or principal place of business in Ontario. As an OCC approved clearing bank, the bank provides settlement services for exchange transactions on behalf of the Ontario Clearing Members. Such services may include, but not be limited to, the payment and release of margin, payment and rebate of fees, and the payment and withdrawal of option premiums.

1.17 OCC initiates no direct contact with Canadian clients of Ontario Clearing Members.

1.18 OCC submits that it does not pose a significant risk to the Ontario capital markets and is subject to an appropriate regulatory and oversight regime in a foreign jurisdiction.

1.19 OCC maintains rigorous Clearing Member criteria that all applicants must satisfy before their applications are accepted, including fitness criteria, review of corporate constating documentation, financial standards, operational standards, appropriate registration qualifications with applicable statutory regulatory authorities, and OCC applies a due diligence process to ensure that all applicants meet the required criteria.

1.20 There are no material differences in terms of membership standards and financial requirements between Ontario Clearing Members and other Clearing Members.

1.21 OCC utilizes processes to minimize systemic risk, which processes include operational and financial criteria for all clearing members, margining and financial protections, the maintenance of a clearing/guarantee fund, sound information systems, comprehensive internal controls, ongoing monitoring of clearing members, and appropriate oversight by the Board of Directors.

1.22 As OCC has Ontario Clearing Members, it is considered by the Commission to be "carrying on business as a clearing agency" in Ontario. OCC cannot carry on business in Ontario as a clearing agency unless it is recognized by the OSC as a clearing agency under subsection 21.2(0.1) of the Act or exempted from such recognition under section 147 of the Act.

1.23 Based on the facts and representations set out in the Application, OCC satisfies the criteria set out in Schedule "A" to this order.

AND WHEREAS based on the Application and the representations of OCC to the Commission, the Commission has determined that OCC satisfies the criteria set out in Schedule "A" and that the granting of exemption from the requirement to be recognized as a clearing agency would not be prejudicial to the public interest;

AND WHEREAS the Commission will monitor developments in international and domestic capital markets and OCC's activities on an ongoing basis to determine whether it is appropriate that OCC continue to be exempted from the requirement to be recognized as a clearing agency and, if so, whether it is appropriate that it continue to be exempted subject to the terms and conditions in this order;

IT IS ORDERED by the Commission that pursuant to section 147 of the Act, OCC is exempt from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the Act.

PROVIDED THAT OCC complies with the terms and conditions attached hereto as Schedule "B".

DATED _____, 2012.

SCHEDULE "A"

Criteria for Exemption from Recognition by the OSC as a clearing agency pursuant to section 21.2(0.1) of the OSA

PART 1 GOVERNANCE

1.1 The governance structure and governance arrangements of the clearing agency ensures:

(a) effective oversight of the clearing agency;

(b) the clearing agency's activities are in keeping with its public interest mandate;

(c) fair, meaningful and diverse representation on the governing body (Board) and any committees of the Board, including a reasonable proportion of independent directors;

(d) a proper balance among the interests of the owners and the different entities seeking access (participants) to the clearing, settlement and depository services and facilities (settlement services) of the clearing agency;

(e) the clearing agency has policies and procedures to appropriately identify and manage conflicts of interest;

(f) each director or officer of the clearing agency, and each person or company that owns or controls, directly or indirectly, more than 10 percent of the clearing agency is a fit and proper person; and

(g) there are appropriate qualifications, limitation of liability and indemnity provisions for directors and officers of the clearing agency.

PART 2 FEES

2.1 All fees imposed by the clearing agency are equitably allocated. The fees do not have the effect of creating unreasonable barriers to access.

2.2 The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 3 ACCESS

3.1 The clearing agency has appropriate written standards for access to its services.

3.2 The access standards and the process for obtaining, limiting and denying access are fair and transparent. A clearing agency keeps records of

(a) each grant of access including, for each participant, the reasons for granting such access, and

(b) each denial or limitation of access, including the reasons for denying or limiting access to an applicant.

PART 4 RULES AND RULEMAKING

4.1 The clearing agency's rules are designed to govern all aspects of the settlement services offered by the clearing agency, and

(a) are not inconsistent with securities legislation,

(b) do not permit unreasonable discrimination among participants, and

(c) do not impose any burden on competition that is not necessary or appropriate.

4.2 The clearing agency's rules and the process for adopting new rules or amending existing rules should be transparent to participants and the general public.

4.3 The clearing agency monitors participant activities to ensure compliance with the rules.

4.4 The rules set out appropriate sanctions in the event of non-compliance by participants.

PART 5 DUE PROCESS

5.1 For any decision made by the clearing agency that affects an applicant or a participant, including a decision in relation to access, the clearing agency ensures that:

(a) an applicant or a participant is given an opportunity to be heard or make representations; and

(b) the clearing agency keeps a record of, gives reasons for, and provides for appeals or reviews of, its decisions.

PART 6 RISK MANAGEMENT

6.1 The clearing agency's settlement services are designed to minimize systemic risk.

6.2 The clearing agency has appropriate risk management policies and procedures and internal controls in place.

6.3 Without limiting the generality of the foregoing, the clearing agency's services or functions are designed to achieve the following objectives:

1. Where the clearing agency acts as a central counterparty, it rigorously controls the risks it assumes.

2. The clearing agency minimizes principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.

3. Final settlement occurs no later than the end of the settlement day. Intraday or real-time finality is provided where necessary to reduce risks.

4. Where the clearing agency extends intraday credit to participants, including a clearing agency that operates net settlement systems, it institutes risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle.

5. Assets used to settle the ultimate payment obligations arising from securities transactions carry little or no credit or liquidity risk. If central bank money is not used, steps are to be taken to protect participants in settlement services from potential losses and liquidity pressures arising from the failure of the cash settlement agent whose assets are used for that purpose.

6. If the clearing agency establishes links to settle cross-border trades, it designs and operates such links to reduce effectively the risks associated with cross-border settlements.

6.4 The clearing agency engaging in activities not related to settlement services carries on such activities in a manner that prevents the spillover of risk to the clearing agency that might affect its financial viability or negatively impact any of the participants in the settlement service.

PART 7 SYSTEMS AND TECHNOLOGY

7.1 For its settlement services systems, the clearing agency:

(a) develops and maintains,

(i) reasonable business continuity and disaster recovery plans,

(ii) an adequate system of internal control,

(iii) adequate information technology general controls, including controls relating to information systems operations, information security, change management, problem management, network support, and system software support;

(b) on a reasonably frequent basis, and in any event, at least annually, and in a manner that is consistent with prudent business practice,

(i) makes reasonable current and future capacity estimates,

(ii) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner,

(iii) tests its business continuity and disaster recovery plans; and

(c) promptly notifies the regulator of any material systems failures.

7.2 The clearing agency annually engages a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards regarding its compliance with section 7.1(a).

PART 8 FINANCIAL VIABILITY AND REPORTING

8.1 The clearing agency has sufficient financial resources for the proper performance of its functions and to meet its responsibilities and allocates sufficient financial and staff resources to carry out its functions as a clearing agency in a manner that is consistent with any regulatory requirements.

PART 9 OPERATIONAL RELIABILITY

9.1 The clearing agency has procedures and processes to ensure the provision of accurate and reliable settlement services to participants.

PART 10 PROTECTION OF ASSETS

10.1 The clearing agency has established accounting practices, internal controls, and safekeeping and segregation procedures to protect the assets that are held by the clearing agency.

PART 11 OUTSOURCING

11.1 Where the clearing agency has outsourced any of its key functions, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices. The outsourcing arrangement provides regulatory authorities with access to all data, information, and systems maintained by the third party service provider required for the purposes of regulatory oversight of the agency.

PART 12 INFORMATION SHARING AND REGULATORY COOPERATION

12.1 For regulatory purposes, the clearing agency cooperates by sharing information or otherwise with the Commission and its staff, self-regulatory organizations, exchanges, quotation and trade reporting systems, alternative trading systems, other clearing agencies, investor protection funds, and other appropriate regulatory bodies.

SCHEDULE "B"

Terms and Conditions

REGULATION OF OCC

1. OCC will maintain its registration as a clearing agency with the SEC and as a DCO with the CFTC and will continue to be subject to the regulatory oversight of the SEC and CFTC.

2. OCC will continue to meet the Criteria for Exemption from Recognition as a Clearing Agency as set out in Schedule "A".

FILING REQUIREMENTS

SEC/CFTC Filings

3. OCC will provide staff of the Commission, concurrently, the following information to the extent that it is required to provide to or file such information with the SEC or the CFTC:

   (a) the annual audited financial statements of OCC;

   (b) details of any material legal proceeding instituted against it;

   (c) notification that OCC has failed to comply with an undisputed obligation to pay money or deliver property to a Clearing Member for a period of thirty days after receiving notice from the Clearing Member of OCC's past due obligation;

   (d) notification that OCC has instituted a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate OCC or has a proceeding for any such petition instituted against it;

   (e) the appointment of a receiver or the making of any voluntary arrangement with creditors;

   (f) changes and proposed changes to its bylaws, rules, operations manual, participant agreements and other similar instruments or documents which contain any contractual terms setting out the respective rights and obligations between OCC and Clearing Members or among Clearing Members;

   (g) A summary of risk management test results related to the adequacy of required margin and the level of the guaranteed fund, including but not limited to stress testing and back testing results; and

   (h) new services or clearing of new types of products to be offered to Ontario Clearing Members or services or products that will no longer be available to Ontario Clearing Members.

Prompt Notice

4. OCC will promptly notify staff of the Commission of any of the following:

   (a) a material change to its business or operations or the information in the Application;

   (b) a material problem with the clearance and settlement of transactions in contracts that could materially affect the safety and soundness of OCC;

   (c) an event of default by a Clearing Member; and

   (d) a material change or proposed material change in OCC's status as a derivatives clearing agency or DCO or to the regulatory oversight by the SEC or the CFTC.

Quarterly Reporting

5. OCC will maintain the following updated information and submit such information to the Commission in a manner and form acceptable to the Commission on at least a quarterly basis, and at any time promptly upon the request of staff of the Commission:

(a) a current list of all Ontario Clearing Members;

(b) a list of all Ontario Clearing Members against whom disciplinary action has been taken in the previous quarter by OCC, or by the SEC or the CFTC with respect to activities on OCC;

(c) a list of all investigations by OCC relating to Ontario Clearing Members;

(d) a list of all Ontario applicants who have been denied Clearing Member status in OCC in the previous quarter;

(e) the average daily volume and value of trades cleared during the previous quarter for each Ontario Clearing Member by asset class;

(f) the average daily volume and value of assets loaned through OCC's stock loan facility during the previous quarter for each Ontario Clearing Member;

(g) the portion of total volume and value of trades cleared during the previous quarter for all Clearing Members that represents the total volume and value of trades cleared during the previous quarter for each Ontario Clearing Member;

(h) the portion of total volume and value of assets loaned during the previous quarter for all Clearing Members that represents the total volume and value of assets loaned during the previous quarter for each Ontario Clearing Member; and

(i) any other information in relation to an OTC derivative cleared by OCC as may be required by the Commission from time to time in order to carry out the Commission's mandate.

INFORMATION SHARING

6. OCC will provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff.

7. OCC will share information with and otherwise cooperate with other recognized and exempt clearing agencies as appropriate.

SUBMISSION TO JURISDICTION AND AGENT FOR SERVICE

8. OCC will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario, in a proceeding arising out of, related to or concerning or in any other manner connected with the activities of OCC in Ontario.

9. OCC will file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the activities of OCC in Ontario.

13.3.2 OSC Notice and Request for Comment – CME Clearing Europe Limited – Application for Exemption from Recognition as a Clearing Agency

OSC NOTICE AND REQUEST FOR COMMENT

CME CLEARING EUROPE LIMITED

APPLICATION FOR EXEMPTION FROM RECOGNITION AS A CLEARING AGENCY

A. Background

CMECE Clearing Europe Limited (CMECE) has applied (the Application) to the Commission for an order pursuant to section 147 of the *Securities Act* (Ontario) (OSA) to exempt CMECE from the requirement to be recognized as a clearing agency in subsection 21.2(0.1) of the OSA. Among other factors set out in the Application, the exemption is being sought on the basis that CMECE is subject to an appropriate regulatory and oversight regime in its home jurisdiction of the United Kingdom (U.K.) by the Financial Services Authority (FSA).

CMECE was established in the U.K. and commenced its clearing operations in May 2011. It currently clears over-the-counter (OTC) commodity derivatives trades.

In reviewing the Application, staff followed the process and assessed the Application against the criteria set out in OSC Staff Notice 24-702 *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies* (Staff Notice).

B. Draft Order

In the Application, CMECE describes how it addresses each of the criteria set forth in the Staff Notice. Subject to comments received, staff propose to recommend to the Commission that it grant CMECE an exemption order with terms and conditions in the form of the proposed draft order (Draft Order).

The Draft Order requires CMECE to comply with various terms and conditions, including relating to:

1. Regulation of CMECE
2. Filing requirements
3. Submission to jurisdiction and agent for service
4. Information sharing

C. Comment Process

The Commission is publishing for public comment the Application and Draft Order. We are seeking comment on all aspects of the Application and Draft Order.

You are asked to provide your comments in writing, via e-mail and delivered on or before **September 22, 2012** addressed to the attention of the Secretary of the Commission, Ontario Securities Commission, 20 Queen Street West, Toronto, Ontario, M5H 3S8, e-mail: comments@osc.gov.on.ca.

The confidentiality of submissions cannot be maintained as comments received during the comment period will be published.

Questions may be referred to:

Maxime Paré
Senior Legal Counsel, Market Regulation
Tel.: 416-593-3650
mpare@osc.gov.on.ca

CME Clearing Europe

August 3, 2012

Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, ON M5H 3S8

Dear Sir/Madam:

Re: CME Clearing Europe Limited – Application for Exemption from Recognition as a clearing agency in Ontario

This application is filed with the Ontario Securities Commission (the OSC) by CME Clearing Europe Limited (the Applicant or CMECE), seeking the following relief:

> An order, pursuant to section 147 of *The Securities Act* (Ontario) (the OSA), exempting CME Clearing Europe Limited from the requirement to be recognized by the OSC as a clearing agency pursuant to subsection 21.1(0.1) of the OSA.

The OSA, and all regulations, rules, policies and notices of the OSC made hereunder are collectively referred to as the Legislation.

Approval Criteria

OSC Staff has prescribed criteria that it will apply when considering applications for recognition or exemption from recognition by clearing agencies under subsection 21.1(0.1) of the OSA, which criteria is contained in OSC Staff Notice 24-702 *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies*. This application follows those criteria.

Part I: Background

- A. Legal and ownership structure
- B. Regulatory Status
- C. Participation of Canadian resident participants in clearing arrangements at CMECE
- D. Further Information on CMECE and its clearing activities
- E. Criteria for Recognition and Exemption from Recognition as a Clearing Agency
  1. Requirements imposed by the UK Financial Services Authority (FSA) on CMECE
  2. Description of how the oversight of CMECE by the foreign regulator FSA ensures ongoing compliance with the criteria

Part II: Application of Approval Criteria to the Clearing House

1. Governance
2. Fees
3. Access
4. Rules and Rulemaking
5. Due Process

6. Risk Management

7. Systems and Technology

8. Financial Viability and Reporting

9. Operational Reliability

10. Protection of Assets

11. Outsourcing

12. Information Sharing and Regulatory Cooperation

Part III Submissions

Part I: Background

A. Legal and ownership structure

CMECE is a private limited company incorporated and registered under the laws of England on June 3, 2009. It is headquartered at One New Change, London EC4M 9AF, England, and its primary place of business is the United Kingdom[1].

