**The Ontario Securities Commission**

# OSC Bulletin

September 20, 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)

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

## 1.1 Notices

### 1.1.1 Current Proceedings Before The Ontario Securities Commission

**September 20, 2012**

**CURRENT PROCEEDINGS**

**BEFORE**

**ONTARIO SECURITIES COMMISSION**

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

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

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

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

**SCHEDULED OSC HEARINGS**

| | |
|---|---|
| September 24, September 26 – October 5 and October 10-19, 2012<br><br>10:00 a.m. | **New Found Freedom Financial, Ron Deonarine Singh, Wayne Gerard Martinez, Pauline Levy, David Whidden, Paul Swaby and Zompas Consulting**<br><br>s. 127<br><br>A. Heydon in attendance for Staff<br><br>Panel: JDC |
| September 27, 2012<br><br>2:00 p.m. | **David Charles Phillips**<br><br>s. 127<br><br>Y. Chisholm in attendance for Staff<br><br>Panel: EPK |
| October 2, 2012<br><br>10:30 a.m. | **Energy Syndications Inc., Green Syndications Inc., Syndications Canada Inc., Land Syndications Inc. and Douglas Chaddock**<br><br>s. 127<br><br>C. Johnson in attendance for Staff<br><br>Panel: MGC |
| October 2 and October 4, 2012<br><br>10:00 a.m. | **Portus Alternative Asset Management Inc., Portus Asset Management Inc., Boaz Manor, Michael Mendelson, Michael Labanowich and John Ogg**<br><br>s. 127<br><br>H Craig in attendance for Staff<br><br>Panel: EPK |

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|---|---|
| October 10, 2012<br><br>10:00 a.m. | **Sino-Forest Corporation, Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho and Simon Yeung**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: MGC |
| October 10, 2012<br><br>10:00 a.m. | **Sino-Forest Corporation, Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho, Simon Yeung and David Horsley**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: MGC |
| October 10, 2012<br><br>10:00 a.m. | **Empire Consulting Inc. and Desmond Chambers**<br><br>s. 127<br><br>D. Ferris in attendance for Staff<br><br>Panel: EPK |
| October 11, 2012<br><br>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**<br><br>s. 127<br><br>S. Horgan in attendance for Staff<br><br>Panel: TBA |
| October 17, 2012<br><br>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**<br><br>s. 127<br><br>C. Watson in attendance for Staff<br><br>Panel: EPK |
| October 19, 2012<br><br>10:00 a.m. | **Global Energy Group, Ltd., New Gold Limited Partnerships, Christina Harper, Howard Rash, Michael Schaumer, Elliot Feder, Vadim Tsatskin, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Shiff**<br><br>s. 127<br><br>C. Watson in attendance for Staff<br><br>Panel: PLK |
| October 22 and October 24-November 5, 2012<br><br>10:00 a.m. | **MBS Group (Canada) Ltd., Balbir Ahluwalia and Mohinder Ahluwalia**<br><br>s. 37, 127 and 127.1<br><br>C. Rossi in attendance for staff<br><br>Panel: CP |
| October 22 and October 24-29, 2012<br><br>10:00 a.m.<br><br>October 23, 2012<br><br>2:30 p.m. | **Nest Acquisitions and Mergers, IMG International Inc., Caroline Myriam Frayssignes, David Pelcowitz, Michael Smith, and Robert Patrick Zuk**<br><br>s. 37, 127 and 127.1<br><br>C. Price in attendance for Staff<br><br>Panel: JDC/MCH |
| October 29, October 31 and November 1, 2012<br><br>10:00 a.m. | **Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva and Abraham Herbert Grossman aka Allen Grossman and Kevin Wash**<br><br>s. 127<br><br>H. Craig/S. Schumacher in attendance for Staff<br><br>Panel: JEAT |

| | |
|---|---|
| October 31 – November 5, November 7-9, December 3, December 5-17 and December 19, 2012<br><br>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**<br><br>s. 127(1) and (5)<br><br>A. Heydon in attendance for Staff<br><br>Panel: EPK |
| November 5, November 7-19, November 21-27 and November 29-30, 2012<br><br>10:00 a.m.<br><br>November 28, 2012<br><br>10:30 a.m. | **Heir Home Equity Investment Rewards Inc.; FFI First Fruit Investments Inc.; Wealth Building Mortgages Inc.; Archibald Robertson; Eric Deschamps; Canyon Acquisitions, LLC; Canyon Acquisitions International, LLC; Brent Borland; Wayne D. Robbins; Marco Caruso; Placencia Estates Development, Ltd.; Copal Resort Development Group, LLC; Rendezvous Island, Ltd.; The Placencia Marina, Ltd.; and The Placencia Hotel and Residences Ltd.**<br><br>s. 127<br><br>B. Shulman in attendance for Staff<br><br>Panel: MGC |
| November 8, 2012<br><br>10:00 a.m. | **Global RESP Corporation and Global Growth Assets Inc.**<br><br>s. 127<br><br>D. Ferris in attendance for Staff<br><br>Panel: JEAT |
| November 12-19 and November 21, 2012<br><br>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.**<br><br>s. 127<br><br>J. Feasby in attendance for Staff<br><br>Panel: JDC |
| November 13, 2012<br><br>10:00 a.m. | **Knowledge First Financial Inc.**<br><br>s. 127<br><br>M. Vaillancourt/D. Ferris in attendance for Staff<br><br>Panel: JEAT |
| November 16, 2012<br><br>10:00 a.m. | **Roger Carl Schoer**<br><br>s. 21.7<br><br>C. Johnson in attendance for Staff<br><br>Panel: JEAT |
| November 21 – December 3 and December 5-14, 2012<br><br>10:00 a.m. | **Bernard Boily**<br><br>s. 127 and 127.1<br><br>M. Vaillancourt/U. Sheikh in attendance for Staff<br><br>Panel: TBA |
| November 22, 2012<br><br>11:30 a.m. | **Heritage Education Funds Inc.**<br><br>s. 127<br><br>M. Vaillancourt/D. Ferris in attendance for Staff<br><br>Panel: JEAT |
| November 27-28, 2012<br><br>10:00 a.m. | **Simply Wealth Financial Group Inc., Naida Allarde, Bernardo Giangrosso, K&S Global Wealth Creative Strategies Inc., Kevin Persaud, Maxine Lobban and Wayne Lobban**<br><br>s. 127 and 127.1<br><br>C. Johnson in attendance for Staff<br><br>Panel: JDC |

| | |
|---|---|
| December 4, 2012<br><br>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**<br><br>s. 127<br><br>H. Craig/C. Rossi in attendance for Staff<br><br>Panel: CP |
| December 5, 2012<br><br>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**<br><br>s. 127 and 127.1<br><br>D. Campbell in attendance for Staff<br><br>Panel: VK |
| December 11, 2012<br><br>9:00 a.m. | **Systematech Solutions Inc., April Vuong and Hao Quach**<br><br>s. 127<br><br>D. Ferris in attendance for Staff<br><br>Panel: EPK |
| December 20, 2012<br><br>10:00 a.m. | **New Hudson Television Corporation, New Hudson Television L.L.C. & James Dmitry Salganov**<br><br>s. 127<br><br>C. Watson in attendance for Staff<br><br>Panel: TBA |
| January 7-14, January 16-28 and January 30 – February 5, 2013<br><br>10:00 a.m. | **Jowdat Waheed and Bruce Walter**<br><br>s. 127<br><br>J. Lynch in attendance for Staff<br><br>Panel: TBA |
| January 21-28 and January 30 – February 1, 2013<br><br>10:00 a.m. | **Moncasa Capital Corporation and John Frederick Collins**<br><br>s. 127<br><br>T. Center in attendance for Staff<br><br>Panel: TBA |
| January 23-25 and January 30-31, 2013<br><br>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**<br><br>s. 127<br><br>C. Watson in attendance for Staff<br><br>Panel: TBA |
| February 1, 2013<br><br>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**<br><br>s. 127<br><br>S. Schumacher in attendance for Staff<br><br>Panel: TBA |
| February 4-11 and February 13, 2013<br><br>10:00 a.m. | **Alexander Christ Doulis (aka Alexander Christos Doulis, aka Alexandros Christodoulidis) and Liberty Consulting Ltd.**<br><br>s. 127<br><br>J. Feasby in attendance for Staff<br><br>Panel: TBA |

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|---|---|
| February 11, February 13-15, February 19-25 and February 27-March 6, 2013<br><br>10:00 a.m. | **David Charles Phillips and John Russell Wilson**<br><br>s. 127<br><br>Y. Chisholm in attendance for Staff<br><br>Panel: TBA |
| March 18-25, March 27-28, April 1-5 and April 24-25, 2013<br><br>10:00 a.m. | **Peter Sbaraglia**<br><br>s. 127<br><br>J. Lynch in attendance for Staff<br><br>Panel: CP |
| April 29 – May 6 and May 8-10, 2013<br><br>10:00 a.m. | **North American Financial Group Inc., North American Capital Inc., Alexander Flavio Arconti, and Luigino Arconti**<br><br>s. 127<br><br>M. Vaillancourt in attendance for Staff<br><br>Panel: TBA |
| TBA | **Yama Abdullah Yaqeen**<br><br>s. 8(2)<br><br>J. Superina in attendance for Staff<br><br>Panel: TBA |
| TBA | **Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell**<br><br>s. 127<br><br>J. Waechter in attendance for Staff<br><br>Panel: TBA |
| TBA | **Frank Dunn, Douglas Beatty, Michael Gollogly**<br><br>s. 127<br><br>K. Daniels in attendance for Staff<br><br>Panel: TBA |
| TBA | **MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric**<br><br>s. 127 and 127(1)<br><br>D. Ferris in attendance for Staff<br><br>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**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA |
| TBA | **Gold-Quest International, Health and Harmoney, Iain Buchanan and Lisa Buchanan**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA |
| TBA | **Brilliante Brasilcan Resources Corp., York Rio Resources Inc., Brian W. Aidelman, Jason Georgiadis, Richard Taylor and Victor York**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA |
| TBA | **Paul Azeff, Korin Bobrow, Mitchell Finkelstein, Howard Jeffrey Miller and Man Kin Cheng (a.k.a. Francis Cheng)**<br><br>s. 127<br><br>T. Center/D. Campbell in attendance for Staff<br><br>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

**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

**Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)**

s. 127 and 127.1

D. Ferris in attendance for Staff

Panel: TBA

TBA

**Anna Pyasetsky**

s. 8

S. Chandra in attendance for Staff

Panel: EPK

TBA

**Crown Hill Capital Corporation and Wayne Lawrence Pushka**

s. 127

A. Perschy/A. Pelletier in attendance for Staff

Panel: TBA

TBA

**Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)**

s. 127

M. Vaillancourt in attendance for Staff

TBA

TBA

**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: TBA

TBA

**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

**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 – Notice of Ministerial Approval of Multilateral Instrument 32-102 Registration Exemption for Non-Resident Investment Fund Managers

In the Notice of Ministerial Approval of Multilateral Instrument 32-102 *Registration Exemption for Non-Resident Investment Fund Managers*, published on September 13, 2012, at (2012), 35 OSCB 8388, the word "on" was inadvertently omitted from the following sentence.

The sentence read:

The Rule was made by the Commission June 19, 2012 and was published in Chapter 5 of the Bulletin on July 5, 2012.

The sentence should have read:

The Rule was made by the Commission on June 19, 2012 and was published in Chapter 5 of the Bulletin on July 5, 2012.

### 1.1.3 Notice of Ministerial Approval of National Instrument 23-103 Electronic Trading

**NOTICE OF MINISTERIAL APPROVAL OF NATIONAL INSTRUMENT 23-103 ELECTRONIC TRADING**

On August 16, 2012, the Minister of Finance approved National Instrument 23-103 *Electronic Trading* (the Rule) made by the Ontario Securities Commission (the Commission) on May 22, 2012.

On May 22, 2012 the Commission adopted the related Companion Policy 23-103CP (Companion Policy). The Rule and Companion Policy are published in Chapter 5 of this Bulletin and at www.osc.gov.on.ca. No changes have been made to the Rule or Companion Policy since their publication in the Bulletin on June 28, 2012.

The Rule will come into force on March 1, 2013.

**September 20, 2012**

## 1.2 Notices of Hearing

### 1.2.1 Sino-Forest Corporation et al. – s. 144

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

**AND**

**IN THE MATTER OF**
**SINO-FOREST CORPORATION, ALLEN CHAN, ALBERT IP, ALFRED C.T. HUNG, GEORGE HO AND SIMON YEUNG**

**NOTICE OF HEARING**
**Section 144**

**WHEREAS** on August 26, 2011, the Ontario Securities Commission (the "Commission") issued a temporary order pursuant to sections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") and an order pursuant to section 144(1) of the Act varying the prior order (together the “Temporary Order”);

**AND WHEREAS** the Temporary Order ordered that all trading in the securities of Sino-Forest Corporation (“Sino-Forest”) shall cease and that all trading by Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho and Simon Yeung (the “Individual Respondents”) in securities shall cease;

**AND WHEREAS** on September 8, 2011, the Temporary Order was extended by order of the Commission until January 25, 2012;

**AND WHEREAS** on September 15, 2011, the Temporary Order was further varied by order of the Commission pursuant to section 144(1) of the Act in the matter of Canadian Derivatives Clearing Corporation (the “CDCC Order”) but otherwise remained in effect, unamended except as expressly provided in the CDCC Order;

**AND WHEREAS** on January 23, 2012, the Temporary Order was extended by order of the Commission until April 16, 2012;

**AND WHEREAS** on March 30, 2012, Sino-Forest applied in front of the Superior Court of Justice (Ontario) for protection under the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the “CCAA Proceedings”);

**AND WHEREAS** on April 13, 2012, the Temporary Order was extended by order of the Commission until July 16, 2012;

**AND WHEREAS** on July 12, 2012, the Temporary Order was extended by order of the Commission until October 10, 2012;

**AND WHEREAS Sino-Forest and the court appointed monitor in the CCAA Proceedings (the "Monitor") intend, as part of the CCAA Proceedings and with the approval of the Superior Court of Justice (Ontario) (the "CCAA Court"), to distribute various meeting materials as contemplated by the Order of the CCAA Court made on August 31, 2012 which materials include a Notice of Meeting and Information Circular along with proxy materials and any amendments and supplements thereto (collectively, the "CCAA Materials") to all potential creditors, including security holders of Sino-Forest;**

**AND WHEREAS** the distribution of the CCAA Materials could be considered an act in furtherance of a trade of the securities of Sino-Forest;

**TAKE NOTICE THAT** the Commission will hold a hearing (the "Hearing") pursuant to subsection 144(1) of the Act in the Large Hearing Room of the Commission, 20 Queen Street West, 17th Floor, commencing on September 18, 2012 at 2 p.m., or as soon thereafter as the Hearing can be held;

**TO CONSIDER** whether it is in the public interest for the Commission:

(i) to vary the Temporary Order pursuant to subsection 144(1) of the Act to permit Sino-Forest and the Monitor to distribute the CCAA Materials; and

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

**BY REASON OF** the recitals set out in the Temporary Order and 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 further notice of the proceeding.

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

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

## 1.4 Notices from the Office of the Secretary

### 1.4.1 Systematech Solutions Inc. et al.

**FOR IMMEDIATE RELEASE**
**September 12, 2012**

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

**AND**

**SYSTEMATECH SOLUTIONS INC.,**
**APRIL VUONG AND HAO QUACH**

**TORONTO –** The Commission issued an Order in the above named matter which provides that the Temporary Order is extended until December 12, 2012; and the hearing to consider the extension of the Temporary Order is adjourned until December 11, 2012 at 9:00 a.m. or to such other date or time as set by the Office of the Secretary and agreed to by the parties.

A copy of the Order dated September 11, 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

Carolyn Shaw-Rimmington
Manager, Public Affairs
416-593-2361

Alison Ford
Media Relations Specialist
416-593-8307

For investor inquiries:

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

### 1.4.2 Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)

**FOR IMMEDIATE RELEASE**
**September 14, 2012**

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

**AND**

**IN THE MATTER OF**
**VINCENT CICCONE AND CABO CATOCHE CORP.**
**(a.k.a. MEDRA CORP. AND MEDRA CORPORATION)**

**TORONTO –** The Commission issued an Order in the above named matter which provides that (1) the hearing on the merits in this matter is adjourned to September 13, 2012, at 2:30 p.m. at which time Staff will provide written submissions on its disclosure obligations with respect to Medra and make submissions regarding how it proposed to proceed against Medra; (2) the hearing on the merits shall continue on September 14, 19, 20 and 21, 2012, each day commencing at 10:00 a.m. and (3) the hearing date of September 12, 2012, is vacated.

A copy of the Order dated September 7, 2012 is available at **www.osc.gov.on.ca.**

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
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### 1.4.3 IIROC v. Roger Carl Schoer

**FOR IMMEDIATE RELEASE**
**September 14, 2012**

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

**AND**

**IN THE MATTER OF**
**AN APPLICATION FOR A HEARING AND REVIEW OF A DECISION OF THE ONTARIO COUNCIL OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA,**
**PURSUANT TO SECTION 21.7 OF**
**THE SECURITIES ACT,**
**R.S.O. 1990, c. S.5, AS AMENDED**

**AND**

**IN THE MATTER OF**
**DISCIPLINE PROCEEDINGS**
**PURSUANT TO THE BY-LAWS OF**
**THE INVESTMENT DEALERS ASSOCIATION OF CANADA AND THE DEALER MEMBER RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

**BETWEEN**

**STAFF OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

**AND**

**ROGER CARL SCHOER**

**TORONTO –** Take notice that the Commission has rescheduled the hearing to consider the Application for a Hearing and Review of an IIROC decision to be heard on Friday, November 16, 2012 at 10:00 a.m. in the above named matter.

Take notice that the hearing scheduled for September 18, 2012 is vacated.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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**1.4.4 Sino-Forest Corporation et al.**

**FOR IMMEDIATE RELEASE**
**September 14, 2012**

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

**AND**

**IN THE MATTER OF**
**SINO-FOREST CORPORATION, ALLEN CHAN,**
**ALBERT IP, ALFRED C.T. HUNG, GEORGE HO**
**AND SIMON YEUNG**

**TORONTO** – The Office of the Secretary issued a Notice of Hearing today, which provides that, a hearing pursuant to subsection 144(1) of the Act will be held on September 18, 2012 at 2:00 p.m. to consider whether it is in the public interest for the Commission: (i) to vary the Temporary Order pursuant to subsection 144(1) of the Act to permit Sino-Forest and the Monitor to distribute the CCAA Materials; and (ii) to make such further orders as the Commission considers appropriate.

A copy of the Notice of Hearing dated September 14, 2012 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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# Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 Sears Holdings Corporation

**Headnote**

NP 11-203 – relief from prospectus requirements to allow U.S. parent company to spin off shares of its U.S. subsidiary to investors by way of distribution in specie – distribution not covered by legislative exemptions – U.S. parent company is a public company in the U.S. but is not a reporting issuer in Canada – U.S. parent company has a de minimis presence in Canada. Following distribution, U.S. subsidiary will not be a reporting issuer in Canada – no investment decision required from Canadian shareholders in order to receive shares from distribution.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 53, 74(1).

**September 11, 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**
**SEARS HOLDINGS CORPORATION**
**(the "Filer" Or "Sears Holdings")**

**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 relief from the prospectus requirements contained in the Legislation (the **"Prospectus Requirements")** in connection with the proposed distribution by the Filer of transferable subscription rights (the **"Subscription Rights"**) to the Filer's shareholders, including any who are resident in Canada, and the proposed distribution by the Filer of shares of common stock (the **"SHO Common Shares"**) of the Filer's wholly-owned subsidiary Sears Hometown and Outlet Stores, Inc. (**"SHO"**) to occur upon the exercise of the Subscription Rights by a holder thereof, including any holders thereof who are resident in Canada (such requested relief, the **"Requested Exemptive Relief"**). The Subscription Rights will entitle the holders thereof to purchase a specified number of SHO Common Shares at a specified purchase price per share. The Subscription Rights are being issued and distributed by Sears Holdings in order to effect a planned separation of SHO from Sears Holdings (the **"Separation"**).

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

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

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

**Interpretation**

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

**Representations**

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

1. Sears Holdings, formed in 2004, is a publicly-traded Delaware corporation. It is a holding company that owns or has interests in various direct and indirect subsidiary entities, including SHO. The principal executive offices of Sears Holdings are located in Hoffman Estates, Illinois.

2. Shares of Sears Holdings' common stock ("**Sears Common Shares"**) are listed and traded on the NASDAQ Global Select Market under the symbol "SHLD". The Sears Common Shares are not listed or traded on any Canadian stock exchange, and Sears Holdings currently has no intention of listing them or having them traded on any Canadian stock exchange.

3. Sears Holdings is not a reporting issuer under the securities laws of any province or territory of Canada, and Sears Holdings currently has no intention of becoming a reporting issuer under such laws.

4. As of July 31, 2012, 15 holders of record of Sears Common Shares were resident in Canada, which constituted in the aggregate approximately 0.001% of the approximately 15,057 holders of

record of Sears Common Shares worldwide. As of that date, persons resident in Canada collectively held of record 606 Sears Common Shares, out of over 100 million Sears Common Shares outstanding worldwide.

5. As of March 8, 2012, based on the number of proxy materials mailed for the 2012 annual meeting of holders of Sears Common Shares (collectively, **"Sears Shareholders"**), Sears Holdings believes that there were, as of such date, approximately 653 beneficial Sears Shareholders in Canada, or approximately 0.01% of the approximately 55,707 beneficial Sears Shareholders worldwide and, as of that date, persons resident in Canada beneficially owned 275,890 Sears Common Shares, out of over 100 million Sears Common Shares outstanding worldwide.

6. As a result, the number and proportion of Sears Common Shares held by both registered and beneficial Sears Shareholders in Canada are *de minimis*.

7. SHO is a national retailer primarily focused on selling home appliances, hardware, tools and lawn and garden equipment. As of April 28, 2012, SHO and its dealers and franchisees operated 1,238 stores across all 50 states of the United States, as well as in Puerto Rice, Guam and Bermuda. SHO's principal executive offices are located in Hoffman Estates, Illinois.

8. At the time of the Separation the authorized capital stock of SHO will consist of SHO Common Shares, US$0.01 par value per share. The number of SHO Common Shares authorized for issuance will be determined prior to the completion of the Separation.

9. Sears Holdings' board of directors has determined that pursuing a disposition of SHO through a rights offering is in the best interests of Sears Holdings and Sears Shareholders, and that separating SHO from Sears Holdings will provide, among other things, financial and operational benefits to both SHO and Sears Holdings.

10. Sears Holdings intends to accomplish the Separation by means of the distribution of the Subscription Rights to Sears Shareholders. Sears Holdings will distribute the Subscription Rights to the record holders of Sears Common Shares, as of the record date. Each Subscription Right will entitle the holder of the Subscription Right to purchase a number of SHO Common Shares to be determined prior to the Separation, for a price per SHO Common Share to be determined prior to the Separation. Each Sears Shareholder will receive one Subscription Right for each Sears Common Share owned by such Sears Shareholder at the record date.

11. Each Subscription Right also entitles the holder to an over-subscription privilege to purchase a portion of any SHO Common Shares that other holders of Subscription Rights do not purchase through the exercise of their Subscription Rights.

12. In connection with the Separation, SHO filed a registration statement on Form S-1 (the **"Registration Statement"**) with the U.S. Securities and Exchange Commission (the **"SEC"**) on April 30, 2012. The Registration Statement, including the prospectus forming part of it (the **"Prospectus"**), contains full disclosure of the business and planned operations of SHO following the Separation, including historical audited consolidated financial statements of SHO, and will be sent to all Sears Shareholders. The SEC declared the Registration Statement effective on September 6, 2012.

13. The distribution of the Subscription Rights to the Sears Shareholders will be made on a pro rata basis, whereby every Sears Common Share outstanding as at the applicable record date will entitle its holder to receive one Subscription Right. As a result, if all Subscription Rights are exercised following the rights offering, the distribution of SHO Common Shares will also be on a pro rata basis to Sears Shareholders. Fractional SHO Common Shares resulting from the exercise of Subscription Rights will be eliminated by rounding down to the nearest whole share.

14. Non-U.S. Sears Shareholders entitled to receive Subscription Rights may be subject to U.S. federal withholding tax and Sears Holdings may withhold and sell a portion of the Subscription Rights otherwise distributable to such non-U.S. Sears Shareholders in order to realize cash proceeds which will be used to satisfy payment of such withholding tax.

15. Sears Shareholders will not be required to pay for the Subscription Rights received in the Separation, or to surrender or exchange any of their Sears Common Shares in order to receive Subscription Rights. Sears Shareholders' proportionate ownership interests in Sears Holdings will not change as a result of the distribution or exercise of the Subscription Rights.

16. SHO intends to apply to list the Subscription Rights for trading on the NASDAQ Capital Market under the symbol "SHOSR" so that any Sears Shareholders who do not wish to exercise their Subscription Rights will have the alternative option of selling their Subscription Rights (although there can be no assurance that a liquid market for the Subscription Rights will develop). As a result, in addition to Sears Shareholders in Canada, other persons in Canada who are not currently Sears Shareholders may acquire and exercise Subscription Rights through the purchase of

Subscription Rights. SHO also intends to apply to list the SHO Common Shares on the NASDAQ Capital Market under the symbol "SHOS", such that following the completion of the Separation SHO will be a publicly-traded company in the United States, independent from Sears Holdings.

17. The Prospectus discloses that the ability to trade in the Subscription Rights and SHO Common Shares on the NASDAQ Capital Market is conditional on their listing on the NASDAQ Capital Market.

18. Assuming the Subscription Rights are exercised in full, Sears Holdings will dispose of all of its SHO Common Shares as a result of the Separation and will cease to be a stockholder of SHO. To the extent that the Subscription Rights are not exercised in full and SHO Common Shares are not purchased through the exercise of the Subscription Rights or pursuant to the over-subscription privilege, Sears Holdings will retain ownership of a portion of the SHO Common Shares. To the extent that Sears Holdings retains ownership of SHO Common Shares after the completion of the Separation, Sears Holdings may in the future dispose of its remaining SHO Common Shares through sales into the public market or otherwise.

19. SHO does not currently intend to list the SHO Common Shares or have them traded on any stock exchange in Canada. SHO is not, and does not currently intend to become, a reporting issuer in any province or territory in Canada.

20. Following the Separation, the Sears Common Shares will continue to be listed and traded on the NASDAQ Global Select Market.

21. The Separation will be effected in compliance with Delaware law and all applicable U.S. federal securities laws, and the Registration Statement has been reviewed and declared effective by the SEC.

22. No shareholder approval of the Separation by Sears Shareholders is required under Delaware law.

23. The Prospectus and any other materials relating to the Separation and the distribution of the Subscription Rights to be sent to Sears Shareholders in the United States will be sent concurrently to Sears Shareholders in Canada.

24. Following the Separation, SHO will concurrently send to its shareholders in Canada the same disclosure materials that it sends to its shareholders in the United States.

25. The Shareholders in Canada who receive Subscription Rights will have the benefit of the same rights and remedies under U.S. federal securities laws in respect of the Registration Statement and the Prospectus provided to them in connection with the Separation that are available to the Sears Shareholders in the United States.

