The Ontario Securities Commission

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

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Table of Contents

Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

April 18, 2013

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

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

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Judith N. Robertson	—	JNR
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SCHEDULED OSC HEARINGS

April 25, 2013 10:00 a.m.	**Global Consulting and Financial Services, Crown Capital Management Corporation, Canadian Private Audit Service, Executive Asset Management, Michael Chomica, Peter Siklos (also known as Peter Kuti), Jan Chomica, and Lorne Banks** s. 127 C. Rossi in attendance for Staff Panel: CP
April 25, 2013 11:00 a.m.	**Michael Robert Shantz and Canada Pacific Consulting Inc.** s. 127 D. Campbell in attendance for Staff Panel: JDC
April 26, 2013 11:00 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: EPK
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: JDC

May 1, 2013 10:00 a.m.	**Ronald James Ovenden, New Solutions Capital Inc., New Solutions Financial Corporation and New Solutions Financial (Ii) Corporation** s. 127 Y. Chisholm in attendance for Staff Panel: EPK
May 8, 2013 10:00 a.m. May 9-13, 2013 11:00 a.m.	**Matthew Robert White and White Capital Corporation** s. 8 S. Horgan/C. Weiler in attendance for Staff Panel: JEAT/MGC
May 9, 2013 10:00 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 Y. Chisholm in attendance for Staff Panel: EPK
May 10, 2013 10:00 a.m.	**Children's Education Funds Inc.** s. 127 D. Ferris in attendance for Staff Panel: JEAT
May 14, 2013 10:00 a.m.	**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: VK/EPK
May 14-17 and May 22-24, 2013 10:00 a.m.	**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: AJL
May 15, 2013 10:00 a.m.	**Quadrexx Asset Management Inc., Quadrexx Secured Assets Inc., Offshore Oil Vessel Supply Services LP, Quibik Income Fund and Quibik Opportunities Fund** s. 127 D. Ferris in attendance for Staff Panel: JEAT
May 15-16 and May 30, 2013 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 Corp., (aka Liquid Gold International Inc.) and Nanotech Industries Inc.** s. 127 J. Feasby in attendance for Staff Panel: JDC
May 17, 2013 10:00 a.m.	**Blackwood & Rose Inc., Steven Zetchus and Justin Kreller (also known as Justin Kay)** s. 37, 127 and 127.1 C. Rossi in attendance for Staff Panel: JEAT

May 22-31, 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: EPK
May 27, 2013 10:00 a.m.	**AMTE Services Inc., Osler Energy Corporation, Ranjit Grewal, Phillip Colbert and Edward Ozga** s. 127 C. Rossi in attendance for Staff Panel: JEAT
June 3, June 5-17 and June 19-25, 2013 10:00 a.m.	**David Charles Phillips and John Russell Wilson** s. 127 Y. Chisholm in attendance for Staff Panel: JDC
May 28 – June 3, June 5-6, 10-12, 14-17, 19-20 and July 22-26, 2013 10:00 a.m.	**Jowdat Waheed and Bruce Walter** s. 127 J. Lynch in attendance for Staff Panel: CP/SBK/PLK
June 6, 2013 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: MGC
June 6, 2013 10:00 a.m.	**New Hudson Television LLC & Dmitry James Salganov** s. 127 C. Watson in attendance for Staff Panel: MGC
June 6, 2013 11:00 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 J. Feasby in attendance for Staff Panel: MGC
June 6, 2013 11:00 a.m.	**Ground Wealth Inc., Michelle Dunk, Adrion Smith, Joel Webster, Douglas DeBoer, Armadillo Energy Inc., Armadillo Energy, Inc., and Armadillo Energy LLC** s. 127 J. Feasby in attendance for Staff Panel: MGC
June 14, 2013 10:00 a.m.	**Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)** s. 127 and 127.1 D. Ferris in attendance for Staff Panel: VK
June 19, 2013 11:00 a.m.	**Knowledge First Financial Inc.** s. 127 D. Ferris in attendance for Staff Panel: JEAT
July 3, 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: VK

July 31, 2013 10:00 a.m.	**Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp., and Weizhen Tang** s. 127 and 127.1 H. Craig in attendance for Staff Panel: MGC	
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 U. Sheikh in attendance for Staff Panel: JDC	
October 15-21, October 23-29, 2013 10:00 a.m.	**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: EPK	
November 4 and November 6-18, 2013 10:00 a.m.	**Systematech Solutions Inc., April Vuong and Hao Quach** s. 127 D. Ferris in attendance for Staff Panel: TBA	
January 13, January 15-27, January 29 – February 10, February 12-14 and February 18-21, 2014 10:00 a.m.	**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	
		May 5-16 and May 20 – June 20, 2014 10:00 a.m. **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
		In writing **Morgan Dragon Development Corp., John Cheong (aka Kim Meng Cheong), Herman Tse, Devon Ricketts and Mark Griffiths** s. 127 J. Feasby in attendance for Staff Panel: EPK
		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 Panel: TBA
		TBA **Frank Dunn, Douglas Beatty, Michael Gollogly** s. 127 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 and Sandra Gale**

s. 127

C. Johnson 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 **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 **Innovative Gifting Inc., Terence Lushington, Z2A Corp., and Christine Hewitt**

s. 127

M. Vaillancourt 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 **Bunting & Waddington Inc., Arvind Sanmugam, Julie Winget and Jenifer Brekelmans**

s. 127

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 **Beryl Henderson**

s. 127

Panel: TBA

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

s. 127

A. Perschy/A. Pelletier in attendance for Staff

Panel: TBA

TBA **Portus Alternative Asset Management Inc., Portus Asset Management Inc., Boaz Manor, Michael Mendelson, Michael Labanowich and John Ogg**

s. 127

H Craig in attendance for Staff

Panel: TBA

TBA

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: TBA

TBA

Ernst & Young LLP

s. 127 and 127.1

A. Clark in attendance for Staff

Panel: TBA

TBA

Newer Technologies Limited, Ryan Pickering and Rodger Frey

s. 127 and 127.1

B. Shulman in attendance for staff

Panel: TBA

TBA

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

s. 37, 127 and 127.1

C. Price in attendance for Staff

Panel: TBA

TBA

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: TBA

TBA

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

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA

Fawad Ul Haq Khan and Khan Trading Associates Inc. carrying on business as Money Plus

s. 60 and 60.1 of the *Commodity Futures Act*

T. Center in attendance for Staff

Panel: TBA

TBA

Global RESP Corporation and Global Growth Assets Inc.

s. 127

D. Ferris in attendance for Staff

Panel: TBA

TBA

Issam El-Bouji, Global RESP Corporation, Global Growth Assets Inc., Global Educational Trust Foundation and Margaret Singh

s. 127 and 127.1

M. Vaillancourt in attendance for Staff

Panel: TBA

TBA **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/Y. Chisholm in attendance for Staff

Panel : TBA

TBA. **Moncasa Capital Corporation and John Frederick Collins**

s. 127

T. Center in attendance for Staff

Panel: EPK

TBA **Garth H. Drabinsky, Myron I. Gottlieb and Gordon Eckstein**

s. 127

A. Clark/J. Friedman in attendance for Staff

Panel: TBA

TBA **Heritage Education Funds Inc.**

s. 127

D. Ferris in attendance for Staff

Panel: TBA

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

s. 127

M. Vaillancourt in attendance for Staff

Panel: TBA

TBA **Onix International Inc. and Tyrone Constantine Phipps**

s. 127

C. Rossi in attendance for Staff

Panel: TBA

TBA **Portfolio Capital Inc., David Rogerson and Amy Hanna-Rogerson**

s. 127

S. Horgan in attendance for Staff

Panel: TBA

TBA **Heritage Management Group and Anna Hrynisak**

s. 127

C. Rossi in attendance for Staff

Panel: TBA

TBA **Global Consulting and Financial Services, Global Capital Group, Crown Capital Management Corp., Michael Chomica, Jan Chomica and Lorne Banks**

s. 127

C. Rossi in attendance for Staff

Panel: TBA

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

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

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

1.1.2 CSA Consultation Paper 91-407 – Derivatives: Registration

CANADIAN SECURITIES ADMINISTRATORS

CSA CONSULTATION PAPER 91-407

DERIVATIVES: REGISTRATION

Canadian Securities Administrators Derivatives Committee
April 18, 2013

Table of Contents

CSA CONSULTATION PAPER 91-407 – DERIVATIVES: *REGISTRATION*

On November 2, 2010, the Canadian Securities Administrators ("CSA") Derivatives Committee published Consultation Paper 91-401 – *Over-the-Counter Derivatives Regulation in Canada* ("Consultation Paper 91-401")[1]. That consultation paper set out high-level proposals for the regulation of over-the-counter derivatives. The Committee sought input from the public with respect to the proposals and eighteen comment letters were received from interested parties.

The Committee has continued to contribute to and follow international regulatory proposals and legislative developments, and collaborate with the Bank of Canada, the Office of the Superintendent of Financial Institutions, the Department of Finance Canada, market participants, as well as bodies such as the International Organization of Securities Commissions, the Financial Stability Board and the Over-the-Counter Derivatives Regulators' Forum. This public consultation paper is one in a series of eight papers that build on the regulatory proposals contained in Consultation Paper 91-401. It proposes a framework for the regulation of key derivatives market participants through a registration regime. It is hoped that this paper will generate necessary commentary and debate that will assist members of the CSA in selecting appropriate policies and rules that will be implemented in Canada.