The Articles of Association and Memorandum of Association of CMECE are publicly available.

CMECE's ultimate parent is CME Group Inc. (CME Group). CMECE's immediate parent (100% ownership) is Chicago Mercantile Exchange Luxembourg S.à r.l; it is in turn a wholly-owned subsidiary of Chicago Mercantile Exchange Luxembourg Holdings S.à r.l, which is wholly-owned subsidiary of CME Group Inc. As at February 8, 2012, Chicago Mercantile Exchange Luxembourg S.à r.l, holds 46,067,273 ordinary £1 shares of CMECE.

CME Group is the holding company for four futures exchanges: the Chicago Mercantile Exchange Inc. (CME), the Board of Trade of the City of Chicago Inc. (CBOT), the New York Mercantile Exchange Inc. (NYMEX) and the Commodity Exchange Inc. (COMEX). CME Group is a listed corporation whose shares are traded on the NASDAQ stock exchange. CME Clearing is a division of CME and offers central counterparty clearing and settlement services for all CME Group exchanges and over-the-counter (OTC) derivatives transactions.

B. Regulatory Status

CMECE received recognition as a clearing house (Recognised Clearing House – RCH) from the UK FSA, under Part XVIII of the Financial Services and Markets Act 2000 (FSMA), on December 14, 2010. CMECE's entry in the UK Financial Services Authority (FSA) Register as a Recognised Clearing House can be found at:
http://www.fsa.gov.uk/register/exchangeDetails.do?sid=256324

The initial authorisation of clearing houses in the UK confers approval for them to clear the products that they have specified in their application to the FSA. Insofar as the product scope of the clearing of a RCH expands, it seeks approval for such expansion from the FSA. CMECE's initial authorisation is for the clearing of OTC commodity derivatives.

C. Participation of Canadian resident participants in clearing arrangements at CMECE

CMECE does not have any office or maintain other physical installations in Ontario or any other Canadian province or territory[2]. Nor does it have any plans to open such an office or to establish any such physical installations in Ontario or elsewhere in Canada.

However, CMECE does have a Clearing Member that is the London branch of a Canadian bank whose principal place of business is Ontario (accepted following the receipt, on May 3, 2011 of the interim exemption from the Commission). At the current time, we have a principal to principal arrangement with all Clearing Members (see the section on Membership below). At the current time, we do not have a relationship with the Clearing Members' clients and we do not ourselves promote services to Canadian resident participants.

1 Please note that until August 14, 2011 CMECE was headquartered at its previously notified address of Watling House, 33 Cannon Street, London, England.

2 Please note that related organisations, owned by our ultimate parent company, have received exemptive relief in one Canadian province.

D. Further Information on CMECE and its clearing activities

CMECE has been established as part of the globalisation plans of CME Group. The associated business goal is to offer clearing services from the UK for a broad range of OTC derivatives, and prospectively for exchange-traded derivatives as well.

The first and as yet only definite provision of clearing services by CMECE centres on the clearing of OTC commodity derivatives. CMECE currently offers over 200 derivative contract types. CMECE was ready to commence clearing from May 6, 2011 and received its first trades for clearing on May 13, 2011.

CMECE plans to launch OTC Interest Rate Swaps (IRS) in the fourth calendar quarter of 2012, followed by Foreign Exchange and Credit Default Swap products in early 2013. As part of the IRS offering, CMECE plans to launch a Canadian Dollar IRS product (Vanilla Fixed vs. Float with a maximum maturity of 30 years). At the current time, we have no other specific plans in relation to the Canadian Dollar or in relation to Canadian government bonds (Federal or Provincial). CMECE strives to launch new products to satisfy demand and we will, of course, provide any information to the OSC that they request, should our offering expand to cover such products.

As outlined in Part 11 (Outsourcing), CMECE receives a number of services and support from CME in the US and from CME Operations Limited (CMEOL) in London.

Our website (www.cmeclearingeurope.com) provides further information on the clearing arrangements. In particular, the *OTC Commodity Derivatives Guide* (available on our website) provides details of our offering, including: risk management; banking and settlement operations, and trade capture and transaction services. The Commodities Contract Module,[3] which forms part of our Rules, contains full details of the current range of products offered.

E. Criteria for Recognition and Exemption from Recognition as a Clearing Agency

Responses made by a foreign clearing agency to the criteria in Appendix A to OSC Staff Notice 24-702 are required to: (1) describe the requirements, if any, that are imposed by the applicable regulator in the clearing agency's jurisdiction (the foreign regulator) in each area and (2) describe how the oversight of the foreign clearing agency by the foreign regulator ensures ongoing compliance with the criteria.

1. Requirements imposed by the UK Financial Services Authority on CMECE

Please find below a list of the main legislation relevant to Recognised Clearing Houses in the UK[4]:

- The main primary legislation is the UK Financial Services and Markets Act 2000 (FSMA), Part XVIII. (Recognised Investment Exchanges and Clearing Houses), which can be found here: http://www.legislation.gov.uk/ukpga/2000/8/contents.
- This is supplemented by the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995): http://www.legislation.gov.uk/uksi/2001/995/contents/made
- In addition, there is the Investment Exchanges and Clearing Houses Act 2006: http://www.legislation.gov.uk/ukpga/2006/55/enacted ;
- The main source of secondary legislation is the rules and guidance contained in the UK Financial Services Authority Handbook 'Recognised Investment Exchanges and Recognised Clearing Houses' (REC) which can be found here: http://fsahandbook.info/FSA/html/handbook/REC

Under proposals issued for consultation by the UK Treasury in February 2011, responsibility for the supervision of clearing houses will pass from the FSA to the Bank of England in 2013. Currently CMECE has a quarterly meeting with the Bank to discuss general clearing and payment related issues.

3 http://www.cmeclearingeurope.com/membership/files/CMECE-Commodities-Contract-Module.pdf

4 The following legislation also applies: Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (http://www.opsi.go.uk/si/si1999/19992979.htm); Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2006 (http://www.opsi.gov.uk/si/si2006/20060050.htm); Financial Markets and Insolvency (Settlement Finality)(Amendment) Regulations 2007 (http://www.opsi.gov.uk/si/si2007/uksi_20070832_en_1), Companies act 1989 Pt VII (http://www.opsi.gov.uk/acts/acts1989/ukpga_19890040_en_1).

The main requirements imposed by the FSA on CMECE are set out in REC.

Therefore, for each of the criteria set out in Part II below, we have noted the relevant reference in REC.

2. Description of how the oversight of CMECE by the foreign regulator (FSA) ensures ongoing compliance with the criteria

'Close and continuous supervision'

As a Recognised Clearing House (RCH), CMECE is expected to maintain an open, cooperative and constructive relationship with its dedicated FSA supervisors (a process known as "close and continuous supervision"), which reflects the important role played by market infrastructure providers. This enables the FSA to have a broad picture of the RCH's activities and ability to meet the recognition requirements (REC 2) (which include but are not limited to: the maintenance of sufficient financial resources to cover all aspects of risk, including Clearing Member default, fitness and propriety). RCH's must also respect 'notification requirements' (REC 3) (covering *inter alia*: financial information, changes to the Clearing Rules, complaints and disciplinary proceedings, major operational issues, default events).

The supervisory relationship consists of on-going communication (typically between the Regulatory Compliance Officer and the FSA Supervisor, on an almost daily basis), as well as a more structured series of meetings between the FSA and key individuals of the RCH. The frequency and nature of these meetings may vary in accordance with the risk profile of the RCH.

FSA recognises that an RCH is likely to develop and adapt their businesses in response to customer demand and new market opportunities. The FSA expects an RCH to take its own steps to assure itself that it will continue to satisfy the recognition requirements, and other obligations in or under FSMA when considering any changes to its business or operations. However, the FSA also expects the RCH to keep it informed of all significant developments and of progress with its plans and operational initiatives, and to provide it with appropriate assurance that the recognition requirements will continue to be satisfied.

Risk based supervision

FSA requires information to support their risk based approach to the supervision of all regulated entities. Risk based supervision is intended to ensure that the allocation of supervisory resources and the supervisory process are compatible with the regulatory objectives and the FSA's general duties under FSMA. The central element of the process of risk based supervision is an assessment by the FSA (a risk assessment) of the main risks to its supervisory objectives posed by each regulated entity. For each RCH, the FSA will conduct a periodic risk assessment. This assessment will take into account relevant considerations including the special position of recognised bodies under FSMA, the nature of the UK recognised body's members, the position of other users of its facilities and the business environment more generally.

The risk assessment will guide the FSA's supervisory focus. The FSA initially reviews its risk assessment with the staff of the RCH to ensure factual accuracy and a shared understanding of the key issues, and may discuss the results of the risk assessment with key individuals of the RCH. It then sends the assessment and an action plan relating to work that it considers appropriate for the RCH to undertake to the Board of the RCH for discussion and response.

Please see chapter 4 of REC for further details, in particular:

4.2 The supervisory relationship with UK recognised bodies

4.3 Risk assessments for UK recognised bodies

4.4 Complaints

4.5 FSA supervision of action by UK recognised bodies under their default rules

4.6 The section 296 power to give directions

4.7 The section 297 power to revoke recognition

4.8 The section 298 procedure

Part II – Application of Approval Criteria to the Clearing Agency

1. GOVERNANCE

1.1 The governance structure and governance arrangements of the clearing agency ensures:

(a) effective oversight of the clearing agency;

CMECE is a private limited company incorporated in England with registered number 06922932. The underlying principles of CMECE's constitution and corporate governance arrangements are set out in CMECE's Memorandum and Articles of Association, which are publicly available. The Articles of Association set out CMECE's formal corporate decision making powers and procedures. Under the Articles of Association and applicable company law, the directors of CMECE are responsible for the day to day running of the company.

The organisational structure of CMECE is such as to allow the senior executive and the Board of Directors (the Board) of CMECE to provide effective governance. Appropriate oversight and control of the functions of CMECE is key to ensuring effective governance by the directors. There are direct reporting lines from each of the relevant functions of CMECE to a particular member of the Board providing the Board with effective control and oversight of the operations of such relevant functions.

The organisation, balance and composition of the Board has been determined in accordance with good corporate governance practice and in accordance with the FSA's guidance on the suitability of individuals appointed as directors or employees of such bodies.

Article 9.1 of the CMECE Articles of Association requires that any decision of the Board is to be either a majority decision at a Board meeting or a unanimous decision taken in accordance with Article 10, i.e. by written resolution. In the event that the number of votes for and against a proposal is equal, the Chairman or other director chairing the meeting has a casting vote (see Article 15). In practical terms, in the event of a tied Board in relation to a decision, the preferred and more likely response would be for the issue to be re-debated and decided without the need for the Chairman to exercise his casting vote.

Article 13.2 of the CMECE Articles of Association specifies that the quorum for Board meetings is two; the directors are able to change the quorum through passing a resolution to that effect. Each director has one vote with the Chairman or other director who is chairing the meeting having the casting vote in the case of a tied vote (Article 15.1). In practice, it is highly unlikely that any meeting would take place with only the minimum of two required for a quorum.

Board members do not represent the interests of shareholders of CMECE. Under company law, the directors owe duties to the company as a whole. Three of the directors are non-executive directors, each of which is also a director of a CME Group company. When acting in their capacity as directors of the Board of CMECE, these directors are obliged to act in accordance with the general legal and fiduciary duties of directors under English company law and also in accordance with CMECE's internal constitutional and organisational rules, safeguards and procedures, as set out in the Articles of Association of CMECE.

The Companies Act 2006 (CA 2006)[5] contains the following duties applicable to executive and non-executive directors:

- Duty to act within powers (section 171 CA 2006)
- Duty to promote the success of the company (section 172 CA 2006)
- Duty to exercise independent judgment (section 173 CA 2006)
- Duty to exercise reasonable care, skill and diligence (section 174 CA 2006)
- Duty to avoid conflicts of interest (section 175 CA 2006)
- Duty not to accept benefits from third parties (section 176 CA 2006)
- Duty to declare interest in proposed transaction or arrangement with the company (section 177 CA 2006)

5 Please see: http://www.legislation.gov.uk/ukpga/2006/46/contents

(b) the clearing agency's activities are in keeping with its public interest mandate;

CMECE is committed to ensuring the integrity of the contracts it clears and the stability of the financial system, in which market infrastructure plays an important role. The rules, policies and activities of CMECE are designed and focused on ensuring that it maintains best practices and fulfils this public interest mandate. CMECE operates on a basis consistent with best practices of other derivatives clearing houses.

(c) fair, meaningful and diverse representation on the governing body (Board) and any committees of the Board, including a reasonable proportion of independent directors;

In the UK, corporate governance requirements are contained in the Companies Act 2006 (Part 10: A company's directors: in particular section 173 "Duty to exercise independent judgement") and the UK Corporate Governance Code (the Code)(please see http://www.frc.org.uk/corporate/ukcgcode.cfm for further details). The FSA reviewed our governance at the time of the RCH application and CMECE is required under REC 3.6 to notify FSA of any changes to our constitution or governance.

The Board's governance arrangements are set out in the Articles of Association, which are publicly available. CMECE's governance arrangements are transparent and fulfil public interest requirements.

The Board of CMECE currently consists of eight members: three independent non-executive directors, one of whom is the Chairman, three non-executive directors appointed by CME Group, and two executive directors (the CEO of CMECE and the COO of CMECE). The name and biographical information of each director is available to the public on the CMECE website (www.cmeclearingeurope.com). The Board generally meets on a monthly basis.

The Code sets out tests for independence of non-executive directors in Code Provision B.1.1. Ultimately, the Board is responsible for determining whether the director is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement. This might include if the director:

- has been an employee of CMECE or the CME Group within the last five years;
- has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;
- has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance related pay scheme, or is a member of the company's pension scheme;
- has close family ties with any of the company's advisers, directors or senior employees;
- holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
- represents a significant shareholder; or
- has served on the Board for more than nine years from the date of their first election.

CMECE has considered and applied the above independence criteria when appointing the independent non-executive directors. In accordance with the best practice reflected in the Code, the independent non-executive directors have recent and relevant experience in the fields of derivatives, financial markets more generally, clearing and settlement and corporate governance.

Audit Committee

The Audit Committee consists of the independent non-executive directors of CMECE. The Chairman is a qualified accountant who also has substantial experience as a finance director. The purpose of the Audit Committee is to assist the Board in ensuring the financial integrity of CMECE and the soundness of its internal risk controls and procedures. The Audit Committee is responsible for reviewing the effectiveness of CMECE's internal operational risk controls, as well as managing and overseeing CMECE's internal audit function, internal audit arrangements and the relationship with CMECE's external auditor. The Audit Committee is also responsible for monitoring CMECE's financial statements and procedures for whistle-blowing, detecting fraud, financial crime, and market abuse.

The terms of reference of the Audit Committee require it to meet at least three times a year at appropriate times in the reporting and auditing cycle and at such other times as the Chairman of the Audit Committee shall require. Since launch in 2011 the Committee has met more frequently than the minimum.

Risk Committee

The Risk Committee consists of: the Chairman, who is an independent non-executive director of CMECE; the CEO; at least three risk management specialists from Clearing Members (currently nine); at least one representative from other parties with a direct interest in the risk management of CMECE (currently two representatives of clients); and the Chairman of the CME Clearing House Risk Committee, *ex officio*. The Risk Committee currently has 15 members. The inclusion of risk management specialists from Clearing Members is a means by which CMECE is able to consider the views of its Clearing Members, who have a direct interest in the risk management of CMECE. Each Clearing Member is invited to nominate a representative to sit on the Risk Committee (although not all of them choose to nominate a representative). This is appropriate given the current number of Clearing Members, although as the number expands, CMECE will keep this under review and may at some point have to implement a 'turnaround' procedure whereby Clearing Members provide representatives on a rotating basis. The representatives that the Clearing Member chooses to nominate will generally be in the market risk or credit risk areas or a product specialist. CMECE will request a biography of the nominated representative and the Head of Risk and Membership will discuss the matter with the Chairman of the Risk Committee. To date, no nominated representatives have been rejected.