26. The proposed distribution of the Subscription Rights to Sears Shareholders in Canada and the exercise of the Subscription Rights by holders thereof in Canada would be exempt from the Prospectus Requirements in accordance with subsections 2.31(2) and paragraph 2.42(1)(b) of National Instrument 45-106 – *Prospectus Exempt Distributions* (**"NI 45-106"**) respectively, but for the fact that SHO is not a reporting issuer in Canada (and subject to compliance with the notice requirements of subsection 2.42(2) of NI 45-106).

27. In the absence of an available exemption under the Legislation, qualification by prospectus of the proposed distribution of the Subscription Rights and the SHO Common Shares issuable on the exercise thereof to persons in Canada in connection with the Separation is not practicable, requiring that Sears Shareholders in Canada be excluded from receiving or exercising Subscription Rights.

**Decision**

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

The decision of the principal regulator under the Legislation is that the Requested Exemptive Relief is granted provided that the first trade in Subscription Rights and the SHO Common Shares issued pursuant to exercise of the Subscription Rights will be deemed a distribution unless the conditions in section 2.6 or subsection 2.14(1) of National Instrument 45-102 *Resale of Securities* are satisfied.

"Wesley M. Scott"
Commissioner
Ontario Securities Commission

"James Carnwath"
Commissioner
Ontario Securities Commission

### 2.1.2 Global Growth Assets Inc. and Global Educational Trust Plan

**Headnote**

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Relief granted to scholarship plan for extension of prospectus lapse date to November 30, 2012 – additional time needed for consideration of consultant's report required pursuant to temporary order issued against the investment fund manager – extension of lapse will not impact currency of disclosure relating to the scholarship plan.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S. 5 as am., ss 62(5).

**September 5, 2012**

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

**AND**

**IN THE MATTER OF**
**GLOBAL GROWTH ASSETS INC.**
**(the Manager)**

**AND**

**GLOBAL EDUCATIONAL TRUST PLAN**
**(the Plan)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the manager for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption that the time limits pertaining to filing the renewal prospectus of the Plan be extended as if the lapse date of the Plan's prospectus dated August 26, 2011 (the **Current Prospectus**) is November 30, 2012 (the **Exemption Sought**).

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

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

(b) the Manager 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, Prince Edward Island, Newfoundland and Nova Scotia (together with the Jurisdiction, the Jurisdictions).

**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 Manager:

1. The Manager is the investment fund manager of the Plan.

2. The Plan is an "Education Savings Plan" under s. 146.1 of the *Income Tax Act* (Canada).

3. Units of the Plan are currently qualified for distribution in each of the Jurisdictions under the Current Prospectus dated August 26, 2011 and the Plan is a reporting issuer in each of the Jurisdictions.

4. Neither the Plan, nor the Manager, is in default of securities legislation in any of the Jurisdictions.

5. The lapse date (the Current Lapse Date) of the Current Prospectus is August 26, 2012. Under the Legislation the distribution of the Plan's units would have to cease on the Current Lapse Date unless (a) a pro forma prospectus for the Plan was filed at least 30 days prior to the Current Lapse Date, (b) the final prospectus is filed no later than 10 days after the Current Lapse Date and (c) a receipt for the final prospectus is obtained within 20 days of the Current Lapse Date.

6. A pro forma prospectus for the Plan was filed on July 26, 2012. This means that absent the Exemption Sought, the final prospectus would have to be filed by September 5, 2012, and a receipt must be obtained by September 17, 2012 (due to September 15 falling on a Saturday), in order for the distribution of units of the Plan to continue without interruption.

7. Given the anticipated timing of a consultant's report the Manager will be providing to OSC staff, OSC staff have indicated to the Manager that they will not be able to complete their review of the pro forma prospectus and issue a receipt for the final prospectus within the required time period. The Exemption Sought is requested in order to allow OSC sufficient time to complete its review without resulting in the Plan being forced to cease distribution of its units because the Current Prospectus has lapsed.

8. Since the date of the Current Prospectus, there has been no undisclosed material change in the Plan. Accordingly, the Current Prospectus continues to provide accurate information regarding the Plan.

9. Should any material changes be proposed in the interim, the Plan's prospectus will be amended accordingly. Therefore, the Exemption Sought will not affect the currency or accuracy of the information contained in the Current Prospectus, and therefore will not be prejudicial to the public interest.

**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.

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

### 2.1.3 Credit Suisse Securities (Canada), Inc. and Credit Suisse Securities (USA) LLC

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – subsection 4.1(1)(b) of National Instrument 31-103 Registration Requirements and Exemptions and Ongoing Registrant Obligations - a registered firm must not permit an individual to act as a dealing representative of the registered firm if the individual is registered as a dealing representative of another registered firm – filers are affiliated entities – Canadian institutional clients wish to have accounts at both registered firms for tax reasons and wish to use the same dealing representative to deal with all accounts - policies in place to handle potential conflicts of interest – relief is time limited to reflect the foreign broker-dealer consultation process - filers exempted from prohibition

**Applicable Legislative Provisions**

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 4.1, 15.1.

**September 12, 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**
**CREDIT SUISSE SECURITIES (CANADA), INC.**
**(CSSC)**

**AND**

**CREDIT SUISSE SECURITIES (USA) LLC**
**(CSSU and, together with CSSC, the Filers)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for relief from the requirement under paragraph 4.1(1)(b) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) to permit up to twenty (20) of CSSU's registered dealing representatives, at any one time, to be registered with CSSC and to act as dealing representatives of CSSC (the **Dual Registration**).

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

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

(b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Québec, Saskatchewan, the Northwest Territories, Nunavut Territory, and the Yukon Territory (with Ontario, the Jurisdictions).

**Interpretation**

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

**Representations**

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

1. CSSC is a corporation formed under the laws of Ontario, and its head office is located at 1 First Canadian Place, Suite 2900, Toronto, Ontario, M5X 1C9.

2. CSSC is registered as an investment dealer in each of the Jurisdictions and is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**). It is also a futures commission merchant in Ontario and a derivatives dealer in Quebec. CSSC is a participating organization or member of the Toronto Stock Exchange, TSX Venture Exchange and Montreal Exchange and other electronic markets. CSSC is a member of the Canadian Derivatives Clearing Corporation.

3. CSSC has restricted its investment dealer registration to only institutional customers as defined under IIROC Rule 2700.

4. CSSC does not conduct business activities outside of Canada, is not a member of any foreign marketplaces, is not a participant in any foreign clearing or depository organizations, and does not have the ability to settle trades in foreign securities that are not listed on a Canadian marketplace.

5. CSSU is a limited liability corporation incorporated under the laws of the State of Delaware, and its head office is located at 11 Madison Avenue, New York, NY 10010.

6. CSSU is registered as a broker-dealer and investment adviser with the United States (**U.S.**) Securities and Exchange Commission, and is a member of the Financial Industry Regulatory Authority. CSSU is a member of major securities exchanges, including the NASDAQ OMX, the Chicago Stock Exchange, NYSE Euronext, and the Philadelphia Stock Exchange.

7. CSSU is registered as a Futures Commission Merchant with the U.S. Commodity Futures Trading Commission, and is a member of the National Futures Association.

8. CSSU is a Foreign Approved Participant of the Montreal Exchange and a Trading Participant of ICE Futures Canada, Inc. CSSU is also a member of the CME Group (including the Chicago Board of Trade), ICE Futures U.S., Inc., and other principal U.S. commodity exchanges, and trades through affiliated or unaffiliated member firms on all other exchanges, including exchanges in Canada, France, Italy, Japan, Singapore, Spain, Taiwan, Mexico, Korea and the United Kingdom.

9. CSSU is registered as an exempt market dealer (**EMD**) in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Newfoundland & Labrador, New Brunswick, Nova Scotia and Prince Edward Island.

10. CSSU also relies on the international dealer exemption under section 8.18 of NI 31-103 and the international adviser exemption under section 8.26 of NI 31-103 in Alberta, Saskatchewan, Ontario, Québec, Newfoundland & Labrador, New Brunswick, Nova Scotia and Prince Edward Island.

11. CSSU provides a variety of capital raising, investment banking, market making, brokerage, and advisory services, including fixed income and equity sales and research, commodities trading, foreign exchange trading, emerging markets activities, securities lending, investment banking and derivatives dealing for governments, corporate and financial institutions. CSSU also conducts proprietary trading activities.

12. CSSU relies on CSSC to access, and trade on, Canadian marketplaces.

13. The Filers are indirect wholly owned subsidiaries of Credit Suisse Group AG, a Swiss corporation. The Filers are affiliates and each provides different trading services.

14. The Filers are subject to the restrictions and requirements in Part 13 of NI 31-103 regarding conflict of interest matters.

15. The Filers are not, to the best of their knowledge, in default of any requirement of securities legislation in any of the Jurisdictions.

16. The Filers have valid business reasons for seeking the Dual Registration. CSSU has relationships with Canadian institutional clients that would like to conduct business with CSSC and hold their assets in Canada. It is costly for Canadian institutional clients to hold Canadian assets in the U.S. due to the treatment of taxes on Canadian dividends. The Dual Registration would permit the Filers to continue servicing their respective clients and also allow the clients to maintain their relationships with the Filers.

17. Institutional customers who conduct business with both CSSU and CSSC would have distinct and separate accounts with the two firms. Account opening documents, trade confirmations and monthly statements are clearly marked to identify the particular firm with which the institutional customer is dealing in respect of any particular trading or other business activity.

18. Institutional customers will be made aware that their accounts with CSSC are subject to Canada Investor Protection Fund coverage and that their accounts with CSSU are subject to Securities Investor Protection Corporation coverage.

19. The Filers have policies and procedures in place to address material conflicts of interest that may arise as a result of the Dual Registration, and believe that they will be able to appropriately deal with these conflicts.

20. The Filers have compliance and supervisory policies and procedures in place to monitor the conduct of their respective representatives. The representatives of CSSU who will act under the Dual Registration will be subject to supervision by, and the applicable compliance requirements of, each of the Filers.

21. All representatives of CSSU who will act under the Dual Registration are licensed to act in a dealing capacity with CSSU, do not require any exemptions from the individual registration requirements under NI 31-103 or the Registered Representative requirements under the IIROC rules and will be registered as dealing representatives of CSSU and CSSC, as applicable.

22. The representatives of CSSU would be registered with CSSC, an IIROC dealer member, and be subject to IIROC regulations.

23. The representatives of CSSU who will act under the Dual Registration will have sufficient time to adequately serve both firms.

24. The trading services provided to clients by the representatives acting under the Dual Registration in their capacity with CSSC will not interfere with their duties or responsibilities on behalf of CSSU.

25. The trading services provided to clients by the representatives acting under the Dual Registration in their capacity with CSSU will not interfere with their duties or responsibilities on behalf of CSSC.

26. The Dual Registration of the representatives will not hinder CSSU or CSSC in complying with the conditions of registration applicable to them.

27. The Filers will disclose the Dual Registration to their clients and have provided non-resident disclosure as required under section 14.5 of NI 31-103.

28. IIROC Rule 18.14 permits registered representatives or investment representatives to have, and continue in, another gainful occupation provided the conditions outlined in IIROC Rule 18.14 are met.

29. The Filers and the representatives who will act under the Dual Registration are in compliance, or will ensure that they are in compliance, with IIROC Rule 18.14.

30. In the absence of the requested relief, the Filers would be prohibited under subsection 4.1(1)(b) of NI 31-103 from permitting the Dual Registration.

**Decision**

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

The decision of the Principal Regulator under the Legislation is that:

(a) the Dual Registration is granted for so long as all Canadian clients of CSSC are “institutional customers” within the meaning of IIROC Rule 2700;

(b) the Dual Registration relief shall immediately expire upon the earlier of:

(i) the effective date that amendments to NI 31-103 are made which limit the activities an EMD can conduct so that CSSU would be required to register as an investment dealer and become a member of IIROC as contemplated in CSA Staff Notice 31-331 *Follow-Up to Broker-Dealer Registration in the Exempt Market Dealer Category*; and

(ii) two (2) years from the date of this decision.

"Erez Blumberger"
Acting Director, Compliance and Registrant Regulation
Ontario Securities Commission

### 2.1.4 Blumont Capital Corporation et al.

**Headnote**

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of mutual fund reorganization – Approval required because transaction does not meet the criteria for pre-approval – NI 81-104 fund merging with a NI 81-102 fund – Funds have differing investment objectives, and merger conducted on a taxable basis – Securityholders provided with timely and adequate disclosure regarding the merger.

**Applicable Legislative Provisions**

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

**September 10, 2012**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**ONTARIO**

**AND**

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

**AND**

**IN THE MATTER OF**
**BLUMONT CAPITAL CORPORATION**
**(the Filer)**

**AND**

**IN THE MATTER OF**
**EXEMPLAR YIELD FUND**
**(the Continuing Fund)**

**AND**

**EXEMPLAR MARKET NEUTRAL PORTFOLIO**
**(the Terminating Fund)**

**DECISION**

**Background**

The principal regulator in Ontario has received an application from the Filer on behalf of the Terminating Fund and the Continuing Fund (each individually referred to herein as a **Fund** and together the **Funds**) for a decision under the securities legislation of Ontario granting approval, pursuant to section 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) of the proposed merger (the **Merger**) of the Terminating Fund into the Continuing Fund (the **Approval Sought**).

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

1. the Ontario Securities Commission (the **OSC**) is the principal regulator for this application; and,

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

**Interpretation**

Terms defined in NI 81-102, National Instrument 14-101 Definitions and MI 11-102 have the same meaning if used in this decision, unless otherwise defined

**Representations**

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

*The Filer and Fund Information*

1. The Filer is a corporation governed by the laws of Ontario. The Filer is registered under the *Securities Act* (Ontario) as an exempt market dealer, investment fund manager, mutual fund dealer and portfolio manager. The Filer is the manager of the Terminating Fund and the manager and trustee of the Continuing Fund.

2. The head office of the Filer is located at 70 University Avenue, Suite 1200, Toronto, Ontario M5J 2M4.

3. The Terminating Fund was launched on May 27, 2011 and represents one class of mutual fund shares of Exemplar Portfolios Ltd. (the **Corporation**). The Corporation is a mutual fund corporation incorporated under the laws of the province of Ontario.

4. The Continuing Fund was launched on May 31, 2012 and is a mutual fund trust governed by a declaration of trust.

5. The Terminating Fund and the Continuing Fund are reporting issuers (or the equivalent) under the securities legislation (the **Legislation**) of each Jurisdiction and are not in default of any of the requirements of the Legislation.

6. The Terminating Fund currently distributes its securities in all the Jurisdictions pursuant to a long form prospectus dated April 24, 2012 (the **Terminating Fund Prospectus**).

7. The Continuing Fund currently distributes its securities in all of the Jurisdictions pursuant to a simplified prospectus, annual information form and fund facts dated May 31, 2012 (the **Continuing Fund Documents**).

8. The Terminating Fund's investment objective is to provide superior absolute returns and be positively correlated to short-term interest rates.

9. The Continuing Fund's investment objective is to provide consistent and tax efficient monthly income and capital appreciation by investing in a diversified portfolio primarily consisting of Canadian equity, global equity, Canadian corporate bonds, income trusts and real estate investment trusts.

10. The Filer is not in default of the securities legislation in any province or territory of Canada.

*Details of the Merger*

11. The proposed Merger was announced in:

    (a) a press release dated July 11, 2012;

    (b) material change reports dated July 19, 2012; and

    (c) amendments to the Terminating Fund Prospectus and Continuing Fund Documents dated July 19, 2012,

    each of which has been filed on SEDAR.

12. The specific steps to implement the Merger are described below. The result of the Merger will be that investors in the Terminating Fund will cease to be shareholders in the Terminating Fund and will become unitholders in the Continuing Fund.

13. The proposed Merger will be structured as follows:

    (a) The value of the Terminating Fund's portfolio and other assets will be determined at the close of business on the effective date of the Merger, which is expected to be on or about September 14, 2011 (the **Effective Date**).

    (b) The Continuing Fund will acquire all or substantially all of the investment portfolio and the assets of the Terminating Fund in exchange for units of the Continuing Fund having an aggregate net asset value equal to the value of the investment portfolio and assets acquired.

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

(d) If necessary, the Terminating Fund will declare, pay and automatically reinvest a dividend of net capital gains and income (if any).

(e) The shares of the Terminating Fund will be redeemed at their net asset value and paid for with units of a corresponding class of the Continuing Fund (as described in paragraph 11 below) having an equal aggregate net asset value as of the Effective Date. Such units will be distributed to shareholders of the Terminating Fund on a pro rata basis in exchange for their shares in the Terminating Fund.

(f) As soon as reasonably practicable after the Effective Date, the articles of the Corporation will be amended in order to delete the class of shares of the Corporation represented by the Terminating Fund, thereby winding up the Terminating Fund.

14. If the Merger is approved, Shareholders of the Terminating Fund will receive units of an equivalent class of the Continuing Fund, as shown opposite in the table below:

| Terminating Fund | Continuing Fund |
|---|---|
| *Series A shares* | *Series A units* |
| *Series F shares* | *Series F units* |
| *Series B shares* | *Series A units* |
| *Series G shares* | *Series F units* |
| *Series L shares* | *Series L units* |

15. Although Series I shares are currently offered under the Terminating Fund Prospectus, there are currently no Series I shareholders in the Terminating Fund.

16. In the opinion of the Filer, the Merger will be beneficial to securityholders of the Fund for the following reasons:

(a) The management fees of the Continuing Fund are lower than those of the Terminating Fund.

(b) The Continuing Fund does not charge a performance fee.

(c) Due to its investment strategies, it is anticipated that the Continuing Fund will receive regular income and foreign dividend payments. Due to the different tax rules that apply to mutual funds trusts (such as the Continuing Fund) and mutual fund corporations (such as the Terminating Fund), it is more tax efficient for the Continuing Fund to operate in a mutual fund trust structure as ordinary income and foreign dividends may be flowed through a mutual fund trust.

(d) The Continuing Fund is structured as a mutual fund trust governed by NI 81-102, whereas the Terminating Fund is structured as a commodity pool governed by National Instrument 81-104 *Commodity Pools* (**NI 81-104**). In general, commodity pools have less regulation and can be exposed to greater risk. Securityholders may therefore be exposed to less risk in the Continuing Fund.

(e) The Continuing Fund will have a greater level of assets which is expected to allow for: increased portfolio diversification opportunities; greater liquidity of investments; and increased economies of scale for operating expenses.

(f) The Merger will eliminate the administrative and regulatory costs of operating the Terminating Fund as a separate mutual fund, which because of its small size, may no longer be economically viable to operate on a stand-alone basis.

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

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

(b) represents the business judgement of the Filer uninfluenced by considerations other than the best interest of the Terminating Fund and the Continuing Fund;

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

(d) achieves a fair and reasonable result for the Terminating Fund and the Continuing Fund.

18. The Filer convened a special meeting (each, a **Meeting** and, collectively, the **Meetings**) of the securityholders of each Fund in order to seek the approval of the securityholders to complete the Merger, as required by subsections 5.1(f) of NI 81-102 and 5.1(g) of NI 81-102. The Meetings were held on September 7, 2012, and the securityholders of each Fund approved the Merger. In connection with the Meetings, the Filer sent to such securityholders a management information circular (the "**Circular**"), a supplement to the management information circular (the "**Supplement**"), a related form of proxy and in the case of the Terminating Fund shareholders, the fund facts of the Continuing Fund (collectively, the **Meeting Materials**). The Meeting Materials sent to the securityholders included all the materials specified per section 5.6(1)(f) of NI 81-102.

19. If all required approvals for a Merger are obtained, it is intended that the Merger will occur after the close of business on the Effective Date. The Filer therefore anticipates that each shareholder of the Terminating Fund will become a unitholder of the Continuing Fund after the close of business on the Effective Date. The Terminating Fund will be wound-up as soon as reasonably possible following the Merger.

20. The cost of effecting the Merger (consisting primarily of proxy solicitation, printing, mailing, legal and regulatory fees) will be borne by the Filer.

21. The right of the shareholders of the Terminating Fund to redeem or switch their shares of the Terminating Fund will cease as of the close of business on the day prior to the Effective Date. Shareholders of the Terminating Fund will subsequently be able to redeem, in the ordinary course, the units of the Continuing Fund that they will acquire upon the Merger. Shareholders of the Terminating Fund with pre-authorized contribution plans and automatic withdrawal plans will have their plans automatically switched over to the Continuing Fund unless the Manager receives notice to the contrary. Purchases of, and switches to, shares of the Terminating Fund were suspended on July 19, 2012.

22. In the opinion of the Filer the Merger satisfies all of the criteria for pre-approved reorganizations and transfers set forth in section 5.6(1) of NI 81-102 except that:

(a) the Merger 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 (in each case, a **Prescribed Rollover**). The Merger will be implemented on a taxable basis as a corporate fund cannot be merged into a trust fund on a non-taxable basis. Consequently, the Merger will not meet the criteria for pre-approved reorganizations and transfers under subsection 5.6(1)(b) of NI 81-102; and

(b) In the opinion of the Filer, a reasonable person may not consider the investment objective of the Terminating Fund to be substantially similar to the investment objective of the Continuing Fund. Accordingly, such Merger may not meet the criteria for pre-approved reorganizations and transfers under subsection 5.6(1)(a)(ii) of NI 81-102.

23. The Circular and Supplement provided:

(a) a summary of the anticipated tax implications to securityholders of the Terminating Fund and the Continuing Fund; and

(b) a comparison of the investment objectives, investment strategies and other material differences of the Funds.

**Decision**

The principal regulator is satisfied that the decision meets the test set out in the securities legislation of Ontario for the principal regulator to make the decision.

The decision of the principal regulator under the securities legislation of Ontario is that the Approval Sought is granted.

"Vera Nunes"
Manager
Investment Funds Branch

### 2.1.5 Terrane Metals Corp. – 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).

September 14, 2012

Terrane Metals Corp.
26 West Dry Creek Circle
Suite 810
Littleton, Colorado
USA 80120

Dear Sirs/Mesdames:

**Re: Terrane Metals Corp. (the Applicant) - application for a decision under the securities legislation of Ontario, Alberta, Saskatchewan, Manitoba, Québec, 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.

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

### 2.1.6 Open Range Energy Corp. – 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).

September 13, 2012

Burnet, Duckworth & Palmer LLP
2400, 525 - 8 Avenue SW
Calgary, AB T2P 1G1

**Attention: Jessica M. Brown**

Dear Madam:

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

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

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

### 2.2 Orders

### 2.2.1 Gazit America Inc. – s. 1(6) of the OBCA

**Headnote**

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

**Statutes Cited**

Business Corporations Act, R.S.O. 1990, c. B.16 as am., ss. 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 GAZIT AMERICA 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;

2. The Applicant is authorized to issue an unlimited number of common shares (**Common Shares**);

3. The Applicant's registered address located at 109 Atlantic Avenue, Suite 303, Toronto, Ontario M6K 1X4;

4. On June 20, 2012, the Applicant entered into an agreement with Gazit-Globe Ltd. (**Gazit-Globe**), being the sole shareholder of Gazit Maple Inc., and First Capital Realty Inc. (**First Capital Realty**) to complete a transaction by way of statutory plan of arrangement in accordance with the *Business Corporations Act* (Ontario) (the **Arrangement**);

5. The Applicant's issued and outstanding share capital immediately prior to the effective time of the Arrangement was 23,345,088 Common Shares;

6. The Arrangement was completed on August 8, 2012;

7. Pursuant to the Arrangement, Gazit-Globe indirectly acquired the 6,311,114 Common Shares not already beneficially owned by it, resulting in Gazit-Globe holding 100% of the 23,345,088 outstanding Common Shares, and First Capital Realty indirectly acquired the medical office and retail properties of the Applicant and the related debt;

8. Pursuant to the Arrangement, the Applicant acquired all of the issued and outstanding warrants to purchase Common Shares of the Applicant expiring November 30, 2015 (2010 Warrants) and all of the outstanding warrants to purchase Common Shares of the Applicant expiring November 30, 2016 (**2011 Warrants**).

9. Prior to the completion of the Arrangement, the Common Shares, the 2010 Warrants and the 2011 Warrants were listed for trading on the Toronto Stock Exchange under the symbols "GAA", "GAA.WT", and "GAA.WT.A", respectively;

10. The Common Shares, the 2010 Warrants and the 2011 Warrants were delisted from the Toronto Stock Exchange as of the close of business on August 13, 2012;

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

12. Pursuant to the terms of the Arrangement, the Applicant amalgamated with Gazit Maple Inc. and all of the Common Shares have been cancelled. The stated capital of the amalgamated entity is an amount equal to the common shares and preferred shares of Gazit Maple Inc. that were issued and outstanding immediately prior to the effective time of the Arrangement, which are all held directly by Gazit-Globe;

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

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

**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** at Toronto on this 11th day of September, 2012.

"Edward P. Kerwin"
Commissioner
Ontario Securities Commission

"Sarah B. Kavanagh"
Commissioner
Ontario Securities Commission

**2.2.2 Systematech Solutions Inc. et al. – ss. 127(1), 127(7), 127(8)**

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

**AND**

**SYSTEMATECH SOLUTIONS INC.,
APRIL VUONG AND HAO QUACH**

**ORDER
(Subsections 127(1), (7) & (8) of the Act)**

**WHEREAS** on December 15, 2011, the Ontario Securities Commission (the **"**Commission") issued a temporary cease trade 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") with respect to Systematech Solutions Inc. ("Systematech"), April Vuong ("Vuong") and Hao Quach ("Quach") (collectively, the "Respondents"), ordering that:

1. pursuant to clause 2 of subsection 127(1) of the Act that all trading in securities by the Respondents shall cease; and

2. pursuant to clause 2 of subsection 127(1) of the Act that all trading in securities of Systematech shall cease;

**AND WHEREAS** on December 22, 2011, the Commission extended the Temporary Order to January 31, 2012 and adjourned the hearing to consider the extension of the Temporary Order to January 30, 2012;

**AND WHEREAS** on January 30, 2012, the Commission extended the Temporary Order to March 8, 2012, on consent of all the parties, and adjourned the hearing to consider the extension of the Temporary Order to March 7, 2012;

**AND WHEREAS** on March 8, 2012, the Commission extended the Temporary Order to June 8, 2012, on consent of all the parties and adjourned the hearing to consider the extension of the Temporary Order to June 7, 2012;

**AND WHEREAS** on June 7, 2012, Staff of the Commission ("Staff") appeared before the Commission and made submissions;

**AND WHEREAS** counsel for Vuong and Systematech sent correspondence advising that his clients consented to the extension of the Temporary Order and advising that he was informed that Quach also consented to the extension of the Temporary Order;

**AND WHEREAS** on June 7, 2012, the Commission extended the Temporary Order to September 12, 2012 on consent of all the parties and adjourned the

hearing to consider the extension of the Temporary Order to September 11, 2012;

**AND WHEREAS** on September 11, 2012, Staff appeared before the Commission, advised that Staff's investigation was complete and requested an extension of the Temporary Order to December 12, 2012;

**AND WHEREAS** Staff informed the Commission that Quach and counsel for Vuong and Systematech sent correspondence to Staff advising that: (i) Quach and counsel were not appearing before the Commission on September 11, 2012; and (ii) the Respondents consent to the Temporary Order being extended to December 12, 2012;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to extend the Temporary Order;

**IT IS ORDERED** that the Temporary Order is extended until December 12, 2012;

**IT IS FURTHER ORDERED** that the hearing to consider the extension of the Temporary Order is adjourned until December 11, 2012 at 9:00 a.m. or to such other date or time as set by the Office of the Secretary and agreed to by the parties.