The Committee continues to work with foreign regulators to develop international standards that will shape the rules that we develop, including those regarding CCP clearing. Although a significant market in Canada, the Canadian OTC derivatives market comprises a relatively small share of the global market, with a substantial portion of transactions involving Canadian market participants transacting with foreign counterparties. It is therefore crucial that rules be developed for the Canadian market that ensure that Canadian market participants have access to international markets and are regulated in accordance with international principles. The Committee will continue to monitor and contribute to the development of international standards.

EXECUTIVE SUMMARY

This paper provides an overview of the Committee's proposal for the regulation of key derivatives market participants through the implementation of a registration regime.

Background

In developing this paper, the Committee considered rules and proposals specific to the regulation of key derivatives market participants in a number of foreign jurisdictions, particularly the United States ("U.S.") and Europe. In addition, the Committee considered the existing CSA registration regime for securities as well as existing regulatory requirements applicable to derivatives market participants in each CSA jurisdiction.

Categories of Registration

The registration regime would have three distinct registration categories: derivatives dealers, derivatives advisers and large derivative participants.

Derivatives Dealer

Persons carrying on the business of trading in derivatives or holding themselves out to be carrying on that business will be required to be registered as derivatives dealers in each Canadian province and territory where they conduct derivatives trading business.

Derivatives Adviser

Persons carrying on the business of advising others in relation to derivatives, or who hold themselves out to be in that business in any Canadian jurisdiction, will be required to be registered as a derivatives adviser in each Canadian province and territory where they conduct derivatives advising business.

[1] Report available on various CSA websites including:
http://www.albertasecurities.com/securitiesLaw/Regulatory%20Instruments/9/91-401/3672026-v1-CSA_Consultation_Paper_91-401.pdf
http://www.bcsc.bc.ca/uploadedFiles/securitieslaw/policy9/94-101_Consultation_Paper.pdf
http://www.osc.gov.on.ca/documents/en/Securities-Category9/csa_20101102_91-401_cp-on-derivatives.pdf
http://www.lautorite.qc.ca/files//pdf/consultations/derives/2010nov02-91-401-doc-consultation-en.pdf

Large Derivative Participant

Large derivative participants ("LDPs") would be required to register in this third category. Large derivatives participants will include entities, other than derivatives dealers, that have a substantial aggregate derivatives exposure. The Committee recommends that additional analysis be completed to establish registration thresholds for LDPs that are appropriate for Canadian financial markets.

For each of the above registration categories, the Committee recommends that an individual would register where the individual is:

- the ultimate designated person, chief compliance officer or chief risk officer of the registrant;
- involved in providing clients with advice relating to derivatives;
- involved in providing trading services to clients as an intermediary to a trade; or
- involved in a trade with a counterparty that is a non-qualified party[2] that is not represented by an independent derivatives adviser.[3]

The Committee recommends that individual registration requirements apply to both frontline staff that deal with clients and persons who manage or supervise such staff.

Registration Requirements

The Committee recommends that all registrants be subject to the following registration requirements:

a) Proficiency – all individuals who are directors, partners, officers, employees or agents of a derivatives registrant who are involved in trading in or advising on derivatives should be subject to minimum proficiency requirements.

b) Financial and Solvency – all registrants should be subject to financial and solvency requirements, including the following:

- minimum Capital Requirements;
- margin Requirements;
- insurance Requirements; and
- maintenance of Financial Records and Periodic Financial Reporting.

c) Compliance Systems and Internal Business Conduct – all registrants should have adequate systems in place to ensure compliance with regulatory requirements and manage risks relating to derivatives positions.

d) Honest Dealing – all registrants should have an obligation to act honestly and in good faith when trading in or advising on derivatives.

e) Holding Client/Counterparty Assets – obligations relating to the care of collateral posted by clients or counterparties have been or will be addressed in other consultation papers issued by the Committee.[4]

Derivatives dealers and derivatives advisers will also be subject to the following additional registration requirements:

a) Gatekeeper – derivatives dealers and advisers should obtain sufficient information relating to their clients and, in the case of derivatives dealers, their counterparties, to allow them to act as a gatekeeper with the objective of ensuring market integrity and allowing the dealer to assess its counterparty risks.

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2 The term "non-qualified party" is defined in the introductory section of Part 6 of this paper.

3 A discussion of the proposals on the regulation of transactions involving a derivatives dealer and a counterparty that is a non-qualified party are set out in part 7.2(b)(ii) of this paper.

4 Consultation Paper 91-404 – *Derivatives: Segregation and Portability in OTC Derivatives Clearing* outlines the Committee's proposals relating to collateral posted in relation to trades cleared through a central counterparty. Proposed obligations applicable to posted collateral relating to bilaterally cleared trades will be described in a future consultation paper.

b) Business Conduct – derivatives advisers and derivatives dealers advising or trading for clients should be subject to additional registration requirements. These requirements include:

- know your client/counterparties obligations;
- suitability obligations;
- conflict of interest identification and management; and
- fair dealing obligations.

The Committee is considering two alternatives for the regulation of derivatives dealers trading as principal with non-qualified parties:

- that the non-qualified party obtain advice from an independent derivatives adviser before trading; or
- that the derivatives dealer inform the counterparty of a conflict of interest and provide details of the conflict in writing and advise the counterparty that it has the right to obtain independent advice. With this alternative, the derivatives dealer would be subject to the market conduct requirements described above.

Derivatives dealers trading for a client or trading as principal with a non-qualified party that is not represented by an independent derivatives adviser would be subject to the following additional requirements:

a) Pre-trade Reports – provide a pre-trade report to allow the client or counterparty to understand the terms of the proposed trade and the costs that it will incur to execute the trade.

b) Trade Confirmations – provide a confirmation of each trade describing the principal financial terms of the client or counterparty's trade.

c) Account Statements – deliver regular statements describing the client or counterparty's positions relating to trades executed with the derivatives dealer or on their behalf by the derivatives dealer.

Exemptions based on Equivalent Regulation

Registrants may be exempted from certain registration requirements in the following circumstances:

a) Regulated Persons – persons triggering registration as a derivatives dealer, a derivatives adviser or large derivatives participants who are subject to equivalent regulatory requirements that are appropriately monitored and enforced by an acceptable regulator in Canada, should be exempted from redundant registration requirements.

b) Foreign Derivatives Dealers and Advisers – foreign derivatives advisers and derivatives dealers should be exempted from specific regulatory requirements in Canada where they are subject to equivalent requirements in their home jurisdictions. These entities will be required to register in each Canadian jurisdiction where they carry on business.

c) Foreign LDPs – foreign entities triggering the obligation to register as a LDP should be required to register in each jurisdiction where their trading obligations exceed the prescribed thresholds; however, these entities should be exempted from specific registration requirements where they are subject to equivalent regulatory requirements in their home jurisdictions. These entities will be required to register in each Canadian jurisdiction where they carry on business.

Exemptions from Registration

The Committee recommends that the following parties be exempted from the requirement to register:

a) Dealers Providing Advice – a person registered as a derivatives dealer should be exempted from the obligation to register as a derivatives adviser when providing advice, where the provision of such advice is incidental to trading services.

b) Governments – Canadian federal, provincial and municipal governments should not be subject to an obligation to register or be subject to registration requirements in any circumstances. Federal and provincial crown corporations whose obligations are guaranteed by the federal and provincial government will not be required to register or be subject to registration requirements only when dealing with qualified parties and not intermediating any trades for clients.

c) Clearing Agencies – where a clearing agency has been recognized (or exempted from recognition) it should not be subject to a requirement to register as a derivatives dealer, derivatives adviser or a LDP where the obligation to register results solely from carrying on the ordinary business as a clearing agency.

d) Transactions with Affiliated Entities – persons that would be subject to registration as either a derivatives dealer or a derivatives adviser solely as a result of trading with or on behalf of or providing derivatives-related advice to a person that is their affiliate should be exempt from the requirement to register as a derivatives dealer or adviser.

Comments and Submissions

The Committee invites participants to provide input on the issues outlined in this public consultation paper. You may provide written comments in hard copy or electronic form. The comment period expires June 17, 2013.

The Committee will publish all responses received on the websites of the Autorité des marchés financiers (www.lautorite.qc.ca) and the Ontario Securities Commission (www.osc.gov.on.ca).

Please address your comments to each of the following:

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1. INTRODUCTION

In Consultation Paper 91-401 the Committee outlined its proposals relating to the regulation of over-the-counter ("OTC") derivatives in Canada, including proposals to impose obligations on certain participants in the OTC derivatives market. To implement those regulatory proposals the Committee believes that it is necessary to impose registration requirements on key derivatives market participants (including participants that represent significant risks to the market because of their derivatives exposure and persons in the business of trading in derivatives or providing advice in relation to derivatives). These requirements, to the degree practical, should be harmonized across all CSA jurisdictions and impose requirements that will not result in an unnecessary regulatory burden.