The Committee has commented on and validated the counterparty and market risk policies that are used for the clearing of OTC commodity derivatives.

The purpose of the Risk Committee is to provide, on behalf of the Board, oversight of the major risk management policies of CMECE relating to counterparty and market risk in relation to Clearing Members and to banking and custodial counterparties.

The work of the Risk Committee is complementary to that of the Audit Committee. The Risk Committee makes recommendations for endorsement by the Board. The Risk Committee is required to review annually the requirements of clearing membership, the policies and practices related to valuation and margining, including Eligible Collateral (see page 20) and haircuts from market value, security of CMECE and Clearing Member assets, and CMECE's other counterparty and market risk policies in relation to Clearing Members and banking and custodial counterparties, and to make recommendations for change, as appropriate, to the Board.

The Risk Committee is required to review, on at least a semi-annual basis, the continued adequacy of CMECE's default resources based on the stress test results presented to it by CMECE staff, and to make recommendations for change, as appropriate, to the Board.

The Risk Committee also is responsible for: (i) reviewing proposals for risk management of new markets or product types with novel risk characteristics and making recommendations to the Board; (ii) reviewing proposals for cross-margining and clearing linkages with other clearing houses; (iii) reviewing applications for clearing membership; and (iv) reviewing all risk-related material amendments to the CMECE Rules and making recommendations to the Board. The members of the Risk Committee are required to disclose the existence of any conflicts of interest and to abstain from any decisions in which they are conflicted.

The Risk Committee meets at least once every quarter and otherwise as required from time to time, keeps minutes of its proceedings and reports to the Board.

CMECE's overall risk management framework is made up of a number of internal risk management policies. These internal policies set out the responsibilities, accountabilities and tolerances/limits which must be adhered to. The default rules (chapter 8 of the Clearing Rules) addresses decision making in crises and emergencies and gives the CEO of CMECE the authority to declare a default and convene an Emergency Committee[6] if appropriate (Rule 8.1.3). The Head of Risk and Membership reports to the COO, and also has a reporting line to the Chairman of the Risk Committee. Following the approval by the Risk Committee, the Board will formally approve and 'sign off' the policies.

(d) a proper balance among the interests of the owners and the different entities seeking access (participants) to the clearing, settlement and depository services and facilities (settlement services) of the clearing agency;

CMECE's Board ensures that the interests of all participants are addressed. The Board's focus is on operating a clearing house that conforms to best practices and ensuring that Clearing Members are treated fairly and consistently. In addition, the Risk Committee (a Committee of the Board) has a number of Clearing Member representatives (please see section 1.1(c) of this letter) – all Clearing Members are currently invited to nominate a representative to serve on the Risk Committee. This Clearing Member representation helps CMECE to ensure that the interests of Clearing Members are met.

It is in the interest of both the owner and participants that CMECE operates in a manner consistent with best practices of clearing houses to preserve the integrity of the contracts cleared. It is in both their interests to ensure stable, effective risk

[6] The composition of the Emergency Committee shall be determined by the Clearing House from time to time.

management processes. Therefore, CMECE does not believe there is a conflict between the interests of the owners and the entities seeking to become Clearing Members.

(e) the clearing agency has policies and procedures to appropriately identify and manage conflicts of interest;

CMECE has in place a formal policy setting out structural arrangements and relevant allocation of responsibility to ensure that it can continue to take proper regulatory decisions notwithstanding any conflicts of interest that may arise in relation to its business. The Board of CMECE is responsible for ensuring that adequate systems and controls are in place to identify and manage conflicts of interest.

The Board of CMECE has been structured and appointed in accordance with corporate governance best practice. Its affairs are conducted so as to ensure that potential conflicts of interest are identified promptly, managed and recorded. The number and type of directors on the Board are such as to ensure that in the event of a number of directors being conflicted and unable to vote on certain matters (for example, where the CME Group non-executive directors are unable to vote due to a conflict with the interests of CME Group), the Board of CMECE will still be quorate and have sufficient competence and expertise to discharge its decision making functions. The Board of CMECE will allocate responsibility for decisions so that it can continue to take proper decisions notwithstanding any conflicts of interest.

The Articles of Association of CMECE set out restrictions and procedures for dealing with conflicts of interest at Board level, in particular outlining circumstances in which a director will not be eligible to vote on a matter in relation to which he has an interest that may conflict with that of CMECE. The directors of CMECE have certain duties under CA 2006 to ensure that their interests do not conflict with their duties as a director to CMECE. These provisions apply equally to all types of directors, regardless of whether they are executive or non-executive directors.

The non-executive directors of CMECE will have roles and responsibilities outside CMECE, in particular with other CME Group entities (with the exception of the independent non-executive directors whose independent status would be compromised by holding a position in the CME Group). This is a potential source of conflicts of interest, where, for example, the CMECE Board is required to make a decision in which the interests of CMECE may conflict with the interests of CME. As noted above, when acting in their capacity as directors of CMECE, the non-executive directors will be obliged to act in accordance with (i) the Articles of Association of CMECE, (ii) the provisions of CA 2006 and (iii) internal policies.

Non-executive directors' letters of appointment include a clause which prevents them from being employed by, hold any directorship in, or holding shares in, any company which is similar to CMECE (or CME Group) because of the confidential information and trade secrets that they have access to. The clause also states that non-executive directors must disclose any potential conflicts to the Board. Where the non-executive directors are conflicted, they may not be eligible to vote on the relevant matter in accordance with the CMECE Articles of Association.

The minutes of all meetings (of the Board and committees) must document the procedures followed to show compliance with the requirements.

The UK requirements relating to conflicts can be found in REC 2.4.3(11) and REC 2.5.13 which deal with identification and management of conflicts of interest. Article 16 of the CMECE Articles of Association sets out restrictions and procedures for dealing with conflicts of interest at Board level; in particular, outlining circumstances in which a director will need to disclose his interest in a matter that may conflict with that of CMECE. In addition, Part 10 of CA 2006 contains provisions imposing general duties on directors. Section 175 CA 2006 requires directors to avoid conflicts of interest and section 177 CA 2006 requires directors to declare any interest in a proposed transaction or arrangement.

(f) each director or officer of the clearing agency, and each person or company that owns or controls, directly or indirectly, more than 10 per cent of the clearing agency is a fit and proper person; and

The directors and officers of CMECE were all interviewed by FSA prior to the granting of RCH status in December 2010[7]. Any new officers or directors will have to be interviewed by FSA and approved by them prior to appointment.

There is currently no Nomination Committee. Members of the Board appointed to executive positions are nominated and appointed on the basis of their particular knowledge and experience, with a view to ensuring that the Board as a whole has the competencies and qualifications required to carry out its responsibilities as the governing body of an RCH.

The CMECE Articles of Association (section 19 and 20) set out the details for appointment of directors. In accordance with UK company law (specifically section 12 of the Companies Act 2006), when the first directors are appointed, they must be appointed in writing by completion of the statement of proposed officers (this will form part of the registration that must be delivered to the

7 With the exception of James E. Oliff, who replaced Robert Ray on the Board of CMECE in early 2011 and was interviewed by FSA in 2011.

registrar of companies[8], who will in turn issue a certificate of incorporation). The statement contains details of the names of those directors and their consent to act in the relevant capacity.

After the initial registration, the Board may appoint any persons whom it sees fit and who are willing to act as directors, either to fill a vacancy or as an addition to the Board, provided that the Board is satisfied that the appointment of such persons would not prejudice CMECE's status as a Recognised Clearing House or any other recognition or status granted to CMECE. As mentioned above, any such appointments would be subject to approval by FSA and will also be notified to the registrar of companies.

(g) there are appropriate qualifications, limitation of liability and indemnity provisions for directors and officers of the clearing agency.

Members of the Board appointed to executive positions are nominated and appointed on the basis of their particular knowledge and experience, with a view to ensuring that the Board as a whole has the competencies and qualifications required to carry out its responsibilities as the governing body of an RCH.

The Articles of Association contain clauses relating to director's indemnity (Article 72) and insurance (Article 73).

Article 72.1 sets out that a relevant officer of the Company or an associated company may be indemnified out of the Company's assets against:

- any liability incurred by that officer in connection with any negligence, default, breach of duty or breach of trust in relation to the Company or an associated company;
- any other liability incurred by that officer as an officer of the Company or an associated company.

However, Article 72.1 does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

Article 73.1 states that the directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant officer in respect of any relevant loss. CMECE has in place Directors' & Officers' Liability Insurance. This provides insurance for liability arising from acts, errors or omissions occurring in the capacity as a director, officer or employee. Coverage also applies for securities claims against CMECE. The policy will reimburse CMECE for its indemnification obligations and will pay the loss of any individual director or officer for non-indemnifiable claims.

2. FEES

2.1 All fees imposed by the clearing agency are equitably allocated. The fees do not have the effect of creating unreasonable barriers to access.

CMECE's clearing fee structure is the same for all Clearing Members.

For the first year of operation, CMECE waived fees on most contracts for all Clearing Members joining CMECE at the outset. Before the launch of clearing operations, CMECE held meetings with a wide range of firms to explain its proposals to offer certain incentives to those becoming 'founder' members. In the event, not all of those approached felt that they had an internal business case to join from "Day One". During the first year of operation, all Clearing Members of CMECE were founder members and enjoyed the fee waiver, which was inclusive of: (i) cash settlement fees and other processing fees (give-ups, transfers, etc.) and (ii) facilitation desk fees. The fee waiver was discontinued after one year and the clearing fees applicable to founder Clearing Members are identical to those applicable to any new Clearing Members.

In addition, in order to build liquidity and activity and to demonstrate CMECE's long-term commitment to its relationship with brokers, under the broker incentive scheme CMECE incentivises brokers who agree to provide market prices for the purposes of establishing settlement data. Under the broker incentive scheme, an order entered into CME Inc. ClearPort Clearing Systems by an "Eligible Participant" (a broker who meets CMECE's criteria) on behalf of its client (i.e. not on its own account or a proprietary account) which has been accepted for clearing by CMECE and novated in accordance with chapter 5 of the Clearing Rules will be an "Eligible Transaction". As at the date of this letter, CMECE pays an Eligible Participant 25% of net transaction fees charged to, and received from, a Clearing Member in regard to each Eligible Transaction submitted by the Eligible Participant.

8 The Registrar of Companies for England and Wales, and Chief Executive of Companies House is Tim Moss. His office is based at Companies House. The main functions of Companies House are to incorporate and dissolve limited companies; examine and store company information delivered under the Companies Act and related legislation; and make this information available to the public. Company registration matters are dealt with in law, by the Companies Act 2006.

These schemes are in line with current market practice and are (or were) available on a consistent and transparent basis to all participants that met the criteria. The schemes were notified to our regulators (the FSA), who did not raise concerns. For these reasons, we do not believe that they distort behaviour or incentivise one group of participants to the detriment of others.

The fees do not create unreasonable barriers to access. On the contrary, we have sought to introduce fees (and incentive schemes) that are conducive to allowing participation in our services.

Fees and incentive schemes are covered by REC 3.9. FSA was provided with a copy of the fee schedule prior to CMECE's launch. As required by Bottom of FormREC 3.9.2, the FSA will be kept informed of (1) any proposal to change the fees or charges levied on our members (or any group or class of them), at the same time as the proposal is communicated to those members; and (2) any such change, no later than the date when it is published or notified to those members.

Access to facilities is governed by REC 2.7 and this is described in more detail in 3.1 below.

2.2 The process for setting fees is fair and appropriate, and the fee model is transparent.

Fees and charges for clearing transactions are determined by CMECE's management team and approved by the Board. Fees and charges are set out in a Fees and Charges Notice, which is published on the website. Fees and Charges are payable in the currencies set out in the Fees and Charges Notice.

3. ACCESS

3.1 The clearing agency has appropriate written standards for access to its services.

The membership requirements of CMECE for OTC commodity derivatives clearing are objective, publicly disclosed and permit fair and open access. Chapter 3 of the CMECE Rules and the CMECE Membership Procedures, set out the admission and eligibility standards that an applicant for clearing membership must satisfy to become a clearing member of CMECE (Clearing Member). Among other requirements, these standards require that an applicant to be a Clearing Member must:

a) have all necessary licenses to become a Clearing Member;

b) meet minimum capital requirements of £10 million;

c) have made a contribution to the Guarantee Fund (currently a minimum of US$2.5 million)(see below);

d) satisfy CMECE as to its fitness and propriety, financial, operational, technical, and risk management capacity and competence; and

e) satisfy CMECE that it has written anti-money laundering, risk management, disaster recovery, and business continuity policies.

All of CMECE's clearing membership requirements are designed to permit fair and open access while protecting CMECE and its Clearing Members. CMECE does not intend to deny an applicant membership in CMECE if it satisfies all of the clearing membership requirements.

As noted above in paragraph (c), Clearing Members must normally make a contribution to the Guarantee Fund unless CMECE has decided to waive this requirement. At the current time, CMECE does not require a Clearing Member to make a contribution to the Guarantee Fund, except in certain circumstances[9] as our Guarantee Fund is still viewed as being in a 'Transitional Period' while the clearing business develops and expands.

Membership application process

To apply for clearing membership, an applicant must complete an application form and submit it with the required documentation to CMECE. The Risk and Membership Department of CMECE will initially review the submitted application and request additional information from the applicant, if necessary. After the Risk and Membership Department determines that the application is complete, it will submit the application for review and consideration by the Risk Committee, which will make a determination for CMECE.

9 If CMECE determines, following the advice of the Risk Committee, that the Guarantee Fund should be increased to an amount greater than US$60 million, or if CMECE issues a declaration of default in respect of a Clearing Member and, in exercising its powers and responsibilities under the Default Rules (chapter 8 of the Clearing Rules), CMECE is required to apply part or all of the Guarantee Fund to discharge the defaulting Clearing Member's liabilities.

CMECE anticipates that the Risk Committee review will take place within six weeks of receipt of the completed application. The Risk Committee will notify the applicant in writing of its decision.

Any applicant whose request to become a Clearing Member is denied will be provided with a written explanation and reasons for the decision. However, according to CMECE's internal procedures, an applicant whose application is denied may appeal to the Board.

Any appeal by an applicant will follow a two-stage process: the Company Secretary will first refer the appeal to the Board, who will be tasked with carrying out an objective and thorough consideration of the appeal. The Board can determine its own procedure for considering the appeal referred to it and may, without limitation, (i) seek further or other information from the Risk Committee and/or the applicant or (ii) make any further or reasonable inquiries as it deems fit in order to properly and fully consider the appeal. The Board may approve the appeal and approve the applicant as a Clearing Member by a majority vote only if it is satisfied that the Risk Committee's decision was arbitrary, capricious or an abuse of the Risk Committee's discretion. The Board must deliver its decision and the reasons for its decision to the applicant within 30 Business Days from the date on which the appeal was referred to it and the costs of the appeal will be met entirely by CMECE.

CMECE maintains records of its Clearing Member application reviews and any resulting hearings or appeals. Complete records are maintained for each Clearing Member. Once approved as a Clearing Member, an applicant must enter into a legal agreement with CMECE.