**DATED** at Toronto this 11th day of September, 2012.

"Edward P. Kerwin"

### 2.2.3 Cormark Securities Inc. and Royal Coal Corp. – s. 144

**Headnote**

Section 144 – Application for partial revocation of cease trade order – Variation of cease trade order to permit certain trades for the purpose of selling securities for a nominal amount solely to establish a tax loss – The securities were acquired prior to the date of the cease trade order – Purchaser of the securities is a sophisticated purchaser who understand that such shares have no market value, the purpose of the proposed trades and the nature of the cease trade order – The purchaser is not aware of any material information that has not been generally disclosed – Partial revocation granted.

**Statutes Cited**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127, 144.

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

**AND**

**IN THE MATTER OF**
**CORMARK SECURITIES INC.**

**AND**

**ROYAL COAL CORP.**

**ORDER**
**(Section 144)**

**WHEREAS** on May 15, 2012 a Director of the Ontario Securities Commission (the "**Commission**") made an order under paragraphs 2 and 2.1 of subsection 127(1) of the Act that all trading in and all acquisitions of securities of Royal Coal Corp. ("**Royal Coal**"), whether direct or indirect, shall cease until further order by the Director (the "**Cease Trade Order**");

**AND WHEREAS** Cormark Securities Inc. ("**Cormark**" or the "**Applican**t") has made an application to the Commission pursuant to section 144 of the Act (the "**Application**") for an order (the "**Order**") varying the Cease Trade Order to permit the acquisition by Cormark of, in the aggregate, 20 million common shares of Royal Coal (the "**Royal Coal Shares**") and 10 million warrants of Royal Coal (the "**Royal Coal Warrants**") from certain of its clients solely for the purpose of establishing a tax loss for those clients;

**AND WHEREAS** section 3.2 of National Policy 12-202 – *Revocation of a Compliance-related Cease Trade Order* provides that the securities regulatory authority "will generally grant a partial revocation order to permit a securityholder to sell securities for a nominal amount solely to establish a tax loss";

**AND UPON** the Applicant having represented to the Commission that:

1. Royal Coal is an Ontario corporation.

2. Royal Coal is a reporting issuer in the provinces of British Columbia, Alberta, Manitoba and Ontario.

3. Royal Coal has represented to Cormark that as at August 9, 2012, there were 241,740,671 common shares of Royal Coal issued and outstanding and 111,528,633 warrants of Royal Coal issued and outstanding. The last trading price of Royal Coal prior to the Cease Trade Order was $0.005 per common share.

4. The Cease Trade Order was issued by the Commission due to Royal Coal's failure to file the following continuous disclosure documents within the time periods prescribed by applicable securities laws:

   a. audited financial statements for the year ended December 31, 2011;

   b. management's discussion and analysis relating to the audited annual financial statements for the year ended December 31, 2011;

   c. certification of the foregoing filings as required by National Instrument 52-109 – *Certification of Disclosure* in Issuers' Annual and Interim Filings.

5. Cormark is a private investment dealer incorporated in Ontario and registered as an investment dealer with the Commission.

6. Certain clients of Cormark (the "**Cormark Clients**") acquired the Royal Coal Shares and Royal Coal Warrants prior to the effective date of the Cease Trade Order.

7. The Royal Coal Shares are listed on the TSX Venture Exchange; however, as a result of the Cease Trade Order and other factors, the Cormark Clients have determined that there is no market for the Royal Coal Shares or Royal Coal Warrants.

8. Cormark will acquire the Royal Coal Shares and Royal Coal Warrants (the "**Acquisition**") solely for the purpose of allowing the Cormark Clients to establish a tax loss in respect of such Acquisition.

9. Cormark has agreed to purchase the Royal Coal Shares for a nominal purchase price of $1,000 and the Royal Coal Warrants for a nominal purchase price of $240. The price to be paid per Royal Coal Share shall be $0.00005 and the price to be paid per Royal Coal Warrant shall be $0.00002.

10. The Cormark Clients are sophisticated sellers and understand that the Royal Coal Shares and the Royal Coal Warrants have no market value, the nature of the Cease Trade Order and the purpose of the proposed trade.

11. Cormark is a sophisticated purchaser and understands that the Royal Coal Shares and the Royal Coal Warrants have no market value, the nature of the Cease Trade Order and the purpose of the proposed trade.

12. Cormark has acknowledged that the issuance of a partial revocation order does not guarantee the issuance of a full revocation order in the future.

13. Each of Cormark and the Cormark Clients are not aware of any material information concerning the affairs of Royal Coal that has not been generally disclosed.

14. Cormark will purchase and hold the Royal Coal Shares and Royal Coal Warrants as principal.

15. Cormark and the Cormark Clients have been provided a copy of the Cease Trade Order, and prior to the completion of the Acquisition, a copy of this Order.

16. Cormark anticipates that the Acquisition will be completed by August 31, 2012.

**AND WHEREAS** considering the Application and the recommendation of the staff of the Commission;

**AND WHEREAS** the Director is satisfied that it would not be prejudicial to the public interest to revoke the Cease Trade Order;

**IT IS ORDERED** under section 144 of the Act that the Cease Trade Order be partially revoked solely to permit the Acquisition.

**DATED** in Toronto this 28th day of August 2012.

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

### 2.2.4 Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)

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

**AND**

**IN THE MATTER OF**
**VINCENT CICCONE AND CABO CATOCHE CORP.**
**(a.k.a. MEDRA CORP. AND MEDRA CORPORATION)**

**ORDER**

**WHEREAS** on October 3, 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 September 30, 2011 with respect to Vincent Ciccone ("Ciccone") and Medra Corp.;

**AND WHEREAS** on March 7, 2012, the Commission ordered that the hearing on the merits in this matter take place on September 5, 2012, at 10:00 a.m. and continue on September 6, 7, 10, 12, 13, 14, 19, 20 and 21, 2012, each day commencing at 10:00 a.m.;

**AND WHEREAS** on May 3, 2012, the Commission issued an Amended Notice of Hearing in connection with an Amended Statement of Allegations filed by Staff on May 2, 2012 to amend the title of proceedings by replacing the name "Medra Corp." with "Cabo Catoche Corp. (a.k.a Medra Corp. and Medra Corporation)" (collectively, "Medra");

**AND WHEREAS** on August 23, 2012, the parties were advised by the Office of the Secretary that September 10, 2012, was no longer available for the hearing on the merits in this matter;

**AND WHEREAS** on September 5, 2012, the first day of the hearing on the merits, Staff appeared before the Commission, counsel for Ciccone did not appear and no one appeared on behalf of Medra;

**AND WHEREAS** on September 5, 2012, Staff advised the Commission that Staff and counsel for Ciccone requested that the hearing be adjourned to September 7, 2012, at 11:00 a.m. in view of the settlement negotiations between Staff and Ciccone;

**AND WHEREAS** on September 5, 2012, the Commission ordered that the matter be adjourned to September 7, 2012, at 11:00 a.m. and continue on September 12, 13, 14, 19, 20 and 21, 2012, each day commencing at 10:00 a.m.;

**AND WHEREAS** on September 7, 2012, another Panel of the Commission approved the Settlement Agreement between Staff and Ciccone;

**AND WHEREAS** on September 7, 2012, the second day of the hearing on the merits, no one appeared on behalf of Medra although the Commission was satisfied that Medra had been served with notice of the hearing;

**AND WHEREAS** the Office of the Secretary received an e-mail dated September 5, 2012, from a representative of Medra requesting Staff disclose all relevant documents in their possession by sending copies of said documents to Medra at their offices in Mexico:

**AND WHEREAS** on September 7, 2012, Staff made submissions in response to Medra's request, and further requested that the Panel proceed with the hearing of the merits of the allegations against Medra by means of a hearing in writing pursuant to Rule 11 of the Commission *Rules of Procedure* (2010), 33 O.S.C.B. 8019;

**AND WHEREAS** on September 7, 2012, the Panel adjourned the hearing to September 13, 2012, and directed Staff to make written submissions on its disclosure obligations with respect to Medra, including submissions on the law, policy, jurisprudence and its position on this issue;

**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 on the merits in this matter is adjourned to September 13, 2012, at 2:30 p.m. at which time Staff will provide written submissions on its disclosure obligations with respect to Medra and make submissions regarding how it proposed to proceed against Medra;

**IT IS FURTHER ORDERED THAT** the hearing on the merits shall continue on September 14, 19, 20 and 21, 2012, each day commencing at 10:00 a.m.

**IT IS FURTHER ORDERED THAT** the hearing date of September 12, 2012, is vacated;

**DATED** at Toronto this 7th day of September, 2012.

"Vern Krishna", Q.C.

## 2.3 Rulings

### 2.3.1 Barclays Capital Inc. – s. 38 of the Act and s. 6.1 of Rule 91-502

**Headnote**

Application to the Commission pursuant to section 38 of the Commodity Futures Act (Ontario) (CFA) for a ruling that the Applicants be exempted from the dealer registration requirement in paragraph 22(1)(a) and the prohibition against trading on non-recognized exchanges in section 33 of the CFA. Applicants will offer the ability to trade in commodity futures contracts and commodity futures options that trade on exchanges located outside Canada to certain of its clients in Ontario who meet the definition of "permitted client" in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations.

Application to the Director for an exemption, pursuant to section 6.1 of OSC Rule 91-502 Trades in Recognized Options (Rule 91-502), exempting the Applicants and their Representatives from the proficiency requirements in section 3.1 of Rule 91-502 for trades in commodity futures options on exchanges located outside Canada.

**Statutes Cited**

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 22, 33, 38.
Securities Act, R.S.O. 1990, c. S.5, as am.

**Rules Cited**

Ontario Securities Commission Rule 91-502 Trades in Recognized Options, ss. 3.1, 6.1.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 8.18.

**September 11, 2012**

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

**AND**

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

**AND**

**IN THE MATTER OF**
**BARCLAYS BANK PLC**

**AND**

**IN THE MATTER OF**
**BARCLAYS CAPITAL INC.**

**RULING & EXEMPTION**
**(Section 38 of the Act and Section 6.1 of Rule 91-502)**

**UPON** the application (the **Application**) of Barclays Bank PLC (**BB PLC**) and Barclays Capital Inc. (**BCI**, and together with BB PLC, the **Applicants**) to the Ontario Securities Commission (the **Commission**) for:

(a) a ruling of the Commission, pursuant to section 38 of the Act, that each Applicant be exempted from the dealer registration requirements in the Act (as defined below) and the trading restrictions in the Act (as defined below) in connection with trades (**Futures Trades**) in contracts (as defined below) on exchanges located outside Canada (**Non-Canadian Exchanges**) where the Applicant is acting as principal or agent in such trades to, from or on behalf of Permitted Clients (as defined below); and

(b) an exemption of the Director, pursuant to section 6.1 of OSC Rule 91-502 *Trades in Recognized Options* (**Rule 91-502**), exempting the Applicants and their salespersons, directors, officers and employees (the **Representatives**) from section 3.1 of Rule 91-502 in connection with Futures Trades;

**AND WHEREAS** for the purposes of this ruling and exemption (the **Decision**):

(i) **"BCCI"** means Barclays Canada Capital Inc.;

**"CFTC"** means the United States Commodity Futures Trading Commission;

**"contract"** means a commodity futures contract or a commodity futures option that trades on one or more organized exchanges located outside of Canada and cleared through one or more clearing corporations located outside of Canada;

**"dealer registration requirements in the Act"** means the provisions of section 22 of the Act that prohibit a person or company from trading in a contract unless the person or company satisfies the applicable provisions of section 22 of the Act;

**"FINRA"** means the Financial Industry Regulatory Authority in the United States;

**"FSA"** means the Financial Services Authority in the United Kingdom;

**"NFA"** means the National Futures Association in the United States;

**"Permitted Client"** means a client in Ontario that is a "permitted client" as that term is defined in section 1.1. of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

**"SEC"** means the United States Securities and Exchange Commission; and

**"specified affiliate"** has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 Registration Information;

**"trading restrictions in the Act"** means the provisions of section 33 of the Act that prohibit a person or company from trading in a contract unless the person or company satisfies the applicable provisions of section 33 of the Act; and

(ii) terms used in the Decision that are defined in the OSA, and not otherwise defined in the Decision or in the Act, shall have the same meaning as in the OSA, unless the context otherwise requires;

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

**AND UPON** the Applicant having represented to the Commission and the Director as follows:

1. BB PLC is a public limited company registered in England and Wales having its registered office at 1 Churchill Place, London, England E14 5HP.

2. BB PLC is a reporting issuer in each of the provinces of Canada and is not in default of securities legislation in any province of Canada.

3. BB PLC (together with its subsidiaries) is a major global financial services provider engaged in retail banking, credit cards, corporate banking, investment banking, wealth management and investment management services, with an extensive international presence in Europe, the Americas, Africa, the Middle East and Asia.

4. BB PLC engages in the securities and commodities trading activities described herein through its investment banking division Barclays Capital. BB PLC is a wholly owned subsidiary of Barclays PLC.

5. BB PLC is authorised by the FSA under the U.K. *Financial Services and Markets Act 2000* to carry on a range of regulated activities within the UK and is subject to consolidated supervision by the FSA. BB PLC is also approved by the NFA as an exempt foreign firm. Pursuant to these authorizations and approvals, BB PLC may (inter alia) trade in securities and exchange contracts in the United Kingdom, and conduct brokerage activities for U.S. customers on non-U.S. futures exchanges without having to register with the CFTC as a futures commission merchant. BB PLC, as a BCD credit institution (as such term is defined in the FSA's rules), holds customer's monies as banker and not as trustee. As such, BB PLC is not obliged to segregate customer's monies from its own monies. All margin posted by

customers in respect of Futures Contracts is transferred as an outright transfer of title. BB PLC's obligation to the customer is to return investments and/or other assets which are fungible with those provided by the customer, or the cash equivalent, subject to its rights to apply margin to meet the customer's obligations.

6. BCCI is an indirect wholly owned subsidiary of BB PLC. BCCI is registered under the OSA as a dealer in the category of investment dealer and is a dealer member of the Investment Industry Regulatory Organization of Canada (**IIROC**). BCCI is not registered as a dealer under the Act and does not act as a broker for Futures Trades.

7. BCI is incorporated under the laws of the State of Connecticut in the United States of America having its head office located at 745 7th Avenue, New York, New York, USA.

8. BCI is an indirect wholly owned subsidiary of BB PLC.

9. BCI is not a reporting issuer in any jurisdiction in Canada.

10. BCI is a broker-dealer registered with the SEC, a member of FINRA, a futures commission merchant with the CFTC and a member of the NFA. Pursuant to its registrations and memberships, BCI is authorized to handle customer orders and receive and hold customer margin deposits, and otherwise act as a futures broker, in the United States. Rules of the CFTC and the NFA require BCI to maintain adequate capital levels, make and keep specified types of records relating to customer accounts and transactions, and comply with other forms of customer protection rules including know-your-customer obligations, account opening, suitability, anti-money laundering checks, credit checks, delivery of confirmation statements, clearing deposits and initial and maintenance margins. These rules do not permit BCI to treat Permitted Clients materially differently from the BCI's US customers. In order to protect customers in the event of the insolvency or financial instability of BCI, BCI is required to ensure that customer securities and monies be separately accounted for, segregated at all times from the securities and monies of BCI and custodied exclusively with such banks, trust companies, clearing organizations or other licensed futures brokers and intermediaries as may be approved for such purposes under the U.S. Commodity Exchange Act and the rules promulgated by the CFTC thereunder (the **BCI Approved Depositories**). BCI is also required to obtain acknowledgements from any BCI Approved Depository holding customer funds or securities that such funds and securities are to be separately held on behalf of such customers, with no right of set-off against BCI's obligations or debts.

11. BCI is exempt from registration as a dealer under the OSA pursuant to the international dealer exemption in section 8.18 of NI 31-103.

12. The Applicants propose to offer certain of its Permitted Clients in Ontario the ability to trade in contracts through the Applicants.

13. Each Applicant will not maintain an office, sales force or physical place of business in Ontario.

14. The Applicants will solicit business in Ontario only from persons who qualify as Permitted Clients.

15. Permitted Clients of the Applicants will only be offered the ability to effect Futures Trades on Non-Canadian Exchanges.

16. The contracts to be traded by Permitted Clients will include, but will not be limited to, contracts for equity index, interest rate, energy, currency, bond, agricultural and other commodity products.

17. Permitted Clients in Ontario will be able to execute Futures Trades through the Applicants by contacting the particular Applicant's exchange floor staff or global execution desk. Permitted Clients may also be able to self-execute Futures Trades electronically via an independent service vendor and/or other electronic trading routing.

18. The Applicants may execute a client's order on the relevant Non-Canadian Exchange in accordance with the rules and customary practices of the exchange, or engage another broker to assist in the execution of orders. The Applicants will remain responsible for the execution of each such trade.

19. The Applicants may perform both execution and clearing functions for Futures Trades in contracts or may direct that a trade executed by the Applicants be cleared through a carrying broker if the particular Applicant is not a member of the Non-Canadian Exchange or clearing house on which the trade is executed and cleared. Alternatively, the Permitted Client will be able to direct that Futures Trades executed by an Applicant be cleared through clearing brokers not affiliated with the Applicants (each, a Non-Barclays Clearing Broker). In addition, each of the Applicants may, from time to time, act as a clearing broker under give-up arrangements entered into with futures brokers not affiliated with the Applicants that will execute Futures Trades for an Applicant's client on a Non-Canadian Exchange.

20. If an Applicant performs only the execution of a Permitted Client's contract order and "gives-up" the transaction for clearance to a Non-Barclays Clearing Broker, such broker will also be required to comply with the rules of the exchanges and clearing houses of which it is a member and any relevant regulatory requirements, including requirements under any applicable legislation. Each such Non-Barclays Clearing Broker will represent to the Applicants in an industry standard give-up agreement that it will perform its obligations in accordance with applicable laws, governmental, regulatory, self-regulatory, exchange and clearing house rules and the customs and usages of the exchange or clearing house on which the relevant Permitted Client's contract orders will be executed and cleared. The Applicants will not enter into a give-up agreement with any Non-Barclays Clearing Broker located in the United States unless such broker is registered with the CFTC and/or SEC, as applicable.

21. As is customary for all Futures Trades, a clearing corporation appointed by the exchange or clearing division of the exchange is substituted as a universal counterparty on all Futures Trades and Permitted Client orders are submitted to the exchange in the name of the Non-Barclays Clearing Broker or the Applicant or, on exchanges where the Applicant is not a member, in the name of another carrying broker. The Permitted Client is responsible to the Applicant for payment of daily mark-to-market variation margin/or proper margin to carry open positions and the Applicant, the carrying broker or the Non-Barclays Clearing Broker is, in turn, responsible to the clearing corporation/division for payment.

22. Permitted Clients that direct an Applicant to give-up transactions in contracts for clearance and settlement by Non-Barclays Clearing Brokers will execute give-up agreements described above.

23. Permitted Clients will pay commissions for trades to the Applicants or the Non-Barclays Clearing Broker or such commissions may be shared by the Applicants with the Non-Barclays Clearing Broker.

24. The trading restrictions in the Act apply unless, among other things, a contract is traded on a recognized or registered commodity futures exchange and the form of the contract is approved by the Director. To date, no foreign commodity futures exchanges have been recognized or registered under the Act.

25. If the Applicants are exempted from the dealer registration requirements in the Act, the Applicants will be precluded from relying upon the statutory exemptions from the trading restrictions in the Act that the Commission has granted to date.

26. The Applicants will offer the ability to trade in contracts exclusively to Permitted Clients, all of whom are institutional entities comprised of sophisticated investors with investment expertise.

27. In addition to the sophistication of the Permitted Clients, the Applicants are sophisticated and experienced in this type of trading, and regulated rigorously by securities regulators, self-regulatory organizations and exchanges located in the United States (**U.S. Securities Regulators**) or the United Kingdom.

28. Each Applicant will execute and clear Futures Trades on behalf of clients in Ontario in the same manner that it executes and clears trades on behalf of their U.S. and U.K. clients, as applicable. Each of the Applicants will follow the same know-your-customer and client classification procedures that it follows in respect of its U.S. and U.K. clients, as applicable. Clients will be afforded the benefits of compliance by the Applicants with the statutory and other requirements of the U.S. Securities Regulators and the U.K. FSA.

29. Clients in Ontario of BB PLC will have the same contractual rights against BB PLC as U.K. clients of BB PLC. Clients of BCI in Ontario will have the same contractual rights against BCI as U.S. clients of BCI.

30. Section 3.1 of Rule 91-502 states that any person who trades as agent in, or gives advice in respect of, a recognized option is required to successfully complete the Canadian Options Course (which has been replaced by the Derivatives Fundamentals Course and the Options Licensing Course).

31. All Representatives who trade in options in the United States have passed the futures and options proficiency examination (i.e., the National Commodity Futures Examination (Series 3)) administered by FINRA. All Representatives who trade options in the United Kingdom have passed the requisite FSA qualifications and proficiency standard (i.e., the Fit and Proper test) and are registered in the capacity of an FSA Approved Person (**Customer Function 30 Status**).

**AND UPON** the Commission and Director being satisfied that it would not be prejudicial to the public interest to grant the order requested;

**IT IS ORDERED** pursuant to section 38 of the Act that each Applicant be exempted from the dealer registration requirements set out in the Act and the trading restrictions set out in the Act in connection with Futures Trades where an Applicant is acting as principal or agent in such trades to, from or on behalf of Permitted Clients, provided that:

(a) each client effecting Futures Trades is a Permitted Client and, if using a Non-Barclays Clearing Broker, has represented and covenanted that the broker is or will be appropriately registered or exempt from registration under the Act;

(b) the Applicants only execute Futures Trades for Permitted Clients on exchanges located outside Canada;

(c) at the time trading activity is engaged, the applicable Applicant:

(i) in the case of BCI,

(1) has its head office or principal place of business in the United States;

(2) is registered as a futures commission merchant with the CFTC in good standing;

(3) is a member in good standing with the NFA; and

(4) engages in the business of a futures commission merchant in contracts in the United States; and

(ii) in the case of BB PLC,

(1) has its head office or principal place of business in the United Kingdom;

(2) is authorized by the FSA to trade in securities and exchange contracts;

(3) is approved by the NFA as an exempt foreign firm in good standing; and

(4) engages in the business of trading securities and exchange contracts in the United Kingdom.

(d) the applicable Applicant has provided to the Permitted Client the following disclosure in writing:

(i) a statement that the Applicant is not registered in Ontario to trade in contracts as principal or agent;

(ii) a statement that the Applicant's head office or principal place of business is located in London, England, in the case of BB PLC, or New York, New York, United States of America, in the case of BCI;

(iii) a statement that all or substantially all of the Applicant's assets may be situated outside of Canada;

(iv) a statement that there may be difficulty enforcing legal rights against the Applicant because of the above; and

(v) the name and address of the Applicant's agent for service of process in Ontario;

(e) the applicable Applicant has submitted to the Commission a completed *Submission to Jurisdiction and Appointment of Agent for Service* in the form attached as Appendix A;

(f) each Applicant notifies the Commission of any regulatory action after the date of this order in respect of the Applicant, or any predecessors or specified affiliates of the Applicant, by completing and filing Appendix B hereto with the Commission within 10 days of the commencement of such action; provided that this condition shall not be required to be satisfied for so long as BCCI remains an investment dealer in good standing under Ontario securities law;

(g) by December 1 of each year, the Applicant notifies the Commission of its continued reliance on the exemption from registration granted pursuant to the Order; and

(h) this Order shall expire five years after the date hereof.

September 11, 2012

"Edward P. Kerwin"
Commissioner

"Sarah B. Kavanagh
Commissioner

**IT IS THE DECISION** of the Director, pursuant to section 6.1 of Rule 91-502, that section 3.1 of Rule 91-502 does not apply to the Applicants and their Representatives in respect of Futures Trades, provided that:

(a) in the case of BCI, BCI and its Representatives maintain their respective registrations with the CFTC and NFA which permit BCI to trade commodity futures options in the United States;

(b) in the case of BB PLC, BB PLC and its Representatives maintain their respective registrations with the FSA to trade commodity futures options in the United Kingdom; and

(c) this Decision shall expire five years after the date hereof.

September 11, 2012

"Erez Blumberger"
Director
Ontario Securities Commission

**APPENDIX A**

**SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE**

**INTERNATIONAL DEALER OR INTERNATIONAL ADVISER EXEMPTED FROM REGISTRATION UNDER THE COMMODITY FUTURES ACT (ONTARIO)**

1. Name of person or company ("International Firm"):

2. If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm:

3. Jurisdiction of incorporation of the International Firm:

4. Head office address of the International Firm:

5. The name, e-mail address, phone number and fax number of the International Firm's individual(s) responsible for the supervisory procedure of the International Firm, its chief compliance officer, or equivalent.

   Name:

   E-mail address:

   Phone:

   Fax:

6. The International Firm is relying on an exemption order under section 38 or section 80 of the Commodity Futures Act (Ontario) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the "Relief Order"):

   ☐ Section 8.18 [*international dealer*]

   ☐ Section 8.26 [*international adviser*]

   ☐ Other [specify]:

7. Name of agent for service of process (the "Agent for Service"):

8. Address for service of process on the Agent for Service:

9. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

10. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

11. Until 6 years after the International Firm ceases to rely on the Relief Order, the International Firm must submit to the regulator

a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated; and

b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service.

12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

_____
(Signature of the International Firm or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

**Acceptance**

The undersigned accepts the appointment as Agent for Service of _____ [*Insert name of International Firm*] under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated: _____

_____
(Signature of the Agent for Service or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

This form is to be submitted to the following address:

Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Attention: Senior Registration Supervisor, Dealer Team
Telephone: (416) 593-8263
email: dleitch@osc.gov.on.ca

**APPENDIX "B"**
**NOTICE OF REGULATORY ACTION**

1. Has the firm, or any predecessors or specified affiliates[1] of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, SRO or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

Yes _____ No _____

If yes, provide the following information for each settlement agreement:

| |
|---|
| Name of entity |
| Regulator/organization |
| Date of settlement (yyyy/mm/dd) |
| Details of settlement |
| Jurisdiction |

2. Has any financial services regulator ,securities or derivatives exchange, SRO or similar organization:

| | Yes | No |
|---|---|---|
| (a) Determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization? | | |
| (b) Determined that the firm, or any predecessors or specified affiliates of the firm made a false statement or omission? | | |
| (c) Issued a warning or requested an undertaking by the firm, or any predecessors or specified affiliates of the firm? | | |
| (d) Suspended or terminated any registration, licensing or membership of the firm, or any predecessors or specified affiliates of the firm? | | |
| (e) Imposed terms or conditions on any registration or membership of the firm, or predecessors or specified affiliates of the firm? | | |
| (f) Conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm? | | |
| (g) Issued an order (other than en exemption order) or a sanction to the firm, or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g. cease trade order)? | | |

If yes, provide the following information for each action:

| | |
|---|---|
| Name of Entity | |
| Type of Action | |
| Regulator/organization | |
| Date of action (yyy/mm/dd) | Reason for action |
| Jurisdiction | |

[1] In this Appendix, the term "specified affiliate" has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 *Registration Information*.

3. Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliate is the subject?

Yes _____ No _____

If yes, provide the following information for each investigation:

| |
|---|
| Name of entity |
| Reason or purpose of investigation |
| Regulator/organization |
| Date investigation commenced (yyyy/mm/dd) |
| Jurisdiction |

| |
|---|
| Name of firm |
| Name of firm's authorized signing officer or partner |
| Title of firm's authorized signing officer or partner |
| Signature |
| Date (yyyy/mm/dd) |

***Witness***

The witness must be a lawyer, notary public or commissioner of oaths.

| |
|---|
| Name of witness |
| Title of witness |
| Signature |
| Date (yyyy/mm/dd) |

This form is to be submitted to the following address:
Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Attention: Senior Registration Supervisor, Dealer Team
Telephone: (416) 593-8263
email: dleitch@osc.gov.on.ca

# Chapter 3

# Reasons: Decisions, Orders and Rulings

**3.1 OSC Decisions, Orders and Rulings**

**3.1.1 Marlon Gary Hibbert et al.**

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

**AND**

**IN THE MATTER OF**
**MARLON GARY HIBBERT, ASHANTI CORPORATE SERVICES INC.,**
**DOMINION INTERNATIONAL RESOURCE MANAGEMENT INC.,**
**KABASH RESOURCE MANAGEMENT, POWER TO CREATE WEALTH INC. AND**
**POWER TO CREATE WEALTH INC. (PANAMA)**

**REASONS AND DECISION**

| | | | |
|---|---|---|---|
| **Hearing:** | December 5, 7 and 9, 2011 and January 11, 2012 | | |
| **Decision:** | April 4, 2012 | | |
| **Panel:** | James D. Carnwath, Q.C. | – | Commissioner and Chair of the Panel |
| **Appearances:** | Swapna Chandra | – | For Staff of the Commission |
| | | – | No one appeared for Marlon Gary Hibbert, Ashanti Corporate Services Inc., Dominion International Resource Management Inc., Kabash Resource Management, Power to Create Wealth Inc. or Power to Create Wealth Inc. (Panama) |

**TABLE OF CONTENTS**



## I. INTRODUCTION

Staff of the Ontario Securities Commission (the "**Commission**") or (the "**OSC**") allege that the respondents engaged in conduct contrary to the public interest in the period from January 2005 to December 2010 as follows:

a) The Respondents traded and distributed securities without filing a prospectus in circumstances where no exemption was available, contrary to s. 53 of the *Securities Act*, R.S.O. 1990, c. S.5 (the "***Act***") and contrary to the public interest;

b) The Respondents traded and advised on the trading of the securities, without being registered and in circumstances where no exemption was available, contrary to s. 25 of the *Act* and contrary to the public interest;

c) Hibbert engaged in or participated in acts practices or courses of conduct relating to the securities that he knew or ought to have known perpetrated a fraud on persons contrary to s. 126.1(b) of the *Act* and contrary to the public interest; and

d) Hibbert made statements during his examinations by Staff that were materially misleading or untrue and/or failed to state facts in respect of PCWP that were required to be stated, contrary to s. 122 of the *Act* and contrary to the public interest.

## II. THE PRINCIPAL PLAYERS

Marlon Gary Hibbert is a Pastor and founder of Dominion World Outreach Ministries Dominion Worship Center Inc. He is also a founding member of Fight For Justice ("**FFJ**"), an organization devoted to bettering the lives of members of the African-Canadian community. He was never registered in any capacity with the Commission.

Dominion International Resource Management Inc. ("**Dominion**") was incorporated December 19, 2003 in Ontario. Dominion operated under the name Kabash Resource Management ("**Kabash**"), although Kabash was never a registered name. Dominion was never registered with the Commission.

Power To Create Wealth Inc. ("**PCW**") was incorporated January 10, 2007 in Ontario. PCW's name was changed to Ashanti Corporate Services Inc. ("**Ashanti**") on February 19, 2008. Neither PCW nor Ashanti was ever registered with the Commission.

Power To Create Wealth Inc. (Panama) ("**PCWP**") is a Panamanian company whose incorporation was arranged by Hibbert.

## III STAFF WITNESSES

### A. H.S.

H.S. is a part-time teacher living in Western Ontario with her family. She had been off for a few years on an extended parental leave and had just returned to work in September 2011. Her evidence is supported in the Hearing Brief identified with her name and filed as Ex. 4. Her evidence may be found in Tr. Vol. 1, pp. 29-92.

H.S. said she invested $60,000 with Marlon Hibbert and recalled advancing the monies in four parts. She heard about the investment through close friends. She learned that the rate of return on the investment was good, there was no risk involved and that there was a guaranteed return of principal. She was also persuaded that the investment was a good idea because Hibbert was a pastor.

She called Hibbert in March 2007 and learned that Hibbert was eager to have H.S. invest with him. Hibbert confirmed that he guaranteed repayment of principal supported by a signed contract. Indeed, Hibbert mailed a contract which H.S. signed before wiring him the first part of the funds.

At no time did Hibbert ask H.S. about her financial circumstances nor did he say that he had taken any training or courses in trading securities.

Contrary to H.S.'s recollection she invested her $60,000 in five instalments as follows:

| | |
|---|---|
| April 27, 2007 | $10,000 |
| May 11, 2007 | $10,000 |
| August 9, 2007 | $10,000 |
| October 1, 2007 | $20,000 |
| May 9, 2008 | $10,000 |
| **Total:** | **$60,000** |

The records indicate that $10,000 was invested so that monthly interest returns of 5% would be paid to H.S. The balance of $50,000 was invested in a capital account where sums were allegedly compounded. At Ex. 4, Tab 11, p. 49 is a statement dated December 31, 2008 showing a capital of $50,000 invested, a return on investment of $74,862.24 and a current account balance of $124,862.24.

At the outset, $40,000 was invested in the monthly interest payment arrangement. H.S. believes she received $16,000 by way of monthly interest payments during the course of her dealings with Hibbert. The final arrangement that committed $10,000 for

monthly interest and $50,000 for compounded interest appears to have started on January 31, 2008 as shown in Ex. 4, Tab 11, pp. 26 and 38.

In early 2009, H.S. told Hibbert it was important for her to receive the return of capital on the anniversary date in April. H.S. and her husband were changing school boundaries, requiring them to move from their residence. They also wanted to pay down their line of credit. Hibbert sent H.S. a letter dated February 6, 2009 addressed to "Client" saying that "we are still working through the issuing of payments in a manner that will not compromise the integrity of our business account." The letter goes on to say that it was expected that the monthly payment would be back on schedule for the month of May, therefore the monthly payment could be delayed for up to two weeks.

In Ex. 4, Tab 7 is a further letter from Ashanti dated April 23, 2009. The letter refers to difficulties in getting funds into Ashanti's bank account as well as recent volatility in the financial markets. The letter purports to cancel the monthly payment plan because of sustained losses. The letter goes on to recite that Ashanti was unable to make payments over the next 12 weeks. The letter advises that Ashanti would not be able to pay all of the outstanding amounts at once, but that payments would be over a more consistent period. It was at this point that H.S. became worried about her investment.

In Ex. 4, Tab 8, p. 14 is a copy of a letter from H.S. to L.B., who worked at Ashanti, asking to receive a statement of her account so that she could negotiate with her bank for a new mortgage. Also in Tab 8 at p. 13 is a "Client" letter confirming repayments beginning the end of July.

Staff counsel asked H.S. if, at that point, she was comfortable with the state of the investment and the projected payout. H.S. confirmed "we were very much believing what he was saying."

H.S. and her husband completed the purchase of their new home and moved in. To do so, they had to empty their RSPs to pay the bank and eliminate some of the credit line they had used to invest with Hibbert. Towards the end of August, the family went to see Hibbert in his office in Scarborough. He said that he could give them a payout of $1,000 per month starting in September of 2009. No such payment was ever received.

H.S. then described the consequences of having lost the $60,000 invested. She had not intended to return to teaching and her maternity leave expired in January 2010. She started a tutoring business at home and got some students, but the family was falling into debt every month. As of the date of her testimony, she was both tutoring and teaching. When asked how the loss of her investment affected the family, H.S. replied "well, it's pretty devastating." They put their new home up for sale in December 2010 and had to move into an 800 square foot rental with their three children. At this point in her evidence, H.S. became upset and began to weep. The hearing adjourned for five minutes.

On January 29, 2010, H.S.'s husband attended a meeting of investors with Hibbert. Hibbert told the investors that he had 70% of the principal owing to investors but needed 16 more weeks before he could make any repayments. Even at that point, H.S. said that a part of her still wanted to believe Hibbert.

**B. T.S.**

Staff called T.S., a stay at home mother with two sons. During the course of her testimony, T.S. revealed that her elder son is both blind and autistic and her younger son is blind. She invested $60,000 with Marlon Hibbert, $10,000 on November 21, 2006 and $50,000 on February 9, 2007. Her evidence is supported in the Hearing Brief identified with her name and filed as Ex. 5. Her evidence may be found in Tr. Vol. 1, pp. 92-149.

T.S. identified Ex. 5, Tab 6, p. 23, a copy of an investment contract with Kabash recording her investment of $10,000 on November 21, 2006. The contract is similar to the one signed by H.S., the previous witness. She and her husband had called Hibbert, had been put on a waiting list and finally signed the contract. They did not inquire about whether he was registered with the OSC or another regulator. She described their investment experience as very minimal. She understood that their investment would be used to trade foreign exchange currencies; they were never told that part of their money would be used to pay other investors, used for office expenses or used to compensate Hibbert and his family. As with H.S., $10,000 was receiving interest monthly and the $50,000 was compounding. The source of the funds was from her mother-in-law's estate.

T.S. was referred to Ex. 5, Tab 3, p. 109, a letter dated May 15, 2008. The letter informed investors that PCW had moved to Belize and would henceforth be known as Ashanti. The letter was signed by L.B., Hibbert's secretary. The letter caused some uneasiness for T.S.

In Ex. 5, Tab 6, p. 28 is an email sent by T.S. to L.B. asking that half the total value of her "locked in" investments to January 31, 2009 be paid out and deposited into her bank account. On the same page is a response from L.B. explaining that a large volume of payments for the end of January and February required T.S.'s payout to be made over a 2-week period "to avoid having red flags raised on the account".

Commencing in January 2009 a series of communications emanated from Ashanti much as they did in the case of H.S. They are as follows:

(1) In Ex. 5, Tab 5, p. 18, a letter dated January 14, 2009, advising T.S. payments would be postponed to the first week of April;

(2) In Ex. 5, Tab 5, p. 15, a letter dated March 23, 2009, addressed to "Client" advising that Ashanti is looking for alternative banking to alleviate a problem. The change could not be in place until June 2009;

(3) In Ex. 5, Tab 5, p. 13, a letter dated July 17, 2009, addressed to "Client", laying out any payouts promised for July 31, 2009; and

(4) In Ex. 5, Tab 2, a letter dated May 6, 2010, addressed to "Investor", reporting the closing of Ashanti's forex trading account. The letter blames the actions of certain investors who wanted the account closed so that they could be paid whatever remained in the account. The letter makes it clear that Ashanti had no intention of doing so.

In Ex. 5, Tab 6, p. 27, T.S. wrote L.B. pointing out that her account statement showed that $113,690.44 was paid out to her and that she had not received the money. L.B. replied on February 23, 2009 saying, "The amount is deducted out to be paid. This amount, because it has not yet been paid has been accounted for separately." It will be recalled that on March 23, 2009 Hibbert had promised new banking arrangements by the end of June 2009.

It was at this point in her testimony that T.S. became upset but chose not to take a five minute recess. She described a meeting with Hibbert in August 2009 at which Hibbert's wife, Shelly (also known as "Verna"), was present. She described the meeting as Mr. and Mrs. Hibbert giving excuses why money was not being sent out, but asking that T.S. not complain to the police, stating "[w]e received the same excuses, banking, loss of money, yeah, it's just tied up."

T.S. and her husband attended the same investors meeting in January 2010 in Scarborough that was described by H.S. T.S. learned that Hibbert intended to pay only the principal back and not any compound interest. She confirmed that Hibbert told the investors that he had 70% of the principal left. He refused to give any banking information about Panama. T.S. was then referred to Ex. 5, Tab 6, p. 35, a statement of her account as of January 15, 2009. The amount invested is shown as $218,474.25 and showing $113,690.44 as having been paid as interest in the period. This, of course, never took place as confirmed by T.S. T.S. believed that the total amount they received by way of interest during the course of her investment was $12,500. She was asked what effect the making of her investment had on her and her family and she replied, "This is where I cry." She described the strain of knowing that Hibbert was a pastor, and that he had done this, not just to her and her family, but to hundreds of other people. She described her desire to establish security for her oldest son who would probably never be able to work. T.S. said she wanted to put an end to Hibbert living off other people's money.

**C. H.F.**

H.F. is employed in insurance sales and has been for 25 years. He is also actively involved in ministry work, teaching biblical principles. His evidence may be found in Tr. Vol. 2, pp. 6-98.

He is an ordained minister and is associated with Pison Financial Ministries ("**Pison**"). He is registered with the Financial Services Commission of Ontario as a licensed insurance agent.

H.F. was introduced to Hibbert sometime in the summer of 2008. H.F. set up a meeting with Hibbert shortly thereafter and ultimately met with him to discuss the currency trading investment promoted by Hibbert. He was told the rate of returns were extremely good and that is why Hibbert was able to guarantee a return of 8.5% interest. H.F. specifically asked him if he was licensed by the Commission and Hibbert replied that "his papers were submitted by an investment lawyer, securities lawyer, that brought his papers in and everything is approved." H.F. was shown a paper with the OSC stamp on it and he said he was satisfied, particularly because he was dealing with a "Man of God".

Staff entered a Hearing Brief marked as Ex. 7, containing the documents relevant to H.F. He was referred to Tab 1, p. 2 of Ex. 7, an agreement between PCWP and Havilah Trading Stream Inc. ("Havilah"), H.F.'s company. The agreement followed a discussion between Messrs. H.F. and Hibbert whereby H.F. would obtain investments for the PCWP, pool them through Havilah and transfer them to PCWP so that Hibbert's minimum investment requirement of $10,000 could be met. The agreement provides that revenue obtained from the investments solicited from Havilah would be disbursed as follows:

e) The first 8.5% was to be paid on the loan investments received from Havilah, twice monthly.

f) Forty percent of the remaining profits would belong to Havilah, half of which would be paid as compensation and half was to be retained in the forex trading account to maintain trading margin.

g) PCWP was to retain 60% of the trading revenue as compensation and expense coverage of administration and banking fees. The document was signed by Messrs. H.F. and Hibbert.

H.F. set up Havilah so that smaller sums coming from individuals could be deposited in its account and then be wired according to Hibbert's instructions. Hibbert explained that PCWP was incorporated in Belize because it was easier to process the investing due to the location of one trading account in New York. H.F. said he was not concerned that the head office of PCWP was in Belize.

Following the establishment of Havilah's bank account, H.F. spoke to many members of his congregation and told them "about this brother, this Man of God who was doing this great investment in good return and we can – we can experience positive return on our investment."

H.F. was then referred to Ex. 7, Tab 3, pp. 4-9 containing six transfers from Havilah's RBC account to Ashanti, representing investments made by numerous persons through H.F. and accumulated in Havilah's bank account. The total sum transferred to Ashanti in Tab 3 is $313,000. H.F. added that the total sum transferred from Havilah was $756,000 because there were other transfers and direct cheques.

H.F. also invested personally in Ashanti. An initial investment of $8,000 was followed by another of $25,000.

Following's H.F.'s investments in Ashanti, H.F. invested in a second scheme promoted by Hibbert, allegedly to support Good Works in Africa. The scheme involved a company called So You May Succeed Inc., described as the authorized agent for PCWP. In Ex. 7, Tab 11, p. 43 is a document describing an investment opportunity with a potential annual return of 79.40%. H.F. created a company called Pison Financial Principles Inc. and that company invested $25,000 in PCWP. Unlike the investment in Ashanti, the return was not guaranteed. In Ex. 7, Tab 4, p. 10 is a copy of the agreement executed by H.F. and Hibbert.

Following these investments, information came to the attention of H.F. which caused him to re-think the wisdom of his investments. It became clear to him that Hibbert was not carrying through with his promises, and indeed, he was acting in a manner to suggest that the investments were at risk. In Ex. 7, Tab 12, p. 44 is a letter from H.F. to PCWP saying he wished to redeem all the funds invested by Pison on the anniversary date, October 27, 2010.

Pison's investment was not returned. There then followed the usual excuses offered by Hibbert to other investors previously described in these Reasons. Banking regulations, the advice of lawyers, difficulties with the market and various other excuses were advanced by Hibbert to H.F.

H.F. responded by sending several eloquent emails to Hibbert reminding him of his responsibilities as a Man of God, and of his obligations to the many investors who were persuaded to invest with him because of his seemingly impeccable credentials as a pastor. It may come as no surprise that Hibbert was unmoved by these reminders.

H.F. lost the money he invested. He described the effect this had on him and on those "brothers and sisters" whom he knew personally that had lost money. He said the money he lost had been intended for the education of his two sons who were attending university. At this point, H.F. found it difficult to continue his testimony and a short recess was taken. On his return, H.F. testified:

> I cannot comment about my children. I'll just go on to something else. It's too painful. But I have – I did not put my money or my brothers and sisters' money into a man's hands. I put our money into a Man of God hand. I never would have done that if he was not counted as a Man of God. I've been in the investment business world for a long time and I would not have done that. It's only because of the umbrellas to which cover us, the Body of Christ. So in trusting a person is not just a person, it was a Man of God. And I think that's why it's so painful for all of us.
>
> (Tr. Vol. 2, pp. 96-97)

**D. L.B.**

L.B. is married with three children and lives in Scarborough. She is currently seeking employment. She is a member and Assistant Pastor at Hibbert's church. Her evidence may be found in Tr. Vol. 2, pp. 100-185.

L.B. told us that she worked for Ashanti part-time in 2006 and full time starting in July 2007. Shortly put, L.B. was responsible for the administration of the office, including communicating with clients, mailing out the monthly statements to the clients, assisting with bank deposits, receiving the monthly bank statements and reconciling them, getting supplies for the office and paying the ordinary and usual office expenses. All this was done under the supervision and direction of Hibbert.

She was a signatory on a CIBC account and a Bank of Montreal account operated in the name of Ashanti. There was also a TD bank account associated with an entity called Dominion, identified earlier in paragraph three of these reasons. Investors in Ashanti either purchased a bank draft which they mailed in or invested by wire transfer which went directly into one of the bank accounts.

Investors' funds were, from time to time, transferred to Forex Capital Markets ("**FXCM**"), the company that was trading in foreign exchange. Transfers to FXCM were done on the instructions of Hibbert. L.B. prepared a list of all investors who asked to be paid their interest on a monthly basis, she would tell Hibbert how much to be paid out each month and he would request funds from FXCM or take it from the bank account. Then L.B. would mail the cheques to those individual investors. Insofar as individual investors were concerned, there was a file for each one containing the signed contract, a photograph of a bank draft if that was the method of payment, a copy of their method of payment and a copy of the monthly statements that they received.

At this point, Staff entered Ex. 8, being a Hearing Brief containing the documents related to L.B. containing 37 tabs. L.B. was referred to Tab 37A, a Venture Capital Investment Agreement made between L.B. and Kabash. The latter was an entity operated by Dominion. L.B. invested USD $3,650 in Kabash with a guaranteed return of 5% monthly payable on the last day of each month. Although her evidence was not clear on this point, it seems that that original investment plus accrued interest totalled slightly over $6,000, which she received in full as did other investors who had connections with Hibbert.

L.B. was referred to Ex. 8, Tab 37D, pp. 159-162, a list of all investors prepared by L.B. It shows total principal invested of $8,530,935.99, total principal repaid of $297,326.13 and a total interest paid of $3,501,158.42.

In Ex. 8, Tab 37C is a list of all investors prepared by L.B. It shows principal owing of $8,290,045.75, total accrued interest owing of $16,503,669.69 and a total of principal and interest paid of $3,738,748.02.

L.B. explained the slight discrepancy revealed in a comparison of Tab C and Tab D by explaining that small errors in the calculation had been revealed in the preparation of Tab D following the preparation of Tab C.

L.B. was taken through a number of exhibits in Ex. 8, at Tabs 14-35 inclusive, being cheques issued by Ashanti. She identified many of the payments to include payments to Hibbert's family, charitable causes promoted by him, a myriad of office expenses for the various companies in which he had an interest and payments for two BMW automobiles driven by Hibbert and his wife.

**E. Paul De Souza**

Mr. De Souza is a senior forensic accountant with the Enforcement Branch of the OSC. He has been designated as a chartered certified accountant in the U.K. since 1974 and has had a CGA designation in Ontario since 1991. He has been a senior forensic accountant at the OSC since 2000. He reviews and analyses financial documents, including disclosure documents, corporate records, bank statements and brokerage statements. He also interviews respondents and witnesses. His evidence may be found in Tr. Vol. 3, pp. 7-89.

Mr. De Souza became involved in the investigation of Hibbert some time in August 2010. He conducted four compelled interviews with Hibbert, starting in November 2010. The purpose of his examination was to fully understand Hibbert's business and his involvement in dealing with securities and investors. As a result of Staff's investigation, a cease trade order was issued against Hibbert's companies. Subsequently, Staff initiated contempt proceedings against Hibbert for the non-receipt of documents and failure to comply with requests made during the compelled interviews.

Mr. De Souza was asked if he obtained any evidence that Hibbert was advising investors about securities without being registered at the Commission. Mr. De Souza identified a "video clip", being website information that showed Hibbert was addressing the public in order to promote investments. The video was provided by J.S., the husband of T.S. A transcription of the CD containing the video was filed as Ex. 13. Hearing Brief Vol. 7, Tabs 1-5 was entered as Ex. 14. Tab 5 of Ex. 14 contains the CD from which the transcription was made. The video itself was then played showing Hibbert advising investors about securities.

A document was produced to Mr. De Souza entitled "The Company's Bank Accounts CBNA", and entered as Ex. 15. The document sets out the various bank accounts owned by the companies controlled by Hibbert, as well as Hibbert's personal bank accounts. Also shown are the periods for which Mr. De Souza reviewed those accounts and the status of the accounts as of the date they were closed.

Mr. De Souza then described his analysis of these bank accounts. He started with the account histories as represented by the bank statements. He then analysed all the transactions for all the bank accounts shown on Ex. 15. He used certain thresholds for payments from the bank account and recorded only those items over $5,000. This was because of the enormous number of transactions. On the deposit side, Mr. De Souza wanted a more accurate number on the potential investment monies raised so he used a threshold of $1,000. He was referred to Hearing Brief 6B, which was filed as Ex. 16, Tabs 1-20. In the second Tab 3, pp. 211-361 are the debits and credits revealed by the banking statements after having applied the thresholds described by Mr. De Souza. The analysis indicates the investor funds deposited and by whom and then disbursements from the accounts with the identity of the recipient. The analysis left several questions in Mr. De Souza's mind so he gave the document to Hibbert with questions directed to entries of which he was not certain.

Hibbert's comments were incorporated into Mr. De Souza's final analysis. In Ex. 16, Tab 3, p. 300, investor funds total $8,411,528. Monies disbursed for Hibbert's personal use totalled $458,484. Money disbursed for charitable causes presumably supported by Hibbert totalled $359,338.

Mr. De Souza was asked if p. 300 of Tab 3 recorded all the advances to the use of Hibbert personally. Mr. De Souza replied that it did not because of the threshold he used of $5,000. A document entitled withdrawals and donations (under $5,000) was produced to Mr. De Souza, identified as having been prepared by him and entered as Ex. 17. Exhibit 17 shows amounts paid to Hibbert to be $94,069, to Mrs. Hibbert $121,071, for donations $124,510 and for other personal expenses $67,017, all flowing from sums under $5,000.

Thus, from the bank accounts analyzed by Mr. De Souza, the Hibberts received approximately $673,000, donations were made of $483,848 and other personal expenses were paid of $67,017.

Mr. De Souza was then asked if he did a trading analysis of Hibbert's activities. A document entitled "Summary of the Profit and Loss on the Currency Trading" was produced to Mr. De Souza. He identified it as having been prepared by him and it was entered as Ex. 18. The document identifies a total trading loss in the period January 2006 to September 2009 of $1,040,382. Exhibit 19 showed a trading summary for FXCM showing deposits of $2,150,804, withdrawals of $1,201,147 and a loss of $948,365 due to trading. The document shows a residual balance of $1,293.

Mr. De Souza was shown a document entitled "Monthly Performance and Trading Account Balance for Ashanti". It was entered as Ex. 20, after having been identified by Mr. De Souza as a document that he prepared. The document shows a different manner of recording the monthly balances in various accounts used by Hibbert in trading. Mr. De Souza confirmed that if the debits and credits were added the result would be a loss of $948,365 as shown on Ex. 19.

Mr. De Souza was then referred to Hearing Brief Vol. 6A previously entered as Ex. 11, Tabs A-23. Attention was directed to Tab 11, p. 619 where Mr. De Souza identified a response to an undertaking by Hibbert to provide Staff with the total obligation owing to investors as of December 31, 2007 and to provide the total of all assets in the names of the companies (Ashanti and/or Kabash) as of December 31, 2007. In a letter found at p. 614 of Tab 11, Hibbert's counsel replied that the total assets were USD $1,599,301.90 and CAD $98,617.66. The total obligations owing to investors as of December 31, 2007 was, according to the letter, $301,028.40.

Mr. De Souza did not agree with these amounts and went through the account statements. He was referred to Tab 13, p. 631 and following where he reviewed Hibbert's numbers and came to an interest obligation outstanding of $2.2 million. This figure was subsequently put to Hibbert, who was forced to agree with it. Hibbert explained he did not understand Commission Staff's request when asked for the obligations.

Finally, Mr. De Souza was referred to a compelled examination of Hibbert, found at Ex. 11, Tab A. At p. 101, Hibbert was asked if there were any immediate family members of his associated with PCWP. Hibbert answered, "no". At p. 110 it was put to Hibbert that he was involved in the Panamanian company known as PCWP. He replied: "I'm not a director. I'm not a founder. I'm not an officer."

Subsequently, Staff obtained information from the National Securities Commission in Panama and from the CFTC in the United States. In Ex. 22, Verna Hibbert, Hibbert's wife, is shown as secretary of PCWP. At Ex. 24 is a document signed by Marlon G. Hibbert as a trading agent for PCWP.

## IV. ANALYSIS

**(a) Did the Respondents trade in securities without being registered to do so in circumstances where no exemptions were available to them, contrary to s. 25(1)(a) of the *Securities Act* (pre-September 2009) and s. 25(1) of the *Securities Act* (post-September 2009) and contrary to the public interest?**

Prior to September 28, 2009, s.25(1)(a) of the *Act* stated that no person or company shall trade in a security unless that person is registered with the Commission as a dealer, or as a salesperson, partner, or officer of a registered dealer. Subsection 25(1)(a) of the *Act* stated:

> 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; or
>
> …
>
> 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.

The current s. 25(1) of the *Act* came into force on September 28, 2009. It provides that a 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 is registered with the Commission:

> 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 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.