The Committee believes that derivatives registrants should be subject to a number of regulatory requirements, including requirements relating to capital and collateral, reporting, internal controls, risk management and interactions with counterparties and clients[5]. These requirements are intended to:

- protect participants in the derivatives markets from unfair, improper and fraudulent practices;
- protect the soundness of our financial markets by ensuring that key market participants manage risks relating to their participation in derivatives markets, including counterparty risk;
- impose specific requirements on registrants when trading with counterparties and trading on behalf of clients; and
- reduce risks, including systemic risks, resulting from the derivatives activities of key market participants.

This consultation paper will outline the Committee's proposals relating to:

- the categories of registration for key derivative market participants;
- the type of activities that would trigger registration;
- the requirements that will apply to derivatives registrants; and
- exemptions from registration and registration requirements, including exemptions for entities that are subject to a regulatory regime that is comparable to the regime established by the CSA.

This Committee recommends that there be three categories of registration: derivatives dealers (entities or persons in the business of trading derivatives), derivatives advisers (entities or persons in the business of advising on derivatives) and large derivatives participants. Additional discussion relating to the types of activities that will trigger registration for each registrant category is set out in Part 6 of this paper.

While this paper discusses minimum registration requirements for each category of registration that will apply to all derivatives dealers, derivatives advisers and large derivatives participants, the Committee recommends that, where appropriate, the CSA consider relying on third-party regulators to carry out some or all of the regulatory functions. These regulators could include foreign regulators, regulating the registrant in its home jurisdiction, prudential regulators, including those responsible for regulating financial institutions in Canada, and self-regulatory organizations. Additional discussion regarding the provision of exemptions from compliance with registration requirements where alternative regulation regimes are in place is included in part 5.2 of this paper.

2. BACKGROUND

In September 2009, Canada and other members of the G20 called for the improvement of the global financial market and committed themselves to reforming OTC derivatives markets and improving oversight of those markets. These reforms included specific commitments to improve transparency, mitigate systemic risk, and protect against market abuse.[6]

On November 2, 2010 the Committee published for comment Consultation Paper 91-401. Consultation Paper 91-401 outlined the Committee's high-level proposals relating to the regulation of OTC derivatives, including proposal relating to clearing, trade

[5] The terms "client" and "counterparty" are used throughout this paper. A client will include any person or entity to which: (i) a registrant provides services, as an intermediary, in relation to derivatives trading; or (ii) a registrant provides advice in relation to derivatives. A counterparty will be a person or entity that is entering into a derivatives trade with a registrant. In many cases the same person could be both a client in relation to one transaction with a registrant and a counterparty to that same registrant in separate transactions.

[6] "Leaders' Statement: The Pittsburgh Summit" (September 24-25, 2009) available at http://www.g20.org/pub_communiques.aspx

reporting, electronic trading, capital and collateral and end-user exemptions. Eighteen comment letters were received from interested parties.

Since the publication of Consultation Paper 91-401 and the receipt of the comment letters relating to that paper, the Committee has developed a plan to implement the regulatory framework proposed in that paper and has published five consultation papers.[7] This paper provides an overview of the Committee's proposal for the regulation of key derivatives market participants through the implementation of a registration regime. Requirements to report derivatives trades to a trade repository, clear derivatives trades utilizing a central counterparty or to execute derivatives trades on an electronic trading platform have been or will be described in other consultation papers issued by the Committee.

3. FOREIGN REGULATION

3.1 United States Approach

The Dodd-Frank Wall Street Reform and Consumer Protection Act [8]("Dodd-Frank Act") requires both the U.S. Commodity Futures Trading Commission ("CFTC") and the U.S. Securities and Exchange Commission ("SEC") to make rules providing for the registration of certain derivatives market participants. The SEC rules provide for the registration of security-based swap dealers and security-based major swap participants. The CFTC rules provide for the registration of swap dealers and major swap participants.

The U.S. *Commodities Exchange Act*[9] establishes requirements relating to the registration of futures, commodity option and retail foreign exchange intermediaries. The CFTC has finalized additional rules requiring the registration of swap dealers and major swap participants.[10]

The CFTC's definition a "swap dealer" includes any person who:

- holds itself out as a dealer in swaps;
- makes a market in swaps;
- regularly enters into swaps in the ordinary course of business, for its own account; or
- engages in any activity causing it to be commonly known in the trade as a dealer or market-maker of swaps.

In addition, the CFTC indicates that '(T)he statutory definitions provide exceptions for a person that enters into swaps or security-based swaps for the person's own account, either individually or in a fiduciary capacity, but not as part of a "regular business."'.

The Dodd-Frank Act provides an exemption from dealer registration for persons who engage in a *de minimis* quantity of swap dealing activity with or on behalf of customers.[11] The CFTC has adopted rules to implement this exemption as an element of the swap dealer definition.[12] To qualify for the CFTC's exemption , an entity's aggregate gross notional exposure resulting from swaps entered into in connection with its dealing activity, over the previous twelve months (excluding exposure resulting from non-dealing activity such as transaction entered into by the entity to hedge its own business risks) can not exceed: (i) for all customers U.S. $3 billion (subject to a phase in level of $8 billion), and (ii) for its customers that are "special entities"[13] U.S. $25 million. [14]

The CFTC defines a "major swap participant" as a person, who is not a swap dealer and:

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7 The Committee's published consultation papers deal with trade repositories, surveillance and enforcement, end-user exemptions, segregation and portability of collateral and central counterparty clearing.

8 *Dodd-Frank Wall Street Reform and Consumer Protection Act*, Pub.L.III-203, H.R. 4173, sec. 721(a)(47), online: http://frwebgate.access.gpo.gov/cgibin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4173enr.txt.pdf.

9 U.S. *Commodities Exchange Act,* 7 UFC.Chapter 1, online: http://www.law.cornell.edu/uscode/text/7/chapter-1.

10 The terms Swap Dealer and Major Swap Participant are defined in the regulations to the Dodd-Frank Act at 17 CFR 240, Release No. 34-66868, File No. S7-39-10 – Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant," and "Eligible Contract Participant." dated May 23, 2012.

11 In this part 3.1, "customers" references the term used in U.S. regulatory requirements. It is not equivalent to the term "client" described in footnote 3 of this paper.

12 Federal Register / Vol. 77, No. 100 / Wednesday, May 23, 2012/Rules and Regulations, pp. 30626 to 30643.

13 The term "special entities" includes entities such as federal, state or local governments or corporations owned by those governments, endowments and employee benefit plans.

14 CFTC Regulation Sec. 1.3(ggg)(4).

- that maintains a substantial position in any major category of swaps excluding (i) positions held to "hedge or mitigate commercial risk", and (ii) positions held by a "employee benefit plan" for the purposes of hedging risks directly associated with the operation of the plan;

- whose outstanding swaps create "substantial counterparty exposure" that could have serious adverse affects on the financial stability of the U.S. banking system or financial markets; or

- that is a "financial entity" that holds a substantial position in a major category of swaps, is highly leveraged when compared to the amount of capital it holds, and is not subject to capital requirements by a federal banking agency.

Swap dealers and major swap participants (together referred to as "swap registrants") will be subject to requirements, including:

- where the entity is not subject to prudential regulation by a federal banking regulator, requirements relating to capital adequacy, including margin requirements;
- requirements relating to risk management including a requirement to establish and maintain a robust risk management process in relation to all of the firm's swap related activities;

- swap documentation requirements, including requirements to deliver trade confirmation to counterparties that are not swap registrants, conduct portfolio reconciliations and terminate offsetting swaps;

- record keeping and reporting requirements, including requirements to keep complete records in relation to each swap transaction and all swap positions held by the registrant;

- requirements to supervise all activities relating to its swap business;

- requirements to adopt and implement procedures to identify and manage conflicts of interest;

- requirements to provide access to records and information relating to its swap trading activity to the CFTC and prudential regulators; and

- business conduct standards applicable when dealing with counterparties that are US persons or non-US persons whose obligations are guaranteed by US persons, including:

    - preventing material confidential information about a counterparty from being misused;

    - making disclosure of material information to counterparties, other than other swap registrants. This information includes:

        - information to allow the counterparty to assess the material risks and characteristics of the swap and the incentives and conflicts of interest that the swap registrant may have relating to execution of the swap with that counterparty;

        - scenario analysis using a range of assumptions, including extreme downward stress scenarios, to allow the counterparty to assess its potential exposures with respect to the swap; and

        - provide counterparties a daily mark of the swap trades that are not centrally cleared;

    - communicating with the counterparty in a fair and balanced manner in accordance with the principles of fair dealing and good faith; and

    - advising a counterparty of its right to clear a swap that is not subject to mandated clearing and its right to select a derivatives clearing organization;

In addition to the requirements applicable to all swap registrants, swap dealers will be subject to:

- requirements to obtain sufficient facts relating to its counterparty to allow it to identify its counterparty and the persons controlling that counterparty and allow it to implement credit and operation risk management policies for transactions with that counterparty; and

- a requirement that a swap dealer use reasonable diligence to understand the risks and benefits of a proposed swap and to ensure that the swap is suitable for the counterparty to which it is providing advice related to derivatives trading.[15]

Under existing CFTC rules, swap dealers and major swap participants are required to become members of a registered futures association.[16] The National Futures Association ("NFA") is the registered futures association for swap dealers and major swap participants. Under NFA rules, intermediaries in the derivatives market are subject to a variety of requirements including:

- proficiency requirements;
- financial requirements, including prudential regulation;
- market integrity requirements;
- requirements relating to obligations owed to customers; and
- requirements to maintain risk management and compliance systems.