REC 2.7 Access to Facilities includes 2.7.2A (taken from the Schedule to the Recognition Requirements Regulations, Paragraph 21A) which states that:

> (1) The [*UK RCH*] must make transparent and non-discriminatory rules, based on objective criteria, governing access to central counterparty, clearing or settlement *facilities* provided by it.
>
> (2) The rules under sub-paragraph (1) must enable an *investment firm* or a *credit institution* authorised by the *competent authority* of another *EEA State* (including a *branch* established in the *United Kingdom* of such a firm or institution) to have access to those *facilities* on the same terms as a *UK firm* for the purposes of finalising or arranging the finalisation of transactions in *financial instruments*.
>
> (3) The [*UK RCH*] may refuse access to those *facilities* on legitimate commercial grounds.

3.2 The access standards and the process for obtaining, limiting and denying access are fair and transparent. A clearing agency keeps records of

(a) each grant of access including, for each participant, the reasons for granting such access, and

The Risk Committee is responsible for reviewing and recommending whether the Board should approve or reject applications for clearing membership and all Clearing Member mergers, changes and withdrawals. The Board will then consider and approve or reject all applications.

The papers submitted to the Risk Committee and the Board will document the reasons why the Risk and Membership team believe the applicant meets the membership requirement criteria. The documentation provided to the meetings, as well as the minutes documenting the discussion held (at both the Board and Risk Committee meetings) will be retained in accordance with internal policy.

(b) each denial or limitation of access, including the reasons for denying or limiting access to an applicant.

As stated under 3.2(a), all applications for access (membership) will be considered by the Risk Committee and (if approved by the Risk Committee) the Board. The papers and minutes relating to these meetings will document the reasons for denying or limiting access to an applicant[10] and will be retained in accordance with CMECE's internal policy. FSA receives all papers and minutes for Risk Committee and Board meetings as part of its supervisory role.

The FSA regulates the access standards of CMECE under REC 2.7 (Access to Facilities) and 3.18 (Membership).

10 To date, no applicants have been denied access or granted only limited access.

4. RULES AND RULEMAKING

4.1 The clearing agency's rules are designed to govern all aspects of the settlement services offered by the clearing agency, and (a) are not inconsistent with securities legislation, (b) do not permit unreasonable discrimination among participants, and (c) do not impose any burden on competition that is not necessary or appropriate.

CMECE maintains a set of written rules, procedures and Contract Modules (together 'the Rules') which are all available on an unrestricted basis to the public, on the website (www.cmeclearingeurope.com).

The Rules were reviewed by the FSA at the time of application for Recognised Clearing House status. Each change to the Rules has to be notified to the FSA as part of the ongoing Recognition Requirements (see REC 3.26 'Proposals to make regulatory provision'. The definition of regulatory provision in this context means any "rule, guidance, arrangements, policy or practice") and any change to the default rules must be pre-notified to the FSA, who will then have 14 days in which to approve them (UK Companies Act 1989[11] s157).

The Rules are not inconsistent with applicable derivatives legislation. CMECE Rules apply equally to all Clearing Members (CMECE currently only has one category of Clearing Member). The Rules do not unreasonably discriminate against any category of Clearing Member and do not impose unnecessary or inappropriate burdens on competition.

4.2 The clearing agency's rules and the process for adopting new rules or amending existing rules should be transparent to participants and the general public.

If CMECE determines[12] that it is necessary or beneficial to adopt new Rules or amend existing Rules then these are first drafted by legal counsel (who will ensure all proposed amendments are consistent with relevant legislation), and reviewed and approved by CMECE staff[13] and management (the CEO or COO).

CMECE's Rules are transparent and are available to participants and the general public on our website. Chapter 2 of the Rules (specifically 2.2) states how the Rules may be adopted or amended. CMECE will generally amend the Rules by issuing a Notice setting out the text of the proposed changes and a brief explanation. There will then follow a consultation period, during which time Clearing Members are invited to submit comments in writing within a specified deadline (the consultation period will normally be four weeks, although CMECE may specify a longer or shorter period, depending on the nature and complexity of the proposed changes). However, CMECE will not be required to consult on any amendments which are minor changes of an administrative or commercial character, are considered to be necessary to ensure compliance with the Applicable Laws or a requirement of a Regulatory Authority, are considered to be necessary as a result of an event of default or force majeure event, or are otherwise considered to be necessary for the purpose of mitigating a significant risk to the CMECE.

Under Article 2.2.3, CMECE may consult on a proposed amendment to the Rules with only a limited number of Clearing Members if it considers it appropriate to do so – including where a proposed amendment will affect a limited number of Clearing Members or is a limited technical amendment.

After the consultation period, legal counsel will review the comments received from Clearing Members and, as far as possible, reflect them in the re-drafting. If necessary (depending on the extensiveness of the comments received and the extent to which the comments are aligned), a further round of consultation may take place, or there may be bilateral discussions with those who have provided comments to the consultation. Rule amendments will again be reviewed and approved by CMECE staff and management. Recommendations for amendments then go to the Board for approval (and the Risk Committee, if the change concerns risk management). The final Rule changes will then be confirmed by publication of a Confirmation Notice, which will set out the finalised Rules and the implementation date.

As noted in 4.1, the FSA must be notified of all changes to the Rules. In addition, REC 2.14 covers Rules and Consultation. In particular, REC 2.14.2 states that:

> (1) The [UK RCH] must ensure that appropriate procedures are adopted for it to make rules, for keeping its rules under review and for amending them.
>
> (2) The procedures must include procedures for consulting users of the [UK RCH's] facilities in appropriate cases.

11 http://www.legislation.gov.uk/ukpga/1989/40/part/VII

12 This may be on CMECE's own initiative, or based on feedback from Clearing Member(s) or other stakeholders.

13 Depending on the nature of the change, this may be any of the following: the Regulatory Compliance Officer, the Head of Risk and Membership, the Head of Operations, IT and Client Support and/or the Head of Banking and Settlement.

(3) The [UK RCH] must consult users of its facilities on any arrangements it proposes to make for dealing with penalty income in accordance with paragraph 22(3) ... (or on any changes it proposes to make to those arrangements).

4.3 The clearing agency monitors participant activities to ensure compliance with the rules.

The detection and assessment of any non-compliance with the relevant CMECE Rules by Clearing Members is the responsibility of CMECE's personnel in Risk and Membership, Operations, IT and Client Support, and Banking and Settlement, supplemented in certain cases by the CME Market Regulation Department and the CME Audit and Membership Department. All cases of non-compliance will be reported to the COO, the CEO, and to the Regulatory Compliance Officer. CMECE will decide whether to conduct a formal investigation or disciplinary proceeding on the basis of the factual record and the gravity of the non-compliance.

The CMECE Risk and Membership Department is responsible for verifying, on an ongoing basis, the compliance of Clearing Members with the CMECE admission and eligibility standards and monitoring compliance with the CMECE Rules. Clearing Members are required to submit audited financial statements, which must demonstrate compliance with CMECE's minimum capital requirements.

In addition, Clearing Rule 3.4.2 allows CMECE to at any time request information to which it is entitled under the Rules from a Regulatory Authority and to disclose it to any of its Affiliates, Settlement Bank or Custodian to the extent necessary for them to provide their services to CMECE. To the extent such information is confidential, CMECE shall use its reasonable endeavours to ensure that any person receiving such information will keep that information confidential.

The Membership Procedures (contained within the Clearing Procedures) section 7 and 8 states the following:

- Section 7.1 states that Clearing Members authorised and supervised by a Regulatory Authority for financial services must submit any and all financial reports that are required to be filed with such Regulatory Authority to CMECE, unless CMECE is able to obtain them directly from such Regulatory Authority.
- Section 7.2 states that Clearing Members not regulated by a Regulatory Authority for financial services must submit monthly unaudited financial reports in a form acceptable to the Clearing House.
- Section 7.3 states that the financial reports must demonstrate compliance with the Clearing House's minimum capital requirements, demonstrate a Total Risk-Based Capital Ratio of 10% (if applicable) and be stated in the currency in which the Clearing Member is legally required to produce its audited financial reports.

Clearing Members are also required to submit audited financial statements as of their financial year-end, unless CMECE is able to obtain them directly from their Regulatory Authority.

The audited financial statements of Clearing Members must include at a minimum the following (or the equivalent in any jurisdiction to the extent applicable):

- external auditor's opinion letter;
- statement of financial condition;
- statement of income (loss);
- statement of cash flows;
- statement of changes in ownership equity; and
- appropriate footnote disclosures.

The Risk and Membership Department will review these financial statements for such compliance.

The CMECE Rules permit CMECE to conduct audits on each Clearing Member's compliance with the CMECE Rules. Clearing Members are required to provide such information, books and records as CMECE may request and to cooperate with CMECE in its audit.

In addition to the financial statements, section 3.5 of the Clearing Rules (Notification Requirements) states that each Clearing Member shall notify CMECE in writing immediately in the event of any of the following:

a) it ceases to be able to satisfy any of the Membership Criteria or reasonably believes it may cease to be able to do so;

b) any material changes are made to the information previously provided to the Clearing House including that relating to its Nominee and Transaction Manager;

c) the Clearing Member is notified that a Regulatory Authority shall investigate any of its affairs or those of any of its Parent Undertakings or Guarantors which is material in terms of the overall size of its group or take disciplinary or other formal action against it or a Parent Undertaking or Guarantor or the Clearing Member has reason to believe that a Regulatory Authority is considering the same; or

d) of anything relating to the Clearing Member of which the Clearing House would reasonably expect notice.

Further, each Clearing Member is required (under 3.5.2) to give CMECE prompt prior written notice of any material change in its form or organisation, ownership structure, or business operations, including (but not limited to) a merger or the sale of a significant part of the business.

Clearing Rule 3.5.3 states that the Clearing House shall be entitled to require each Clearing Member to provide it with a report on its large positions, as and when requested.

Clearing Rule 3.5.5 states that each Clearing Member shall furnish to the Clearing House such documents in a timely manner with respect to any of the foregoing events as the Clearing House may from time to time require.

Under Clearing Rule 3.8.1, in order to protect the integrity of its clearing arrangements or to avoid the introduction of uncertainty, volatility or risk into the financial markets, CMECE may take certain actions, including (but not limited to) requiring a Clearing Member to increase its capital, deposit additional collateral, decrease the size or volume of its contracts or to not enter into any new contracts.

If a Clearing Member is not compliant with the Rules, then CMECE may suspend a Clearing Member or terminate their membership.

As stated above, the CMECE Risk and Membership Department is responsible for verifying, on an ongoing basis, the compliance of Clearing Members with the CMECE admission and eligibility standards and monitoring compliance with the CMECE Rules. In some instances, non-compliance with the Clearing Rules may be identified as the result of a complaint received by CMECE. The details of CMECE's complaints process is set out in Chapter 9 of the Clearing Rules (Complaints).

All complaints must be made and dealt with in accordance with the Complaints Procedures (which form part of the Clearing Procedures). If a Clearing Member complaint alleges a breach of the Rules, CMECE will commence an investigation and may commence disciplinary proceedings in accordance with the Rules. CMECE will notify a Clearing Member that makes a complaint of the steps it has taken to review such complaint and the outcome. CMECE may provide details to a Regulatory Authority about any complaint which it considers requires investigation (and about any outcome of an investigation or disciplinary proceeding).

The Rules set out the process that CMECE will follow in order to investigate breaches of the Rules and provide that a Clearing Member shall cooperate fully with any investigation irrespective of whether they are the subject of or otherwise involved in the investigation. The Rules require each Clearing Member to provide any information requested within set timescales, allow CMECE to access their business premises, attend meetings with CMECE, produce or give CMECE reasonable access to documents, records, files, tapes and computer systems and to print information from such systems.

If CMECE considers that a complaint, matter or concern requires investigation, it will issue an Investigation Notice to the Clearing Member concerned, which will set out a brief description of the matter under investigation. Once CMECE has carried out the investigation it shall send a preliminary letter to the relevant Clearing Member that describes its preliminary factual conclusions and the action it proposes to take in the light of such breach. CMECE will also invite the Clearing Member to either attend a meeting or to send written comments, to correct any factual error that it reasonably considers has been made in the preliminary letter. CMECE will then finalise its initial findings and present them in writing to the Clearing Member. CMECE may then exercise one or more of the following powers: decide that no further action should be taken, issue a private written warning to the Clearing Member(s), instigate disciplinary proceedings (see section 4.4 below), carry out further enquiries, or refer all or a portion of the investigation to a Regulatory Authority. The Clearing House shall notify the Clearing Member(s) in writing of the power to be exercised.

4.4 The rules set out appropriate sanctions in the event of non-compliance by participants.

CMECE has adequate arrangements to monitor and enforce compliance with the CMECE Rules, and to resolve disputes among Clearing Members, and will have the authority and ability to discipline, limit, and suspend a Clearing Member for violations of the CMECE Rules.

The Clearing Rules Chapter 9 (Complaints and Enforcement) set out the detail of the sanctions available to CMECE in the event of non-compliance by participants. The disciplinary procedures have two stages – investigations (set out in section 4.3 of this letter) and disciplinary proceedings (set out below) – and the powers available to CMECE in respect of each reflect the magnitude of the breach of the CMECE Rules. If CMECE believes a breach to be particularly serious, CMECE need not undertake an investigation before launching Disciplinary Proceedings (for example, if we have incontrovertible evidence of a criminal offence, we would wish to have the ability to institute disciplinary proceedings before further investigation).

The Clearing House will commence the disciplinary proceedings set out in Rule 9.4 only when it is reasonably satisfied that the Clearing Member has breached the Rules, whether as a result of an investigation or otherwise. CMECE may decide at any time to terminate the disciplinary proceedings or to reach a settlement.

Article 9.4.3 of the Rules states that, for the purposes of each disciplinary proceeding, the Board will nominate members to form a disciplinary panel. Each Disciplinary Panel shall consist of a chairman sitting with two other persons (who may be market practitioners, experts, lawyers or other suitable persons). The Rule prevents any person from sitting on the panel if they are conflicted (such as employees or directors of CMECE or the Clearing Member subject to disciplinary proceedings). The Clearing Member alleged to have committed the breach has the opportunity to object to any particular appointment to the disciplinary panel.

Article 9.4.7 of the Rules states that, to commence the Disciplinary Proceedings the Clearing House shall send to the Clearing Member concerned a written notice (the Disciplinary Notice), which contains details of the alleged breach of the Rules and sufficient information to enable the Clearing Member to understand and respond to such allegations. The Clearing Member then has 20 Business Days if they wish to provide a statement of defence, which should outline the plea that they intend to make and any admissions of fact.

Article 9.4.14 of the Rules states that the Disciplinary Panel shall apply the civil standard of proof on the balance of probabilities, with the cogency of evidence required being commensurate with the seriousness of the alleged breach.

Article 9.4.16 of the Rules states that the Disciplinary Panel shall communicate in writing its findings and particulars of any sanction determined to the Clearing House and to the Clearing Member concerned. Such findings and sanctions shall be deemed conclusive and binding upon expiry of the time permitted for appeal or receipt by the Clearing House of any earlier written notice from the Clearing Member that such right of appeal will not be exercised. Subject to Rule 9.4.17(b), such findings and sanctions shall not be made public.

Article 9.4.17 of the Rules states that the Disciplinary Panel may impose one or more of the following sanctions:

a) issue a private written warning to the Clearing Member;

b) issue of a public notice of censure;

c) impose a fine of any amount;

d) require the disgorgement of any gain made by the Clearing Member or its Representatives in connection with the breach of the Rules;

e) recommend to the Clearing House to suspend or terminate the membership of the Clearing Member with immediate effect; or

f) issue an order requiring the Clearing Member to take such steps including making an order for compensation, as the Disciplinary Panel may direct, to remedy the situation caused by the breach of the Rules.

