The Ontario Securities Commission

OSC Bulletin

September 27, 2012

Volume 35, Issue 39

(2012), 35 OSCB

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

The Ontario Securities Commission
Cadillac Fairview Tower
Suite 1903, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

416-593-8314 or Toll Free 1-877-785-1555

Published under the authority of the Commission by:
Carswell, a Thomson Reuters business
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

416-609-3800 or 1-800-387-5164

Contact Centre - Inquiries, Complaints:	Fax: 416-593-8122
Market Regulation Branch:	Fax: 416-595-8940
Compliance and Registrant Regulation Branch	
- Compliance:	Fax: 416-593-8240
- Registrant Regulation:	Fax: 416-593-8283
Corporate Finance Branch	
- Team 1:	Fax: 416-593-8244
- Team 2:	Fax: 416-593-3683
- Team 3:	Fax: 416-593-8252
- Insider Reporting:	Fax: 416-593-3666
- Mergers and Acquisitions:	Fax: 416-593-8177
Enforcement Branch:	Fax: 416-593-8321
Executive Offices:	Fax: 416-593-8241
General Counsel's Office:	Fax: 416-593-3681
Investment Funds Branch:	Fax: 416-593-3699
Office of the Secretary:	Fax: 416-593-2318

THOMSON REUTERS

The OSC Bulletin is published weekly by Carswell, a Thomson Reuters business, under the authority of the Ontario Securities Commission.

Subscriptions are available from Carswell at the price of $649 per year.

Subscription prices include first class postage to Canadian addresses. Outside Canada, these airmail postage charges apply on a current subscription:

U.S.	$175
Outside North America	$400

Single issues of the printed Bulletin are available at $20 per copy as long as supplies are available.

Carswell also offers every issue of the Bulletin, from 1994 onwards, fully searchable on S*ecuritiesSource*™, Canada's pre-eminent web-based securities resource. *SecuritiesSource*™ also features comprehensive securities legislation, expert analysis, precedents and a weekly Newsletter. For more information on *SecuritiesSource*™, as well as ordering information, please go to:

http://www.westlawecarswell.com/SecuritiesSource/News/default.htm

or call Carswell Customer Relations at 1-800-387-5164 (416-609-3800 Toronto & Outside of Canada).

Claims from *bona fide* subscribers for missing issues will be honoured by Carswell up to one month from publication date.

Space is available in the Ontario Securities Commission Bulletin for advertisements. The publisher will accept advertising aimed at the securities industry or financial community in Canada. Advertisements are limited to tombstone announcements and professional business card announcements by members of, and suppliers to, the financial services industry.

ISSN 0226-9325

THOMSON REUTERS

One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

Customer Relations
Toronto 1-416-609-3800
Elsewhere in Canada/U.S. 1-800-387-5164
Fax 1-416-298-5082
www.carswell.com
Email www.carswell.com/email

Table of Contents

Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

September 27, 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

Telephone: 416-597-0681 Telecopier: 416-593-8348

CDS **TDX 76**

Late Mail depository on the 19th Floor until 6:00 p.m.

- -

THE COMMISSIONERS

Howard I. Wetston, Chair	—	HIW
James E. A. Turner, Vice Chair	—	JEAT
Lawrence E. Ritchie, Vice Chair	—	LER
Mary G. Condon, Vice Chair	—	MGC
Sinan O. Akdeniz	—	SOA
James D. Carnwath	—	JDC
Margot C. Howard	—	MCH
Sarah B. Kavanagh	—	SBK
Kevin J. Kelly	—	KJK
Paulette L. Kennedy	—	PLK
Edward P. Kerwin	—	EPK
Vern Krishna	—	VK
Christopher Portner	—	CP
Judith N. Robertson	—	JNR
Charles Wesley Moore (Wes) Scott	—	CWMS

SCHEDULED OSC HEARINGS

October 1- 5 and October 10-19, 2012 10:00 a.m.	**New Found Freedom Financial, Ron Deonarine Singh, Wayne Gerard Martinez, Pauline Levy, David Whidden, Paul Swaby and Zompas Consulting** s. 127 A. Heydon in attendance for Staff Panel: JDC
October 2, 2012 10:30 a.m.	**Energy Syndications Inc., Green Syndications Inc., Syndications Canada Inc., Land Syndications Inc. and Douglas Chaddock** s. 127 C. Johnson in attendance for Staff Panel: MGC
October 2 and October 4, 2012 10:00 a.m.	**Portus Alternative Asset Management Inc., Portus Asset Management Inc., Boaz Manor, Michael Mendelson, Michael Labanowich and John Ogg** s. 127 H Craig in attendance for Staff Panel: EPK
October 5, 2012 11:00 a.m.	**Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)** s. 127 M. Vaillancourt in attendance for Staff Panel: VK

October 10, 2012 10:00 a.m.	**Sino-Forest Corporation, Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho and Simon Yeung** s. 127 H. Craig in attendance for Staff Panel: MGC
October 10, 2012 10:00 a.m	**Sino-Forest Corporation, Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho, Simon Yeung and David Horsley** s. 127 H. Craig in attendance for Staff Panel: MGC
October 10, 2012 10:00 a.m.	**Empire Consulting Inc. and Desmond Chambers** s. 127 D. Ferris in attendance for Staff Panel: EPK
October 11, 2012 9:00 a.m.	**New Solutions Capital Inc., New Solutions Financial Corporation, New Solutions Financial (II) Corporation, New Solutions Financial (III) Corporation, New Solutions Financial (VI) Corporation and Ron Ovenden** s. 127 S. Horgan in attendance for Staff Panel: TBA
October 17, 2012 10:00 a.m.	**Sage Investment Group, C.A.D.E Resources Group Inc., Greenstone Financial Group, Fidelity Financial Group, Antonio Carlos Neto David Oliveira, and Anne Marie Ridley** s. 127 C. Watson in attendance for Staff Panel: EPK
October 19, 2012 10:00 a.m.	**Global Energy Group, Ltd., New Gold Limited Partnerships, Christina Harper, Howard Rash, Michael Schaumer, Elliot Feder, Vadim Tsatskin, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Shiff** s. 127 C. Watson in attendance for Staff Panel: PLK
October 22 and October 24 – November 5, 2012 10:00 a.m.	**MBS Group (Canada) Ltd., Balbir Ahluwalia and Mohinder Ahluwalia** s. 37, 127 and 127.1 C. Rossi in attendance for staff Panel: CP
October 22 and October 24-29, 2012 10:00 a.m. October 23, 2012 2:30 p.m.	**Nest Acquisitions and Mergers, IMG International Inc., Caroline Myriam Frayssignes, David Pelcowitz, Michael Smith, and Robert Patrick Zuk** s. 37, 127 and 127.1 C. Price in attendance for Staff Panel: JDC/MCH
October 29, October 31 and November 1, 2012 10:00 a.m.	**Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva and Abraham Herbert Grossman aka Allen Grossman and Kevin Wash** s. 127 H. Craig/S. Schumacher in attendance for Staff Panel: JEAT

October 31 – November 5, November 7-9, December 3, December 5-17 and December 19, 2012 10:00 a.m.	**Rezwealth Financial Services Inc., Pamela Ramoutar, Justin Ramoutar, Tiffin Financial Corporation, Daniel Tiffin, 2150129 Ontario Inc., Sylvan Blackett, 1778445 Ontario Inc. and Willoughby Smith** s. 127(1) and (5) A. Heydon in attendance for Staff Panel: EPK
November 5, November 7-19, November 21-27 and November 29-30, 2012 10:00 a.m. November 28, 2012 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.** s. 127 B. Shulman in attendance for Staff Panel: MGC
November 8, 2012 10:00 a.m.	**Global RESP Corporation and Global Growth Assets Inc.** s. 127 D. Ferris in attendance for Staff Panel: JEAT
November 12-19 and November 21, 2012 10:00 a.m.	**Sandy Winick, Andrea Lee McCarthy, Kolt Curry, Laura Mateyak, Gregory J. Curry, American Heritage Stock Transfer Inc., American Heritage Stock Transfer, Inc., BFM Industries Inc., Liquid Gold International Inc., and Nanotech Industries Inc.** s. 127 J. Feasby in attendance for Staff Panel: JDC
November 13, 2012 10:00 a.m.	**Knowledge First Financial Inc.** s. 127 M. Vaillancourt/D. Ferris in attendance for Staff Panel: JEAT
November 16, 2012 10:00 a.m.	**Roger Carl Schoer** s. 21.7 C. Johnson in attendance for Staff Panel: JEAT
November 21 – December 3 and December 5-14, 2012 10:00 a.m.	**Bernard Boily** s. 127 and 127.1 M. Vaillancourt/U. Sheikh in attendance for Staff Panel: TBA
November 22, 2012 11:30 a.m.	**Heritage Education Funds Inc.** s. 127 M. Vaillancourt/D. Ferris in attendance for Staff Panel: JEAT
November 27-28, 2012 10:00 a.m.	**Simply Wealth Financial Group Inc., Naida Allarde, Bernardo Giangrosso, K&S Global Wealth Creative Strategies Inc., Kevin Persaud, Maxine Lobban and Wayne Lobban** s. 127 and 127.1 C. Johnson in attendance for Staff Panel: JDC

December 4, 2012 3:30 p.m.	**Global Consulting and Financial Services, Crown Capital Management Corporation, Canadian Private Audit Service, Executive Asset Management, Michael Chomica, Peter Siklos (Also Known As Peter Kuti), Jan Chomica, and Lorne Banks** s. 127 H. Craig/C. Rossi in attendance for Staff Panel: CP
December 5, 2012 10:00 a.m.	**Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjaiants, Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd., Cambridge Resources Corporation, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group** s. 127 and 127.1 D. Campbell in attendance for Staff Panel: VK
December 11, 2012 9:00 a.m.	**Systematech Solutions Inc., April Vuong and Hao Quach** s. 127 D. Ferris in attendance for Staff Panel: EPK
December 20, 2012 10:00 a.m.	**New Hudson Television Corporation, New Hudson Television L.L.C. & James Dmitry Salganov** s. 127 C. Watson in attendance for Staff Panel: TBA
January 7-14, January 16-28 and January 30- February 5, 2013 10:00 a.m.	**Jowdat Waheed and Bruce Walter** s. 127 J. Lynch in attendance for Staff Panel: TBA
January 21-28 and January 30-February 1, 2013 10:00 a.m.	**Moncasa Capital Corporation and John Frederick Collins** s. 127 T. Center in attendance for Staff Panel: TBA
January 23-25 and January 30-31, 2013 10:00 a.m.	**Sage Investment Group, C.A.D.E Resources Group Inc., Greenstone Financial Group, Fidelity Financial Group, Antonio Carlos Neto David Oliveira, and Anne Marie Ridley** s. 127 C. Watson in attendance for Staff Panel: TBA
February 1, 2013 10:00 a.m.	**Ground Wealth Inc., Armadillo Energy Inc., Paul Schuett, Doug DeBoer, James Linde, Susan Lawson, Michelle Dunk, Adrion Smith, Bianca Soto and Terry Reichert** s. 127 S. Schumacher in attendance for Staff Panel: TBA
February 4-11 and February 13, 2013 10:00 a.m.	**Alexander Christ Doulis (aka Alexander Christos Doulis, aka Alexandros Christodoulidis) and Liberty Consulting Ltd.** s. 127 J. Feasby in attendance for Staff Panel: TBA

February 11, February 13-15, February 19-25 and February 27 – March 6, 2013 10:00 a.m.	**David Charles Phillips and John Russell Wilson** s. 127 Y. Chisholm in attendance for Staff Panel: TBA
March 18-25, March 27-28, April 1-5 and April 24-25, 2013 10:00 a.m.	**Peter Sbaraglia** s. 127 J. Lynch in attendance for Staff Panel: CP
March 18-25 and March 27-28, 2013 10:00 a.m.	**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
April 11-22 and April 24, 2013 10:00 a.m.	**Morgan Dragon Development Corp., John Cheong (aka Kim Meng Cheong), Herman Tse, Devon Ricketts and Mark Griffiths** s. 127 J. Feasby in attendance for Staff Panel: TBA
April 29 – May 6 and May 8-10, 2013 10:00 a.m.	**North American Financial Group Inc., North American Capital Inc., Alexander Flavio Arconti, and Luigino Arconti** s. 127 M. Vaillancourt in attendance for Staff Panel: TBA
September 16-23, September 25 – October 7, October 9-21, October 23 – November 4, November 6-18, November 20 – December 2, December 4-16 and December 18-20, 2013 10:00 a.m.	**Eda Marie Agueci, Dennis Wing, Santo Iacono, Josephine Raponi, Kimberley Stephany, Henry Fiorillo, Giuseppe (Joseph) Fiorini, John Serpa, Ian Telfer, Jacob Gornitzki and Pollen Services Limited** s. 127 J, Waechter/U. Sheikh in attendance for Staff Panel: TBA
TBA	**Yama Abdullah Yaqeen** s. 8(2) J. Superina in attendance for Staff Panel: TBA
TBA	**Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell** s. 127 J. Waechter in attendance for Staff Panel: TBA
TBA	**Frank Dunn, Douglas Beatty, Michael Gollogly** s. 127 K. Daniels in attendance for Staff Panel: TBA
TBA	**MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric** s. 127 and 127(1) D. Ferris in attendance for Staff Panel: TBA

TBA

Gold-Quest International, 1725587 Ontario Inc. carrying on business as Health and Harmoney, Harmoney Club Inc., Donald Iain Buchanan, Lisa Buchanan and Sandra Gale

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA

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

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA

Brilliante Brasilcan Resources Corp., York Rio Resources Inc., Brian W. Aidelman, Jason Georgiadis, Richard Taylor and Victor York

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA

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

s. 127

T. Center/D. Campbell in attendance for Staff

Panel: TBA

TBA

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

s. 127

H. Craig/C.Rossi in attendance for Staff

Panel: TBA

TBA

Axcess Automation LLC, Axcess Fund Management, LLC, Axcess Fund, L.P., Gordon Alan Driver, David Rutledge, 6845941 Canada Inc. carrying on business as Anesis Investments, Steven M. Taylor, Berkshire Management Services Inc. carrying on business as International Communication Strategies, 1303066 Ontario Ltd. Carrying on business as ACG Graphic Communications, Montecassino Management Corporation, Reynold Mainse, World Class Communications Inc. and Ronald Mainse

s. 127

Y. Chisholm in attendance for Staff

Panel: TBA

TBA

FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun

s. 127

C. Price in attendance for Staff

Panel: TBA

TBA

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

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

s. 127

A. Perschy/A. Pelletier 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

TBA **David Charles Phillips**

s. 127

Y. Chisholm in attendance for Staff

Panel: TBA

TBA **Children's Education Funds Inc.**

s. 127

D. Ferris in attendance for Staff

Panel: TBA

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

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

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

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

1.1.2 Notice of Correction – Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)

Schedule "A" was inadvertently omitted from *Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)*. published on September 13, 2012, at (2012), 35 OSCB 8417. Schedule "A" is reproduced below.

SCHEDULE "A"

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)

AND

IN THE MATTER OF A
SETTLEMENT AGREEMENT
BETWEEN STAFF OF THE ONTARIO SECURITIES COMMISSION
AND VINCENT CICCONE

ORDER
(Subsections 127(1) and 127.1(1))

WHEREAS on October 3, 2011, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing (the "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 the allegations set out in the Statement of Allegations of Staff of the Commission ("Staff") dated September 30, 2011;

AND WHEREAS on May 3, 2012, the Notice of Hearing was amended (the "Amended Notice of Hearing") and on May 2, 2012 the Statement of Allegations was amended (the "Amended Statement of Allegations");

AND WHEREAS Vincent Ciccone ("Ciccone") entered into a Settlement Agreement with Staff of the Commission dated September 5, 2012 (the "Settlement Agreement") in which Ciccone agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing and as amended by the Amended Notice of Hearing, subject to the approval of the Commission;

AND WHEREAS on September 5, 2012, the Commission issued a notice of hearing pursuant to sections 127 and 127.1 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a settlement agreement entered into between Staff and Ciccone;

AND UPON reviewing the Settlement Agreement, the Amended Notice of Hearing, and the amended Statement of Allegations of Staff, and upon hearing submissions from Staff and counsel for Ciccone;

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

IT IS HEREBY ORDERED THAT:

(a) the Settlement Agreement is approved;

(b) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Ciccone cease permanently from the date of this Order;

(c) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of securities by Ciccone is prohibited permanently from the date of this Order;

(d) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Ciccone permanently from the date of this Order;

(e) pursuant to clause 6 of subsection 127(1) of the Act, Ciccone is reprimanded;

(f) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, Ciccone is prohibited permanently from the date of this Order from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;

(g) pursuant to clause 8.5 of subsection 127(1) of the Act, Ciccone is prohibited permanently from the date of this Order from becoming or acting as a registrant, an investment fund manager or a promoter;

(h) pursuant to clause 9 of subsection 127(1) of the Act, Ciccone shall pay to the Commission an administrative penalty in the amount of $750,000 for his failure to comply with Ontario securities law, which is designated for allocation to or for the benefit of third parties or for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets, in accordance with subsection 3.4(2) of the Act;

(i) pursuant to clause 10 of subsection 127(1) of the Act, Ciccone shall disgorge to the Commission the amount of $15,497,586 obtained as a result of his non-compliance with Ontario securities law which is designated for allocation to or for the benefit of third parties or for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets, in accordance with subsection 3.4(2) of the Act; and

(j) pursuant to section 127.1 of the Act, Ciccone shall pay costs to the Commission in the amount of $100,000.

DATED AT TORONTO this _____ day of September, 2012.

_____

1.1.3 Notice of Correction – New Found Freedom Financial et al.

Schedule "A" was inadvertently omitted from *New Found Freedom Financial et al.*, published on September 13, 2012, at (2012), 35 OSCB 8424. Schedule "A" is reproduced below.

SCHEDULE "A"

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

AND

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

ORDER

WHEREAS on November 2, 2011, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act,* R.S.O. 1990, c. S.5, as amended (the "Act"), in connection with the allegations set out in the Statement of Allegations filed by Staff of the Commission ("Staff") on November 1, 2011;

AND WHEREAS David Whidden ("Whidden") entered into a settlement agreement with Staff dated • (the "Settlement Agreement") in relation to the matters set out in the Statement of Allegations;

AND WHEREAS on •, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve the Settlement Agreement;

AND UPON reviewing the Settlement Agreement, the Notice of Hearing, and the Statement of Allegations, and upon hearing submissions from Staff and from Whidden;

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

IT IS HEREBY ORDERED, PURSUANT TO SECTION 127(1) OF THE ACT, THAT:

(a) the Settlement Agreement is approved;

(b) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Whidden shall cease for a period of four (4) years commencing from the date of this Order, with the exception that, once the entire amount set out in paragraph (i) below is paid in full, Whidden shall be permitted to trade securities for the account of his registered retirement savings plans and his registered pension plan as defined in the *Income Tax Act,* R.S.C. 1985, c.1, as amended (the "*Income Tax Act*") solely through a registered dealer or, as appropriate, a registered dealer in a foreign jurisdiction (which dealer must be given a copy of this Order) in (a) any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101 provided that he does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities, or (b) any security issued by a mutual fund that is a reporting issuer;

(c) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Whidden is prohibited for a period of four (4) years commencing from the date of this Order, with the exception that Whidden shall be permitted to acquire securities for the account of his registered retirement savings plans and his registered pension plan as defined in the *Income Tax Act* once the entire amount set out in paragraph (i) below is paid in full, in accordance with the exception requirements as set out in paragraph (b) above;

(d) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Whidden for a period of four (4) years commencing from the date of this Order, except to the extent such exemption is necessary for trades undertaken in connection with his registered retirement savings plans and his registered pension plan as defined in the *Income Tax Act*, once the entire amount set out in paragraph (i) below is paid in full;

(e) pursuant to clause 6 of subsection 127(1) of the Act, Whidden is reprimanded;

(f) pursuant to clause 7 of subsection 127(1) of the Act, Whidden shall resign any positions he holds as a director or officer of an issuer, with the exception that Whidden may continue his activities as a director and officer of Alternative Strategies by DAW Inc. and Profitable Giving Canada as those activities relate to charitable gifting arrangements, excluding any such arrangements involving securities;

(g) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, Whidden is prohibited for a period of four (4) years from the date of this Order from becoming or acting as a director or officer of an issuer, registrant or investment fund manager, with the exception that Whidden may continue his activities as a director and officer of Alternative Strategies by DAW Inc. and Profitable Giving Canada as those activities relate to charitable gifting arrangements, excluding any such arrangements involving securities;

(h) pursuant to clause 8.5 of subsection 127(1) of the Act, Whidden is prohibited for a period of four (4) years from the date of this Order from becoming or acting as a registrant, investment fund manager or promoter; and

(i) pursuant to clause 9 of subsection 127(1) of the Act, Whidden shall pay to the Commission an administrative penalty in the amount of $6,000 for his failure to comply with Ontario securities law, which is designated under subsection 3.4(2)(b) of the Act for allocation to or for the benefit of third parties.

DATED at Toronto this _____ day of •, 2012

_____

1.2 Notices of Hearing

1.2.1 Children's Education Funds Inc.

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

AND

IN THE MATTER OF
CHILDREN'S EDUCATION FUNDS INC.

NOTICE OF HEARING

WHEREAS on September 14, 2012, the Ontario Securities Commission (the "Commission") issued a temporary order (the "Temporary Order") pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act");

AND WHEREAS the Temporary Order ordered terms and conditions imposed on the registration of Children's Education Funds Inc. ("CEFI");

TAKE NOTICE THAT the Commission will hold a hearing (the "Hearing") pursuant to section 127 of the Act at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room on Wednesday, September 26, 2012 at 10:00 a.m., or as soon thereafter as the hearing can be held;

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

(a) extend the Temporary Order; and

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

BY REASON OF such allegations and evidence as counsel may advise and the Commission may permit;

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

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

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

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

1.3 News Releases

1.3.1 OSC Panel Issues Sanctions Against Abel Da Silva for Breaches of the Securities Act

FOR IMMEDIATE RELEASE
September 25, 2012

OSC PANEL ISSUES SANCTIONS AGAINST
ABEL DA SILVA FOR BREACHES OF
THE SECURITIES ACT

TORONTO – A panel of the Ontario Securities Commission (OSC) today released its Reasons and Decision on Sanctions and Costs against Abel Da Silva ("Da Silva"). In a June 22, 2011 decision on the merits, the Commission found that Da Silva misled staff of the OSC and breached an OSC Cease Trade Order by trading in securities of Colby Cooper Inc.

In today's decision on sanctions and costs, the OSC panel made protective orders permanently banning Da Silva from trading in or acquiring securities, or becoming or acting as a director or officer of an issuer, registrant, investment fund manager or promoter. The OSC panel also ordered that Da Silva pay an administrative penalty of $250,000, disgorge the $45,280 he obtained as a result of his non-compliance with Ontario securities law, and pay $52,470.25 in costs to the OSC.

The panel referred to Da Silva as a recidivist and found that "an order restricting his activities in capital markets will send a message to other like-minded individuals that involvement in this type of conduct will result in sanctions by the Commission."

A copy of the Reasons and Decision on Sanctions and Costs and the Reasons and Decision on the Hearing on the Merits Held in Writing are available on the OSC website at www.osc.gov.on.ca.

The mandate of the OSC is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets. Investors are urged to check the registration of any person or company offering an investment opportunity and to review the OSC's investor materials available at www.osc.gov.on.ca.

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

Follow us on Twitter: OSC_News

For Investor Inquiries:

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

1.3.2 OSC Requests Members for the New Registrant Advisory Committee

FOR IMMEDIATE RELEASE
September 26, 2012

OSC REQUESTS MEMBERS FOR THE NEW REGISTRANT ADVISORY COMMITTEE

TORONTO – The Ontario Securities Commission (OSC) is seeking applicants for membership on its new Registrant Advisory Committee (RAC).

In recognizing the importance of consulting with our stakeholders, the OSC's RAC will serve as a forum to discuss issues and challenges faced by registrants in interpreting and complying with Ontario securities law, including registration and compliance related matters.

The Committee will also play a consultative role by providing feedback to the OSC on the development and implementation of policy and rule making initiatives that promote investor protection and fair and efficient capital markets.

The RAC will meet approximately 4 to 6 times per year, in addition to possible ad hoc meetings as required. The Committee will consist of 10 to 12 members representing the different registration categories and business models overseen by the OSC. Membership terms for the RAC will vary between 12 and 24 months.

The RAC will be co-chaired by Erez Blumberger, Deputy Director, Compliance and Registrant Regulation and Felicia Tedesco, Manager, Compliance and Registrant Regulation.

Interested parties should submit their application indicating their relevant experience by **October 19, 2012**.

Applications and questions regarding the RAC may be forwarded in writing to:

Erez Blumberger
Deputy Director, Compliance and Registrant Regulation
Ontario Securities Commission
416-593-3662
eblumberger@osc.gov.on.ca

Felicia Tedesco
Manager, Compliance and Registrant Regulation
Ontario Securities Commission
416-593-8273
ftedesco@osc.gov.on.ca

Merzana Martinakis
Senior Accountant, Compliance and Registrant Regulation
Ontario Securities Commission
416-593-2398
mmartinakis@osc.gov.on.ca

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

Follow us on Twitter: OSC_News

For Investor Inquiries:

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

1.4 Notices from the Office of the Secretary

1.4.1 Heir Home Equity Investment Rewards Inc. et al.

FOR IMMEDIATE RELEASE
September 19, 2012

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

AND

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

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

1. The hearing on the merits in this matter will commence on November 5, 2012 and will continue thereafter on November 7-9, 12-16, 19, 21-23, and 26-30 inclusive;

2. A further pre-hearing conference is scheduled for October 5, 2012 at 10:00 a.m.; and

3. All parties to this proceeding are to provide notice of their intention to bring any pre-hearing motions in this matter by no later than October 5, 2012.

A copy of the Order dated September 14, 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 David Charles Phillips

FOR IMMEDIATE RELEASE
September 19, 2012

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

AND

IN THE MATTER OF
DAVID CHARLES PHILLIPS

TORONTO – Take notice that a hearing will be held on September 27, 2012 at 2:00 p.m. in the above noted matter to consider the Temporary Order dated May 15, 2012, as varied.

A copy of the Order dated June 6, 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)

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

FOR IMMEDIATE RELEASE
September 20, 2012

N 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 the hearing on the merits in this matter is adjourned to September 20, 2012, at 10:00 a.m.; and the hearing dates of September 14 and 19, 2012, are vacated;

A copy of the Order dated September 13, 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)

1.4.4 Eda Marie Agueci et al.

FOR IMMEDIATE RELEASE
September 21, 2012

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

AND

IN THE MATTER OF
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

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

1. A motion by the respondent Dennis Wing concerning Staff disclosure and a motion by Staff concerning service on Pollen Services Limited shall be heard on November 13 and 14, 2012;

2. A further confidential pre-hearing conference shall take place on December 17, 2012 at 10:00 a.m.; and

3. The hearing on the merits shall commence on September 16, 2013 and continue through to December 20, 2013, with the exception of September 24, 2013 and every second Tuesday thereafter, and with the further exception of other days that may be agreed to by the parties and the Commission.

A copy of the Order dated September 12, 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)

1.4.5 Sino-Forest Corporation et al.

FOR IMMEDIATE RELEASE
September 21, 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 Commission issued an Order in the above named matter which provides that, pursuant to section 144 of the Act, the Temporary Order be and is hereby varied solely to permit the distribution of the CCAA Materials to all potential creditors, including Noteholders of the Issuer.

A copy of the Order dated September 18, 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)

1.4.6 Children's Education Funds Inc.

FOR IMMEDIATE RELEASE
September 21, 2012

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

AND

IN THE MATTER OF
CHILDREN'S EDUCATION FUNDS INC.

TORONTO – The Office of the Secretary issued a Notice of Hearing on September 20, 2012 setting the matter down to be heard on September 26, 2012 at 10:00 a.m. to consider whether it is in the public interest, pursuant to subsections 127(7) and (8) of the Act, for the Commission to:

(a) extend the Temporary Order; and

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

A copy of the Notice of Hearing dated September 20, 2012 and Temporary Order dated September 14, 2012 are 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)

1.4.7 2196768 Ontario Ltd et al.

FOR IMMEDIATE RELEASE
September 21, 2012

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

AND

IN THE MATTER OF
2196768 ONTARIO LTD
carrying on business as RARE INVESTMENTS,
RAMADHAR DOOKHIE, ADIL SUNDERJI
and EVGUENI TODOROV

TORONTO – The Commission issued an Order in the above named matter which provides that the hearing on the merits shall commence on Monday, March 18, 2013 and continue on March 19, 20, 21, 22, 25, 27, and 28, 2013.

A copy of the Order dated September 14, 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)

1.4.8 Morgan Dragon Development Corp. et al.

FOR IMMEDIATE RELEASE
September 24, 2012

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

AND

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

TORONTO – The Commission issued an Order in the above named matter which provides that (1) a confidential pre-hearing conference will be held on January 11, 2013, at 10:00 a.m.; and (2) the hearing on the merits in this matter will commence on April 11, 2013, and continue on April 12, 15 to 19, 22 and 24, 2013, commencing at 10:00 a.m. on each day.

A copy of the Order dated September 20, 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)

1.4.9 Abel Da Silva

FOR IMMEDIATE RELEASE
September 25, 2012

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

AND

IN THE MATTER OF
ABEL DA SILVA

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

A copy of the Reasons for Decision on Sanctions and Costs and the Order dated September 24, 2012 are 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)

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 New Flyer Industries Canada ULC – s. 1(10)(a)(ii)

Headnote

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

Applicable Legislative Provisions

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

September 19, 2012

New Flyer Industries Canada ULC
711 Kernaghan Avenue
Winnipeg, Manitoba
R2C 3T4 Canada

Dear Sirs/Mesdames:

Re: New Flyer Industries Canada ULC (the Applicant) – application for a decision under the securities legislation of Ontario, Alberta, Manitoba, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut and Yukon (the Jurisdictions) that the Applicant is not a reporting issuer

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

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

The Applicant has represented to the Decision Makers that:

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

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

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

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

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

"Lisa Enright"
Manager, Corporate Finance
Ontario Securities Commission

2.1.2 CIC Energy Corp. – s. 1(10)(a)(ii)

Headnote

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

Applicable Legislative Provisions

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

September 19, 2012

Jindal (BVI) Ltd.
c/o Stikeman Elliott LLP
5300 Commerce Court
199 Bay Street
Toronto, Ontario M5L 1B9

Dear Sirs/Mesdames:

Re: CIC Energy Corp. (the Applicant) – application for an order under subclause 1(10)(a)(ii) of the *Securities Act* (Ontario)(the Act) that the Applicant is not a reporting issuer

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

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

The Applicant has represented to the Commission that:

(a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in Ontario 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 not in default of any of its obligations under the Legislation as a reporting issuer; and

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

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

"Lisa Enright"
Manager, Ontario Securities Commission
Ontario Securities Commission

2.1.3 CPA Securities Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – paragraph 4.1(1)(b) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – a registered firm must not permit an individual to act as a dealing, advising or associate advising representative of the registered firm if the individual is registered as a dealing, advising or associate advising representative of another registered firm – Filers are affiliated entities and have valid business reasons for an individual to be registered with both firms – individual has time to serve both registered firms – policies in place to handle potential conflicts of interest – clients provided disclosure regarding the dual registration - Filers exempted from prohibition for a limited period of time.

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 19, 2012

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

and

IN THE MATTER OF
CPA SECURITIES INC. (CPA) AND
WATERSTREET FAMILY CAPITAL
COUNSEL INC. (WFCCI)
AND ROGER LYDIATT (Lydiatt)
(collectively, the Filers)

DECISION

Background

The 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**) (the **Relief Sought**) to permit Lydiatt who is currently registered as an advising representative of WFCCI to be registered as an advising representative of CPA (the **Dual Registration**) for a limited period of time to facilitate the merger of the businesses.

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

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

(ii) the Filer has provided notice that the subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon by the Filers in Alberta, British Columbia, Ontario and Quebec (collectively with Ontario, the **Jurisdictions**).

Interpretation

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

Representations

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

1. WFCCI is registered as a portfolio manager and exempt market dealer in Ontario and as a portfolio manager in Alberta and British Columbia. The head office of WFCCI is in Toronto, Ontario.

2. CPA is registered as an investment dealer in Alberta, British Columbia, Ontario and Quebec and is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**). The head office of CPA is in Toronto, Ontario.

3. CPA and WFCCI are in the process of merging the two legal entities. It is anticipated that the merger will be completed in approximately 12 to 18 months.

4. Each of the Filers are wholly owned by the Bank of Nova Scotia, and are therefore affiliates.

5. Neither of the Filers is in default of any requirements of securities legislation in any jurisdiction of Canada.

6. Lydiatt is a resident of Alberta and is currently registered as an advising representative with WFCCI. Lydiatt is applying for registration as a registered representative with CPA to have the ability to accept client trade requests, provide advice on those requests, and assess trade and portfolio suitability at the time of the request and on an ongoing basis.

7. WFCCI manages accredited investor client accounts on a discretionary basis. WFCCI primarily employs sub-advisors to facilitate client portfolio construction and invests clients in sub-advisors pooled funds and in limited partnership units.

8. CPA is an investment dealer whose clients are invested in separately managed accounts and in mutual funds. CPA is one of several corporate

entities which comprise WaterStreet Family Offices (**WFO**). WFO manages the wealth and affairs of its clients by providing personalized investment, accounting and tax advice. CPA's role is restricted to providing investment services to existing clients of WFO by facilitating investment in investment products offered by third party providers. CPA will only sell investment products approved by CPA.

9. Currently, CPA's clients in Alberta and in British Columbia are being serviced out of the Ontario office. This temporary dual registration would permit Lydiatt to service the clients in Alberta and British Columbia.

10. Lydiatt has the capacity, proficiency, skill and investment knowledge to service these clients. During the transition period, Lydiatt would not be actively soliciting CPA client orders, but would only help to facilitate client requests. He understands the product offering of CPA. At the same time, Lydiatt's current client account base with WFCCI is not overly time consuming as the business is still growing. Lydiatt would therefore be able to service the accounts with both Filers during the transition period.

11. During the transition period, Lydiatt will be subject to supervision by, and the applicable compliance requirements of, both Filers.

12. Both businesses operate from the same office location, they will be merging the legal entities but the business lines of CPA and WFCCI will continue to operate separately.

13. As Lydiatt will be advising and trading with different client bases in his dual role, there is minimal potential for conflicts of interest. Moreover, because the Filers are majority-owned subsidiaries of the same ultimate parent company, the Dual Registration of Lydiatt will not give rise to the conflicts of interest present in a similar arrangement involving unrelated, arms-length firms.

14. The Filers have in place written policies and procedures to address any potential conflicts of interest that may arise in their business, and believe that they will be able to appropriately deal with these conflicts.

15. The Dual Registration will be disclosed to clients of CPA and WFCCI.

16. In the absence of the Requested Relief, the Filers would be prohibited under paragraph 4.1(1)(b) of NI 31-103 from permitting an advising representative of WFCCI to act as a registered representative of CPA, even though CPA and WFCCI are affiliated.

Decision

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

The decision of the regulator under the Legislation is that the Relief Sought is granted for a period of 18 months from the date of this decision

"Pat Chaukos"
Manager, Compliance and Registrant Regulation
Ontario Securities Commission

2.1.4 Excel Funds Management Inc. and Excel EM Capital Income Fund

Headnote

National Policy 11-203 – Process for Exemptive Relief applications in Multiple Jurisdictions – Mutual funds granted relief from certain restrictions in National Instrument 81-102 Mutual Funds on securities lending transactions, including (i) the 50% limit on lending; (ii) the requirement to use the fund's custodian or sub-custodian as lending agent; and (iii) the requirement to hold the collateral during the course of the transaction – Mutual funds invest their assets in a basket of Canadian equity securities that are pledged to a Counterparty for performance of the funds' obligations under forward contracts giving the funds exposure to underlying interests – Mutual funds wanting to lend 100% of the basket of Canadian equity securities – not practical for custodian to act as securities lending agent as it does not have possession of, or control over, the Canadian equity securities – counterparties must release its security interest in the Canadian equity securities in order to allow the funds to lend such securities, provided the funds grant the Counterparties a securities interest in the collateral held by the fund for the loaned securities – National Instrument 81-102 Mutual Funds.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.12(1)1, 2.12(1)2, 2.12(1)12, 2.12(3), 2.15, 2.16, 6.8(5), 19.1.

September 19, 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
EXCEL FUNDS MANAGEMENT INC.
(the "Filer")

AND

EXCEL EM CAPITAL INCOME FUND
(the "Present Fund")

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 exemptive relief for the Present Fund, together with all other mutual funds now or in the future managed by the Filer in respect of which the representations set out below are applicable (collectively, the "**Funds**" and each a "**Fund**"), from the following provisions of National Instrument 81-102 Mutual Funds ("**NI 81-102**"):

1. subsection 2.12(1)1 of NI 81-102 to permit each Fund to enter into securities lending transactions that will not be administered in compliance with all the requirements of sections 2.15 and 2.16 of NI 81-102;

2. subsection 2.12(1)2 of NI 81-102 to permit each Fund to enter into securities lending transactions that do not fully comply with all the requirements of section 2.12 of NI 81-102;

3. subsection 2.12(1)12 of NI 81-102 to permit each Fund to enter into securities lending transactions in which the aggregate market value of securities loaned by the Fund exceeds 50% of the total assets of the Fund;

4. subsection 2.12(3) of NI 81-102 to permit each Fund, during the term of a securities lending transaction, to not hold or to dispose of any non-cash collateral delivered to it as collateral in the transaction;

5. section 2.15 of NI 81-102 to permit each Fund to appoint an agent, other than the custodian or sub-custodian of the Fund, as agent for administering the securities lending transactions entered into by the Fund ("**Agent**");

6. section 2.16 of NI 81-102 to the extent this section contemplates that securities lending transactions be entered into through an agent appointed under section 2.15 of NI 81-102; and

7. subsection 6.8(5) of NI 81-102 to permit the collateral delivered to each Fund in connection with a securities lending transaction not to be held under the custodianship of a custodian or a sub-custodian of the Fund.

Paragraphs 1 through 7 are collectively referred to as the **Exemption Sought**.

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

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

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

Defined Terms

Terms defined in NI 81-102, National Instrument 14-101 – *Definitions* and MI 11-102 have the same meaning in this Decision unless they are defined in this Decision.

Representations

This Decision is based on the following facts represented by the Filer on behalf of each Fund:

Facts

1. The Filer is a corporation incorporated under the laws of Ontario and is registered in the category of Investment Fund Manager in Ontario. The Filer's head office is in Mississauga, Ontario.

2. The Filer is the manager, trustee and promoter of the Fund and is not in default of the Legislation.

3. Each Fund is a mutual fund to which NI 81-102 applies. Securities of Series A and F of the Present Fund are currently qualified for sale by fund facts, simplified prospectus and annual information form dated September 30, 2011 that has been prepared and filed and receipted in all Jurisdictions.

4. Each Fund is or will be a reporting issuer in all of the Jurisdictions and is not in default under the securities legislation in force in any Jurisdiction.

5. The Present Fund's investment objective is to achieve returns that are similar to an emerging market bond fund that invests primarily in fixed and floating-rate debt securities issued by corporations, governments, or government related entities of developing or emerging nations, less transactions and hedging costs. The Present Fund's investment objectives state that it may use specified derivatives to seek to provide these returns.

6. Each Fund's investment objective will be to achieve returns that are similar to another mutual fund and each Fund may use specified derivatives to seek to provide these returns.

7. Each Fund invests its assets in equity securities of Canadian public issuers ("**Equity Portfolio**") that are Canadian securities for the purposes of the *Income Tax Act* (Canada). The Equity Portfolio is a static portfolio that is not actively managed except in limited circumstances. Each Fund also enters into forward contracts with one or more financial institutions (each a "**Counterparty**") to effectively replace the economic return on its Equity Portfolio with the economic return on another mutual fund (the "**Reference Fund**") to achieve the Fund's investment objective.

8. Each Fund pledges its Equity Portfolio to the Counterparty (or the portion thereof that is subject to the relevant forward contract with that Counterparty) as collateral security for performance of the Fund's obligations under its forward contract with that Counterparty. The Equity Portfolio (or that portion thereof) is held by the Counterparty as security for the Fund's obligations pursuant to that applicable forward contract.

9. The Filer proposes to engage in securities lending transactions on behalf of each Fund that may represent up to 100% of the net assets of that Fund, in order to earn additional returns for that Fund. The Filer proposes to arrange for the Equity Portfolio to be lent to one or more borrowers indirectly through one or more Agents, other than the Fund's custodian or sub-custodian.

10. Each Agent shall be acceptable to the Fund and Counterparty and shall be either a Canadian financial institution (including a Counterparty) or an affiliate of a Canadian financial institution. It is not commercially practical for the Fund's custodian to act as Agent with respect to the Fund's securities lending transactions as the custodian will not have control over the Fund's Equity Portfolio for the reason set out in paragraph 8 above.

11. The Filer will ensure that any Agent through which a Fund lends securities maintains appropriate internal controls, procedures, and records for securities lending transactions as prescribed in subsection 2.16(2) of NI 81-102.

12. A Counterparty must release its security interest in the securities in the Equity Portfolio of the Fund in order to allow the Fund to lend such securities, but will only do so provided that the Fund grants the Counterparty a security interest in the collateral held by the Fund pursuant to the security lending transaction.

13. To facilitate the Counterparty's release of its security interest in the securities of the Equity Portfolio of a Fund, securities in the Equity Portfolio will be loaned only to borrowers that are acceptable to the Fund and the Counterparty, and that have an "approved credit rating" as defined in NI 81-102 or whose obligations are unconditionally guaranteed by persons or companies that have such a credit rating.

14. A borrower may include an affiliate of the Counterparty. Whether the borrower is an affiliate or not an affiliate of the Counterparty or the Agent will not affect the revenues from securities lending transactions received by the Fund.

15. To facilitate the Counterparty's perfection of its security interest in the collateral for the loaned securities, the Filer will ensure that such collateral is held by a registered dealer and member of the Investment Industry Regulatory Organization of Canada (IIROC).

16. The collateral received by a Fund in respect of a securities lending transaction, and in which the Counterparty will have a security interest, will be in the form of cash, qualified securities and/or other collateral permitted by NI 81-102, other than collateral described in subsection 2.12(1)6(d) or in paragraph (b) of the definition of "qualified security". The non-cash collateral will be held by the Agent in the name of the Fund and will not be reinvested in any other types of investment products.

17. Revenue generated from a Fund's securities lending transactions will be paid to such Fund.

18. The Filer will ensure that the Agent administering the securities lending transaction of each Fund is subject to the standard of care prescribed in subsection 2.15(5) of NI 81-102.

19. The prospectus of each Fund discloses that the Fund may enter into securities lending transactions. Other than as set forth herein, any securities lending transactions on behalf of the Fund will be conducted in accordance with the provisions of NI 81-102.

Decision

The principal regulator is satisfied that the test contained in the Legislation that provides the principal regulator with the jurisdiction to make the decision has been met.