The SEC is proposing new rules under the U.S. *Securities Exchange Act of 1934*[17] that will require the registration of two new categories of entities, securities-based swap dealers ("SBS dealers") and major security-based swap participants ("major SBS participants" and together with SBS dealers "SBS entities").[18]

Under the SEC proposal SBS dealers that enter into security-based swaps with persons that do not qualify as "eligible contract participants"[19] must also be registered as broker-dealers, unless otherwise exempt from that requirement.

Key requirements applicable to all SBS entities under the proposed SEC registration regime obligations:

- to disclose material risks and characteristics of a securities-based swap to all counterparties[20] that are not registered as SBS entities before entering into the swap;
- to disclose material incentives and conflicts of interest that the SBS entity may have in relation to the swap before entering into the swap;
- to provide a daily mark of the security-based swap;[21]
- to disclose to its counterparties:
    - the clearing agencies to which the SBS entity is a clearing member; and
    - that the SBS entity has the sole right to select the clearing agency that will clear the swap, provided that the SBS entity is permitted to clear through that clearing agency;
- to communicate in a fair and balanced manner based on the principles of fair dealing;
- to know-their-counterparty so that the SBS entity can comply with applicable requirements, understand the risks they face in relation to the counterparty and ensure the authority of the person acting on behalf of the counterparty;
- when making a recommendation to a proposed counterparty (including a communication that may reasonably influence a decision to enter into a transaction) to ensure that the swap is suitable for that counterparty;

15 These requirements are set out in a number of CFTC rules, particularly 17 CFR, Parts 1, 3, 4, and 23.

16 The requirement is in CFTC Regulation 170.16.

17 The proposed new SEC Rules are Rules 15Fb1-1 through 15Fb6-1.

18 17 CFR Part 240 and 249, Release No. 34-65543; File No. S7-40-11 – Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, dated October 12, 2011..

19 "Eligible Contract Participant is defined in the U.S. *Commodities Exchange Act* and includes a variety of parties including individual who has amounts invested on a discretionary basis, in excess of $10 million (or $5,000,000 if contracting to manage risks) and corporations with at least $10 million in assets or $1 million in net worth if contracting for risk management purposes.

20 This disclosure does not appear to be the equivalent of prospectus disclosure under US requirements.

21 This will not apply where the counterparty is an SBS or a swap registrant.

- to communicate with counterparties in a fair and balanced manner to provide the counterparty with a sound basis for evaluating the facts relating to a swap;
- to maintain and enforce systems to appropriately supervise their business involving security-based swaps; and
- to act in the best interest of a special entity such as a federal or state agency, and employee benefit plan or an endowment when advising such an entity on security-based swaps.[22]

3.2 European Union Approach

The European Union's Markets in Financial Instruments Directive ("MiFID")[23] provides for the regulation of investment firms trading, either as an agent or as a principal, or advising in relation to a wide range of derivatives.

The term "investment firm" is defined in MiFID as "… any legal person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis".[24]

Investment services and activities include:

- execution of orders on behalf of clients;[25]
- dealing on their own account;
- portfolio management; and
- investment advice.

Investment firms operating in Europe are subject to a wide variety of requirements including those relating to:

- member state supervision;
- management of conflict of interests;
- obligations when providing services to clients, including the obligation to act in a client's best interest;
- market integrity requirements;
- a requirement to maintain compliance and risk management systems;
- record keeping obligations; and
- management of client assets they hold.

MiFID does provide exemptions from specific regulatory obligations when an investment firm conducts a transaction with an eligible counterparty.[26] In particular, an investment firm that transacts with eligible counterparties will be exempt from specific requirements relating to:

- acting honestly, fairly and professionally in accordance with the best interests of the client;
- providing fair, clear and non-misleading information about the investment firm, its services, investment strategies and costs;

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22 17 CFR 240, Release No. 34-64766, File No. 87-25-11 – Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, dated June 29, 2011.

23 Directive 2004/39/EC of the European Parliament and of the Council, of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC – http://ec.europa.eu/internal_market/securities/isd/mifid_en.htm

24 MiFID Level 1 Directive, Article 4.

25 The reference to "clients" in this part 3.2 references the term used in European regulatory requirements rather than term described in footnote 3 of this paper.

26 MiFID Level 1 Directive, Article 24.

- the assessment of suitability and appropriateness of financial instruments for the client;
- the duty to report on services provided and costs associated with these services; and
- the obligation to execute orders on terms most favourable to the client.

The proposed revisions to MiFID[27] ("MiFID II"), when implemented in 2014, will reduce the scope of exemptions applicable to investment firms when dealing with eligible counterparties. As a result of the proposed changes investment firms will be subject to:

- the obligation to act honestly, fairly and professionally and the obligation to be fair, clear and not misleading will apply even where counterparties are eligible counterparties;
- the requirement to provide eligible counterparties with information about the investment firm, its services, investment strategies and costs; and
- the requirement to report to eligible counterparties on services provided and costs associated with transactions and services.

4. IOSCO STANDARDS

In June 2012, the Technical Committee of the International Organization of Securities Commissions ("IOSCO") released its final report relating to the regulation of derivative market intermediaries (DMIs")[28]. This report provides recommendations on:

- registration standards related to derivatives activity;
- capital standards and other financial resource requirements;
- business conduct standards related to derivatives activity;
- supervision standards for derivatives activities; and
- standards relating to recordkeeping in relation to derivatives activities.

4.1 Registration Standards

IOSCO's report recommends that DMIs should generally include persons in the business of dealing in derivatives, making a market in derivatives or intermediating derivatives transactions. The report recommends that DMIs should be subject to registration or licensing and substantive regulations. DMIs should not include end-users and other persons entering into derivatives transactions but that are not engaged in the business of dealing, making a market or intermediating trades. The recommendations in the report are limited to the regulation of intermediaries and are not intended to address the regulation of participants in the derivatives market that, through their derivatives exposures, represent a systemic risk to derivatives markets or economies.

4.2 Capital and Financial Standards

The report recommends the adoption of adequate capital standards applicable to DMIs to protect against insolvency by addressing risks that the intermediaries' liabilities exceed the realizable value of their assets. These standards may include both minimum capital requirements as well as margin requirements. The report acknowledges that some entities are currently subject to appropriate prudential regulation requirements and therefore do not need to be subject to capital standards established by market regulators.

4.3 Business Conduct Standards

The report recommends the adoption of business conduct standards to prevent improper behaviour and foster confidence in derivatives markets. These would require intermediaries to observe high standards of integrity and fair dealing. The report recommends that appropriate regulatory protections must be established for participants based on nature of the party and the complexity and risk associated with an instrument or service. These standards should be appropriate for the derivatives markets and the participants in these markets and not merely the application of traditional standards applied to securities intermediaries.

[27] Proposal for a Directive of the European Parliament and of the Council on Market in Financial Instruments repealing Directive 2004/39/EC of the European Parliament and of the Council – http://ec.europa.eu/internal_market/securities/isd/mifid_en.htm.

[28] Internal Standards for Derivatives Market Intermediary Regulation, Final Report, Technical Committee of the International Organization of Securities Commissions, FR03/12 June 2012,, http://www.iosco.org/library/pubdocs/pdf/IOSCOPD381.pdf

These standards would include, among other things, prohibitions against fraud, misrepresentation, manipulation and other abusive practices. Business conduct requirements should be tailored, as appropriate, for the derivatives market, which could be based on the reasonable assessment of the nature of the party dealing with a DMI and the complexity and risk associated with a derivatives instrument or service.

4.4 Supervision Standards

The report recommends the adoption of regulatory requirements and internal advisory structures that facilitate the identification and monitoring of risks. In addition, internal supervisory structures adopted by DMIs must be adequate to recognize and monitor risk across all lines of business activity, including derivatives. This structure will include:

- an effective corporate governance framework;
- supervisory policies and procedures to manage their derivatives activities;
- risk management organizations and systems to identify and manage derivative related risk;
- compliance systems to monitor compliance with regulatory standards and the DMI's internal policies and procedures; and
- an effective business continuity plan appropriate for the DMI.

4.5 Recordkeeping Standards

The report recommends the adoption of requirements that DMIs keep detailed records relating to derivatives transactions, including records relating to communications with clients or counterparties, including:

- records that provide an audit trail for client or counterparty instructions and orders;
- records of the terms of derivatives transactions executed for clients or counterparties; and
- any agreements or communications with such parties.

The report also recommends that DMIs should be required to retain derivatives transaction records and be able to provide them in a timely, organized and readable manner for a specified period after derivative's termination, maturity or assignment.

4.6 Gaps and Overlap with Existing Regulatory Regimes

The report does not prescribe the type of regulator or combination of regulators that should be responsible for the regulation and oversight of DMIs in a particular jurisdiction but rather provides standards which could be used by each IOSCO member to assess whether the recommendations in the report have been implemented in its jurisdiction.