Article 9.4.18 of the Rules states that the Disciplinary Panel has discretion as to the appropriate sanction in each case and such differentiation may take into account factors including whether the breach was deliberate or negligent, the seriousness of the consequences and whether the Clearing Member has since taken action to remedy the breach or prevent a recurrence.

Section 9.5 of the Rules set out CMECE's Appeals Process. For further detail please see section 5.5 of this application letter (below).

The FSA requires RCH's to have appropriate sanctions in REC 2.15 – most notably 2.15.2 which states:

(1) The [UK RCH] must have effective arrangements for monitoring and enforcing compliance with its rules.

(2) The arrangements must include procedures for -

(a) investigating complaints made to the [UK RCH] about the conduct of persons in the course of using the [UK RCH's] facilities; and

(b) the fair, independent and impartial resolution of appeals against decisions of the [UK RCH].

(3) Where the arrangements include provision for requiring the payment of financial penalties, they must include arrangements for ensuring that any amount so paid is applied only in one or more of the following ways -

(a) towards meeting expenses incurred by the [UK RCH] in the course of the investigation of the breach in respect of which the penalty is paid, or in the course of any appeal against the decision of the [UK RCH] in relation to that breach;

(b) for the benefit of users of the [UK RCH's] facilities;

(c) for charitable purposes.

REC 3.20 (Disciplinary action relating to members') requires that where a RCH has taken any disciplinary action against any member or any employee of a member, in respect of a breach of a rule, it must immediately notify the FSA of that event, and give: the name of the person concerned; details of the disciplinary action taken by the UK recognised body; and the RCH's reasons for taking that disciplinary action. Where an appeal is lodged against any disciplinary action, the RCH must immediately give the FSA notice of that event, and the name of the appellant, the grounds on which the appeal is based and the outcome of the appeal (when known).

5. DUE PROCESS

5.1 For any decision made by the clearing agency that affects an applicant or a participant, including a decision in relation to access, the clearing agency ensures that:

(a) an applicant or a participant is given an opportunity to be heard or make representations; and

(b) the clearing agency keeps a record of, gives reasons for, and provides for appeals or reviews of, its decisions.

Applicants – As described in section 3.1, the Risk Committee will decide whether to recommend that the Board accepts the applicant as a Clearing Member and communicate this to the Board. This will then be confirmed by the Board and CMECE will report this to the new Clearing Member and CME Audit & Membership Department as necessary.

An applicant that is not accepted shall have 10 Business Days from notification of such result to file an appeal to the Board of CMECE. The Board may have to re-examine the Risk Committee's recommendation and its own decision if it is satisfied that either were arbitrary, capricious or an abuse of discretion. Clearing Members do not have an explicit right to appeal to a regulatory authority. Such a right would be inappropriate as it should ultimately be up to the Clearing House to determine whether an applicant fulfils its criteria. The FSA would be able to take action if it felt that CMECE's overall membership criteria or rules were unfair or discriminatory. It should be noted that it would be counter to CMECE's interests to reject a Clearing Member's application on spurious grounds.

Participants – the Clearing Rules (section 9.5) set out the Appeals process, whereby Clearing Members can appeal a decision made by CMECE in respect of a breach of the Rules by the Clearing Member. Specifically, Clearing Rule 9.5.1 states that within 10 Business Days of receiving notice in writing of a decision of a Disciplinary Panel, or a notice of sanction (whichever is the later), a Clearing Member (whether current or former in the case of expulsion) or the Clearing House, or both, may appeal to the appeals body (the Appeals Body) by lodging with the Clearing House a notice of appeal in writing and by delivering a copy thereof to any other party to the Disciplinary Proceedings. The Clearing House shall refer the appeal to the Appeals Body within 10 Business Days of receipt of the appeal.

According to 9.5.2 of the Clearing Rules, a notice of appeal shall set out the grounds of the appeal and shall contain a brief statement of all matters relied on by the appellant. The grounds of the appeal may be any one or more of the following:

a) the Disciplinary Panel's decision was: (i) arbitrary, capricious, or an abuse of its discretion; or (ii) based on a clearly erroneous application or interpretation of the Rules; or

b) the sanction imposed by the Disciplinary Panel was excessive or, in the case of an appeal by the Clearing House, was insufficient or inappropriate.

Clearing Rule 9.5.3 states that in the case of appeal against a sanction, the Appeals Body may affirm, vary or revoke the sanction. The Appeals Body may make such order or give such direction as it considers fit including a direction for a rehearing of the case by another newly constituted Disciplinary Panel.

Clearing Rule 9.5.4 specifies that the Appeals Body shall consist of one or more than one persons who shall be nominated for the purposes of this Rule 9.5.4 by the Centre for Effective Dispute Resolution[14] in London. Such person shall:

a) be independent of the Clearing House, meaning for the purposes of these Rules, that such person is not and has not ever been an officer, director or employee of the Clearing House or an Affiliate;

b) have appropriate experience of the clearing market and normal clearing operations; and,

c) have appropriate knowledge of the Clearing House, the Rules and relevant Applicable Law.

Clearing Rule 9.5.5 states that an Appeals Body may adopt such procedure as it thinks fit and just, including, without limitation, the procedures described in Rule 9.4.13 and shall notify the Clearing Member accordingly. The Appeals Body shall be bound by Rule 9.4.14. The appellant and the respondent shall be entitled to appear, make representations and (subject to any restriction on adducing new evidence), call witnesses, who may be examined and cross-examined at any hearing, which will not be held in public.

Clearing Rule 9.5.6 states that the decision of an Appeals Body shall be final and binding and there shall be no further appeal. The decision shall be supported with reasons and shall be notified to the appellant and respondent in writing without undue delay. The decision of an Appeals Body shall not be made public unless otherwise agreed between the appellant and the respondent.

Clearing Rule 9.6.1 states that the proceeds of any fine imposed by the Clearing House shall be used for the following purposes only:

a) to meet expenses incurred by the Clearing House in the course of the Investigation, Disciplinary Proceeding or appeal from a Disciplinary Proceeding in respect of which it has been imposed;

b) for the benefit of the Clearing Members generally; or,

c) for charitable purposes.

In addition to the formal process described above, Clearing Members will have access to the executive of CMECE to discuss any issues. The Regulatory Compliance Officer will maintain correspondence with Clearing Members (including any requests for information, disciplinary actions etc.) in its original hard copy format on-site for a minimum of one year. The CME Audit and Membership Department will also maintain an electronic database of all disciplinary actions and Clearing Member correspondence.

6. RISK MANAGEMENT

6.1 The clearing agency's settlement services are designed to minimize systemic risk.

Through the collection of Margin under its Risk Management Procedures (which form one chapter of CMECE's Clearing Procedures) and the maintenance of the Guarantee Fund (including CMECE's commitment to the Guarantee Fund), CMECE will possess financial resources that, at a minimum, exceed the total amount that would enable CMECE to meet its financial obligations to its Clearing Members, notwithstanding a default by the Clearing Member creating the largest financial exposure for CMECE in extreme but plausible market conditions. The adequacy of CMECE's default resources are stress tested on a daily basis.

Further information can be found in the OTC Commodity Derivatives Guide available on our website.

14 The Centre for Effective Dispute Resolution (CEDR) is an independent, non-profit organisation with a mission to cut the cost of conflict and create choice and capability in dispute prevention and resolution. The CEDR set the standard for dispute resolution and conflict management with their mediation, consultancy and training services. CEDR Solve is the largest independent alternative dispute resolution body in Europe, has access to over 5000 mediators and neutrals worldwide.

Margin and Variation Requirements

CMECE manages its counterparty and market risk by margining each Clearing Member's contracts on a daily and intra-day basis according to the Risk Management Procedures. Risk is further mitigated through CMECE's payment to and collection from Clearing Members of profits and losses determined through the variation settlement process.

The CME SPAN model is used to calculate a Clearing Member's "Margin Requirement" for OTC commodity derivatives. The CME SPAN model simulates the effects of changing market conditions and uses tailored options pricing models to determine a portfolio's overall risk. CME SPAN constructs scenarios of price and volatility changes to estimate the potential loss arising if an entire portfolio must be closed out over a one-day time horizon. The resulting Margin Requirement is designed to cover this potential loss at a 99% confidence level.

The Margin Requirement forms part of the collateral required by CMECE in respect of each contract. It is calculated in a different way (net or gross basis) in respect of each type of account (House Account, Non-Segregated Client Account or Segregated Client Account).

CMECE calculates the "Variation Requirement" for contracts at least twice daily. The Variation Requirement consists of a mark-to-market revaluation of contracts based on current market prices. CMECE uses the Margin Requirement and the Variation Requirement to calculate the "Net Settlement Amount" for the settlement cycle.

Guarantee Fund

CMECE maintains a Guarantee Fund, which is an important element of the financial safeguards for the protection of CMECE and the Clearing Members. CMECE will maintain the Guarantee Fund in accordance with the Guarantee Fund Procedures (which form a chapter in the Clearing procedures).

After the initial phase[15] of CMECE's clearing operations, the Guarantee Fund for OTC commodity derivatives will comprise Guarantee Fund contributions from Clearing Members and a contribution by CMECE of at least US$20 million. Each Clearing Member will be required to contribute the higher of US$2.5 million or its pro rata portion of the total Guarantee Fund, based on its proportion of the average daily margin requirement for all Clearing Members in the previous quarter, weighted to a factor of 85% and its proportion of gross volume in the previous quarter, weighted to a factor of 15%.

However, during the initial phase, CMECE's contribution to the Guarantee Fund is US$60 million, and during this phase CMECE will not require Clearing Members to make a contribution to the Guarantee Fund, except in certain circumstances (see section 3.1 above).

In the event that the Guarantee Fund is depleted in the course of handling a Clearing Member default, CMECE currently has an assessment power against non-defaulting Clearing Members for 275% of the original Guarantee Fund contribution of the Clearing Members with respect to the Guarantee Fund. In the course of the depletion of some of the Guarantee Fund during default management, CMECE would require Clearing Members to replenish their contributions (Rule 8.5.2).

However, please note that CMECE has recently proposed changes in order to address concerns that there is currently no aggregate maximum for cascading defaults over a short period of time.

The proposed changes (which are – at the date of this letter – still subject to FSA approval and consultation with Clearing Members and therefore subject to change) state that following a Declaration of Default, the Clearing House shall re-assess the Guarantee Fund and each non-defaulting Clearing Member's Contribution. If the Clearing House applies all or part of the Contributions of the non-defaulting Clearing Members, each non-defaulting Clearing Member shall provide such replenishment amount to the Clearing House as notified and requested by the Clearing House to ensure that such non-defaulting Clearing Member's Contribution deposited with the Clearing House is maintained at the same level as required prior to the issue of the first Declaration of Default in the relevant Cooling Off Period, save that during a Cooling Off Period, the replenished Contribution provided by each non-defaulting Clearing Member to the Clearing House shall not exceed a total of 550% of its Contribution to the Guarantee Fund as at the date on which the first Declaration of Default in the relevant Cooling Off Period was issued. Subject to the 550% maximum, a non-defaulting Clearing Member may be required to deposit further amounts more than once during a Cooling Off Period. The Clearing House shall use such amounts in accordance with the rule set out below (Proposed new Rule 8.6.1).

[15] The initial phase was originally intended to be the first year following CMECE's launch. However, this has now been extended until further notice.

If there remains an unsatisfied obligation after the Clearing House has used in full the contributions set out in Rules 8.5.1(a) and 8.5.1(b)[16], the Clearing House shall have a right to use the replenished Contribution received from each non-defaulting Clearing Member pursuant to Rule 8.6.1 provided that:

a) if there is only one Declaration of Default during the relevant Cooling Off Period, the Clearing House may use a total of 275% of each non-defaulted Clearing Member's Contribution to the Guarantee Fund as determined at the date on which such Declaration of Default in the relevant Cooling Off Period was issued; and

b) if there is more than one Declaration of Default during the relevant Cooling Off Period, the Clearing House may use a total of 550% of each non-defaulting Clearing Member's Contribution to the Guarantee Fund as determined at the date on which the first Declaration of Default in the relevant Cooling Off Period was issued (proposed new Rule 8.6.2).

Each non-defaulting Clearing Member is required to provide the amount as required pursuant to (proposed new) Rule 8.6.1 to the Clearing House within one (1) hour of notification of such amount if notification is received during the hours when CHAPS is open and otherwise, within one hour of the time at which the CHAPS first opens after such notification. The Clearing Member agrees that the Clearing House may debit such amount from its Bank Account. With respect to assessments pursuant to (proposed new) Rule 8.6.1, the Clearing House shall use its reasonable endeavours to notify non-defaulting Clearing Members and provide estimates of the amounts required in advance of any formal notifications.

After the Cooling Off Period, each non-defaulting Clearing Member's Contribution will be assessed pursuant to the Clearing House's assessment methodology. The Clearing House shall notify each Clearing Member of the new amount of Contribution.

Eligible Collateral

Clearing Members are required to make their Guarantee Fund contributions and Margin deposits in Eligible Collateral, which comprises Eligible Securities[17] and Eligible Cash[18] (please note that we are currently consulting on changes to the Clearing Rules which will – subject to regulatory approval by FSA – enable us to also accept gold as collateral, which would be deemed Eligible Commodities). The list of Eligible Collateral is made available to Clearing Members on our website.

From time to time, CMECE will wish to add securities as Eligible Collateral (this would generally be on the initiative of the Head of Banking and Settlement or the Head of Risk and Membership and may be the result of requests from Clearing Members). Proposals to accept new securities as Eligible Collateral will need to be approved by the Risk Committee and Board. If the proposal is for a completely new type of Eligible Collateral (i.e. a new asset class, such as precious metal), then CMECE will also require approval from the FSA. We plan to accept Canadian government bonds and Canadian dollars as Eligible Collateral in future, although there are currently no fixed timescale or fixed plans to introduce them.

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16 Clearing Rule 8.5.1 referred to above states that "to the extent that the assets referred to in Rule 8.3.3 (below) are insufficient, the following assets shall be used to satisfy any outstanding amount in the order set out below:

a) the Clearing House's contribution to the Guarantee Fund;

b) the Contributions of the non-defaulting Clearing Members to the Guarantee Fund; and

c) amounts received by the Clearing House pursuant to Rule 8.5.2 (below).

Clearing Rule 8.5.2 referred to above states that "in the event that there remains an unsatisfied obligation, the Clearing House shall have a right to assess each non-defaulting Clearing Member for an amount not exceeding 275% of its Contribution to the Guarantee Fund as at the date on which the Event of Default occurred. Each non-defaulting Clearing Member is required to provide the amount assessed to the Clearing House within one (1) hour of notification of such amount if notification is received during the hours when Clearing House Automated Payment System (CHAPS) is open and otherwise, within one hour of the time at which CHAPS first opens after such notification. The Clearing House shall use its reasonable endeavours to notify Clearing Members and provide an estimate of the amount required in advance of the formal notification".

Clearing Rule 8.3.3 referred to above states that "the sum produced pursuant to Rule 8.3.1 (below) will, if due from the Defaulting Clearing Member, be set off against the following assets in the following order or, if due to the Defaulting Clearing Member, be aggregated with the following assets:

a) the Defaulting Clearing Member's Collateral; and

b) the Defaulting Clearing Member's Contribution to the Guarantee Fund."