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

(a) with respect to the exemption from subsection 2.12(1)12 of NI 81-102, each Fund enters into a forward contract with an applicable Counterparty and grants that Counterparty a security interest in the securities subject to that forward contract and, in connection with a securities lending transaction relative to those securities,

(i) receives the collateral that

(A) is prescribed by subsections 2.12(1)3 to 6 of NI 81-102 other than collateral described in subsection 2.12(1)6(d) or in paragraph (b) of the definition of "qualified security";

(B) is marked to market on each business day in accordance with subsection 2.12(1)7 of NI 81-102;

(ii) has the rights set forth in subsections 2.12(1)8, 2.12(1)9 and 2.12(1)11 of NI 81-102;

(iii) complies with subsection 2.12(1)10 of NI 81-102; and

(iv) lends its securities only to borrowers that are acceptable to the Fund and the Counterparty, and that have an approved credit rating (as defined in NI 81-102) or whose obligations to the Fund are fully and unconditionally guaranteed by persons or companies that have such a credit rating;

(b) with respect to the exemption from subsection 2.12(3) of NI 81-102, the Fund provides a security interest to the applicable Counterparty in the collateral delivered to it as collateral pursuant to a securities lending transaction as described in representation 12;

(c) with respect to the exemption from section 2.15 of NI 81-102:

(i) each Fund enters into a written agreement with an Agent that complies with each of the requirements set forth in subsection 2.15(4) of NI 81-102, except as set out herein;

(ii) the Agent administering the securities lending transaction of each Fund shall be acceptable to the Fund and Counterparty and shall be either a bank or trust company described in paragraph 1 or 2 of section 6.2 of NI 81-102 or the investment bank affiliate of such bank or trust company that is registered as an investment dealer or in an equivalent registration category;

(d) with respect to the exemption from section 2.16 of NI 81-102, the Filer and the Funds comply with the requirements of section 2.16 of NI 81-102 as if references to an "agent appointed under section 2.15" in that section are references to an "agent appointed by the manager"; and

(e) with respect to the exemption from subsection 6.8(5) of NI 81-102, each Fund:

(i) provides a security interest to the applicable Counterparty in the collateral delivered to it as collateral pursuant to a securities lending transaction as described in representation 12; and

(ii) the collateral delivered to the Fund pursuant to the securities lending transaction is held by a registered dealer and member of the IIROC as described in representation 15.

“Darren McKall”
Manager, Investment Funds Branch
Ontario Securities Commission

2.1.5 Merrill Lynch, Pierce, Fenner & Smith Incorporated

Headnote

Multilateral Instrument 11-102 section 4.7(1) – US broker-dealer registered as exempt market dealer and portfolio manager – Conditions concerning continuing to be registered under the securities legislation of the US – Exemption granted from requirement to file Form 31-103F1 – Conditions concerning filing of SEC Form X-17a-5 (FOCUS Report) in lieu of Form 31-103F1 and notification of any issues – Exemption granted from requirement to prepare financial statements on an audited unconsolidated basis – Exemption granted from requirements to provide annual financial statements on a comparative basis and that at least one director sign the statement of financial position – Filer to deliver the annual financial statements that it files with the SEC and FINRA – Filer must append audited supplemental information to annual audited financial statements that corresponds with line 3480 through to and including line 3910 "Computation of Net Capital" in the FOCUS Report and the auditor's report relating to the Filer's financial statements expresses an unmodified opinion on the supplemental information – Exemption Sought shall expire when Filer's registration as an exempt market dealer is terminated or revoked or on December 31, 2013.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 14-101 Definitions.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 12.1, 12.10, 12.12, 12.13, 15.1.
National Instrument 52-107 Acceptable Accounting Principles and Accounting Standards, ss. 3.15, 5.1.

September 21, 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
MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED
(the "Filer")

DECISION

BACKGROUND

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

(i) for the purposes of section 12.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), permits the Filer to calculate its excess working capital using United States (**U.S.**) Securities and Exchange Commission (**SEC**) Form X-17a-5 (FOCUS Report) (the **FOCUS Report**) rather than Form 31-103F1 *Calculation of Excess Working Capital* (**Form 31-103F1**);

(ii) for the purposes of paragraphs 12.12(1)(b) and 12.13(b) of NI 31-103, permits the Filer to deliver the FOCUS Report in lieu of Form 31-103F1; and

(iii) exempts the Filer from

(a) the requirements of subsection 3.15(b) *Acceptable Accounting Principles for Foreign Registrants* of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107) that financial statements be prepared in accordance with U.S. GAAP, except that any investments in subsidiaries, jointly controlled entities and associates must be accounted for as specified for separate financial statements in International Accounting Standard 27 *Consolidated and Separate Financial Statements* (**IAS 27**), and

(b) the requirements of section 12.10 *Annual financial statements* of NI 31-103 that the Filer prepare a statement of comprehensive income, a statement of changes in equity, a statement of cash flows and a statement of financial position for the financial year immediately preceding the most recently completed financial year and that at least one director of the Filer sign the Filer's statement of financial position,

so long as the Filer delivers to the regulator the annual audited financial statements that it files with the SEC and the Financial Industry Regulatory Authority (**FINRA**).

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta, British Columbia, and Quebec (the **Passport Jurisdictions**, and together with the Jurisdiction, the **Jurisdictions**).

INTERPRETATION

Terms defined in National Instrument 14-101 *Definitions*, NI 52-107, 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

1. The Filer is a corporation formed under the laws of the State of Delaware. The Filer's head office is located in New York, New York, in the U.S. The Filer is a direct, wholly-owned, subsidiary of Merrill Lynch & Co.

2. The Filer is registered in each Jurisdiction as a dealer in the category of exempt market dealer (**EMD**), and as an adviser in the category of portfolio manager (**PM**).

3. The Filer is registered as a broker-dealer and investment adviser with the SEC and is a member of FINRA. The Filer is a member of all major U.S. stock exchanges and U.S. commodity futures exchanges.

4. Among other things, for corporate, institutional, government, individual, and other clients, the Filer: (i) acts as a broker (i.e., agent) and dealer (i.e. principal) in the purchase and sale of debt and equity securities and other financial instruments; (ii) provides discretionary and non-discretionary investment advisory services; and (iii) provides investment banking and other financial services.

5. The Filer does not lend money, extend credit or provide margin to clients in the Jurisdictions.

FOCUS Relief

6. Under section 12.1 of NI 31-103, registered firms are required to calculate their excess working capital using Form 31-103F1.

7. The Filer is subject to regulatory capital requirements under the *Securities Exchange Act of 1934*, specifically SEA Rule 15c3-1 *Net Capital Requirements for Brokers or Dealers* (**SEA Rule 15c3-1**) and SEA Rule 17a-5 *Reports to be Made by Certain Brokers and Dealers* (**SEA Rule 17a-5**), that are designed to provide protections that are substantially similar to the protections provided by the regulations regarding excess working capital to which dealer members of the Investment Industry Regulatory Organization of Canada (**IIROC**) are subject, and the Filer is in compliance in all material respects with SEA Rule 15c3-1. The SEC and FINRA have the responsibility to ensure that the Filer operates in compliance with SEA Rule 15c3-1.

8. The Filer is required to prepare and file a FOCUS Report with U.S. regulators, which is the financial and operational report containing a net capital calculation.

9. The FOCUS Report provides a more comprehensive description of the business activities of the Filer, and more accurately reflects those activities including client lending activity, than would be provided by Form 31-103F1. The minimum capital requirements prescribed by SEA Rule 15c3-1 applicable to the Filer are a substantially greater amount than the minimum capital requirements applicable to a registered PM and EMD under subsection 12.1(3) of NI 31-103.

Financial Statements Relief

10. The Filer is subject to certain U.S. reporting requirements under SEA Rule 17a-5, including the requirement to prepare and file annual audited financial statements. SEA Rule 17a-5 requires that the annual audited financial statements of the Filer be filed with the SEC and FINRA.

11. The SEC currently permits the Filer to file audited consolidated annual financial statements that are prepared in accordance with U.S. GAAP.

12. Section 12.10 of NI 31-103 provides that annual financial statements delivered to the regulator must include a statement of comprehensive income, a statement of changes in equity, a statement of cash flows, and a statement of financial position for the most recently completed financial year and the financial year immediately preceding the most recently completed financial year, along with notes thereto. Further, section 12.10 of NI 31-103 also requires that the statement of financial position be signed by at least one director of the registered firm.

13. The annual audited financial statements that the Filer prepares and files with the SEC and FINRA are not required to include the statement of comprehensive income, the statement of changes in equity, the statement of cash flows, and the statement of financial position for the financial year immediately preceding the most recently completed financial year, nor is a signature of at least one director of the Filer for the statement of financial position required. These are requirements under section 12.10 of NI 31-103.

14. The accounting principles and methods used to prepare the FOCUS Reports that the Filer delivers in lieu of Form 31-103F1 are consistent with the accounting principles and methods used to prepare the annual audited financial statements that the Filer files with the SEC and FINRA.

15. Audited supplemental information to the Filer's annual audited financial statements, as required by SEA Rule 17a-5, which includes supplemental information that corresponds with line 3480 through to and including line 3910 "Computation of Net Capital" in the FOCUS Report, along with the auditor's report which expresses an unmodified opinion on this supplemental information, would allow the regulator to assess the capital position of the Filer and, therefore, achieve the same regulatory outcomes as the requirements for annual audited financial statements prepared in accordance with subsection 3.15(b) of NI 52-107 and section 12.10 of NI 31-103. Accordingly, it would be burdensome and costly for the Filer, if it was required to prepare and file unconsolidated annual audited financial statements.

DECISION

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

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

(a) the head office or principal place of business of the Filer is in the U.S.;

(b) the Filer is registered under the securities legislation of the U.S. in a category of registration that permits it to carry on the activities in the U.S. that registration as an investment dealer would permit it to carry on in the Jurisdiction;

(c) by virtue of the registration referred to in paragraph (b), including required membership in one or more self-regulatory organizations, the Filer is subject to SEA Rule 15c3-1 and SEA Rule 17a-5 for the preparation of annual financial statements; and that the protections provided by SEA Rule 15c3-1 and SEA Rule 17a-5 in respect of maintaining excess net capital are substantially similar to the protections provided by the capital requirements of IIROC that would be applicable to the Filer if it were registered under the Legislation as an investment dealer and were a member of IIROC;

(d) the Filer submits the FOCUS Report in lieu of Form 31-103F1;

(e) the Filer prepares the FOCUS Report on an unconsolidated basis;

(f) the Filer does not guarantee any debt of a third party;

(g) the Filer gives prompt written notice to the principal regulator of any significant issues arising from analysis by U.S. securities regulators of the FOCUS Report filed by the Filer pursuant to FINRA and SEC requirements;

(h) the Filer gives written notice to the principal regulator immediately if excess net capital as calculated on line 25, page 6 of the FOCUS Report is less than zero, and ensures that such excess net capital is not less than zero for two consecutive days;

(i) the Filer provides the principal regulator with at least five days written notice prior to any repayment of subordinated intercompany debt or termination of a subordination agreement with respect to intercompany debt;

(j) the Filer delivers to the principal regulator no later than the 90th day after the end of its financial year its annual financial statements prepared in accordance with U.S. GAAP as permitted by SEA Rule 17a-5;

(k) the Filer gives prompt written notice to the principal regulator if the Filer has received written notice from the SEC or FINRA of any material non-compliance in the preparation and filing of its annual financial statements pursuant to the requirements of SEA Rule 17a-5;

(l) the Filer appends audited supplemental information to its annual audited financial statements, as required by SEA Rule 17a-5, which includes supplemental information that corresponds with line 3480 through to and including line 3910 "Computation of Net Capital" in the FOCUS Report; and

(m) the auditor's report relating to the Filer's financial statements expresses an unmodified opinion on the supplemental information referred to in paragraph (l).

It is further the decision of the principal regulator that the Exemption Sought shall expire on the date that is the earlier of:

(a) the date that the Filer's registration as an EMD is terminated or revoked; and

(b) December 31, 2013.

"Marrianne Bridge"
Deputy Director, Compliance & Registrant Regulation
Ontario Securities Commission

2.1.6 2930862 Canada Inc. (formerly, BELLUS Health Inc.) – s. 1(10)

Headnote

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

Applicable Legislative Provisions

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

July 6, 2012

2930862 CANADA INC.
6111 Royalmount Avenue
Suite 100
Montréal, Québec, H4P 2T4

Attention: Mr. David Goodman, President

Dear Mr. Goodman:

Re: 2930862 Canada Inc. (formerly, BELLUS Health Inc.) (the "Applicant") – Application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador (the "Jurisdictions") that the Applicant is not a reporting issuer

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

As the Applicant has represented to the Decision Makers that:

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

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

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

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

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

"Louis Morisset"
Superintendent of Securities Markets
Autorité des marchés financiers

2.1.7 Manulife Asset Management Limited et al.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of mutual fund mergers – approval required because mergers do not meet the criteria for per-approval – continuing funds have different investment objectives than terminating funds – certain mergers do not have the same fee structure – certain mergers not a "qualifying exchange" or a tax-deferred transaction under the Income Tax Act – certain continuing funds do not have a simplified prospectus or fund facts documents for certain series that correspond to the terminating funds – those certain series are offered under a prospectus exempt basis only -securityholders provided with timely and adequate disclosure regarding the mergers.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 5.5(1)(b), 5.5(3), 5.6, 5.7(1)(b), 19.1.

September 21, 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
MANULIFE ASSET MANAGEMENT LIMITED
(the "Filer")

AND

IN THE MATTER OF
MANULIFE GLOBAL ADVANTAGE FUND
MANULIFE SECTOR ROTATION FUND
MANULIFE CANADIAN CORE FUND
MANULIFE CANADIAN EQUITY FUND
MANULIFE EUROPEAN OPPORTUNITIES FUND
MANULIFE SIMPLICITY AGGRESSIVE PORTFOLIO
MANULIFE CANADIAN CORE CLASS
MANULIFE CANADIAN EQUITY CLASS
(each a "Terminating Fund" and, collectively,
the "Terminating Funds")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer and the Terminating Funds for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") for approval of the mergers (the "Mergers") of the Terminating Funds into the applicable Continuing Funds (as defined below) under subsection 5.5(1)(b) of National Instrument 81-102 – *Mutual Funds* ("**NI 81-102**").

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 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, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

Interpretation

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

Representations

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

1. The Filer is a corporation governed under the *Business Corporations Act* (Ontario) with its head office located in Toronto, Ontario.

2. The Filer is registered in the categories of commodity trading manager, exempt market dealer, mutual fund dealer, portfolio manager and investment fund manager.

3. The Filer is the manager of the Funds and is also the trustee of the Trust Funds (as hereinafter defined).

4. Each of Manulife Global Advantage Fund, Manulife International Dividend Income Fund, Manulife Sector Rotation Fund, Manulife Canadian Opportunities Fund, Manulife Canadian Core Fund, Manulife Canadian Equity Fund, Manulife European Opportunities Fund, Manulife International Value Equity Fund, Manulife Simplicity Aggressive Portfolio and Manulife Simplicity Growth Portfolio (collectively, the "**Trust Funds**") are open-ended mutual fund trusts established under the laws of Ontario by declarations of trust and, where applicable, separate Regulations and are governed by the provisions of NI 81-102.

5. Each of Manulife Canadian Core Class, Manulife Canadian Equity Class and Manulife Canadian Opportunities Class (collectively, the "**Corporate Funds**") are classes of mutual fund shares of Manulife Investment Exchange Funds Corp. (the "**Corporation**"). The Corporation is a mutual fund corporation formed under the laws of Ontario by articles of amalgamation dated October 23, 2010, as amended from time to time. Each Corporate Fund is an open-ended mutual fund governed by the provisions of NI 81-102.

6. The Filer is proposing to merge each Terminating Fund listed in the chart below into the corresponding continuing fund (each a "**Continuing Fund**" and, collectively, the "**Continuing Funds**" and, together with the Terminating Funds, the "**Funds**") shown opposite its name:

TERMINATING FUND	CONTINUING FUND
Manulife Global Advantage Fund	Manulife International Dividend Income Fund
Manulife Sector Rotation Fund	Manulife Canadian Opportunities Fund
Manulife Canadian Core Fund	Manulife Canadian Opportunities Fund
Manulife Canadian Equity Fund	Manulife Canadian Opportunities Fund
Manulife European Opportunities Fund	Manulife International Value Equity Fund
Manulife Simplicity Aggressive Portfolio	Manulife Simplicity Growth Portfolio
Manulife Canadian Core Class	Manulife Canadian Opportunities Class
Manulife Canadian Equity Class	Manulife Canadian Opportunities Class

7. Securities of the Funds are currently qualified for sale in each of the provinces and territories of Canada pursuant to a simplified prospectus and annual information form dated August 1, 2012 and receipted in all of the provinces and territories of Canada on August 10, 2012. Each of the simplified prospectus, annual information form and related fund facts includes disclosure in respect of the Mergers, as applicable.

8. The Terminating Funds and the Continuing Funds are reporting issuers as defined under the applicable securities legislation of each province and territory of Canada and are not in default of any of the requirements of the securities legislation of any of the provinces and territories of Canada.

9. Other than under circumstances in which the securities regulatory authority or securities regulator of a province or territory of Canada has expressly exempted a Fund therefrom, each of the Funds follows the standard investment restrictions and practices established by NI 81-102.

10. The net asset value for each of the Funds is calculated on a daily basis at the end of each day the Toronto Stock Exchange is open for trading.

11. No sales charges, if any, will be payable in connection with the acquisition by each Continuing Fund of the investment portfolio of its corresponding Terminating Fund.

12. The portfolios and other assets of each Terminating Fund to be acquired by the applicable Continuing Fund as a result of the Mergers are currently, or will be, acceptable to the portfolio advisers of the applicable Continuing Fund prior to the effective date of the Mergers, and are or will also be consistent with the investment objectives of the applicable Continuing Fund.

13. Securityholders of Manulife Global Advantage Fund, Manulife European Opportunities Fund, Manulife Canadian Core Class and Manulife Canadian Equity Class will continue to have the right to redeem securities of each such Terminating Fund for cash at any time up to the close of business on the effective date of their Mergers, which is expected to be on or about October 5, 2012. Securityholders of Manulife Sector Rotation Fund, Manulife Canadian Equity Fund, Manulife Canadian Core Fund and Manulife Simplicity Aggressive Portfolio will continue to have the right to redeem securities of each such Terminating Fund for cash at any time up to the close of business on the effective date of their Mergers, which is expected to be on or about November 23, 2012. The Circular (as hereinafter defined) will disclose that securities of a Continuing Fund acquired by securityholders upon the proposed Mergers are subject to the same redemption charges to which their securities of the Terminating Fund were subject prior to the Merger.

14. A press release was issued and filed on SEDAR on May 29, 2012 and a material change report was filed on SEDAR on June 4, 2012 with respect to the proposed Mergers. Amendments to the simplified prospectus and annual information form together with related fund facts for each of the Funds were filed on May 29, 2012.

15. A notice of meeting, a management information circular (the "**Circular**") and a form of proxy in connection with the special meetings of securityholders that were held on September 18, 2012 were mailed to securityholders of the Terminating Funds and applicable Continuing Funds and filed on SEDAR on or about August 28, 2012.

16. Each Merger (with the exception of the Merger of Manulife Global Advantage Fund into Manulife International Dividend Income Fund and of Manulife Simplicity Aggressive Portfolio into Manulife Simplicity Growth Portfolio) will be 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 subsection 86(1) of the Tax Act.

17. The Mergers of Manulife Global Advantage Fund into Manulife International Dividend Income Fund and Manulife Simplicity Aggressive Portfolio into Manulife Simplicity Growth Portfolio are intended to be taxable Mergers to permit the accumulated unused losses in the Continuing Funds to be carried forward to shelter possible future gains within the Continuing Funds following the completion of the Mergers.

18. Pursuant to National Instrument 81-107 – *Independent Review Committee for Investment Funds*, the independent review committee of the Funds (the "**IRC**") has reviewed the proposed Merger of each Terminating Fund with its corresponding Continuing Fund and the process to be followed in connection with each such Merger, and has advised the Filer that, in the opinion of the independent review committee, having reviewed each Merger as a potential "conflict of interest matter", each Merger achieves a fair and reasonable result for the Terminating Fund and the Continuing Fund. This information will be disclosed in the Circular.

19. The Filer will pay for the costs of the Mergers. These costs consist mainly of legal, proxy solicitation, printing, mailing, brokerage costs and regulatory fees.

20. Approval for the Mergers is required as the Mergers do not meet all of the criteria for pre-approved reorganizations and transfers set out in section 5.6 of the NI 81-102 in the following ways:

    (i) a reasonable person may not consider the fundamental investment objectives of the Terminating Funds and the corresponding Continuing Funds to be "substantially similar", contrary to section 5.6(1)(a)(ii) of NI 81-102;

    (ii) a reasonable person may not consider the fee structure of the Series G securities of Manulife Canadian Core Fund and the corresponding Continuing Fund to be "substantially similar", contrary to section 5.6(1)(a)(ii) of NI 81-102;

(iii) certain Mergers are being conducted on a taxable basis, contrary to subsection 5.6(1)(b) of NI 81-102; and

(iv) the materials sent to securityholders of certain series of the Terminating Funds does not include the current simplified prospectus or the most recently filed fund facts document of the corresponding series of the applicable Continuing Funds, contrary to subsection 5.6(1)(f)(ii) of NI 81-102.

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

22. The Filer believes that the Mergers will benefit securityholders of the Funds because:

(i) Securityholders of the combined Continuing Funds may benefit from increased economies of scale in administrative and regulatory operating costs and lower expenses associated with operating the Funds, which are significant costs that can contribute to higher management expense ratios.

(ii) Each Merger has the potential to lower costs for securityholders as the operating costs and expenses of the Continuing Funds will be spread over a greater pool of assets when the Terminating Funds merge into the corresponding Continuing Funds, potentially reducing each Continuing Fund's management expense ratio. With the exception of The Manufacturers Life Insurance Company ("**MLI**"), an affiliate of the Filer and the sole holder of the Series G securities of Manulife Canadian Core Fund, no securityholder of the Terminating Funds will be subject to an increase in management fees as a result of the Terminating Funds merging into the corresponding Continuing Funds and, in some cases, securityholders will potentially benefit from a decrease in management fees. The Series G securities of Manulife Canadian Core Fund are not offered by prospectus and retail investors are not eligible to purchase such securities.

(iii) With the exception of the Mergers involving Manulife Global Advantage Fund and Manulife Simplicity Aggressive Portfolio, which will be conducted on a taxable basis, the tax-deferred nature of the Mergers means that securityholders of the Terminating Funds should not face any material adverse tax consequences in connection with each such Merger.

(iv) The retention of tax loss carry forwards in Manulife International Dividend Income Fund and Manulife Simplicity Growth Portfolio may serve to attract new investments into the Funds.

(v) Each Continuing Fund will have an asset base of greater size, potentially allowing for increased portfolio diversification opportunities and a smaller proportion of assets set aside to fund redemptions. Each Continuing Fund is also expected to benefit from an increased profile in the marketplace. The ability to improve diversification may lead to increased returns and a reduction of risk, while at the same time creating a higher profile that will attract more investors.

(vi) Each of the Continuing Funds is expected to attract more assets as marketing efforts will be concentrated on fewer funds, rather than multiple funds with similar investment mandates. The ability to attract assets in the Continuing Funds will benefit investors by ensuring that the Continuing Funds remain viable, long-term, attractive investment vehicles for existing and potential investors.

(vii) The IRC has determined, after reasonable inquiry, that the Mergers achieve a fair and reasonable result for the Funds and has provided its positive recommendation of the Mergers.

23. The foregoing reasons for the Mergers were set out in the Circular. In addition, the Circular included certain prospectus-level disclosure concerning the Continuing Funds, including information regarding fees, expenses, investment objectives, valuation procedures, the manager, the portfolio advisor (or sub-advisor, as applicable), income tax considerations and net asset value. The Circular also disclosed that securityholders can obtain the simplified prospectus, annual information form, the fund facts, the most recent financial statements, and the most recent management report of fund performance of the Continuing Funds that have been made public, from the Filer upon request, on the Filer's website or on SEDAR at www.sedar.com. Also accompanying the Circular delivered to securityholders was a copy of the fund facts document for the relevant Continuing Fund. In cases where a fund facts document does not exist for a particular series of the Continuing Fund, the fund facts document for the Advisor Series securities of the Continuing Fund accompanied the Circular. These series will not be qualified for distribution under a prospectus and will not be sold to any investors following the Mergers. For example, in respect of Series H securities, securityholders were provided with the fund facts document for the Advisor Series securities of Manulife International Dividend Income Fund and Manulife Canadian Opportunities Fund as a new series of securities of Manulife International Dividend Income Fund and Manulife Canadian Opportunities Fund, to be called Series H securities, will be created to grandfather the trailer fee of the Series H securities of Manulife Global Advantage Fund and Manulife Canadian Equity Fund. In respect of Series K securities, securityholders were provided with the fund facts document

for the Advisor Series securities of the Manulife Canadian Opportunities Fund as a new series of securities of Manulife Canadian Equity Fund to be called Series K securities, will be created to grandfather the trailer fee of the Series A securities of Manulife Canadian Equity Fund.

24. In respect of the Circular and the other disclosure documents set out in sub-paragraph 5.6(f)(iii) of NI 81-102, the Filer ensured that:

    (i) the Circular sent to securityholders in connection with a Merger provided sufficient information about the Merger to permit securityholders to make an informed decision about the Merger;

    (ii) the Circular sent to securityholders in connection with a Merger prominently disclosed that securityholders can obtain the most recent interim and annual financial statements of the applicable Continuing Fund by contacting their dealer, by calling the Filer's 1-800 number, by accessing it on the Filer's website at www.manulifemutualfunds.ca or by accessing the SEDAR website at www.sedar.com;

    (iii) upon request by a securityholder for financial statements or the simplified prospectus of the funds, the Filer would make best efforts to provide the securityholder with financial statements of the applicable continuing fund in a timely manner so that the securityholder can make an informed decision regarding a Merger; and

    (iv) each applicable Terminating Fund and the applicable Continuing Fund with respect to a Merger has an unqualified audit report in respect of its last completed financial period.

25. Finally, in accordance with subsection 5.1(f) of NI 81-102, securityholders of the Terminating Funds approved the Mergers at special meetings held on September 18, 2012. Pursuant to subsection 5.1(g) of NI 81-102, securityholders of Manulife International Value Equity Fund and Manulife Canadian Opportunities Fund (with respect to its Mergers with Manulife Canadian Core Fund and Manulife Canadian Equity Fund) were asked to approve the Mergers at special meetings held on September 18, 2012, as each such Merger constituted a material change for the applicable Continuing Fund and, in each case, the requisite securityholder approval was obtained at the special meetings. In addition, in accordance with the Business Corporations Act (Ontario), securityholders of Manulife Canadian Opportunities Class approved each of the Mergers with Manulife Canadian Equity Class and Manulife Canadian Core Class at a special meeting held on September 18, 2012.

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 Mergers are approved.

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

2.1.8 Anglo Pacific Group plc

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 43-101 Standards of Disclosure for Mineral Projects, section 9.1 – filer seeks relief from requirements of subsection 2.2 with respect to the use of mineral resource and mineral reserve categories of the JORC Code, the PERC Code, the SAMREC Code, SEC Industry Guide 7 or the Certification Code in disclosure relating to properties underlying royalty interests – relief subject to conditions including that disclosure must be extracted from publicly available information disclosed by an issuer whose securities trade on a specified exchange, and must be accompanied by proximate cautionary language.

Applicable Legislative Provisions

National Instrument 43-101 Standards of Disclosure for Mineral Projects, ss. 2.2, 9.1.

September 24, 2012

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

AND

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

AND

IN THE MATTER OF
ANGLO PACIFIC GROUP PLC
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") pursuant to subsection 9.1(1) of National Instrument 43-101 – *Standards of Disclosure for Mineral Projects* ("**NI 43-101**") that the Filer be exempt from the requirements of section 2.2 of NI 43-101 that the Filer must disclose any information about a mineral resource or mineral reserve using only the meanings ascribed to those terms by the Canadian Institute of Mining, Metallurgy and Petroleum ("**CIM**"), with respect to the use of mineral resource and mineral reserve categories of the JORC Code, the PERC Code, the SAMREC Code, SEC Industry Guide 7 or the Certification Code, as applicable (each as defined in NI 43-101, collectively the "**Foreign Codes**") in "disclosure" (as defined in NI 43-101) made by the Filer relating to properties underlying the Royalty Portfolio (as defined below) and the Royalty Options (as defined below) (collectively, the "**Foreign Code Disclosure**") (the "**Exemption Sought**").

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

(a) the Ontario Securities Commission is the principal regulator (the "**Principal Regulator**") for this 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 British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut.

Interpretation

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

Representations

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

1. The Filer is a public limited company, which was incorporated and registered in England and Wales on February 7, 1967 under the UK Companies Act, 1948 under the name "*Diversified Bank Shares Limited*". The Company subsequently underwent a number of name changes and on November 11, 1997 the Company changed its name to "*Anglo Pacific Group plc*". The Filer's head and registered office is located in London, England, United Kingdom.

2. The issued share capital of the Filer consists of 109,605,376 ordinary shares ("**Ordinary Shares**") with nominal par value per Ordinary Share of £0.02 issued and outstanding as at August 31, 2012.

3. The Filer is a London, United Kingdom based global natural resources royalties company. The Filer's business consists of:

   (a) passive (non-operating) royalty interests in mining projects and operations, including coal, iron ore, gold, chromite and uranium projects ("**Royalty Portfolio**");

   (b) options to acquire royalties and other associated assets ("**Royalty Options**");

   (c) direct ownership in two private coal properties; and

   (d) direct equity investments in both listed and unlisted mineral exploration and development companies.

4. The Filer considers the Royalty Portfolio and the Royalty Options, as a whole, to be material to the Filer's business, as the Royalty Portfolio and the Royalty Options comprise the core part of the Filer's business strategy and objective to continually build a diverse portfolio of royalties to generate growing, long-term returns for its investors. Currently, the Filer considers its private royalty ground on the Kestrel Mine located in the Bowen Basin, Queensland, Australia to be a mineral project on a property material to the Filer.

5. The Ordinary Shares are listed and quoted for trading on the London Stock Exchange ("**LSE**"), which is the principal trading market of the Ordinary Shares. The Filer is in compliance with the reporting requirements of the LSE.

6. The Filer is subject to the listing rules and regulations of the UK Financial Services Authority in its capacity as the competent authority for the purposes of Part VI of the UK Financial Services and Markets Act 2000 (as amended from time to time) and the applicable laws of England and Wales (in each case as amended from time to time).

7. The Filer does not have a head office in any jurisdiction in Canada. However, the Filer is a "reporting issuer" (as defined under the *Securities Act* (Ontario)) in the Jurisdiction as a consequence of its Ordinary Shares becoming listed and posted for trading on the Toronto Stock Exchange on July 9, 2010.

8. The Filer is not in default of securities legislation in any of the jurisdictions in Canada.

9. The Filer qualifies as a "designated foreign issuer" (as defined in National Instrument 71-102 – *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*).

10. As a royalty and/or option holder, the Filer often has limited, if any, access to non-public scientific and technical information in respect of the properties underlying the Royalty Portfolio and the Royalty Options, or such information is subject to confidentiality provisions. The Filer often has certain rights to require an audit of payments under its royalties but generally does not have access to technical and other information regarding the properties underlying the Royalty Portfolio and the Royalty Options, other than as publicly disclosed by the owners and operators of such properties. As such, in making technical disclosure in respect of the properties underlying the Royalty Portfolio and the Royalty Options, the Filer is required to rely on the public disclosures of the owners and operators of the properties underlying the Royalty Portfolio and the Royalty Options, as available at the date of such disclosure, and such information and disclosure may not comply with the requirements of NI 43-101.

11. The public disclosures of certain of the owners and operators of the properties underlying the Royalty Portfolio and the Royalty Options are subject to technical disclosure requirements that exist in other jurisdictions pursuant to the Foreign Codes.

12. The Filer wishes to provide the Foreign Code Disclosure to Canadian investors because it believes that investors could find such additional disclosure to be useful in understanding the Filer's business as a natural resources royalty

company and evaluating an investment in the Filer. However, any such Foreign Code Disclosure would be subject to the requirements of NI 43-101.

13. Section 7.1 of NI 43-101 provides an exemption from section 2.2 of NI 43-101 that is similar to the Exemption Sought. It allows certain issuers to make disclosure and file a technical report that uses the mineral resource and mineral reserve categories of an acceptable foreign code (as defined in NI 43-101) provided that the issuer includes in such technical report a reconciliation of any material differences between the mineral resource and mineral reserve categories used under an acceptable foreign code and the analogous mineral resource and mineral reserve categories reported in the standards developed by the CIM, as the CIM Definition Standards on Mineral Resources and Mineral Reserves adopted by CIM Council, as amended (the "**CIM Standards**") in respect of a mineral project.

14. The Filer cannot avail itself of the exemption in section 7.1 of NI 43-101 because (i) it is exempt from filing technical reports under subsection 9.2(1) of NI 43-101, which provides an exemption for royalty or other similar issuers from the requirement to file a technical report under certain conditions and (ii) as a result of the Filer's limited, if any, access to non-public scientific and technical information in respect of the properties underlying the Royalty Portfolio and the Royalty Options as set out in paragraph 10 and the fact that certain of the owners and operators of the properties underlying the Royalty Portfolio and the Royalty Options report scientific and technical information in accordance with the Foreign Codes (or may, in the future, report scientific and technical information in accordance with the Foreign Codes), the Filer is often unable (or may, in the future, be unable) to take the necessary steps required to describe the material differences between any mineral resource and mineral reserve categories reported in the Foreign Codes as reported in respect of the properties underlying the Royalty Portfolio and the Royalty Options and the CIM Standards.

Decision

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

The decision of the Principal Regulator under the Legislation is that the Exemption Sought is granted provided that:

(a) the Exemption Sought applies solely to Foreign Code Disclosure in respect of the properties underlying the Royalty Portfolio or the Royalty Options whose owners and operators are subject to the technical disclosure requirements of and report scientific and technical information in accordance with the Foreign Codes;

(b) the Filer extracts the Foreign Code Disclosure from information publicly disclosed in documents disclosed by the owners and operators of the properties underlying the Royalty Portfolio or the Royalty Options, from information available in the public domain or from information available on the relevant issuer's website and information available on other public websites;

(c) the Filer's disclosure which includes the Foreign Code Disclosure will contain the following cautionary statement, as appropriately modified for the circumstances:

> "National Instrument 43-101 – *Standards of Disclosure for Mineral Projects* ("NI 43-101") contains certain requirements relating to the use of mineral resource and mineral reserve categories of an "acceptable foreign code" (as defined in NI 43-101) in "disclosure" (as defined in NI 43-101) made by [*the Filer*] with respect to a "mineral project" (as defined in NI 43-101), including the requirement to include a reconciliation of any material differences between the mineral resource and mineral reserve categories used under an acceptable foreign code and the standards developed by the Canadian Institute of Mining, Metallurgy and Petroleum, as the CIM Definition Standards on Mineral Resources and Mineral Reserves adopted by CIM Council, as amended (the "CIM Standards") in respect of a mineral project. Pursuant to an exemption order granted to [*the Filer*] by the Ontario Securities Commission, the information contained herein with respect to the [*properties underlying the Royalty Portfolio/Royalty Option*] has been extracted from information publicly disclosed, disseminated, filed, furnished or similarly communicated to the public by an issuer whose securities trade on a "specified exchange" (as defined in NI 43-101) that discloses mineral reserves and mineral resources under one of the JORC Code, the PERC Code, the SAMREC Code, SEC Industry Guide 7 or the Certification Code (each as defined in NI 43-101). As the definitions and standards of the JORC Code, the PERC Code, the SAMREC Code, SEC Industry Guide 7 and the Certification Code are substantially similar to the CIM Standards, a reconciliation of any material differences between the mineral resource and mineral reserve categories reported under the JORC Code, the PERC Code, the SAMREC Code, SEC Industry Guide 7 and the Certification Code, as applicable, to categories under the CIM Standards is not included and no Form

43-101F1 technical report will be filed to support the disclosure based upon such exemption."; and

(d) this decision will terminate 36 months after the date hereof.

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

2.1.9 Questrade, Inc.

Headnote

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

Legislation Cited

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

September 10, 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
QUESTRADE, INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the Filer and its respective officers, directors and representatives be exempt from the prospectus requirement in respect of the distribution of contracts for difference (**CFDs**), over-the-counter (**OTC**) foreign exchange contracts and other similar OTC contracts (collectively, **OTC Contracts**) to investors resident in Canada (the **Requested Relief**) subject to the terms and conditions below.

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada, other than the provinces of Québec, Alberta and Nunavut, (the **Non-Principal Jurisdictions**, and, together with the Jurisdiction, the **Applicable 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 Filer:

The Filer

1. The Filer is a corporation incorporated under the Ontario *Business Corporations Act*, with its headquarters in Toronto, Ontario.

2. The Filer is registered as a dealer in the category of investment dealer in each of the provinces and territories of Canada (except Nunavut), and is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**).

3. The Filer is registered under the *Commodity Futures Act* as a Futures Commission Merchant (**FCM**) in the category of introducing broker in Ontario and Manitoba.

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

5. The Filer has previously offered OTC foreign exchange contracts (but not other types of OTC Contracts) to investors in the Applicable Jurisdictions on the basis of a good faith determination that trading in OTC foreign exchange contracts did not involve a distribution of securities for the purposes of the securities law of the Applicable Jurisdictions. Consequently, such offerings have been made in compliance with applicable IIROC Rules and IIROC Acceptable Practices but were not made under a prospectus or an exemption from the prospectus requirement of securities law. In October 2009, OSC staff published OSC Staff Notice 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors* (**OSC SN 91-702**). The Filer has considered the guidance in OSC SN 91-702 and wishes to continue to offer OTC foreign exchange contracts (and potentially other types of OTC Contracts in the future) to investors, including retail investors, in the Applicable Jurisdictions on the basis of the exemptive relief contemplated by OSC SN 91-702.

6. Except as indicated in the previous paragraph, the Filer is not, to the best of its knowledge, in default of any requirements of securities legislation in Canada or IIROC Rules or IIROC Acceptable Practices (as defined below).

7. The Filer wishes to offer OTC foreign exchange contracts and other types of OTC Contracts to investors in the Applicable Jurisdictions in accordance with the representations, terms and conditions described in this Decision. For the Interim Period (as defined below), the Filer is seeking the Requested Relief in connection with the offering of OTC Contracts in Ontario and intends to rely on this Decision and the Passport System described in MI 11-102 (the **Passport System)** to offer OTC Contracts in the Non-Principal Jurisdictions.

8. In Québec, the Filer has applied for a Qualification and Authorization to market a derivative (the **AMF Order**) from the *Autorité des Marchés Financiers* (the **AMF**) to offer OTC derivative contracts to both accredited and retail investors pursuant to the provisions of the *Derivatives Act* (Québec) (the **QDA**). The final AMF Order will, if granted, allow the Filer to offer specified OTC derivative contracts to investors in Québec on similar terms and conditions as are contained in this decision.

9. In Alberta, the Filer understands that staff of the Alberta Securities Commission (**ASC**) has advised other IIROC members that they have public interest concerns with an applicant relying on the Passport System to passport a prospectus exemption order relating to OTC Contracts. Accordingly, the Filer intends to make a separate local application for relief in that jurisdiction should the Filer wish to offer OTC Contracts to clients who are not accredited investors or who do not qualify under another exemption to the prospectus requirements.

IIROC Rules and Acceptable Practices

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

11. In addition, IIROC has communicated to its members certain additional expectations as to acceptable business practices (**IIROC Acceptable Practices**) as articulated in IIROC's paper "Regulatory Analysis of Contracts for Differences (CFDs)" published by IIROC on June 6, 2007, as amended on September 12, 2007 (the **IIROC CFD Paper**), for any IIROC member proposing to offer OTC foreign exchange contracts or other types of CFDs to investors. To the best of its knowledge, the Filer is in compliance with IIROC Acceptable Practices in offering OTC Contracts. The Filer will continue to offer OTC Contracts in accordance with IIROC Acceptable Practices as may be established from time to time.

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

Online Trading Platform

13. The Filer offers online self-directed trading in OTC Contracts via an online trading platform (the **Platform**), which is a fully automated internet-based OTC Contracts trading platform. The Filer may provide clients with a choice of OTC Contracts trading platforms in the future.

14. The Platform technology has certain client protection mechanisms and risk management tools. It provides transparency of price to clients. The Platform is a key component of a comprehensive risk management strategy, which will help the Filer's clients and the Filer to manage the risk associated with leveraged products. This risk management system has evolved over many years with the objective of meeting the mutual interests of all relevant parties (including, in

particular, clients). These attributes and services are described in more detail below:

(a) *Client reporting.* Clients are provided with a real-time view of their margin balance, including how tick-by-tick price movements affect their margin balances. Account balances are updated daily.

(b) *Automated risk management system.* Clients are instructed that they must maintain the required margin against their position(s). If a client's funds drops below the required margin, margin calls are regularly issued via email, alerting the client to the fact that the client is required to either deposit more funds to maintain the position or close/reduce it voluntarily. Where possible, daily telephone margin calls are provided as a supporting communication for clients. However, if a client fails to deposit more funds, where required, the client's position is liquidated. This liquidation procedure is intended to act as a mechanism to help reduce the risk of losses being greater than the amount deposited. The risk management functionality of the Platform ensures that client positions are closed out when the client no longer maintains sufficient margin in their account to support the position, thereby preventing the client from losing more than their stated risk capital or cumulative loss limit. This functionality also ensures that the Filer will not incur any credit risk vis-a-vis its customers in respect of transactions in OTC Contracts.

(c) *Wide range of order types.* The Platform also provides risk management tools such as stops, limits, and contingent orders, which are available on all OTC Contracts. These tools are designed to help reduce the risk of losses being greater than the amount deposited by a client.

15. The Platform is similar to those developed for online brokerages in that the client trades without other communication with, or advice from, the dealer.

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

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

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

19. The Filer manages the risk in its client positions by simultaneously placing the identical OTC Transaction on a back-to-back basis with an "acceptable counterparty" (as the term is defined in the JRFQ) (the **Acceptable Counterparty**). The Acceptable Counterparty, in turn, automatically offsets each position against other client positions on a second-by-second basis, and either "hedges" its net exposure by trading with liquidity providers (banks) or using its equity capital, or both. By virtue of this risk management functionality inherent in the Trading Platform, the Filer eliminates both market risk and counterparty risk. This also means that the Filer does not have an inherent conflict of interest with its clients since it does not profit on either the loss or gain of the client, is compensated solely by the spread and does not charge any account opening or maintenance fees, commissions or other charges of any kind. If the Filer makes any changes to this compensation model in the future, the Filer will provide reasonable prior notice to its clients and to IIROC and will ensure that all such changes are in accordance with IIROC Rules and IIROC Acceptable Practices.

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

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

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

Structure of CFDs

23. A CFD is a derivative product that allows clients to obtain economic exposure to the price movement

of an underlying instrument, such as a share, index, market sector, currency pair, treasury or commodity, without the need for ownership and physical settlement of the underlying instrument. Unlike certain OTC derivatives, such as forward contracts, CFDs do not require or oblige either the client or principal counterparty (being the Filer for purposes of the Requested Relief), nor any agent of the principal counterparty (also being the Filer for the purposes of the Requested Relief) to deliver the underlying instrument.

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

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

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

OTC Contracts Distributed in the Applicable Jurisdictions

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

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

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

30. As part of the account opening process and prior to the client's first OTC Transaction, the Filer will obtain a written or electronic acknowledgement from the client confirming that the client has read and understood the Risk Disclosure Document. Such acknowledgment will be separate and prominent from other acknowledgements provided by the client as part of the account opening process.

31. As is customary in the industry, and due to the fact that this information is subject to factors beyond the control of the Filer (such as changes in IIROC Rules), information such as the underlying instrument listing and associated margin rates would not be disclosed in the Risk Disclosure Document but will be part of a client's account opening package and will be available on both the Filer's website and the Platform.