5. CURRENT REGULATION OF DERIVATIVES MARKETS IN CANADA

5.1 Regulation of Derivatives Market Participants

The *Derivatives Act* (Québec) (the "QDA")[29] establishes a legislative framework for regulation of key derivatives market participants by requiring that derivatives dealers and advisers be registered, and specifies the requirements applicable to them as regards the management of their business, their conduct and the conduct of their officers, representatives and employees.

The QDA defines a dealer as "a person who engages or purports to engage in the business of (1) derivatives trading on the person's own behalf or on behalf of others; or (2) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of an activity described in paragraph 1", and an adviser as "a person who engages or purports to engage in the business of advising others as to derivatives or the buying or selling of derivatives, or in the business of managing derivatives portfolios". The QDA provides that the categories of registration, the conditions to be met by applicants, the duration of registration and the rules governing the business of dealers, advisers and representatives are determined by regulation. [30] Dealers and advisers that are registered in accordance with the *Securities Act* (Québec) ("QSA") [31] and meet the conditions imposed by the QDA for registration are deemed to be registered under the QDA.

[29] *Derivatives Act,* R.S.Q., I-14.01.

[30] *Derivatives Act,* c. 1-14.01, r. 1.

[31] *Securities Act,* R.S.Q., V-1.1.

Section 7 of the QDA provides that provisions dealing with registration and qualification do not apply where OTC derivatives activities or transactions involve only Accredited Counterparties.[32]

Other provinces also have existing regulatory requirements applicable to derivatives market participants.

Amendments to the *Securities Act* (Ontario)[33] ("OSA") and the *Securities Act* (Manitoba)[34] ("MSA") have been approved by the respective legislatures and include specific powers relating the regulation of derivative market participants, including powers relating to the registration of persons trading in or advising on derivatives. These amendments are not yet in force. Where instruments fall under the definition of "securities" in both the OSa and MSA, persons dealing in these instruments will be subject to registration under the securities regime.

The OSA includes an exemption from registration for specified financial institutions.[35]

Other provinces including British Columbia, Alberta, Saskatchewan, New Brunswick and Nova Scotia are in the process of developing or introducing legislative amendments to facilitate the registration of persons dealing in or advising on derivatives. Currently in British Columbia, Alberta, Saskatchewan and New Brunswick, instruments that will be considered to be derivatives can be either securities, exchange contracts or fall outside the regulation regime altogether. In these provinces, for the purpose of registration, persons trading in or advising on derivatives that are securities or exchange contracts will, unless otherwise exempted, be subject to securities dealer registration.

In addition, a number of jurisdictions have adopted exemptions from registration and prospectus requirements for trades of OTC derivatives where the client or counterparty to the transaction meets specified criteria. These criteria include a minimum net worth, for individuals, or minimum total assets, for non-individual entities.

5.2 Alternative Regulation of Derivatives Markets Participants

Some derivatives market participants, such as federally and provincially regulated financial institutions, insurance companies, investment dealers and foreign resident derivatives dealers and advisers, may be subject to existing supervision and regulatory requirements that are or that may be equivalent with some or all of the registration requirements that the Committee is proposing.[36] The Committee recommends that persons subject to equivalent requirements be exempted from the equivalent registration requirements. Additional information about these exemptions is set out in Part 8 of this paper.

6. REGISTRATION REQUIREMENT AND CATEGORIES OF REGISTRATION

The Committee believes that the most appropriate method to regulate key derivatives market participants is to impose standard registration requirements based on the activity conducted by the participants.

National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103") provides a comprehensive registration regime for persons in the business of trading in or advising on securities and for persons acting as investment fund managers. Many of the concepts relating to the registration of derivative market registrants have been developed through a review of the existing securities registration regime in Canada, however the factors that will trigger registration and the specific requirements applicable to derivatives registrants will, in some ways, be substantially different from those applicable under the existing securities registration regime. These differences are necessary given:

- the differences in the purpose of trading, with securities typically being purchased for investment purposes and derivatives typically being contracts entered into for the transfer of risk;
- the element of leverage that exists in most categories of derivatives that amplifies market risk. The total risk exposure under a derivatives contract will often exceed the cost of entering into the derivative; and
- the complexity of many types of derivatives contracts.

As a result, derivatives markets operate in ways that are different from securities markets. The Committee recommends that the regulation of derivatives market participants involve derivatives-appropriate registration requirements. While the Committee did consider requiring persons dealing in or advising on derivatives that had securities as their underlying asset to be registered under the securities regime, the Committee believes that it is desirable to subject all types of derivatives to a consistent regime

32 "Accredited Counterparty" is defined in section 3 of the QDA.

33 *Securities Act*, RSO 1990, c. S.5.

34 *The Securities Act,* CCSM, c S50.

35 *Securities Act*, RSO 1990, c. S.5, section 35.1.

36 Specific information relating to exemptions from a requirement to register as a derivatives dealer or derivatives adviser or from having to comply with some registration obligations are described in Part 8 of this paper.

regardless of the nature of the underlying asset. The Committee believes that an exemption from registration under the derivatives regime for these categories of derivatives market participants would result in confusion and would result in different regulatory requirements for derivatives that have similar risks.

Where, however, the contract or instrument is used by an issuer or an affiliate of an issuer solely to compensate an employee or service provider or as a financing instrument and whose underlying interest is a share or stock of that issuer or its affiliate it will be considered to be a security for the purpose of registration. In such situations, the contract or instrument has a similar or the same economic effect as a security. The Committee believes it should be subject to the registration requirements that are applicable to securities. Persons trading these contracts or instruments will be subject to registration as securities dealers in accordance with NI 31-103 and, unless required because of other activities, will not be required to register as derivatives dealers.[37]

The Committee recommends that persons registered as securities dealers or securities advisers who are also subject to registration as derivatives dealers or derivatives advisers be subject to compliance with both regimes. The Committee also recommends that steps be taken to streamline the processes applicable to entities that register as both securities dealers and derivatives dealers to ensure that regulation is conducted in an efficient manner.

The Committee considered the application of derivatives registration requirements on investment funds. The Committee believes that investment fund managers should continue to be regulated under the securities registration regime regardless of the nature of the investment fund or the assets held by the fund.

An adviser to a fund that triggers the obligation to register as an adviser under part 6.2 of this paper will be subject to derivatives adviser registration requirements. An adviser that advises in relation to both derivatives and securities may be subject to registration as both a securities adviser and a derivatives adviser.

The Committee also notes that some investment funds may conduct derivatives trading activity that could trigger registration requirements as a derivatives dealer. The Committee believes that the obligation to register as a derivatives dealer will apply to the fund itself rather than the fund's investment fund manager, however, based on the criteria used to define being in the business of trading derivatives, the Committee believes that most investment funds, particularly investment funds that are reporting issuers, will not trigger an obligation to register. By imposing the derivatives registration requirements on the fund, pertinent financial information relating to the fund and its derivatives exposures will be provided pursuant to trade reports and reports furnished under registration requirements. The Committee understands that, under their proposal, investment funds will often rely on their investment fund managers to fulfill the fund's registration requirements however the responsibility to meet registration requirements will remain with the fund.

The Committee understands that participants in the derivatives market include a variety of entities ranging from very large and sophisticated entities to individuals and small entities that may have little experience in trading derivatives. The Committee believes that participants that do not have the experience necessary to understand the obligations and risks related to a derivatives transaction or the resources necessary to easily meet their obligations may benefit from additional protection that is not appropriate for large, sophisticated participants.

In this paper we will refer to these sophisticated participants with adequate resources to absorb losses from derivatives trades as "qualified parties". A person would be a qualified party in respect of a derivatives trade if:

- they are a securities or derivatives registrant in any jurisdiction in Canada; or
- they have sufficient:
    - financial resources to ensure that:
        - losses resulting from a derivatives trade would not cause undue hardship; and
        - they can perform all of their obligations pursuant to a derivatives trade; and
    - experience and knowledge in trading derivatives so as to have an understanding of the risks and obligations relating to trades in derivatives; and
- they have not entered into a contract with the registered entity that requires the registered entity to provide the persons with the same types of protections that are adopted as registration requirements when trading with a non-qualified party.

[37] The Committee intends this carve out to be consistent with section 5 of CSA Staff Consultation Paper 91-301 - Model Provincial Rules – Derivatives: Product Determination and Trade Repositories and Derivatives Data Reporting as well as paragraph 4 of section 6 of the QDA.

A specific definition of a qualified party will be established in future regulations. The Committee recognizes that there are a number of options available to determine whether a person will be a qualified party, including:

- an *accredited investor* standard consistent with National Instrument 45-106 – *Prospectus and Registration Exemptions*;[38]
- a *permitted client* standard consistent with NI 31-103;[39]
- an *accredited counterparty* standard consistent with the QDA;[40] or
- another standard based on financial resources, proficiency requirements or experience in trading of the derivative.

Persons that do not meet the standards to be a qualified party will be referred to in this paper as "non-qualified parties".

Q1: Should investment funds be subject to the same registration triggers as other derivatives market participants? If not, what registration triggers should be applied to investment funds?

Q2: What is the appropriate standard for determining whether a person is a qualified party? Should the standard be based on the financial resources or the proficiency of the client or counterparty? If the standard is based on financial resources should it be based on the net assets of the client or counterparty, gross annual revenues of the client or counterparty, or some other factor or factors?