The requirement for registration is now determined by a "business trigger". In determining whether a person or company is trading in securities for a business purpose, section 1.3 of Companion Policy 31-103 sets out a number of relevant factors that are derived from case law and regulatory decisions that have interpreted the "business purpose test" for securities matters. The relevant factors are as follows:

> h) engaging in activities similar to a registrant, including promoting securities or stating that an individual or company will buy or sell securities;
>
> i) intermediating trades or acting as a market maker;
>
> j) directly or indirectly carrying on in the activity with repetition, regularity or continuity, especially trading in any way that produces, or is intended to produce profits;
>
> k) being, or expecting to be, remunerated or compensated for trading and it is irrelevant if the individual or company actually received compensation or in what form; and
>
> l) directly or indirectly soliciting, including contacting anyone by any means to solicit securities transactions.

The definition of "trade" or "trading" in s. 1(1) of the *Act* 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 the foregoing.

The definition of "security" in s. 1(1) of the *Act* includes:

> …

> (n) any investment contract;
>
> …
>
> whether any of the foregoing relate to an issuer or a proposed issuer.

I find that the contracts prepared by Hibbert and signed by him and investors he solicited to be a "security" as defined in s. 1(1) of the *Act*. Hibbert promised investors high rates of return at no risk and guaranteed the return of the investors' capital investment.

Hibbert's interaction with H.S., T.S. and H.F. consisted almost entirely of trading or acting in furtherance of trades and conducting the business of trading in securities. Not only did he cause the incorporation of the corporate respondents to assist in the investment scheme, he also prepared and submitted investment contracts for execution by investors, solicited investments over the telephone and accepted and deposited investors' funds into the bank accounts of the corporate respondents located in Canada. In addition, he paid referral fees to existing investors who referred new investors and signed an agreement with H.F. to gather in yet further potential investors.

Indeed, Hibbert himself acknowledged that neither he nor his companies had ever been registered with the Commission. He further acknowledged there were no exemptions from the registration requirements available to any of the Respondents (Agreed Statement of Facts, Ex. 2, Ex. 2, paras. 3 and 8).

I find that all the Respondents engaged in activities or a course of conduct that constituted "acts in furtherance of a trade" or the "business of trading in securities without being registered contrary to s. 25(1)(a) of the *Act* (pre-September 2009), and contrary to s. 25(1) (after September 2009), in circumstances where no exemption was available to them.

**(b) Did the Respondents trade and advise on the trading of securities of the corporate respondents without being registered and in circumstances where no exemption was available, contrary to s. 25(1)(c) of the *Securities Act* (pre-September 2009) and s. 25(3) of the *Securities Act* (post-September 2009) and contrary to the public interest?**

Prior to September 28, 2009, s. 25(1)(c) of the *Act* provided:

> No person or company shall,
>
> …
>
> (c) act as an adviser unless the person or company is registered as an adviser, or is registered as a representative or as a partner or as an officer of a registered adviser and is acting on behalf of an adviser,
>
> 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

On September 28, 2009, s. 25 of the *Act* was amended. Subsection 25(3) of the *Act* now provides:

> Unless a person or a 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 securities or buying or selling securities or derivatives unless the person or company,
>
> (a) is registered in accordance with Ontario securities law as an advisor;
>
> …

In *Re Maguire* (1995), 18 O.S.C.B. 4623 at pp. 3-4, the Commission established a three-part test for a breach of subsection 25(1)(c) of the *Act*:

> 1. Has a recommendation or opinion been given as opposed to simply factual information?
>
> 2. If so, was the recommendation or opinion given in a manner that reflects a business purpose?

3. Were any exemptions available?

The evidence of H.S., T.S. and H.F. establishes that Hibbert recommended they invest in the respondent companies and that he was doing so for a business purpose. Each of the investors testified that Hibbert promised a high rate of return and that the principal amount invested was guaranteed.

In addition to advising individual investors to invest, Hibbert created and posted the video clip referred to earlier in these Reasons touting advantages of investing in Power to Create Wealth Inc. The transcript of the video clip, Ex. 13, sets out in considerable detail the promised rate of return of up to 79.4% a year.

Based on Mr. De Souza's evidence, I find that Hibbert intended to and did in fact gain financially from the investments.

I find that Hibbert personally and through the corporate respondents engaged in a course of conduct that constituted "advising" within the meaning of s. 25(1)(c) (pre-September 2009) and s. 25(3) (post-September 2009) of the *Act*. I find there were no exemptions from the registration requirement available to any of the Respondents.

**(c) Did the Respondents distribute securities for which no preliminary prospectus or prospectus had been filed and for which no receipt had been issued by the Director, contrary to s. 53(1) of the *Act*?**

During the period of Hibbert's activities, s. 53(1) of the *Act* stated:

> 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 security, unless a preliminary prospectus or a prospectus have been filed and receipts have been issued for them by the Director.

As found earlier, Hibbert personally and through the corporate respondents traded in securities. Hibbert admitted that no prospectus or preliminary prospectus was ever filed with the OSC with respect to the investor contracts and no receipts were issued by the Director.

Hibbert acknowledged there were no exemptions available from the prospectus requirements to any of the Respondents (Agreed Statement of Facts, Ex. 2, para. 7).

I find that Hibbert and the corporate respondents distributed securities contrary to s. 53(1) of the *Act*.

**(d) Did Hibbert, directly or indirectly, engage in or participate in acts, practices or course of conduct relating to securities that he knew or reasonably ought to have known would perpetrate a fraud on investors, contrary to s. 126.1(b) of the Act and contrary to the public interest?**

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 or derivatives of securities that the person or company knows or reasonably ought to know,
>
> …
>
> (b) perpetrates a fraud on any person or company.

In several recent cases, the Commission has accepted the definition of fraud established by the British Columbia Court of Appeal in *Anderson v. British Columbia (Securities Commission)* (2004), 192 B.C.C.A. 119 ("***Anderson***") at para. 27, leave to appeal denied [2004] S.C.C.A. No. 81:

> … 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 consent
>
> Correspondingly, 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).

It is important to note that in Ontario, as it is in British Columbia, the legislature has chosen to impose liability under the Securities *Act* where a person "ought reasonably to know … that their conduct perpetrates a fraud on any person or company". Commission cases adopting the definition of fraud in *Anderson* include *Re Al-Tar Energy Corp* (2010), 33 O.S.C.B. 5535 ("***Al-Tar***"); *Re Lehman Cohort Group Inc.* (2010), 33 O.S.C.B. 7041 ("***Lehman***"); and *Re Global Partners Capital* (2010), 33 O.S.C.B. 7783 ("***Global Partners***").

**1. The *Actus Reus* of Fraud**

The *actus reus* requires proof of (a) a dishonest act involving "deceit, falsehood or other fraudulent means" which (b) causes detriment or deprivation to the victim. A "deprivation" includes circumstances where a mere "risk of prejudice" is caused to the victim's economic interests (*R. v. Théroux*, [1993] 2 S.C.R. ("***Théroux***"), at paras. 16 and 27).

To find "deceit" or "falsehood" the trier of fact must determine whether there was an actual representation that a situation was of a certain character, when, in reality, it was not (*Théroux*, above, para. 18).

"Other fraudulent means" include all other dishonest situations which cannot be characterized as "deceit" or "falsehood". The issue is determined objectively, by reference to what a reasonable person would consider to be a dishonest act. It describes underhanded conduct which has the effect, or which creates a risk of such a loss, the conduct is wrongful if it constitutes conduct which reasonable decent persons would consider dishonest and unscrupulous.

Courts have found "other fraudulent means" to include the concealment of important facts, the unauthorized diversion of funds and the unauthorized taking of funds or property (*Théroux*, above, at paras. 17-18).

The unauthorized use of an investor's funds constitutes "other fraudulent means" (*R. v. Currie*, [1984] O.J. No. 147 (Ont. C.A.) pp. 3-4).

The element of "deprivation" is satisfied on proof of: (i) actual loss to the victim; (ii) prejudice to a victim's economic interest; or merely (iii) the risk of prejudice to the economic interests of a victim (*Théroux*, above, at paras. 16-17).

"Prejudice" may be established by proof that a victim faced a risk of economic loss even if no loss took place. If, through an act of dishonesty, someone makes an investment or borrows money, even if that action did not cause an actual loss, it constitutes prejudice.

**2. The *Mens Rea* of Fraud**

The *mens rea* of fraud requires a person to be aware of the risk posed to another's interests. The subjective awareness can be inferred from the evidence. It may be also established by evidence showing that the perpetrator was "wilfully blind" or "reckless" as to the conduct and the truth or falsity of any statements made (*Théroux*, above, at paras. 26 and 28).

A sincere belief or hope that no risk or deprivation would ultimately materialize does not establish an absence of fraud:

> A person who deprives another person of what the latter has should not escape criminal responsibility merely because, according to his moral or personal code, he or she was doing nothing wrong or because of a sanguine belief that all will come out right in the end. Many frauds are perpetrated by people who think there is nothing wrong in what they are doing or who sincerely believe that their act of placing other people's property at risk will not ultimately result in actual loss to those persons. If the offence of fraud is to catch those who actually practise fraud, its mens rea cannot be cast so narrowly as this.
>
> (*Théroux*, above, at para. 36)

For a corporation, it is sufficient to show that its directing minds know or reasonably ought to have known that the corporation perpetrated a fraud to prove a breach of subsection 126.1(b) of the Act (*Al-Tar*, above, para. 221; *Lehman*, above, para. 99; *Global Partners*, above, para. 245).

Hibbert deceived investors by misappropriating their funds to his own use and the use of his wife and his charities. He caused payments of approximately $673,000 to be transferred to himself and his wife, including payments for leased vehicles. He caused payments of $483,848 to be paid to his ministries and charities and other charities founded and run by family members. He caused payments of $67,017 for other personal expenses, including VISA payments, school fees, hotels and gym memberships. The payments for personal expenses were made after payments to investors had stopped.

Hibbert lied to investors by telling them he was successful in trading in foreign exchange. There is no evidence to suggest that he ever made a profit in doing so. He lied to investors by providing monthly statements as to the success of their investments which did not reflect actual trading results. The statements showed growth of investors' funds when in fact losses were sustained. Investors believed their funds to be safe and earning returns. He lied to investors when he tried to explain why the payments of principal could not be made and provided a litany of excuses, which were untrue, as to why repayments of principal were not possible.

By virtue of Hibbert's deceptions and untruths, many investors lost their entire investment. To date, they are owed more than $8.2 million in principal, to say nothing of the promised returns of more than $13 million (Ex. 11, Tab B, questions 1361-1374).

I find the *actus reus* of fraud has been established on the evidence.

As perpetrator of the fraud and as directing mind of the corporate respondents, Hibbert had subjective awareness that he was acting dishonestly and putting the investors' funds at risk. He controlled the trading of investor funds in foreign exchange. He had to have known of the losses suffered as a result of his trading. He was aware or should have been aware of the state of the Canadian bank accounts in the name of the various corporate respondents.

Hibbert composed the letters which deceived investors as to the true state of affairs of their investment. At the meeting in January 2010, Hibbert told investors that he had 70% of their principal when he knew that was not the case.

I find the *mens rea* of fraud to have been established.

**(e) Did Hibbert make statements in evidence submitted to Staff which were misleading, or untrue or did he fail to state facts that were required to be stated, contrary to s. 122(1) of the *Act*?**

During the period in which Hibbert's statements in evidence were made, s. 122(1)(a) of the *Act* stated:

> Every person or company that,
>
> (a) makes a statement in any material, evidence or information submitted to the Commission, a Director, any person acting under the authority of the Commission or the Executive Director or any person appointed to make an investigation or examination under this *Act* that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading;
>
> …
>
> is guilty of an offence and on conviction is liable to a fine of not more than $5 million or to imprisonment for a term of not more than five years less a day, or to both.

In this case, Hibbert was examined under oath with a court reporter on four occasions: (1) November 9, 2010; (2) January 20, 2011; (3) September 22, 2011; and (4) November 15, 2011. He swore to tell the truth at his first two examinations and then subsequently affirmed to do so at his third and fourth examinations.

> Transcript of Examination of Gary Hibbert dated November 9, 2010, Exhibit 11, Tab A and Summary, Exhibit 25
>
> Transcript of Examination of Gary Hibbert dated January 20, 2011, Exhibit 11, Tab B and Summary, Exhibit 26
>
> Transcript of Examination of Gary Hibbert dated September 22, 2011, Exhibit 16, Tab 4 and Summary, Exhibit 27
>
> Transcript of Examination of Gary Hibbert dated November 15, 2011, Exhibit 10, Tab A and Summary, Exhibit 28

On the November 9, 2010 examination, Hibbert testified he had incorporated a company called So You May Succeed Inc., which was a publishing company for his book. He stated that it had nothing to do with investing (Ex. 11, Tab A, questions 825-835). This statement was false. In a document with the letterhead Power to Create Wealth Inc., entitled "Investment Opportunity", So You May Succeed Inc. is listed as the authorized agent for Power to Create Wealth Inc. (Ex. 7, Tab 11).

At his November 9, 2010 examination, Hibbert testified that he moved all of the investor funds to PCWP in late 2007. He testified that none of his immediate family members were involved with PCWP. This statement was false. The forex trading online application for Power to Create Wealth Inc., with a Panamanian address, lists Verna Hibbert as the trading manager/secretary for PCWP (Ex. 22).

## V. CONCLUSION

I find:

(a) The Respondents traded in securities without being registered to trade in securities in circumstances where no exemptions were available to them contrary to s. 25(1)(a) (pre-September 2009) and s. 25(1) (post-September 2009) of the *Act* and contrary to the public interest;

(b) The Respondents acted as advisors with respect to investing in, buying or selling securities without registration in respect of which there were no exemptions available contrary to s. 25(1)(c) (pre-September 2009) and s. 25(3) (post-September 2009) of the *Act* and contrary to the public interest;

(c) The activities of the Respondents constituted a distribution in securities for which no preliminary prospectus or prospectus had been filed and for which no receipt has been issued by the Director, contrary to s. 53(1) of the *Act* and contrary to the public interest;

(d) Hibbert has, directly or indirectly, engaged or participated in acts, practices or a course of conduct relating to the securities that he knew or reasonably ought to have known would perpetrate a fraud on persons contrary to s. 126.1(b) of the *Act* and contrary to the public interest; and

(e) Hibbert misled Staff contrary to s.122(1)(a) of the *Act* and contrary to the public interest.

The parties are directed to contact the Office of the Secretary to the Commission within ten days to schedule a sanctions and costs hearing, failing which a date will be set by the Office of the Secretary.

Dated at Toronto this 4th day of April, 2012.

“James D. Carnwath

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## Chapter 4

# Cease Trading Orders

### 4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

| Company Name | Date of Temporary Order | Date of Hearing | Date of Permanent Order | Date of Lapse/Revoke |
|---|---|---|---|---|
| Pro Minerals Inc. | 12 Sept 12 | 24 Sept 12 | | |
| Sierra Madre Developments Inc. | 08 Aug 12 | 22 Aug 12 | 22 Aug 12 | 14 Sept 12 |
| Meritus Minerals Ltd. | 12 Sept 12 | 24 Sept 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 |
|---|---|---|---|---|---|
| McVicar Industries Inc. | 12 Sept 12 | 24 Sept 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. | 08 Aug 12 | 20 Aug 12 | 20 Aug 12 | | |
| Canadian Oil Recovery & Remediation Enterprises Ltd. | 31 Aug 12 | 12 Sept 12 | 12 Sept 12 | | |
| McVicar Industries Inc. | 12 Sept 12 | 24 Sept 12 | | | |

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# Chapter 5

# Rules and Policies

### 5.1.1 NI 23-103 Electronic Trading and Companion Policy 23-103 Electronic Trading

**NATIONAL INSTRUMENT 23-103**
**ELECTRONIC TRADING**

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**PART 1**
**DEFINITIONS AND INTERPRETATION**

**Definitions**

**1.** In this Instrument,

"automated order system" means a system used to automatically generate or electronically transmit orders on a pre-determined basis;

"marketplace and regulatory requirements" means

(a) the rules, policies, requirements or other similar instruments set by a marketplace respecting the method of trading by marketplace participants, including those related to order entry, the use of automated order systems, order types and features and the execution of trades;

(b) the applicable requirements in securities legislation; and

(c) the applicable requirements set by a recognized exchange, a recognized quotation and trade reporting system or a regulation services provider under section 7.1, 7.3 or 8.2 of NI 23-101;

and

"participant dealer" means a marketplace participant that is an investment dealer.

**Interpretation**

**2.** A term that is defined or interpreted in National Instrument 21-101 *Marketplace Operation,* or National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* has, if used in this Instrument, the meaning ascribed to it in National Instrument 21-101 or National Instrument 31-103.

**PART 2**
**REQUIREMENTS APPLICABLE TO MARKETPLACE PARTICIPANTS**

**Risk Management and Supervisory Controls, Policies and Procedures**

**3.** (1) A marketplace participant must

(a) establish, maintain and ensure compliance with risk management and supervisory controls, policies and procedures that are reasonably designed to manage, in accordance with prudent business practices, the financial, regulatory and other risks associated with marketplace access or providing clients with access to a marketplace; and

(b) record the policies and procedures required under paragraph (a) and maintain a description of the marketplace participant's risk management and supervisory controls in written form.

(2) The risk management and supervisory controls, policies and procedures required under subsection (1) must be reasonably designed to ensure that all orders are monitored and for greater certainty, include

(a) automated pre-trade controls, and

(b) regular post-trade monitoring.

(3) The risk management and supervisory controls, policies and procedures required in subsection (1) must be reasonably designed to

(a) systematically limit the financial exposure of the marketplace participant, including, for greater certainty, preventing

(i) the entry of one or more orders that would result in exceeding pre-determined credit or capital thresholds for the marketplace participant and, if applicable, its client with marketplace access provided by the marketplace participant,

(ii) the entry of one or more orders that exceed pre-determined price or size parameters;

(b) ensure compliance with marketplace and regulatory requirements, including, for greater certainty,

(i) preventing the entry of orders that do not comply with marketplace and regulatory requirements that must be satisfied on a pre-order entry basis;

(ii) limiting the entry of orders to those securities that a marketplace participant or, if applicable, its client with marketplace access provided by the marketplace participant, is authorized to trade;

(iii) restricting access to trading on a marketplace to persons authorized by the marketplace participant; and

(iv) ensuring that the compliance staff of the marketplace participant receives immediate order and trade information, including, for greater certainty, execution reports, resulting from orders sent by the marketplace participant or, if applicable, its client with marketplace access provided by the marketplace participant;

(c) enable the marketplace participant to immediately stop or cancel one or more orders entered by the marketplace participant or, if applicable, its client with marketplace access provided by the marketplace participant;

(d) enable the marketplace participant to immediately suspend or terminate any access to a marketplace granted to a client with marketplace access provided by the marketplace participant; and

(e) ensure that the entry of orders does not interfere with fair and orderly markets.

(4) A third party that provides risk management and supervisory controls, policies or procedures to a marketplace participant must be independent from each client with marketplace access provided by the marketplace participant, except if the client is an affiliate of the marketplace participant.

(5) A marketplace participant must directly and exclusively set and adjust the risk management and supervisory controls, policies and procedures required under this section, including those provided by third parties.

(6) A marketplace participant must

(a) regularly assess and document the adequacy and effectiveness of its risk management and supervisory controls, policies and procedures; and

(b) document any deficiencies in the adequacy or effectiveness of a risk management or supervisory control, policy or procedure and promptly remedy the deficiency.

(7) If a marketplace participant uses the services of a third party to provide risk management or supervisory controls, policies and procedures, the marketplace participant must

(a) regularly assess and document the adequacy and effectiveness of the third party's relevant risk management and supervisory controls, policies and procedures; and

(b) document any deficiencies in the adequacy or effectiveness of a risk management or supervisory control, policy or procedure and ensure the deficiency is promptly remedied.

**Authorization to Set or Adjust Risk Management and Supervisory Controls, Policies and Procedures**

**4.** Despite subsection 3(5), a participant dealer may, on a reasonable basis, authorize an investment dealer to perform, on the participant dealer's behalf, the setting or adjusting of a specific risk management or supervisory control, policy or procedure required under subsection 3(1) if

(a) the participant dealer has a reasonable basis for determining that the investment dealer, based on the investment dealer's relationship with the ultimate client, has better access to information relating to the ultimate client than the participant dealer such that the investment dealer can more effectively set or adjust the control, policy or procedure;

(b) a description of the specific risk management or supervisory control, policy or procedure and the conditions under which the investment dealer is authorized to set or adjust the specific risk management or supervisory control, policy or procedure are set out in a written agreement between the participant dealer and investment dealer;

(c) before authorizing the investment dealer to set or adjust a specific risk management or supervisory control, policy or procedure, the participant dealer assesses and documents the adequacy and effectiveness of the investment dealer's setting or adjusting of the risk management or supervisory control, policy or procedure;

(d) the participant dealer

(i) regularly assesses the adequacy and effectiveness of the setting or adjusting of the risk management or supervisory control, policy or procedure by the investment dealer, and

(ii) documents any deficiencies in the adequacy or effectiveness of the setting or adjusting of the risk management or supervisory control, policy or procedure and ensures that the deficiencies are promptly remedied, and

(e) the participant dealer provides the investment dealer with the immediate order and trade information of the ultimate client that the participant dealer receives under subparagraph 3(3)(b)(iv).

## PART 3
## REQUIREMENTS APPLICABLE TO USE OF AUTOMATED ORDER SYSTEMS

**Use of Automated Order Systems**

**5.** (1) A marketplace participant must take all reasonable steps to ensure that its use of an automated order system or the use of an automated order system by any client, does not interfere with fair and orderly markets.

(2) A client of a marketplace participant must take all reasonable steps to ensure that its use of an automated order system does not interfere with fair and orderly markets.

(3) For the purpose of the risk management and supervisory controls, policies and procedures required under subsection 3(1), a marketplace participant must

(a) have a level of knowledge and understanding of any automated order system used by the marketplace participant or any client that is sufficient to allow the marketplace participant to identify and manage the risks associated with the use of the automated order system,

(b) ensure that every automated order system used by the marketplace participant or any client is tested in accordance with prudent business practices initially before use and at least annually thereafter, and

(c) have controls in place to immediately

(i) disable an automated order system used by the marketplace participant, and

(ii) prevent orders generated by an automated order system used by the marketplace participant or any client from reaching a marketplace.

## PART 4
## REQUIREMENTS APPLICABLE TO MARKETPLACES

**Availability of Order and Trade Information**

**6.** (1) A marketplace must provide a marketplace participant with access to its order and trade information, including execution reports, on an immediate basis to enable the marketplace participant to effectively implement the risk management and supervisory controls, policies and procedures required under section 3.

(2) A marketplace must provide a marketplace participant access to its order and trade information referenced in subsection (1) on reasonable terms.

**Marketplace Controls Relating to Electronic Trading**

**7.** (1) A marketplace must not provide access to a marketplace participant unless it has the ability and authority to terminate all or a portion of the access provided to the marketplace participant.

(2) A marketplace must

(a) regularly assess and document whether the marketplace requires any risk management and supervisory controls, policies and procedures relating to electronic trading, in addition to those controls that a marketplace participant is required to have under subsection 3(1), and ensure that such controls, policies and procedures are implemented in a timely manner;

(b) regularly assess and document the adequacy and effectiveness of any risk management and supervisory controls, policies and procedures implemented under paragraph (a);and

(c) document and promptly remedy any deficiencies in the adequacy or effectiveness of the controls, policies and procedures implemented under paragraph (a).

**Marketplace Thresholds**

**8.** (1) A marketplace must not permit the execution of orders for exchange-traded securities to exceed the price and volume thresholds set by

(a) its regulation services provider;

(b) the marketplace, if it is a recognized exchange that directly monitors the conduct of its members and enforces requirements set under subsection 7.1(1) of NI 23-101; or

(c) the marketplace, if it is a recognized quotation and trade reporting system that directly monitors the conduct of its users and enforces the requirements set under subsection 7.3(1) of NI 23-101.

(2) A recognized exchange, recognized quotation and trade reporting system or regulation services provider setting a price threshold for an exchange-traded security under subsection (1) must coordinate its price threshold with all other exchanges, quotation and trade reporting systems and regulation services providers setting a price threshold under subsection (1) for the exchange-traded security or a security underlying the exchange-traded security.

**Clearly Erroneous Trades**

**9.** (1) A marketplace must not provide access to a marketplace participant unless it has the ability to cancel, vary or correct a trade executed by the marketplace participant.

(2) If a marketplace has retained a regulation services provider, the marketplace must not cancel, vary or correct a trade executed on the marketplace unless

(a) instructed to do so by its regulation services provider;

(b) the cancellation, variation or correction is requested by a party to the trade, consent is provided by both parties to the trade and notification is provided to the marketplace's regulation services provider; or

(c) the cancellation, variation or correction is necessary to correct an error caused by a system or technological malfunction of the marketplace systems or equipment, or caused by an individual acting on behalf of the marketplace, and the consent to cancel, vary or correct has been obtained from the marketplace's regulation services provider.

(3) A marketplace must establish, maintain and ensure compliance with reasonable policies and procedures that clearly outline the processes and parameters associated with a cancellation, variation or correction and must make such policies and procedures publicly available.

## PART 5

## EXEMPTION AND EFFECTIVE DATE

**Exemption**

**10.** (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

**Effective Date**

**11.** This Instrument comes into force on March 1, 2013.

**COMPANION POLICY 23-103CP**
**ELECTRONIC TRADING**

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## PART 1 GENERAL COMMENTS

### 1.1 Introduction

#### *(1) Purpose of National Instrument 23-103*

The purpose of National Instrument 23-103 *Electronic Trading* (NI 23-103) is to address areas of concern and risks brought about by electronic trading. The increased speed and automation of trading on marketplaces give rise to various risks, including credit risk and market integrity risk. To protect marketplace participants from harm and to ensure continuing market integrity, these risks need to be reasonably and effectively controlled and monitored.

In the view of the Canadian Securities Administrators (CSA or we), marketplace participants should bear primary responsibility for ensuring that these risks are reasonably and effectively controlled and monitored. This responsibility applies to orders that are entered electronically by the marketplace participant itself, as well as orders from clients using the participant dealer's marketplace participant identifier.

This responsibility includes both financial and regulatory obligations. This view is premised on the fact that it is the marketplace participant that makes the decision to engage in trading or provide marketplace access to a client. However, the marketplaces also have some responsibilities to manage risks to the market.

NI 23-103 is meant to address risks associated with electronic trading on a marketplace with a key focus on the gatekeeping function of the executing broker. However, a clearing broker also bears financial and regulatory risks associated with providing clearing services. Under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) a dealer must manage the risks associated with its business in accordance with prudent business practices. As part of that obligation, we expect a clearing dealer to have in place effective systems and controls to properly manage its risks.

#### *(2) Scope of NI 23-103*

NI 23-103 applies to the electronic trading of securities on marketplaces. In Alberta and British Columbia, the term "security" when used in NI 23-103 includes an option that is an exchange contract but does not include a futures contract. In Ontario, the term "security" when used in NI 23-103, does not include a commodity futures contract or a commodity futures option that is not traded on a commodity futures exchange registered with or recognized by the Commission under the Commodity Futures Act or the form of which is not accepted by the Director under the Commodity Futures Act. In Québec, the term "security" when used in NI 23-103, includes a standardized derivative as this notion is defined in the Derivatives Act.