Clearing Rule 8.3.1 referred to above states that "upon the Clearing House issuing a Declaration of Default, the Clearing House shall seek to discharge all of the Defaulting Clearing Member's rights and liabilities under all of the Affected Contracts, aggregate any obligations for the payment of money, whether present or future, actual or contingent by the Defaulting Clearing Member under such Contracts and the Rules (including any amounts owing to the Clearing House including any costs and expenses arising from the implementation of the Default Rules), aggregate any such obligations to the Defaulting Clearing Member under each Affected Contract and the Rules, and set-off the two aggregated amounts against one another so as to produce a single net sum for the purpose of Rule 8.3.3.(above)".

17 Eligible Securities currently includes: French and German Government Bills, Notes, and Bonds; UK Government Bills and Gilts; and US Treasury Bills, Bonds, and Notes.

18 Eligible Cash currently includes: EUR, GBP, and USD

Haircuts are applied to eligible cash and collateral to ensure that upon liquidation in a time of market stress, cash received would at least equal the value of the collateral.

Appropriate haircuts will be applied to cash only when it is utilised to meet CMECE requirements in other currencies. Appropriate haircuts will be applied to all securities and physical collateral utilised to meet CMECE requirements. FX rates will be taken into account when setting haircuts for securities, to account for the fact that securities may be lodged in currencies other than the currency of the liability. Haircuts will be based on a minimum of the 99% confidence level over 12 months of 1-day moves.

This historical percentile analysis is considered alongside the following other quantitative measures: Extreme Value Theory (EVT), Exponentially Weighted Moving Average (EWMA) and Normal Mixtures.

In addition to using quantitative data from these methodologies, qualitative information is also incorporated into the analysis. An example of qualitative information is a change in market fundamentals pertaining to the collateral that may not yet be reflected in the quantitative information. Additionally, further investigation into the cause of a period of increased volatility may indicate that the indicated level of haircut is not warranted and therefore the haircut may be set at a lower level, but at all times ensuring the 99% confidence level is maintained.

Stress Testing

CMECE runs a comprehensive suite of risk-based stress testing analysis on a daily basis to inform decisions on margin and Guarantee Fund adequacy, determine the need for additional margin requirements, and for general Clearing Member monitoring. CMECE employs three separate stress-testing models to assess potential Clearing Member exposures across all markets, each of which is currently used by CME:

- Largest Net Debtor Stress Testing
- Concentration Margin Stress Testing
- Trend Analysis Stress Testing

Default Rules

CMECE's default rules can be found in chapter 8 of the Clearing Rules and are described in the OTC Commodity Derivatives Guide.

CMECE's default rules, supported by the provisions of English law under amendments to Part VII of the UK Companies Act 1989, permit CMECE to apply any surplus assets (a net sum under terms used in the legislation and in the default rules) available after it has finalised the default management of a defaulter's house account positions to meet any shortfall in relation to the defaulting Clearing Member's Client account positions. CMECE is not permitted to apply a net sum related to the CMECE Segregated Client Account of a defaulting Clearing Member to cover a shortfall in the defaulting Clearing Member's house account. In that context, Client accounts have a priority over house accounts.

CMECE is able to use the Guarantee Fund (including the contribution from CME Group and contributions of non-defaulting Clearing Members) to cover shortfalls in relation to a defaulting Clearing Member's Client accounts, house account, or both.

6.2 The clearing agency has appropriate risk management policies and procedures and internal controls in place.

CMECE has set up a number of processes and internal management practices to ensure the proper operation of the clearing house. The risk department has a number of internal policies in place which are all considered and approved by the Risk Committee.
In addition, CMECE's Clearing Procedures contain procedures relating to membership, risk management and the Guarantee Fund. These are available on the CMECE website.

The Risk and Membership department reports directly to the COO, who is a member of the Board. In addition, the Head of Risk and Membership reports in to the Chairman of the Risk Committee. Ongoing monitoring of the Risk and Membership department's policies and procedures is undertaken by the Regulatory Compliance Officer (as part of the Compliance Monitoring Programme) and the internal auditor.

The staff working in the risk and membership team are required to have sufficient qualifications, skills and experience to perform their roles: the amount of which will obviously depend on the level of the role and the responsibilities undertaken. The specific requirements will be stated in job descriptions and verification of the skills necessary will form part of the interview and selection process. There is no formal written requirement regarding the skills or experience of members of the Risk Committee, although

it is to Clearing Members advantage to nominate a representative with sufficient ability, qualifications and aptitude. The biographies of nominated representatives to the Risk Committee are supplied to CMECE and reviewed by the Chairman of the Risk Committee and the Head of Risk and Membership prior to appointment to the Risk Committee.

6.3 Without limiting the generality of the foregoing, the clearing agency's services or functions are designed to achieve the following objectives:

1. Where the clearing agency acts as a central counterparty, it rigorously controls the risks it assumes.

CMECE acts as a central counterparty (CCP) and it rigorously controls the risk it assumes: this is achieved by having an experienced, dedicated risk management team in the UK, which is able to also draw on the resources of the CME Risk Management department. The policies and procedures are put in place to ensure consistency and transparency: these are approved by the Risk Committee, the Board and filed with (and subject to review and comment by) the FSA.

As described above, CMECE has in place financial safeguards to ensure the integrity of the marketplace and the contracts it clears. The activities of CMECE are designed and focused on ensuring that it maintains best practices and fulfils its public interest mandate.

2. The clearing agency minimizes principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.

CMECE minimises principal risk by waiting for confirmation of the movement of cash (or securities) from Clearing Members before we release the corresponding securities (or cash).

3. Final settlement occurs no later than the end of the settlement day. Intraday or real-time finality is provided where necessary to reduce risks.

As stated in the Risk Management Procedures (which form a chapter of the Clearing procedures), CMECE operates two settlement cycles each day and may require the Clearing Member to transfer Collateral to it or make payment to the Clearing Member at the end of each settlement cycle in satisfaction of a Net Settlement Amount. However, for certain Transactions, the clearing house may, in practice, only require the Clearing Member to transfer Collateral or make payment to the Clearing Member at the end of one settlement cycle each day. Collection from Clearing Members must be made prior to 9:00am for the previous end of day settlement cycle or within two hours of the intraday settlement cycle (if required).

The Variation Requirement consists of a periodic mark-to-market or revaluation of contracts and the determination of any final settlement amounts. The Variation Requirement also takes account of other amounts payable under the contracts relating to an Account such as premiums. Under volatile market conditions, the clearing house will conduct additional Variation Requirement calculations.

To calculate the intra-day Variation Requirement, the Clearing House uses current market prices and applies them to the position data submitted by Clearing Members prior to the relevant time set out on the Website on that Business Day. For the end-of-day Variation Requirement, the Clearing House uses final settlement prices and applies them to the position data submitted by Clearing Members prior to the relevant time set out on the Website.

The Clearing House uses the Margin Requirement and the Variation Requirement to calculate the Net Settlement Amount for the settlement cycle. The Net Settlement Amount for each Clearing Member is reported to the Clearing Member at the end of each settlement cycle.

4. Where the clearing agency extends intraday credit to participants, including a clearing agency that operates net settlement systems, it institutes risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle.

In order to ensure we have adequate liquidity each day for required payments and settlements, CMECE invests in rolling overnight repos, which provides us with a daily pool of liquidity from which to manage outgoing payments. This policy means that we only re-invest any cash which is not required to manage liquidity.

5. Assets used to settle the ultimate payment obligations arising from securities transactions carry little or no credit or liquidity risk. If central bank money is not used, steps are to be taken to protect participants in settlement services from potential losses and liquidity pressures arising from the failure of the cash settlement agent whose assets are used for that purpose.

Where the Net Settlement Amount is payable to the clearing house, it shall be provided in the form of Eligible Cash. The Clearing Member may subsequently substitute part or all of such Collateral with an amount of Eligible Securities which is of an equivalent value as at the date of the substitution.

All of our acceptable collateral is of very high quality and is very liquid. However, in order to account for potential credit or liquidity risk, haircuts from current market value are applied when recognising the value of Eligible Collateral. According to internal CMECE policy, haircuts will be based on a minimum of the 99% confidence level over 12 months of 1-day moves. The haircuts are established and reviewed based on volatility using several VaR methodologies and historical observations for varying periods of time and confidence intervals. In addition to using the quantitative data from these methodologies, qualitative information is also incorporated into the analysis.

6. If the clearing agency establishes links to settle cross-border trades, it designs and operates such links to reduce effectively the risks associated with cross-border settlements.

CMECE does not have any such links. Were it to establish one or more in the future, it would focus on ensuring that the legal structure and general risk management of the linkage or linkages was such as to reduce residual risks to a minimum.

6.4 The clearing agency engaging in activities not related to settlement services carries on such activities in a manner that prevents the spillover of risk to the clearing agency that might affect its financial viability or negatively impact any of the participants in the settlement service.

CMECE does not at the current time engage in any activities other than that of a clearing house for OTC commodity derivatives.

7. SYSTEMS AND TECHNOLOGY

7.1 For its settlement services systems, the clearing agency:

(a) develops and maintains,

(i) reasonable business continuity and disaster recovery plans,

(ii) an adequate system of internal control,

(iii) adequate information technology general controls, including controls relating to information systems operations, information security, change management, problem management, network support, and system software support;

CMECE uses information technology (IT) systems provided and supported by CME at all levels of its operations, including those key to the daily processing and risk assessment of a clearing house. The core systems standards and procedures that underpin performance and resilience are those established and reviewed by CME. CMECE's separate internal audit function, which will draw on IT audit experts from an external auditor, will rely on CME Group Internal Audit work[19] or undertake complementary work, as appropriate.

The CME Clearing IT Department includes a dedicated Quality Assurance Team responsible for manual and automated testing of all clearing systems. The team provides test coverage for each of the systems described above. It has developed a large suite of regression test cases that cover all existing functionality and continues to add new test cases to cover new functionality added to the various systems. It executes various types of tests, including testing individual systems in isolation as well as end-to-end integration tests that exercise the functions of the clearing systems.

In addition, the CME Clearing IT Department includes a dedicated performance and reliability testing team responsible for executing tests that stress the clearing systems with large numbers of transactions to ensure that the systems are sized to support at least twice the last known transaction volume peak. Additional hardware will be added as necessary to meet increasing transaction volumes. The Quality Assurance Team also executes tests that simulate various types of system failure and ensures that these scenarios are handled predictably and can be recovered with no impact on data integrity.

CMECE has defined business-critical IT systems with appropriate redundancy, including immediate recovery time objectives for core components and up to four hours recovery for certain ancillary systems. In practice, the business could withstand a system outage of up to eight hours.

The CMECE Operations, IT and Client Support Team are responsible for overall monitoring of the operation of the CMECE IT systems and the provision of IT services by CME. Monitoring will include system performance, availability, and integrity of the relevant systems. The Operations, IT and Client Support Team will in turn report to the CEO and the Board pursuant to the

19 The CME Internal Audit Department performs systems reviews on an annual basis as part of the CME Group Sarbanes-Oxley (SOX) program and also as part of the Internal Audit risk based audit plan. The CMECE IT systems will be reviewed by CME Internal Audit at the same time that it carries out its review of the CME systems, with a separate report for the CMECE systems provided and reported to the relevant departments / the Board of CMECE.

CMECE internal reporting line structure. Monitoring of IT system performance also takes place within CME with reporting lines to the CMECE Operations, IT and Client Support Team.

CME and CMECE have both implemented disaster recovery plans in the event of a failure of their systems. While these plans are designed to ensure that business operations can continue in the event of a wide range of disaster situations, IT failure is at their core. Since most of the IT systems are operated by CME on CMECE's behalf, the CME disaster recovery plan is key to CMECE. However, CMECE also has its own disaster recovery plan to set out back-up arrangements for CMECE staff and their connections with the services being provided on an outsourced basis by CME. The CMECE disaster recovery plan is parallel to CME's disaster recovery plan and extensive work has been carried out by CMECE and CME to ensure that the two plans are coordinated and operate effectively together.

To retain its recognition as an RCH, CMECE must comply with REC 2.5 (systems and controls) which requires an RCH to ensure that the systems and controls used in the performance of its relevant functions are adequate and appropriate for the scale and nature of its business. The relevant REC guidance on information technology systems set out in REC chapter 2.5, specifically 2.5.18 and 2.5.19:

REC 2.5.18

Information technology is likely to be a major component of the systems and controls used by any UK recognised body. In assessing the adequacy of the information technology used by a UK recognised body to perform or support its relevant functions, the FSA may have regard to:

(1) the organisation, management and resources of the information technology department within the UK recognised body;

(2) the arrangements for controlling and documenting the design, development, implementation and use of information technology systems; and

(3) the performance, capacity and reliability of information technology systems.

REC 2.5.19

The FSA may also have regard to the arrangements for maintaining, recording and enforcing technical and operational standards and specifications for information technology systems, including:

(1) the procedures for the evaluation and selection of information technology systems;

(2) the arrangements for testing information technology systems before live operations;

(3) the procedures for problem management and system change;

(4) the arrangements to monitor and report system performance, availability and integrity;

(5) the arrangements (including spare capacity and access to back-up facilities) made to ensure information technology systems are resilient and not prone to failure;

(6) the arrangements made to ensure business continuity in the event that an information technology system does fail;

(7) the arrangements made to protect information technology systems from damage, tampering, misuse or unauthorised access; and

(8) the arrangements made to ensure the integrity of data forming part of, or being processed through, information technology systems.

(b) on a reasonably frequent basis, and in any event, at least annually, and in a manner that is consistent with prudent business practice,

(i) makes reasonable current and future capacity estimates,

All automated systems employed by CMECE meet the International Organization of Securities Commissions (IOSCO) Principles for the Oversight of Screen-Based Trading Systems issued in 1990, as supplemented in October 2000, including those involving physical security, environmental controls, network management, capacity, and systems testing.

The CMECE clearing system, a dedicated, separate instance of CME's clearing system, has been configured initially to handle a level of transactions per day that provides significant headroom above the level currently handled by CMECE. The type of product cleared has no impact on system capacity. CMECE believes this is a suitable and prudent capacity for initial activity, with considerable excess capacity, and will be kept under periodic review.

(ii) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner,

As stated under (i), CMECE will keep capacity under periodic review and will at least annually conduct capacity stress tests to ensure systems are able to process transactions in an accurate, timely and efficient manner.

(iii) tests its business continuity and disaster recovery plans; and

CME Group tests the full capabilities of its Disaster Recovery Clearing systems at least twice a year. CMECE is included in disaster recovery planning and testing.

In the first part of the year it does not test with Clearing Members. For the second test of the year, CME Group carries out a full test of its Disaster Recovery systems with its Clearing Members (the FIA industry test).

In addition, CME Group tests the Business Continuity Planning business plans with participation from all CME Group business units. These tests do not currently include Clearing Members.

CMECE participated in the FSA's market wide exercise in November 2011. The key objective of the MWE programme is to improve UK financial sector preparedness by providing opportunities to test, review and update plans to deal with a range of major operational disruptions; both as individual organisations and as part of the sector, including the Tripartite Authorities (FSA, the Bank of England and HM Treasury).

(c) promptly notifies the regulator of any material systems failures.

It is the duty of the Regulatory Compliance Officer to notify the FSA of any material systems failures. Under REC 3.15, the RCH is required to notify FSA of any suspension of services or inability to operate facilities. In addition, REC 3.16 requires that:

> 3.16.2 Where a UK recognised body changes any of its plans for action in the event of a failure of any of its information technology systems resulting in disruption to the operation of its facilities, it must immediately give the FSA notice of that event, and a copy of the new plan.
>
> 3.16.3 Where any reserve information technology system of a UK recognised body fails in such a way that, if the main information technology system of that body were also to fail, it would be unable to operate any of its facilities during its normal hours of operation, that body must immediately give the FSA notice of that event, and inform the FSA: (1) what action that UK recognised body is taking to restore the operation of the reserve information technology system; and (2) when it is expected that the operation of that system will be restored.