Satisfaction of the Registration Requirement

32. The role of the Filer as it relates to the offering of OTC Contracts (other than it being the principal under the OTC Contracts will be limited to acting as an execution-only dealer. In this role, the Filer will, among other things, be responsible for approving all marketing, for holding of clients funds and for client approval (including the review of know-your-client (**KYC**) due diligence and account opening suitability assessments). The Filer will have full and instantaneous access to all client information and trade activity orders, which will be put into the Platform. Client approvals and holding of clients funds will be solely under the Filer's control.

33. IIROC Rules exempt member firms that provide execution-only services such as discount brokerages from the obligation to determine whether each trade is suitable for the client. However, IIROC has exercised its discretion to impose additional requirements on members proposing to trade in OTC Contracts (namely the **IIROC Acceptable Practices** described in paragraph 11) which requires, among other things, that:

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

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

(c) the Filer's registered dealing representatives who will conduct the KYC and initial product suitability analysis, as well as their registered supervisor who oversees the KYC and initial product suitability analysis, will meet proficiency requirements for futures trading, and will maintain appropriate IIROC registration; and

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

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

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

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

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

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

39. The Requested Relief, if granted, would be consistent with the guidelines articulated by Staff of the Principal Regulator in OSC SN 91-702. OSC SN 91-702 provides guidance with regards to the distributions of CFDs, foreign exchange contracts (forex or FX contracts) and similar OTC derivative products to investors in the Jurisdiction.

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

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

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

43. The Filer is of the view that requiring compliance with the prospectus requirement in order to enter into OTC Contracts with retail clients would not be appropriate since the disclosure of a great deal of the information required under a prospectus and

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

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

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

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

Decision

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

The Decision of the Principal Regulator is that the Requested Relief is granted provided that:

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

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

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

(d) prior to a client first entering into a transaction in an OTC Contract, the Filer has provided to the client the Risk Disclosure Document and has delivered, or has previously delivered, a copy of the risk disclosure document to the Principal Regulator;

(e) prior to the client's first transaction in an OTC Contract and as part of the account opening process, the Filer has obtained a written or electronic acknowledgement from the client, as described in paragraph 30, confirming that the client has received, read and understood the Risk Disclosure Document;

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

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

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

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

(j) the Requested Relief shall immediately expire upon the earliest of

1. four years from the date that this Decision is issued;

2. the issuance of an order or decision by a court, the Commission in such Applicable Jurisdiction, the AMF (in respect of Québec) or other similar regulatory body that suspends or terminates the ability of the Filer to offer CFDs or other OTC

Contracts to clients in such Applicable Jurisdiction or Québec; and

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

"Edward P. Kerwin"
Commissioner

"James Turner"
Vice-Chair

2.1.10 Touchstone Atlantis Mining Inc. – s. 1(10)(a)(ii)

Headnote

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

Applicable Legislative Provisions

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

September 25, 2012

Touchstone Atlantis Mining Inc.
c/o Alexander Pizale
Cassels Brock & Blackwell LLP
40 King Street West
Scotia Plaza, Suite 2100
Toronto, ON M5H 3C2

Dear Sirs/Mesdames:

Re: Touchstone Atlantis Mining Inc. (the Applicant) - application for a decision under the securities legislation of Ontario and Alberta (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.

"Lisa Enright"
Manager, Corporate Finance
Ontario Securities Commission

2.2 Orders

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

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

AND

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

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

WHEREAS on March 29, 2011, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on March 29, 2011 in respect of HEIR Home Equity Investment Rewards Inc., FFI First Fruit Investments Inc., Wealth Building Mortgages Inc., Archibald Robertson, Eric Deschamps (collectively, the "HEIR Respondents") and Canyon Acquisitions, LLC, Canyon Acquisitions International, LLC, Brent Borland, Wayne D. Robbins, Marco Caruso, Placencia Estates Development, Ltd., Copal Resort Development Group, LLC, Rendezvous Island, Ltd., The Placencia Marina, Ltd. and The Placencia Hotel and Residences Ltd. (collectively, the "Canyon Respondents");

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

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

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

AND WHEREAS on May 17, 2011, a first appearance on this matter was held before the Commission, at which Staff attended, counsel from Borden Ladner Gervais LLP attended on behalf of all of the HEIR

Respondents, and counsel from Cassels Brock & Blackwell LLP attended on behalf of all of the Canyon Respondents, and at that first attendance, Staff submitted that the hearing on the merits should be scheduled at a future pre-hearing conference or at a subsequent attendance;

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

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

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

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

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

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

AND WHEREAS on July 19, 2011, the Commission ordered that the hearing be adjourned to August 22, 2011 at 10:00 a.m. for the purpose of discussing scheduling and any other procedural matters or for such other purposes as may be appropriate;

AND WHEREAS on August 22, 2011, Staff and counsel for each of the HEIR Respondents and the Canyon Respondents appeared and made submissions regarding the scheduling of a pre-hearing conference, and the Commission ordered that a pre-hearing conference be held on Tuesday, October 11, 2011 at 3:30 p.m.;

AND WHEREAS on October 11, 2011, Staff and counsel for each of the HEIR Respondents and the Canyon Respondents appeared before the Commission for a confidential pre-hearing conference and the Commission ordered that a further prehearing conference be held on Tuesday, December 20, 2011 at 2:30 p.m.;

AND WHEREAS on December 2, 2011, Norton Rose LLP served notice that it had been retained on behalf of Eric Deschamps ("Deschamps") and, as of that date, Deschamps is no longer included in the defined term "HEIR Respondents" used herein;

AND WHEREAS on December 20, 2011 Staff and counsel for each of the HEIR Respondents, the Canyon Respondents and Deschamps appeared before the Commission for a confidential pre-hearing conference, and the Commission ordered that a further prehearing conference be held on February 1, 2012 at 9:00 a.m. for the purpose of confirming September 10, 2012 as the target date for the commencement of the hearing on the merits and the schedule for such hearing;

AND WHEREAS on February 1, 2012 Staff and counsel for each of the HEIR Respondents, the Canyon Respondents and Deschamps appeared before the Commission for a confidential pre-hearing conference, and made submissions regarding the scheduling of the hearing on the merits and further pre-hearing conferences, and the Commission ordered that:

(a) a further pre-hearing conference shall be held on Wednesday, March 14, 2012 at 9:30 a.m. for the purpose of confirming November 5, 2012 as the date for the commencement of the hearing on the merits, and the schedule for such hearing, currently expected to last approximately four weeks; and

(b) a further pre-hearing conference shall be held on Friday, September 14, 2012 at 10:00 a.m. to address any pre-hearing issues;

AND WHEREAS on February 14, 2012 Staff filed an Amended Statement of Allegations in respect of the HEIR Respondents and the Canyon Respondents;

AND WHEREAS the Commission ordered on March 1, 2012 that McCarthy Tétrault LLP be granted leave to withdraw as the representative of the Canyon Respondents;

AND WHEREAS on March 14, 2012 Staff and counsel for the HEIR Respondents and Deschamps appeared before the Commission for a confidential pre-hearing conference, and Brent Borland on behalf of himself and the Canyon Respondents participated in the pre-hearing conference by telephone, and the Commission ordered that:

(a) the hearing on the merits in this matter shall commence on November 5, 2012, and continue for four weeks thereafter, or on such further or other dates as agreed to by the parties and set by the Office of the Secretary; and

(b) a further pre-hearing conference is scheduled for April 20, 2012 at 10:00 a.m.

AND WHEREAS on April 20, 2012 Staff appeared before the Commission for a confidential pre-hearing conference and counsel for Deschamps participated in the pre-hearing conference by telephone. No one participated on behalf of the HEIR Respondents or the Canyon Respondents and Staff confirmed that each of the Canyon Respondents and counsel for the HEIR Respondents had been provided with information regarding participation in the pre-hearing conference by telephone. The Commission ordered that this matter be adjourned to the previously scheduled confidential pre-hearing conference on September 14, 2012 at 10:00 a.m.;

AND WHEREAS on July 3, 2012 the Commission ordered that Borden Ladner Gervais LLP be granted leave to withdraw as the representative of the HEIR Respondents;

AND WHEREAS on September 14, 2012 a confidential pre-hearing conference was held and attended in-person by Staff and Archibald Robertson, on behalf of himself and of the HEIR Respondents. Also in attendance by telephone were Brent Borland, on behalf of himself and the Canyon Respondents, and counsel for Deschamps.

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

IT IS ORDERED THAT:

(a) The hearing on the merits in this matter will commence on November 5, 2012 and will continue thereafter on November 7-9, 12-16, 19, 21-23, and 26-30 inclusive;

(b) A further pre-hearing conference is scheduled for October 5, 2012 at 10:00 a.m.; and

(c) All parties to this proceeding are to provide notice of their intention to bring any pre-hearing motions in this matter by no later than October 5, 2012.

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

"Christopher Portner"

2.2.2 Sears Canada Inc. et al.

[Editor's note: This order was inadvertently not published in the Bulletin at the time of issuance by the Commission in August 2006. It should be cited as *Re Sears Canada et al.* (2006), 35 OSCB 8766.]

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

AND

IN THE MATTER OF
SEARS CANADA INC.,
SEARS HOLDINGS CORPORATION,
AND SHLD ACQUISITION CORP.

AND

IN THE MATTER OF
HAWKEYE CAPITAL MANAGEMENT, LLC,
KNOTT PARTNERS MANAGEMENT, LLC, AND
PERSHING SQUARE CAPITAL MANAGEMENT, L.P.

ORDER

For the purpose of this Order, all defined terms used therein shall have the same meaning ascribed to them in the accompanying Reasons and Decision.

Upon it appearing to the Commission that Sears Holdings Corporation and SHLD Acquisition Corp. ("Sears Holdings") have not complied with and are not complying with Part XX of the Act and the regulations relating to such Part (collectively, "Ontario Securities Law") in respect of the bid (the "Offer") for shares of Sears Canada Inc. ("Sears Canada") and as the Commission is of the opinion that it is in the public interest to so order;

IT IS ORDERED pursuant to subsections 104(1) and 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5 (the Act) that:

1. Sears Holdings is directed to comply with Ontario Securities Law in respect of the Offer and all other offers made or to be made for shares of Sears Canada;

2. the directors and senior officers of Sears Holdings Corporation and SHLD Acquisition Corp. are directed to cause their respective corporations to comply with and to cease to contravene Ontario Securities Law;

3. the Offer and any other offer made or to be made for shares of Sears Canada by Sears Holdings or any affiliate thereof is cease traded until the take-over bid circular in respect of the Offer or any other offer is amended to disclose:

   (a) that Sears Holdings will exclude from the calculation of the required majority of the

minority approval, on the anticipated second step subsequent acquisition transaction or any other offer and subsequent acquisition transaction in the future, the votes attached to the shares of Sears Canada held by or acquired from Scotia Capital Inc., The Bank of Nova Scotia and The Royal Bank of Canada which are the subject of the Support Agreements; and

(b) the identities and interests of the parties to the Support Agreements and a description of the material terms of the Support Agreements;

4. the Offer for shares of Sears Canada by Sears Holdings and its affiliate SHLD is cease traded until the Take-Over Bid Circular in respect of the Offer is amended to disclose:

(a) the existence and terms of the release granted to Vornado pursuant to the Vornado Deposit Agreement;

(b) the grant by Sears Holdings of an identical release to all shareholders of Sears Canada who have tendered or will tender to the Offer or whose shares are acquired under the second step subsequent acquisition transaction; and

(c) that Sears Holdings will exclude from the calculation of the required majority of the minority approval, on the anticipated second step subsequent acquisition transaction, the votes attached to the shares of Sears Canada held by or acquired by Sears Holdings from Vornado pursuant to the Vornado Deposit Agreement.

DATED at Toronto this 8th day of August, 2006.

"Susan Wolburgh Jenah"

"Robert W. Davis"

"Carol S. Perry"

2.2.3 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. 8017;

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 on September 13, 2012, on the third day of the hearing of the merits, Staff filed written submissions and the Affidavits of Allister Field, sworn September 7 and 13, 2012, and made oral submissions to the Commission in support of Staff's position that it has complied with its disclosure obligations with respect to Medra pursuant to Subrule 4.3(2) of the Commission *Rules of Procedure*;

AND WHEREAS on September 13, 2012, no one appeared on behalf of Medra although the Commission was satisfied that Medra had been served with notice of the hearing;

AND WHEREAS on September 13, 2012, the Commission reserved its decision on the disclosure 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 20, 2012, at 10:00 a.m.;

IT IS FURTHER ORDERED THAT the hearing dates of September 14 and 19, 2012, are vacated;

DATED at Toronto this 13th day of September, 2012.

"Vern Krishna"

2.2.4 Thirdcoast Limited – s. 1(10)(a)(ii)

Headnote

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

Applicable Legislative Provisions

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

September 19, 2012

Aikins, MacAulay & Thorvaldson LLP
30th Floor – 360 Main Street
Winnipeg, Manitoba R3C 4G1

Attn: Todd W. Thomson

Dear Sirs/Mesdames:

Re: Thirdcoast Limited (the Applicant) – application for an order under subclause 1(10)(a)(ii) of the Securities Act (Ontario) (the Act) that the Applicant is not a reporting issuer

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

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

The Applicant has represented to the Commission that:

(a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in Ontario 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 not in default of any of its obligations under the Legislation as a reporting issuer; and

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

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

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

2.2.5 Eda Marie Agueci et al. – s. 127

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

AND

**IN THE MATTER OF
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**

**ORDER
(Section 127)**

WHEREAS the Ontario Securities Commission (the "Commission") issued a Notice of Hearing and Staff of the Commission ("Staff") filed a Statement of Allegations in this matter on February 7, 2012 against Eda Marie Agueci, Dennis Wing, Santo Iacono, Josephine Raponi, Kimberley Stephany, Henry Fiorillo, Giuseppe (Joseph) Fiorini, John Serpa, Ian Telfer, Jacob Gorntizki and Pollen Services Limited (collectively, the "Respondents");

AND WHEREAS at a pre-hearing conference held on September 12, 2012, certain scheduling matters were agreed to by the parties;

AND WHEREAS the Respondents have reserved their rights to bring adjournment or other motions should issues subsequently arise;

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

IT IS HEREBY ORDERED that:

1. A motion by the respondent Dennis Wing concerning Staff disclosure and a motion by Staff concerning service on Pollen Services Limited shall be heard on November 13 and 14, 2012;

2. A further confidential pre-hearing conference shall take place on December 17, 2012 at 10:00 a.m.; and

3. The hearing on the merits shall commence on September 16, 2013 and continue through to December 20, 2013, with the exception of September 24, 2013 and every second Tuesday thereafter, and with the further exception of other days that may be agreed to by the parties and the Commission.

DATED at Toronto this the 12th day of September, 2012.

"James E. A. Turner"

2.2.6 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

ORDER
(Section 144)

WHEREAS the securities of Sino-Forest Corporation (the "**Issuer**") currently are subject to a temporary cease trade order made by the Commission, pursuant to paragraph 2 of subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") on August 26, 2011, and extended until October 15, 2012, pursuant to subsections 127(7) and (8) of the Act, that trading in securities of the Issuer cease (the "**Temporary Order**");

AND WHEREAS the Issuer has made an application pursuant to section 144 of the Act for an order varying the Temporary Order to allow the distribution of the certain meeting materials to all potential creditors, including beneficial owners of the Issuer's 5% Convertible Senior Notes Due 2013, 10.25% Guaranteed Senior Notes Due 2014, 4.25% Convertible Senior Notes Due 2016 and 6.25% Guaranteed Senior Notes Due 2017 (the "**Noteholders**");

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

1. The Issuer is a federally incorporated corporation having its head office in the Province of Ontario and, up until August 26, 2011, the Issuer had its shares listed for trading on the Toronto Stock Exchange. The Issuer is a reporting issuer under the Act.

2. On March 30, 2012, the Issuer applied for and obtained an initial order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA") from the Superior Court of Justice (Ontario) (the "**CCAA Proceedings**").

3. On August 31, 2012, the Superior Court of Justice (Ontario) granted an order in the CCAA Proceedings (the "**Meeting Order**") relating to the calling of a meeting of the Issuer's creditors (the "**Meeting**") to consider a Plan of Arrangement and Compromise under the CCAA and the *Canada Business Corporations Act* (the "**Plan**").

4. The Issuer and the court-appointed monitor in the CCAA Proceedings intend to distribute various meeting materials as contemplated by the Meeting Order, which materials include a Notice of Meeting and Information Circular, along with proxy materials and any amendments and supplements thereto (collectively, the "C**CAA Materials")** to all potential creditors, including Noteholders of the Issuer.

5. The distribution of the CCAA Materials could be considered an act in furtherance of a trade of the securities of the Issuer.

6. It is a condition of implementation of the Plan that the Issuer obtain an order varying the Temporary Order to permit certain transactions contemplated by the Plan which may constitute trades, which order the Issuer intends to seek at a future date (prior to the Meeting).

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

IT IS ORDERED, pursuant to section 144 of the Act, that the Temporary Order be and is hereby varied solely to permit the distribution of the CCAA Materials to all potential creditors, including Noteholders of the Issuer.

DATED at Toronto, Ontario this 18th day of September, 2012.

"Mary G. Condon"

2.2.7 Children's Education Funds Inc. – ss. 127(1), 127(5)

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

AND

IN THE MATTER OF
CHILDREN'S EDUCATION FUNDS INC.

TEMPORARY ORDER
(Subsections 127(1) and (5))

WHEREAS it appears to the Ontario Securities Commission (the "Commission") that:

1. Children's Education Funds Inc. ("CEFI") distributes units of three distinct savings plans (the "Plans") which are Registered Education Savings Plans ("RESPs");

2. CEFI has been registered with the Commission as a scholarship plan dealer since March 22, 1991;

3. From July 2011 to August 2011 inclusive, Staff conducted a compliance review at CEFI's head office in Burlington, Ontario and at CEFI's various branch locations in the Greater Toronto Area;

4. Staff alleged a number of compliance deficiencies which were set out in Staff's compliance report dated June 14, 2012;

AND WHEREAS the terms and conditions confirm that CEFI has retained an independent consultant and will retain an independent monitor that are approved by the Compliance and Registrant Regulation ("CRR") Branch of the Commission to assist CEFI in implementing plans to strengthen its compliance system;

AND WHEREAS CEFI's counsel has advised Staff that CEFI has reviewed and consents to the terms of this Temporary Order without prejudice to any position that CEFI may take subsequently;

AND WHEREAS Staff has advised that Staff's investigation of CEFI is ongoing;

AND WHEREAS the Commission is of the opinion that the time required to conclude a hearing could be prejudicial to the public interest as set out in subsection 127(5) of the Act;

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

AND WHEREAS by Authorization Order made June 13, 2012, pursuant to subsection 3.5(3) of the Act, each of Howard I. Wetston, James E. A. Turner, Kevin J. Kelly, James D. Carnwath, Mary G. Condon, Margot C. Howard, Paulette L. Kennedy, Vern Krishna, Christopher Portner and Edward P. Kerwin, acting alone, is authorized, to exercise the powers of the Commission under the Act, subject to subsection 3.5(4) of the Act, to make orders under section 127 of the Act;

IT IS HEREBY ORDERED pursuant to section 127 of the Act that:

1. under paragraph 1 of subsection 127(1) of the Act, the terms and conditions set out in Schedule "A" to this Order are imposed on CEFI's registration;

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

3. the matter will be brought before the Commission on September 26, 2012 at 10:00 a.m. for the purpose of providing the Commission with an update on the implementation of the terms and conditions imposed on CEFI.

4. Staff shall be free to reapply to the Commission in the event that it has concerns with the application or operation of any provision of this Order.

Dated at Toronto this 14th day of September, 2012.

"James E. A. Turner"

SCHEDULE "A"

Proposed Terms and Conditions
Children's Education Funds Inc. ("CEFI")

1. CEFI has retained, at its own expense, an independent consultant (the "Consultant") that has been approved by a Manager in the Compliance and Registrant Regulation Branch of the Ontario Securities Commission (the "OSC Manager") and shall continue to work with the Consultant to:

   (a) prepare and assist CEFI in implementing a plan (the "Plan") to strengthen CEFI's "compliance system" within the meaning of section 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, including the expected dates of completion and person(s) responsible for the implementation. In the Plan, the Consultant will examine CEFI's operations, internal policies, practices and procedures and make recommendations for rectifying all identified compliance deficiencies raised in a Compliance Report dated June 14, 2012, including but not limited to, in relation to:

      i. documenting and collecting clients' know-your-client information ("KYC Information");

      ii. ensuring that all trades are suitable for CEFI's clients;

      iii. training dealing representatives and preparing training materials;

      iv. overseeing branch locations and performing branch audits; and

      v. preparing and distributing marketing materials;

   (b) review CEFI's progress with respect to implementation of the Plan; and

   (c) submit written progress reports ("Progress Reports") to the OSC Manager detailing CEFI's progress with respect to the implementation of the Plan and stating whether the specific recommendations included in the Plan have been implemented and, if not, the expected date of completion and person(s) responsible for the implementation.

2. The Plan and the Progress Reports must be reviewed and approved by the ultimate designated person ("UDP") and chief compliance officer ("CCO") of CEFI, and signed by the UDP and CCO of CEFI as evidence of their review and approval.

3. The Consultant shall provide the Plan to the OSC Manager no later than 30 days from the date of this Order for review and approval.

4. CEFI shall retain a monitor that is independent of CEFI that is approved by the OSC Manager (the "Monitor"). The Monitor must be in place no later than 10 business days from the date of this Order, to carry out the activities described in paragraph 5, for any new clients or new accounts from existing clients (collectively the "New Clients").

5. Until such time as the Plan has been approved by the OSC Manager, the Monitor will:

   (a) review all applications from New Clients of CEFI for the purpose of ensuring adequate KYC information in order to determine suitability of the investment and should the Monitor not be satisfied with the KYC Information for this purpose, contact the New Client; and

   (b) contact the following additional New Clients of CEFI;

      i. 100% of all New Clients with an income less than or equal to $50,000; and

      ii. a random sample of 20% of all New Clients with an income greater than $50,000.

6. The Monitor will use best efforts to contact the New Clients of CEFI as set out in paragraph 5 within 30 days of the client's investment for the purpose of confirming:

   (a) the accuracy of the client's KYC Information;

   (b) that the investment is suitable for the client including that the client has the ability to make the payments for the investment time horizon; and

(c) that the client understands the fee structure of the investment including the impact of enrolment fees on early termination of the investment and any fees and charges as a result of missed payments.

7. In the event that the Monitor determines that the investment was not suitable for the client, the investment shall be unwound at no cost to the client and any deposits made will be returned in full to the client. In the event the Monitor determines that the client did not understand the fee structure, the Monitor will explain the fee structure and advise the client of the client's option to unwind the investment, at no cost to the client, within 60 days following the investment. In the event that after using its best efforts to attempt to contact a New Client under paragraph 5(b) on at least three separate occasions, the Monitor has been unsuccessful in reaching the New Client and has been unable to confirm the information set out in paragraph 6 above, then no further efforts by the Monitor to contact that New Client in accordance with paragraph 5(b) will be required.

8. CEFI will disclose to New Clients that their investment will be reviewed by an independent Monitor retained by CEFI and will be unwound if the Monitor determines the investment is not suitable for them.

9. The Monitor shall provide bi-weekly reports of its findings to the OSC Manager.

10. The Plan to be submitted by the Consultant shall include a continuing role for the Monitor during the period after the Plan has been approved and until the Plan has been fully implemented in relation to the items set out in paragraphs 4 through 7 above and to allow for the unwinding of investments at no cost to the client where appropriate.

11. The Consultant shall submit Progress Reports to the OSC Manager every 30 days following delivery of the Plan to the OSC Manager until the Plan has been fully implemented.

12. Until the Plan has been fully implemented, CEFI shall not open any new branch locations, and may not sponsor any new dealing representatives, except so as to replace dealing representatives that depart CEFI subsequent to the date of this Order such that the aggregate number of CEFI's dealing representatives as of the date of this Order does not increase and only on the condition that the Consultant has provided a letter in writing to the OSC Manager, in respect of each proposed dealing representative, confirming that the proposed dealing representative:

(a) has received adequate training to sell the investment(s) offered by CEFI, including appropriate sales conduct and practices; and

(b) will be supervised by a branch manager that has the capacity and the demonstrated ability to properly oversee the proposed dealing representative.

13. CEFI shall immediately submit to the Commission a direction from CEFI giving consent to unrestricted access by staff of the Commission to communicate with the Monitor regarding the Monitor's work and with the Consultant regarding CEFI's progress with respect to the implementation of the Plan or any of its specific recommendations.

2.2.8 2196768 Ontario Ltd et al.

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

AND

**IN THE MATTER OF
2196768 ONTARIO LTD
carrying on business as RARE INVESTMENTS,
RAMADHAR DOOKHIE, ADIL SUNDERJI
and EVGUENI TODOROV**

ORDER

WHEREAS on November 22, 2011, the Ontario Securities Commission ("Commission") issued a Notice of Hearing pursuant to s.127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5 accompanied by a Statement of Allegations with respect to the Respondents, 2196768 Ontario Ltd. carrying on business as RARE Investments, Ramadhar Dookhie, Adil Sunderji and Evgueni Todorov (the "Respondents") for a hearing to commence on December 5, 2011;

AND WHEREAS the Respondents were served with the Notice of Hearing and Statement of Allegations dated November 22, 2011 on November 23, 2011;

AND WHEREAS at a hearing on December 5, 2011, counsel for Staff advised that disclosure will be made to the Respondents by Staff on or by January 16, 2012, and the parties consented to the scheduling of a confidential pre-hearing conference on March 5, 2012 at 10:00 a.m.;

AND WHEREAS the confidential pre-hearing conference was adjourned from March 5, 2012 at 10:00 a.m. to May 2, 2012 at 10:00 a.m., with the consent of Staff, to permit two of the Respondents to retain legal counsel;

AND WHEREAS the parties attended on May 2, 2012 and Staff advised that disclosure was complete and two of the Respondents advised they had not yet retained legal counsel;

AND WHEREAS the parties attended before the Commission on July 19, 2012, and two of the Respondents advised they had still not retained legal counsel;

AND WHEREAS the parties attended before the Commission on September 14, 2012, and two of the Respondents advised that although they have not retained counsel they intend to do so immediately;

AND WHEREAS nearly ten months have elapsed since the Respondents were served with the Notice of Hearing and Statement of Allegations such that the Respondents have had sufficient time to retain counsel;

AND WHEREAS all of the parties have consented to the hearing dates ordered herein;

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

IT IS ORDERED that:

(a) The hearing on the merits shall commence on Monday, March 18, 2013 and continue on March 19, 20, 21, 22, 25, 27, and 28, 2013.

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

"Paulette L. Kennedy"

2.2.9 Sierra Madre Developments Inc. – s. 144

Headnote

Section 144 – full revocation of cease trade order upon remedying of defaults.

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, CHAPTER S.5, AS AMENDED
(the Act)

AND

IN THE MATTER OF
SIERRA MADRE DEVELOPMENTS INC.
(the Reporting Issuer)

ORDER
(Section 144)

Background

On August 10, 2012, the Director made an order under paragraph 2 of subsection 127(1) of the Act (the Cease Trade Order) that all trading in securities of the Reporting Issuer, whether direct or indirect, shall cease until further order by the Director.

The Order was made because the Reporting Issuer was in default of certain filing requirements under Ontario securities law as described in the Cease Trade Order (the Default).

The Reporting Issuer has applied to the Ontario Securities Commission under section 144 of the Act for a revocation of the Cease Trade Order.

Representations

This order is based on the following facts represented by the Reporting Issuer:

1. The Reporting Issuer is a reporting issuer under the securities legislation of the provinces of Ontario, British Columbia and Alberta.

2. The Reporting Issuer is not in default of the Cease Trade Order.

3. Except for the Default, the Reporting Issuer is not in default of any requirements under Ontario securities law.

4. The Reporting Issuer has filed all outstanding continuous disclosure documents that are required to be filed under Ontario securities law.

5. The Reporting Issuer has paid all outstanding activity, participation and late filing fees that are required to be paid.

6. The Reporting Issuer's SEDAR profile and SEDI issuer profile supplement are current and accurate.

7. Upon the issuance of this revocation order, the Reporting Issuer will issue a news release announcing the revocation of the Cease Trade Order. The Reporting Issuer will concurrently file the news release and a material change report regarding the revocation of the Cease Trade Order on SEDAR.

8. The Reporting Issuer was also subject to a similar cease trade order issued by British Columbia as a result of the failure to make the filings described in the Cease Trade Order. The order issued by British Columbia was revoked on September 12, 2012.

Order

The Director is of the opinion 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 is revoked.

Dated: September 14, 2012

"Kelly Gorman"
Deputy Director, Corporate Finance Branch

2.2.10 Morgan Dragon Development Corp. et al. – s. 127

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

AND

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

ORDER
(Section 127)

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

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

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

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

AND WHEREAS on June 4, 2012, the Commission heard submissions from Staff and counsel for MDDC and Cheong, and the matter was adjourned to August 15, 2012, for a further status update;

AND WHEREAS on August 15, 2012, the Commission heard submissions from Staff and counsel for MDDC and Cheong, and the matter was adjourned to September 20, 2012, for a further status update;

AND WHEREAS on September 20, 2012, the Commission heard submissions from Staff and counsel for Cheong, MDDC, Tse and Ricketts;

AND WHEREAS Griffiths did not appear, though properly served with notice of the hearing;

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

IT IS ORDERED that:

(1) a confidential pre-hearing conference will be held on January 11, 2013, at 10:00 a.m.; and

(2) the hearing on the merits in this matter will commence on April 11, 2013, and continue on April 12, 15 to 19, 22 and 24, 2013, commencing at 10:00 a.m. on each day.

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

"Edward P. Kerwin"

2.2.11 Abel Da Silva – ss. 37, 127, 127.1

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

AND

IN THE MATTER OF
ABEL DA SILVA

ORDER
(Sections 37, 127 and 127.1)

WHEREAS the Commission found on June 22, 2011 that the respondent, Abel Da Silva ("Da Silva"), engaged in conduct which was contrary to sections 37, 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "***Act***") and contrary to the public interest;

AND WHEREAS on June 5, 2012, the Commission held a hearing with respect to the sanctions and costs to be imposed in this matter;

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

IT IS ORDERED that:

(a) pursuant to s. 127(1)2 of the *Act*, all trading by Da Silva cease permanently;

(b) pursuant to s. 127(1)2.1 of the *Act*, the acquisition of any securities by Da Silva is prohibited permanently;

(c) pursuant to s. 127(1)3 of the Act, any exemptions contained in Ontario securities law do not apply to Da Silva permanently;

(d) I hereby reprimand Mr. Da Silva for his conduct, pursuant to s. 127(1)6 of the *Act*;

(e) pursuant to s. 127(1)8 of the *Act*, Da Silva is prohibited from becoming or acting as a director or officer of any issuer permanently;

(f) pursuant to s. 127(1)8.2 of the *Act*, Da Silva is prohibited from becoming or acting as a director or officer of a registrant permanently;

(g) pursuant to s. 127(1)8.4 of the *Act*, Da Silva is prohibited from becoming or acting as a director or officer of an investment fund manager permanently;

(h) pursuant to s. 127(1)8.5 of the *Act*, Da Silva is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter permanently;

(i) pursuant to s. 127(1)9 of the *Act*, Da Silva pay an administrative penalty of CDN $250,000, to be allocated by the Commission to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*;

(j) pursuant to s. 127(1)10 of the *Act*, Da Silva shall disgorge to the Commission the entirety of the $45,280 he obtained as a result of his non-compliance with Ontario securities law, to be allocated by the Commission to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*;

(k) pursuant to s. 127.1 of the *Act*, Da Silva shall pay $52,470.25, representing the costs and disbursements incurred by the Commission in the investigation and hearing of this matter; and

(l) pursuant to s. 37(1) of the *Act*, Da Silva is prohibited from telephoning any residence within or outside of Ontario for the purpose of trading in any security or derivative or in any class of securities or derivatives.

Dated at Toronto this 24th day of September, 2012.

"James D. Carnwath"

2.2.12 RBC Target 2021 Corporate Bond Index ETF – s. 1.1 of OSC Rule 48-501 Trading During Distributions, Formal Bids and Share Exchange Transactions

Headnote

Certain mutual funds designated as exchange-traded funds for the purposes of OSC Rule 48-501.

Rules Cited

Ontario Securities Commission Rule 48-501 Trading During Distributions, Formal Bids and Share Exchange Transactions, s. 1.1.

IN THE MATTER OF
ONTARIO SECURITIES COMMISSION RULE 48-501 – TRADING DURING DISTRIBUTIONS, FORMAL BIDS AND SHARE EXCHANGE TRANSACTIONS (Rule)

AND

IN THE MATTER OF
RBC Target 2021 Corporate Bond Index ETF
(the Fund)

DESIGNATION ORDER
Section 1.1

WHEREAS the Fund is or will be listed on the Toronto Stock Exchange;

AND WHEREAS under the Universal Market Integrity Rules (UMIR), the Fund is considered an Exempt Exchange-traded Fund that is not subject to prohibitions related to trading during certain securities transactions;

AND WHEREAS the definition of "exchange-traded fund" in the Rule is substantially similar to the definition of Exempt Exchange-traded Fund in UMIR, and the purpose of the Rule and UMIR are substantially similar;

THE DIRECTOR HEREBY DESIGNATES the Fund as an exchange-traded fund for the purposes of the Rule.

Dated September 19, 2012

"Susan Greenglass"
Director, Market Regulation

2.2.13 ThirdCoast Limited – s. 1(6) of the OBCA

Headnote

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

Applicable Legislative Provisions

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

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

AND

IN THE MATTER OF
THIRDCOAST LIMITED
(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 authorized capital consists of an unlimited number of common shares (the **Common Shares**).

3. The head office of the Applicant is located at 230 Harbour Street P.O. Box 126, Goderich, Ontario.

4. The Common Shares of the Applicant were traded primarily on the over-the-counter market and were not listed on any stock exchange.

5. As of July 19, 2012, Parrish & Heimbecker, Limited (**P&H**) acquired 211,647 Common Shares pursuant to a take-over bid, dated May 31, 2012 (as extended on July 5, 2012) which, together with the Common Shares already held by P&H, represented approximately 96% of the total outstanding Common Shares.

6. Effective September 1, 2012, P&H acquired all of the Common Shares of Thirdcoast that it did not already own pursuant to a compulsory acquisition under section 188 of the OBCA.

7. As of the date of this decision, all of the outstanding securities of the Applicant, including debt securities, which are beneficially owned, directly or indirectly, are held by a sole securityholder, P&H.

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

9. The Applicant has applied for an order that it is not a reporting issuer in Ontario pursuant to subclause 1(10)(a)(ii) of the *Securities Act* (Ontario) in accordance with the simplified procedure set out in OSC Staff Notice 12-703 *Applications for a Decision* that an Issuer is not a Reporting Issuer and is not a reporting issuer or the equivalent in any other jurisdiction in Canada (the **Securities Act Order**). The Securities Act Order was granted on September 19, 2012.

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

11. The Applicant is not be a reporting issuer or equivalent in any jurisdiction of 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 21st day of September, 2012.

"Edwin P. Kerwin"
Commissioner
Ontario Securities Commission

"Judith Robertson"
Commissioner
Ontario Securities Commission

This page intentionally left blank

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1.1 Sears Canada Inc. et al.

[Editor's note: This decision was inadvertently not published in the Bulletin at the time of issuance by the Commission in August 2006. It should be cited as *Re Sears Canada et al.* (2006), 35 OSCB 8781.]

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

AND

IN THE MATTER OF
SEARS CANADA INC.,
SEARS HOLDINGS CORPORATION,
AND SHLD ACQUISITION CORP.

AND

IN THE MATTER OF
HAWKEYE CAPITAL MANAGEMENT, LLC,
KNOTT PARTNERS MANAGEMENT, LLC, AND
PERSHING SQUARE CAPITAL MANAGEMENT, L.P.

REASONS AND DECISION

Hearing	–	July 4 – 6, 2006
Panel	–	
Susan Wolburgh Jenah	–	Vice-Chair (Chair of the Panel)
Robert W. Davis, FCA	–	Commissioner
Carol S. Perry	–	Commissioner
Counsel		
For Staff	–	Kelley McKinnon
	–	Naizam Kanji
	–	Michael Brown
For Sears Holdings Corporation	–	Mark Gelowitz
SHLD Acquisition Corp.	–	Allan Coleman
	–	Shawn Irving
	–	Donald Ross
	–	Don Gilchrist
For Hawkeye Capital Management LLC		Kent Thomson
Knott Partners Management LLC		Luis Sarabia
Pershing Square Capital Management, L.P.		Patricia Olasker
		Steven Harris
		Sean Campbell

For Sears Canada Inc.	–	Andrew Gray
	–	Kathleen Keller-Hobson
For The Bank of Nova Scotia and Scotia Capital Inc.	–	Paul Steep
	–	Gary Girvan
	–	Thomas Sutton
	–	Peter Neumann
	–	Lyla Simon
For The Royal Bank of Canada	–	Peter Howard
	–	Mihkel Voore
For William Anderson	–	Gerald Ranking

TABLE OF CONTENTS

(ix) April 20 Complaint Against the Principal of Pershing
(x) Other Complaints
(xi) What is the Appropriate Remedy?

REASONS AND DECISION

I. Overview

A. Background to the Proceeding

[1] Two Applications were filed in relation to an offer of SHLD Acquisition Corp. (SHLD), a wholly-owned subsidiary of Sears Holdings Corporation to acquire all of the outstanding common shares of Sears Canada Inc. (Sears Canada) not owned by it or its affiliates (the "Offer"). The Offer was announced on December 5, 2005, formally commenced on February 9, 2006 and expires on August 31, 2006.

[2] In conjunction with the Offer, Sears Holdings informed the shareholders of Sears Canada of its intention to take Sears Canada private following the completion of the Offer pursuant to a second step subsequent acquisition transaction (SAT), for which "majority of the minority" approval would be required under Ontario Securities Commission Rule 61-501 – *Insider Bids, Issuers Bids, Business Combinations and Related Party Transactions* (2004), 27 O.S.C.B. 5975 ("Rule 61-501"). Sears Holdings intends to complete the SAT in December 2006.

[3] On April 6, 2006, Sears Holdings announced that it had entered into agreements with holders of a sufficient number of Sears Canada shares to assure that any SAT undertaken by Sears Holdings would be approved by a majority of the minority of the shareholders of Sears Canada.

[4] On June 5, 2006, SHLD and Sears Holdings Corporation (collectively, Sears Holdings) filed an application for relief (the Sears Holdings Application) under sections 104 and 127 of the Securities Act, R.S.O. 1990, c. S.5 (the Act) in respect of the conduct of Pershing Square Capital Management L.P. (Pershing), Hawkeye Capital Management, LLC (Hawkeye) and Knott Partners Management LLC (Knott) (collectively, the Pershing Group) in connection with the Offer. The fundamental allegation against the Pershing Group is that they engaged in joint activity in a coordinated effort to thwart the Offer and to frustrate the expressed will of the majority of the minority shareholders of Sears Canada. They allege numerous breaches of Ontario securities law and seek relief from the Commission against Pershing and the Pershing Group under sections 127 and 104 of the Act.

[5] On June 5, 2006, the Pershing Group filed an application for relief against Sears Holdings (the Pershing Application) under sections 104 and 127 of the Act. They allege that various aspects of the conduct of Sears Holdings in pursuing its Offer violated Ontario securities law and constituted abusive and coercive conduct. The Pershing Group therefore requests that the Commission exercise its public interest jurisdiction and make an order under sections 127 and 104 of the Act.

[6] The Commission issued a Notice of Hearing pursuant to subsection 104(1) and section 127 of the Act on May 17, 2006, scheduling a hearing commencing on Wednesday July 5, 2006 to consider the above-noted Applications. An Amended Notice of Hearing was issued on June 7, 2006 setting down the hearing for July 4, 2006.

[7] Although The Bank of Nova Scotia (BNS), Scotia Capital Inc. (Scotia Capital) and The Royal Bank of Canada (RBC) are not named as parties to the Pershing Application, certain issues have been raised by the Pershing Group which relate to and could impact on BNS, Scotia Capital and RBC. Accordingly, we granted full standing to BNS, Scotia Capital and RBC on the consent of all the parties and subject to the conditions set out in our Orders.

[8] Prior to the hearing, we also heard and determined several motions for production of documents made by the parties. Most of these motions were heard and determined by the Chair of the panel at the request and with the consent of the parties. These motions resulted in several orders for pre-hearing production. We also made an order compelling William Anderson to testify at the hearing on the merits.

B. The Parties

[9] Sears Holdings Corporation is the United States' third largest broadline retailer with annual revenues in excess of $55 billion. It is the leading home appliance retailer as well as a leader in tools, garden, electronics, home and automotive repair and maintenance. Prior to the announcement of the Offer, Sears Holdings held 57,732,517 common shares of Sears Canada (approximately 53.8 percent of the outstanding common shares). It is therefore an insider within the meaning of Rule 61-501.

[10] SHLD is a wholly-owned subsidiary of Sears Holdings Corporation. SHLD was incorporated for the sole purpose of making the Offer.

[11] Pershing is a New York based registered investment advisor to several investment funds (the Pershing Funds) with total capital of more than U.S. $1.8 billion. William Ackman is the founder and principal of Pershing. Pershing manages capital on behalf of more than 200 individuals, pension funds, charitable organizations, educational endowments and other institutional and corporate investors. Pershing began investing in Sears Canada in February 2005 based on its belief that Sears Canada was undervalued. In their written submissions, the Pershing Group stated that the Pershing Funds owned 5,601,400 Sears Canada shares (approximately 5.2 percent of the outstanding shares). The Pershing Funds are also entitled to the economic benefit of an additional 6,900,000 Sears Canada shares (approximately 6.4 percent of the outstanding shares of Sears Canada) under cash-settled derivatives transactions with a resulting total economic interest equal to approximately 11.6 percent of the outstanding shares of Sears Canada.

[12] Hawkeye was founded in November 1999 and is a provider of investment management services in New York. Hawkeye's activities are focused on researching and investing in equity and debt securities on behalf of Hawkeye Capital L.P.'s limited partners. The written submissions indicate that Hawkeye owned or controlled 1,525,872 Sears Canada shares (approximately 1.42 percent of the outstanding shares of Sears Canada).

[13] Knott is a New York limited liability company. Knott provides discretionary investment advisory services which include managing and directing the investment of assets for individuals, institutional clients and private investment limited partnerships. The written submissions indicate that Knott owned or controlled 1,114,300 Sears Canada shares (approximately 1.04 percent of the outstanding shares of Sears Canada). In addition to trading in the shares of Sears Canada for its own account, Knott trades shares in Sears Canada on behalf of a number of investment funds.

C. The Applications

[14] The relevant events leading up to both the Sears Holdings and the Pershing Group's Applications being filed with the Commission are as follows.

Events Prior to the Announcement of the Offer

[15] Sears Holdings Corporation was formed as a result of the merger between Sears, Roebuck and Co. and Kmart Holdings Corporation on March 24, 2005.

[16] On June 13, 2005, Sears Canada announced it would consider strategic alternatives for its credit and financial services business.

[17] On August 31, 2005, Sears Canada announced an agreement with J.P. Morgan Chase & Co. to sell its credit and financial services business for approximately $2.2 billion in cash proceeds and stated that it proposed to make a substantial cash distribution from the proceeds of the sale to the shareholders of Sears Canada.