6.1 Derivatives Dealer

The Committee believes that persons carrying on the business of trading in derivatives or holding themselves out to be carrying on that business, should be regulated. The Committee recommends that these persons be required to be registered as derivatives dealers in each Canadian province and territory where they conduct derivatives trading business, unless an exemption is available. Subject to part 8.1 below, persons in the business of trading derivatives in Canada that are resident outside of Canada will still be subject to an obligation to register and be required to comply with registration requirements, even if that dealer does not have an office or other place of business in Canada.

The registration requirements applicable to a derivatives dealer will, in many ways, be comparable to the registration requirements applicable to derivatives dealers in the U.S. under both the CFTC and SEC regimes; however the Committee is not currently recommending a *de minimis* exemption comparable to that adopted by U.S. regulators. The Committee believes that participants in the derivatives market should be subject to the same protections regardless of the size or the total derivatives exposure of the dealer. While the Committee does not believe that a *de minimis* exemption is appropriate, it should be noted that a person that is not in the business of dealing or advising in the trading of derivatives will not be required to register as a derivatives dealer or adviser.

(a) Trading Derivatives

As described above, persons will only have to register as derivatives dealers where they are in the business of trading derivatives. This concept is similar to the trigger applicable to investment dealers under the securities registration regime however there will be substantial differences in the way the trigger is applied. By their nature, trades in derivatives are very different from trades in securities. Generally, securities trades involve an agreement to sell and purchase a specific security. The relationship between the buyer and seller is concluded once the transfer of the security is settled and the agreed upon consideration delivered. A derivatives trade results in the creation on an ongoing contractual relationship between two counterparties that will last for the term of the contract. A derivatives trade will also be considered to occur when there is a material change to the terms of the derivatives contract. Subsection (b.1) and (b.2) of the definition of "trade" in the Ontario *Securities Act* make this clear:

(b.1) entering into a derivative or making a material amendment to, terminating, assigning, selling, or otherwise acquiring or disposing of a derivative, or

(b.2) a novation of a derivative, other than a novation with a clearing agency.

A number of other jurisdictions in Canada are considering or are in the process of developing legislative amendments to introduce a comparable concept of a trade of a derivative.

[38] National Instrument 45-106 – *Prospectus and Registration Exemptions*, section 1.1.

[39] NI 31-103 – *Registration Requirement, Exemptions and Ongoing Registrant Obligations*, section 1.1.

[40] QDA, section 3.

The Committee proposes that a variety of activities be considered to be a trade in a derivative, including:

- entering into a derivatives contract;
- material amendments to a derivatives contract;
- assignment of any or all rights under a derivatives contract;
- termination of a derivatives contract;
- novation of a derivatives contract, except where the novation is by a clearing agency; and
- other activities in furtherance of a trade.

The Committee notes that the definition of derivative is not consistent across the country. Certain jurisdictions have an independent regime for commodity futures contracts[41] and commodity futures options[42] while some jurisdictions include them as securities and others define them as derivatives. Recently the Committee published CSA Staff Consultation Paper 91-301[43] that provides the Committee's recommendations on the type of instruments that will be considered derivatives. While this instrument only relates to trade reporting, it does provide some insight into what types of instruments that the Committee may recommend to be considered derivatives for the purposes of triggering registration as a derivatives dealer.

A number of persons providing comments to Consultation Paper 91-401[44] discussed the scope of derivatives market regulation, particularly concerns that the CSA may regulate traditional banking activities. The discussion on business triggers below provides guidance on the types of activities that will result in a requirement to register as a derivatives dealer.

(b) Business Trigger for Trading

The Committee recommends that a variety of factors, including those described below, be considered when determining whether a person is in the business of trading derivatives. For the most part, these factors are from case law and regulatory decisions that have interpreted the business purpose test for securities matters. This is not a complete list. The existence of any one of these factors, on its own, is not determinative as to whether an individual or firm is in the business of trading or advising in derivatives but instead each should be considered as an element of a holistic analysis. In all cases, a potential registrant should consider whether they could benefit from the registration exemptions described in part 8 of this paper.

(i) *Intermediating trades* – In general, the provision of services relating to the intermediation of trades between counterparties to derivative contracts will be considered to be a trading business activity. This typically takes the form of the business commonly referred to as a broker.

(ii) *Acting as a market maker* – Making a market in derivatives is also generally considered to be trading for a business purpose. A person will generally be considered to be making a market for a derivative where it is taking or making an effort to take both a long and a short position in a derivative or category of derivatives.

(iii) *Trading with the intention of being remunerated or compensated* – Receiving, or expecting to receive, any form of compensation for carrying on derivatives trading activity, including whether the compensation is transaction or value based, indicates a business purpose. It does not matter if the individual or firm actually receives compensation or in what form.

(iv) *Directly or indirectly soliciting* – Contacting anyone to solicit derivatives trades will typically indicate a business purpose. Solicitation includes contacting someone by any means, including advertising that offers derivatives

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41 The Ontario *Commodity Futures Act* (R.S.O. 1990, c.C20) defines a commodity futures contract as "a contract to make or take delivery of a specified quantity and quality, grade or size of a commodity during a designated future month at a price agreed upon when the contract is entered into on a commodity futures exchange pursuant to standardized terms and conditions set forth in such exchange's by-laws, rules or regulations".

42 The Ontario *Commodity Futures Act* defines a commodity futures option as "a right, acquired for a consideration, to assume a long or short position in relation to a commodity futures contract at a specified price and within a specified period of time and any other option of which the subject is a commodity futures contract".

43 CSA Staff Consultation Paper 91-301 - Model Provincial Rules – Derivatives: Product Determination and Trade Repositories and Derivatives Data Reporting.

44 Comment letters publicly available at
http://www.osc.gov.on.ca/en/30430.htmhttp://www.osc.gov.on.ca/en/30430.htm and
http://www.lautorite.qc.ca/en/regulation-derivatives-markets-qc.htm

trading or participating in a derivatives trade, or that offers services for these purposes. This includes advertising on the internet with the intention of encouraging trading in derivatives by local residents.

(v) *Providing clearing services to third parties* – The provision of clearing services for derivatives trades to third parties, typically as a clearing member of a clearing agency, would also indicate that a person is in the business of trading derivatives[45].

(vi) *Trading with a counterparty that is a non-qualified party that is not represented by a derivatives dealer or adviser on a repetitive basis*[46] – If the second proposal outlined in part 7.2(b)(ii) is adopted, then a party entering into transactions with counterparties that are non-qualified parties will typically be considered to be in the business of trading derivatives unless that non-qualified party is represented by a derivatives dealer or adviser.

(vii) *Engaging in activities similar to a derivatives dealer* – If a person sets up a business to carry out any activities related to trading of derivatives, it is an indication that they could be in the business of trading derivatives and are derivatives dealers. For example, a person that is in the business of promoting a strategy for trading derivatives could be considered to be in the business of trading derivatives if they are providing additional services to facilitate the trade.[47]

The proposed trigger may result in a variety of persons that do not carry out derivatives dealing activities as their primary business becoming subject to an obligation to register as a derivatives dealer.

(c) Jurisdiction

To determine whether a person will be considered to be carrying on business in a jurisdiction, a number of factors should be considered. The presence of any one of these factors would indicate that a person is carrying on business in a jurisdiction:

(i) it has an office or other place of business in a jurisdiction, even if that place of business is not permanent;

(ii) it intermediates a trade or trades on behalf of a resident of the jurisdiction;

(iii) it conducts trading activity with or on behalf of counterparties located in the jurisdiction on a regular or repetitive basis;[48]

(iv) it actively solicits or markets a derivatives trading business in that jurisdiction; or

(v) acts as a market maker to a resident in the jurisdiction.

(d) Registration of Derivatives Dealers Representatives

Information relating to the obligation to register individuals is discussed in part 6.4 below. The registration requirements applicable to derivatives dealer representatives will be discussed in Part 7 of this paper.

6.2 Derivatives Adviser

The Committee recommends that persons that carry on the business of advising others in relation to derivatives, or who hold themselves out to be in that business in any Canadian jurisdiction, be required to register as a derivatives adviser, unless an exemption is available. This would include persons that provide advice in relation to the management of a portfolio of derivatives.

45 Clearing agencies may benefit from an exemption as described in part 8.2(c) of this paper.

46 For further discussion on persons that would constitute a non-qualified party see section 7.2(b) of this paper.

47 Where an entity is only offering trading advice they will not be subject to registration as derivative dealers but instead will be subject to registration as derivatives advisers, as described below.

48 A person will not be considered to be carrying on business in a jurisdiction due to repetitive trading activity with counterparties in a jurisdiction that is conducted through the facilities of a trading facility where the person is unaware of the identity of their counterparties.

(a) "Advising" in Relation to Derivatives

The concept of advising in relation to derivatives is very similar to the concept of advising about securities. A person would be considered to be "advising" in relation to derivatives where they provide another person with any advice or direction relating, either directly or indirectly, to trading derivatives, including the provision of advice in relation to:

- the management of a portfolio of derivatives;
- the use of derivatives as an investment strategy or part of an investment strategy; and
- the provision of advice in relation to hedging strategies.