7.2 The clearing agency annually engages a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards regarding its compliance with section 7.1(a).

Internal Audit Department

CMECE Internal Audit and CME Group Internal Audit have established independent assurance functions that report functionally to the Audit Committees of their respective boards. The functions are established with reporting lines that are independent of management and governed by terms of reference duly approved by their Audit Committees and staffed with qualified and credentialed audit personnel.

Clearing, Technology and Related Processes

CMECE has implemented formal business processes with a system of internal controls to operate, manage and control CMECE.

Independent Systems Review

CMECE Internal Audit performs periodic risk assessments of CMECE business processes and system of internal controls. The scope of this risk assessment includes processes managed and operated internally by CMECE as well as processes performed by CME Group. This risk assessment is used to prepare a schedule of internal audits that are approved by, monitored and reported to CMECE's Audit Committee (comprised of independent non-executive directors). This schedule of internal audits includes coverage of Clearing and Technology services. CME Group Internal Audit conducts independent audits of CME Group

Clearing and Technology processes and prepares reports in accordance with established audit standards and provides these reports to CMECE Internal Audit and CMECE Management. CMECE Internal Audit relies on these audits performed by CME Group Internal Audit to provide adequate risk coverage. CMECE Internal Audit and CMECE Management use these reports to draw independent conclusions about the relevance of results to CMECE.

The audits performed by CMECE Internal Audit and CME Group Internal Audit provide reasonable assurance that processes included in the system of internal controls are designed and operating effectively. Among other areas, these audits examine the integrity, completeness and timeliness of processing as well as the design and operating effectiveness of technology processes. Technology processes audited include among others: Access Controls, Business Continuity Management, Change Management, Database Management, Disaster Recovery Planning, Information Security, Network Management, Systems Configuration, Systems Development, Technology Operations and Quality Assurance.

8. FINANCIAL VIABILITY AND REPORTING

8.1 The clearing agency has sufficient financial resources for the proper performance of its functions and to meet its responsibilities and allocates sufficient financial and staff resources to carry out its functions as a clearing agency in a manner that is consistent with any regulatory requirements.

CMECE has adequate financial and staff resources to carry on its activities in full compliance with its regulatory requirements and with best practices of clearing houses.

Financial resources

REC 2.3 sets out the recognition requirement regarding financial resources (known as the financial resources requirement (FRR)). In particular, 2.3.2 requires that the RCH must have financial resources sufficient for the proper performance of its relevant functions as a UK RCH. REC 2.3.7 states that the FSA considers that a RCH should have at any time: (1) liquid financial assets (LFA) amounting to at least six months' operating costs; and (2) net capital of at least this amount.

CMECE maintains LFA to meet the FRR: Net Capital Cover (base plus buffer) and LFA ratio over the minimum requirement of 150% – effectively 9 months of wind-down costs.

CMECE's Audit Committee is responsible for ensuring compliance with the financial requirements. CMECE files regular financial information with the FSA (as set out in REC 3.8), including monthly management accounts.

Staff resources

CMECE participates in a group wide performance management programme on an annual basis to assess the calibre of its talent base and skill set. This performance planning tool aims to capture data and feedback related to individual performance, objectives of the role within CMECE and to identify any additional training/learning that may be required to ensure the job holder can develop and fully perform their role with the capabilities required. All CMECE employees participate in this programme.

CMECE also participates in a headcount planning and approval workflow to allow the business to make business justification for additional headcount to support recruitment. A committee meets regularly to discuss headcount needs based on business commitments. In addition, CMECE participates in an annual budget planning process whereby additional resources are requested and approved. This is driven by the CEO of CMECE.

9. OPERATIONAL RELIABILITY

9.1 The clearing agency has procedures and processes to ensure the provision of accurate and reliable settlement services to participants.

The processes and procedures utilised by CMECE are designed to ensure that it fulfils its necessary reporting and operational requirements. CMECE has rules, procedures, schedules and deadlines for all processes related to settlement services.

The CMECE Banking and Settlement team's role is to manage the cash and collateral that is central to the operations and integrity of the clearing house. Apart from its responsibilities for the accounts in which the cash and collateral is held, the team oversees the daily settlements of margin between CMECE and the settlement banks acting on behalf of Clearing Members.

The Banking and Settlement team works closely with the Operations, IT and Client Support and Risk teams. The Risk team will review Clearing Members' positions before settlement instructions are approved for release by the Banking and Settlement team. Any large exposure may be communicated to Clearing Members' staff and settlement banks prior to release of payment instructions.

Payment instructions will be released to settlement banks daily, after Regular Trading Hours (RTH) settlement cycle calculations are completed, at around 2:00 AM GMT. All margin/variation calls resulting from the RTH cycle will be processed by the settlement banks by 9:00 AM GMT with payments confirmed to CMECE. Any delays will be immediately escalated to senior management. CMECE will also run a routine Intra-Day (ITD) settlement cycle every day at 12:00 PM GMT.

CMECE uses the Combined Cash Flow settlement method. This means that any cash initial margin excess will be utilised to cover a Clearing Member's cash variation margin requirement; and any cash variation margin payments due from CMECE will be deposited into the Clearing Member's cash initial margin accounts. Instructions to deposit or release any margin (whether cash or eligible financial instruments) will be accepted via the Clearing 21 system on the CME Clearing Europe portal.

CMECE uses the settlement prices established for the US-cleared (NYMEX) contracts, reserving the right in exceptional circumstances and on risk management grounds to depart from those values. The OTC Commodities Contract Module (available on our website) contains the product specifications and the settlement methodologies applicable to the contracts.

As an RCH, CMECE is required by REC 2.8 (Settlement and Clearing Services) to ensure that its clearing services involve satisfactory arrangements for securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions in respect of which it provides such services, (being rights and liabilities in relation to those transactions).

10. PROTECTION OF ASSETS

10.1 The clearing agency has established accounting practices, internal controls, and safekeeping and segregation procedures to protect the assets that are held by the clearing agency.

Accounting practices

With respect to accounting practices, all financial reporting is outsourced to CME Operations Limited accounting personnel (see Part 11: Outsourcing). All clearing deposits are included in the overall financial reporting of the Clearing House and are reviewed by management and the independent Board members on a monthly basis.

All financial information of CME Group Inc., including all of its subsidiary companies is also consolidated and reported in the 10Q and 10K filings submitted to the US S.E.C.

Internal controls

The Audit Committee has responsibility for oversight of the operational risk framework of CMECE. The Audit Committee is responsible for monitoring and reviewing the effectiveness of the internal audit function in the context of CMECE's overall risk management system. It will also review and approve the statement to be included in CMECE's annual report concerning internal controls and risk management. The Audit Committee provides general oversight of the transaction recording process.

The internal audit function consists of one dedicated person (the Head of Internal Audit) (outsourced), who as mentioned in section 7 is supported by other specialists from their firm on various aspects of the audit work, supported by the CME Group Internal Audit department. The Head of Internal Audit is ACA[20] qualified. The Head of Internal Audit of CMECE reports to the Audit Committee of the Board functionally and to the CEO of the Clearing House administratively.

The role of Internal Audit is to understand the key risks of the organisation and to examine and evaluate the adequacy and effectiveness of the system of risk identification and management and internal control as operated by the organisation. CMECE Internal Audit, therefore, shall have unrestricted access to all activities undertaken in the organisation (including, where relevant, CME Group-wide activities), in order to review, appraise and report on: systems and controls, risk management, finance and controls, regulatory and governance issues.

Safekeeping and segregation

Whilst CMECE holds both legal and beneficial title to all assets transferred to it, we keep separate records and accounts to distinguish:

- the assets and positions of a Clearing Member from the assets and positions held for another Clearing Member and from our own assets;

20 ACA stands for Associate Chartered Accountant and is a qualification gained through the Institute of Chartered Accountants in England and Wales.

- the assets and positions of a Clearing Member from the assets and positions held for its clients (omnibus client segregation);

- the assets and positions of a client from the assets and positions held for other clients (individual client segregation).

We will be consulting on new safekeeping and segregation procedures and rules shortly. Our proposed segregation and safekeeping structure will be compliant with the proposed EMIR[21] requirements in Europe. Our proposed account structure will enable us to identify positions of a Clearing Member's clients and to segregate related collateral. We will maintain client positions and collateral in omnibus client accounts or individual client accounts. This account structure will be supported by our Clearing Rules, Clearing Procedures and legal agreements to be entered into by a Clearing Member, a client and CMECE. We are in the process of obtaining legal opinions from the relevant jurisdictions to verify and support the enforceability of the segregated account structure.

We are able to facilitate portability of client positions and collateral to another Clearing Member in the event of a Clearing Member default because:

- we offer omnibus client accounts where collateral is held on a gross basis;

- we offer individually segregated client accounts (i.e. both legally segregated accounts and legally and operationally segregated accounts);

- we have a legal agreement under which a Clearing Member assigns to its client its rights to any collateral and the account balance remaining (after the close-out of the Clearing Member's client transactions) as a result of the Clearing Member's default (known as 'Portable Net Sum'). Such security will be perfected by registration;

- we ask clients to nominate in advance new Adopting Clearing Members in the event that their Clearing Member defaults; and

- proposed EMIR legislation in Europe will legally recognise the concept of porting.

11. OUTSOURCING

11.1 Where the clearing agency has outsourced any of its key functions, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices. The outsourcing arrangement provides regulatory authorities with access to all data, information, and systems maintained by the third party service provider required for the purposes of regulatory oversight of the agency.

As mentioned in Part I (section D) of this letter, CMECE receives a number of services and support from CME in the US and from CME Operations Limited (CMEOL) in London. The outsourcing arrangement is governed by legal agreements entered into by CMECE with CME and with CMEOL. Under the agreements, the regulators have access to all data and information maintained by CME.

CMECE receives legal and company secretarial, financial accounting, human resources, IT support services and office administrative support from CMEOL staff working in London. U.S. based staff of CME provide support to CMECE in these and other areas.

CME and CMEOL are required to provide the services in a manner which is consistent with that in which CME provides equivalent services, including quality and timing, and with due skill, care, and diligence. The Board has ultimate oversight of the services provided by CME through regular reports from management. On a day-to-day basis, satisfactory performance of the outsourcing arrangements is overseen by the relevant CMECE staff, who are in frequent contact with their counterparts at CME and receive regular notices and reports on the provision of the services to supplement their direct observations of the performance of the services provided by CME. The oversight procedure put in place by CMECE comprises CMECE operational staff, for example, those in the risk management department, reporting all breaches of service standards to the Regulatory Compliance Officer, the CEO, and the COO. Corrective action in respect of persistent problems will be escalated to CME at a senior level and the internal CMECE reports and escalation actions and agreed consequential changes will form the basis of management reports from the Regulatory Compliance Officer to the Board of CMECE.

21 The European Union European Market Infrastructure Regulation, which is due to be formally adopted in the next few months.

CMECE is bound by REC 2.2.1(3) which requires that:

> "Where a UK recognised body or applicant makes arrangements of the kind mentioned in paragraph (2), the arrangements do not affect the responsibility imposed by [FSMA] on the UK recognised body or applicant to satisfy recognition requirements applying to it under these Recognition Requirements Regulations, but it is in addition a recognition requirement applying to the UK recognised body or applicant that the person who performs (or is to perform) the functions is a fit and proper person who is able and willing to perform them."

12. INFORMATION SHARING AND REGULATORY COOPERATION

12.1 For regulatory purposes, the clearing agency cooperates by sharing information or otherwise with the Commission and its staff, self-regulatory organizations, exchanges, quotation and trade reporting systems, alternative trading systems, other clearing agencies, investor protection funds, and other appropriate regulatory bodies.

CMECE is required by REC 2.13.2 (2) to be "able and willing to cooperate, by the sharing of information or otherwise, with the FSA, with any other authority, body or person having responsibility in the United Kingdom for the supervision or regulation of any regulated activity or other financial service, or with an overseas regulator within the meaning of section 195 of [FSMA]".

In order to comply with 2.13.2(2), each Clearing Member is required to enter into a Clearing Membership Agreement with CMECE, which will bind the Clearing Member to the Clearing Rules. The Clearing Membership Agreement requires the Clearing Member to agree that CMECE shall be permitted to disclose information it receives from the Clearing Member and which it learns about the Clearing Member in the course of its business as a clearing house to the FSA and any other regulator which has jurisdiction over CMECE in relation to the Clearing Member. Clearing Rule 2.4 also makes it clear that CMECE is entitled to disclose confidential information relating to Clearing Members in this way.

CMECE intends to be open with the FSA and any other appropriate regulatory bodies in relation to the running of the clearing house. CMECE will investigate and pursue enquiries from the FSA and other appropriate bodies diligently. This is the responsibility of the Regulatory Compliance Officer and the CEO.

CMECE will, as appropriate, enter into and abide by the terms of information sharing agreements and use relevant information obtained from such agreements in carrying out its risk management program.

CMECE is not currently party to any formal, UK, or international information-sharing agreements and arrangements. CMECE is not aware of any such arrangement between clearing houses in the UK but may initiate discussion with other UK clearing houses.

CMECE is a member of the European Association of Clearing Houses (EACH). Membership in EACH, which is open to all regulated CCP houses in Europe, does not involve formal information-sharing agreements. It does, however, provide close contacts for the informal sharing of information about risk concerns and risk perceptions (not covering the precise information that may be needed for regulatory investigations) that is in practice the way in which clearing house risk managers can and do best co-operate and offer mutual support.

CMECE will join the international exchange and clearing house information sharing agreement administered by CME, which provides for information sharing on an international basis. CMECE will notify the Commission of its entry into information-sharing arrangements with other clearing organisations or other groups or associations, on a timely basis.

Part III Submissions

CMECE submits that it meets the criteria set out for recognition as a clearing agency, all as outlined in Appendix A to Staff Notice 24-702. CMECE further submits that it would be appropriate and would not be contrary to the public interest for the Commission to exempt CMECE from recognition due to the fact that it is already subject to appropriate regulatory oversight by the Financial Services Authority of the United Kingdom (FSA).