[18] The same day, the Institutional Equity Group at Scotia Capital purchased 125,000 Sears Canada. From August 31 to December 16, 2005, Scotia Capital Institutional Equity Group made further purchases of Sears Canada shares for an aggregate of 513,000 shares.

[19] On September 14, 2005, Sears Canada announced that it proposed to distribute approximately $2 billion of the proceeds of the sale of the credit card and financial services assets to its shareholders. Sears Canada's share price increased to over $30.00 per share after the announcement.

[20] Between, October 31 and November 29, 2005, Scotia Capital's Capital Markets Group purchased 4,000,000 Sears Canada shares. These shares were purchased in the market through trades effected over the facilities of the TSX. Scotia Capital's Capital Markets Group purchased these 4,000,000 Sears Canada shares to partially hedge its risk in relation to equity swap transactions it had entered into with SunTrust Capital Markets Inc. ("SunTrust") and a broker dealer. To further reduce its exposure, between November 29, 2005 and December 13, 2005, Scotia Capital's Capital Markets Group also entered into three total return swaps with Canadian institutions in relation to 2,042,100 Sears Canada shares.

[21] In November 2005, Sears Canada presented a proposal to its board of directors (code named "Project Dawn") setting out a number of cost saving initiatives for an estimated total of $301 million.

[22] On December 2, 2005, Sears Canada announced that its board of directors had declared that $4.38 per share would be paid to all shareholders of Sears Canada on December 16, 2005 as a return of capital and that a $14.26 per share dividend would also be paid on that day. The Pershing Funds are non-resident shareholders of Sears Canada for the purpose of Canadian tax laws. As a result, Pershing approached SunTrust with a view to entering into cash-settled total return swaps approximately equivalent to 5.3 million Sears Canada shares (the "2005 Pershing Swaps"). The purpose of Pershing entering into the 2005 Pershing Swaps was to minimize its exposure to Canadian withholding taxes by disposing of its Sears Canada shares prior to receiving the dividend while maintaining an economic interest in the performance of Sears Canada shares. In

anticipation of entering into the 2005 Swaps, Pershing sold all of its shares of Sears Canada between October 31, 2005 and December 8, 2005. Pershing has no right to terminate the 2005 Pershing Swaps prior to their scheduled expiration in December of 2006 and has no right to obtain physical settlement of the 2005 Pershing Swaps upon termination.

[23] On December 4, 2005, Sears Holdings advised the directors of Sears Canada that it intended to make an insider bid to acquire all of the Sears Canada shares not then held by Sears Holdings for a purchase price of $16.86 per share. Sears Holdings also advised the directors of Sears Canada that it had entered into an agreement with Natcan Investment Management Inc. ("Natcan") pursuant to which Natcan has agreed to tender 9,699,862 shares of Sears Canada to the intended Offer.

[24] On December 4, 2005, Scotia Capital, having heard of the yet to be announced bid, contacted Sears Holdings to secure a retainer as the financial advisor to Sears Holdings in connection with the Offer. Between December 4 and 16, 2005, Scotia Capital concurrently sought a retainer as the financial advisor to the Special Committee of Sears Canada (described below) but was not selected because of concerns about its lack of independence due to its banking relationship with Sears Canada. On December 16, 2005, Scotia Capital pursued its effort to secure a retainer as the financial advisor to Sears Holdings. On December 29, 2005, Scotia Capital met with representatives of Sears Holdings to make a pitch for the financial advisory mandate. The retainer was formalized in an engagement letter dated January 6, 2006 (the Engagement Letter). Under the Engagement Letter, Scotia Capital was entitled to a fee of $50,000 per month and a success fee of $400,000 if the transaction was accomplished at a price at or below the initial Offer price of $16.86 per share.

Relevant Events Relating to the Offer

[25] On December 5, 2005, Sears Holdings publicly announced its intention to make an insider bid to acquire all of the outstanding shares of Sears Canada not owned by it at a price of $16.86 per share. The announcement indicated that the insider bid would be subject to the usual condition that a majority (on a fully diluted basis) of the Sears Canada shares not owned by Sears Holdings be tendered (the Minimum Tender Condition). Sears Holdings also publicly disclosed that it had entered into a lock-up agreement with Natcan on December 3, 2005, pursuant to which Natcan had agreed to tender 9,699,862 shares, representing 9.06 percent of the outstanding shares of Sears Canada, into Sears Holdings' proposed insider bid.

[26] The next day, the board of directors of Sears Canada formed a Special Committee of its directors (the "Special Committee") which consisted of the six independent directors of Sears Canada, to supervise the preparation of a formal valuation and to review and make a recommendation to the board of directors of Sears Canada with respect to the proposed insider bid. Mr. William Anderson (Anderson) was appointed Chair of the Special Committee. The Special Committee was authorized to retain independent legal counsel and independent financial advisors to assist it in carrying out its responsibilities. The Fasken Martineau law firm was retained on December 9, 2005. Genuity Capital Markets ("Genuity") was retained on December 15, 2005, to serve as independent valuator and financial advisor to the Special Committee. Genuity was asked to provide a formal valuation of Sears Canada and an opinion as to the fairness of the proposed Offer of Sears Holdings to the minority shareholders of Sears Canada.

[27] On January 10, 2006, Sears Holdings applied to the securities regulators in Ontario and a number of other provinces across Canada for exemptive relief from the requirement of Ontario securities law (and the analogous requirement in the other Canadian jurisdictions) to include a formal valuation of the Sears Canada shares in its Take-Over Bid Circular on the grounds that the Genuity valuation was not being prepared in a timely manner. Staff of the Commission (Commission Staff) advised Sears Holdings that it was not prepared to grant the requested relief at that time. However, Commission Staff agreed that such exemptive relief sought by Sears Holdings would be granted in the event that Genuity failed to deliver its valuation by the end of the week of February 6, 2006. Genuity delivered its formal Valuation and Inadequacy Opinion to the Special Committee on February 7, 2006 (the Genuity Valuation).

[28] On January 16, 2006, representatives of Sears Holdings met with Genuity to convey their views in relation to the Genuity Valuation. On January 25, 2006, Genuity advised the Special Committee that it anticipated reaching the conclusion that the consideration Sears Holdings proposed to offer to the minority shareholders of Sears Canada would be below the "bottom end of the range of the fair market value" of the common shares. The Special Committee arranged further meetings between Genuity and Sears Holdings in advance of Genuity finalizing its formal valuation and opinion regarding the insider bid. During these meetings, Genuity made a presentation to representatives of Sears Holdings concerning its valuation and methodologies.

[29] On February 6, 2006, Genuity met with and assured the Special Committee that it had given "fair consideration" to the issues and concerns that Sears Holdings had raised in respect of Genuity's valuation approach. On February 7, 2006, Genuity delivered its Valuation to the Special Committee indicating that, in its opinion, the fair market value of the shares of Sears Canada was in the range of $19.00 to $22.25 per share and that the consideration under the proposed Offer of Sears Holdings was inadequate from a financial point of view. In its calculation of value, Genuity estimated costs savings of $95 million rather the $301 million in costs savings originally identified by the Sears Canada Project Dawn initiative.

[30] On February 6, 2006, Sears Holdings issued a press release announcing its intention to mail the Take-Over Bid Circular and that the Offer would not be subject to the previously announced Minimum Tender Condition.

[31] Scotia Capital entered into an agreement with Sears Holdings on February 8, 2006 to form and manage a soliciting dealer group. Under this agreement, and subject to a number of exceptions and limitations, soliciting dealers would be entitled to a fee of $0.10 per common share for each share tendered to the Offer.

[32] On February 9, 2006, following the delivery of the Genuity Valuation, Sears Holdings commenced its Offer for the shares of Sears Canada at $16.86 per share by distributing its Offer and Take-Over Bid Circular ("Circular") to the shareholders of Sears Canada. In its Circular, Sears Holdings was critical of the Genuity Valuation for "ignoring" the matters that had been brought to Genuity's attention by Sears Holdings. The insider bid was not subject to the Minimum Tender Condition. The Circular indicated that the Offer would expire on March 17, 2006 and that any SAT would be pursued within 120 days thereafter.

[33] Sears Canada distributed its Directors' Circular in relation to the insider bid on February 21, 2006. The voting members of Sears Canada's board (being the six independent directors comprising the Special Committee) recommended unanimously that the shareholders of Sears Canada reject the Offer and not tender their shares to the insider bid. They expressed the view that the Offer was opportunistically timed and exerted pressure on Sears Canada and its minority shareholders as evidenced by factors such as Sears Holdings' application for exemptive relief from the requirement to include a formal valuation of the shares of Sears Canada in its Circular as well as the absence of a Minimum Tender Condition. In support of this recommendation, the Special Committee noted among other things, that the Offer was financially inadequate, significantly below the Genuity Valuation range and significantly below the average trading price of the shares on the Toronto Stock Exchange since the announcement of the Offer on December 5, 2005.

[34] On February 22, 2006, Sears Holdings issued a lengthy press release responding to the Directors' Circular.

[35] On February 27, 2006, Sears Canada announced that all six of the independent directors of the board of Sears Canada had given notice that they would not stand for re-election at the next annual meeting of shareholders.

[36] In late February 2006, Sears Holdings were advised by Scotia Capital that a significant number of shares of Sears Canada were potentially held by Canadian banks and had been acquired in connection with derivative trades transacted in connection with the extraordinary cash dividend paid by Sears Canada in December 2005. On February 28, 2006, Scotia Capital confirmed to Sears Holdings that based on its inquiries it estimated about 9 to 10 percent of the total shares outstanding were held by such shareholders, including 4 million shares held by BNS, 0.5 million shares held by Scotia Capital, 2 million shares held indirectly by BNS through swaps and 3 million shares held by RBC.

[37] On March 17, 2006, the initial expiration date of the Offer, Sears Holdings took up 10,161,968 Sears Canada shares of which 9,699,862 or more than 95 percent, had been deposited pursuant to the Natcan lock-up agreement. By this date, Sears Holdings owned 67,894,485 Sears Canada shares, representing 63.2 percent of the total outstanding shares.

[38] On March 20, 2006, Sears Holdings issued a Notice of Extension of its insider bid to March 31, 2006. The Notice of Extension indicated that, if "Sears Holdings does not acquire a majority of the minority of Sears Canada", it will support the elimination of what it characterized as the "recent practice" of Sears Canada of paying quarterly dividends. This message was also conveyed by Sears Holdings in a press release it issued that same day.

[39] On March 28, 2006, Sears Holdings entered into Support Agreements with each of BNS and Scotia Capital at a price of $16.86 per Sears Canada share. On the same day, Sears Holdings entered into Escrow Agreements with each of BNS and Scotia Capital for a total of 4,511,000 shares. These Escrow Agreements provide that the Support Agreements involving BNS and Scotia Capital would be held in escrow until at least a majority of the Sears Canada shares held by the minority shareholders was acquired by Sears Holdings pursuant to its insider bid or had become subject to support agreements substantially similar to the Support Agreements entered into by BNS and Scotia Capital.

[40] On March 31, 2006, Pershing sold 1,600,000 shares of Sears Canada to SunTrust and entered into another cash-settled total return swap transaction with SunTrust (the "2006 Pershing Swaps"), on substantially the same terms as the 2005 Pershing Swaps. SunTrust offered Pershing the alternative of cash or physical settlement. At the time Pershing entered into the swap it elected cash settlement. Pershing did not maintain a legal or beneficial interest in, or the power to exercise control or direction over, the voting rights in respect of the Sears Canada shares that were sold by it at the end of March.

[41] On April 1, 2006, Sears Holdings entered into a deposit agreement with Vornado (the Vornado Agreement) whereby Vornado agreed to deposit its 7,500,000 shares of Sears Canada to a revised Offer by Sears Holdings at an increased price of $18.00 per share and an extended expiry date. These shares were subsequently deposited and taken up such that Sears Holdings owned 75,441,763 (70.2 percent) of the outstanding Sears Canada shares. Pursuant to the terms of the Vornado Agreement, Sears Holdings agreed to provide Vornado with price protection until December 31, 2008 as a result of which it would pay to Vornado the highest price paid to any other shareholder of Sears Canada under its insider bid. Sears Holdings also provided a "litigation release" (the Release) to Vornado as discussed more fully below. Sears Holdings undertook to cause Sears Canada to provide the same Release in favour of Vornado.

[42] On April 3, 2006, Sears Holdings disclosed the Vornado Agreement in a press release. It also announced that it had increased its Offer to the shareholders of Sears Canada from $16.86 per share to $18.00 per share and extended its Offer to April 19, 2006. Sears Holdings further indicated that its Offer had been amended to provide that any dividend paid by Sears Canada after the date of the Offer, including regular quarterly dividends would have to be remitted to Sears Holdings by shareholders who tender.

[43] Sears Holdings issued a Notice of Extension and Variation on April 4, 2006, which described the amendments to the Offer and extended to all shareholders of Sears Canada whose shares were acquired pursuant to the Offer the price protection that had been granted to Vornado. The Release was not referred to.

[44] On April 5, 2006, Pershing purchased 204,000 additional shares of Sears Canada, which brought its ownership to approximately 3.47 percent of the outstanding shares of Sears Canada.

[45] On April 5, 2006, Sears Holdings entered into a Support Agreement with RBC in respect of 3.1 million of the 3.9 million Sears Canada shares owned by RBC.

[46] On April 6, 2006, Sears Holdings announced that unnamed shareholders holding 7,611,000 Sears Canada shares (being the number of shares subject to the Support Agreements with BNS, Scotia Capital and RBC) had agreed to vote in favour of a SAT at $18.00 a share to be effected either as a share consolidation or plan of arrangement. Sears Holdings also stated that Sears Holdings and its affiliates "will own or have support commitments for sufficient shares to assure the necessary shareholder approval of a going private transaction of Sears Canada at the offer price of C$18.00 per share."

[47] The same day, Pershing acquired 1,868,400 additional shares of Sears Canada, increasing its interest to 5.21 percent and Hawkeye purchased 100,000 shares of Sears Canada.

[48] On April 7, 2006, Pershing issued a press release regarding its ownership of Sears Canada shares pursuant to section 102 of the Act.

[49] Sears Holdings issued a Notice of Variation and Change of Information dated April 7, 2006 extending the expiry date of its Offer to August 31, 2006. It described the terms, but not the parties with whom it had entered into the Support Agreements. It also indicated that a subsequent going private transaction was expected to close in December 2006. The extension by Sears Holdings of its Offer from April 19, 2006 to August 31, 2006 would ensure that no more than 120 days would elapse between the expiry of the Offer and the SAT. This meant that it would avoid the need to obtain a new independent valuation and would also allow shares tendered under the insider bid to be counted when the required "majority of the minority" approval was sought in connection with the SAT.

[50] On April 10, 2006, Sears Canada issued two press releases concerning changes to the composition of its senior management team. In the first press release, Sears Canada announced that Brent Hollister, the President and CEO of Sears Canada would be stepping down effective May 9, 2006, would leave the company and would not stand for re-election to its board of directors. The second press release announced that Dene Rogers, a senior executive of Sears Holdings, had been appointed to the role of Acting President of Sears Canada, effectively replacing Mr. Hollister.

[51] On April 12, 2006, the independent directors of Sears Canada issued a Notice of Change of Directors' Circular relating to the revised Offer. This Notice of Change indicated that on April 11, 2006, Genuity had provided to members of the Special Committee a summary of its updated Valuation and Inadequacy Opinion together with a description of the due diligence it had undertaken in its preparation. The Notice included a copy of the updated Genuity Valuation which reaffirmed that the fair market value of Sears Canada shares as of April 11 was $19.00 to $22.25 and that Sears Holdings' revised Offer remained inadequate. The Notice also stated that the Special Committee had unanimously determined not to make a recommendation concerning the revised Offer. The Special Committee continued to have a number of reservations with respect to the revised Offer of Sears Holdings which were detailed in this Notice of Change.

[52] On April 14, Pershing, Hawkeye and Knott formed a group to oppose the efforts of Sears Holdings to take Sears Canada private. On April 17, 2006, they jointly announced that they had formed a group to "take all appropriate action to halt" the Sears Holdings bid. They also disclosed that they collectively owned 8,241,572, approximately 7.7 percent, of the then outstanding common shares of Sears Canada.

[53] On May 9, 2006, Sears Canada held its annual meeting at which a new board was elected comprised of four Sears Holdings employees, an employee of Sears Canada and three "independent" members nominated for election by Sears Holdings.

D. The Hearing

[54] The hearing on the merits to consider the two Applications commenced on July 4, 2006 and took place over three consecutive days. We heard evidence over the first two days of the hearing and closing submissions were made by the parties on the last day. In total, seven witnesses were called to testify. They were: William Ackman, the founder and principal of Pershing; William Anderson, the Chair of the Special Committee of Sears Canada; Richard Murawczyk, an investment analyst and member of Knott; Richard Rubin, a managing member of Hawkeye; William C. Crowley, the Executive Vice President, Chief Financial Officer and Administrative Officer of Sears Holdings; Kieran O'Donnell, an employee of BNS and a member of the Capital Markets Group of Scotia Capital; and Greg Rudka, an employee in the Investment Banking Group of Scotia Capital.

II. Summary of Allegations and Relief Sought by Sears Holdings

A. The Allegations

[55] The main allegations or submissions made by Sears Holdings against the Pershing Group are summarized as follows:

(1) Pershing and its joint actors acquired beneficial ownership of common shares of Sears Canada during the Offer period and failed to comply with the early warning disclosure requirements under sections 101 and/or 102 of the Act;

(2) Pershing issued a news release with respect to its acquisition of common shares of Sears Canada during the Offer period that failed to comply with the requirements of section 198 of the Regulations and contained material misrepresentations contrary to section 126.2 of the Act;

(3) Pershing and its joint actors engaged in activities that resulted in an artificial price of Sears Canada shares contrary to section 126.1 of the Act; and

(4) Pershing and its joint actors engaged in abusive minority tactics contrary to the public interest.

B. Order Sought by Sears Holdings

[56] Sears Holdings seeks the following relief from the Commission:

(i) an order that Pershing and its joint actors be reprimanded;

(ii) an order requiring that Pershing and its joint actors comply with Part XX and the related regulations by selling into the market the common shares of Sears Canada each of them purchased during the period in which they were required to disclose their position as joint actors under Part XX but failed to do so;

(iii) an order requiring that Pershing and its joint actors be prohibited from acquiring any further common shares of Sears Canada;

(iv) or in the alternative, an order directing that the votes attached to any common shares of Sears Canada owned or controlled by Pershing and its joint actors be excluded in determining whether minority approval of any subsequent acquisition transaction in connection with the Offer has been obtained pursuant to Rule 61-501.

III. Sears Holdings – Allegations Against the Pershing Group

[57] Sears Holdings alleges that the Pershing Group has violated sections 101, 102, 126.1 and 126.2 of the Act and has engaged in abusive minority tactics contrary to the public interest. The particulars of their allegations are discussed below.

A. Did Pershing Violate the Early Warning Requirements of Sections 101 and 102 of the Act?

[58] On April 7, 2006, Pershing issued a press release (the “April 7 Press Release”) disclosing that it owned 5,601,400 common shares of Sears Canada, representing approximately 5.2 percent of the outstanding common shares. This was Pershing’s first public disclosure filing relating to its holdings in Sears Canada. In the same press release, Pershing also disclosed, for the first time, that Pershing was entitled to the economic benefit of an additional 6,900,000 common shares of Sears Canada as a result of certain cash-settled derivatives transactions it had entered into with SunTrust (the 2005 and 2006 Pershing Swaps).

[59] Between October 31 and December 8, 2005, Pershing sold its then entire position of 5.3 million Sears Canada Shares in connection with entering into the 2005 Pershing Swaps. Mr. Ackman testified at the hearing that these shares were sold in

"market-on-close" transactions which were arranged by SunTrust with one or more ultimate counterparties including BNS (although at the time of the trades the identity of the counterparty was not known to Pershing).

[60] According to Mr. Ackman's Affidavit of June 14, 2006, the purpose of entering into the 2005 Pershing Swaps "was to minimize its exposure to Canadian withholding taxes by disposing of its Sears Canada shares prior to receiving the Sears Canada dividend while maintaining an economic interest in the performance of Sears Canada shares." Mr. Ackman further indicated that the 2005 Pershing Swaps were arranged in the fall of 2005 before Sears Holdings announced its intention to proceed with its Offer.

[61] On March 16, Pershing began again to purchase shares of Sears Canada in the open market and continued to do so up until April 6, 2006.

[62] On March 31, 2006, Pershing sold 1,600,000 shares of Sears Canada and entered into another equity swap transaction with SunTrust for an equivalent number of shares. This occurred prior to Sears Holdings' announcement that it had entered into the Vornado Agreement and the Support Agreements.

Evidence, Law and Analysis

[63] Sears Holdings alleges that the Pershing Group, due to their actions with each other and/or with third parties, violated sections 101 and 102 of the Act by failing to comply with the applicable early warning disclosure requirements.

[64] Subsection 101(1) of the Act requires an "offeror that acquires beneficial ownership of, or the power to exercise control or direction over … voting or equity securities of any class of a reporting issuer that, together with each offeror's securities of that class, would constitute 10 percent or more of the outstanding securities of that class" to issue and file forthwith a news release containing the prescribed information and, within two business days, to file a report. For purposes of section 101, an offeror is defined to include a person or company who acquires a security, whether or not by way of a take-over bid, issuer bid or offer to acquire.

[65] During the course of a formal take-over bid, the relevant reporting threshold pursuant to section 102 of the Act is reduced from 10 percent to 5 percent. The purpose of section 102 of the Act is to provide a signal to the marketplace that competing bidders may be interested in making a formal bid (or blocking a formal bid) and that others are purchasing the target issuer's shares [*Securities Law & Practice*, Thomson Canada Limited, 2006, at para. 20.15.1].

[66] The trading records over the relevant period of time showed that Hawkeye and Knott owned 1.4 percent and 1 percent, respectively, of the total outstanding shares of Sears Canada and therefore did not violate sections 101 or 102 of the Act in the absence of any finding that they were joint actors with Pershing.

[67] Similarly, the trading records indicate that at no point during the relevant time did Pershing own more than 10 percent of the outstanding Sears Canada shares. On its face, and subject to the discussion below, Pershing did not violate section 101 of the Act.

[68] Pershing's trading records show that between February 9, 2006 (the day the bid was made) and April 6, 2006 (the last day that Pershing acquired Sears Canada shares), Pershing crossed the five percent reporting threshold of section 102 of the Act on April 6, 2006 as a result of its purchase of 1,868,400 Sears Canada shares. The next business day, Pershing issued the previously discussed April 7 Press Release. Based on this evidence, Pershing did not violate section 102 of the Act.

[69] The analysis does not end there, however. In determining whether a party has acquired securities in excess of the 10 percent and 5 percent thresholds in sections 101 and 102 of the Act, respectively, one must aggregate the number of securities which a party beneficially owns or exercises control or direction over, with those which its "joint actors" beneficially own or exercise control or direction over. In other words, the relevant thresholds in sections 101 and 102 of the Act are aggregated for persons acting "jointly or in concert".

[70] Section 91 of the Act provides that it is a question of fact as to whether persons are "acting jointly or in concert". The purpose of section 91 of the Act is to ensure that all persons or companies who are effectively engaged in a common investment or purchase program, whether in support of, or in opposition to, a take-over bid, abide by the rules that govern securities transactions prior to, during and subsequent to the bid (*Report of the Committee to Review the Provisions of the Securities Act (Ontario) Relating to Take-Over Bids and Issuer Bids* (Toronto: Securities Commission, September 23, 1983)).

(i) Were Pershing and Vornado "Joint Actors"?

[71] Sears Holdings has asked us to determine, as a matter of fact, that Pershing was acting jointly and in concert with Vornado, at least up until the time that Vornado decided to enter into the Deposit Agreement with Sears Holdings on April 1, 2006. If we were to reach that conclusion based on the evidence, they say Pershing would have contravened both sections 101

and 102 of the Act because Sears Canada shares acquired by Pershing from March 16 to March 31, 2006, when aggregated with the 7.5 million Sears Canada shares then held by Vornado, would have exceeded both the 10 and 5 percent thresholds set out in these sections.

[72] What did the evidence establish about the relationship between Pershing and Vornado? On or about February 15, 2005, Pershing entered into an arrangement with Vornado pursuant to which Pershing agreed to split with Vornado its purchases of Sears Canada shares. Between February and September, 2005, Pershing sold to Vornado approximately 7,400,000 Sears Canada shares pursuant to this arrangement.

[73] Mr. Ackman, during his cross-examination by counsel for Sears Holdings, indicated that this joint purchasing arrangement with Vornado was oral and was both entered into and terminated over the telephone. Mr. Ackman explained that, as both Vornado and Pershing wanted to buy Sears Canada shares over the relevant period, Vornado suggested that they split the stock purchases rather that "compete in the marketplace". Mr. Ackman testified that the arrangement was terminated at the end of September because Vornado "had no interest in buying additional shares".

[74] In support of its allegation of continuing "joint activity" between Pershing and Vornado, counsel for Sears Holdings drew to our attention a "finder's fee" of $2.5 million that Vornado indicated it would pay to Pershing towards the end of February, 2006. Mr. Ackman confirmed in his Reply Affidavit and in his testimony that in the fall of 2005, he had approached Mr. Roth, Chairman and CEO of Vornado, and requested that Vornado pay Pershing a finder's fee for bringing the Sears Canada investment opportunity to the attention of Vornado and that Mr. Roth had agreed to consider Pershing's request. When pressed as to the unexplained timing gap between the request and Vornado's decision to pay the fee Mr. Ackman testified that:

> "I think the reason why he had to determine – finalize the amount of the fee in February, is they were in the process of filing their 10-K with the SEC, and that they needed to accrue for what the amount of the fee was in preparation with that filing."
>
> (Hearing Transcript dated July 4, 2006 at page 90)

[75] According to the evidence, on April 2, 2006, Mr. Roth of Vornado phoned Mr. Ackman at home to alert him to the fact that he had entered into the Deposit Agreement with Sears Holdings. This call came one day prior to Sears Holdings' public announcement relating to the Vornado Agreement. The evidence was that Mr. Ackman was surprised by this turn of events. There was no evidence advanced to suggest that Mr. Ackman knew of the Vornado Agreement or the negotiations that led up to it prior to this point in time.

[76] In this regard, Sears Holdings relied upon an e-mail that was sent from Mr. Ferguson of Pershing after Pershing learned of the Vornado Agreement, in which he stated: "I can't believe these guys tendered. Talk about getting sold out."

[77] Mr. Ackman explained this comment, however, in the course of his evidence as follows:

> "It was not a good day for minority shareholders of Sears Canada when Vornado announced the Deposit Agreement because it increased the probability that minority holders were going to get squeezed out at a below-market price, a price significantly below fair value.
>
> What made it particularly upsetting to us is that we brought this idea to Vornado to begin with. So here we give them this investment idea on which they made a hundred million dollars, and then they effectively cost us a lot of money by choosing to tender. And had we not even brought this idea to the attention of Vornado, we would have been much better off. And I think Mr. Ferguson is expressing that frustration."
>
> (Hearing Transcript dated July 4, 2006 at page 97)

[78] We accept Mr. Ackman's explanation for this e-mail and reject Sears Holdings' contention that it provides evidence of joint activity between Pershing and Vornado over the period of the Offer.

[79] Sears Holdings submits that a formal agreement between parties, while helpful in establishing joint actor status from an evidentiary point of view, is not a prerequisite (*Re 243978 Alberta Limited et al.* (1982), 4 O.S.C.B. 566C). We agree with this general proposition. However, in the absence of the proverbial "smoking gun", there must be evidence to support a finding that parties have acted jointly or in concert. Credible and plausible alternative explanations were provided by Pershing, as noted above, in reference to the evidence relied upon by Sears Holdings in support of its allegation. We therefore conclude that the evidence does not support Sears Canada's contention that Vornado and Pershing acted jointly or in concert for purposes of their obligations under sections 101 and 102 of the Act or in connection with the Offer more generally.

[80] We note, in obiter, that Sears Holdings' allegations were focused on Pershing having acted jointly or in concert with Vornado. The necessary corollary to such a finding (which we have rejected as noted above) would be that Vornado acted jointly or in concert with Pershing although no such allegation was made by Sears Holdings against Vornado. Sears Holdings' request that the Commission exclude the votes attached to shares of Sears Canada owned or controlled by "Pershing and its joint actors" for purposes of determining minority approval of the SAT may equally have applied to Vornado had we made a finding of joint actor status as we were urged to do so by Sears Holdings. In light of our determination on this issue, we need not address the consequential implications that a finding against Pershing might have had on Vornado.

(ii) Are Pershing, Hawkeye and Knott Joint Actors?

[81] The essence of Sears Holdings' allegation is that the principals behind the Pershing Group – Mr. Ackman of Pershing, Mr. Rubin of Hawkeye and Mr. Murawczyk of Knott – purchased shares during the Offer period as a result of an agreement, commitment or understanding with each other with respect to Sears Canada shares and in order to "thwart the Offer" and to prevent Sears Holdings from securing the "majority of the minority" approval required for the SAT to proceed.

[82] Their allegations in this regard involve Mr. Mayers of Desjardins Securities Inc. (Desjardins), a broker who had telephone conversations with the Pershing Group principals over the period of the Offer. In the course of cross-examination, Mr. Ackman, Mr. Rubin and Mr. Murawczyk were asked to explain various conversations that each of them had had with Mr. Mayers in relation to the Offer. These conversations were contained in a transcript that had been prepared at the behest of Commission Staff based on tapes of telephone conversations previously provided to Commission Staff by Desjardins.

[83] Sears Holdings submitted that, in the event the Commission were to determine that the Pershing Group acted jointly and in concert prior to April 6, 2006 (the date of the last purchase of Sears Canada shares by one of the Pershing Group parties), this would support a finding of a breach of section 102 of the Act because, taken together, the Pershing Group holds more than 5 percent of the outstanding shares of Sears Canada.

[84] The evidence established that, on April 6, 2006, the Pershing Group met to discuss the Sears Canada situation. Messrs. Ackman and Rubin attended a meeting held on April 10, 2006, organized by Mr. Mayers. They apparently discussed Mr. Mayers' proposal that he be elected as an independent director of Sears Canada. We learned little about the outcome of this meeting.

[85] The evidence was that the Pershing Group determined on April 14 to form a group to oppose the Offer and Sears Holdings' efforts to take Sears Canada private. This was the subject of a press release issued on April 17 by the Group. It stated, in part, as follows:

> "… These shareholders believe that Sears Holdings is engaging in coercive tactics to force the minority shareholders of Sears Canada to enter into an undervalued and unsupported offer. As such, the group intends to take all appropriate legal action to halt the transaction so Sears Canada remains a public company, or, alternatively, to ensure that those shareholders who desire to sell their shares in Sears Canada are treated fairly."
>
> (Exhibit 63 to the Pershing Application Record)

[86] Despite lengthy cross-examinations of Mr. Ackman as well as Mr. Rubin and Mr. Murawczyk, the evidence does not support the allegation that the Pershing Group parties acted jointly or in concert prior to April 14 when they clearly joined forces and promptly announced their joint purpose in the April 17 Press Release referenced above.

[87] In support of their allegations, Sears Holdings relied upon the Desjardins transcript to show that Mr. Mayers and Mr. Ackman were attempting to make lists of shareholders that opposed the bid. However, counsel for Pershing, in his closing submission, argued that this activity was innocuous and reflected the same process that was going on in the Sears Holdings camp. Counsel for Pershing in referring to Mr. Ackman' testimony described the process as follows:

> "This is like an election. You keep a tally. You try and figure out who is going to do what. There is nothing wrong in that. It happens all the time. Who is a friend? Who is a foe?"
>
> (Hearing Transcript dated July 6, 2006 at page 127)

[88] For purposes of section 102 of the Act, subsection 89(1) of the Act provides that an "offeror's securities" includes securities "beneficially owned, or over which control or direction is exercised, on the date of an offer to acquire, by the offeror or any person acting jointly or in concert with the offeror."

[89] Although the Act does not define "control or direction" over securities, the Commission has held that in order to exercise control or direction over shares of a company not owned by the offeror, the offeror must have the ability to exercise the

attributes of ownership – voting power and investment power, including the power to acquire or dispose of the shares (*Re Robinson* (1996), 19 O.S.C.B. 2643 at 2675).

[90] Based on the evidence and for the reasons set out above, we have concluded that Sears Holdings has failed to make out its claim that Pershing, Hawkeye and Knott were acting jointly or in concert prior to April 6, 2006, and we therefore do not find that they violated section 102 of the Act.

(iii) Did Pershing Use Swaps to Avoid Disclosure Obligations?

[91] In their written submissions, Sears Holdings alleged that "Pershing contravened sections 101 and 102 of the Act through its use of swap arrangements to dispose of beneficial ownership of its Sears Canada shares with the understanding that it would exercise a degree of direction or control over the shares that were the subject of the swaps."

[92] Sears Holdings also alleges that Pershing and its joint actors have engaged in abusive minority tactics by seeking to "park" 6.9 million common shares of Sears Canada that are the subject of total return swaps with SunTrust, with the understanding that: (a) the Pershing/SunTrust Swaps could be unwound and the 6.9 million shares returned to Pershing; and (b) in any SAT, the votes attached to the 6.9 million shares would be voted as directed by Pershing or not voted at all.

[93] Based on this understanding, Sears Holdings submits that Pershing secretly acquired shares of Sears Canada in the market during the Offer period, without disclosing to the public the fact that Pershing understood it had control or direction of the votes attached to these shares. Sears Holdings submits that Pershing understood that the 6.9 million shares that were the subject of the swaps would either be returned to Pershing or not voted, and therefore it had "parked" the 6.9 million shares by removing them from the pool of shares that would be voted in the minority approval of the SAT.

[94] Sears Holdings further alleges that Pershing used the swap transactions to avoid its reporting obligations under the Act. This "parking behaviour" on the part of Pershing, they say, raises serious public interest concerns, and even if no breach of the Act can be proven, constitutes abusive minority tactics that ought to engage the public interest jurisdiction of the Commission.

[95] Pershing sold 5.3 million Sears Canada shares in connection with entering into the Pershing 2005 Swaps. As discussed above, they did so for tax reasons relating to the extraordinary dividend that had been declared by Sears Canada as a result of the sale of its Credit Card business in the fall of 2005.

[96] On March 31, 2006, Pershing entered into a further swap transaction with SunTrust involving 1,600,000 Sears Canada shares.

[97] In their written submissions, Sears Holdings acknowledged that: "The effect of the swap arrangements between Pershing and SunTrust, all of which ended up being cash-settled swaps, was that Pershing would maintain an economic interest in the performance of … Sears Canada shares." (Sears Holdings Written Submissions at para. 115.)

[98] Mr. Ackman was forthright in giving his evidence with regard to the Pershing 2005 Swap Transactions. He confirmed that he liked Sears Canada as an investment and wanted to retain economic ownership. He wanted to participate in "the appreciation of the stock" despite the need to sell the actual shares to avoid an undesirable tax consequence at the time (Hearing Transcript dated July 4, 2006 at page 179).

[99] With respect to the reason for the Pershing 2006 Swap which, as Mr. Ackman put it had initially puzzled Commission Staff, he explained that he did not expect, based on what he knew about Mr. Lampert's approach to business transactions, that Mr. Lampert would raise his bid above $16.86. [Edward Lampert is the Chairman of Sears Holdings Corporation and the Chairman of ESL Investments]. Indeed, Sears Holdings had said as much publicly. The shares of Sears Canada had consistently traded above the Offer price and with the bid set to expire on March 31, Mr. Ackman believed the insider bid would fail and Sears Canada would remain a public company.

[100] Pershing therefore began to purchase shares of Sears Canada in the open market as of March 16. Mr. Ackman described himself as a long-term investor in Sears Canada who bought shares "before Mr. Lampert ever owned a single share." He testified that he believed in the long term prospects of the company.

[101] In reference to the Pershing 2006 Swap, Mr. Ackman's evidence was that he wanted to increase his exposure to the shares of Sears Canada while remaining below a public reporting position. When pressed to explain this by counsel for Sears Holdings, Mr. Ackman explained his motive as follows:

> "… I wanted to be able to maintain this economic ownership in Sears without raising – without Eddie Lampert knowing that I wanted to – that I was the guy who had been buying stock during his offer.

> And the reason why I didn't want to do that is it's like throwing, you know, salt into the eyes of the dragon. You know you don't go off and – it's an act of war, in a situation like this, for me to surface as a buyer of a stock in his deal."
>
> (Hearing Transcript dated July 4, 2006 at page 191)

[102] In other words Mr. Ackman did not want to antagonize Mr. Lampert, a significant participant in the U.S. capital markets, with whom he expected to have business dealings in the future.

[103] As it turns out, when Pershing sold its shares in 2005 in connection with the Pershing 2005 Swaps, BNS was a purchaser of the shares. Pershing did not know who had purchased the shares and BNS did not know who had sold them. It is self-evident that Pershing did not continue to exercise "control or direction" over the shares it sold which were bought by BNS.

[104] The Pershing 2006 Swap was a cash-settled transaction. Mr. Ackman's Affidavit states that Pershing did not maintain a legal or beneficial interest in, or the power to exercise control or direction over, any or the 1,600,000 Sears Canada shares related to the Pershing 2006 Swap.

[105] In their written submissions, Commission Staff maintain that, even if the 1,600,000 Sears Canada shares were under the control or direction of Pershing after March 31, the trading data provided by Pershing shows that it would not have affected the date by which Pershing crossed the 5 percent threshold contained in section 102 of the Act. There was no evidence adduced by Sears Holdings to support a finding that Pershing and its Swap counterparties had an understanding that the shares would be returned or otherwise made available to be voted so that Pershing could be said to exercise "control or direction" over the shares within the meaning of sections 101 and 102 of the Act notwithstanding that Pershing did not have legal ownership.

[106] Based on the evidence and the law, there is no basis to conclude that Pershing violated sections 101 and 102 of the Act through the use of the Pershing 2005 and 2006 Swaps.

[107] This still leaves the issue of whether their conduct in using the swaps to avoid disclosure obligations under the Act was "abusive of the capital markets" so as to engage the Commission's public interest jurisdiction.

[108] Counsel for Pershing relies upon the fact that swap arrangements are "perfectly normal economic transactions". In closing argument, he said:

> "They are entered into all of the time by many of the participants in this proceeding and there is nothing whatsoever untoward about entering into a swap transaction. It is a common practice. It is entirely consistent with the actions of a valued investor who believes strongly in the prospects of the company, but does not to want to own the shares."
>
> (Hearing Transcript dated July 6, 2006 at pages 122-123).

[109] Counsel for Pershing pointed out to us that Pershing's assessment of its reporting obligations in relation to the swaps was apparently shared by RBC. Evidently, between April 3 and 6, 2006, RBC, which owned 3.9 million Sears Canada shares at the time, purchased cash-settled swaps on 3.9 million shares for a total economic exposure of 7.8 million shares constituting approximately 7.2 percent of the outstanding Sears Canada shares. It made no public disclosure of these transactions.

[110] Based on the evidence we heard and in light of Mr. Ackman's explanation as to the reason he entered into the Pershing 2005 and 2006 Swaps, we have concluded that there is insufficient evidence to support a finding that Pershing's conduct in this regard was abusive of the capital markets so as to invoke our public interest jurisdiction under section 127 of the Act.

[111] This finding is based on the evidence and circumstances of this case. We wish to underscore that there might well be situations, in the context of a take-over bid, where the use of swaps to "park securities" in a deliberate effort to avoid reporting obligations under the Act and for the purpose of affecting an outstanding offer could constitute abusive conduct sufficient to engage the Commission's public interest jurisdiction. This is not such a case.

B. Did Pershing's April 7 Press Release Violate Section 198 of the Regulation?

[112] On April 7, 2006, Pershing issued a Press Release announcing that it had acquired more than 5 percent of the shares of Sears Canada. The Press Release disclosed that Pershing held 5,601,400 Sears Canada shares and was entitled to the economic benefit of an additional 6,900,000 shares, for a total economic interest in Sears Canada equal to approximately 11.6 percent.

[113] Sears Holdings alleges that the Pershing Press Release failed to disclose either Pershing's purpose in acquiring Sears Canada shares during the Offer period or its intention to acquire further common shares of Sears Canada in violation of section 198(e) of the Regulation under the Act.

[114] Sears Holdings submits that the April 7 Press Release was silent on the purpose of Pershing in acquiring shares during the Offer period, stating only that:

> "Pershing Square and its affiliates intend to exercise all of their legal rights, including appraisal rights to ensure that their reasonable expectations are not frustrated and to ensure that they receive fair value for their investments in Sears Canada."
>
> (Sears Holdings Written Submissions at para. 149)

[115] It was obvious, they say, that this was not the only purpose Pershing had in acquiring shares during the Offer period. Rather, given that Pershing acquired shares after Sears Holdings announced that majority of the minority approval of the SAT was assured, Sears Holdings says that the true purpose was to maintain the price of Sears Canada shares above the Offer price. This true purpose was not disclosed, they say. Additionally, in failing to disclose that Pershing was acting jointly or in concert with other shareholders including Knott and Hawkeye in order to thwart the Offer, Pershing's Press Release also violated section 126.2 of the Act.

[116] We note that, in addition to the paragraph in the Press Release which Sears Holdings pointed out to us in support of their allegation, reproduced above, the Press Release also says:

> "Pershing Square believes that the consideration offered by Sears Holdings Corporation … has been, and continues to be, wholly inadequate and intends that the Pershing Square funds will remain shareholders of Sears Canada rather than accept the current offer by Sears Holdings."
>
> (Exhibit 58 of the Pershing Group Application Record)

[117] It appears to us that this expression of dissatisfaction with the Offer combined with their stated intention to remain shareholders of Sears Canada is consistent with their actions in purchasing shares on April 6, 2006 and constitutes adequate disclosure for purposes of section 198 of the Regulation.

[118] Similarly, we reject any claim that the Press Release failed to disclose "any future intention to increase the beneficial ownership, control or direction" of Pershing over shares of Sears Canada. As Pershing's counsel put it:

> "…Pershing Square had no intention when its press release was issued on April 7, 2006 to acquire, and has not in fact acquired, any additional legal or beneficial ownership of, or control or direction over, Sears Canada shares…
>
> Holdings seeks to impute to Pershing Square an intention it did not have, and then to fault Pershing Square for failing to disclose this non-existent intention. For obvious reasons its contention is fallacious."
>
> (Pershing Group's Written Submissions at paras. 326 and 327)

[119] In conclusion, we find that Pershing's April 7 Press Release constituted adequate disclosure for purposes of section 198 of the Regulation and dismiss Sears Holdings' allegation in this regard.

C. Did Pershing Engage in a Course of Conduct that Violated Sections 126.1 and 126.2 of the Act?

[120] Sears Holdings alleges that Pershing and its joint actors engaged in a course of conduct that they knew, or ought reasonably to have known, would result in an artificial price for the Sears Canada shares contrary to section 126.1 of the Act by secretly acquiring shares during the Offer period and by orchestrating carefully "calculated and unattributed" press coverage for the purpose of maintaining the price of Sears Canada shares.

[121] It is submitted that Pershing was timing its purchases of Sears Canada to maintain its share price above the Offer price. Sears Holdings submits that this conduct violated section 126.1 of the Act because Pershing and its joint actors knew or reasonably ought to have known that it would result in an artificial price for the shares of Sears Canada.

[122] Two provisions in the Act address the issue of market manipulation. Section 126.1 of the Act provides that:

> 126.1 A person or company shall not, directly or indirectly, engage in 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,
>
> (a) results in or contributes to a misleading appearance of trading activity in, or on artificial price for, a security or derivative of a security; or
>
> (b) perpetrates a fraud on any person or company.