Persons registered as derivatives dealers will be exempt from the requirement to register as derivatives advisers if they trigger registration as a derivatives adviser through the provision of advice that is solely incidental to a derivatives trade. The exemption is described more fully in part 8.2(a) of this paper.

(b) Business Trigger for Advising

Specific factors that should be considered when determining whether a person is "in the business" of providing derivatives advice include:

(i) *Directly or indirectly providing advice about derivatives trading activity with repetition, regularity or continuity* – Frequent or regular provision of advice in relation to derivatives transactions or in relation to the ongoing management of a portfolio of derivatives are common indicators that a person may be engaged in the business of advising in relation to derivatives. This activity does not have to be their sole or even primary endeavour for them to be in the business.

(ii) *Being, or expecting to be, remunerated or compensated* – Receiving, or expecting to receive, any form of compensation for providing advice about derivatives.

(iii) *Directly or indirectly soliciting* – Contacting anyone to solicit business relating to advising in derivatives trades. Solicitation includes contacting someone by any means, including advertising.

(iv) *Engaging in activities similar to a derivatives adviser* – Carrying on a business that is intended to provide persons with advice relating to derivatives trading activity, including promoting a trading strategy or offering software that provides a client with guidance relating to the purchase of derivatives,[49] will trigger registration as a derivatives adviser.

(c) Jurisdiction

The derivatives adviser would be subject to an obligation to be registered in each Canadian jurisdiction in which it is engaged in the business of providing advice in relation to derivatives, such as where it:

(i) has an office or other place of business in a jurisdiction, even if that place of business is not permanent;

(ii) provides advice on a trade to a resident of the jurisdiction;

(iii) carries on the business of providing advisory services or promotes itself as providing advisory services to a person or persons residing in the jurisdiction; or

(iv) actively solicits or markets a derivatives advising business in that jurisdiction.

(d) Registration of Derivatives Adviser Representatives

Information relating to the obligation to register individuals is discussed in part 6.4 below. The registration requirements applicable to derivatives adviser representatives are described in Part 7 of this paper.

[49] Where the entity is providing the advice and trading services the expectation is that they will only be registering as a derivatives dealer.

6.3 Large Derivative Participant

As indicated earlier in this paper, U.S. regulators have developed a new registration category for major swap participants.[50] The Committee believes that, similar to the U.S., there may be entities, other than derivatives dealers, that may have positions in derivatives that represent or could represent a significant systemic risk to Canadian markets or to the national or local economies. The registration of these entities would facilitate regulatory oversight that would assist in the management of systemic risk.

Recommendation

The Committee recommends that a third category of regulation, large derivative participant ("LDP") be established. Regulation as a LDP will not be subject to the same "business" trigger as dealers and advisers. Instead a market participant will be required to register as an LDP where:

- the entity is:
    - a Canadian resident entity that maintains a substantial position in a derivative or a category of derivatives; or
    - is a foreign resident entity that holds a substantial position in a derivative or category of derivatives with Canadian resident counterparties; and
- the entity's exposure in Canadian derivatives markets results in counterparty exposure that could pose a serious risk to Canadian financial markets or to the financial stability of Canada or a province or territory of Canada.

Entities can be categorized as LDPs, and subject to regulation regardless of whether their derivative trading activity is for hedging purposes or for speculative purposes. Where an entity is registered as a derivatives dealer under a CSA registration regime, they would not be expected to also register as a LDP.

The Committee further recommends that additional work be undertaken, in consultation with other Canadian authorities to establish the thresholds for registration as an LDP. The thresholds will be established in regulations that will be developed once the Committee has done sufficient analysis on trade repository data.

6.4 Registration of Individual Representatives of Derivatives Dealers and Derivative Advisers

NI 31-103 includes a requirement that securities registrants register individual employees including chief compliance officers, ultimate designated persons and representatives of securities dealers and securities advisers.

As previously discussed in part 6 of this paper, the derivatives market is very different from the securities markets. A sizable proportion of OTC derivatives activity involves transactions between qualified parties that have the resources necessary to protect their own interests. They do not rely on the expertise and advice of the counterparty to the transaction, and that counterparty's representatives, to protect their interests. The Committee does however recognize that there are participants in the derivatives market that will be relying on the expertise of derivatives dealers and derivatives advisers and persons representing those registered entities to ensure that their derivatives trade is suitable given the participant's objectives and risk tolerances.

Recommendation

The Committee recommends that individuals be registered:

- where they are the ultimate designated person, chief compliance officer and chief risk officer of a registrant;
- as a representative of a derivatives adviser where they provide clients with advice relating to derivatives, whether or not the client is a qualified party; and
- as a representative of a derivatives dealer where they provide services relating to trading to clients, whether or not the client is a qualified party, or, if the second alternative part 7.2(b)(ii) is implemented, where they deal with a counterparty[51] that is a non-qualified party[52] unless that counterparty is represented by an independent

[50] See footnote 11.

[51] Footnote 5 describes how the terms client and counterparty are used in this paper.

[52] The terms "qualified party" and "non-qualified party" are defined in part 7.2(b) of this paper.

investment adviser. If first alternative in part 7.2(b)(ii) is implemented, representatives dealing with counterparties will not be required to be registered as all counterparties will either be qualified parties or will be represented by independent derivatives advisers.

Individuals that function as dealer representatives that do not trade on behalf of non-qualified parties will not be required to register.

The Committee believes that limiting registration of individual representatives to the situations described above balances the need to protect the interests of derivative market participants with the cost of having registrants register.

Q3: Should registration as a derivatives dealer be subject to a *de minimis* exemption similar to the exemption adopted by U.S. regulators? Please indicate why such an exemption is appropriate.

Q4: Are derivatives dealer, derivatives adviser and LDP the correct registration categories? Should the Committee consider recommending other or additional categories?

Q5: Are the factors listed the correct factors that should be considered in determining whether a person is in the business of trading derivatives? Please explain your answer.

Q6: The Committee is not proposing to include frequent derivatives trading activity as a factor that we will consider when determining whether a person triggers registration as a derivative dealer. Should frequent derivatives trading activity trigger an obligation to register where an entity is not otherwise subject to a requirement to register as a derivatives dealer or a LDP? Should entities that are carrying on frequent derivatives trading activity for speculative purposes be subject to a different registration trigger than entities trading primarily for the purpose of managing their business risks?

Q7: Is the proposal to impose derivatives dealer registration requirements on parties providing clearing services appropriate? Should an entity providing these clearing services only to qualified parties be exempt from regulation as a derivatives dealer?

Q8: Are the factors listed above the appropriate factors to consider in determining whether a person is in the business of advising on derivatives?

Q9: Are the factors listed for determining whether an entity is a LDP appropriate? If not what factors should be considered? What factors should the Committee consider in determining whether an entity, as a result of its derivatives market exposures, could represent a serious adverse risk to the financial stability of Canada or a province or territory of Canada?

Q10: Is the Committee's proposal to only register derivative dealer representatives where they are dealing with clients or when dealing with counterparties that are non-qualified parties appropriate?

7. REGISTRATION REQUIREMENTS

This part represents the Committee's view with respect to some of the key registration requirements that will apply to each category of registrant and the individual representatives of a registrant. A chart summarizing the proposed registration requirements for each category is included as Schedule A, at the end of this paper.

A discussion of exemptions from registration and from regulatory requirements will be discussed more fully in Part 8 of this paper.

Obligations related to derivatives trade reporting, mandatory clearing of derivatives trades through a clearing agency or requirements to trade derivatives on an electronic trading platform will not be discussed in this paper. Other consultation papers that have been or will be issued by the Committee will address these requirements.

This part is intended to describe key registration requirements that the Committee is recommending. Detailed registration requirements will be set out in draft rules that will be published for comment.

At present the Committee has not come to a recommendation that derivatives dealers or other categories of registrants be required to become members of a self-regulated organization ("SRO"), however the Committee will carry out additional analysis on the issue.

7.1 Requirements of Derivatives Dealers, Derivatives Advisers and LDPs

This part describes registration requirements that will, subject to exemptions, apply to all derivatives registrants. Additional requirements that will apply to derivatives dealers and derivatives advisers will be discussed in parts 7.2 and 7.3.

(a) Proficiency Requirements

The Committee believes that all individuals who are directors, partners, officers, employees or agents of a derivatives registrant who are involved in trading in or advising on derivatives, including persons responsible for the supervision or management of derivatives related activity, should be subject to minimum proficiency standards. These standards are intended to ensure that individuals representing registrants understand the fundamentals of the derivatives markets in which they trade or advise in and the regulatory requirements relevant to their activities. The Committee also believes that minimum proficiency requirements will have the effect of protecting the registered entities, their clients and counterparties and the broader derivatives market.

Recommendation

The Committee recommends that registered entities be required to develop minimum proficiency standards and have procedures to ensure that all of their directors, officers, employees or agents involved in trading or advising on derivatives, including supervisors and managers of those responsible for trading in or advising activity, have the appropriate education, training and experience to carry out their responsibilities. The Committee believes that the proficiency requirements should, at least initially, be principle based. Registered entities will be responsible for ensuring that all directors, officers, employees and agents involved in trading or advising on derivatives are reasonably proficient to:

- perform the trading and advising functions that they carry out;
- understand the risks and obligations resulting from the derivatives trades; and
- be knowledgeable of the behaviour and dynamics of the derivatives markets in which they will be trading.