Yours sincerely,

"Lee Betsill"

Lee Betsill

Chief Operating Officer

[DRAFT ONLY]

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

AND

IN THE MATTER OF
CME CLEARING EUROPE LIMITED

ORDER
(Section 147 of the Act)

WHEREAS CME Clearing Europe Limited (CMECE) filed an application dated August 3, 2012 (the Application) with the Ontario Securities Commission (the Commission or OSC) requesting an Order pursuant to section 147 of the Act exempting CMECE from the requirement to be recognized by the OSC as a clearing agency pursuant to subsection 21.2(0.1) of the Act;

AND WHEREAS CMECE has represented to the Commission that:

1. CMECE is a private limited company incorporated under the laws of England and Wales;

2. CMECE's ultimate parent is CME Group Inc. (CME Group). CMECE's immediate parent (100% ownership) is Chicago Mercantile Exchange Luxembourg S.à r.l; it is in turn a wholly-owned subsidiary of Chicago Mercantile Exchange Luxembourg Holdings S.à r.l, which is a wholly-owned subsidiary of CME Group;

3. CME Group is the holding company for four futures exchanges: the Chicago Mercantile Exchange Inc. (CME), the Board of Trade of the City of Chicago Inc. (CBOT), the New York Mercantile Exchange Inc. (NYMEX) and the Commodity Exchange Inc. (COMEX). In addition to being an exchange, CME offers through a division, "CME Clearing", central counterparty clearing and settlement services to all CME Group exchanges and for certain over-the-counter (OTC) derivatives transactions. CME Group is a listed corporation whose shares are traded on the NASDAQ stock exchange;

4. CMECE has been established as part of a globalization strategy by CME Group. The associated business goal is to offer clearing services from the United Kingdom (UK) for a broad range of OTC derivatives;

5. CMECE is a Recognised Clearing House (RCH) in the UK under the Financial Services and Markets Act 2000 (FSMA);

6. The Financial Services Authority of the UK (FSA) is CMECE's primary regulator. As part of its regulatory oversight of CMECE, the FSA reviews, assesses and enforces the on-going compliance by CMECE with the requirements set out in the FSMA including financial resources; suitability; systems and controls (including the assessment and management of risks to the performance of the clearing house's functions); safeguards for investors (including access to facilities); promotion and maintenance of standards; rule-making (including default rules in respect of market contracts); and arrangements regarding discipline and complaints;

7. CMECE is required to provide to the FSA, on request, access to all records and to cooperate with other regulatory authorities, including making arrangements for information-sharing;

8. CMECE's financial safeguards model includes clear and certain rules and procedures (and other aspects of its legal framework) governing CMECE's role as central counterparty, as well as appropriate membership criteria that are risk-based. CMECE operates a robust pricing and margining/collateral methodology. CMECE also has in place appropriate banking and custody arrangements, default resources and management processes. These components are linked by daily monitoring and oversight, undertaken by an experienced risk management team, with appropriate oversight by the Board of Directors;

9. The membership requirements of CMECE for OTC derivative clearing are publicly disclosed and are designed to permit fair and open access, while protecting CMECE and its clearing members (Clearing Members). The clearing membership requirements include fitness criteria, financial standards, operational standards and appropriate registration qualifications with applicable statutory regulatory authorities. CMECE applies a due diligence process to ensure that all applicants meet the required criteria and conducts on-going monitoring of Clearing Members;

10. CMECE currently offers clearing services for over 200 OTC commodity derivative contract types. CMECE also has plans to launch clearing services for OTC interest rate swaps in the last quarter of 2012, followed by foreign exchange and credit default swap products in the first half of 2013. Any such launch of new products requires the approval of the FSA;

11. CMECE does not have any office or maintain other physical installations in Ontario or any other Canadian province or territory. CMECE does not have any plans to open such an office or to establish any such physical installations in Ontario or elsewhere in Canada. However, CMECE offers or proposes to offer direct clearing access in Ontario for clearing OTC derivatives products to entities that have a head office or principal place of business in Ontario (Ontario Clearing Members);

12. Section 21.2 of the Act prohibits clearing agencies from carrying on business in Ontario unless they are recognized by the Commission as a clearing agency or exempted from such recognition under s.147;

AND WHEREAS based on the Application and the representations that CMECE has made to the OSC, the Commission has determined that (i) CMECE satisfies the applicable criteria set out in Schedule "A"; and (ii) it would not be prejudicial to the public interest to grant the Order requested;

AND WHEREAS the Commission will monitor developments in international and domestic capital markets and CMECE's activities on an ongoing basis to determine whether it is appropriate that CMECE continue to be exempted from the requirement to be recognized as a clearing agency and, if so, whether it is appropriate that it continue to be exempted subject to the terms and conditions in this order;

IT IS ORDERED by the Commission that, pursuant to section 147 of the Act, CMECE is exempt from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the Act;

PROVIDED THAT CMECE complies with the terms and conditions attached hereto as Schedule "B".

DATED at Toronto this _____ day of _____

SCHEDULE "A"

Criteria for Exemption from Recognition by the OSC as a clearing agency pursuant to section 21.2(0.1) of the OSA

PART 1 GOVERNANCE

1.1 The governance structure and governance arrangements of the clearing agency ensures:

(a) effective oversight of the clearing agency;

(b) the clearing agency's activities are in keeping with its public interest mandate;

(c) fair, meaningful and diverse representation on the governing body (Board) and any committees of the Board, including a reasonable proportion of independent directors;

(d) a proper balance among the interests of the owners and the different entities seeking access (participants) to the clearing, settlement and depository services and facilities (settlement services) of the clearing agency;

(e) the clearing agency has policies and procedures to appropriately identify and manage conflicts of interest;

(f) each director or officer of the clearing agency, and each person or company that owns or controls, directly or indirectly, more than 10 percent of the clearing agency is a fit and proper person; and

(g) there are appropriate qualifications, limitation of liability and indemnity provisions for directors and officers of the clearing agency.

PART 2 FEES

2.1 All fees imposed by the clearing agency are equitably allocated. The fees do not have the effect of creating unreasonable barriers to access.

2.2 The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 3 ACCESS

3.1 The clearing agency has appropriate written standards for access to its services.

3.2 The access standards and the process for obtaining, limiting and denying access are fair and transparent. A clearing agency keeps records of

(a) each grant of access including, for each participant, the reasons for granting such access, and

(b) each denial or limitation of access, including the reasons for denying or limiting access to an applicant.

PART 4 RULES AND RULEMAKING

4.1 The clearing agency's rules are designed to govern all aspects of the settlement services offered by the clearing agency, and

(a) are not inconsistent with securities legislation,

(b) do not permit unreasonable discrimination among participants, and

(c) do not impose any burden on competition that is not necessary or appropriate.

4.2 The clearing agency's rules and the process for adopting new rules or amending existing rules should be transparent to participants and the general public.

4.3 The clearing agency monitors participant activities to ensure compliance with the rules.

4.4 The rules set out appropriate sanctions in the event of non-compliance by participants.

PART 5 DUE PROCESS

5.1 For any decision made by the clearing agency that affects an applicant or a participant, including a decision in relation to access, the clearing agency ensures that:

(a) an applicant or a participant is given an opportunity to be heard or make representations; and

(b) the clearing agency keeps a record of, gives reasons for, and provides for appeals or reviews of, its decisions.

PART 6 RISK MANAGEMENT

6.1 The clearing agency's settlement services are designed to minimize systemic risk.

6.2 The clearing agency has appropriate risk management policies and procedures and internal controls in place.

6.3 Without limiting the generality of the foregoing, the clearing agency's services or functions are designed to achieve the following objectives:

1. Where the clearing agency acts as a central counterparty, it rigorously controls the risks it assumes.

2. The clearing agency minimizes principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.

3. Final settlement occurs no later than the end of the settlement day. Intraday or real-time finality is provided where necessary to reduce risks.

4. Where the clearing agency extends intraday credit to participants, including a clearing agency that operates net settlement systems, it institutes risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle.

5. Assets used to settle the ultimate payment obligations arising from securities transactions carry little or no credit or liquidity risk. If central bank money is not used, steps are to be taken to protect participants in settlement services from potential losses and liquidity pressures arising from the failure of the cash settlement agent whose assets are used for that purpose.

6. If the clearing agency establishes links to settle cross-border trades, it designs and operates such links to reduce effectively the risks associated with cross-border settlements.

6.4 The clearing agency engaging in activities not related to settlement services carries on such activities in a manner that prevents the spillover of risk to the clearing agency that might affect its financial viability or negatively impact any of the participants in the settlement service.

PART 7 SYSTEMS AND TECHNOLOGY

7.1 For its settlement services systems, the clearing agency:

(a) develops and maintains,

(i) reasonable business continuity and disaster recovery plans,

(ii) an adequate system of internal control,

(iii) adequate information technology general controls, including controls relating to information systems operations, information security, change management, problem management, network support, and system software support;

(b) on a reasonably frequent basis, and in any event, at least annually, and in a manner that is consistent with prudent business practice,

(i) makes reasonable current and future capacity estimates,

(ii) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner,

(iii) tests its business continuity and disaster recovery plans; and

(c) promptly notifies the regulator of any material systems failures.

7.2 The clearing agency annually engages a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards regarding its compliance with section 7.1(a).

PART 8 FINANCIAL VIABILITY AND REPORTING

8.1 The clearing agency has sufficient financial resources for the proper performance of its functions and to meet its responsibilities and allocates sufficient financial and staff resources to carry out its functions as a clearing agency in a manner that is consistent with any regulatory requirements.

PART 9 OPERATIONAL RELIABILITY

9.1 The clearing agency has procedures and processes to ensure the provision of accurate and reliable settlement services to participants.

PART 10 PROTECTION OF ASSETS

10.1 The clearing agency has established accounting practices, internal controls, and safekeeping and segregation procedures to protect the assets that are held by the clearing agency.

PART 11 OUTSOURCING

11.1 Where the clearing agency has outsourced any of its key functions, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices. The outsourcing arrangement provides regulatory authorities with access to all data, information, and systems maintained by the third party service provider required for the purposes of regulatory oversight of the agency.

PART 12 INFORMATION SHARING AND REGULATORY COOPERATION

12.1 For regulatory purposes, the clearing agency cooperates by sharing information or otherwise with the Commission and its staff, self-regulatory organizations, exchanges, quotation and trade reporting systems, alternative trading systems, other clearing agencies, investor protection funds, and other appropriate regulatory bodies.

SCHEDULE "B"

Terms and Conditions

REGULATION OF CMECE

1. CMECE will maintain its status as a RCH with the UK Financial Services Authority (FSA) or its successor to the FSA and will continue to be subject to the regulatory oversight of the FSA or its successor.

2. CMECE will continue to meet the criteria set out in Schedule "A".

FILING REQUIREMENTS

FSA Filings

3. CMECE will provide staff of the Commission, concurrently, the following information that it is required to provide to or file with the FSA or its successor:

   (a) the annual audited financial statements of CMECE;

   (b) the institution of any legal proceeding against it;

   (c) the presentation of a petition for winding up, the appointment of a receiver or the making of any voluntary arrangement with creditors;

   (d) changes and proposed changes to its bylaws, rules, operations manual, participant agreements and other similar instruments or documents of CMECE which contain any contractual terms setting out the respective rights and obligations between CMECE and Clearing Members or among Clearing Members;

   (e) new types of products to be offered for clearing to Clearing Members or products that will no longer be available for clearing to Clearing Members;

   (f) the CME Clearing Europe Risk Committee Quarterly Report or other materials that provide equivalent risk management information.

Prompt Notice

4. CMECE will promptly notify staff of the Commission of any of the following:

   (a) any material change to its business or operations or the information as provided in the Application;

   (b) any material problem with the clearance and settlement of transactions that could materially affect the financial safety and soundness of CMECE;

   (c) an event of default by a Clearing Member;

   (d) any material change or proposed material change in CMECE's RCH status or the regulatory oversight by the FSA or its successor;

   (e) any new services or clearing of new products that are proposed to be offered to Ontario Clearing Members.

Quarterly Reporting

5. CMECE will maintain the following updated information and submit such information to the Commission in a manner and form acceptable to the Commission on at least a quarterly basis, and at any time promptly upon the request of staff of the Commission:

   (a) a current list of all Ontario Clearing Members;

   (b) a list of all Ontario Clearing Members against whom disciplinary action has been taken in the last quarter by CMECE or the FSA or its successor with respect to activities at CMECE;

   (c) a list of all investigations by CMECE relating to Ontario Clearing Members;

(d) a list of all Ontario applicants who have been denied Clearing Member status by CMECE;

(e) the average daily volume and value of trades cleared by asset class during the previous quarter, for each Ontario Clearing Member;

(f) the portion of total volume and value of trades cleared by asset class during the previous quarter for all Clearing Members that represents the total volume and value of trades cleared during the previous quarter for each Ontario Clearing Member; and

(g) any other information in relation to an OTC derivative cleared by CMECE as may be required by the Commission from time to time to carry out the Commission's mandate.

INFORMATION SHARING

6. CMECE will provide such other information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff.

7. CMECE will share information and otherwise cooperate with other recognized and exempt clearing agencies, as appropriate.

SUBMISSION TO JURISDICTION AND AGENT FOR SERVICE

8. For greater certainty, CMECE will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario, in a proceeding arising out of, related to or concerning or in any other manner connected with the activities of CMECE in Ontario.

9. For greater certainty, CMECE will file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the activities of CMECE in Ontario.

Chapter 25

Other Information

25.1 Approvals

25.1.1 ONE Financial Corporation – s. 213(3)(b) of the LTCA

Headnote:

Clause 213(3)(b) of the Loan and Trust Corporations Act – application by manager, with no prior track record acting as trustee, for approval to act as trustee of pooled funds and future pooled funds to be managed by the applicant and offered pursuant to a prospectus exemption.

Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., s. 213(3)(b).

August 10, 2012

Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, Ontario M5H 2T6

Re: ONE Financial Corporation (ONE Financial) – application for approval pursuant to clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario) to act as trustee of All-Weather Profit Canada Investment Pool, All-Weather Profit U.S. Investment Pool, All-Weather Profit Europe & Asia Investment Pool, All-Weather Profit Emerging Markets Investment Pool, All-Weather Profit Commodities Investment Pool, All-Weather Profit Global Diversified Investment Pool, All-Weather Profit Global Diversified Growth Investment Pool, All-Weather Profit Growth & Income Balanced Investment Pool, ONE Financial All-Weather Profit Monthly Bond Investment Pool, All-Weather Profit Short-term Savings Investment Pool, All-Weather Profit Conservative Growth 2022 Protected Investment Pool and All-Weather Profit Monthly ROC Income 2022 Protected Investment Pool and any other future investment fund trusts that ONE Financial may establish from time to time (collectively, the Funds)

Further to an application dated July 27, 2012 (the **Application**) filed on behalf of ONE Financial, and based on the facts set out in the Application and the representations of ONE Financial that the assets of the Funds will be held in the custody of a trust company incorporated or licensed under the laws of Canada or a jurisdiction thereof, or a bank listed in Schedule I, II or III of the *Bank Act* (Canada), or an affiliate of such a trust company or bank, the Ontario Securities Commission (the **Commission**) makes the following order:

Pursuant to the authority conferred on the Commission in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that ONE Financial act as the trustee of the Funds, the securities of which will be distributed pursuant to a prospectus exemption.

Yours truly,

"Edward P. Kerwin"
Commissioner

"Vern Krishna"
Commissioner

25.1.2 Cardinal Capital Management Inc. – s. 213(3)(b) of the LTCA

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act – application by manager, with no prior track record acting as trustee, for approval to act as trustee of pooled funds and future pooled funds to be managed by the applicant and offered pursuant to a prospectus exemption.

Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., s. 213(3)(b).

August 3, 2012

Fasken Martineau DuMoulin LLP
Stock Exchange Tower
Suite 3700, P.O. Box 242
800 Place Victoria
Montréal, Quebec H4Z 1E9

Attention: Pierre-Yves Châtillon

Dear Sirs/Medames:

Re: Cardinal Capital Management Inc. (the "Applicant")

Application pursuant to clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario) for approval to act as trustee

File No. 2012/0306

Further to your application dated May 15, 2012 (the "Application") filed on behalf of the Applicant, and based on the facts set out in the Application and the representation by the Applicant that the assets of Cardinal Canadian Equity Pool and any other future mutual fund trusts that the Applicant may establish and manage from time to time will be held in the custody of a trust company incorporated and licensed or registered under the laws of Canada or a jurisdiction, or a bank listed in Schedule I, II or III of the *Bank Act* (Canada), or an affiliate of such bank or trust company, the Ontario Securities Commission (the "Commission") makes the following order:

Pursuant to the authority conferred on the Commission in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of Cardinal Canadian Equity Pool and any other future mutual fund trusts which may be established and managed by the Applicant from time to time, the securities of which will be offered pursuant to prospectus exemptions.

Yours truly,

"James Turner"
Vive-Chair

"Paulette Kennedy"
Commissioner

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