[123] Section 126.2 of the Act prohibits a person or company from making a statement that the person or company knows or reasonably ought to know is misleading or untrue in a material respect or omits to state a fact required to be stated in order to make a statement not misleading where the statement would reasonably by expected to have a significant effect on the market price of a security.

[124] The essence of Sears Holdings' allegation in this regard is that Pershing and its joint actors violated section 126.1 of the Act by deliberately timing their purchases of Sears Canada shares during the Offer period in order to artificially maintain the price of the shares above the Offer price.

[125] Sears Holdings contends that the timing of Pershing's purchases on March 16 (the day before the Offer was originally scheduled to expire) and on April 6 (the same day the Support Agreements were announced) supports the inference that these purchases were made by Pershing to maintain the price of Sears Canada shares.

[126] They maintain that this trading activity was coupled with a media campaign in which Pershing attempted with the assistance of Mr. Mayers of Desjardins, by means of incomplete and misleading disclosure to reporters, to create the impression that the SAT would not occur due to failure to win majority of minority approval, the Offer would fail and a higher Offer price would be forthcoming.

[127] What is an "artificial price" for a security? An artificial price for a security is one that differs from the price that would prevail had the market operated freely and fairly on the basis of true market supply and demand. Creating a misleading appearance of trading activity in a security distorts normal forces of supply and demand and such conduct is contrary to the public interest because it misleads other buyers and sellers (*Re Roche Securities Ltd.*, [2004] A.S.C.D. No 400 (QL) at paras. 53-57; and *Re Podorieszach*, (2004) ABSECCOM REA #1459118v1).

[128] Securities regulators generally evaluate allegations of market manipulation by considering the nature of the trades and the circumstances surrounding their execution. Individual trades must not be reviewed in isolation. Similarly, the conduct of an alleged market manipulator must be considered as a whole to determine whether he or she has attempted to sustain an artificial price by creating the appearance of public interest at a particular price level (*Re Cycomm International Inc.* (1994), 17 O.S.C.B. 21; *Re Fatir Hussain Siddiqi*, [2005] B.C.S.C.D. No 542 (QL) at paras. 114-118).

[129] Pershing's counsel submits, and Commission Staff agrees, that there was either no, or insufficient, evidence led to support a finding that Pershing breached either section 126.1 or section 126.2 of the Act.

[130] The Pershing Group's trades were executed through the facilities of the TSX at the prevailing market price. They were executed during the trading day, not timed to coincide with the close of the market.

[131] Sears Holdings asks us to conclude, based on the fact that Pershing's trades took place on March 16 and April 6, as noted above, that the purchases were made for the purpose of maintaining the price of Sears Canada shares.

[132] Intent to manipulate can be inferred from circumstantial evidence. However, where two alternative inferences are equally plausible, intent to manipulate will not generally be inferred (*Sebastian v. Golden Capital Securities Ltd.*, [2006] B.C.J. No. 506 (Sup. Ct.) (QL) at para. 34).

[133] The conduct of Pershing and the Pershing Group when viewed as a whole, and in light of the surrounding circumstances, is consistent with their stated view that Sears Canada shares were undervalued, that the bid price was inadequate and that they would oppose the Offer.

[134] Pershing's counsel submits that, from the time that Sears Holdings first announced its Offer, Sears Canada shares have consistently traded at a premium to Sears Holdings' Offer price. He submits that, during this period of time, there were 120 trading days and the Pershing Group only executed trades in shares of Sears Canada on fewer than 10 percent of those days. These facts suggest that other shareholders of Sears Canada, besides the Pershing Group, must also have believed the bid price to be inadequate given that they were executing trades in the market at a premium to it.

[135] Based upon the evidence and for the reasons discussed above, we dismiss Sears Holdings' allegations that Pershing and its joint actors breached sections 126.1 and 126.2 of the Act through their trading activity.

[136] In conclusion, and for the reasons set out above, all of the allegations made by Sears Holdings against the Pershing Group are dismissed.

IV. Summary of Allegations and Relief Sought by the Pershing Group

A. The Allegations

[137] The Pershing Group states that its Application concerns the "important issue of whether the minority shareholders of a public company in Ontario are entitled to be treated equally and fairly when a bid is made by the majority shareholder of that company for their shares". The Application allegedly concerns unprecedented conduct by Sears Holdings that calls into question the "fairness, efficiency and integrity of the capital markets".

[138] The allegations in the Application filed on behalf of the Pershing Group in relation to Sears Holdings and its insider bid are summarized as follows:

(1) Sears Holdings violated subsection 97(2) of the Act by entering into the Support Agreements with BNS, Scotia Capital and RBC and the Deposit Agreement with Vornado;

(2) Sears Holdings violated subsection 94(2) of the Act by entering into the Support Agreements with BNS, Scotia Capital and RBC;

(3) Sears Canada shares held by BNS, Scotia Capital and RBC should be excluded for the purposes of minority approval of the second step going private transaction pursuant to subsection 8.1(2) of Rule 61-501;

(4) Sears Canada shares owned by Sears Holdings that were deposited by Vornado to the insider bid of Sears Holdings pursuant to the Vornado Agreement should be excluded for the purposes of minority approval of the second step going private transaction pursuant to subsection 8.2(b) of Rule 61-501;

(5) Sears Canada shares now owned by Sears Holdings that were deposited to the Offer of Sears Holdings should be excluded for the purposes of minority approval of the second step going private transaction given the failure of Sears Holdings to comply with paragraph 8.2(f) of Rule 61-501 and/or shareholders were coerced by Sears Holdings to tender;

(6) The Circular of Sears Holdings contained a misrepresentation arising from the failure to disclose the substantial shareholdings of Scotia Capital and BNS and the Circular as amended and varied on April 4, 2006 contained misrepresentations or material omissions arising from the failure of Sears Holdings to disclose the Support Agreements with BNS and Scotia Capital and the related Escrow Agreements;

(7) further or in the alternative, the Commission should exercise its public interest jurisdiction pursuant to section 127 of the Act to cease trade or prohibit the insider bid of Sears Holdings and its proposed second step going private transaction on the grounds that the conduct of Sears Holdings has been coercive and abusive of shareholders generally, including the minority shareholders of Sears Canada, jeopardizes the fairness and efficiency of the capital markets and confidence in those markets, and that such an order is necessary to protect investors in Sears Canada from the unfair and improper conduct and practices of Sears Holdings.

B. Order Sought by the Pershing Group

[139] In its Application, the Pershing Group originally sought various orders under subsections 104(1) and 127(1) of the Act as follows:

(a) pursuant to clause 104(1)(c) of the Act directing that Sears Holdings comply with the regulations related to Part XX of the Act (specifically, Rule 61-501) as follows:

  (i) comply with section 8.1 of Rule 61-501 and exclude from the calculation of the majority of the minority on any second step going private transaction the shares of Sears Canada held by its joint actors, including BNS and Scotia Capital;

  (ii) comply with section 8.2 of Rule 61-501 and exclude from the calculation of the majority of the minority on any second step going private transaction the shares of Sears Canada acquired by Sears Holdings from Vornado pursuant to the Vornado Agreement;

(iii) comply with section 8.2 of Rule 61-501 and exclude from the calculation of the majority of the minority on any second step going private transaction the shares of Sears Canada acquired by Sears Holdings pursuant to its take-over bid for Sears Canada from the date that is five business days after Sears Holdings has complied with the order requested in paragraph (c) below;

(b) pursuant to subsection 104(1)(b) of the Act requiring that Sears Holdings amend the terms of its Offer for the shares of Sears Canada to irrevocably exclude from the calculation of the majority of the minority on any second step going private transaction the shares of Sears Canada held by BNS, Scotia Capital and RBC;

(c) pursuant to subsection 104(1)(c) of the Act directing Sears Holdings to remedy its non-compliance with subsections 94(2) and 97(2) of the Act;

(d) pursuant to clauses 104(1)(b) and (c) of the Act requiring that Sears Holdings amend its Take-Over Bid Circular to:

(i) disclose that Sears Holdings will exclude from the calculation of the majority of the minority on any second step going private transaction the shares of Sears Canada that it is prohibited from including in such calculation as provided in paragraphs (a) and (b) above;

(ii) disclose the existence and terms of the Release granted to Vornado pursuant to the Vornado Agreement and to grant an identical Release to all other shareholders of Sears Canada whose shares are acquired under the take-over bid or in any second step going private transaction;

(iii) disclose the identities and interests of the parties to the Support Agreements, describe the collateral benefits received by them including the tax benefits to them and the liquidity covenant and disclose the banking relationship and any other material relationships between Sears Holdings, Sears Canada and the parties to the Support Agreements;

(iv) provide an opportunity of at least ten business days from the date of mailing of the amended Take-Over Bid Circular for all shareholders who tendered to withdraw their Sears Canada shares from the Offer notwithstanding that such shares may have been taken up and paid for; and

(v) correct all other misrepresentations and omissions in the Take-Over Bid Circular and all amendments and variations made thereto;

(e) pursuant to subsection 127(1) of the Act reprimanding Sears Holdings for violating subsections 94(2) and 97(2) of the Act and for disseminating a Take-Over Bid Circular or amendments and variations made thereto containing misrepresentations and omissions;

(f) pursuant to subsection 127(1) of the Act cease trading Sears Holdings' take-over bid for Sears Canada until the foregoing orders are complied with;

(g) in the alternative, an order pursuant to subsection 127(1) of the Act cease trading Sears Holdings' take-over bid for Sears Canada; and

(h) such other orders as counsel may request and the Commission considers appropriate.

[140] At the conclusion of the hearing, the Pershing Group submitted a draft Order outlining the revised nature of the specific relief they were seeking against Sears Holdings. It reads as follows:

"**IT IS ORDERED** pursuant to subsections 104(1) and 127(1) of the *Securities Act* (the "Act") that:

1. Sears Holdings Corporation and SHLD Acquisition Corp. ("Sears Holdings") have not complied with and are not complying with Part XX of the *Securities Act* (Ontario) and the regulations relating to such Part (collectively, "Ontario Securities Law") in respect of the bid (the "Offer") for shares of Sears Canada Inc. ("Sears Canada").

2. Sears Holdings is directed to comply with Ontario Securities Law in respect of the Offer and all other offers made or to be made for shares of Sears Canada.

3. The directors and senior officers of Sears Holdings Corporation and SHLD Acquisition Corp. are directed to cause their respective corporations to comply with, and to cease to contravene, Ontario Securities Law.

4. The Offer and any other offer made or to be made for shares of Sears Canada by Sears Holdings or any affiliate thereof is cease traded until:

   (a) the support agreements entered into by Scotia Capital Inc. (Scotia Capital), Bank of Nova Scotia ("BNS") and Royal Bank of Canada ("RBC") in respect of the Offer are terminated; and

   (b) the take over bid circular in respect of the Offer is amended to disclose that Sears Holdings will exclude from the calculation of the majority of the minority on any second step going private transaction the shares of Sears Canada held by or acquired from Scotia Capital, BNS and RBC and the shares of Sears Canada acquired by Holdings from Vornado pursuant to the Vornado Deposit Agreement."

[141] The Pershing Group also requests that the Sears Holdings Application be dismissed in its entirety.

V. The Pershing Group – Allegations Against Sears Holdings

A. Are BNS and Scotia Capital "Joint Actors" with Sears Holdings?

[142] For this part of the Reasons, it is important to understand who the various parties are, and, in the case of BNS and Scotia Capital, what the various business units are, and what retainers and involvement they had in relation to Sears Canada, Sears Holdings and the Sears Holdings Offer. Briefly, the structure of the entities and business units within BNS and Scotia Capital is as follows. Scotia Capital is a wholly-owned subsidiary of BNS. Scotia Capital is organized into two groups- Global Capital Markets and Global Corporate & Investment Banking. The Capital Markets Group (Scotia CMG) is a business sub-unit of Scotia Capital's Global Capital Markets with business lines serving both BNS and Scotia Capital. Scotia CMG's business activities include equity and credit derivatives, foreign exchange, interest rate hedging, debt capital markets and securitization. The Institutional Equity Group (Scotia IEG) is another sub-unit of Scotia Capital's Global Capital Markets. Scotia IEG's business activities include proprietary trading and the purchase of securities for risk arbitrage purposes. The Investment Banking Group and the Mergers and Acquisitions Group are sub-units of Scotia Capital's Global Corporate & Investment Banking. The manner in which BNS and Scotia Capital are organized and the way in which they are structured and operated in order to clearly separate the relevant business units of BNS and Scotia Capital is not, we understand, atypical for integrated Canadian financial institutions.

[143] In November, 2005, Sears Canada engaged Scotia Capital to arrange a $500 million credit facility (the lending relationship). Scotia Capital had a banking relationship with Sears Holdings and was the lead banker on the financing for Sears Canada.

[144] On January 6, 2006, Sears Holdings engaged Scotia Capital to advise it with respect to the Offer and this retainer was put in writing on January 10, 2006, with effect as of January 6, 2006 (the "Engagement Letter"). Professionals from both Scotia Capital's Investment Banking and Mergers and Acquisitions Groups were assigned to the engagement team. For simplicity, the party engaged by Sears Holdings is referred to as Scotia M & A. Under the terms of the Engagement Letter, Scotia M & A was entitled to a work fee of $50,000.00 per month and a success fee of $400,000.00 if the Offer was successful at or below a share price of $16.86 (which did not happen and therefore Scotia M & A was not entitled to the success fee under the terms of its engagement). If the share price was increased above $16.86, the payment of a success fee was within the sole discretion of Sears Holdings and if Sears Holdings did not acquire a majority of the minority of the shares in Sears Canada, no success fee would be payable. No success fee was paid to Scotia M & A, a fact that Sears Holdings publicly announced and confirmed in evidence before us. According to the submissions of counsel for BNS and Scotia Capital, Scotia M & A is not entitled to and will not receive any other compensation beyond the monthly work fee described above.

[145] On February 8, 2006, Scotia M & A entered into a dealer-manager agreement with Sears Holdings (the Dealer-Manager Agreement). Scotia M & A is not entitled to any additional fees from Sears Holdings as a consequence of agreeing to act as dealer-manager. The Dealer-Manager Agreement provides for a solicitation fee of $.10 per share payable in respect of shares validly tendered to the Offer and not withdrawn. The Agreement provides for a maximum fee payable for each deposit. This solicitation fee is payable only to the individual broker within Scotia Capital's brokerage arm and other individual brokers within the brokerage firms that form part of the Canadian Solicitor Dealer Group in connection with the Offer. No solicitation fees are payable for shares tendered by Natcan or Vornado or for shares not tendered to the Offer but voted in favour of any SAT that may be undertaken, including the shares of Sears Canada held by Scotia Capital, BNS and RBC.

[146] Against this background, the Pershing Group alleges that Scotia Capital and BNS are "joint actors" with Sears Holdings. They seek this determination in order that the votes attached to the Sears Canada shares held by Scotia Capital and BNS should be excluded from the minority in determining whether the SAT obtains "majority of the minority" approval. The Pershing Group submits that the public interest requires that parties which are as "linked" to the bidder as are Scotia Capital and

BNS through the various Support Agreements, the financial advisor and dealer-manager engagements and lending relationships, ought not to be permitted to determine the outcome of a vote that is required to be determined by the true minority shareholders of the target.

Evidence, Law and Analysis

[147] The legal backdrop to consideration of this issue is fairly straightforward. The SAT is a business combination for Sears Canada under Rule 61-501 because it is the transaction by which Sears Holdings intends to acquire any Sears Canada shares that are not tendered to its Offer. In order for the SAT to be carried out, it must be approved by the minority shareholders. For purposes of Rule 61-501, the minority shareholders exclude any joint actors of Holdings.

[148] For purposes of Rule 61-501, the term "joint actors" is generally defined to mean persons or companies "acting jointly or in concert" with the offeror as defined in section 91 of the Act. Section 91 provides that it is a question of fact as to whether a person or company is acting "jointly or in concert" with an offeror.

[149] The policy underpinning of the joint actor concept is to ensure that all persons or companies who are effectively engaged in a common investment or purchase program, whether in support of or in opposition to a take-over bid, are required to abide by the requirements of Ontario securities law that govern securities transactions prior to, during and subsequent to the bid (Practitioners Report, at page 10, in *Securities Law and Practice*, 3rd edition, Borden Ladner Gervais LLP, Part 20, Take-Over Bids and Issuers Bids (Toronto: Carswell, 2002)).

[150] Subsection 91(2) of the Act provides that a registered dealer acting solely in an agency capacity for an offeror in connection with a take-over bid and that does not execute principal transactions for its own account in the class of securities subject to the offer to acquire or does not perform services beyond a customary dealer's functions will not be presumed, solely by reason of such an agency relationship, to be acting jointly or in concert. Subsection 8.1(2) of Rule 61-501 provides similarly.

[151] The Pershing Group submits that there are essentially four key elements of the relationship between Scotia Capital, BNS and Sears Holdings that points to a finding that they were all acting jointly or in concert with regard to the Offer and the SAT:

(a) Scotia Capital and BNS attach critical importance to their business relationship with Sears Holdings;

(b) The Offer and SAT, as revised, provide significant tax benefits to Scotia Capital and BNS;

(c) BNS has virtually no economic interest in the Sears Canada shares given the swap transactions it had entered into with SunTrust; and

(d) Scotia Capital's prospect of earning a success fee on the transaction.

[152] Scotia Capital and BNS submit that Scotia CMG, the sub-unit that acquired Sears Canada shares on behalf of BNS, and Scotia IEG, which acquired Sears Canada shares for risk arbitrage purposes, are effectively "walled off" from each other and from Scotia M & A, the group that provided financial advisory services to Sears Holdings. They submit that policies and procedures are in place relating to the handling of confidential and non-public information and that no evidence was adduced that these policies and procedures were not followed by Scotia M & A in relation to the Offer or that confidential, non-public information flowed from Scotia M & A to either Scotia CMG or Scotia IEG. Commission Staff emphasized that the creation of firewalls between and within the Canadian banks and their investment banking subsidiaries is a well-established and recognized practice.

[153] The Pershing Group submits that the existence of firewalls between BNS and Scotia Capital and the absence of the exchange of confidential information between them is not germane to the question of fact that must be determined in this case: Did BNS and Scotia Capital act jointly and in concert with Sears Holdings in planning, promoting and structuring the Offer to ensure its success beyond the customary role of a financial advisor? In addressing this question in the context of Part XX of the Act, the Commission and the courts have focused on whether there has been an agreement, commitment or understanding by two or more parties with respect to a common acquisition or investment program or the exercise of voting rights (*Re 243978 Alberta Limited et al* (1982), 4 O.S.C.B. 566C at 568C and 573C).

[154] Scotia Capital and BNS also deny that Scotia M & A, on the one hand, and Scotia CMG and Scotia IEG, on the other hand, had any actual commonality of interest in the outcome of the Offer. They submit that Scotia M & A was motivated solely, as a soliciting dealer for Sears Holdings, to identify shareholders and put them in contact with Sears Holdings so they could potentially negotiate their own terms for participation in the Offer. Scotia CMG and Scotia IEG, on the other hand, were motivated to maximize returns on their investments in Sears Canada shares in the most tax effective manner possible. This is, of course, a factual determination driven by the evidence we heard as discussed below.

[155] The Pershing Group concedes in their Application that, if Scotia Capital provided only customary advisory and administrative functions to Sears Holdings, it would not be presumed to be acting jointly or in concert with Sears Holdings. We are unable to conclude, based on the evidence, that Scotia Capital's role extended beyond the provision of customary advisory and administrative support to Sears Holdings. In particular, we note that neither Scotia Capital nor BNS acquired any shares of Sears Canada for their own account after Scotia Capital was engaged by Sears Holdings. We accept that it is a customary soliciting dealer function to identify the owners of shares of an offeree issuer and to ascertain their willingness to tender to the bid – which is what Scotia Capital did in this case.

[156] In the course of the hearing we heard testimony from Mr. Greg Rudka, a member of Scotia Capital's Investment Banking Group and the senior person on the Scotia M & A engagement team responsible for advising Sears Holdings in relation to their bid. In addition, we heard testimony from Mr. Kieran O'Donnell, an employee of BNS and a member of Scotia CMG. Mr. O'Donnell, whose evidence we found to be very cogent, straightforward and credible, swore in his Affidavit and emphasized in his viva voce evidence, that BNS and Scotia Capital, the two entities that signed the Support Agreements with Sears Holdings, did not, at any time, "work together" with the Scotia M & A team "to deliver the votes necessary to ensure the success of the Expropriation transaction" as alleged by Mr. Ackman in his Affidavit. This was borne out by the e-mail and other documentary evidence filed with us that showed that Scotia M & A did not take part in the negotiations and the decisions by BNS and Scotia Capital to enter into the Support Agreements. In fact, Scotia M & A was careful to insist that those negotiations take place directly between BNS and Scotia Capital and Sears Holdings and their respective counsel.

[157] In a particularly telling exchange of e-mails we reviewed, at one point Mr. Crowley, the Executive Vice President and CFO of Sears Holdings, and the principal in charge of overseeing the Sears Holdings Offer, became quite frustrated with the length of time it was taking to negotiate the Support Agreements with the Banks. He expressed this sense of frustration to Mr. Rudka and others within the Scotia M & A team and suggested that he wished to speak with the CEOs of both BNS and RBC to better understand the delays and the process timeline. As Sears Holdings' frustration level as a result of the delays grew, Mr. Rudka and his colleagues attempted to convey the gravity of the situation to Mr. O'Donnell and others who were working on the Support Agreements on the other side of the wall. Mr. O'Donnell responded that more time was required and was, it would appear, somewhat impervious to the pressure attempted to be applied by Scotia M & A and Sears Holdings. In short, BNS, Scotia CMG and Scotia IEG were motivated to take the necessary time in their negotiations to maximize returns on their investments in Sears Canada shares in the most tax-effective manner possible in their own, and in their shareholders' best interests. Their interest in this regard was independent of Sears Holdings' interest in successfully completing the bid and does not support a finding that they shared a commonality of interest with Sears Holdings in this regard.

[158] The Pershing Group also points to an unusual degree of collaboration and co-operation between BNS and RBC in the course of negotiating the Support Agreements with Sears Holdings, including an offer to share tax opinions with RBC. While this did, indeed, appear to be the case, it does not logically lead to a finding that they did so in an effort to assist Sears Holding in planning, promoting and structuring their Offer. Rather, it is consistent with the motivation of BNS and Scotia Capital to ensure that they were in the strongest position to negotiate Support Agreements which reflected terms which advanced their own best interests.

[159] In response to the Pershing Group's allegation that BNS has virtually no economic interest in the shares of Sears Canada, Mr. O'Donnell responded in his Affidavit that both BNS and Scotia Capital have a meaningful interest in the Sears Canada shares that they own. The Sears Canada shares purchased by Scotia Capital represent proprietary trading positions with full exposure to the value of Sears Canada shares. While BNS purchased its Sears Canada shares to reduce its exposure under its SunTrust swap agreements, it has exposure to the price of the shares as its after-tax return increases with an increased SAT share price and, accordingly, BNS has some economic interest in the shares.

[160] In the absence of cogent evidence that a party to a transaction intervened or attempted to manipulate the outcome of a bid or similar transaction, we are of the view that it would be a dangerous path for us to follow to exclude shares from voting or tendering into a transaction on the basis that the holder lacks a sufficient economic interest in the securities that are the subject of the transaction. Such an inquiry is highly subjective, fraught with factual uncertainty and ought not to be a determining factor in a contested take-over bid context. If this matter warrants study, it should be undertaken in a broader policy context. In this regard, it is also noteworthy that the traditional focus of our conflict of interest related rules as they apply to mergers and acquisitions is on those conflicts which give rise to a bidder's active intervention or the existence of collateral benefits that could distort the incentives for security holders (the latter issue is, of course, the subject of a distinct allegation of the Pershing Group and is dealt with as a distinct matter).

[161] While we accept that both Scotia Capital and BNS may well attach critical importance to their business relationship with Sears Holdings, as the Pershing Group claims, we cannot logically proceed from that premise, accepting it to be true, to a finding that they acted jointly or in concert with Sears Holdings. As regards Scotia Capital's prospect of earning a success fee, the evidence was clear that there is no such prospect. Moreover, the prospect of a success fee was never assured from the outset of what were, evidently, difficult negotiations with Sears Holdings over fees in relation to Scotia Capital's engagement as financial advisor in connection with the Offer.

[162] The fact that Scotia Capital and BNS agreed, under the Support Agreements, to vote their shares in favour of the SAT does not establish that they were joint actors with Sears Holdings. If this were so, RBC would also be a joint actor with Sears Holdings on this basis, an allegation that was not made by the Pershing Group.

[163] The law, as described above, makes it clear that the provision by a dealer of financial advice in respect of an offer is not, on its own, sufficient to lead to the presumption of joint actor status. This safe harbor may not apply, however, where the dealer's activities include playing an integral role in presenting proposals to management and actively promoting the success of an offer, where such activities exceed what is customary for a dealer (*Re Seel Mortgage Investment Corporation and Dominion Trustco Capital Inc.* (1992), 15 O.S.C.B. 4287). The facts in *Seel* are distinguishable from this case.

[164] This leads us to the final assertion of the Pershing Group that the public interest compels a finding that Scotia Capital and BNS are joint actors with Sears Holdings. They say that public appearance and the perception of the investing public as a result of Sears Holdings, Scotia Capital and BNS engaging in transactions "perceived to be delivering collateral benefits" warrants Commission intervention. The allegations relating to collateral benefits and consideration of the appropriate consequences that ought to flow from any findings in this regard based on the Commission's public interest jurisdiction are dealt with in these Reasons as a separate matter.

[165] The evidence established that:

- BNS and Scotia Capital, through Scotia CMG and Scotia IEG respectively, purchased their shares in Sears Canada for their own accounts between August 31, 2005 and December 16, 2005 and neither conducted further trading in Sears Canada shares for their own accounts after December 16, 2005;
- Sears Holdings retained Scotia M & A on January 6, 2006 to provide financial advisory services in relation to its anticipated bid for Sears Canada and retained Scotia M & A to be dealer-manager for the Offer on February 8, 2006;
- As a result of information containment processes and internal controls, Scotia M & A was not aware that BNS or Scotia Capital owned Sears Canada shares prior to the solicitation process at the end of February 2006;
- Similarly, no one at Scotia CMG or Scotia IEG were aware that Sears Holdings was negotiating with or had retained, Scotia M & A until after the retainer was finalized;
- Scotia M & A took no part in the negotiations and decisions by BNS and Scotia Capital to enter into the Support Agreements; rather, these decisions appeared to be made independently of Scotia M & A and for business and commercial purposes unrelated to the Scotia M & A assignment;

[166] In conclusion, it does not appear, based upon the application of the law to the facts and the evidence before us, that Scotia Capital and BNS were "joint actors" of Sears Holdings in relation to their Offer and the SAT.

B. Were the Support Agreements Entered into in Contravention of Subsection 94(2) of the Act?

Law and Analysis

[167] The Pershing Group alleges that, by entering into the Support Agreements, Sears Holdings has contravened subsection 94(2) of the Act because it has entered into an agreement to acquire shares of Sears Canada other than pursuant to the Offer. Subsection 94(2) reads as follows:

> 94(2) An offeror shall not offer to acquire or make, or enter into, any agreement, commitment or understanding to acquire beneficial ownership of any securities of the class that are subject to a take-over bid otherwise than pursuant to the bid on and from the day of the announcement of the offeror's intention to make the bid until its expiry.

[168] Subsection 94(2) of the Act has very limited exceptions, including subsection 185(1) of the Regulations which were not argued to be applicable in this case.

[169] The policy purpose served by subsection 94(2) of the Act is to ensure that an offeror is not able to avoid or circumvent the equal treatment and other protections afforded target company shareholders under Ontario securities law by entering into a private agreement to acquire shares outside the bid, during the currency of the bid (*Report of the Committee to Review the Provisions of the Securities Act (Ontario) Relating to Take Over Bids and Issuer Bids*, cited above, at page 20).

[170] Sears Holdings says in response that the Support Agreements do not constitute agreements to acquire beneficial ownership of shares within the meaning of subsection 94(2) of the Act. Rather, they commit BNS, Scotia Capital and RBC to

vote their shares in favour of the SAT. They argue that, if the Pershing Group's interpretation of the provision were to be accepted, then every instance in which an offeror announces its intention to carry out a SAT following completion of a bid (which the offeror would be legally obliged to disclose provided they have such an intention) would violate subsection 94(2) because it would constitute an "offer to acquire" or a "commitment to acquire" securities other than pursuant to the bid.

[171] The Pershing Group contends, however, that the Support Agreements in this case are properly viewed as private agreements to acquire shares entered into outside of, but during the course of, the bid. They say that this is so because the effect of entering into them was to guarantee satisfaction of the Minority Approval requirement which, in turn, guaranteed the acquisition of the Sears Canada shares to be voted by BNS, Scotia Capital and RBC in favour of the SAT pursuant to the terms of the Support Agreements. Once the Support Agreement with RBC was signed, Sears Holdings had contractual commitments to support the SAT such that, in their words, "success of our Offer was assured." Accordingly, Pershing submits, "there could be no clearer understanding that Holdings would acquire Sears Canada shares held by BNS, Scotia Capital and RBC in the second step going private transaction and outside of the Offer."

[172] Commission Staff took the position, consistent with that of Sears Holdings, that the Support Agreements are not agreements to purchase Sears Canada shares outside of the Offer within the meaning of subsection 94(2) of the Act. However, they point out that it is unusual for a bidder to enter into a support agreement with a target shareholder during the course of a bid that provides for the target shareholder to vote their shares in favour of a SAT rather then tender into the bid. In this case, it is clear from the evidence that BNS, Scotia Capital and RBC were not prepared to tender to the bid as it was not in their economic best interests to do so. Mr. Kieran O'Donnell of BNS, in his Affidavit, clearly states that "the essence of the Support Agreements was that BNS and Scotia Capital would agree to hold on to their shares and vote them in favour of a form of second step going private transaction." (Affidavit of Kieran O'Donnell sworn June 22, 2006, Record of The Bank of Nova Scotia and Scotia Capital Inc., Volume 2, Tab 2, at para. 27).

[173] Commission Staff nonetheless submit that we might consider the unusual nature and effect of these Support Agreements in assessing, under our public interest jurisdiction, whether Sears Holdings' conduct in relation to the bid was "abusive" overall as alleged by the Pershing Group.

[174] We acknowledge that, on their face, the Support Agreements do not "technically" appear to offend subsection 94(2) of the Act because they are not, in form, agreements to purchase or acquire shares, but rather, agreements to vote shares in favour of the SAT. However, as Commission Staff concede, the nature of these Support Agreements is unusual. By the time the Support Agreements were released from escrow, approval of the SAT was effectively assured as explained above. The true substance and intended effect of the Support Agreements was that BNS, Scotia Capital and RBC would vote their Sears Canada shares in favour of the SAT and Sears Holdings would acquire their shares pursuant to the SAT in December 2006. If one looks through the form of these agreements to their true substance and intended effect, the complaint that they contravene subsection 94(2) of the Act has merit.

[175] However, this allegation is not central to our Decision or Reasons and we have therefore determined that it is unnecessary to make a conclusive finding on this issue.

C. Did Sears Holdings Comply with its Disclosure Obligations?

[176] The Pershing Group has made a number of allegations that Sears Holdings failed to comply with its disclosure obligations in connection with its Offer. In particular, they allege that Sears Holdings' disclosure was deficient with regard to the following matters:

(a) Scotia Capital had been retained as Sears Holdings' financial advisor;

(b) Scotia Capital/BNS held shares of Sears Canada as principal;

(c) the Vornado Agreement included a Release in favour of Vornado in respect of any claims arising out of Vornado's purchases and sales of Sears Canada shares;

(d) the Support Agreements with Scotia Capital and BNS had been signed on March 28, 2006 and were being held in escrow pursuant to Escrow Agreements that had also been signed by them and Sears Holdings;

(e) Scotia Captial, BNS and RBC were the parties to the Support Agreements together with the specific terms of the Support Agreements;

(f) the lock-up agreement with Natcan contained a price-protection provision (although this was ultimately disclosed in the Sears Holdings' Circular it was not disclosed in the press release which announced the Offer and simultaneously announced the Natcan Deposit Agreement); and

(g) the tax consequences of the Offer and the SAT were not properly and fully described in the Circular in that it did not expressly address the "stop-loss" and other income tax aspects of the deal that would have been of relevance to other Canadian corporations besides BNS, Scotia Capital and RBC.

[177] The essence of the Pershing Group's complaint as regards the standard of disclosure to which Sears Holdings adhered to in its press releases, Circular and Notice of Variation and Change in Information which described its revised Offer, is that, on the whole, it was inadequate and either not provided on a timely basis or not provided at all. The Pershing Group alleges that Sears Holdings failed to disclose, or failed to disclose on a timely basis, facts and information that they were obliged to disclose and that minority shareholders would consider to be material in the circumstances. As such, they say, remedial action is warranted.

[178] Sears Holdings says that the Pershing Group's allegations are without merit and proceed from the faulty premise that because something was not disclosed, the non-disclosure must be improper. They argue that, to warrant Commission intervention, non-disclosure must be coupled with an obligation to disclose. Below we review the disclosure complaints in more detail against the backdrop of what is required.

Arguments, Law and Analysis

[179] Under the Act, subsection 98(1) requires delivery of a take-over bid circular by the offeror. In the event of a change in the information contained in the bid circular that would reasonably be expected to affect the decision of security holders of the offeree issuer, the offeror is required under subsection 98(2) to issue and deliver a Notice of Change in Information. The information required to be disclosed in these documents is prescribed by Form 32.

[180] Sears Holdings disclosed in its Circular that it had retained Scotia Capital as dealer-manager of the soliciting dealer group. It did not disclose, and maintains that it had no obligation to disclose, that Scotia Capital had also been retained to act as Sears Holdings financial advisor. However, it did in fact disclose in its February 9 press release which announced the mailing of the Offer that Scotia Capital had been retained as its financial advisor.

[181] Sears Holdings submits that it had no obligation to issue a Notice of Change of Information disclosing that Scotia Capital and BNS were shareholders of Sears Canada after it first became aware of this information.

[182] Sears Holdings also maintains that they had no obligation to disclose the fact that the Vornado Agreement included the litigation Release in favour of Vornado in respect of its purchases and sales of Sears Canada shares because the existence of the Release was not a material fact.

[183] Similarly, they maintain that they were not obligated to disclose the fact that Support Agreements with Scotia Capital and BNS had been signed "in escrow" because, until such time as the Minority Condition was satisfied, the Support Agreements were not binding and, if the Minority Condition was never satisfied, the Support Agreements would be deemed not to have been delivered. Sears Holdings maintains that disclosure that the Support Agreements had been signed in escrow by BNS and Scotia Capital would have been misleading to the market given that there was no assurance that the Minority Condition would be satisfied and this information was withheld "in order to protect minority shareholders from tendering under a misapprehension."

[184] Sears Holdings submits that it had no obligation to disclose the identity of the parties to the Support Agreements on the basis that this information "was not, in any sense, material to shareholders."

[185] Counsel for Sears Holdings submitted in his closing submissions that the tax impact of the extension of the Offer that resulted from the Support Agreement negotiations as well as the "stop-loss" aspect of the *Income Tax Act* were, in fact, properly disclosed and that shareholders were, as is customary, advised to consult with their own advisors.

[186] With regard to the failure to mention the price protection provided to Natcan when the lock-up agreement was first disclosed in connection with the announcement of the Offer, counsel for Sears Holdings submits that whether or not a particular term of an agreement ought to be disclosed is "a matter of business judgment." In addition, they say, the price protection provided to Natcan was ultimately disclosed in the Bid Circular.

[187] Full, accurate and timely disclosure is a fundamental underpinning of Ontario securities law. In a take-over bid context, a principal means of protecting the bona fide interests of the shareholders of target companies is by ensuring that they are provided with information that might reasonably affect their decision to accept or reject a bid for their shares. Information is material, and therefore should be disclosed, if there is a substantial likelihood that a reasonable shareholder would consider it important when deciding whether to accept or reject the bid. This determination involves more than the application of "appropriate business practices or judgment." (*Re Maple Leaf Sports & Entertainment Ltd.* (1999), 22 O.S.C.B. 2027; *Beringer Properties Inc.*, (1993) 18 B.C.S.C. Weekly Summary 18 at 22; and *Re Standard Broadcasting Corp. Ltd.* (1985), 8 O.S.C.B. 3672 at 3676-3677).

[188] In his closing submissions, counsel for Sears Holdings referred us to the MacDonald Oil case where the Commission, in its reasons, indicated that it is often the case that allegations of non-disclosure or inadequate disclosure are made during the course of a take-over bid. They further noted that "there is a difference between perfect disclosure, which no two opposing counsel likely would ever agree upon, acceptable disclosure and material non-disclosure or materially misleading disclosure." Counsel submitted, and we agree, that this is a sensible framework against which to assess the Pershing Group's allegations of non-disclosure in this case (*Re MacDonald Oil Exploration* (1999), 22 O.S.C.B. 6453).

[189] To the sensible framework laid out by the Commission in the *MacDonald Oil* case, supra, we would add that there is also a difference between disclosure which strictly follows the "line items requirements" in a form or a rule and disclosure that focuses on information that may be material to an investor's decision to tender their shares to a bid in the particular circumstances. Sears Holdings' defence of their disclosure approach in the context of their insider bid rests upon the absence of a specific line item obligation to disclose coupled with their view that the information was not likely to be important to investors in determining how to respond to the Offer.

[190] No-one should be held to a standard of infallibility when it comes to judging disclosure with the benefit of hindsight. However, meeting one's disclosure obligations is a contextual, and not purely mechanical exercise, and requires the exercise of judgment. In the context of a bid, the success of which is conditional upon a particular shareholder tendering his shares or agreeing to vote in favour of a SAT, tentative agreements with that shareholder are fundamentally important and should be disclosed. Sears Holdings' defence that there is no general obligation to disclose the identity of shareholders who choose to tender to a bid is not an appropriate analogy. A deal with an individual shareholder to support a SAT in the midst of a bid that otherwise appeared to be failing is unusual and cannot be equated with an anonymous decision on the part of a shareholder to tender to the bid. The identity of the counterparties to the Support Agreements was material information in these circumstances and ought to have been disclosed. That the counterparties may have preferred for this information to be kept confidential would not relieve Sears Holdings of any disclosure obligation that they might have had.

[191] With regard to the confidentially provisions in the Support Agreements, the evidence we heard conflicted to a certain extent. On the one hand, Mr. Crowley of Sears Holdings testified that the confidentiality provisions were added to the Support Agreements by counsel acting on behalf of BNS and Scotia Capital. The impetus for their inclusion did not come from Sears Holdings. Mr. O'Donnell of BNS did not dispute this. However, Mr. O'Donnell indicated that, notwithstanding BNS's earlier insistence on inclusion of the provision, continued confidentiality was not critical from their perspective. As speculation and interest in knowing the identity of the counterparties to the Support Agreements mounted in the press and elsewhere, BNS apparently communicated to Sears Holdings their willingness to have their identity revealed. In fact, we heard evidence that it was Mr. Frank Switzer, an official spokesperson for BNS, who first confirmed in an April 12 Wall Street Journal article that the Bank was a party to the Support Agreement.

[192] The fact that the Support Agreements were being held in escrow and subject to the Minority Condition does not necessarily mean that their existence could not have been disclosed, together with the necessary disclosure about the conditions to which they were subject so as to ensure that they would not be "misleading to the marketplace". Indeed, as both the Pershing Group and Commission Staff pointed out, in the April 4, 2006 Notice of Extension and Variation, Sears Holdings certified that there were "no contracts, arrangements or understandings" between it and any security holder in relation to the Offer although there was such an arrangement, albeit conditional and held in escrow. This certification did not accurately and fairly reflect the reality at the time. Counsel for Sears Holdings said in closing submissions: "Those Support Agreements, the signed documents that later became the Support Agreements, simply did not exist until the escrow condition was satisfied." (emphasis added). We reject this characterization. There is no basis in fact or logic for us to conclude that the heavily negotiated, signed Support Agreements did not exist simply because they were subject to a condition pre-requisite to their release and effectiveness.

[193] The evidence showed that the Vornado Release, regardless of any lack of importance that Sears Holdings may have attached to it, was of critical importance to Vornado. This, too, was material information that might have provided more objective information to other shareholders with which to assess the import of the Vornado Agreement.

[194] Similarly, the Sears Holdings press release of December 5, 2005, announced that it had entered into a lock-up agreement with Natcan pursuant to which Natcan "has agreed to tender all 9,699,862 shares that it owns or controls in response to Sears Holdings' Offer". Shareholder and marketplace assessment of an independent third party agreement to tender to Sears Holdings' Offer at $16.86 per share might well have been impacted had they known that Natcan had received 3 month price protection under the terms of the lock-up agreement.

[195] The Pershing Group has urged us to conclude that the public disclosure of Sears Holdings in the circumstances of this case was woefully inadequate, self-serving, and sometimes misleading. They maintain, and Commission Staff agree, that decisions with respect to disclosure appear to have been made for tactical purposes, to advance the self interest of Sears Holdings rather than to ensure that the investing public received proper and timely disclosure.

[196] Viewed as a whole, the panel is troubled by the approach taken by Sears Holdings to their disclosure obligations in the context of their Offer. Insider bids are subject to the rigorous disclosure, valuation, majority of the minority shareholder approval and Special Committee requirements which are the protective pillars so central to Rule 61-501. These protections are intended to safeguard the rights and interests of minority shareholders in circumstances where related party transactions are undertaken, such as the insider bid in question. Insiders such as Sears Holdings must ensure that they treat minority shareholders fairly and comply fully with the spirit and intent of their disclosure and other obligations. We are particularly troubled by Sears Holdings' approach with respect to making proper and timely disclosure to the Special Committee of Sears Canada. Our concerns with regard to interactions between Sears Holdings and the Special Committee extend beyond the failure to provide the Committee with the disclosure and information they sought in order to properly fulfill their mandate. We address these latter concerns in detail later in these Reasons.

[197] In their written submissions, Sears Holdings maintains that even if we were to find that they fell short of their disclosure obligations, the remedy originally sought by the Pershing Group of cease trading the Offer or excluding from the minority the shares held by the parties to the Vornado Agreement and the Support Agreements would be disconnected from, and disproportionate to, the wrong alleged. On balance, we agree that such relief would be disproportionate in the circumstances. We also note that the revised draft relief which the Pershing Group presented for our consideration at the hearing did not include a request that we generally cease trade the Offer. Although a "compliance order" pursuant to section 104 of the Act is subject to the inherent limitations of addressing disclosure deficiencies on an ex post facto basis, we have concluded that this is the most appropriate and proportionate remedy available to us in relation to the disclosure deficiencies. At the same time, such an Order, considered in conjunction with these Reasons, will signal to the marketplace more generally the importance of complying with the spirit and intent, as well as the form, of our disclosure requirements.

D. Did the Support Agreements and the Vornado Agreement Contravene Subsection 97(2) of the Act?

The Legislative Scheme

[198] Subsection 97(1) of the Act sets out the basic requirement that, where a bid is made, all of the holders of the same class of securities must be offered identical consideration.

[199] Subsection 97(2) of the Act prohibits an offeror making or intending to make a take-over bid from entering into "any collateral agreement, commitment or understanding with any holder of beneficial owner of securities of the offeree issuer that has the effect of providing to the holder or owner a consideration of greater value than that offered to the other holders of the same class of securities."