#### *(3) Purpose of Companion Policy*

This Companion Policy sets out how the CSA interpret or apply the provisions of NI 23-103 and related securities legislation.

Except for Part 1, the numbering of Parts and sections in this Companion Policy correspond to the numbering in NI 23-103. Any general guidance for a Part appears immediately after the Part name. Any specific guidance on sections in NI 23-103 follows any general guidance. If there is no guidance for a Part or section, the numbering in this Companion Policy will skip to the next provision that does have guidance.

All references in this Companion Policy to Parts and sections are to NI 23-103**,** unless otherwise noted.

### 1.2 Definitions

Unless defined in NI 23-103**,** terms used in NI 23-103 and in this Companion Policy have the meaning given to them in the securities legislation of each jurisdiction, in National Instrument 14-101 *Definitions*, National Instrument 21-101 *Marketplace Operation* (NI 21-101)*,* or NI 31-103.

#### *(1) Automated order systems*

Automated order systems encompass both hardware and software used to generate or electronically transmit orders on a pre-determined basis and would include smart order routers and trading algorithms that are used by marketplace participants, offered by marketplace participants to clients or developed or used by clients.

## PART 2 REQUIREMENTS APPLICABLE TO MARKETPLACE PARTICIPANTS

### 3. Risk management and supervisory controls, policies and procedures

#### *(1) National Instrument 31-103 requirements*

For marketplace participants that are registered firms, section 11.1 of NI 31-103 requires the registered firm to establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to: (a) provide reasonable assurance that the registered firm and each individual acting on its behalf complies with securities legislation; and (b) manage the risks associated with its business in accordance with prudent business practices. Section 3 of NI 23-103 builds on the obligations outlined in section 11.1 of NI 31-103. The CSA have included requirements in NI 23-103 for all marketplace participants that conduct trading on a marketplace to have risk management and supervisory controls, policies and procedures that are reasonably designed to manage their risks in accordance with prudent business practices. What would be considered to be "reasonably designed" in this context is tied to the risks associated with electronic trading that the marketplace participant is willing to bear and what is necessary to manage that risk in accordance with prudent business practices.

These requirements provide greater specificity with respect to the expectations surrounding controls, policies and procedures relating to electronic trading. The requirements apply to all marketplace participants, not just those that are registered firms.

#### *(2) Documentation of risk management and supervisory controls, policies and procedures*

Paragraph 3(1)(b) requires a marketplace participant to record its policies and procedures and maintain a copy of its risk management and supervisory controls in written form. This includes a narrative description of any electronic controls implemented by the marketplace participant as well as their functions.

We note that the risk management and supervisory controls, policies and procedures related to the trading of unlisted, government and corporate debt may not be the same as those related to the trading of equity securities due to the differences in the nature of trading of these types of securities. Different marketplace models such as a request for quote, negotiation system, or continuous auction market may require different risk management and supervisory controls, policies and procedures in order to appropriately address the varying levels of diverse risks these different marketplace models can pose to our markets.

A registered firm's obligation to maintain its risk management and supervisory controls in written form under paragraph 3(1)(b) includes retaining these documents and builds on a registered firm's obligation in NI 31-103 to retain its books and records. We expect a non-registered marketplace participant to retain these documents as part of its obligation under paragraph 3(1)(b) to maintain a description of its risk management and supervisory controls in written form.

#### *(3) Clients that also maintain risk management controls*

We are aware that a client that is not a registered dealer may maintain its own risk management controls. However, part of the intent of NI 23-103's risk management and supervisory controls, policies and procedures is to require a participant dealer to manage its risks associated with electronic trading and to protect the participant dealer under whose marketplace participant identifier an order is being entered. Consequently, a participant dealer must maintain reasonably designed risk management and supervisory controls, policies and procedures regardless of whether its clients maintain their own controls. It is not appropriate for a participant dealer to rely on a client's risk management controls, as the participant dealer would not be able to ensure the sufficiency of the client's controls, nor would the controls be tailored to the particular needs of the participant dealer.

#### *(4) Minimum risk management and supervisory controls, policies and procedures*

Subsection 3(2) sets out the minimum elements of the risk management and supervisory controls, policies and procedures that must be addressed and documented by each marketplace participant. Automated pre-trade controls include an examination of the order before it is entered on a marketplace and the monitoring of entered orders whether executed or not. The marketplace

participant should assess, document and implement any additional risk management and supervisory controls, policies and procedures that it determines are necessary to manage the marketplace participant's financial exposure and to ensure compliance with applicable marketplace and regulatory requirements.

With respect to regular post-trade monitoring, it is expected that the regularity of this monitoring will be conducted commensurate with the marketplace participant's determination of the order flow it is handling. At a minimum, an end of day check is expected.

***(5) Pre-determined credit or capital thresholds***

A marketplace participant can establish pre-determined credit thresholds by setting lending limits for a client and establish pre-determined capital thresholds by setting limits on the financial exposure that can be created by orders entered or executed on a marketplace under its marketplace participant identifier. The pre-determined credit or capital thresholds referenced in paragraph 3(3)(a) may be set based on different criteria, such as per order, trade account or other criteria, including overall trading strategy, or using a combination of these factors as required in the circumstances.

For example, a participant dealer that sets a credit limit for a client with marketplace access provided by the participant dealer could impose that credit limit by setting sub-limits applied at each marketplace to which the participant dealer provides access that together equal the total credit limit. A participant dealer may also consider whether to establish credit or capital thresholds based on sector, security or other relevant factors. In order to address the financial exposure that might result from rapid order entry, a participant dealer may also consider measuring compliance with set credit or capital thresholds on the basis of orders entered rather than executions obtained.

We note that different thresholds may be set for the marketplace participant's own order flow (including both proprietary and client order flow) and that of a client with marketplace access provided by the marketplace participant, if appropriate.

***(6) Compliance with applicable marketplace and regulatory requirements***

The CSA expect marketplace participants to prevent the entry of orders that do not comply with all applicable marketplace and regulatory requirements that must be satisfied on a pre-trade basis where possible. Specifically, marketplace and regulatory requirements that must be satisfied on a pre-order entry basis are those requirements that can effectively be complied with only before an order is entered on a marketplace, including: (i) conditions that must be satisfied under National Instrument 23-101 *Trading Rules* (NI 23-101) before an order can be marked a "directed-action order", (ii) marketplace requirements applicable to particular order types and (iii) compliance with trading halts. This requirement does not impose new substantive regulatory requirements on the marketplace participant. Rather it establishes that marketplace participants must have appropriate mechanisms in place that are reasonably designed to effectively comply with their existing regulatory obligations on a pre-trade basis in an automated, high-speed trading environment.

***(7) Order and trade information***

Subparagraph 3(3)(b)(iv) requires the risk management and supervisory controls, policies and procedures to be reasonably designed to ensure that the compliance staff of the marketplace participant receives immediate order and trade information. This will require the marketplace participant to ensure that it has the capability to view trading information in real-time or to receive immediate order and trade information from the marketplace, such as through a drop copy.

This requirement will help the marketplace participant fulfill its obligations under subsection 3(1) with respect to establishing and implementing reasonably designed risk management and supervisory controls, policies and procedures that manage its risks associated with access to marketplaces.

This provision does not prescribe that a marketplace participant carry out compliance monitoring in real-time. There are instances however, when automated, real-time monitoring should be considered, such as when an automated order system is used to generate orders. It is up to the marketplace participant to determine, based on the risk that the order flow poses to the marketplace participant, the appropriate timing for compliance monitoring. However, our view is that it is important that a marketplace participant have the necessary tools in place to facilitate order and trade monitoring as part of the marketplace participant's risk management and supervisory controls, policies and procedures.

***(8) Direct and exclusive control over setting and adjusting of risk management and supervisory controls, policies and procedures***

Subsection 3(5) specifies that a marketplace participant must directly and exclusively set and adjust its risk management and supervisory controls, policies and procedures. With respect to exclusive control, we expect that no person or company, other than the marketplace participant, will be able to set and adjust the controls, policies and procedures. With respect to direct

control, a marketplace participant must not rely on a third party in order to perform the actual setting and adjusting of its controls, policies and procedures.

A marketplace participant can use technology of third parties, including that of marketplaces, as long as the marketplace participant, whether a registered dealer or institutional investor, is able to directly and exclusively set and adjust its supervisory and risk management controls, policies and procedures.

Section 4 provides a limited exception to the requirement in subsection 3(5) in that a participant dealer may , on a reasonable basis, and subject to other requirements, authorize an investment dealer to set or adjust a specific risk management or supervisory control, policy or procedure on behalf of the participant dealer.

(***9)*** ***Risk management and supervisory controls, policies and procedures provided by an independent third party***

Under subsection 3(4), a third party providing risk management and supervisory controls, policies or procedures to a marketplace participant must be independent of any client of the marketplace participant. However, an entity affiliated with a participant dealer that is also a client of the participant dealer may provide supervisory and risk management controls to the participant dealer. In all instances, the participant dealer must directly and exclusively set and adjust its supervisory and risk management controls.

Paragraph 3(7)(a) requires that a marketplace participant must regularly assess and document whether the risk management and supervisory controls, policies and procedures of the third party are effective and otherwise consistent with the provisions of NI 23-103 before engaging such services. Reliance on representations of a third party provider is insufficient to meet this assessment requirement. The CSA expect registered firms to be responsible and accountable for all functions that they outsource to a service provider as set out in Part 11 of Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations.*

***(10)*** ***Regular assessment of risk management controls and supervisory policies and procedures***

Subsection 3(6) requires a marketplace participant to regularly assess and document the adequacy and effectiveness of the controls, policies and procedures it is required to establish under subsection 3(1). Under subsection 3(7), the same assessment requirement also applies if a marketplace participant uses the services of a third party to provide risk management or supervisory controls, policies and procedures. A "regular" assessment would constitute, at a minimum, an assessment conducted annually of the controls, policies and procedures and whenever a substantive change is made to the controls, policies and procedures. A marketplace participant should determine whether more frequent assessments are required, depending on the particular circumstances.

A marketplace participant that is a registered firm is expected to retain the documentation of each such assessment as part of its obligation to maintain books and records in NI 31-103.

**4. Authorization to set or adjust risk management and supervisory controls, policies and procedures**

Section 4 is intended to address introducing (originating) and carrying (executing) arrangements or jitney arrangements that involve multiple dealers. In such arrangements, there may be certain controls that are better directed by the originating dealer, since it is the originating dealer that has knowledge of its client and is responsible for suitability and other "know your client" obligations. However, the executing dealer must also have reasonable controls in place to manage the risks it incurs by executing orders for other dealers.

Therefore, section 4 provides that a participant dealer may, on a reasonable basis, authorize an investment dealer to set or adjust a specific risk management or supervisory control, policy or procedure on the participant dealer's behalf by written contract and after a thorough assessment. Our view is that where the originating investment dealer with the direct relationship with the ultimate client has better access than the participant dealer to information relating to the ultimate client, the originating investment dealer may more effectively assess the ultimate client's financial resources and investment objectives.

We also expect that the participant dealer will maintain a written contract with the investment dealer that sets out a description of the specific risk management or supervisory control, policy or procedure and the conditions under which the investment dealer is authorized to set or adjust the control, policy or procedure as part of its books and records obligations set out in NI 31-103.

Paragraph 4(d) requires a participant dealer to regularly assess the adequacy and effectiveness of the investment dealer's setting or adjusting of the risk management and supervisory controls, policies and procedures that it performs on the participant dealer's behalf. We expect that this will include an assessment of the performance of the investment dealer under the written agreement prescribed in paragraph 4(b). A "regular" assessment would constitute, at a minimum, an assessment conducted annually of the controls, policies and procedures and whenever a substantive change is made to the controls, policies or

procedures. A marketplace participant should determine whether more frequent assessments are required, depending on the particular circumstances.

Under paragraph 4(e), the participant dealer must provide the compliance staff of the originating investment dealer with immediate order and trade information of the ultimate client. This is to allow the originating investment dealer to monitor trading more effectively and efficiently.

Authorizing an investment dealer to set or adjust a risk management or supervisory control, policy or procedure does not relieve the participant dealer of its obligations under section 3, including the overall responsibility to establish, document, maintain and ensure compliance with risk management and supervisory controls, policies and procedures reasonably designed to manage, in accordance with prudent business practices, the financial, regulatory and other risks associated with marketplace access.

## PART 3 REQUIREMENTS APPLICABLE TO THE USE OF AUTOMATED ORDER SYSTEMS

### 5. Use of automated order systems

Section 5 stipulates that a marketplace participant or any client must take all reasonable steps to ensure that its use of automated order systems does not interfere with fair and orderly markets. A marketplace participant must also take all reasonable steps to ensure that the use of an automated order system by a client does not interfere with fair and orderly markets. This includes both the fair and orderly trading on a marketplace or the market as a whole and the proper functioning of a marketplace. For example, the sending of a continuous stream of orders that negatively impacts the price of a security or that overloads the systems of a marketplace may be considered as interfering with fair and orderly markets.

Paragraph 5(3)(a) requires a marketplace participant to have a level of knowledge and understanding of any automated order systems used by either the marketplace participant or the marketplace participant's clients that is sufficient to allow the marketplace participant to identify and manage the risks associated with the use of the automated order system. We understand that detailed information of automated order systems may be treated as proprietary information by some clients or third party service providers; however, the CSA expect that the marketplace participant will be able to obtain sufficient information in order to properly identify and manage its own risks.

Paragraph 5(3)(b) requires that each automated order system is tested in accordance with prudent business practices. A participating dealer does not necessarily have to conduct tests on each automated order system used by its clients but must satisfy itself that these automated order systems have been appropriately tested. Testing an automated order system in accordance with prudent business practices includes testing it before its initial use and at least annually thereafter. We would also expect that testing would also occur after any significant change to the automated order system is made.

## PART 4 REQUIREMENTS APPLICABLE TO MARKETPLACES

### 6. Availability of order and trade information

#### *(1) Reasonable access*

Subsection 6(1) is designed to ensure that a marketplace participant has immediate access to the marketplace participant's order and trade information when needed. Subsection 6(2) will help ensure that the marketplace does not have any rules, polices, procedures, fees or practices that would unreasonably create barriers to the marketplace participant in accessing this information.

This obligation is distinct from the requirement for marketplaces to disseminate order and trade information through an information processor under Parts 7 and 8 of NI 21-101. The information to be provided pursuant to section 6 would need to include the private information included on each order and trade in addition to the public information disseminated through an information processor.

#### *(2) Immediate order and trade information*

For the purposes of providing access to order and trade information on an immediate basis, we consider a marketplace's provision of this information by a drop copy to be acceptable.

### 7. Marketplace controls relating to electronic trading

#### *(1) Termination of marketplace access*

Subsection 7(1) requires a marketplace to have the ability and authority to terminate all or a portion of the access provided to a marketplace participant before providing access to that marketplace participant. This requirement also includes the authority of

a marketplace to terminate access provided to a client that is using a participant dealer's marketplace participant identifier to access the marketplace. We expect a marketplace to act when it identifies trading behaviour that interferes with the fair and orderly functioning of its market.

***(2) Assessments to be conducted***

Paragraph 7(2)(a) requires a marketplace to regularly assess and document whether the marketplace requires any risk management and supervisory controls, policies and procedures relating to electronic trading, in addition to the risk management and supervisory controls, policies and procedures that marketplace participants are required to have under subsection 3(1), and ensure that such controls, policies and procedures are implemented in a timely manner. As well, a marketplace must regularly assess and document the adequacy and effectiveness of any risk management and supervisory controls, policies and procedures put in place under paragraph 7(2)(a). A marketplace is expected to document any conclusions reached as a result of its assessment and any deficiencies noted. It must also promptly remedy any identified deficiencies.

It is important that a marketplace take steps to ensure it does not engage in activity that interferes with fair and orderly markets. Part 12 of NI 21-101 requires marketplaces to establish systems-related risk management controls. It is therefore expected that a marketplace will be generally aware of the risk management and supervisory controls, policies and procedures of its marketplace participants and assess whether it needs to implement additional controls, policies and procedures to eliminate any risk management gaps and ensure the integrity of trading on its market.

***(3) Timing of assessments***

A "regular" assessment would constitute, at a minimum, an assessment conducted annually and whenever a substantive change is made to a marketplace's operations, rules, controls, policies or procedures that relate to methods of electronic trading. A marketplace should determine whether more frequent assessments are required depending on the particular circumstances of the marketplace, for example when the number of orders or trades is increasing very rapidly or when new types of clients or trading activities are identified. A marketplace should document and preserve a copy of each such assessment as part of its books and records obligation in NI 21-101.

***(4) Implementing controls, policies and procedures in a timely manner***

A "timely manner" will depend on the particular circumstances, including the degree of potential risk of financial harm to marketplace participants and their clients or harm to the integrity of the marketplace and to the market as a whole. The marketplace must ensure the timely implementation of any necessary risk management and supervisory controls, policies and procedures.

**8. Marketplace thresholds**

Section 8 requires that each marketplace must not permit the execution of orders of exchange-traded securities exceeding price and volume thresholds set by its regulation services provider, or by the marketplace if it is a recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces certain requirements set under NI 23-101.

These price and volume thresholds are expected to reduce erroneous orders and price volatility by preventing the execution of orders that could interfere with a fair and orderly market.

There are a variety of methods that may be used to prevent the execution of these orders. However, the setting of the price threshold is to be coordinated among all regulation services providers, recognized exchanges and recognized quotation and trade reporting systems that set the threshold under subsection 8(1).

The coordination requirement also applies when setting a price threshold for securities that have underlying interests in an exchange-traded security. We note that there may be differences in the actual price thresholds set for an exchange-traded security and a security that has underlying interests in that exchange-traded security.

**9. Clearly erroneous trades**

***(1) Application of section 9***

Section 9 provides that a marketplace cannot provide access to a marketplace participant unless it has the ability to cancel, vary or correct a trade executed by that marketplace participant. This requirement would apply in the instance where the marketplace decides to cancel, vary or correct a trade or is instructed to do so by a regulation services provider.

Before cancelling, varying or correcting a trade, paragraph 9 (2)(a) requires that a marketplace receive instructions from its regulation services provider, if it has retained one. We note that this would not apply in the case of a recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces requirements set pursuant to subsection 7.1(1) or 7.3(1) respectively of NI 23-101.

***(2) Cancellation, variation or correction where necessary to correct a system or technological malfunction or error made by the marketplace systems or equipment***

Under paragraph 9(2)(c) a marketplace may cancel, vary or correct a trade where necessary to correct an error caused by a system or technological malfunction of the marketplace's systems or equipment or an individual acting on behalf of the marketplace. If a marketplace has retained a regulation services provider, it must not cancel, vary or correct a trade unless it has obtained permission from its regulation services provider to do so.

Examples of errors caused by a system or technological malfunction include where the system executes a trade on terms that are inconsistent with the explicit conditions placed on the order by the marketplace participant, or allocates fills for orders at the same price level in a manner or sequence that is inconsistent with the stated manner or sequence in which such fills are to occur on the marketplace. Another example includes where the trade price was calculated by a marketplace's systems or equipment based on some stated reference price, but it was calculated incorrectly.

***(3) Policies and procedures***

For policies and procedures established by the marketplace in accordance with the requirements of subsection 9(3) to be "reasonable", they should be clear and understandable to all marketplace participants.

The policies and procedures should also provide for consistent application. For example, if a marketplace decides that it will consider requests for cancellation, variation or correction of trades in accordance with paragraph 9(2)(b), it should consider all requests received regardless of the identity of the counterparty. If a marketplace chooses to establish parameters only within which it might be willing to consider such requests, it should apply these parameters consistently to each request, and should not exercise its discretion to refuse a cancellation or amendment when the request falls within the stated parameters and the consent of the affected parties has been provided.

When establishing any policies and procedures in accordance with subsection 9(3), a marketplace should also consider what additional policies and procedures might be appropriate to address any conflicts of interest that might arise.

## 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 |
|---|---|---|---|---|
| 06/27/2012 | 2 | Accutrac Capital Solutions Inc. - Preferred Shares | 50,000.00 | 50.00 |
| 08/01/2012 | 6 | Allard Development Corporation - Mortgage | 1,500,000.00 | 1,500,000.00 |
| 08/23/2012 | 37 | ARC Resources Ltd. - Notes | 402,628,000.00 | 37.00 |
| 08/14/2012 | 1 | Auro Resources Corp. - Units | 15,000.00 | 300,000.00 |
| 05/24/2012 | 1 | Avista Capital Opportunities Fund II (Offshore) L.P. - Units | 152,190.00 | 150,000.00 |
| 08/24/2012 | 5 | BCGold Corp. - Units | 75,000.00 | 1,500,000.00 |
| 07/10/2012 | 1 | Bison Income Trust II - Trust Units | 100,000.00 | 10,000.00 |
| 07/26/2012 | 2 | Bison Income Trust II - Trust Units | 2,480,000.00 | 248,000.00 |
| 07/18/2012 | 4 | Breazer Home USA, Inc. - Notes | 5,807,500.00 | 4.00 |
| 08/31/2012 | 1 | Burlington Partners Plus LP - Limited Partnership Units | 240,000.00 | 240.00 |
| 08/31/2012 | 1 | Burlington Partners1 LP - Limited Partnership Units | 260,000.00 | 260.00 |
| 08/24/2012 | 36 | Catch the Wind Ltd. - Special Warrants | 4,264,869.24 | 51,081,154.00 |
| 05/29/2012 | 1 | Clear Energy Systems, Inc. - Common Shares | 256,325.51 | 333,334.00 |
| 07/23/2012 to 07/26/2012 | 6 | Colwood City Centre Limited Partnership - Notes | 239,810.00 | 239,810.00 |
| 01/31/2012 | 3 | Delego Software Inc. - Common Shares | 450,000.00 | N/A |
| 06/29/2012 | 3 | DIRTT Environmental Solutions Ltd. - Notes | 3,657,785.00 | 3.00 |
| 08/13/2012 | 9 | Evolving Gold Corp. - Units | 3,600,000.00 | 12,000,000.00 |
| 07/27/2012 | 4 | FedEx Corporation - Notes | 7,274,974.51 | 4.00 |
| 06/30/2012 | 1 | First Access Funding Corp. - Units | 10,000.00 | 100,000.00 |
| 08/20/2012 | 5 | Gemoscan Canada, Inc. - Debentures | 142,000.00 | 525,926.00 |
| 09/13/2012 | 5 | Guyana Precious Metals Inc. - Common Shares | 350,000.01 | 4,666,668.00 |
| 06/15/2012 | 15 | Harte Gold Corp. - Units | 1,557,500.00 | 5,250,000.00 |
| 07/24/2012 | 1 | HedgeForum Visium, Ltd. - N/A | 100,640.00 | N/A |
| 09/06/2012 | 13 | Hudbay Minerals Inc. - Notes | 170,267,250.00 | 173,300.00 |
| 08/24/2012 | 1 | JP Morgan Chase & Co. - Notes | 12,433,000.00 | N/A |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price ($) | No. of Securities Distributed |
|---|---|---|---|---|
| 08/31/2012 | 2 | Kingwest High Income Fund - Units | 428,000.00 | 72,737.16 |
| 08/31/2012 | 2 | Kingwest U.S. Equity Portfolio - Units | 1,301.02 | 86.79 |
| 07/26/2012 | 1 | Legion Strategies Ltd. - N/A | 100,880.00 | N/A |
| 09/05/2012 | 33 | MAG Silver Corp. - Common Shares | 33,146,374.00 | 3,526,210.00 |
| 07/17/2012 | 23 | Magor Communications Corp. - Debentures | 2,011,786.03 | 23.00 |
| 09/12/2012 | 4 | Micromem Technologies Inc. - Options | 102,000.00 | 4.00 |
| 08/14/2012 to 08/23/2012 | 6 | Minto Multi-Residential Income Partners I, LP - Units | 160,060,000.00 | 160,060.00 |
| 09/10/2012 to 09/14/2012 | 8 | Morumbi Resources Inc. - Units | 500,000.00 | 1,250,000.00 |
| 07/20/2012 | 26 | Natcore Technology Inc. - Units | 2,500,020.00 | 4,166,700.00 |
| 08/27/2012 to 09/05/2012 | 3 | Newport Balanced Fund - Trust Units | 4,216.86 | N/A |
| 08/27/2012 to 09/05/2012 | 3 | Newport Fixed Income Fund - Trust Units | 178,720.00 | N/A |
| 08/27/2012 to 09/05/2012 | 4 | Newport Global Equity Fund - Trust Units | 267,390.87 | N/A |
| 08/27/2012 to 09/05/2012 | 8 | Newport Strategic Yield Fund - Trust Units | 158,530.99 | N/A |
| 08/27/2012 to 09/05/2012 | 2 | Newport Yield Fund - Trust Units | 151,320.42 | N/A |
| 06/16/2012 | 26 | Norbord Inc. - Notes | 86,044,200.00 | 26.00 |
| 08/23/2012 | 14 | Northern Gold Mines Inc. - Common Shares | 13,001,000.20 | 43,333,334.00 |
| 08/30/2012 to 09/07/2012 | 21 | Northfield Metals Inc. - Common Shares | 471,000.00 | 2,355,000.00 |
| 07/25/2012 | 6 | Peraso Technologies Inc. - Preferred Shares | 8,000,000.00 | 8,000,000.00 |
| 04/21/2012 | 18 | Populus Global Solutions Inc. - Common Shares | 1,000,000.00 | 31,250.00 |
| 08/09/2012 | 2 | Prospect Capital Corporation - Notes | 10,698,072.00 | 110,000.00 |
| 06/12/2012 | 6 | Pulis Registered Capital 1 Inc. - Bonds | 481,800.00 | 481.80 |
| 06/12/2012 | 2 | Pulis Wealth Management LP I - Limited Partnership Units | 612,000.00 | 612.00 |
| 04/05/2012 to 06/19/2012 | 25 | Redstone Capital Corporation - Bonds | 598,000.00 | N/A |
| 06/26/2012 | 4 | Rodinia Lithium Inc. - Units | 4,500,000.00 | 4,500,000.00 |
| 08/30/2012 | 7 | Royal Bank of Canada - Common Shares | 2,878,540.00 | 29,000.00 |
| 09/06/2012 | 4 | Royal Bank of Canada - Notes | 3,979,125.00 | 405,000.00 |
| 08/24/2012 | 3 | Sanatana Resources Inc. - Common Shares | 92,250.27 | 439,287.00 |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price ($) | No. of Securities Distributed |
|---|---|---|---|---|
| 03/02/2012 | 20 | Searchgold Resources Inc. - Common Shares | 500,000.00 | 10,000,000.00 |
| 08/02/2012 | 5 | Sigma Dek Ltd. - Common Shares | 590,000.00 | 147,500.00 |
| 08/09/2012 to 08/23/2012 | 4 | Sinclair-Cockburn Mortgage Investment Corporation - Common Shares | 800,000.00 | 800,000.00 |
| 06/20/2012 | 1 | SQI Diagnostics Inc. - Units | 480,550.00 | 274,600.00 |
| 08/21/2012 | 4 | Tartisan Resources Corp. - Common Shares | 47,500.00 | 190,000.00 |
| 09/04/2012 to 09/11/2012 | 9 | Tartisan Resources Corp. - Common Shares | 158,750.00 | 635,000.00 |
| 07/25/2012 | 58 | Trevali Mining Corporation - Common Shares | 15,437,125.00 | 14,987,500.00 |
| 08/15/2012 | 4 | Trevali Mining Corporation - Common Shares | 250,000.00 | 329,472.00 |
| 08/09/2012 | 24 | True North Gems Inc. - Common Shares | 725,400.00 | 14,508,000.00 |
| 07/16/2012 to 07/20/2012 | 25 | UBS AG, Jersey Branch - Certificates | 15,020,315.07 | 27.00 |
| 07/20/2012 | 3 | UBS AG, London Branch - Notes | 3,023.19 | 3.00 |
| 09/01/2012 | 1 | ValueAct Capital International II, L.P. - Limited Partnership Interest | 309,698.20 | N/A |
| 08/31/2012 | 31 | Vertex Fund - Trust Units | 4,791,913.44 | N/A |
| 08/31/2012 | 3 | Vertex Managed Value Portfolio - Trust Units | 1,459,786.55 | N/A |
| 08/31/2012 | 2 | Vertex Strategic Income Fund - Trust Units | 37,373.58 | N/A |
| 08/15/2012 | 6 | Virgin Metals Inc. - Common Shares | 203,971.05 | 1,359,897.00 |
| 06/15/2012 to 07/06/2012 | 3 | Vital Alert Communication Inc. - Preferred Shares | 693,692.89 | 7,707,698.78 |
| 08/09/2012 | 69 | Walton Alliston Development IC - Common Shares | 1,392,890.00 | 139,289.00 |
| 08/09/2012 | 36 | Walton Alliston Development LP - Units | 3,717,890.00 | 371,789.00 |
| 08/09/2012 | 13 | Walton GA Yargo Township LP - Units | 548,350.00 | 55,000.00 |
| 08/09/2012 | 20 | Walton MD Gardner Woods Investment Corporation - Common Shares | 602,600.00 | 60,260.00 |
| 08/09/2012 | 165 | Walton NC Concord Investment Corporation - Common Shares | 3,963,350.00 | 356,270.00 |
| 06/25/2012 | 6 | Waymar Resources Ltd. - Common Shares | 0.00 | 1,000,000.00 |
| 08/13/2012 | 10 | Xinergy Ltd. - Warrants | 0.00 | 1,000,000.00 |