[200] Subsection 97(3) of the Act provides that, where the terms of take-over bid are varied prior to its expiration so as to increase the value of the consideration offered for the securities subject to the bid, the offeror must pay the increased consideration to each person or company whose securities are taken up pursuant to the bid, including those whose securities were taken up prior to the variation.

(i) What Are the Elements of the "Collateral Benefits" Prohibition?

[201] Although the use of the term "collateral benefit" does not, in fact appear in the actual text of the legislative prohibition in subsection 97(2) of the Act, it is the descriptive title which appears before the section and is often used to describe the prohibition enshrined in subsection 97(2). For purposes of these Reasons, we use the term "Collateral Benefits Prohibition" in referring to the subsection 97(2) prohibition.

[202] In order for there to be a violation of subsection 97(2) of the Act, two conditions must be met:

a. there must be a collateral agreement, commitment or understanding between the offeror and a shareholder: and

b. such agreement, commitment or understanding must have the effect of providing the shareholder with consideration of greater value than that offered to other shareholders of the target corporation.

[203] As regards the first condition, the Commission has described a "collateral agreement" as: "…an agreement separate and apart from any agreement resulting from acceptance of the offeree's take-over bid itself…The primary dictionary meaning of collateral is "running side by side – parallel." (*Re Genstar Corp.* (1982) 4 O.S.C.B. 326C at 338C).

[204] In this case, there is no dispute between the parties that the Vornado Agreement and the Support Agreements satisfy the first branch of the two-part test in the Collateral Benefits Prohibition.

[205] The issue in dispute is whether the Vornado and Support Agreements had the effect of providing to the shareholders that were parties to them consideration of greater value than that which was offered to other shareholders of Sears Canada.

(ii) The Vornado Agreement

[206] On April 1, 2006, Sears Holdings entered into its deposit agreement with Vornado (the Vornado Agreement) under which Vornado agreed to deposit its 7.5 million shares of Sears Canada to a revised Offer of Sears Holdings at a price of $18.00 per share. Sears Holdings agreed to pay Vornado, and all other Sears Canada shareholders whose shares are taken up under the Offer including those shareholders who had already tendered their shares to the Offer, any increased consideration paid by Sears Holdings either under the Offer or any subsequent acquisition of all Sears Canada shares prior to December 31, 2008, under the Deposit Agreement (Price Protection). Sears Holdings also provided the following release to Vornado (the Release):

> "In consideration for entering into (the Deposit Agreement), Sears Holdings Corporation … hereby releases Vornado Realty L.P. ... (and their respective officers, directors, employees and agents) from any and all claims and demands of any nature arising out of or otherwise based upon the activities of Vornado … in connection with Vornado Realty L.P.'s acquisition and disposition of Common Shares of Sears Canada Inc. and entering into and performing this Agreement…In addition, Sears Holdings Corporation agrees….to cause Sears Canada Inc. to execute an instrument expressly agreeing to this release on behalf of itself and its subsidiaries."

[207] Sears Holdings did not disclose this Release when it publicly announced the Vornado Agreement nor did it do so in its Notice of Extension and Variation dated April 4, 2006. The existence of the Release was first disclosed by Sears Holdings on June 10, 2006, in the course of carrying out its production obligations in connection with these proceedings.

Arguments, Law and Analysis

[208] The Pershing Group submits that consideration of greater value has been provided to Vornado in the form of the Release and that this consideration has not been offered to other shareholders of Sears Canada. On its face, the granting of the Release in favour of Vornado pursuant to its Deposit Agreement with Sears Holdings therefore contravenes subsection 97(2) of the Act. The onus, they argue, then shifts to the offeror to demonstrate that the special features of the arrangement, in this case, the Release, did not give rise to consideration of greater value than was offered to the other shareholders (*Re Royal Trustco Ltd. and Campeau Corporation (No. 2)* (1980), 11 B.L.R. 298 at 309).

[209] Sears Holdings' disputes that the Release has the effect of providing consideration of greater value to Vornado than that which was offered to other shareholders. They say that, as Sears Holdings did not believe that either it or Sears Canada had any private cause of action against Vornado in any event, granting Vornado the Release did not have the effect of providing Vornado with anything of value.

[210] Although Sears Holdings may not have attached any value to the Release, the evidence at the hearing during the cross-examination of Mr. Crowley clearly established that Vornado attached significance to the Release. Mr. Crowley confirmed that Mr. Roth, Chairman of Vornado, was directly involved in discussions with Mr. Lampert relating to the scope of the Release. As neither Mr. Roth nor Mr. Lampert were called as witnesses at the hearing, we do not know what the precise nature of those discussions were but Mr. Crowley suggested in his evidence that successfully negotiating the form and wording of the Release was important to Vornado in causing it to enter into the Deposit Agreement. He indicated that Vornado was originally negotiating for a broader form of indemnity but ultimately agreed to the Release.

[211] The Pershing Group, in its written submissions, referred to the following statement by Mr. Roth in connection with Vornado's Annual Report for 2005:

> "With respect to Sears Canada, sure there's more value there than the offered price, but we made a fine profit here and fighting for a few more bucks is not our game. In this case, we'll leave that to others. Our shares have been tendered and taken up, we have received our $118 million in cash and enjoy price protection through December 31, 2008."

[212] As we have previously noted in connection with Sears Holdings' allegations against the Pershing Group, if the Pershing Group was found to be a joint actor with Vornado in connection with its purchases of Sears Canada shares, the corollary would also have been true although it was not alleged. We do not know, and cannot speculate, as to whether this played any role in the negotiations between Mr. Roth and Mr. Lampert in connection with the Deposit Agreement.

[213] The law provides that, for purposes of subsection 97(2), it is not necessary to determine whether the quantum of the consideration is large or small. (*Royal Trustco Ltd.*, supra).

[214] In the *CDC Life Sciences* case, the Commission held that, even in the face of conflicting evidence about value, value can be inferred from the very fact that a shareholder entered into an agreement. Specifically, the Commission stated in its decision that it was "confident that the (security holder) would not have entered into the agreement unless it saw some value to

itself in so doing." (*Re CDC Life Sciences Inc., Caisse de depot et placement du Quebec and Institut Merieux S.A.* (1988), 11 O.S.C.B. 2541 at 2554).

[215] In the *Olympia and York* case, the British Columbia Securities Commission explicitly recognized, by granting an exemption from a Collateral Benefits Prohibition equivalent to subsection 97(2) in respect of an indemnity against legal liability that had been provided to a shareholder, that benefits of this nature are otherwise prohibited (*Re Olympia & York Developments Ltd.*, (1989) B.C.S.C. Weekly Summary 131).

[216] We have concluded that the granting of the Release in connection with the Vornado Agreement constituted a violation of subsection 97(2) of the Act. On its face, it constitutes consideration of greater value than that offered to other shareholders of Sears Canada in connection with the Offer and Sears Holdings has not discharged the burden of persuading us that it did not provide consideration of greater value than that offered to other shareholders of Sears Canada.

[217] In coming to this conclusion we have considered Sears Holdings' argument that, as they did not consider the Release to have any value, Sears Holdings could not have contravened subsection 97(2) of the Act by providing it. To accept this argument would be to concede that the offeror's subjective assessment of the value of the consideration provided, or in this case the alleged lack thereof, is determinative.

[218] The Canadian Oxford Dictionary defines consideration, in a legal context, to mean "anything given or promised or forborne by one party in exchange for the promise or undertaking of another." The Black's Law Dictionary similarly provides that consideration means "something (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promisee". In both cases, the concept of "forbearance" is relevant.

[219] The law is well settled that "forbearance to sue is good consideration." Even where the validity of a claim is in doubt, the courts have held that forbearance to enforce it can be good consideration." (*B. v. Arkin* (1996), 138 D.L.R. (4th) 309 (Man. Q.B.) at 313 and 314).

[220] In this case, the Release that was provided gave Vornado comfort that Sears Holdings would "forbear" from suing Vornado in connection with its purchases and sales of Sears Canada shares. It went further in also providing Vornado with Sears Holdings' commitment to secure the same release from Sears Canada in favour of Vornado (although we were advised during the hearing that this release had not yet been executed by Sears Canada). This Release is presumed to have value and constitutes consideration of greater value than that offered to other minority shareholders who have not received such a release.

(iii) The Support Agreements

[221] The facts relating to the ownership of the Sears Canada shares to which the Support Agreements relate were not contested. Briefly, Scotia Capital IEG purchased, for risk arbitrage purposes, 513,000 Sears Canada shares between August 31, 2005 and December 16, 2005. BNS, through Scotia CMG, acquired 4 million Sears Canada shares as a partial hedge against the swap agreements it had entered into with SunTrust and a broker dealer and hedged the rest of its exposure under the swap agreements by entering into offsetting swaps. RBC owns 3.9 million Sears Canada shares and also entered into various equity swap agreements.

[222] The BNS Support Agreement relates to the 4 million Sears Canada shares owned by BNS. The Scotia Capital Support Agreement relates to 511,000 of their Sears Canada shares. The RBC Support Agreement relates to 3.1 million of the 3.9 million shares owned by RBC. In the aggregate, the Support Agreements covered approximately 7.1% of the then outstanding Sears Canada shares.

[223] From the time that Sears Holdings first announced their Offer in early December, 2005, BNS and RBC (referred to collectively as the Banks), as Canadian corporate shareholders, were aware of the potential impact of the Offer on their tax position. Once the Offer came to the attention of Mr. O'Donnell of BNS CMG, he wrote to his colleague Mr. Chris Purkis to raise awareness of the potential impact of the Offer on BNS. Thereafter, they began to consider and discuss strategies to improve the tax treatment on the taxable dividend BNS had received in December, 2005, including negotiating an exit strategy with Sears Holdings which would permit BNS to hold its Sears Canada shares for more than one year. In paragraph 25 of his Affidavit, Mr. O'Donnell said: "We recognized that we may have to negotiate to have the bid re-structured and extended in order to achieve this objective." Similarly, the potential impact of the Offer was also apparent to RBC as evidenced by the following e-mail from Mr. Richard Tavoso of RBC:

> "… The current takeover for us is negative in that it will force the stock to stop trading and we will not be able to age our inventory for one year in order to qualify for a tax gross-up. We believe there are certain ways the company can structure the deal so that its shareholders can qualify for a tax gross-up and would like to talk to the company and see if they are amenable. …"

[224] The tax impact of the Offer that was of concern to the Banks arose from the payment of the extraordinary cash dividend to all Sears Canada shareholders on December 14, 2005. Briefly, under the "stop loss" rules contained in the *Income Tax Act*, tax losses cannot be deducted where tax free dividends have been received and the shares in question have been held for less than 365 days from the date of purchase. Accordingly, if the SAT were to have been successfully completed before December, 2006, the Banks would not have held their shares for more than 365 days and the stop loss rules would therefore apply to the disposition of their shares. In addition, under either of the two forms of SAT preferred by the Banks, they would be able to elect deemed dividend treatment on the disposition of their Sears Canada shares.

[225] Following inquiries, Scotia M & A reported to Sears Holdings and their counsel as to the identity of the banks that owned significant blocks of shares of Sears Canada. The Banks were the only Canadian financial institutions identified as having significant holdings. Sears Holdings realized that the Banks would have an incentive not to tender their shares to the Offer prior to the one-year anniversary of their acquisition because it would result in less advantageous after tax positions as compared to their tax position if they continued to hold the shares until at least December 2006. Based on this assessment, Sears Holdings approached BNS, Scotia Capital and RBC to determine if there was a way in which these parties would be prepared to either tender their shares to the Offer or agree to vote their shares in favour of the SAT.

[226] Following extensive negotiations, by March 28, 2006, Sears Holdings reached an agreement with BNS and Scotia Capital as to the terms of the Support Agreements. However, neither BNS nor Scotia Capital were willing to deliver a binding support agreement until each of them was certain that Sears Holdings had obtained sufficient shares, either pursuant to the Offer or through support agreements negotiated with other parties, to ensure that Sears Holdings would obtain the votes of a majority of the minority shareholders in the SAT (the Minority Condition). Accordingly, the signed Support Agreements were held in escrow.

[227] During the week of April 3, 2006, Sears Holdings continued its negotiations with RBC and, on April 5, 2006, Sears Holdings entered into the Support Agreement with RBC. At that point in time, and in light of the Vornado Agreement, the Minority Condition was satisfied and the Support Agreements executed with BNS and Scotia Capital were released from escrow and became effective agreements.

[228] The Banks both filed materials in aid of establishing the quantum of the tax advantage to each of them as a result of their successful negotiations with Sears Holdings which resulted in an extension of the expiry date of the Offer and negotiation of the precise form of the SAT out of the four possible forms of SAT initially identified in Sears Holdings' Circular. According to BNS and Scotia Capital, the tax benefits were approximately $39.67 million in relation to the 4 million shares held by Scotia CMG if those shares were disposed of in accordance with the Support Agreements. According to the memorandum of Brad Rowse, Senior Vice president, Taxation on March 30, 2006 these benefits would result from a combination of the elimination of the "stop loss' rule by extending the SAT to December 2006 ($16.07 million) and the election to dispose of shares to Sears Canada ($23.60 million). In addition, the per share tax benefit to Scotia IEG in relation to their 511,000 shares would be comparable. According to a letter filed by counsel to RBC, their tax position was as follows: if RBC sold the 3.1 million shares referenced in the Support Agreement before December 9, 2006, RBC would be obliged to pay approximately $15,339,000 of tax referable to the extraordinary dividend paid in December, 2005. This is in addition to an additional $19,307,000 of tax that it would not be obliged to pay were it to dispose of its shares in a re-purchase by Sears Canada at any time after December 9, 2006.

[229] Under the terms of the Support Agreements, BNS, Scotia Capital and RBC each agreed to vote the Sears Canada shares in favour of the SAT and Sears Holdings, in return, agreed that:

(a) the meeting of Sears Canada shareholders to approve the SAT would be held, and any court approval obtained, prior to November 15, 2006;

(b) the SAT would be completed and closed between December 14 and 17, 2006;

(c) the SAT would take the form of either a reverse stock split or consolidation of Sears Canada shares or a plan of arrangement under section 192 of the *Canada Business Corporations Act*; and

(d) in the event that the SAT was not completed by December 15,2006, or December 17, 2006 (as per the BNS/Scotia Capital and RBC Support Agreements respectively) Sears Holdings would consult with BNS, Scotia Capital and RBC as to what future steps should be taken to enable them to dispose of their Sears Canada shares (the Liquidity Consultation Provision).

[230] The quid pro quo for the Banks entering into the Support Agreements was Sears Holdings' agreement to revise the Offer and the SAT to accommodate their tax planning objectives. Specifically, the changes to the Offer were as follows:

(a) the expiry date of the Offer was extended to August 31, 2006 and the SAT was deferred to December 2006 (the Offer Extension) as a result of which the Banks were able to preserve a significant tax loss deduction in connection with their Sears Canada shares; and

(b) the narrowing down of the SAT to one of two forms of transaction out of the four possibilities originally identified by Sears Holdings in their Circular, which would be treated as a redemption for tax purposes from the perspective of the Banks which, in turn, would result in a substantial tax free deemed dividend to BNS, Scotia Capital and RBC (the SAT Election).

Arguments, Law and Analysis

[231] Sears Holdings argues that, upon completion of the SAT in December, 2006, the consideration that will have been paid to all minority shareholders of Sears Canada under the Offer will be $18.00 per share. In other words, the Support Agreements (and the Vornado Agreement) will not have the "effect" of providing consideration of greater value to the Banks (and Vornado) than was offered to the remaining minority shareholders of Sears Canada. We accept the first part of this submission inasmuch as all shareholders will receive $18.00 per share under the Offer and upon successful completion of the SAT. In other words, all holders of the same class of securities are being offered identical consideration under the Offer as required by subsection 97(1) of the Act.

[232] The Pershing Group's allegation is that the effect of entering into the Support Agreements was to provide the Banks with consideration of greater value than that offered to other shareholders in violation of subsection 97(2) of the Act. Counsel for the Pershing Group characterized the arguments made on behalf of itself and Sears Holdings as "two ships passing in the night. We are arguing a 97(2) case and they are arguing 97(1)." Subsection 97(2) of the Act establishes an "effects based" test for determining whether a collateral agreement, commitment or understanding has been entered into in violation of its provisions.

[233] Sears Holdings and the Banks argued several points with regard to whether the tax advantages that are available to the Banks as a result of the successful negotiation of the revised terms of the Offer and SAT violate the Collateral Benefits Prohibition. They say that some other shareholders may well be in the same position as the Banks and will be able to benefit from the same revised terms of the Offer by holding on to their shares and voting in favour of the SAT as the Banks have agreed to do. The difficulty we have with this argument is that the evidence clearly shows that millions of shares traded during the period between the commencement of the Offer and the revised Offer being announced. Even if we accept, as we do, Sears Holdings' argument that it is for the individual shareholders of Sears Canada to determine their own financial and tax position with regard to the Offer and the SAT, the fact that the revised Offer followed months of extensive trading in the shares of Sears Canada after commencement of the bid is fatal to the argument that other shareholders of Sears Canada who are in a similar tax position to the Banks have the same opportunity to benefit from the revised Offer. As counsel for Pershing put it in his closing submissions, "They can't take 25 million pieces of toothpaste and stick them back in the toothpaste tube, because that is how many shares have traded in the time the bid was pending."

[234] The submissions from the Banks and Sears Holdings emphasized that both subsections 97(1) and 97(2) of the Act focus on the consideration offered under the bid and not on the after-tax impact of the consideration received by individual shareholders. It is, of course, true that the after-tax impact of the consideration ultimately realized pursuant to the Offer or upon successful completion of the SAT will vary across the diverse shareholder base depending on whether the shareholder is an individual, corporation, tax exempt entity or even a resident of Canada. In his Affidavit, Mr. Crowley stated as follows:

> Throughout his Affidavit, Mr. Ackman emphasizes that the Support Agreements were negotiated with a view to the tax position of BNS, Scotia Capital and RBC. This is certainly the case. There was nothing even remotely improper in Sears Holdings taking into account the tax position of shareholders of the target corporation in determining how to make the proposed acquisition the most appealing to holders of the largest number of shares. This is a common factor taken into account by offerors and it would have been irrational for Sears Holdings not to do so.
>
> (Affidavit of Mr. William C. Crowley sworn June 21, 2006 at para. 101).

[235] We agree entirely with these submissions. Section 97 of the Act cannot be interpreted to mean that all holders of the same class of securities must be offered identical after-tax consideration or that bidders are required to adjust the consideration offered to account for the unique tax positions of diverse groups of shareholders. In fact, offerors are required to provide adequate disclosure of the tax consequences of an Offer precisely to allow shareholders to assess the impact of the Offer on their own tax position and take this into account in deciding whether or not to tender, participate in the SAT or exercise any other rights that may be available to them. As a general proposition, there is nothing wrong with bidders taking into account the tax planning objectives of shareholders generally in the course of structuring their bids. Clearly, the Act cannot and should not be interpreted so as to require offerors to provide identical consideration to shareholders on a post-tax basis. This would be neither practical nor sensible.

[236] The Pershing Group relied upon two previous Commission decisions in support of their position that "tax benefits" can be found to violate the Collateral Benefits Prohibition.

[237] In the *Royal Trustco Ltd.* case, Campeau made an all-cash bid for the common and preferred shares of Royal Trustco. Prior to launching the bid, Campeau had obtained a call option on the Royal Trustco shares owned by Unicorp in consideration for which Unicorp received convertible preference shares of Campeau which, on the third anniversary date from issuance, would automatically convert into common shares of Campeau. Unicorp also entered into a shareholders' agreement with Campeau's principal shareholder which would allow Unicorp the option of either selling its convertible preference shares to, or buying Campeau common shares from, the principal shareholder. Campeau apparently applied for relief from the Collateral Benefits Prohibition but withdrew its application prior to the conclusion of the hearing. The Commission found that the call option and shareholders' agreements made it possible for Unicorp to receive advantages or benefits that were not offered to other shareholders of the same class in the form of a "tax-free rollover of its Royal Trustco shares into Campeau shares." The Commission stated in its decision that "the onus was on Campeau to demonstrate that the special features of the arrangement with Unicorp did not give rise to consideration of greater value than that offered the other shareholders of the class." The Commission ultimately found that Unicorp did not receive the same consideration as other Royal Trustco shareholders and that the call and shareholders' agreements constituted Prohibited Collateral Benefits. (*Royal Trustco Ltd.*, cited above, at page 309).

[238] Sears Holdings and the Banks argue that the conclusions reached by the Commission in the *Royal Trustco Ltd.* case are not applicable in this case as they are limited to a situation in which the bidder provides certain shareholders with a different form of consideration than that offered to other target shareholders. In this case, all Sears Canada shareholders are being offered the same consideration of $18.00 per share. While the Royal Trustco situation is not on all fours with this case, it is relevant in establishing that the onus rests with Sears Holdings and the Banks to establish that the special features of the Support Agreements do not "give rise to consideration of greater value than that offered the other shareholders" of Sears Canada.

[239] In the *Noranda* case, the Commission gave relief from the Collateral Benefits Prohibition. In that case, the target shareholders were given the option of receiving cash or voting preferred shares redeemable for the same amount as the cash consideration. The preferred share option provided the controlling shareholders with favourable tax treatment. Although all shareholders were given the same choice between cash or preferred shares, the controlling shareholders were the only shareholders who would stand to realize a tax advantage in choosing the preferred share option. For this reason, an order from the Commission was sought. While the *Noranda* case is, again, not on all fours with the instant case, it establishes that a bidder that seeks to accommodate the specific tax planning objectives of certain target shareholders (in that case, the controlling shareholders) in preference to other shareholders may well be considered to have violated the Collateral Benefits Prohibition. In Noranda, all target shareholders were given the same choice of cash or preferred shares redeemable for the same amount as the cash consideration. However, the controlling shareholders were the only parties who were in a position to realize a tax advantage from the preferred share option. Similarly, in this case, Sears Holdings and the Banks argue that all minority shareholders are being offered the same revised Offer as the Banks. The practical reality is that the Banks may well be the only shareholders who can take advantage of the tax benefits that will be available to them as a result of the negotiation of the revised terms of the Offer and the SAT mid-bid and neither Sears Holdings nor the Banks have established otherwise. These arguments are not, in any event, dispositive in determining the application of the Collateral Benefits Prohibition to the Support Agreements in these circumstances.

[240] Counsel for RBC argued that, with the exception of the *Noranda* case, none of the authorities or precedents addressed the situation where the alleged benefit does not emanate from the bidder directly but, rather, follows from the application of general tax laws to the particular circumstances of a shareholder. Counsel for Sears Holdings made a similar submission in which he argued that the concept of "consideration of greater value" which is central to the Collateral Benefits Prohibition under subsection 97(2) must emanate from the offeror. Our finding with regard to whether or not the Support Agreements had the effect of providing consideration of greater value to the Banks than to other shareholders of Sears Canada does not depend on this interpretive issue as will be clear from our reasoning below. However, we note that the Collateral Benefits Prohibition does not expressly require that the consideration of greater value, if it is found to exist, must emanate from the offeror or the person acting jointly or in concert with the offeror. Rather, the Collateral Benefits Prohibition requires a determination of whether a collateral agreement, commitment or understanding has the "effect" of providing to a shareholder consideration of greater value than that offered to other shareholders.

[241] The *Royal Trustco Ltd.* case, supra, is helpful in addressing a further interpretive issue that was raised in connection with the ambit of subsection 97(2) of the Act. Section 97 applies to take-over bids as defined. A take-over bid is defined in subsection 89(1) of the Act as "an offer to acquire …securities…". The *Royal Trustco Ltd.* case established that agreements which confer collateral benefits on shareholders even though they contemplate the acquisition of shares outside of a bid are still subject to subsection 97(2) of the Act. In that case, the Commission found that there was a prohibited collateral benefit where the offeror proposed to acquire shares outside of a bid pursuant to a call agreement. As a matter of principle and policy, it should not be possible for an offeror to avoid the application of the Collateral Benefits Prohibition by agreeing to provide collateral benefits to a shareholder whose shares are to be acquired outside the bid in a SAT or other transaction. There is nothing in the language of subsection 97(2) which expressly requires or even implies that the shares at issue must be acquired

under the bid. To interpret the provision otherwise where avoidance of its intent could so easily be achieved would be to undermine the fundamental principle of equal treatment of shareholders. We also note that it would be inconsistent with Rule 61-501 which treats the combination of the Offer and the SAT as the equivalent of a single transaction for purposes of determining whether the Minority Approval requirement has been satisfied.

[242] As noted above in the context of the consideration of the Vornado Agreement, consideration is not a defined term under the Act. In the case of *Currie v. Misa*, an English court provided a definition of consideration which has frequently been cited with approval by courts in Canada. It was said to consist in "some right, interest, profit or benefit accruing to the one party or some forbearance, detriment, loss or responsibility, given, suffered, or undertaken by the other." (*Currie v. Misa* (1875), L.R. 10 Exch. 153; affirmed (1876), 1 App. Cas. 554 (H.L.). Consideration has been held by the courts to mean something which is of value in the eyes of the law and could include an act, or promise of an act, which is incapable of being given a monetary value, though it has some value or benefit in the sense of advantage for the party who is the present or future recipient or beneficiary of the act. (*Thomas v. Thomas* (1842), 2. Q.B.851 at 859; *Meisner v. Bourgaux Estate* (1994), 131 N.S.R. (2d) 244 (N.S.S.C); *Bank of Nova Scotia v. MacLellan* (1977), 78 D.L.R. (3d) 1 (N.S.S.C)).

[243] Commission Staff take the position that the Support Agreements violate the Collateral Benefits Prohibition. They reject the arguments of Sears Holdings and the Banks to the contrary for a number of reasons including the following:

- Sears Holdings took into account the tax objectives of a select group of Sears Canada shareholders whose votes it required and not those of all other shareholders;
- if the Collateral Benefits Prohibition were to be interpreted as focusing only on the identical consideration issue, this would make subsection 97(1), which sets out the basic requirement for identical consideration, superfluous; and
- it is clear from the evidence that the Banks would have suffered severe tax losses if the Offer and the SAT had been completed within the timeframe and in the form originally contemplated by Sears Holdings and if Sears Holdings had chosen not to enter into the Support Agreements and had simply raised the bid price under the Offer.

[244] Counsel for the Pershing Group submits that, at the end of the day, the effect of the Support Agreements was to do exactly what subsection 97(2) of the Act is directed at preventing. The Banks agreed to support the SAT in circumstances where they would not, in fact, have tendered to the bid because they received consideration of greater value in exchange for entering into the Support Agreements.

[245] We agree. The consideration of greater value that was received by the Banks in this case consisted of the promise of the Offer Extension, the SAT Election and the Liquidity Consultation Provision which, in turn, ensured that the Banks would be in a position to preserve and realize millions of dollars worth of tax benefits. By entering into the Support Agreements, the Banks were able to negotiate these revised terms of the Offer which ensured that they would not be forced to tender into the bid prior to December, 2006 and thereby lose these tax benefits. By entering into the Support Agreements, the Banks were able to ensure that the form of the SAT, which would otherwise have been at the option of Sears Holdings to choose from among the four possibilities outlined in the Bid Circular, was one which would be advantageous to the Banks from a tax point of view. The Support Agreements also provided the Banks with the benefit of the Liquidity Consultation Provision, described above, which was not available to other shareholders of Sears Canada. This commitment on the part of Sears Holdings to consult with BNS, Scotia Capital and RBC as to future steps that might be taken to enable them to dispose of their shares in the event that the SAT was not successfully completed by December, 2006, appears to provide consideration of greater value than that offered to other Sears Canada shareholders particularly in light of Sears Holdings' persistent warnings that the Sears Canada shares would be very illiquid upon completion of the Offer. No evidence was offered to the contrary. In return for the Banks support of the SAT, Sears Holdings promised to take the foregoing actions which constituted consideration that was of considerable value to the Banks in ensuring that they would not be effectively forced to tender to the Offer and thereby lose the tax benefits that they wished to preserve and realize.

[246] We have concluded, for the reasons and based on the analysis set out above, that the effect of the Support Agreements was to provide consideration of greater value to the Banks than that offered to other Sears Canada shareholders. We are satisfied that no other conclusion, in the unique circumstances of this case, would be consistent with the wording, spirit and intent underlying the Collateral Benefits Prohibition which is a fundamental element of the protections afforded under Part XX of the Act.

(iv) What is the Appropriate Remedy in Relation to the Vornado Agreement and the Support Agreements?

(a) Extending the Release to Sears Canada Shareholders

[247] Given our finding that the Vornado Agreement contravened subsection 97(2) of the Act, what is the appropriate remedy? Counsel for the Pershing Group submits that the votes attached to the Sears Canada shares acquired by Sears Holdings from Vornado pursuant to the Deposit Agreement ought not to be included in the minority for purposes of the minority approval of the SAT. They say that exemptive relief under subsection 104(2) of the Act could not have been available to Sears Holdings had it been sought as the Deposit Agreement was not made for reasons other than to increase the value of the consideration paid to Vornado.

[248] Sears Holdings submits that the relief sought by the Pershing Group is disconnected from and disproportionate to the alleged wrong. They say that a more appropriate remedy, if one is required at all, would be for Sears Holdings to issue a Notice of Variation pursuant to subsection 98(4) of the Act to extend the same release, in effect, to all other shareholders whose shares are acquired pursuant to the Offer.

[249] Commission Staff maintain that it is unclear how providing a similar release to other Sears Canada shareholders would eliminate the benefit received by Vornado when the release is likely to have greater value for Vornado than any other Sears Canada shareholder.

[250] Deposit agreements, support agreements, and lock-up agreements are all contemplated by the Act and Rule 61-501 and are not, in and of themselves, objectionable or illegal. As counsel for RBC pointed out to us in closing submissions, such agreements are a common and accepted tool for bidders in this jurisdiction. Insider bidders are also entitled to lock-up a majority of the minority votes and to have those votes count in a second stage transaction. Although we must analyze the Vornado Agreement and the Support Agreements separately, they were, as counsel for Sears Holdings put it, in the nature of a "package deal." Another description offered was of a "three legged stool." It was Vornado that was successful in negotiating for an increase in the bid price from $16.86 per share to $18.00 per share. As counsel for Sears Holdings put it in closing submissions: "Mr. Roth knew he had Sears Holdings where he wanted them, and he had the ability to extract the last nickel out of Sears Holdings, and he did it...And he was probably, in the circumstances, the only person who could have done that."

[251] The remedy we fashion must be preventive and protective in nature and not punitive. In balancing the nature and effect of the collateral benefit provided by Sears Holdings to Vornado, the extent of the preferential treatment afforded to Vornado in the form of the Release, the impact of the granting of the Release on the integrity of the process and shareholder confidence against the increase in the bid price that resulted from the Vornado negotiations to the benefit of all Sears Canada minority shareholders, we are of the view that, in order to address the inherent unfairness of the Release having been granted only to Vornado, Sears Holdings ought to amend the Take-Over Bid Circular in respect of the Offer to disclose the existence and terms of the Release granted to Vornado pursuant to the Vornado Agreement and grant the same Release to other shareholders whose shares were or are acquired under the bid or the proposed SAT.

[252] Vornado clearly negotiated in its own commercial self-interest and the result of that negotiation was a higher bid price that accrued to the benefit of all Sears Canada shareholders including the Pershing Group.

[253] The nature of the collateral benefit that was obtained by Vornado is such that it can feasibly and pragmatically be extended to all shareholders of Sears Canada whose shares were or are acquired under the Offer. We are of the view that extending the release to other shareholders of Sears Canada whose shares are acquired under the bid or under the proposed SAT is appropriate and fair in the circumstances and consistent with the principle of equal treatment of all shareholders under a bid. To do so is also consistent with the animating principle underlying s. 97(3) of the Act.

[254] We are equally of the view, however, that on its own, this remedy is inadequate and fails to redress the real harm which has been done by Sears Holdings in granting the release to Vornado in the context of negotiating the Deposit Agreement. Merely granting the Release to other Sears Canada shareholders will not, of course, result in equal treatment. These shareholders do not have the opportunity that Vornado had to make their decision to tender to the bid conditional upon the receipt of a satisfactory form of Release. From the evidence, we know that receipt of the Release was important to Vornado in its decision to tender to the bid. Accordingly, we must address the impact, if any, that the tendered Vornado shares ought to have on the minority approval of the SAT required to be obtained in accordance with the terms of Rule 61-501 and its Companion Policy. This matter is addressed immediately below.

(b) The Minority Approval Requirement of Rule 61-501

[255] Our overriding obligation must be to ensure that the consequences to the Offer and the SAT that result from our findings above are consistent with the spirit and intent of the equal treatment requirements which govern insider bids under the Act and consistent with the Minority Approval requirement which is a key protective pillar under Rule 61-501.

[256] The SAT is a business combination under Rule 61-501 because it is a transaction by which Sears Holdings intends to acquire any Sears Canada shares that are not tendered to it under the Offer. The Companion Policy to Rule 61-501 states that the Commission does not consider the types of transactions covered by Rule 61-501 to be inherently unfair. However, the Policy notes that such transactions are capable of being abusive and unfair and that the Commission has therefore adopted the protections set out in the Rule animated by the principles set out in the Companion Policy to Rule 61-501. In order for the SAT to proceed, it must be approved by the minority shareholders in accordance with the provisions of the Rule.

[257] The votes attached to the Sears Canada shares which were tendered to the Offer may generally be included in determining whether Minority Approval of the SAT has been obtained under Rule 61-501 with numerous exceptions. Votes attached to shares of joint actors would have to be excluded. In addition, votes attached to shares of a party that received a collateral benefit under the bid would also have to be excluded. For purposes of Rule 61-501, which focuses on related party transactions, the definition of "collateral benefit" differs from that under the Act and applies to "related parties". The Rule 61-501 definition of "collateral benefit" is not applicable in this case as none of BNS, Scotia Capital, RBC or Vornado are "related parties" as therein defined.

[258] We are therefore left to determine the appropriate remedy based on the application of the policy and principles which underlie the Minority Approval requirement to these circumstances where collateral benefits have been granted to non-related third parties. In responding to comments received on the proposed January 2004 amendments to Rule 61-501, Commission Staff stated as follows:

> In the case of a business combination, where a majority of security holders can force the minority to relinquish their securities against their will, it is important that this majority be comprised, to the extent possible, of security holders who are voting solely on the merits of the business combination. (emphasis added)
>
> (Notice of Proposed Amendments to Rule 61-501 – Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions and Companion Policy 61-501 CP (2004), 27 O.S.C.B. 550 at 566).

[259] In its Notice of Amendments to Rule 61-501, in commenting on the nature of the Minority Approval requirement, the Commission expressed the expectation that those voting have interests which are as aligned and as free from conflicts as possible:

> … when a majority vote of security holders can force the minority to relinquish their securities against their will at a price they may regard as inadequate, it is reasonable to require that the security holders comprising the majority be as free from conflicts as possible so that their interests are aligned with those of the minority. (emphasis added).
>
> (Notice of Amendments to Rule 61-501 (2004), 27 O.S.C.B. 4483 at 4486).

[260] In recently introducing the definition of collateral benefits for purposes of Rule 61-501, the Commission noted that collateral benefits can, in fact or perception, induce the recipient shareholders to tender to a bid or to support a business combination. Even where motives are above reproach, the Commission further noted that collateral benefits can cause a transaction to have economic consequences that vary among security holders entitled to vote on the transaction. This can have a distortional impact on the required minority vote.

[261] These principles are applicable in the instant case. It is clear that the Banks agreed to support the SAT in return for the collateral benefits which they received as outlined above. In the case of the Vornado Agreement, we do not know what role the Release played in Vornado's decision to tender to an $18.00 bid price. We know from Mr. Roth's statement in Vornado Annual Report that he believed there was more value there. The result of the Vornado Agreement and the Support Agreements – the "package deal" that Sears Holdings had negotiated with select shareholders – was to ensure the success of the vote on the SAT. This result was prejudicial to the remaining shareholders of Sears Canada who not only had lost their collective leverage with respect to the bid price but also were certain to lose their shares despite how they might otherwise have been inclined to vote on the SAT. We have concluded that, to permit the votes attached to the Vornado shares tendered to Sears Holdings and the votes committed in favour of the SAT under the Support Agreements to count as part of the Minority Approval would be to distort the outcome of the Minority Approval process and vitiate its intended benefit.

[262] Finally, subsection 2.1 (5) of the Companion Policy to Rule 61-501 expressly contemplates the possibility of Commission intervention on public interest grounds where an arm's length security holder is receiving preferential treatment in return for its support of a business combination: "…giving a security holder preferential treatment in order to obtain that holder's support of the transaction will not normally be considered justifiable." Commission Staff submit, and we agree, that the preferential treatment extended by Sears Holdings to the Banks in order to accommodate their legitimate tax planning objectives

in the context of a bid that did not otherwise appear to be succeeding affords a basis to conclude that Sears Holdings ought not to be permitted to count the votes in favour of the SAT pursuant to the Support Agreements.

[263] As the Act prohibits agreements with specific shareholders which have the effect of providing consideration of greater value than that offered to other shareholders, we also considered whether to allow the Offer to proceed in circumstances where it has been determined that collateral benefits have been provided to certain shareholders. The Commission may grant exemptions from the Collateral Benefits Prohibition if it is satisfied that it would not be prejudicial to the public interest and the collateral agreement was made for reasons other than to increase the value of consideration paid for the securities of a selling security holder (subsection 104(2)(a)). This determination would be based primarily on the business purpose for providing the benefit. There was no basis for granting exemptions in this case. However, we decided that a permanent cease-trade order of the Offer would not be an appropriate remedy given the stage of the bid, the nature of the collateral benefits and their effect on other shareholders and taking into account that such a remedy was not put forward by any of the parties, including Commission Staff, in their final submissions to us. In fashioning an appropriate remedy in this case, we are mindful of the challenges we face in attempting to redress various aspects of Sears Holdings' conduct in the pursuit of its Offer given the stage of the Offer and the fact that so many shareholders have already traded or tendered their shares. The Order we are making will ensure that if Sears Holdings does proceed with a SAT, that they must be scrupulous in ensuring that the decision on the SAT is determined by the minority shareholders of Sears Canada uninfluenced by the inclusion of shares or votes secured by conferring collateral benefits and preferential treatment to specific shareholders.

[264] Therefore, we conclude that the Take-Over Bid Circular in respect of the Offer ought to be amended to disclose that Sears Holdings will exclude from the calculation of the majority of the minority, on the anticipated SAT, the shares of Sears Canada acquired by Sears Holdings from Vornado pursuant to the Vornado Agreement and the shares of Sears Canada held by or acquired from Scotia Capital, BNS and RBC, which are the subject of the Support Agreements, including on any other offer or SAT in the future.

E. Was the Conduct of Sears Holdings in Connection with its Offer Coercive and/or Abusive?

[265] The Pershing Group submits that, in considering all of the circumstances of this case, the bid of Sears Holdings is coercive and/or abusive of the minority shareholders of Sears Canada and contrary to the public interest. Counsel for Pershing provided the panel with a summary document enumerating all aspects of the conduct at issue in this matter which they allege, when viewed as a whole, amounts to coercive and abusive conduct. We deal with these complaints below.

[266] Counsel for Sears Holdings urged us to be cautious in applying words like "coercive" and "abusive" to the Offer as these words are often applied loosely and strategically by those who stand in opposition to an offeror and its bid. According to the Webster's Dictionary, "coercive" means to dominate or control especially by exploiting fear or anxiety. The dictionary definition of "abusive" which is relevant in this context means to mistreat. Not surprisingly, previous Commission decisions have not attempted to define these terms in the abstract but rather, have applied the Commission's public interest jurisdiction in the context of particular transactions and circumstances that call out for a remedy. This approach is, perhaps, analogous to the manner in which the Courts have been reluctant to define pornography but, rather, "know it when they see it."

(i) The Absence of a "Minimum Tender Condition"

[267] The Pershing Group takes issue with the fact that the Offer does not contain a minimum tender condition despite the earlier public representation by Sears Holdings to the contrary. They say this is coercive because, in the circumstances, shareholders may well feel pressured to tender for fear of holding shares in an even less liquid post-bid entity.

[268] Sears Holdings submits that their bid is not a partial bid but is, rather, an all-cash premium bid for all outstanding Sears Canada shares and therefore cannot be said to be coercive.

[269] We cannot conclude that the absence of a minimum tender condition is necessarily coercive on its own. There is no obligation to include a minimum tender condition in every offer and nothing, per se, improper with announcing the intention to include such a condition but subsequently deciding not to include it once the bid is formally launched. We also note that even where take-over bids do include such a condition, the condition can typically be waived in the sole discretion of the offeror.

[270] However, liquidity concerns on the part of shareholders who would prefer not to tender to the Offer which lacks the protection of a minimum tender condition can create pressure on shareholders to tender despite their views as to the adequacy of the offer. On its own, this does not warrant Commission intervention but it is a factor to bear in mind in considering the other claims of coercive or abusive conduct relating to the Offer.

(ii) The Offer Was at a Price Below the Genuity Valuation

[271] There is nothing inherently improper about an offeror deciding to make a bid at a price which is less than the valuation range of the independent valuator. The role of the Commission is not to form an opinion as to the fair value of Sears Canada

shares. Similarly, our role is not to weigh in as to the relative merits of the Genuity Valuation or the financial adequacy of the Sears Holdings' bid price. That is for the shareholders of Sears Canada to decide with the benefit of the required valuation and the views of the Special Committee formed pursuant to the requirements of Rule 61-501.

[272] Provided that shareholders have had the benefit of an independent valuation conducted in accordance with the terms of Rule 61-501 and a meaningful opportunity to accept or reject the bid, there is no basis for the Commission to intervene on the basis that the bid is lower than the lowest end of the independent valuation range.

(iii) Interference with the Genuity Valuation Process

[273] Sears Holdings had several meetings with Genuity, organized by the Special Committee, in an effort to ensure that Genuity was aware of information that Sears Holdings believed ought to be considered by Genuity in formulating its valuation opinion. The fact that such discussions took place and that Sears Holdings was desirous of communicating with Genuity prior to completion of the valuation should not be viewed as objectionable or coercive. That such meetings took place would not, absent other conduct, afford a basis to conclude that there was any improper attempt to influence or intimidate Genuity. Proof of the latter would, of course, raise significant concerns.

[274] Following the issuance of the Genuity Valuation, Sears Holdings was openly critical of Genuity, accusing it of having made indefensible assumptions and of ignoring highly relevant factors which it ought to have considered and which Sears Holdings had brought to its attention. There is nothing wrong with parties disagreeing on the question of fair market value – in fact, this is to be expected. However, the manner in which Sears Holdings chose to attack the integrity of the Genuity Valuation is reflective of the manner in which they dealt with others – such as the Special Committee and the Pershing Group – who got in the way of the successful completion of their bid.

(iv) Decision by Sears Holdings to Cease Dividend Payments

[275] On March 20, 2006, Sears Holdings issued a press release stating that: "in the event that Sears Holdings does not acquire a majority of the minority of Sears Canada shares, Sears Canada will face the increasingly competitive Canadian retail environment without the financial and operating benefits of being owned 100% by Sears Holdings. Therefore, Sears Holdings, consistent with its practice in the United States, will support the elimination of the recent practice of Sears Canada of paying quarterly dividends of C$0.06. In addition, Sears Holdings would not support any extraordinary dividend or distribution to public shareholders in 2006."

[276] Mr. Crowley explained in his Affidavit that Sears Holdings made this public statement of what its intentions were with respect to the payment of dividends. He further explained that Sears Holdings does not pay quarterly dividends and believed that a consistent practice was appropriate for Sears Canada.

[277] Mr. Crowley's characterization of the reasons underlying this public statement by Sears Holdings in the course of its insider bid flies in the face of contemporaneous non-public communications from Mr. Rudka, financial advisor to Sears Holdings, to his colleagues at Scotia Capital. From these e-mails, it is clear that Mr. Crowley intended to use the threat that Sears Holdings would eliminate the Sears Canada dividend in order to exert pressure, or coerce, the shareholders of Sears Canada to tender into the insider bid. The e-mail dated March 13, 2006, from Mr. Rudka to Messrs. Vaux and Asmundson at Scotia Capital states as follows: "Crowley called. … He wants to send out a press release this week reminding people to tender and perhaps threatening no 2006 dividend." (emphasis added)

[278] Sears Holdings followed up on this "threat" by issuing the March 20 press release which announced the intention to eliminate dividend payments at Sears Canada. In so doing, it is noteworthy that Sears Holdings mischaracterized quarterly dividend payments as a "recent practice" when, in fact, Sears Canada had been paying dividends for the past 20 years.

[279] Subsequently, on April 3, 2006, Sears Holdings announced that its Offer had been amended to provide that any dividend paid by Sears Canada after the date of the Offer, including regular quarterly dividends, would have to be remitted to Sears Holdings by shareholders who tender. An e-mail sent April 26, 2006, to Mr. Crowley from Mr. William Phelan, VP & Controller of Sears Holdings stated as follows:

> "From my perspective, the key point is that the majority of the minority have already accepted the $18.00 offer and all shareholders can receive their $18.00 immediately (actually ten days after) when they tender. To pay a dividend would provide a mixed message to these shareholders, giving them a reason to hold the shares longer and delay the process. That would not be in the best interest of Sears Canada, its associates or the shareholders."

[280] Viewed in the context of events that were unfolding in relation to the Offer, the statements relating to the non-payment of dividends could be construed as threatening in nature and, together with other "warnings" relating to decreased liquidity and the increasingly competitive Canadian retail environment, intended to exert pressure on the minority shareholders to tender to

the bid. Despite the business purpose advanced by Sears Holdings in explaining their decision to announce the cessation of dividend payments to Sears Canada shareholders, we do not regard it as co-incidental that this announcement was issued at a time when it appeared that minority shareholders were unwilling to tender at the then bid price.

(v) Sears Holdings' Dealings with the Special Committee of Sears Canada

[281] The Pershing Group raised several complaints relating to the manner in which Sears Holdings dealt with the Special Committee of Sears Canada. They submit that this conduct is remarkable and should be deeply troubling to the Commission. In evaluating the validity of these complaints, we had the benefit of the testimony of Mr. William Anderson, the Chair of the Special Committee. All of the parties, including Sears Holdings, acknowledged Mr. Anderson to be a very credible and impressive witness. We found Mr. Anderson to be a credible witness who gave his evidence in a straightforward, thoughtful and balanced fashion.

[282] It is important to set out the factual background to the complaints made in this regard. On February 21, 2006, Sears Canada mailed its Directors' Circular concerning the insider bid. The voting members of Sears Canada's board (i.e. the six independent directors comprising the Special Committee) recommended unanimously that the shareholders of Sears Canada reject the Offer of Sears Holdings and not tender their shares to the insider bid. The mere fact that Sears Holdings chose to pursue a bid which the Special Committee considered to be inadequate does not, in our view, constitute evidence of coercive conduct as suggested by the Pershing Group.

[283] In support of this recommendation to reject the Offer, the Special Committee noted, among other things, that:

(a) the Offer of Sears Holdings was financially inadequate;

(b) the consideration offered by Sears Holdings was significantly below the valuation range of Genuity;

(c) the consideration offered by Sears Holdings was at a significant discount to the average trading price of the shares of Sears Canada on the Toronto Stock Exchange over the period following the initial announcement of the Offer on December 5, 2005;

(d) the Offer was made at a time when the impact of the steps being taken by Sears Canada in the last half of 2005 to reduce costs and improve the company's financial results had not yet become evident; and

(e) the Offer did not reflect the benefits and savings that would be realized by Sears Holdings if its Offer was successful.

[284] In addition, the Special Committee also expressed their view that the Offer had been "opportunistically timed" and that it "exerts pressure" on Sears Canada and its minority shareholders as evidenced by a number of factors including Sears Holdings' application for exemptive relief to permit it to mail its Circular without including the required formal valuation as well as the absence of a minimum tender condition under the Offer.

[285] This set off a chain of events. On February 22, 2006, Sears Holdings issued a press release in response to the Directors' Circular. This press release quoted Alan Lacy, the Vice Chairman of Sears Holdings as follows:

> "We are disappointed that the Special Committee has recommended against our Offer; however we recognize that the Special Committee was constrained in its ability to recommend that shareholders accept our offer as a result of the valuation range contained in what we believe to be a flawed valuation report."

[286] Having in essence attacked the basis for the Special Committee's recommendation as being "flawed", Sears Holdings went on in their press release to set out a detailed chronology of the purchases and sales of Sears Canada shares by members of the Special Committee in the three years prior to the issuance of the Directors' Circular. They suggest in their press release that shareholders should consider whether these actions of the individual members of the Special Committee are "consistent with the Genuity valuation report, which is the principal underpinning of the Special Committee's recommendation." Mr. Anderson, in giving his evidence, made it clear that he felt that these comments were unfair and misleading in that they did not reflect the fact that some members of the Special Committee were precluded from buying Sears Canada shares as a result of trading restrictions during the relevant time period. We have concluded that the purpose of these statements in the Sears Holdings press release was to call into question the good faith and bona fides of the Special Committee members by underscoring the perceived inconsistency between their recommendation with regard to the Offer and their own past trading practices with regard to the shares of Sears Canada.

[287] The Sears Holdings press release also attributed to members of the Special Committee concerns pertaining to the financial condition and stability and the ongoing business prospects of Sears Canada. Mr. Anderson's evidence before us was

that these statements were taken out of context. We have concluded that Sears Holdings used these prior statements out of context and in a misleading fashion in an effort to pressure the shareholders of Sears Canada to tender to its bid.

[288] Mr. Anderson made it clear that despite numerous requests made to Sears Holdings for access to information which the Special Committee felt they needed in order to fulfill their statutory mandate, access to this information and documentation was either delayed or never provided at all. Into the latter category falls the Natcan lock-up agreement, the Vornado Agreement and the Support Agreements with BNS, Scotia Capital and RBC.

[289] In the cross-examination of Mr. Anderson, we learned that the draft Notice of Change to Directors' Circular originally described the insider bid of Sears Holdings as "coercive". The final version of the Notice of Change to Directors' Circular dated April 12, 2006, did not include that word. Mr. Anderson conceded that the Special Committee agreed to take that reference out of the final version of their Directors' Circular as a result of requests made by representatives of Sears Holdings. However, his evidence was that the Special Committee was not coerced into doing so.

[290] Subsequently, on February 27, 2006, Sears Canada issued a press release announcing that all six of the independent directors on its board did not intend to stand for re-election at the next annual meeting of shareholders in the spring, 2006. These six directors constituted the members of the Special Committee. At this time, Mr. Vaux of Scotia M & A sent an e-mail dated February 28, 2006, to Mr. Crowley and others in which he stated as follows:

> "If there was a time to issue a press release about Holdings intending to put forth its own slate of directors and to effect some changes, this is probably it. Just try to sound disappointed with their actions and again let's raise the inconsistencies about how this obviously further distances them from their reject recommendation."

[291] The day after the announcement was made that the independent directors would not stand for re-election, Mr. Lacy, the representative of Sears Holdings on the Sears Canada board, approached the independent directors to ask them if they would resign immediately instead of waiting for the annual general meeting on May 9, 2006. The independent directors refused to do so because of the fiduciary obligations they owed to Sears Canada. That Sears Holdings would seek the early resignation of the members of the Special Committee in the midst of an insider bid in respect of which the Special Committee had expressed serious reservations is of significant concern to the panel. It is also noteworthy that someone at Sears Holdings apparently leaked to the media the message that the independent directors of Sears Canada were "running for the hills" which appeared in a subsequent news report.

[292] Following the increase of the Sears Holdings Offer to $18.00 a share in conjunction with the announcement of the Vornado Agreement and the Support Agreements, the Special Committee received an updated Valuation and Inadequacy Opinion from Genuity which re-affirmed Genuity's prior valuation range for the Sears Canada shares. The Special Committee issued a Notice of Change of Directors' Circular in response to the revised Offer in which they continued to express a number of reservations "with respect to, or arising in light of, the revised Offer" of Sears Holdings but unanimously determined not to make a recommendation concerning the revised Offer. In their Notice, the Special Committee stated as follows:

> "The Special Committee has not been provided with copies of the support agreements pursuant to which certain Minority Shareholders have agreed to vote their Common Shares in favour of a going private transaction or the names of such shareholders. <u>As a result, the Special Committee is unable to assess whether the Common Shares subject to such agreements may be voted as part of the minority with respect to a going private transaction involving Sears Canada.</u>" (emphasis added).

[293] We do not and cannot know what impact the provision of the requested information and documentation might have had on the Special Committee's consideration of the revised Offer or on their determination not to make any recommendation to the Sears Canada minority shareholders with respect thereto. The result of Sears Holdings' refusal to provide this information to the Special Committee on the basis, as counsel to Sears Holdings submitted to us, that they had no specific statutory obligation to do so, was that the minority shareholders of Sears Canada were effectively denied the opportunity to know what impact the information might have had on the Special Committee's consideration of the revised Offer and on their determination to proceed with a neutral recommendation.

[294] As the Commission emphasized in the context of the *Hollinger* decision, the role of the Special Committee in the context of an insider bid is a critical component of the protections afforded to minority shareholders pursuant to Rule 61-501 (*Re Hollinger Inc.* (2005), 28 O.S.C.B. 3309). It is understandable that all bidders, including insider bidders, will want to successfully complete their bid at the lowest price reasonably possible in the circumstances. In fact, it is to be expected that parties will act rationally and in their own economic interests. For this very reason, minority shareholders cannot be expected to look to the insider making the bid to protect their rights and interests. Rather, it is the statutorily mandated role of the Special Committee in such circumstances to safeguard the rights and interests of the public shareholders of the company during the course of an

insider bid by, among other things, obtaining a formal valuation from an independent valuator of its choice and making an informed recommendation to the shareholders in relation to the insider bid.

[295] Insiders who wish to make an insider bid for a public company and take it private assume an obligation to co-operate with the Special Committee as it discharges its important and statutorily mandated function. We do not know to what extent Sears Holdings' actions and public attacks on the members of the Special Committee played a role in the individual decisions of the members not to seek re-election. We do know that, had the members of the Special Committee resigned immediately as Sears Holdings requested, that would have left no-one on the board of Sears Canada to protect the rights and interests of that company's minority shareholders during the pendency of the insider bid. We are of the view that the conduct of Sears Holdings as regards their dealings with the Special Committee, formed in accordance with the requirements of Rule 61-501, fell far short of the conduct we would expect of even the most determined offeror in the pursuit of its insider bid.

(vi) Dissent Rights

[296] The February 22 press release of Sears Holdings quotes Mr. Lacy as saying: "On March 17, 2006, shareholders will have two choices: either tender to the Sears Holdings offer or continue to hold shares, which we believe will thereafter trade at a significant discount to our offer." Counsel for Sears Holdings, BNS and Scotia Capital and RBC all urged us to bear in mind that those shareholders who are unhappy with the Offer can exercise their dissent and appraisal rights under Canadian corporate law. We agree. It is noteworthy that this choice was not mentioned as an option for shareholders in the February 22 press release. We cannot do more than speculate as to whether this omission reflects Sears Holdings' view as expressed by Mr. Crowley in a February 24 e-mail to Mr. Lampert that "dissenters rights in Canada do not work well for the dissenter in practice. It can take years for the dissenter to get the money (10 years in one case). Not a practical solution for shareholders." It is worth noting that, by extending the expiry date of the Offer to August 31, 2006, and the closing date for the proposed SAT to mid-December 2006, in accordance with the terms of the Support Agreements, there is resulting delay to other Sears Canada shareholders who might wish to commence the dissent and appraisal process.

(vii) Exemption Application in Relation to the Valuation

[297] As noted earlier in these Reasons, Sears Holdings applied to the Commission and other securities regulators for relief from the requirement to include a formal valuation of the Sears Canada shares in its Take-Over Bid Circular on the basis that the Genuity Valuation was not being prepared quickly enough. The resolution of the exemption request is described earlier in these Reasons and need not be repeated here. While the Valuation was, of course, critical information for minority shareholders to have, Sears Holdings considered it appropriate to seek exemptive relief to dispense with the need to include the Valuation in its Circular so that they could proceed with its mailing.

(viii) Threatening Legal Action Against Desjardins

[298] When Sears Holdings took note of Mr. Mayers comments in the press in which he was generally critical of the bid price under the Offer, Sears Holdings took steps to commence a libel action against Desjardins. Desjardins subsequently issued a public apology for the previous comments of Mr. Mayers, one of their executives. We are unable to conclude, based on the little we know about what precipitated these events, that this action on the part of Sears Holdings provides evidence of coercive conduct.

(ix) April 20 Complaint Against the Principal of Pershing

[299] On April 20, 2006, Sears Holdings filed a complaint with Commission Staff in relation to the conduct of the Pershing Group. This complaint had two components to it. The first of these components outlined allegations of breaches of the act against the Pershing Group which have been fully addressed earlier in these Reasons. The other component of the complaint related to the past conduct of Mr. Ackman. Sears Holdings included with their complaint a number of articles and U.S. court decisions concerning Gotham Partners L.P., a public and private equity partnership that Mr. Ackman had co-managed before he launched Pershing in January 2004. Mr. Ackman, through his counsel, took objection to what he characterized as a pre-emptive, personal attack based on his past business dealings which were unrelated to Pershing, Sears Holdings or Sears Canada. Mr. Ackman's response to the complaint made against him underscored the selective and misleading nature of the materials that were filed with Commission Staff. The Commission takes complaints which are filed with it seriously and we expect that all market participants, acting directly or through their counsel, will be duly diligent in ensuring that information filed in support of such complaints is balanced, accurate and not misleading.

(x) Other Complaints

[300] The Pershing Group made a number of other complaints in support of their claim that the Offer is coercive and abusive which relate to the fact that Sears Holdings entered into the Vornado Agreement and the Support Agreements, provided inadequate and deficient disclosure and generally took steps designed to coerce minority shareholders to tender into their insider bid. We need not address these complaints here as they are dealt with elsewhere in these Reasons.

(xi) What is the Appropriate Remedy?

[301] The Commission may make an order under subsection 127(1) of the Act that trading in any securities by or of a person or company cease permanently or for such period as may be specified (the cease trade order) where, in its opinion, it is in the public interest to do so.

[302] The Commission's public interest jurisdiction is derived from the broad mandate conferred upon it under the Act to provide protection to investors from unfair, improper, or fraudulent practices and to foster fair and efficient capital market and confidence in their integrity (section 1.1 of the Act).

[303] In *Re Cablecasting Ltd.*, (1978) O.S.C.B. 37, the Commission applied its public interest jurisdiction to a "going private transaction" effected in compliance with the requirements of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 but not in compliance with the disclosure requirements applicable to issuer bids under the predecessor policy to Rule 61-501. In its decision, the Commission balanced the need for intervention where a transaction was inconsistent with the best interests of investors against a preference for a policy oriented solution but, ultimately, did not have to issue a cease trade order because the respondent undertook to obtain minority approval. The Commission, however, provided guidance on when it was more likely to intervene under the rubric of its public interest jurisdiction despite the absence of any breach of Ontario securities law:

> "If the transaction under attack was of an entirely novel nature, Commission action might seem more appropriate. Another relevant consideration in assessing whether to act against a particular transaction is whether the principle of the new policy ruling that would be required to deal with the transaction is foreshadowed by principles already enunciated in the Act, the regulations or prior policy statements. Where this is the case the Commission will be less reluctant to exercise its discretionary authority than it will be in cases that involve an entirely new principle." (*Re Cablecasting*, supra, at page 43).

[304] The frequently cited *Canadian Tire* decision established that the Commission can and will intervene on public interest grounds even if there is no breach of the Act, the regulations or Commission policies. In such circumstances, the Commission's public interest jurisdiction will be invoked where necessary to prevent an otherwise abusive transaction from occurring. Accordingly, the standard for intervention in such circumstances is more than a complaint of unfairness and will generally involve some showing of a broader impact on the operation of the capital markets (*Re Canadian Tire Corp.* (1987), 10 O.S.C.B. 858 at 948, affirmed (1987) 37 D.L.R (4th) 94 (Div. Ct).

[305] In the *H.E.R.O. Industries* case, the Commission intervened in the public interest to stop a transaction where a market participant initiated a transaction that was purposefully designed to exploit a loophole in securities legislation. The Commission stated that:

> "Finally, Middlefield's conduct seems to us to be clearly abusive of the integrity of the capital markets, which have every right to expect that market participants like Middlefield will adhere to both the letter and spirit of the rules that are intended to guarantee equal treatment of offerees in the course of a take-over bid…" (*Re H.E.R.O. Industries Ltd.* (1990), 13 O.S.C.B. 3775 at page 3795).

[306] The parties in this case, including Commission Staff, all agreed that in the absence of any contravention of Ontario securities law, a finding that the conduct of Sears Holdings in relation to their Offer was abusive of the capital markets would be required in order to warrant an order being made to cease trade the Offer under section 127 of the Act.

[307] In view of the fact that we have found that the Vornado Agreement and the Support Agreements were entered into in contravention of subsection 97(2) of the Act, it is unnecessary for us to make a finding that the conduct of Sears Holdings in connection with their insider bid or the bid itself was "abusive" in order to support the exercise of our public interest jurisdiction under section 127 of the Act.

[308] Although it is unnecessary for us to do so, we find that elements of the conduct of Sears Holdings in pursuing their Offer were coercive and abusive of the minority shareholders of Sears Canada and the capital markets generally. Our finding in this regard is based on the detailed analysis and assessment of the conduct of Sears Holdings considered in totality as described in detail above.

[309] Sears Holdings relied upon the Support Agreements as a means of obtaining assurance of the necessary shareholder approval of a SAT. The purpose and effect of the Support Agreements are well described in an e-mail dated April 6, 2006, from Mr. Rudka to Mr. Crowley and Mr. Lacy of Sears Holdings after Sears Holdings had issued its press release announcing the Support Agreements. The e-mail congratulates Sears Holdings on its success and states:

> "Today's announcement will surprise the market and, given our conversations with the analysts and institutional shareholders, it will catch most off-guard. In fact, the rather unique tactic of securing the support of the majority through the derivatives trades and support agreements will make this transaction one of the most intriguing Canadian M & A trades in a long time."

[310] Sears Holdings and their financial advisor were aware that the approach they had employed to ensure the success of their Offer was "unique." Despite the unique and novel nature of the approach, the principle of fair and equal treatment to all minority shareholders without preference to some shareholders over others is a well-enunciated principle in Ontario securities law in the bid context and we therefore have no hesitation in applying this principle to this transaction in accordance with the Commission's guidance in the *Cablecasting* decision cited above.

[311] In this case, had we found that subsection 97(2) had not, technically, been contravened and despite the absence of a finding of joint actor status, we would nonetheless have determined that an order under section 127 of the Act was warranted to ensure that the votes attached to the shares that are the subject of the Support Agreements as well as the votes attached to the shares acquired by Sears Holdings pursuant to the Vornado Agreement ought not to count in the majority of the minority vote required on the SAT.

[312] Such intervention would be justified in the public interest in the circumstances of this case and consistent with our mandate under the Act. The purpose and effect of the Support Agreements was to secure the votes of a select few shareholders – namely, BNS, Scotia Capital and RBC – in connection with the SAT in return for which a deal was negotiated with respect to the Offer that ensured that the interests of these parties was addressed through the terms of the Offer. While there is nothing wrong with BNS, Scotia Capital and RBC wanting to ensure that the Offer was structured in the most advantageous manner possible from their particular tax perspective, allowing their votes to count in the majority of the minority vote on the SAT in these circumstances would be to turn a blind eye to the overriding principle underlying Rule 61-501 that all shareholders be treated, and be seen to be treated, fairly and equally unless differential treatment is reasonably justified. In our view, the same rationale applies to the Vornado shares. As subsection 2.1(5) of the Companion Policy to Rule 61-501 provides, giving a security holder preferential treatment in order to obtain that holder's support of the transaction will not normally be considered justifiable.

[313] Although we find that certain aspects of Sears Holdings' conduct in connection with the Offer was unfair, coercive, and at times abusive, we are not of the view that the transaction as a whole is so abusive of the minority shareholders or the capital markets as to warrant an order cease trading the Offer entirely. Rather, we believe that a more proportionate and appropriate remedy is to order that Sears Holdings comply with all of its obligations under Ontario securities law in relation to its Offer and to cease trade the Offer subject to certain conditions. These conditions include a requirement that Sears Holdings amend its Take-Over Bid Circular in respect of the Offer and disclose that the votes attached to the shares of BNS, Scotia Capital and RBC as well as the Vornado shares previously tendered to Sears Holdings will be excluded for purposes of the required minority vote in connection with the SAT under Rule 61-501.

[314] The Pershing Group has requested that the Support Agreements be terminated as a term and condition of the cease trade order. Commission Staff urged us to carefully consider whether our jurisdiction to impose terms and conditions pursuant to section 127 extends so far as to permit us to effectively order that legal agreements between the bidder and third parties be terminated. Counsel for the Pershing Group maintains that they are not seeking an order that the Support Agreements be terminated. Rather, they are seeking an order that the bid be cease traded unless and until the Support Agreements are terminated. They argue that termination of the Support Agreements is therefore not a mandatory term of the order.

[315] The parameters of the Commission's jurisdiction to impose terms and conditions under a section 127 order was addressed by both the Ontario Court of Appeal and the Supreme Court of Canada in the *Asbestos* decision. The Supreme Court there stated as follows:

> "The breadth of the OSC's discretion to act in the public interest is also evident in the range and potential seriousness of the sanctions it can impose under s. 127(1). Furthermore, pursuant to s. 127(2), the OSC has an unrestricted discretion to attach terms and conditions to any order made under s. 127(1)."
>
> (*Committee in the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission*, [2001] 2 S.C.R. 132 at page 149).

[316] The Court went on to say that the nature of any section 127 order and the terms and conditions that may attach to it must be consistent with the Commission's overall mandate under the Act.

[317] While we take significant comfort from the broad interpretation given to our section 127 authority by the Supreme Court of Canada, it is unnecessary in this case to test the precise limits of that jurisdiction. Counsel for the Pershing Group explained in their closing submissions the reason they are seeking the termination condition as follows: "If the order simply excludes from voting the shares of the banks, then one likely outcome is that we will then proceed to a subsequent acquisition transaction. The

vote may well fail … Holdings is then perfectly at liberty to commence another offer, and our read of the support agreements is that they continue. There is no obvious termination provision, based on our understanding of these agreements, and so the banks would continue to be bound to support that subsequent offer. We think that would have the effect of vitiating the order we have asked you to make today."

[318] It is a legitimate concern that the Order be cast broadly enough to ensure that the votes attached to the shares held by the parties to the Support Agreements, and to which the Support Agreements relate, are not included in calculating whether minority approval of any SAT has been achieved. As the Order refers to the Offer and any other offer made or to be made by Sears Holdings or any affiliate for the shares of Sears Canada, it appears to us broad enough to address this concern without including a condition that the Support Agreements be terminated. The issue of the continued effectiveness of the Support Agreements is not a matter that we need to address and is best left to the parties to deal with. Our Order makes it clear that Sears Holdings cannot include the votes attached to the shares of Scotia Capital, BNS or RBC to which the Support Agreements relate in the required minority approval under Rule 61-501 in the context of this Offer or any future offer which they may launch for the shares of Sears Canada. We believe that the desired result is achieved by cease trading the Offer or any future offer to be made by Sears Holdings for the shares of Sears Canada unless and until Sears Holdings abides by the condition set out immediately above and discloses the same in their Take-Over Bid Circular relating to this Offer or any future offer for the shares of Sears Canada.

DATED at Toronto this 8th day of August, 2006.

"Susan Wolburgh Jenah"
Susan Wolburgh Jenah

"Robert W. Davis"
Robert W. Davis

"Carol S. Perry"
Carol S. Perry

3.1.2 Abel Da Silva – ss. 37, 127, 127.1

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

AND

IN THE MATTER OF
ABEL DA SILVA

REASONS FOR DECISION ON SANCTIONS AND COSTS
(Sections 37, 127 and 127.1 of the Act)

Hearing:	June 5, 2012		
Decision:	September 24, 2012		
Panel:	James D. Carnwath	–	Commissioner and Chair of the Panel
Appearances:	Cameron Watson	–	For Staff of the Commission
	Abel Da Silva	–	Did not appear

TABLE OF CONTENTS

PART I – OVERVIEW

[1] This matter proceeded following a hearing on the merits in writing. A panel of the Ontario Securities Commission (the "**Commission**") found on June 22, 2011 that the respondent, Abel Da Silva ("**Da Silva**"), engaged in conduct which was contrary to ss. 122(1)(a) and 122(1)(c) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "***Act***") and contrary to the public interest. More specifically:

(a) On January 9, 2006, Da Silva made statements to the Commission with respect to his employment history and his financial situation, that, in a material respect and at the time and in light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements not misleading, contrary to section 122(1)(a) of the *Act* and contrary to the public interest; and

(b) Between and including April 23, 2007 and August 21, 2007, Da Silva breached the Sanctions Decision and the May 10, 2006 Cease Trade Order of the Commission by trading securities of Colby Cooper Inc., contrary to section 122(1)(c) of the *Act* and contrary to the public interest.

(*Re Abel Da Silva* (2011), 34 O.S.C.B. 7291 (the "**Merits Decision**"))

[2] On May 10, 2006, a cease trading order was made against Da Silva for a period of seven years, subject to certain exceptions. He was also ordered to pay $7,500 costs of the Commission (*Re Allen* (2006), 29 O.S.C.B. 3944).

[3] On June 4, 2010, Da Silva entered a guilty plea in the Ontario Court of Justice to a charge of contravening Ontario securities laws by trading in securities of Colby Cooper Inc. at a time when he was prohibited from trading in securities by order

of the Commission dated May 10, 2006 (The Affidavit of Wayne Vanderlaan sworn November 10, 2010 at paras. 34 to 38 and Exhibit "Q").

[4] On September 1st, 2010, Da Silva was sentenced to 75 days imprisonment to be served intermittently commencing on September 10, 2010. Da Silva was also placed on probation for two years following the conclusion of his intermittent sentence (Affidavit of Wayne Vanderlaan sworn November 10, 2010 at para. 39 and Exhibit "S").

PART II – THE APPLICABLE LAW

A. Approach to the Imposition of Sanctions

[5] The Commission must ensure that the sanctions imposed in each case are proportionate to the circumstances and conduct of the particular respondent. The factors the Commission should consider include:

(a) the seriousness of the allegations;

(b) the respondent's experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been a recognition of the seriousness of the improprieties;

(e) whether or not the sanctions imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets;

(f) any mitigating factors;

(g) whether the violations are isolated or recurrent;

(h) the size of any profit made or loss avoided from the illegal conduct;

(i) the size of any financial sanctions or voluntary payment when considering other factors;

(j) the effect any sanction might have on the livelihood of a respondent;

(k) the restraint any sanctions may have on the ability of a respondent to participate without check in the capital markets;

(l) the reputation and prestige of the respondent;

(m) the shame or financial pain that any sanction would reasonably cause to the respondent; and

(n) the remorse of the respondent.

(*Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at paras. 23-26; *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 at paras. 10, 16-19 and 26)

[6] The Commission may also consider general and specific deterrence in crafting appropriate sanctions. The weight given to general deterrence will vary from case to case and is a matter within the discretion of the Commission (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at paras. 60 and 64; *Re Momentas Corp.* (2007), 30 O.S.C.B. 6475 at paras. 51-52).

B. The Seriousness of the Allegations

[7] Evasion, obfuscation, and untruth in responding to Staff inquiries serves to hinder Staff's performance of their responsibilities to monitor and enforce compliance with Ontario securities law; such conduct is an obstacle to effective regulation of the capital markets (*Re Hennig*, 2008 ABASC 363 at para. 1296).

[8] The efficacy and integrity of Commission orders should not be eroded by respondents who disregard and disrespect their terms. Achieving the purpose and objectives of the *Act* depends on the ability of the Commission to make such orders and have the persons or companies whom are the subject of those orders abide by the terms.

[9] Breaches of Commission orders show a disregard for the rule of law as well as for the Commission and its processes, undermine public confidence in the capital markets, and amount to conduct contrary to the public interest (*Re Prydz* (2000), 23 O.S.C.B. 3399 at page 4 (Q.L.)).

C. Specific Sanctioning Factors Applicable in this Matter

[10] Da Silva received $45,280 for his sale of Colby Cooper Inc. securities (Affidavit of Wayne Vanderlaan sworn November 10, 2010 at para. 38 and Exhibit "R").

[11] Da Silva is a recidivist and an order restricting his activities in capital markets will send a message to other like-minded individuals that involvement in his type of conduct will result in sanctions by the Commission.

[12] In addition to Da Silva's record for violating Ontario securities laws, Staff submit that Da Silva's convictions for crimes of dishonesty are highly relevant, particularly with respect to the issue of specific deterrence. Da Silva's criminal record dates back to 1964 demonstrating a substantial need for specific deterrence. Da Silva's criminal record includes crimes of dishonesty spanning the period between 1985 and 2011 and two lengthy jail sentences for breaches of the *Act*. On November 15, 2011, Mr. Justice J.F. Kenkel in the Ontario Court of Justice sentenced Da Silva to twenty-seven months for eight violations of the *Act* in relation to *Shallow Oil and Gas Inc.* On March 30, 2012, Madame Justice S. Ray in the Ontario Court of Justice sentenced Da Silva to eighteen months concurrent for five violations of the *Act* in relation to *Moncasa Capital Corporation* (Criminal Record of Abel Marquis Da Silva at May 23, 2012; *Ontario Securities Commission v. Abel Da Silva* (15 November 2011), Newmarket 08 90000460 (Ont. Ct. J.); *R. v. Da Silva*, [2012] O.J. No. 2073).

D. Permanent Bans

[13] I agree with Staff's submission that Da Silva should be subject to permanent trading, acquisition, exemption, director and officer bans. His conduct demonstrates that he cannot be trusted to participate in the capital markets in even a limited capacity.

E. Disgorgement

[14] This is an appropriate matter for a disgorgement order in the amount of $45,280, the amount received by Da Silva from the sale of Colby Cooper Inc. securities.

F. Administrative Penalty

[15] I agree with Staff's submission that Da Silva should pay an administrative penalty of $250,000, given the seriousness of his misconduct and his repeated breaches of the *Act*.

G. Costs

[16] I agree with Staff's submission that Da Silva should pay the total costs of Staff's investigation and conduct of the Hearing on the Merits in the amount of $52,470.25.

PART III – CONCLUSION

[17] It is ordered that:

(a) pursuant to s. 127(1)2 of the *Act*, all trading by Da Silva cease permanently;

(b) pursuant to s. 127(1)2.1 of the *Act*, the acquisition of any securities by Da Silva is prohibited permanently;

(c) pursuant to s. 127(1)3 of the *Act*, any exemptions contained in Ontario securities law do not apply to Da Silva permanently;

(d) I hereby reprimand Mr. Da Silva for his conduct, pursuant to s. 127(1)6 of the *Act*;

(e) pursuant to s. 127(1)8 of the *Act*, Da Silva is prohibited from becoming or acting as a director or officer of any issuer permanently;

(f) pursuant to s. 127(1)8.2 of the *Act*, Da Silva is prohibited from becoming or acting as a director or officer of a registrant permanently;

(g) pursuant to s. 127(1)8.4 of the *Act*, Da Silva is prohibited from becoming or acting as a director or officer of an investment fund manager permanently;

(h) pursuant to s. 127(1)8.5 of the *Act*, Da Silva is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter permanently;

(i) pursuant to s. 127(1)9 of the *Act*, Da Silva pay an administrative penalty of CDN $250,000, to be allocated by the Commission to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*;

(j) pursuant to s. 127(1)10 of the *Act*, Da Silva shall disgorge to the Commission the entirety of the $45,280 he obtained as a result of his non-compliance with Ontario securities law, to be allocated by the Commission to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*;

(k) pursuant to s. 127.1 of the *Act*, Da Silva shall pay $52,470.25, representing the costs and disbursements incurred by the Commission in the investigation and hearing of this matter; and

(l) pursuant to s. 37(1) of the *Act*, Da Silva is prohibited from telephoning any residence within or outside of Ontario for the purpose of trading in any security or derivative or in any class of securities or derivatives.

Dated this 24th day of September, 2012.

“James D. Carnwath

This page intentionally left blank

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	24 Sept 12	
Meritus Minerals Ltd.	12 Sept 12	24 Sept 12		26 Sep 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
Focus Graphite Inc.	24 Sept 12	05 Oct 12			
McVicar Industries Inc.	12 Sept 12	24 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		
Focus Graphite Inc.	24 Sept 12	05 Oct 12			
McVicar Industries Inc.	12 Sept 12	24 Sept 12	24 Sept 12		

This page intentionally left blank

Chapter 7

Insider Reporting

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

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

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

Chapter 8

Notice of Exempt Financings

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

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
08/31/2012	61	ACM Commercial Mortgage Fund - Units	3,266,395.03	28,812.45
08/23/2012	19	Anconia Resources Corp. - Flow-Through Units	487,479.94	2,119,478.00
08/22/2012 to 08/23/2012	33	Anconia Resources Corp. - Units	708,000.00	3,540,000.00
08/30/2012	8	AndeanGold Ltd. - Units	285,000.00	5,700,000.00
08/22/2012	1	Ares Capital Corporation - Common Shares	94,947,250.00	N/A
06/29/2012	1	Asian Mineral Resources Limited (Amended) - Common Shares	5,199,999.97	47,272,727.00
09/06/2012	5	Atlanta Gold Inc. - Common Shares	817,095.45	16,335,909.00
08/30/2012	1	AuRico Gold Inc. - Common Shares	1,722,874.00	211,991.00
03/13/2012	20	Balmoral Resources Ltd. - Flow-Through Shares	3,040,000.00	2,000,000.00
08/02/2012 to 08/10/2012	7	Bison Income Trust II - Trust Units	1,181,869.00	118,186.90
07/16/2012	1	BIY Build It Yourself Renovation Learning Center Inc. - Common Shares	250,000.00	200,000.00
08/31/2012	27	Brookstreet MIC Inc. - Special Shares	3,471,782.00	3,471,782.00
08/23/2012	1	Burlington Northern Santa Fe, LLC - Debenture	2,965,890.72	1.00
08/23/2012	5	Canadian Horizons First MIC Fund Inc. - Preferred Shares	278,603.00	278,603.00
06/28/2012	9	Canadian Orebodies Inc. - Units	3,010,000.00	15,755,556.00
08/31/2012	1	Cartier Resources Inc. - Common Shares	150,000.00	576,923.00
08/31/2012	1	Cartier Resources Inc. - Flow-Through Shares	350,000.00	1,129,032.00
08/16/2012	65	Cayden Resources Inc. - Units	5,095,000.00	5,095,000.00
08/28/2012	5	Cleanfield Alternative Energy Inc. - Common Shares	292,484.00	5,856,960.00
08/20/2012	60	Comstock Metals Ltd. - Common Shares	1,365,449.65	N/A
08/22/2012 to 08/30/2012	6	Condor Precious Metals Inc. - Common Shares	400,000.05	2,666,667.00
09/12/2012	9	Condor Resources Inc. - Common Shares	500,000.00	5,000,000.00
08/09/2012	1	Crescent Resources, LLC and Crescent Ventures, Inc. - Note	20,790,000.00	1.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
07/09/2012	1	Creso Exploration Inc. - Units	5,000,000.00	10,000,000.00
07/02/2012	1	Digital Realty Trust, Inc. - Common Shares	110,445.00	1,500.00
06/08/2012	8	Empower Technologies Corporation - Common Shares	270,000.00	1,800,000.00
08/17/2012	40	ES Investments Ltd. - Common Shares	1,570,600.50	1,047,067.00
05/23/2012	19	Excalibur Resources Ltd. - Units	1,168,778.22	8,060,535.00
06/28/2012	8	Excelsior Mining Corp. - Units	1,015,000.20	3,383,334.00
06/29/2012	13	FLYHT Aerospace Solutions Ltd. - Common Shares	755,640.00	3,778,200.00
08/30/2012	29	Foran Mining Corporation - Flow-Through Shares	5,038,715.88	8,367,776.00
08/30/2012 to 08/31/2012	2	Gemoscan Canada, Inc. - Loan	325,000.00	1.00
08/02/2012	75	Geologix Explorations Inc. - Common Shares	2,502,000.00	12,510,000.00
08/31/2012	7	Golden Bridge Mining Corporation - Common Shares	145,120.08	518,286.00
09/07/2012	16	Golden Dawn Minerals Inc. - Units	254,739.53	N/A
06/07/2012	2	Golden Moor Inc. - Common Shares	50,000.00	1,666,666.00
08/21/2012	58	GoldQuest Mining Corp. - Common Shares	15,000,000.00	12,000,000.00
06/28/2012	51	International Northair Mines Ltd. - Common Shares	6,099,616.42	21,784,344.00
08/30/2012	2	Intertainment Media Inc. - Units	2,500,000.00	12,500,000.00
08/07/2012	1	Isle of Capri Casinos, Inc. - Note	4,000,000.00	1.00
08/13/2012	2	JPMorgan Chase & Co. - Notes	69,406,539.51	2.00
06/27/2012	2	Kinwest 2008 Energy Inc. - Common Shares	59,998.95	38,709.00
08/23/2012	2	laboratory Corporation of America Holdings - Notes	5,435,981.10	2.00
06/07/2012	7	Lakeland Resources Inc. - Units	195,000.00	1,950,000.00
07/16/2012 to 07/20/2012	7	League IGW Real Estate Investment Trust - Units	1,496,574.03	N/A
09/04/2012 to 09/07/2012	4	League IGW Real Estate Investment Trust - Units	243,496.21	347,642.60
08/27/2012	58	Loyalist Group Limited - Common Shares	5,000,000.00	25,000,000.00
06/04/2012	2	Manitou Gold Inc. - Common Shares	0.00	30,000.00
09/17/2012	1	Manitou Gold Inc. - Common Shares	600,000.00	4,000,000.00
06/19/2012	9	Meadow Bay Gold Corporation - Units	875,880.00	1,500,000.00
06/08/2012	18	Medifocus Inc. - Units	2,755,088.00	18,367,254.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
05/24/2012	109	Medworxx Solutions Inc. - Units	3,106,496.42	9,136,754.00
08/30/2012	1	Meridian Infrastructure North America Fund II, L.P. - Limited Partnership Interest	34,741,000.00	N/A
06/07/2012	1	Mint Technology Corp. - Common Shares	5,000,000.00	29,411,765.00
06/08/2012	1	Mistango River Resources Inc. - Units	2,500,000.00	10,500,000.00
02/21/2012 to 02/27/2012	13	Mountainstar Gold Inc. (Formerly Mountain-West Resources Inc. Amended) - Units	397,050.00	610,847.00
09/04/2012 to 09/10/2012	2	MOVE Trust, BNY Trust company of Canada as trustee - Notes	11,868,696.49	2.00
09/01/2012	1	New Haven Mortgage Income Fund (1) Inc. - Special Shares	6,000.00	N/A
05/10/2012	21	Northern Freegold Resources Ltd. - Units	756,479.93	N/A
09/12/2012	6	Northern Freegold Resources Ltd. - Units	389,840.00	3,248,667.00
09/05/2012	5	Nulogy Corporation - Preferred Shares	700,000.00	518,518.52
08/27/2012	13	Odin Mining and Exploration Ltd. - Common Shares	1,345,000.00	13,450,000.00
04/08/2012	1	Offshore Group Investment Limited - Note	2,160,000.00	1.00
09/07/2012	24	OPEL Technologies Inc. - Units	1,442,580.01	6,272,087.00
09/13/2012	5	OPEL Technologies Inc. - Units	1,234,870.00	5,369,000.00
05/31/2012	95	Pavilion Flow-Through L.P. - Limited Partnership Units	1,977,000.00	N/A
06/06/2012	1	Pilot Gold Inc. - Common Shares	48,000.00	50,000.00
07/16/2012	2	Primerica, Inc. - Notes	380,887,500.00	375,000.00
07/31/2012	30	Prophecy Platinum Corp. - Units	7,251,749.30	N/A
06/14/2012	32	Prospero Silver Corp. - Units	605,500.00	6,055,000.00
08/30/2012	17	Rainbow Resources Inc. - Flow-Through Units	584,000.00	2,920,000.00
08/30/2012	27	Rainbow Resources Inc. - Units	486,820.00	2,754,556.00
09/19/2012	6	Rainmaker Mining Corp. - Units	280,000.00	2,545,455.00
08/25/2012 to 08/28/2012	4	Redstone Investment Corporation - Notes	410,000.00	N/A
06/14/2012	37	Ridgemont Iron Ore Corp. - Flow-Through Units	9,104,802.00	N/A
08/21/2012	4	Rio Tinto Finance (USA) PLC - Notes	62,591,487.34	4.00
09/19/2012	16	Rockex Mining Corporation - Flow-Through Shares	700,658.00	2,919,408.00
08/21/2012 to 08/28/2012	77	Rye Patch Gold Corp. - Units	3,898,150.50	7,796,301.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
09/04/2012	1	Silvercove Capital (Canada) Inc. - Common Shares	50,400.00	84,000.00
08/27/2012 to 09/04/2012	2	Sinclair-Cockburn Mortgage Investment Corporation - Common Shares	175,000.00	175,000.00
07/15/2012	23	Skyline Apartment Real Estate Investment Trust - Trust Units	3,920,829.00	356,439.00
08/30/2012	7	Strike Minerals Inc. - Units	166,000.00	1,324,000.00
06/13/2012	15	Super Nova Minerals Corp. - Common Shares	135,440.00	1,212,000.00
08/24/2012	26	Synodon Inc. - Units	1,449,303.10	14,493,031.00
06/14/2012	3	Temex Resources Corp. - Common Shares	10,000.00	50,000.00
06/07/2012	1	The CIM Group - Units	5,075,000.00	N/A
09/01/2012	2	The Toronto United Church Council - Notes	255,000.00	255,000.00
08/30/2012	1	Three2N International Inc. - Common Share	50,000.00	1.00
04/13/2012	41	Timbercreek Mortgage Investment Corporation - Common Shares	34,005,730.00	3,400,573.00
08/15/2012	1	TriLinc Global, LLC - Units	200,000.00	N/A
09/06/2012	11	UMC Financial Management Inc. - Limited Partnership Interest	780,000.00	N/A
08/07/2012	6	VendTek Systems Inc. - Units	619,300.00	5,630,000.00
08/15/2012	12	Vive Crop Protection Inc. - Units	458,000.00	458,000.00
05/08/2012	8	Vive Crop Protection Inc. (Amended) - Units	981,500.00	981,500.00
08/09/2012	14	Walton NC Concord LP - Units	3,808,978.68	382,044.00
05/02/2012	64	Westbridge Energy Corporation - Receipts	3,980,000.00	16,000,000.00
05/22/2012	13	Western Pacific Trust Company - Warrants	285,000.00	2,850,000.00
08/15/2012	11	Westridge Resources Inc. - Units	397,400.00	1,589,600.00
08/27/2012	4	Willis Stein & Partners III Sub L.P. - Limited Partnership Interest	0.00	4.00
08/31/2012	2	Wright medical Group, Inc. - Notes	4,438,350.00	2.00
09/14/2012	21	Yoho Resources Inc. - Flow-Through Shares	8,000,001.45	3,864,735.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Alberta Oilsands Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated September 17, 2012
NP 11-202 Receipt dated September 18, 2012
Offering Price and Description:
OFFERING TO THE HOLDERS OF COMMON SHARES OF ALBERTA OILSANDS INC.
OF UP TO 156,957,057 RIGHTS TO SUBSCRIBE FOR UP TO 156,957,057 UNITS AT A PRICE OF $0.10 PER UNIT (EACH UNIT CONSISTING OF ONE COMMON SHARE AND ONE WARRANT)
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1961522