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## Chapter 11

# IPOs, New Issues and Secondary Financings

**Issuer Name:**
Canadian Convertibles Plus Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated September 12, 2012
NP 11-202 Receipt dated September 12, 2012
**Offering Price and Description:**
Maximum $50,000,000.00 (* Units) - Price: $ * per Unit:
Minimum Purchase: 200 Units
**Underwriter(s) or Distributor(s):**
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
GMP Securities L.P.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
Desjardins Securities Inc.
Raymond James Ltd.
Canaccord Genuity Corp.
Dundee Securities Ltd.
Macquarie Private Wealth Inc.
Manulife Securities Incorporated
**Promoter(s):**
Propel Capital Corporation
**Project** #1959983

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**Issuer Name:**
Brookfield Residential Properties Inc.
Principal Jurisdiction - Alberta
**Type and Date:**
Preliminary Base Shelf Prospectus dated September 13, 2012
NP 11-202 Receipt dated September 13, 2012
**Offering Price and Description:**
US$1,000,000,000
Debt Securities
Common Shares
Preferred Shares
Warrants
Subscription Receipts
Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1960366

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**Issuer Name:**
Catch the Wind Ltd.
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated September 13, 2012
NP 11-202 Receipt dated September 14, 2012
**Offering Price and Description:**
Total Offering: $3,064,869.24
a) 51,081,154 Special Warrant Shares and 51,081,154 Warrants on exercise of 51,081,154 Special Warrants;
b) 3,064,870 Compensation Options on exercise of 3,064,870 Compensation Warrants;
c) 5,108,115 Special Warrant Shares and 5,108,115 Warrants on exercise of 5,108,115 Special Warrants that may be issued as Penalty Securities and
d) 306,487 Compensation Options on exercise of 306,487 Compensation Warrants that may be issued as Compensation Penalty Securities
Price: $0.06 per Special Warrant

**Underwriter(s) or Distributor(s):**
Stifel Nicolaus Canada Inc.
Fraser Mackenzie Limited
**Promoter(s):**
-
**Project** #1960602

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**Issuer Name:**
Fidelity Tactical Fixed Income Capital Yield Fund
Fidelity U.S. Dividend Currency Neutral Fund
Fidelity U.S. Dividend Fund
Fidelity U.S. Dividend Investment Trust
Fidelity U.S. Monthly Income Capital Yield Fund
Fidelity U.S. Monthly Income Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Simplified Prospectuses dated September 12, 2012
NP 11-202 Receipt dated September 13, 2012
**Offering Price and Description:**
Series A, B, F, O, T5, T8, S5, S8, F5 and F8 Units
**Underwriter(s) or Distributor(s):**
Fidelity Investments Canada ULC
Fidelity Investments Canada Limited
**Promoter(s):**
Fidelity Investments Canada ULC
**Project** #1960159

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**Issuer Name:**
Frontier Acquisition Corp.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Long Form Prospectus dated September 12, 2012
NP 11-202 Receipt dated September 12, 2012
**Offering Price and Description:**
$90,000,000.00 - 200,000,0000 Subscription Receipts
Price: $0.45 per Subscription Receipt
**Underwriter(s) or Distributor(s):**
RAYMOND JAMES LTD.
CIBC WORLD MARKETS INC.
GMP SECURITIES L.P.
ACUMEN CAPITAL FINANCE PARTNERS LIMITED
STIFEL NICOLAUS CANADA INC.
**Promoter(s):**
John R. Jacobs
Brad N. Creswell
**Project** #1960162

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**Issuer Name:**
GLG Prospect Mountain Ltd.
Principal Regulator - Ontario
**Type and Date:**
Preliminary Long Form Non-Offering Prospectus dated September 11, 2012
NP 11-202 Receipt dated September 12, 2012
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1959765

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**Issuer Name:**
IMRIS Inc.
Principal Regulator - Manitoba
**Type and Date:**
Preliminary Base Shelf Prospectus dated September 11, 2012
NP 11-202 Receipt dated September 11, 2012
**Offering Price and Description:**
US$75,000,000.00:
Common Shares
Warrants
Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1959658

---

**Issuer Name:**
Ivanplats Limited
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Long Form Prospectus dated September 10, 2012
NP 11-202 Receipt dated September 11, 2012
**Offering Price and Description:**
$ * - * COMMON SHARES Price: $ * per COMMON SHARE
**Underwriter(s) or Distributor(s):**
BMO Nesbitt Burns Inc.
Morgan Stanley Canada Limited
Macquarie Capital Markets Canada Ltd.
RBC Dominion Securities Inc.
**Promoter(s):**
-
**Project** #1959806

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**Issuer Name:**
Neptune Technologies & Bioressources Inc.
Principal Regulator - Quebec
**Type and Date:**
Preliminary Base Shelf Prospectus dated September 11, 2012
NP 11-202 Receipt dated September 11, 2012
**Offering Price and Description:**
US$100,000,000.00:
Common Shares
Warrants
Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1959703

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**Issuer Name:**
Paramount Resources Ltd.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Short Form Prospectus dated September 14, 2012
NP 11-202 Receipt dated September 14, 2012
**Offering Price and Description:**
(1) $60,016,000.00 - 1,936,000 CEE Flow-Through Shares Price: $31.00 per CEE Flow-Through Share and
(2)$10,021,400.00 - 356,000 CDE Flow-Through Shares Price: $28.15 per CDE Flow-Through Share
**Underwriter(s) or Distributor(s):**
BMO Nesbitt Burns Inc.
Canaccord Genuity Corp.
CIBC World Markets Inc.
Cormark Securities Inc.
FirstEnergy Capital Corp.
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Peters & Co. Limited
RBC Dominion Securities Inc.
Scotia Capital Inc.
Stifel Nicolaus Canada Inc.
TD Securities Inc.
**Promoter(s):**
-
**Project #**1960794

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**Issuer Name:**
QMX Gold Corporation
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated September 11, 2012
NP 11-202 Receipt dated September 12, 2012
**Offering Price and Description:**
$ * - * Units - Price: $ * per Unit
**Underwriter(s) or Distributor(s):**
TD Securities Inc.
National Bank Financial Inc.
**Promoter(s):**
-
**Project #**1959850

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**Issuer Name:**
Southern Pacific Resource Corp.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Short Form Prospectus dated September 14, 2012
NP 11-202 Receipt dated September 14, 2012
**Offering Price and Description:**
$75,001,250.00 - 51,725,000 Common Shares Price: $1.45 per Common Share
**Underwriter(s) or Distributor(s):**
BMO NESBITT BURNS INC.
RBC DOMINION SECURITIES INC.
FIRSTENERGY CAPITAL CORP.
TD SECURITIES INC.
RAYMOND JAMES LTD.
ALTACORP CAPITAL INC.
CANACCORD GENUITY CORP.
**Promoter(s):**
-
**Project #**1960846

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**Issuer Name:**
Timbercreek U.S. Multi-Residential Opportunity Fund #1
Principal Regulator - Ontario
**Type and Date:**
Amended and Restated Preliminary Long Form Prospectus dated September 11, 2012
NP 11-202 Receipt dated September 11, 2012
**Offering Price and Description:**
Minimum: C$25,000,000.00 - 2,500,000 Class A Units and/or Class B Units; Maximum: C$75,000,000.00 - 7,500,000 Class A Units and/or Class B Units Price: C$10.00 per Class A Unit and C$10.00 per Class B Unit Minimum Purchase: 1,000 Class A Units or 500,000 Class B Units
**Underwriter(s) or Distributor(s):**
Raymond James Ltd.
CIBC World Markets Inc.
GMP Securities L.P.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
Canaccord Genuity Corp.
Macquarie Capital Markets Canada Ltd.
Dundee Securities Ltd.
Manulife Securities Incorporated
**Promoter(s):**
Timbercreek Asset Management Inc.
**Project #**1957444

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**Issuer Name:**
Wolfden Resources Corporation
Principal Regulator - Ontario
**Type and Date:**
Second Amended and Restated Preliminary Prospectus dated September 12, 2012
NP 11-202 Receipt dated September 13, 2012
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
CANACCORD GENUITY CORP.
RBC DOMINION SECURITIES INC.
JONES, GABLE & COMPANY LIMITED
**Promoter(s):**
Ewan Downie
**Project** #1887523

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**Issuer Name:**
Xtreme Drilling and Coil Services Corp.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Short Form Prospectus dated September 14, 2012
NP 11-202 Receipt dated September 14, 2012
**Offering Price and Description:**
$15,001,750.00 - 13,045,000 Common Shares Price: $1.15 per Offered Share
**Underwriter(s) or Distributor(s):**
Peters & Co. Limited
**Promoter(s):**
-
**Project** #1960874

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**Issuer Name:**
BMG BullionFund (Class A, Class F, Class S1 and Class S2 Units)
BMG Gold BullionFund (Class A, Class F, Class S1 and Class S2 Units)
BMG Gold Advantage Return BullionFund (Class A and Class F Units)
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectuses dated August 27, 2012
NP 11-202 Receipt dated September 12, 2012
**Offering Price and Description:**
Class A, Class F, Class S1 and Class S2 Units @ Net Asset Value
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Bullion Management Services Inc.
**Project** #1935056

---

**Issuer Name:**
BRADES RESOURCE CORP.
Principal Regulator - British Columbia
**Type and Date:**
Final Long Form Prospectus dated September 13, 2012
NP 11-202 Receipt dated September 13, 2012
**Offering Price and Description:**
MINIMUM OFFERING: 5,500,000 SHARES MAXIMUM OFFERING: 8,500,000 SHARES
Price: $0.15 per Share (Minimum of $825,000.00 and up to a Maximum of $1,275,000.00)
**Underwriter(s) or Distributor(s):**
Jordan Capital Markets Inc.
**Promoter(s):**
Cheryl More
**Project** #1930056

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**Issuer Name:**
Celtic Tiger Minerals Exploration Inc.
Principal Regulator - Nova Scotia
**Type and Date:**
Final Long Form Prospectus dated September 13, 2012
NP 11-202 Receipt dated September 13, 2012
**Offering Price and Description:**
$1,500,000.00 - 10,000,000 Common Shares Per Common Share $0.15
**Underwriter(s) or Distributor(s):**
Macquarie Private Wealth Inc.
**Promoter(s):**
Darrin Campbell
Gary MacKenzie
**Project** #1921121

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**Issuer Name:**
Chou Asia Fund
Chou Associates Fund
Chou Bond Fund
Chou Europe Fund
Chou RRSP Fund
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectuses dated September 14, 2012
NP 11-202 Receipt dated September 14, 2012
**Offering Price and Description:**
Series A and F Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Chou Associates Management Inc.
**Project** #1940418

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**Issuer Name:**
Doca Capital Corp.
Principal Regulator - British Columbia
**Type and Date:**
Final Long Form Prospectus dated September 13, 2012
NP 11-202 Receipt dated September 13, 2012
**Offering Price and Description:**
Minimum Offering: $1,900,000.00; Maximum Offering: $2,500,000.00 - Public Offering of a minimum of 12,666,667 Common Shares and a maximum of 16,666,666 Common Shares at $0.15 each
**Underwriter(s) or Distributor(s):**
Canaccord Genuity Corp.
**Promoter(s):**
-
**Project** #1939798

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**Issuer Name:**
Exchange Income Corporation
Principal Regulator - Manitoba
**Type and Date:**
Final Short Form Prospectus dated September 12, 2012
NP 11-202 Receipt dated September 12, 2012
**Offering Price and Description:**
$50,000,000.00 - 5.50% CONVERTIBLE UNSECURED SUBORDINATED DEBENTURES
**Underwriter(s) or Distributor(s):**
National Bank Financial Inc.
CIBC World Markets Inc.
Laurentian Bank Securities Inc.
TD Securities Inc.
Raymond James Ltd.
Scotia Capital Inc.
Canaccord Genuity Corp.
PI Financial Corp.
Stonecap Securities Inc.
**Promoter(s):**
-
**Project** #1958299

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**Issuer Name:**
ING DIRECT Streetwise Balanced Fund
ING DIRECT Streetwise Balanced Growth Fund
ING DIRECT Streetwise Balanced Income Fund
ING DIRECT Streetwise Equity Growth Fund
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated September 7, 2012 to the Simplified Prospectuses and Annual Information Form dated November 17, 2011
NP 11-202 Receipt dated September 13, 2012
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
ING DIRECT FUNDS LIMITED
ING Direct Funds Limited
**Promoter(s):**
ING DIRECT ASSET MANAGEMENT LIMITED
**Project** #1813176

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**Issuer Name:**
Invesco European Growth Class
(Series A, Series F and Series I)
(of Invesco Corporate Class Inc.)
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated September 5, 2012 to the Simplified Prospectus and Annual Information Form dated July 30, 2012
NP 11-202 Receipt dated September 11, 2012
**Offering Price and Description:**
Series A, F and I @ Net Asset Value
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Invesco Canada Ltd.
**Project** #1916961

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**Issuer Name:**
Naturally Advanced Technologies Inc.
Principal Regulator - British Columbia
**Type and Date:**
Final Short Form Prospectus dated September 11, 2012
NP 11-202 Receipt dated September 11, 2012
**Offering Price and Description:**
$10,000,000.00 - 10% Convertible Secured Debentures PRICE: $1,000 PER DEBENTURE
**Underwriter(s) or Distributor(s):**
Cormark Securities Inc.
**Promoter(s):**
-
**Project** #1955221

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**Issuer Name:**
Oriana Resources Corporation
Principal Regulator - Ontario
**Type and Date:**
Final CPC Prospectus dated September 7, 2012
NP 11-202 Receipt dated September 12, 2012
**Offering Price and Description:**
$300,000.00 - 3,000,000 Common Shares PRICE: $0.10 per Common Share
**Underwriter(s) or Distributor(s):**
Macquarie Private Wealth Inc.
**Promoter(s):**
Richard Buzbuzian
**Project** #1941024

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**Issuer Name:**
Saputo Inc.
Principal Regulator - Quebec
**Type and Date:**
Final Short Form Prospectus dated September 11, 2012
NP 11-202 Receipt dated September 11, 2012
**Offering Price and Description:**
$129,270,000.00 - 3,100,000 Common Share Price at $41.70 per Common Share
**Underwriter(s) or Distributor(s):**
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Desjardins Securities Inc.
RBC Dominion Securities Inc.
CIBC World Markets Inc.
Merrill Lynch Canada Inc.
TD Securities Inc.
**Promoter(s):**
-
**Project** #1957426

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**Issuer Name:**
Stay Gold Inc.
Principal Regulator - Nova Scotia
**Type and Date:**
Amended and Restated Prospectus dated September 6, 2012 to Long Form Prospectus dated May 28, 2012
NP 11-202 Receipt dated September 11, 2012
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
Wolverton Securities Ltd.
**Promoter(s):**
Brendan Matheson
Darrin Campbell
Jordan Keeke
**Project** #1896806

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**Issuer Name:**
Top 20 U.S. Dividend Trust
Principal Regulator - Ontario
**Type and Date:**
Final Long Form Prospectus dated September 12, 2012
NP 11-202 Receipt dated September 13, 2012
**Offering Price and Description:**
Class A Units and Class U Units
Maximum $150,000,000
(15,000,000 Class A Units and/or Class U Units)
Price: $10.00 per Class A Unit
Minimum Purchase: $2,000 (200 Class A Units)
Price: US$10.00 per Class U Unit
Minimum Purchase: US$2,000 (200 Class U Units)
**Underwriter(s) or Distributor(s):**
SCOTIA CAPITAL INC.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
CANACCORD GENUITY CORP.
DESJARDINS SECURITIES, INC.
GMP SECURITIES L.P.
RAYMOND JAMES LTD.
DUNDEE SECURITIES LTD.
MACKIE RESEARCH CAPITAL CORPORATION
MACQUARIE PRIVATE WEALTH INC.
MANULIFE SECURITIES INCORPORATED
UNION SECURITIES LTD.
**Promoter(s):**
SCOTIA MANAGED COMPANIES ADMINISTRATION INC.
**Project** #1942649

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**Issuer Name:**
TTU Trust
Principal Regulator - Ontario
**Type and Date:**
Final Long Form Prospectus dated September 12, 2012
NP 11-202 Receipt dated September 13, 2012
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
SCOTIA MANAGED COMPANIES ADMINISTRATION INC.
**Project** #1945231

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**Issuer Name:**
Vela Minerals Ltd.
Principal Regulator - British Columbia
**Type and Date:**
Amended and Restated Long Form ment dated September 11, 2012 to the Long Form Prospectus dated July 17, 2012
NP 11-202 Receipt dated September 13, 2012
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
MACQUARIE PRIVATE WEALTH INC.
**Promoter(s):**
-
**Project** #1859428

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**Issuer Name:**
Brookfield Residential Properties Inc.
Principal Jurisdiction - Alberta
**Type and Date:**
Preliminary Base Shelf Prospectus dated September 13, 2012
Withdrawn on September 13, 2012
**Offering Price and Description:**
US$1,000,000,000.00:
Debt Securities
Common Shares
Preferred Shares
Warrants
Subscription Receipts
Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1960366

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# Chapter 12

# Registrations

### 12.1.1 Registrants

| Type | Company | Category of Registration | Effective Date |
|---|---|---|---|
| Change in Registration Category | Wise Capital Management Inc. | From: Exempt Market Dealer and Portfolio Manager<br>To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager | September 11, 2012 |
| New Registration | Financière Des Professionnels Gestion Privée Inc. / Professionals' Financial - Private Management Inc. | Investment Dealer | September 12, 2012 |
| Consent to Suspension (Pending Surrender) | Votas Financial Corp. | Portfolio Manager | September 13, 2012 |
| Consent to Suspension (Pending Surrender) | Nuveen Investments Canada Co. | Exempt Market Dealer | September 14, 2012 |
| New Registration | Services Financiers Quintal & Co. Inc. / Quintal & Co. Financial Services Inc. | Exempt Market Dealer | September 17, 2012 |

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# Chapter 13

# SROs, Marketplaces and Clearing Agencies

## 13.2 Marketplaces

### 13.2.1 Omega ATS – Notice of Proposed Changes and Request for Comment

**OMEGA ATS**

**NOTICE OF PROPOSED CHANGES AND REQUEST FOR COMMENT**

Omega ATS has announced its plans to implement the changes described below in Q1 2013. Omega Securities Inc is publishing this Notice of Proposed Changes in accordance with the "Process for the Review and Approval of Rules and the Information Contained in Form 21-101F2 and the Exhibits Thereto". Market participants are invited to provide the Commission with comment on the proposed changes.

Comment on the proposed changes should be in writing and submitted by October 22, 2012 to:

Market Regulation Branch
Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Fax 416 595 8940
marketregulation@osc.gov.on.ca

And

Richard J Millar
Chief Compliance Officer
Omega Securities Inc.
100 Lombard St. Suite 101
Toronto, ON M5C 1M3
Richard.millar@omegaats.com

Comments received will be made public on the OSC website. Upon completion of the Review by OSC staff, and in the absence of any regulatory concerns, notice will be published to confirm the completion of Commission staff's review and to outline the intended implementation date of the changes.

Omega has announced plans to implement the changes described below Q1 2013 unless otherwise noted.
If you have any questions concerning the information below please contact Richard J Millar CCO for Omega ATS, at 416 646 2764.

Omega intends to introduce the following changes:

- **Additions of an Odd lot/Mixed lot trading book:** Omega intends to create a mixed lot/odd lot book that will create a new venue for the trading of odd and mixed lots.

- **Introduction of a new order type Opening Limit Bid/Offer (OLBO):** This order type is intended to encourage immediate post-open participation on Omega by placing orders to the top of book at the open.

- **Introduction of two new order types, Cross at Calculated Opening Price and Cross at Market On Close (X-COP, X-MOC):** The Cross at Calculated Opening Price (X-COP) and Cross at Market on Close (X-MOC) order types are intended to aid institutional participants in printing crosses at the calculated opening price, and close.

**1/ Introduction of an Odd Lot Book**:

A significant change subject to public comment

A. Description:

OSI (Omega Securities Inc.) intends to add an Odd Lot book. OSI believes the addition of this feature supports OSI's desire to have fully functional marketplaces that support all the core functions of a trading platform. At present there are only two venues to trade the odd lots of listed shares, OSI believes that a new venue would increase competitiveness, and improve market function.

Odd lots are quantities that do not conform to the board lots established by the prior days' closing price. A board lot is 100 shares for a security with a previous day closing price at or greater than $1.00, 500 shares for a security with a previous day closing price at or greater than $0.10 but less than $1.00, and 1000 shares for a security with a previous day closing price less than $0.10. Currently, when Omega receives an odd lot, the order is rejected back to the sender indicating that the order is not a multiple of a board lot. Omega is adding the functionality to support odd lots and mixed lot orders.

When Omega receives an odd lot order it is checked against the odd lot book for executions at the submitted price or better. If a partial execution or no shares are available, the remainder of the order is posted to the odd lot book and does not interact with the board lot book. This ensures that board lots do not partially fill against odd lot orders. Odd lot quotes and executions which can trade outside the Canadian Best Bid and Offer (CBBO) are not included in the Level 1 market data feed, and will be specially marked as an odd lot execution. Odd lot quotes are included in the Level 2 feed and can be easily identified by the share size. Odd lot quotes and executions should be ignored for the purposes of setting the CBBO.

A mixed lot is a combination of a board lot and an odd lot. When Omega receives a mixed lot, the order will be split and the board lot portion will be executed against, or posted on the board lot book, and the odd lot against the odd lot book. Any changes to the order, such as OPR re-price or cancel and replace would affect both the board lot and odd lot portions of the order.

B. Expected Implementation Date:

Our Subscriber agreement requires 90 day notice be provided to our subscribers when making a significant mandatory change, added to the time required for both regulatory review and public comment we expect the Odd Lot/Mixed lot book to be operating before March 31st 2013.

C. The Rationale for proposed Change:

Omega ATS believes the addition of this feature supports Omega's desire to have a fully functional marketplace that supports the core features of a trading venue. We believe that having an odd lot/mixed lot book is a core feature for a marketplace.

D. The expected Impact of the proposed Significant Change on Market structure for Subscribers, Investors and capital markets:

Omega believes the impact of the proposed change to be minor for subscribers, investors, vendors and the capital markets. Subscribers and vendors will need to amend their systems to facilitate the odd lot/mixed lot book on the Omega platform, but this should be minor in nature as this functionality already exists. Moreover subscribers will no longer have Odd Lot/Mixed Lot orders rejected by Omega.

E. Expected impact of the Significant Change on Omega Securities compliance with Ontario securities law and the requirements of fair access and the maintenance of a fair and orderly market:

We foresee no negative impact to fair access.

**2/ New order type Opening Limit Bid/Offer (OLBO):**

A significant change subject to public comment

A. Description:

This order type is intended to encourage immediate post-open participation on Omega by placing the orders to the top of book at the open.

Opening Limit Bid/Offer (OLBO) orders can only be submitted prior to the TMX market open between 8:30-9:29 am. When the order is accepted by Omega, the order will be held in an inactive state during the pre-market phase, between

Omega's open at 8:30 am until the TMX Calculated Opening Price (COP) dissemination at approximately 9:30 am. The OLBO will not interact with any liquidity during this time. When the TMX COP is disseminated, all OLBO orders will become active, taking on an aggressive or passive nature dependent on the COP price relative to the CBBO at the open. Passive orders will automatically be posted at the best bid or offer and aggressive orders can be flagged to route or be re-priced by the Omega's Order Protection Rule Functionality (OPRF marker).

**Ex 1. Price/Time Priority**

Prior to the official (Calculated Opening Price) COP, in the Omega continuous pre-market session a participant enters a limit bid to Omega book for 1000 shares at $10.00 at 9:00 am. This order is live and rests passively on the Omega book.

| Bid | | | | Offer | | | |
|---|---|---|---|---|---|---|---|
| Exchange | Broker ID | Size | Bid | Offer | Size | Broker ID | Exchange |
| OMG | 001 | 1000 | $ 10.00 | | | | |

An OLBO Limit Bid order is also entered for 1000 shares pre-open. However, this order was entered at 8:45 am. The OLBO order is not displayed and is considered to be inactive and cannot be interacted with by any other order type. The TMX Calculated Opening Price (COP) is $10.00 and TMX prints all of its opening auction participants at the COP.

Pre-Open:

| Bid | | | | Offer | | | |
|---|---|---|---|---|---|---|---|
| Exchange | Broker ID | Size | Bid | Offer | Size | Broker ID | Exchange |
| TMX | 001 | 1000 | $ 10.00 | $ 10.01 | 5000 | 001 | TMX |
| OMG | 001 | 1000 | $ 10.00 | | | | |
| OMG | 001 | 1000 | $ 10.00 | | | | |

OMG = Limit bid (entered at 9:00 am)
OMG = OLBO Bid (entered at 8:45 am)

In the above scenario, immediately following the COP the CBBO is $10.00 by $10.01 and the OLBO Bid becomes a live order and rests passively displayed in the Omega book. However, as there was a lit, live limit order entered and displayed in the Omega book prior to the open the OLBO order does not have time priority and must be placed behind the original order in the queue.