Issuer Name:
Alimentation Couche-Tard Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Base Shelf Prospectus dated September 20, 2012
NP 11-202 Receipt dated September 21, 2012
Offering Price and Description:
Cdn.$1,000,000,000.00 - Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1962369

Issuer Name:
DHX Media Ltd.
Principal Regulator - Nova Scotia
Type and Date:
Preliminary Short Form Prospectus dated September 17, 2012
NP 11-202 Receipt dated September 18, 2012
Offering Price and Description:
$17,730,000.00 -11,820,000 Subscription Receipts each representing the right to receive one Common Share Price: $1.50 per Subscription Receipt
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
BYRON CAPITAL MARKETS LTD.
CORMARK SECURITIES INC.
NCPNORTHLAND CAPITAL PARTNERS INC.
Promoter(s):
-
Project #1961371

Issuer Name:
Dundee Industrial Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated September 14, 2012
NP 11-202 Receipt dated September 17, 2012
Offering Price and Description:
$ * - * Units Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
CANACCORD GENUITY CORP.
DUNDEE SECURITIES LTD.
BROOKFIELD FINANCIAL CORP.
DESJARDINS SECURITIES INC.
GMP SECURITIES L.P.
NATIONAL BANK FINANCIAL INC.
Promoter(s):
DUNDEE PROPERTIES LIMITED PARTNERSHIP
Project #1946226

Issuer Name:
Enbridge Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Base Shelf Prospectus dated September 20, 2012
NP 11-202 Receipt dated September 20, 2012
Offering Price and Description:
$4,000,000,000.00 - MEDIUM TERM NOTES (UNSECURED)
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1962264

Issuer Name:
Franklin U.S. Rising Dividends Hedged Corporate Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated September 20, 2012
NP 11-202 Receipt dated September 20, 2012
Offering Price and Description:
Series A, F, O and T Shares
Underwriter(s) or Distributor(s):
Franklin Templeton Investments Corp.
Promoter(s):
Franklin Templeton Investments Corp.
Project #1962217

Issuer Name:
Loncor Resources Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated September 19, 2012
NP 11-202 Receipt dated September 19, 2012
Offering Price and Description:
Cdn $ * - * Common Shares Price: Cdn$ * per Offered Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
GMP Securities L.P.
Promoter(s):
-
Project #1961911

Issuer Name:
Loncor Resources Inc.
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated September 20, 2012
NP 11-202 Receipt dated September 21, 2012
Offering Price and Description:
Cdn$9,030,000 - 8,600,000 Common Shares Price: Cdn $1.05 per Offered Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
GMP Securities L.P.
Promoter(s):
-
Project #1961911

Issuer Name:
Meranex Energy Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Long Form Prospectus dated September 21, 2012
NP 11-202 Receipt dated September 21, 2012
Offering Price and Description:
$ * - * Units Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
Promoter(s):
MERANEX ENERGY ADMINISTRATOR INC.
Project #1962675

Issuer Name:
Phillips, Hager & North Monthly Income Class
RBC Bond Capital Class
RBC Select Aggressive Growth Class
RBC Select Balanced Class
RBC Select Conservative Class
RBC Select Growth Class
RBC Select Very Conservative Class
RBC U.S. Dividend Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated September 14, 2012
NP 11-202 Receipt dated September 17, 2012
Offering Price and Description:
Advisor Series, Advisor T5 Seres, Series A, H, D, F, FT5, I, O and T5
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc.
RBC Direct Investing Inc.
Promoter(s):
RBC Global Asset Management Inc.
Project #1960957

Issuer Name:
QMX Gold Corporation
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated September 18, 2012
NP 11-202 Receipt dated September 19, 2012
Offering Price and Description:
$ * - * Units Price: $ * per Unit
Underwriter(s) or Distributor(s):
TD Securities Inc.
National Bank Financial Inc.
Dundee Securities Ltd.
Raymond James Ltd.
Promoter(s):
-
Project #1959850

Issuer Name:
RBC Bond LP
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated September 14, 2012
NP 11-202 Receipt dated September 17, 2012
Offering Price and Description:
Series O Units
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc.
Promoter(s):
RBC Global Asset Management Inc.
Project #1960959

Issuer Name:
RBC Bond Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated September 14, 2012
NP 11-202 Receipt dated September 17, 2012
Offering Price and Description:
Series O Units
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc.
Promoter(s):
RBC Global Asset Management Inc.
Project #1960962

Issuer Name:
Sprott Physical Gold Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated September 21, 2012
NP 11-202 Receipt dated September 21, 2012
Offering Price and Description:
U.S.$3,000,000,000.00 - Trust Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Sprott Asset Management LP
Project #1962574

Issuer Name:
TriOil Resources Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated September 21, 2012
NP 11-202 Receipt dated September 21, 2012
Offering Price and Description:
$20,004,750.00 - 7,845,000 Class A Shares Price: $2.55 per Class A Share; and $8,751,864.00 - 2,917,288 Flow-Through Shares Price: $3.00 per Flow-Through Share
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
GMP SECURITIES L.P.
DUNDEE SECURITIES LTD.
TD SECURITIES INC.
ALTACORP CAPITAL INC.
HAYWOOD SECURITIES INC.
CORMARK SECURITIES INC.
RAYMOND JAMES LTD.
DESJARDINS SECURITIES INC.
Promoter(s):
-
Project #1962733

Issuer Name:
Valeura Energy Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated September 21, 2012
NP 11-202 Receipt dated September 21, 2012
Offering Price and Description:
$14,950,000.00 - 11,500,000 Common Shares Price: $1.30 per Common Share
Underwriter(s) or Distributor(s):
CORMARK SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
CANACCORD GENUITY CORP.
FIRSTENERGY CAPITAL CORP.
JENNINGS CAPITAL INC.
Promoter(s):
-
Project #1962701

Issuer Name:
VPI Mortgage Pool
Principal Regulator - Manitoba
Type and Date:
Preliminary Simplified Prospectus dated September 21, 2012
NP 11-202 Receipt dated September 21, 2012
Offering Price and Description:
Series A Units and Series F Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Value Partners Investments Inc.
Project #1962582

Issuer Name:
Woodfine Professional Centres Limited Partnership
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated September 13, 2012
NP 11-202 Receipt dated September 17, 2012
Offering Price and Description:
$20,000,000.00 to $50,000,000.00 - 500,000 to 200,000 Units Price: $100 per Unit Minimum Purchase: $5,000 (50 Units)
Underwriter(s) or Distributor(s):
Macquarie Private Wealth Inc.
Promoter(s):
Woodfine Capital Projects Inc.
Project #1960978

Issuer Name:
Aegean Metals Group Inc.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated September 20, 2012
NP 11-202 Receipt dated September 21, 2012
Offering Price and Description:
$1,500,000.00 - 10,000,000 Units at $0.15 per unit
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
-
Project #1939018

Issuer Name:
BMO Global Dividend Class
(BMO Guardian Global Dividend Class Advisor Series, BMO Guardian Global Dividend Class
Series H,
BMO Guardian Global Dividend Class Series F and BMO Guardian Global Dividend Class Series
T5)
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated August 21, 2012 to the Simplified Prospectus and Annual Information Form dated May 28, 2012
NP 11-202 Receipt dated September 17, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
BMO INVESTMENTS INC.
BMO Investments Inc.
Promoter(s):
BMO INVESTMENTS INC.
Project #1892658

Issuer Name:
Border Petroleum Corp.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated September 21, 2012
NP 11-202 Receipt dated September 21, 2012
Offering Price and Description:
(1) $7,250,250.00 - 48,335,000 Common Shares; (2) $750,750.00 - 4,550,000 CDE Flow-Through Shares; and (3) $10,000,080.00 - 55,556,000 CEE Flow-Through Shares
Price: (1) $0.15 Per Common Share; (2) $0.165 per CDE Flow-Through Share (3) $0.18 Per CEE Flow-Through Share
Underwriter(s) or Distributor(s):
DUNDEE SECURITIES LTD.
MACQUARIE CAPITAL MARKETS CANADA LTD.
CANACCORD GENUITY CORP.
NATIONAL BANK FINANCIAL INC.
FRASERMACKENZIE LIMITED
Promoter(s):
-
Project #1959408

Issuer Name:
Canadian Convertibles Plus Fund
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated September 21, 2012
NP 11-202 Receipt dated September 21, 2012
Offering Price and Description:
Maximum $50,000,000.00 (5,624,296 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

Issuer Name:
Dynamic Blue Chip Balanced Fund (Series A, Series F, Series FT, Series G, Series I, Series O and Series T Securities)
Dynamic Blue Chip Equity Fund (Series A, Series F, Series G , Series I and Series O Securities)
Dynamic Dividend Fund (Series A, Series F, Series G, Series I, Series O and Series T Securities)
Dynamic Dividend Income Fund (Series A, Series F, Series G, Series I, Series O and Series T Securities)
Dynamic Energy Income Fund (Series A, Series F, Series G, Series I, Series IP, Series O, Series OP and Series T Securities)
Dynamic Equity Income Fund (Series A, Series F, Series G, Series I, Series O and Series T Securities)
Dynamic Small Business Fund (Series A, Series F, Series G, Series I, Series IP, Series O and Series OP Securities)
Dynamic Strategic Yield Fund (Series A, Series F, Series FH, Series G, Series H, Series I and Series O Securities)
Dynamic Advantage Bond Fund (Series A, Series F, Series FH, Series G, Series H, Series I and Series O Securities)
Dynamic Canadian Bond Fund (Series A, Series F, Series G, Series I and Series O Securities)
Dynamic Corporate Bond Strategies Fund (Series A, Series F, Series FH, Series H, Series IP, Series O and Series OP Securities)
Dynamic Dollar-Cost Averaging Fund (Series A and Series F Securities)
Dynamic High Yield Bond Fund (Series A, Series F, Series FH, Series FP, Series G, Series H, Series I, Series O, Series OP and Series P Securities)
Dynamic Money Market Fund (Series A and Series F Securities)
Dynamic Real Return Bond Fund (Series A, Series F, Series I and Series O Securities)
Dynamic Short Term Bond Fund (Series A, Series F, Series FH, Series H, Series I and Series O Securities)
Dynamic Strategic Global Bond Fund (Series A, Series F, Series FH, Series H, Series IP, Series O and Series OP Securities)
Dynamic Power American Currency Neutral Fund (Series A, Series F, Series I and Series O Securities)
Dynamic Power American Growth Fund (Series A, Series F, Series I, Series IP, Series O, Series OP and Series T Securities)
Dynamic Power Balanced Fund (Series A, Series F, Series FT, Series G, Series I, Series IP, Series O, Series OP and Series T Securities)
Dynamic Power Canadian Growth Fund (Series A, Series F, Series G, Series I, Series IP, Series O, Series OP and Series T Securities)
Dynamic Power Global Growth Fund (Series O Series OP Securities)
Dynamic Power Small Cap Fund (Series A, Series F, Series G, Series I and Series O Securities)

Dynamic Alternative Yield Fund (Series A, Series F, Series FH, Series H, Series IP, Series O and Series OP Securities)
Dynamic Diversified Real Asset Fund (Series A, Series F, Series G, Series I, Series O and Series T Securities)
Dynamic Financial Services Fund (Series A, Series F, Series G, Series I, Series O and Series T Securities)
Dynamic Focus+ Resource Fund (Series A, Series F, Series G, Series I, Series IP, Series O and Series OP Securities)
Dynamic Global Infrastructure Fund (Series A, Series F, Series I, Series O and Series T Securities)
Dynamic Global Real Estate Fund (Series A, Series F, Series I, Series IP, Series O, Series OP and Series T Securities)
Dynamic Precious Metals Fund (Series A, Series F, Series G, Series I and Series O Securities)
Dynamic Strategic Income Portfolio (Series A Securities)
Dynamic Strategic Growth Portfolio (Series A and Series G Securities)
Dynamic American Value Fund (Series A, Series F, Series FH, Series G, Series H, Series I, Series O and Series T Securities)
Dynamic Canadian Dividend Fund (Series A, Series F, Series G, Series I and Series O Securities)
Dynamic Dividend Advantage Fund (formerly, Dynamic Dividend Value Fund) (Series A, Series F, Series FT, Series I, Series IT, Series O and Series T Securities)
Dynamic European Value Fund (Series A, Series F, Series I and Series O Securities)
Dynamic Far East Value Fund (Series A, Series F, Series I, Series IP, Series O and Series OP Securities)
Dynamic Global Asset Allocation Fund (Series A, Series F, Series FT, Series I, Series O and Series T Securities)
Dynamic Global Discovery Fund (Series A, Series F, Series G, Series I, Series O and Series T Securities)
Dynamic Global Dividend Fund (Series A, Series F, Series FT, Series G, Series I, Series IT, Series O and Series T Securities)
Dynamic Global Value Fund (Series A, Series F, Series G, Series I, Series IT, Series O and Series T Securities)
Dynamic Value Balanced Fund (Series A, Series F, Series FT, Series G, Series I, Series O and Series T Securities)
Dynamic Value Fund of Canada (Series A, Series F, Series G, Series I, Series O and Series T Securities)
DynamicEdge Balanced Portfolio (Series A, Series F, Series FT, Series G, Series I, Series IT, Series O and Series T Securities)
DynamicEdge Balanced Growth Portfolio (Series A, Series F, Series FT, Series G, Series I, Series IT, Series O and Series T Securities)
DynamicEdge Defensive Portfolio (Series A, Series F, Series I and Series O Securities)
DynamicEdge Equity Portfolio (Series A, Series F, Series FT, Series G, Series I, Series IT, Series O and Series T Securities)
DynamicEdge Growth Portfolio (Series A, Series F, Series FT, Series G, Series I, Series IT, Series O and Series T Securities)
DynamicEdge 2020 Portfolio (Series A, Series F, Series I, Series O and Series T Securities)
DynamicEdge 2025 Portfolio (Series A, Series F, Series I, Series O and Series T Securities)
DynamicEdge 2030 Portfolio (Series A, Series F, Series I, Series O and Series T Securities)
Dynamic Aurion Total Return Bond Fund (Series A, Series F, Series FH, Series G, Series H, Series I and Series O Securities)
Dynamic Blue Chip U.S. Balanced Class (formerly, Dynamic Blue Chip Balanced Class) (Series A, Series F, Series FH, Series H, Series I, Series O and Series T Securities)
Dynamic Dividend Income Class (Series A, Series F, Series I, Series O, Series T Securities)
Dynamic Strategic Yield Class (Series A, Series F, Series FH, Series FT, Series G, Series H, Series I, Series IT and Series T Securities)
Dynamic Advantage Bond Class (Series A, Series F, Series FH, Series FT, Series H, Series I, Series IT and Series T Securities)
Dynamic Money Market Class (Series C and Series F Securities)
Dynamic Power American Growth Class (Series A, Series F, Series I, Series IP, Series O, Series OP and Series T Securities)
Dynamic Power Balanced Class (Series A, Series F, Series FT, Series G, Series I, Series IP, Series IT, Series O, Series OP and Series T Securities)
Dynamic Power Canadian Growth Class (Series A, Series F, Series G, Series I, Series IP, Series O, Series OP and Series T Securities)
Dynamic Power Global Balanced Class (Series A, Series F, Series I, Series IP, Series O, Series OP and Series T Securities)
Dynamic Power Global Growth Class (Series A, Series F, Series G, Series I, Series IP, Series O, Series OP and Series T Securities)
Dynamic Power Global Navigator Class (Series A, Series F, Series I, Series IP, Series O, Series OP and Series T Securities)
Dynamic American Value Class (Series A, Series F, Series I, Series O and Series T Securities)
Dynamic Canadian Dividend Class (Series A, Series F, Series I, Series O and Series T Securities)
Dynamic Canadian Value Class (Series A, Series F, Series G, Series I, Series IP, Series O, Series OP and Series T Securities)
Dynamic Dividend Advantage Class (Series A, Series F, Series I, Series O and Series T Securities)
Dynamic EAFE Value Class (Series A, Series F, Series I, Series O and Series T Securities)
Dynamic Global Asset Allocation Class (Series A, Series F, Series I, Series O and Series T Securities)
Dynamic Global Discovery Class (Series A, Series F, Series I, Series O and Series T Securities)

Dynamic Global Dividend Class (Series A, Series F, Series FT, Series I, Series O and Series T Securities)
Dynamic Global Value Class (Series A, Series F, Series I, Series IP, Series O, Series OP and Series T Securities)
Dynamic Value Balanced Class (Series A, Series F, Series FT, Series G, Series I, Series IT, Series O and Series T Securities)
Dynamic Emerging Markets Class (Series A, Series F, Series IP and Series OP Securities)
Dynamic Strategic Energy Class (Series A, Series F, Series I, Series IP, Series O, Series OP and Series T Securities)
Dynamic Strategic Gold Class (Series A, Series F, Series G, Series I and Series O Securities)
Dynamic Strategic Resource Class (Series A, Series F, Series IP and Series OP Securities)
DynamicEdge Balanced Class Portfolio (Series A, Series F, Series FT, Series G, Series I, Series IT, Series O and Series T Securities)
DynamicEdge Balanced Growth Class Portfolio (Series A, Series F, Series FT, Series G, Series I, Series IT, Series O and Series T Securities)
DynamicEdge Conservative Class Portfolio (Series A, Series F, Series I, Series O and Series T Securities)
DynamicEdge Equity Class Portfolio (Series A, Series F, Series FT, Series I, Series IT, Series O and Series T Securities)
DynamicEdge Growth Class Portfolio (Series A, Series F, Series FT, Series I, Series IT, Series O and Series T Securities)
DynamicEdge 2020 Class Portfolio (Series A, Series F, Series I and Series T Securities)
DynamicEdge 2025 Class Portfolio (Series A, Series F, Series I and Series T Securities)
DynamicEdge 2030 Class Portfolio (Series A, Series F, Series I and Series T Securities)
Dynamic Aurion Canadian Equity Class (Series A, Series F, Series I, Series O and Series T Securities)
Dynamic Aurion Tactical Balanced Class (Series A, Series F, Series FT, Series I, Series O and Series T Securities)
Dynamic Aurion Total Return Bond Class (Series A, Series F, Series FH, Series FT, Series H, Series I, Series IT and Series T Securities)
DMP Canadian Dividend Class (Series A and Series F Securities)
DMP Canadian Value Class (Series A and Series F Securities)
DMP Global Value Class (Series A and Series F Securities)
DMP Power Canadian Growth Class (Series A and Series F Securities)
DMP Power Global Growth Class (Series A and Series F Securities)
DMP Resource Class (Series A, Series F and Series G Securities)
DMP Value Balanced Class (Series A and Series F Securities)
Principal Regulator - Ontario

Type and Date:
Amendment #4 dated August 30, 2012 to the Simplified Prospectuses and Annual Information Form dated January 27, 2012
NP 11-202 Receipt dated September 17, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
GCIC LTD.
GCIC Ltd.
Promoter(s):
GCIC LTD.
Project #1824809, 1843955

Issuer Name:
Extendicare Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated September 18, 2012
NP 11-202 Receipt dated September 18, 2012
Offering Price and Description:
$110,000,000.00 - 6.00% Convertible Unsecured Subordinated Debentures Price: $1,000.00 per Debenture
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
BYRON CAPITAL MARKETS LTD.
Promoter(s):
-
Project #1959352

Issuer Name:
First Trust Global Balanced Portfolio
First Trust U.S. Dividend Portfolio
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated September 17, 2012
NP 11-202 Receipt dated September 18, 2012
Offering Price and Description:
Series A and F Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
FT Portfolios Canada Co.
Project #1931300

Issuer Name:
Offering Series A, Series I and Series O Units (unless otherwised indicated) of:
Marquis Institutional Balanced Portfolio (also Series G, Series T and Series V Units)
Marquis Institutional Balanced Growth Portfolio (also Series G, Series T and Series V Units)
Marquis Institutional Growth Portfolio (also Series T and Series V Units)
Marquis Institutional Equity Portfolio (also Series T and Series V Units)
Marquis Institutional Canadian Equity Portfolio (also Series T and Series V Units)
Marquis Institutional Global Equity Portfolio (also Series T and Series V Units)
Marquis Institutional Bond Portfolio (also Series V Units)
Marquis Balanced Portfolio (also Series G and Series T Units)
Marquis Balanced Growth Portfolio (also Series T Units)
Marquis Growth Portfolio (also Series G and Series T Units)
Marquis Equity Portfolio (also Series T Units)
Marquis Balanced Income Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment #4 dated August 30, 2012 to the Simplified Prospectuses and Annual Information Form dated December 7, 2011
NP 11-202 Receipt dated September 17, 2012
Offering Price and Description:
Series A, Series I, Series O, Series G, Series T and Series V Units
Underwriter(s) or Distributor(s):
GCIC Ltd.
Promoter(s):
GCIC LTD.
Project #1818180

Issuer Name:
Movarie Capital Ltd.
Principal Regulator - British Columbia
Type and Date:
Amendment dated September 14, 2012 to the CPC Prospectus dated June 13, 2012
NP 11-202 Receipt dated September 17, 2012
Offering Price and Description:
$600,000.00 - 4,000,000 Common Shares Price: $0.15 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
Mark Orsmond
Project #1905516

Issuer Name:
Neptune Technologies & Bioressources Inc.
Principal Regulator - Quebec
Type and Date:
Final Base Shelf Prospectus dated September 19, 2012
NP 11-202 Receipt dated September 20, 2012
Offering Price and Description:
US$100,000,000.00:
Common Shares
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1959703

Issuer Name:
SelectCore Ltd.
Principal Regulator - Ontario
Type and Date:
Amended and Restated Short Form Prospectus dated September 13, 2012 to the Short Form Prospectus dated September 5, 2012
NP 11-202 Receipt dated September 17, 2012
Offering Price and Description:
Minimum Offering: $3,000,000.00 (33,333,334 Units);
Maximum Offering: $5,000,000.00 (55,555,556 Units)
$0.09 per Unit
Underwriter(s) or Distributor(s):
MGI Securities Inc.
Promoter(s):
-
Project #1931155

Issuer Name:
Southern Pacific Resource Corp.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated September 21, 2012
NP 11-202 Receipt dated September 21, 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

Issuer Name:
Symphony Floating Rate Senior Loan Fund
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated September 19, 2012
NP 11-202 Receipt dated September 19, 2012
Offering Price and Description:
Class A and Class U Units - Maximum $56,045,000 - 5,500,000 Units Price: $10.19 per Class A Unit and US$10.19 per Class U Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.,
Scotia Capital Inc.
TD Securities Inc.
GMP Securities L.P.
Macquarie Private Wealth Inc.
Raymond James Ltd.
Desjardins Securities Inc.
Dundee Securities Ltd.
Mackie Research Capital Corporation
Manulife Securities Incorporated
Promoter(s):
Brompton Funds Limited
Project #1958836

Issuer Name:
Brickburn 2012 Royalty Income Limited Partnership
Principal Jurisdiction - Alberta
Type and Date:
Preliminary Long Form Prospectus dated June 13, 2012
Withdrawn on September 17, 2012
Offering Price and Description:
Maximum Offering: $30,000,000.00 (300,000 Units);
Minimum Offering: $5,000,000.00 (50,000 Units)
Price: $100.00 per Unit Minimum Purchase: $5,000.00 (50 Units)
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Scotia Capital Inc.
GMP Securities LP
Canaccord Genuity Corp.
Dundee Securities Ltd.
Macquarie Private Wealth Inc.
Raymond James Ltd.
Manulife Securities Incorporated
Promoter(s):
Brickburn Asset Management Inc.
Project #1922403

This page intentionally left blank

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Galibier Capital Management Ltd.	Portfolio Manager and Investment Fund Manager	September 18, 2012
Suspended (Regulatory Action)	Peregrine Financial Group Canada, Inc.	Futures Commission Merchant	September 19, 2012
Change in Registration Category	Lex Capital Management Inc.	From: Exempt Market Dealer To: Exempt Market Dealer and Investment Fund Manager	September 20, 2012
New Registration	Alta West Mortgage Capital Corporation	Exempt Market Dealer	September 24, 2012

This page intentionally left blank

Chapter 13

SROs, Marketplaces and Clearing Agencies

13.2 Marketplaces

13.2.1 Liquidnet Canada Inc. – Notice of Commission Approval of Proposed Change

LIQUIDNET CANADA INC.

NOTICE OF COMMISSION APPROVAL OF PROPOSED CHANGE

Liquidnet Canada Inc. has announced its plan to implement changes to its Form 21-101F2 (F2) to enable its institutional subscribers to interact with liquidity from IIROC participants in the form of small retail immediate-or-cancel orders (previously approved by the OSC) and large client Broker Blocks (Proposed Change). A notice describing the Proposed Change was published in accordance with OSC Staff Notice 21-703 – *Transparency of the Operations of Stock Exchanges and Alternative Trading Systems* on June 28, 2012 in this Bulletin. Pursuant to OSC Staff Notice 21-703, market participants were also invited by OSC staff to provide the Commission with feedback on the proposed change. No comments were received.

The Proposed Change was approved on September 21, 2012. Liquidnet Canada is expected to publish a notice indicating the intended implementation date of the proposed change.

13.2.2 Instinet Canada Cross (ICX) Limited – Notice of Commission Approval of Proposed Changes

INSTINET CANADA CROSS (ICX) LIMITED

NOTICE OF COMMISSION APPROVAL OF PROPOSED CHANGES

Instinet Canada Cross Limited (ICX) has announced its plans to implement changes to its Form 21-101F2 (F2) to reduce the length of the window of the random pricing process from a range of one to ten seconds to zero to one second (Proposed Change). A notice describing the Proposed Change was published in accordance with OSC Staff Notice 21-703 – *Transparency of the Operations of Stock Exchanges and Alternative Trading Systems* on June 21, 2012 in this Bulletin. Pursuant to OSC Staff Notice 21-703, market participants were also invited by OSC staff to provide the Commission with feedback on the proposed changes. No comments were received.

The Proposed Change was approved on September 20, 2012. ICX is expected to publish a notice indicating the intended implementation date of the proposed change.

13.3 Clearing Agencies

13.3.1 CDS – Notice of Commission Approval – Material Amendments to CDS Rules – Disclosure of Participant Information

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

MATERIAL AMENDMENTS TO CDS RULES

DISCLOSURE OF PARTICIPANT INFORMATION

NOTICE OF COMMISSION APPROVAL

In accordance with the Rule Protocol between the Ontario Securities Commission ("OSC") and CDS, the OSC approved on September 25, 2012, amendments filed by CDS to its rules relating to Disclosure of Participant Information.

Summary of Material Rule

A copy and description of the amendments were published for comment on July 5, 2012 in the OSC Bulletin at (2012), 35 OSCB 6394.

With the approved amendments, CDS will be permitted to disclose participant information to its regulators upon their written request and to disclose on CDS's own initiative material risk information to the regulators of CDS and of the relevant participant where the actions of the participant have resulted or may result in a material risk to CDS's services or a material breach of the CDS Rules or Procedures. Where a regulatory request or order prohibits the notification of the participant that a disclosure of its information has been requested by a regulatory authority, CDS will not provide notification to the participant. CDS will also be authorized to disclose material risk information relating to a participant to other affected participants, such as the Extender of Credit for a Receiver of Credit or a Credit Ring of participants, in order to enable them to assess and respond to material risk in CDSX®.

Summary of Public Comments

CDS received public comments which are summarized in Appendix A.

Revisions to the Material Rule

In consultation with its regulators, CDS has decided to make a non-significant revision to the proposed amendments. The British Columbia Securities Commission has been added to the definition of "CDS Regulator".

The Rule amendments that were approved by the OSC are provided in Appendix B (the non-significant revision has been marked to indicate the change from the previously published version).

APPENDIX A

SUMMARY OF COMMENTS
(Public Comment Period from 2012-July-5 to 2012-Aug-4)

Summarized Comments	CDS Response
The commenter was in general agreement with the proposed amendments. The commenter suggested that participant's be advised prior to any disclosure of information. This would provide participants with the opportunity to clarify their position or to take action to rectify their situation.	Under the CDS Rules, CDS provides notice to a Participant prior to disclosure of information concerning that Participant, subject to various exceptions. Many of these exceptions concern business in the normal course and were part of the CDS Rules prior to the implementation of the amendments and would not require Participant clarification or action. With the implementation of the amendments, there are three specific categories where disclosure may be made without notice to a Participant. In two of these categories, notice may not be provided due to a prohibition against the same (i.e. upon CDS Regulator request or pursuant to a statute, regulation, order or other similar operation of law). The other category pertains to a material risk event and exception from notice is applicable only if it is not in the best interests of CDS or other Participants generally.

APPENDIX B

RULE AMENDMENT

Text of CDS Participant Rules marked to reflect non-significant revisions to the proposed Rule published for comment on July 5, 2012	Text of CDS Participant Rules reflecting the adoption of non-significant revisions to the proposed Rule published for comment on July 5, 2012
1.2.1 Definitions	**1.2.1 Definitions**
For the purposes of the Legal Documents, unless otherwise specified:	For the purposes of the Legal Documents, unless otherwise specified:
"CDS Office" means an office at which CDS offers the Services to Participants.	"CDS Office" means an office at which CDS offers the Services to Participants.
“CDS Regulator” means the Autorité des marchés financiers, the Bank of Canada, the British Columbia Securities Commission or the Ontario Securities Commission.	“CDS Regulator” means the Autorité des marchés financiers, the Bank of Canada, the British Columbia Securities Commission or the Ontario Securities Commission.
“CDS Security Interests” has the meaning set forth in Rule 5.2.2.	“CDS Security Interests” has the meaning set forth in Rule 5.2.2.
…..	…..
“Regulatory Body”, with reference to any Person, means any board, commission, securities or commodities exchange, association or other body, organization or agency, whether governmental, professional, self-regulatory or otherwise, having jurisdiction over that Person or over any part of the business carried on by it and includes a CDS Regulator with reference to CDS.	“Regulatory Body”, with reference to any Person, means any board, commission, securities or commodities exchange, association or other body, organization or agency, whether governmental, professional, self-regulatory or otherwise, having jurisdiction over that Person or over any part of the business carried on by it and includes a CDS Regulator with reference to CDS.
3.6 CONFIDENTIALITY	**3.6 CONFIDENTIALITY**
3.6.2 Release of Information	**3.6.2 Release of Information**
Each Participant authorizes CDS to release any information concerning the Participant or provided by a Participant in the circumstances listed below.	Each Participant authorizes CDS to release any information concerning the Participant or provided by a Participant in the circumstances listed below.
(a) CDS may release such information at the request of or with the prior written consent of the Participant. (b) CDS may release such information to the auditors of CDS, of the Participant and of other Participants, as may reasonably be required to perform their duties. (c) CDS may release such information to the legal counsel of CDS, as may reasonably be required to perform their duties. (d) CDS may release such information as is legally required to be provided to a CDS Regulator or requested in writing by a CDS Regulator within the regulatory authority of the requesting CDS Regulator. When a CDS Regulator requests the disclosure of such information that is directed exclusively to the activities of a particular Participant, CDS shall give notice to the Participant of the request coincident with making the disclosure unless the request prohibits such notice. (e) CDS may release such information if requested by the Issuer of Securities held for the Participant or by any other Person and if CDS is reasonably satisfied that such information is sought for a purpose concerning an	(a) CDS may release such information at the request of or with the prior written consent of the Participant. (b) CDS may release such information to the auditors of CDS, of the Participant and of other Participants, as may reasonably be required to perform their duties. (c) CDS may release such information to the legal counsel of CDS, as may reasonably be required to perform their duties. (d) CDS may release such information as is legally required to be provided to a CDS Regulator or requested in writing by a CDS Regulator within the regulatory authority of the requesting CDS Regulator. When a CDS Regulator requests the disclosure of such information that is directed exclusively to the activities of a particular Participant, CDS shall give notice to the Participant of the request coincident with making the disclosure unless the request prohibits such notice. (e) CDS may release such information if requested by the Issuer of Securities held for the Participant or by any other Person and if CDS is reasonably satisfied that such information is sought for a purpose concerning an

Text of CDS Participant Rules marked to reflect non-significant revisions to the proposed Rule published for comment on July 5, 2012	Text of CDS Participant Rules reflecting the adoption of non-significant revisions to the proposed Rule published for comment on July 5, 2012
effort to influence the voting by Security holders of the Issuer, an offer to acquire Securities of the Issuer or any other matter relating to either the affairs of the Issuer or Transactions in the Securities of the Issuer effected by the Participant. Such information shall be limited to information with respect to the Securities held for the Participant and shall not identify any client or customer of the Participant.	effort to influence the voting by Security holders of the Issuer, an offer to acquire Securities of the Issuer or any other matter relating to either the affairs of the Issuer or Transactions in the Securities of the Issuer effected by the Participant. Such information shall be limited to information with respect to the Securities held for the Participant and shall not identify any client or customer of the Participant.
(f) CDS may release such information as may be required from time to time by order, summons, subpoena, statutory direction or other process of, or pursuant to an agreement with, a court, Regulatory Body or other administrative or regulatory agency, having, in the opinion of CDS, jurisdiction over CDS. When CDS is required to disclose such information that is directed exclusively to the activities of a particular Participant, CDS shall give notice to the Participant of the request coincident with making the disclosure unless the terms of any applicable statute, regulation, ruling or order prohibit such notice.	(f) CDS may release such information as may be required from time to time by order, summons, subpoena, statutory direction or other process of, or pursuant to an agreement with, a court, Regulatory Body or other administrative or regulatory agency, having, in the opinion of CDS, jurisdiction over CDS. When CDS is required to disclose such information that is directed exclusively to the activities of a particular Participant, CDS shall give notice to the Participant of the request coincident with making the disclosure unless the terms of any applicable statute, regulation, ruling or order prohibit such notice.
(g) CDS may release such information pursuant to any statutory or regulatory requirement including National Instrument 54-101 *Communication with Beneficial Owners of a Reporting Issuer* (as it may be reformulated from time to time) or any similar policy, instrument or Rule adopted or made by the Canadian Securities Administrators.	(g) CDS may release such information pursuant to any statutory or regulatory requirement including National Instrument 54-101 *Communication with Beneficial Owners of a Reporting Issuer* (as it may be reformulated from time to time) or any similar policy, instrument or Rule adopted or made by the Canadian Securities Administrators.
(h) CDS may release such information to any securities exchange, commodities exchange, alternative trading system, securities depository, securities clearing agency, payment clearing system or self-regulatory organization of which the Participant is a member or the services of which the Participant uses in connection with its participation in CDS, or to any insurer of the Participant including the Canadian Investor Protection Fund or the Canada Deposit Insurance Corporation. CDS shall request the recipient to treat such information as confidential.	(h) CDS may release such information to any securities exchange, commodities exchange, alternative trading system, securities depository, securities clearing agency, payment clearing system or self-regulatory organization of which the Participant is a member or the services of which the Participant uses in connection with its participation in CDS, or to any insurer of the Participant including the Canadian Investor Protection Fund or the Canada Deposit Insurance Corporation. CDS shall request the recipient to treat such information as confidential.
(i) CDS may release such information to any self-regulatory organization of which the Participant is a member and to the primary Canadian Regulatory Body for the Participant in regards to compliance with Rule 10.2.3(b).	(i) CDS may release such information to any self-regulatory organization of which the Participant is a member and to the primary Canadian Regulatory Body for the Participant in regards to compliance with Rule 10.2.3(b).
(j) CDS may release such information that is in a statistical, summary or other format, provided the information in that format does not specifically identify a particular Participant, or, if the information concerns debt Securities, provided the information in that format does not identify any industry group.	(j) CDS may release such information that is in a statistical, summary or other format, provided the information in that format does not specifically identify a particular Participant, or, if the information concerns debt Securities, provided the information in that format does not identify any industry group.
(k) CDS may release such information (i) to a CDS Regulator, (ii) to any other Regulatory Body having, in the opinion of CDS, jurisdiction over CDS, (iii) to the primary Regulatory Body for the Participant, or (iv) to other Participants, concerning an event or circumstance involving the Participant that CDS considers raises concerns about potential material risk in the Services, including a material breach of the Rules or Procedures by the Participant, or a Loss of Securities or Participant Loss caused or contributed to by the Participant. The	(k) CDS may release such information (i) to a CDS Regulator, (ii) to any other Regulatory Body having, in the opinion of CDS, jurisdiction over CDS, (iii) to the primary Regulatory Body for the Participant, or (iv) to other Participants, concerning an event or circumstance involving the Participant that CDS considers raises concerns about potential material risk in the Services, including a material breach of the Rules or Procedures by the Participant, or a Loss of Securities or Participant Loss caused or contributed to by the Participant. The

Text of CDS Participant Rules marked to reflect non-significant revisions to the proposed Rule published for comment on July 5, 2012	Text of CDS Participant Rules reflecting the adoption of non-significant revisions to the proposed Rule published for comment on July 5, 2012
following conditions shall apply to such release of confidential information: (i) CDS shall give notice to the Participant of the proposed disclosure coincident with making the disclosure, if such notice is, in the determination of CDS, not against the best interests of CDS and Participants generally; (ii) CDS shall determine whether the information will be released to all other Participants or only to a select group of Participants, such as members of a Credit Ring, who are particularly affected by the event or circumstance; (iii) CDS shall identify the Participant involved in the event or circumstance to a CDS Regulator or any other Regulatory Body; and (iv) CDS shall identify the Participant involved in the event or circumstance to other Participants only if, in its judgment, such identification is necessary to enable the other Participants to respond to the potential risk. Where CDS discloses the identity of a Participant involved in the event or circumstance to other Participants, the Participant receiving such disclosure shall keep the identity of the Participant confidential and shall not further disclose the identity to another party unless compelled by law.	following conditions shall apply to such release of confidential information: (i) CDS shall give notice to the Participant of the proposed disclosure coincident with making the disclosure, if such notice is, in the determination of CDS, not against the best interests of CDS and Participants generally; (ii) CDS shall determine whether the information will be released to all other Participants or only to a select group of Participants, such as members of a Credit Ring, who are particularly affected by the event or circumstance; (iii) CDS shall identify the Participant involved in the event or circumstance to a CDS Regulator or any other Regulatory Body; and (iv) CDS shall identify the Participant involved in the event or circumstance to other Participants only if, in its judgment, such identification is necessary to enable the other Participants to respond to the potential risk. Where CDS discloses the identity of a Participant involved in the event or circumstance to other Participants, the Participant receiving such disclosure shall keep the identity of the Participant confidential and shall not further disclose the identity to another party unless compelled by law.
(l) CDS may release such information to other Participants which are involved in litigation brought by or against CDS as the operator of the CDSX system or the provider of other Services to Participants, provided that (i) such information is relevant to the litigation, (ii) CDS shall give prior notice to the Participant of the proposed disclosure, and (iii) the Participant shall be given the opportunity to appeal the proposed disclosure pursuant to Rule 3.2.3. Participants receiving such disclosure shall keep the identity of other involved Participants confidential and shall not further disclose the identity of other involved Participants to another party unless compelled by law.	(l) CDS may release such information to other Participants which are involved in litigation brought by or against CDS as the operator of the CDSX system or the provider of other Services to Participants, provided that (i) such information is relevant to the litigation, (ii) CDS shall give prior notice to the Participant of the proposed disclosure, and (iii) the Participant shall be given the opportunity to appeal the proposed disclosure pursuant to Rule 3.2.3. Participants receiving such disclosure shall keep the identity of other involved Participants confidential and shall not further disclose the identity of other involved Participants to another party unless compelled by law.
In releasing any information pursuant to this Rule, CDS shall take reasonable steps to avoid releasing any information that may identify a particular client or customer of a Participant, unless (i) such information is requested in writing by the requestor and the requestor has, in the opinion of CDS, the legal right to obtain such information; or (ii) with respect to information released under subsection (k), such information is necessary to enable Participants to respond to the potential risk.	In releasing any information pursuant to this Rule, CDS shall take reasonable steps to avoid releasing any information that may identify a particular client or customer of a Participant, unless (i) such information is requested in writing by the requestor and the requestor has, in the opinion of CDS, the legal right to obtain such information; or (ii) with respect to information released under subsection (k), such information is necessary to enable Participants to respond to the potential risk.

This page intentionally left blank

Chapter 25

Other Information

25.1 Approvals

25.1.1 Donville Kent Asset Management Inc. – s. 213(3)(b) of the LTCA

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act – application by manager, with no prior track record acting as trustee, for approval to act as trustee of pooled funds and future pooled funds to be managed by the applicant and offered pursuant to a prospectus exemption.

Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., s. 213(3)(b).

August 17, 2012

AUM Law Professional Corporation
225a MacPherson Avenue
Suite 201
Toronto, ON M4V 1A1

Attention: Stacey Long

Dear Sirs/Medames:

Re: Donville Kent Asset Management Inc. (the "Applicant")

Application pursuant to clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario) for approval to act as trustee

File No. 2012/0422

Further to your application dated July 5, 2012 (the "Application") filed on behalf of the Applicant, and based on the facts set out in the Application and the representation by the Applicant that the assets of DKAM Capital Ideas Trust and any other future mutual fund trusts that the Applicant may establish and manage from time to time will be held in the custody of a trust company incorporated and licensed or registered under the laws of Canada or a jurisdiction, or a bank listed in Schedule I, II or III of the *Bank Act* (Canada), or an affiliate of such bank or trust company, the Ontario Securities Commission (the "Commission") makes the following order:

Pursuant to the authority conferred on the Commission in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of DKAM Capital Ideas Trust and any other future mutual fund trusts which may be established and managed by the Applicant from time to time, the securities of which will be offered pursuant to prospectus exemptions.

Yours truly,

"Sarah B. Kavanagh"

"Edward P. Kerwin"

25.2 Exemptions

25.2.1 Universitas Plan Trust et al. – s. 19.1 of NI 41-101 General Prospectus Requirements

Headnote

Relief from subsection 2.3(1) of NI 41-101 to file a final prospectus more than 90 days after the date of the receipt for the preliminary prospectus.

Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, ss. 2.3(1), 19.1.

September 17, 2012

Universitas Foundation of Canada

Attention: Isabelle Grenier

Dear Sirs/Mesdames:

Re: The UNIVERSITAS plan Trust, the REFLEX plan Trust and the INDIVIDUAL Plan Trust (the Plans)

Exemptive Relief Application under Section 19.1 of National Instrument 41-101 General Prospectus Requirements ("NI 41-101")

Application No. 2012/0569, SEDAR Project Nos. 1920398, 1920399 & 1920395

By letter dated September 7, 2012 (the Application), the Plans applied to the Director of the Ontario Securities Commission (the Director) pursuant to section 19.1 of NI 41-101 for relief from the operation of subsection 2.3(1) of NI 41-101, which prohibits an issuer from filing a prospectus more than 90 days after the date of the receipt for the preliminary prospectus.

This letter confirms that, based on the information and representations made in the Application, and for the purposes described in the Application, the Director grants the requested exemption to be evidenced by the issuance of a receipt for the Partnership's prospectus, provided the Partnership's final prospectus is filed no later than November 3, 2012.

Yours very truly,

"Darren McKall"
Manager, Investment Funds Branch

Index