**Ex 2. Passive Bid Logic**

An OLBO Limit Bid order is entered for 1000 shares pre-open. The OLBO order is not displayed and is considered to be inactive and cannot be interacted with by any other order type. The TMX Calculated Opening Price (COP) is $10.00 and TMX prints all of its opening auction orders at the COP.

Passive Order Market Post Open:

| Bid | | | | Offer | | | |
|---|---|---|---|---|---|---|---|
| Exchange | Broker ID | Size | Bid | Offer | Size | Broker ID | Exchange |
| TMX | 001 | 5000 | $ 10.00 | $ 10.01 | 5000 | 001 | TMX |
| OMG | 001 | 1000 | $ 10.00 | | | | |

In the above scenario, immediately following the COP the CBBO is $10.00 by $10.01 and the OLBO Bid becomes a live order and rests passively displayed in the Omega book.

**Ex 3. Active Bid Logic**

An OLBO Limit Bid order is entered for 1000 shares pre-open. The OLBO order is not displayed and is considered to be inactive and cannot be interacted with by any other order type. The TMX Calculated Opening Price (COP) is $10.01 and TMX prints all of its opening auction orders at the COP.

Active BID Order Post Open:

| Bid | | | | Offer | | | |
|---|---|---|---|---|---|---|---|
| Exchange | Broker ID | Size | Bid | Offer | Size | Broker ID | Exchange |
| TMX | 001 | 5000 | $ 10.00 | $ 10.01 | 4000 | 001 | TMX |

In the above scenario, immediately following the COP the CBBO is $10.00 by $10.01 and the OLBO Bid becomes a live order and is routed via the Omega Smart Order Router to the TMX.

**Ex 4. Passive Offer Logic**

An OLBO Limit Offer order is entered for 1000 shares pre-open. The order is not displayed and is considered to be inactive and cannot be interacted with by any other order type. The TMX Calculated Opening Price (COP) is $10.01 and TMX prints all of its opening auction orders at the COP.

Passive Offer Post Open:

| Bid | | | | Offer | | | |
|---|---|---|---|---|---|---|---|
| Exchange | Broker ID | Size | Bid | Offer | Size | Broker ID | Exchange |
| TMX | 001 | 5000 | $ 10.00 | $ 10.01 | 5000 | 001 | TMX |
| | | | | $ 10.01 | 1000 | 001 | OMG |

In the above scenario, immediately following the COP the CBBO is $10.00 by $10.01 and the OLBO Offer becomes a live order and rests passively displayed in the Omega book.

**Ex 5. Active Offer Logic**

An OLBO Limit Offer order is entered for 1000 shares pre-open. The OLBO order is not displayed and is considered to be inactive and cannot be interacted with by any other order type. The TMX Calculated Opening Price (COP) is $10.00 and TMX prints all of its opening auction orders at the COP.

Active Offer Post open:

| Bid | | | | Offer | | | |
|---|---|---|---|---|---|---|---|
| Exchange | Broker ID | Size | Bid | Offer | Size | Broker ID | Exchange |
| TMX | 001 | 4000 | $ 10.00 | $ 10.01 | 5000 | 001 | TMX |

In the above scenario, immediately following the COP the CBBO is $10.00 by $10.01 and the OLBO Offer becomes a live order and is routed via the Omega Smart Order Router to the TMX.

**Ex 6. Order Protection Rule Functionality (OPRF) Bid Logic:**

As of February 2011 the Order Protection Rule (OPR) as outlined in National Instrument 23-101 took effect. Marketplaces are responsible for enforcing book-through/trade-through protection. As a result of this, Omega has implemented order protection functionality. Subscribers have the option of automatically re-pricing their order one tick closer than the far side, to cancel their order, or to route the order to an away market if the original order would result in a book-through or trade-through. Reference prices are provided for by the CBBO.

If OLBO OPRF Bid order is entered for 1000 shares pre-open. The OLBO order is not displayed and is considered to be inactive and cannot be interacted with by any other order type. The TMX Calculated Opening Price (COP) is $10.01 and TMX prints all of its opening auction orders at the COP.

OPRF Bid Post -open:

| Bid | | | | Offer | | | |
|---|---|---|---|---|---|---|---|
| Exchange | Broker ID | Size | Bid | Offer | Size | Broker ID | Exchange |
| TMX | 001 | 5000 | $ 10.00 | $ 10.01 | 5000 | 001 | TMX |
| OMG | 001 | 1000 | $ 10.00 | | | | |

In the above scenario, immediately following the COP the CBBO is $10.00 by $10.01 and the OLBO OPRF Bid becomes a live order, is re-priced to $10.00 and rests passively displayed in the Omega book.

**Ex 7. Order Protection Rule Functionality (OPRF) Offer Logic:**

An OLBO OPRF Offer order is entered for 1000 shares pre-open. The OLBO order is not displayed and is considered to be inactive and cannot be interacted with by any other order type. The TMX Calculated Opening Price (COP) is $10.00 and TMX prints all of its opening auction orders at the COP.

OPRF Offer Post open:

| Bid | | | | Offer | | | |
|---|---|---|---|---|---|---|---|
| Exchange | Broker ID | Size | Bid | Offer | Size | Broker ID | Exchange |
| TMX | 001 | 5000 | $ 10.00 | $ 10.01 | 5000 | 001 | TMX |
| | | | | $ 10.01 | 1000 | 001 | OMG |

In the above scenario, immediately following the COP the CBBO is $10.00 by $10.01 and the OLBO OPRF Offer becomes a live order, is re-priced to $10.01 and rests passively displayed in the Omega book.

B. Expected Implementation Date:

Even though this is not a mandatory change Omega intends to provide a 90 day notice, in addition to the time required for both regulatory review and public comment we expect the Opening Limit Bid/Offer (SOR/OPR) order type to be operating before March 31st 2013.

C. The Rationale for proposed Change:

OSI (Omega Securities Inc.) supports market innovation and competition. The new order Opening Limit Bid/Offer (OLBO) is a new order type with which we intend to provide some competition to the current order types that occur at open. By adding another venue where special open order types can occur, we believe will add some much needed competition to the current landscape at the opening bell.

D. The expected Impact of the proposed Significant Change on Market structure for Subscribers, Investors and capital markets:

Omega ATS believes the impact of the proposed change to be minor for subscribers, investors, vendors and the capital markets. Subscribers and vendors will need to amend their systems as they would for any new order type. These changes would be voluntary, based on their desire to use these order types. Vendors would be required to make edits to their current programs to allow for this new order type on Omega ATS. Given the long timelines we have in place for the implementation of this order type, there shouldn't be any major issues with anyone who wants to participate.

E. Expected impact of the Significant Change on Omega Securities compliance with Ontario securities law and the requirements of fair access and the maintenance of a fair and orderly market:

We foresee no negative impact to fair access; the trades will occur at the same trading fees as other similar trades on the Omega ATS platform. Other than the necessary technology changes of adding an order type, we have no intention of creating a new cost on our subscriber community.

**3/ Introduction of a new order type Cross at Calculated Opening Price & Cross at Market on Close**

**(X-COP/X-MOC):**

A significant Change subject to public Comment

A. Description:

The Cross at Calculated Opening Price (X-COP) and Cross at Market on Close (X-MOC) order type is intended to aid institutional participants to print crosses on Omega at the Calculated Opening Price (COP) or the Market On Close (MOC) calculated by the primary market. In keeping with UMIR 8.1 all principal/client crosses for volumes of less than 50 standard trading units or $100,000.00 will have the client side price improved or rejected depending on market conditions.

X-COP orders may be entered to the Omega ATS marketplace at any time between 8:30-9:29 am by the matching system and will be held until the official open of the individual security. X-MOC orders may be entered at any time after 3:40 pm and will be held until the official MOC is disseminated to Omega and the subsequent intentional cross is put-through.

**Ex 1. Calculated Opening Price Intentional Cross (X-COP):**

Prior to the official COP, in the Omega marketplace's continuous pre-market session an RBC participant (002) enters an X-COP order for 1,000,000 shares. The order is held by Omega ATS until the official COP is established by the TMX. This order is inactive and does not rest in the book.

TMX Book Pre-Calculated Opening Price (COP):

| Bid | | | | Offer | | | |
|---|---|---|---|---|---|---|---|
| Exchange | Broker ID | Size | Bid | Offer | Size | Broker ID | Exchange |
| TMX | 007 | 1,000 | $ 10.01 | $ 10.01 | 1,000 | 009 | TMX |
| TMX | 085 | 500 | $ 10.01 | $ 10.01 | 500 | 033 | TMX |
| TMX | 053 | 800 | $ 10.01 | $ 10.01 | 800 | 072 | TMX |
| TMX | 099 | 400 | $ 10.01 | $ 10.01 | 400 | 001 | TMX |

At the open, the TMX COP facility has determined that the securities Calculated Opening Price is $10.01. Due to OPR protection, the theoretical CBBO could be $10.00 by $10.01 or $10.01 by $10.02 or any wider spread variation. For the sake of our example, post-COP the top of book is established at $10.00 by $10.01.

In the above scenario, immediately following the COP Omega X-COP facility matches the trade as a cross for RBC (002) at $10.01 at 09:30:002 am. There is no required displacement of visible liquidity at this price, as the X-COP will execute prior to any shift in the CBBO.

| Time & Sales | | | | | | |
|---|---|---|---|---|---|---|
| Time | Price | Vol | Buyer | Seller | TadeCon | MktPl |
| 09:30:002 | $ 10.01 | 1,000,000 | 002 | 002 | XT | OMG |
| 09:30:001 | $ 10.01 | 800 | 053 | 072 | COP | TMX |
| 09:30:001 | $ 10.01 | 500 | 085 | 033 | COP | TMX |
| 09:30:001 | $ 10.01 | 1000 | 007 | 009 | COP | TMX |

In this example RBC (002) has achieved its objective of printing a cross at the COP without participating in the TMX COP facility. The RBC (002) trader's order could have been entered and/or cancelled at any time prior to the opening print.

**Ex 1. Market On Close Intentional Cross (X-MOC):**

Prior to the official MOC, during the Omega continuous market session and after 3:40 pm an RBC participant enters an X-MOC order for 1,000,000 shares. The order is held by OSI until the official MOC is established by the TMX and is disseminated by Omega ATS Marketplace. This order is inactive and does not rest in the Omega ATS book.

At the close, the TMX MOC facility has determined that the securities official closing price is $10.01. Often, immediately following the final print, the spread will tend to move wide as participants cancel orders in the post market. For the sake of our example, post-MOC the top of book is established at $9.50 by $10.50.

Post Market On Close Book:

| Bid | | | | Offer | | | |
|---|---|---|---|---|---|---|---|
| Exchange | Broker ID | Size | Price | Price | Size | Broker ID | Exchange |
| ALF | 007 | 200 | $ 9.50 | $ 10.50 | 500 | 009 | ALF |
| ALF | 085 | 300 | $ 9.00 | $ 11.00 | 200 | 033 | ALF |
| CHI | 053 | 200 | $ 8.50 | $ 11.50 | 100 | 099 | CHI |
| OMG | 099 | 100 | $ 8.00 | $ 12.00 | 200 | 001 | OMG |

After the MOC participation orders have been printed and the closing price for the individual security has been disseminated by OSI, the X-MOC order will execute the Intentional cross at the same price as the closing print.

| Time & Sales | | | | | | |
|---|---|---|---|---|---|---|
| Time | Price | Vol | Buyer | Seller | TadeCon | MktPl |
| 16:05:001 | $ 10.01 | 1,000,000 | 002 | 002 | XT | OMG |
| 16:05:000 | $ 10.01 | 35,000 | 007 | 009 | MOC | TMX |
| 16:05:000 | $ 10.01 | 8,500 | 085 | 033 | MOC | TMX |
| 16:05:000 | $ 10.01 | 11,500 | 053 | 099 | MOC | TMX |

As this order type does not become live until the Calculated Closing Price is disseminated, and is not subject to interference, there is no need for the participant that entered the order to displace any visible liquidity.

B. Expected Implementation Date:

Even though this is not a mandatory change Omega intends to provide at least 90 days notice, added to the time required for both regulatory review and public comment we expect this new order type to be operating before March 31st 2013.

C. The Rationale for proposed Change:

OSI supports market innovation and competition. The new order type Cross at Calculated Opening Price ( X-COP) and Cross at Market on Close (X-MOC) are two new innovative order types with which we intend to provide some competition to the current crosses that occur on other exchanges at the open and close of the primary market. By adding another venue where a cross can occur using the opening or closing price we believe will add some much needed competition to the current landscape.

D. The expected Impact of the proposed Significant Change on Market structure for Subscribers, Investors and capital markets:

OSI believes the impact of the proposed change to be minor for subscribers, investors, vendors and the capital markets. Subscribers and vendors will need to amend their systems as they would for any new order type. These changes for subscribers, investors and capital markets would be voluntary based on their desire to use these order types. Vendors would be required to make edits to their current crossing programs. Given the long timelines we have in place for the implementation of these order types, there should not be any major issues with anyone who wishes to participate.

E. Expected impact of the Significant Change on Omega Securities compliance with Ontario securities law and the requirements of fair access and the maintenance of a fair and orderly market:

We foresee no negative impact to fair access.

## 13.3 Clearing Agencies

### 13.3.1 CDS – Notice and Request for Comments – Material Amendments to CDS Procedures – Enhancements to the CNS Allotment Process

**CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)**

**MATERIAL AMENDMENTS TO CDS PROCEDURES**

**ENHANCEMENTS TO THE CNS ALLOTMENT PROCESS**

**REQUEST FOR COMMENTS**

**A. DESCRIPTION OF THE PROPOSED CDS PROCEDURE AMENDMENTS**

*Withdrawal of previous procedures amendment submission*

On July 27, 2012 CDS submitted a Notice and Request for Comment – Material Amendments to CDS Procedures relating to Enhancements to the CNS Allotment Process for regulatory review. The Notice and the proposed amendments to the procedures were published on August 9, 2012 by the Ontario Securities Commission (OSC Bulletin (2012) 35 OSCB 7577) and by the Autorité des marchés financiers (AMF Bulletin 9 août 2012 - Vol. 9, n° 32).

The procedure amendments in the July 27th notice identified changes to the CNS allotment process that were intended to include all corporate actions processed in CDSX (i.e. mandatory and voluntary events) and were to be implemented on November 19, 2012.

Since the submission of the July 27th notice, the Debt & Equity Subcommittee of CDS's Strategic Development Review Committee decided to defer the inclusion of 'mandatory-type' corporate actions in this enhancement and proceed with only 'voluntary-type' corporate actions. As a result, the amendments described in the original submission will affect only 'voluntary-type' corporate actions. The procedure amendments proposed in the July 27th notice are being withdrawn.

*Summary of the new proposed amendments to procedures*

The proposed amendments outlined in this Notice and Request for Comment will amend functionality of the allotment process for voluntary corporate actions only in the Continuous Net Settlement Service (CNS). The CNS allotment process refers to (i) the creation of non-exchange trades with a settlement mode of trade-for-trade (TFT) from outstanding CNS positions by assigning or allotting buyers to sellers against outstanding CNS positions, and (ii) trade conversion activities whereby exchange and non-exchange trades with a settlement mode of CNS are converted to settle TFT.

Previously submitted procedure amendments have been updated to specify voluntary corporate actions as the amendments will not affect 'mandatory-type' corporate actions.

**Background**

CNS is a central counterparty service designed to clear and settle primarily equity trades initiated on a Canadian exchange, a quotation and trade reporting system (QTRS) or an alternative trading system (ATS). Transactions targeted to CNS may also originate as non-exchange trades with a settlement mode of CNS, manually setup in CDSX® by participants.

***Novation and netting of CNS trades***

When an exchange or non-exchange trade with a settlement mode of CNS reaches value date, the original buyer and seller obligations (to receive securities and deliver payment, and vice versa) are extinguished and replaced with settlement obligations between each party and CDS (i.e., novation). Each time another trade for the same security is processed, the new novated obligations are netted with the existing settlement obligations for that security. These netted obligations are the "to receive" and "to deliver" positions that are settled in the overnight batch net settlement process, and continuously in CDSX in the real-time CNS settlement process that runs from system start-up through to the start of payment exchange.

***Allotment of CNS positions and trade conversion activities for voluntary corporate actions***

When a voluntary corporate action is scheduled to occur on a CNS-eligible security, existing CNS positions are restricted from settling and new trades targeted to CNS are restricted from novation and netting. This is accomplished in the following manner:

(i) existing CNS outstanding settlement obligations are allotted from CNS and converted into TFT non-exchange trades,

(ii) CNS non-exchange trades are converted into TFT non-exchange trades, and

(iii) CNS exchange trades are converted into TFT exchange trades.

The allotment process removes CDS as the central counterparty by assigning buyers and sellers to the outstanding CNS obligations and replacing those obligations with non-exchange trades targeted to settle TFT. In addition, exchange and non-exchange trades that are targeted to settle CNS are converted to a TFT settlement mode.

The process of changing the mode of settlement on CNS exchange trades to TFT often results in participants being left with a large number of trades over which they have no control. The result is that participants are unable to effectively prioritize their settlement activity in the affected security.

**Proposed Amendments**

The SDRC Debt and Equity Subcommittee requested that CDS review the current trade allotment process and propose an approach whereby they would be afforded greater flexibility to manage their settlement activities. The approved proposal will amend the process such that exchange and non-exchange trades involving a security with a CNS settlement-related restriction, due to an upcoming voluntary corporate action, will be novated and netted. Once the netted obligations are determined, those outstanding CNS settlement positions will be allotted into non-exchange TFT trades, per the current process.

This change will (i) eliminate the TFT exchange trades created by the conversion process, and (ii) potentially reduce the number of TFT non-exchange trades due to additional netting activities. This amendment will result in participants having fewer trades to manage.

## B. NATURE AND PURPOSE OF THE PROPOSED CDS PROCEDURE AMENDMENTS

The proposed procedure amendments are enhancements to current functionality of the allotment process which will provide greater processing efficiencies and improved trade settlement management flexibility.

CDS participants will benefit from the proposed enhancements to the trade allotment process because:

- The number of transactions that require monitoring and settlement management activities will be reduced, thereby reducing operational risk[1]
- The novation and netting process will reduce the quantity to be settled.

Currently, when a CNS settlement restriction exists on a security, all new trades with a settlement mode of CNS received from an exchange or entered by participants are prevented from being picked up in the CNS novation and netting processes. The settlement mode of the trades is automatically changed to TFT, and participants must manage these transactions manually. However, participants are restricted from placing the trades that originated at an exchange on hold, which prevents settlement until such time as they are ready for the movement of securities or cash to be completed from their CDSX ledgers. This has often resulted in a large number of trades which participants have no ability to manage, and which may have used funds or securities for small value trades that participants would have preferred to first target toward larger value trades.

A change will be made to the CNS novation and netting process to disregard the CNS settlement restriction if it has been automatically created by a voluntary corporate action. This will allow all CNS trades reaching value date to be netted each day during the corporate action period. Settlement of outstanding obligations will still be restricted, and these settlement obligations will then be allotted out each day to minimal numbers of non-exchange trades over which settlement can be managed.

CNS settlement restrictions that have been placed on a security manually or automatically for reasons other than a voluntary corporate action will continue to be processed as they are today. That is, the mode of settlement on exchange and non-exchange trades will be converted from CNS to TFT.

## C. IMPACT OF THE PROPOSED CDS PROCEDURE AMENDMENTS

The proposed procedure amendments will provide processing efficiencies and trade settlement management flexibility. The impact of these changes will be limited to those CDS participants that utilize the CNS function within CDSX.

[1] A participant experienced the creation of approximately 50,000 TFT exchange trades due to the allotment process, which took a three month period for completion of all settlements.

### C.1 Competition

The proposed procedure amendments apply to all CDS participants who currently use, or may choose to use, the CNS service. Consequently, no CDS participant will be disadvantaged with the introduction of these enhancements.

### C.2 Risks and Compliance Costs

CDS Risk Management has determined that the proposed amendments will improve the risk profile of its participants due to the novation and netting process. It will not change the risk profile of CDS.

The introduction of the proposed enhancement to the CNS allotment process will not result in any changes to the existing CDSX settlement process. The method of (i) applying non-entitlement related CNS settlement restrictions to securities, (ii) placing holds on non-exchange transactions, and (iii) the settlement of exchange and non-exchange trades remain unchanged. The prioritization of settlements is also not impacted by this initiative.

There are no compliance costs to the participants associated with the proposed enhancements to the CNS allotment process.

### C.3 Comparison to International Standards – (a) Committee on Payment and Settlement Systems of the Bank for International Settlements, (b) Technical Committee of the International Organization of Securities Commissions, and (c) the Group of Thirty

As stated in Principle #21 – Efficiency and effectiveness – of the new international standards for payment, clearing and settlement systems set out in the CPSS/IOSCO report *Principles for Financial Market Infrastructures*[2], a financial market infrastructure such as CDS "should be designed to meet the needs of its participants and the markets it serves, in particular, with regard to choice of a clearing and settlement arrangement; operating structure; scope of products cleared, settled, or recorded; and use of technology and procedures".

This development, requested by some of CDS's participants, supports greater flexibility for managing the settlement of transactions.

No other comparisons to international standards were identified.

## D. DESCRIPTION OF THE PROCEDURE DRAFTING PROCESS

### D.1 Development Context

The development request was tabled at the SDRC Debt and Equity Subcommittee as an opportunity to increase efficiencies in the settlement of trades systematically allotted from the CNS service. Once approved by the SDRC for further analysis, CDS developed a requirements document that was reviewed with the SDRC Debt and Equity Subcommittee. Their input was incorporated into the final design which was subsequently approved by the SDRC.

### D.2 Procedure Drafting Process

The CDS procedure amendments were drafted by CDS's Business Systems Development and Support group, and subsequently reviewed and approved by the SDRC. The SDRC determines or reviews, prioritizes and oversees CDS-related systems development and other changes proposed by participants and CDS. The SDRC's membership includes representatives from a cross-section of the CDS participant community, and it meets on a monthly basis.

The original amendments were reviewed and approved by the SDRC on July 26, 2012. This revision was reviewed and approved by the SDRC on August 30, 2012.

### D.3 Issues Considered

Initially, all corporate action event types were considered for this enhancement. However, due to the additional complexity of mandatory event processing (i.e. conversion of existing securities to a new security or funds being received), the enhancement for mandatory type events was deferred.

[2] The report can be found at http://www.bis.org/publ/cpss101.htm

### D.4 Consultation

This development was requested by the SDRC Debt and Equity Subcommittee. CDS reviewed the requirements document with that group and received their final approval for the development of the described enhancement.

CDS's Customer Service account managers provide continuous communication and status updates of all proposed changes to their clients, as well as soliciting input on those changes.

CDS facilitates consultation through a variety of means, including regularly scheduled SDRC subcommittee meetings which provide a forum for detailed requirement review, and monthly meetings with service bureaus to discuss development impacts to them. All development initiatives are also presented to the Investment Industry Regulatory Organization of Canada's (IIROC) Financial Administrators Section (FAS) working group.

### D.5 Alternatives Considered

Initially, the SDRC Debt and Equity Subcommittee requested that CDS enable participants to manage the settlement control indicator on exchange trades converted from CNS to TFT. During the review and analysis phase, it was determined that this approach would be insufficient to achieve maximum potential efficiencies in the management of these trades as large volumes would continue to exist. Consequently, the SDRC Debt and Equity Subcommittee and the SDRC agreed that CDS's proposal to net CNS trades prior to allotment was a more complete solution.

### D.6 Implementation Plan

The proposed procedure amendments and the scheduled date of implementation have been communicated regularly to CDS participants through the SDRC and its subcommittees, as well as through Customer Service relationship meetings. The Customer Service account managers will provide their clients with details of the upcoming changes, and provide customer-related training during the months of October and November 2012. CDS will distribute a bulletin to all CDS participants the week before implementation reminding them of the upcoming changes and confirming the effective date of those changes.

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.2 of the Ontario *Securities Act*. The Autorité des marchés financiers has authorized CDS to carry on clearing activities in Québec pursuant to sections 169 and 170 of the Québec *Securities Act*. In addition CDS is deemed to be the clearing house for CDSX®, a clearing and settlement system designated by the Bank of Canada pursuant to section 4 of the *Payment Clearing and Settlement Act.* The Ontario Securities Commission, the Autorité des marchés financiers and the Bank of Canada will hereafter be collectively referred to as the "Recognizing Regulators".

The amendments to Participant Procedures may become effective upon approval of the amendments by the Recognizing Regulators following public notice and comment. Implementation of this initiative is planned for November 17, 2012.

## E. TECHNOLOGICAL SYSTEMS CHANGES

### E.1 CDS

CDSX functionality, for voluntary corporate actions, will be impacted by these changes as follows:

a) Allow for novation and netting of CNS trades (exchange and non-exchange) when a CNS settlement restriction exists on a security. CNS positions will not be settled when this restriction is applied, per the current process.

b) Eliminate the change to the settlement mode of existing trades from CNS to TFT during the allotment process. Trades will remain as CNS and be available for extraction.

c) Newly entered exchange and non-exchange CNS trades will be populated with a mode of settlement as CNS when a CNS settlement restriction exists. Trades will remain as CNS and be available for novation.

d) Automate additional allotments of CNS positions. Existing CNS trades will remain intact. New process to be triggered upon completion of CNS netting where an allotment has previously taken place on the event.

### E.2 CDS Participants

There are no technological system changes required by CDS Participants.

### E.3 Other Market Participants

There are no technological system changes required by CDS Participant service bureaus.

## F. COMPARISON TO OTHER CLEARING AGENCIES

A similar CNS trade allotment and conversion process is provided by the National Securities Clearing Corporation (NSCC) as outlined in the NSCC Rules and Procedures dated June 28, 2012. Reference to conversion and allocation as it pertains to corporate actions is made, however CDS is not aware of any impending rule changes in this regard.

No comparable or similar procedures were available for other clearing agencies in order to conduct an analysis.

## G. PUBLIC INTEREST ASSESSMENT

CDS has determined that the proposed amendments are not contrary to the public interest.

## H. COMMENTS

Comments on the proposed amendments should be in writing and submitted within 30 calendar days following the date of publication of this notice in the Ontario Securities Commission Bulletin, the British Columbia Securities Commission Bulletin or the Autorité des marchés financiers Bulletin to:

Elaine Spankie
Senior Business Analyst, Business Systems Development and Support
CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9

Phone: 416-365-3595
Email: espankie@cds.ca

Copies should also be provided to the Autorité des marchés financiers, the British Columbia Securities Commission and the Ontario Securities Commission by forwarding a copy to each of the following individuals:

M$^{e}$ Anne-Marie Beaudoin
Secrétaire générale
Autorité des marchés financiers
800, square Victoria, 22$^{e}$ étage
C.P. 246, tour de la Bourse
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Fax: 604-899-6506
Email: agander@bcsc.bc.ca

CDS will make available to the public, upon request, all comments received during the comment period.

## I. PROPOSED CDS PROCEDURE AMENDMENTS

Access the proposed amendments to the CDS Procedures on the User documentation revisions web page (http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-blacklined?Open) and to the CDS Forms (if applicable) on Forms online (Click View by Form Category and in the Select a Form Category list, click External review) on the CDS Services web page (www.cdsservices.ca).

# Index