The Committee also recommends that proficiency requirements be established based on the specific classes or categories of derivatives that a representative is trading in or providing advice on. The Committee believes that markets for different classes and categories of derivatives are distinctive and that persons trading in, or advising in relation to, those markets should have specialized expertise to understand their market. Similarly, the Committee believes that it is inappropriate to require a derivative dealer's representative to have a broad range of proficiency related to derivatives markets that they do not trade in. So, for example, an individual trading foreign exchange based derivatives must have adequate knowledge and proficiency relating to trading those foreign exchange based contracts. They will not be required to become proficient in trading other types of contracts, such as commodity futures, and will not be able to trade those products. It should be noted that some elements of the proficiency requirements, such as familiarity with market conduct standards, will be common across all categories of derivatives classes.

At least initially, proficiency can be developed by taking educational courses or by passing relevant examinations recognised by the CSA members, or through work experience. Derivatives registrants that are also securities registrants will be required to ensure that their representatives meet proficiency requirements applicable to both securities registrants and derivatives registrants.

Q11: Is it appropriate to impose category or class-specific proficiency requirements?

Q12: Is the proposed approach to establishing proficiency requirements appropriate?

(b) Financial and Solvency Requirements

Clients of registrants rely on the dealer or adviser to have the resources to provide services and stand behind the services they provide. Clients that have counterparty risk from a registrant will be adversely impacted if the registrant defaults on its obligations under a derivatives contract. Such a default will often adversely impact the non-defaulting counterparty but may also impact the non-defaulting counterparty's ability to meet its obligations. The Committee believes that the imposition of financial and solvency requirements will help manage the risks to clients and counterparties of registrants.

Recommendation

(i) *Minimum Capital Requirements*

The Committee recommends that registrants be required to maintain minimum specified levels of capital. These requirements are intended to ensure the solvency of registrants, with the intention of reducing the likelihood that they cannot meet their

ongoing obligations under derivatives contracts. Presently many potential registrants are subject to capital regulation by a prudential regulator, such as the Office of the Superintendent of Financial Institutions or self-regulatory organizations such as IIROC. As stated in part 5.2 of this paper, where such requirements are substantially equivalent, those requirements will continue to apply and those entities will be exempt from the CSA's capital requirements.

The Committee recommends that registrants be required to calculate their minimum capital requirements on a regular basis and be required to adjust the amount of capital held, as appropriate. Registrants will be required to file periodic reports on minimum capital requirements and capital held.

The Committee will provide recommendations relating to minimum capital requirements in a future paper.

(ii) *Margin Requirements*

International working groups are considering standards relating to posting and collecting margin in relation to derivatives trades that are not cleared through a central counterparty.[53] The Committee recommends that margin standards be adopted that, at a minimum, are consistent with international standards. Typically, margin requirements will not apply to registered entities that are registered only as derivatives advisers where these entities are not holding positions as counterparties to derivatives trades.

The Committee will provide additional information relating to specific margin requirements and obligations with respect to holding collateral in a future paper.

(iii) *Insurance Requirements*

The Committee recommends that registrants be required to maintain insurance to protect against the loss of property with a view to protecting, where applicable:

- the assets of a counterparty to a transaction held as collateral;
- client and counterparty assets held by the entity; and
- the entity's own assets.

The insurance will, at a minimum cover:

- losses of property resulting from the dishonest or fraudulent actions of an employee, director, officer, partner or agent of the registrant;
- loss of property held or controlled by the registrant resulting from theft or fraud by a third-party; and
- loss of property held or controlled by the registrant as a result of a disaster including fire, flood, earthquake, physical damage to a storage or transportation facility or loss in transporting the property, as appropriate.

(iv) *Maintenance of Financial Records and Periodic Financial Reporting*

The Committee recommends that all registrants be required to maintain complete, up-to-date financial records including their financial statements, records of all derivatives positions held by the registrant on its own behalf or on behalf of third-parties. These records should be consistent with appropriate accounting standards. These records should include calculations of the value and risk exposure relating to each position and the value and exposure of the registrant's aggregate positions and specifics regarding collateral posted to or collected from its derivatives counterparties.

The Committee also recommends that these registrants be required to file these financial records on a quarterly basis. In addition, they would be required to file audited versions of their financial statements on an annual basis. The audit would need to be conducted by a fully qualified, independent auditor in compliance with appropriate audit standards and approved by the registrant's board of directors.[54]

(c) Compliance Systems and Internal Business Conduct Requirements

The Committee believes that all registrants should have adequate systems in place to ensure compliance with all regulatory requirements and to manage risks relating to derivatives positions.

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[53] BCBS-IOSCO, Margin requirement for non-centrally-cleared derivatives, available at: http://www.bis.org/publ/bcbs242.pdf.

[54] When we refer to a registrant's board of directors in this paper we intend to reference to any person or groups of persons that control or provide direction over a registrant including sole proprietors, partners, or trustees.

Recommendations

(i) *Compliance and Risk Management Systems*

The Committee recommends that registrants be required to establish, maintain and apply systems, policies and procedures that establish robust compliance and risk management systems, appropriate for their derivatives business. These systems should:

- provide assurance that the registrant and individuals acting on its behalf comply with applicable derivatives legislation and regulation; and
- manage the risks associated with the registrant's business, including its derivatives business, in accordance with prudent business practices.

The Committee recommends that these compliance and risk management systems be required to have internal controls and monitoring systems to identify non-compliance with both regulatory requirements and internal policies and procedures and correct such non-compliance in a timely manner. The Committee expects that risk management systems would identify risks applicable to the registrant and ensure that appropriate steps are taken to manage such risks in a timely manner. These systems should be part of a firm-wide commitment to compliance and management of risk involving participation by directors, management and staff.

The Committee recommends that each registrant be obligated to implement compliance systems that are appropriate for their derivatives business, considering the size and scope of their operations, including the types of clients or counterparties that they do business with, types of derivatives traded, types of counterparties dealt with, risks and compensating controls, and any other relevant factors. The Committee also recommends that registrants be required to implement compliance and risk management systems that include:

- a firm-wide commitment to compliance;
- sufficient resources and training to operate effective compliance and risk management systems, including qualified staff;
- detailed policies and procedures that:
    - ensure compliance with regulatory requirements and internal policies and procedures;
    - clearly outline who is expected to do what, when and how;
    - are readily accessible by everyone who is expected to know and follow them; and
    - are updated when regulatory requirements or the registrant's business practices change;
- internal controls that manage the risks that affect their business, including risks that may relate to:
    - safeguarding of firm, client and counterparty assets;
    - accuracy of books and records;
    - trading;
    - conflicts of interest;
    - money laundering;
    - business interruption
    - marketing and sales practices, and
    - the registrant's overall financial viability;
- monitoring and supervision of derivatives related activity and risk exposure including day-to-day monitoring as well as monitoring the effectiveness of the registrant's compliance and risk management systems; and

- business continuity and disaster recovery plans designed to ensure that the registrant is able to resume operations within a reasonable period with minimal disturbance to clients and counterparties.

In all cases, the Committee believes that these compliance and risk management systems should be approved by the registrant's board of directors. In addition, the systems should be appropriately documented and made reasonably available to directors, partners, trustees, officers and staff members of the registrant to allow them to understand the duties and obligations under the systems. The Committee recommends that registrants be required to regularly review both compliance and risk management systems to ensure that they continue to be appropriate for the organization and its ongoing derivatives trades and exposures. At least annually, each registrant will be required to prepare a report describing the registrant's derivatives activities, their derivatives compliance and risk management systems and issues related to derivatives compliance and risk management for presentation to the registrant's board. A copy of this report should be filed with the market regulators in each jurisdiction in which it is registered after it has been approved by the registrant's board.

While these requirements do apply to all categories of registrants, the Committee notes that the compliance and risk management systems that would be appropriate for derivatives dealers, derivatives advisers or LDPs may be very different because of the different registration requirements and the different risks that each category of registrant faces.

(ii) *Appointment of an Ultimate Designated Person, Chief Compliance Officer and Chief Risk Officer*

The Committee recommends that each registrant be required to appoint and register an ultimate designated person ("UDP") who will be the individual responsible for conduct and supervision of the derivative trading or advising operations of the entity. This individual will typically be the senior staff member responsible for derivatives trading or advising activity at the registrant.

For organizations that have derivatives trading or advising as their primary business, the UDP will typically be the president, chief executive officer or someone holding a comparable position. For entities where derivatives trading or advising is merely one part of the organizations business, the UDP will typically be the individual responsible for the arm of the business that conducts derivatives trading or advising.

The Committee also recommends that each registrant be required to appoint and register a chief compliance officer ("CCO") for their derivatives related business. The CCO will be the main point of contact for regulators. This individual will be responsible for promoting a culture of compliance, developing and implementing appropriate compliance systems and overseeing the operation of the firm's compliance systems relating to OTC derivatives, including:

- overseeing the operation of the registrant's compliance systems;
- establishing and updating compliance policies and procedures;
- monitoring and supervising actions to resolve compliance issues;
- reporting material compliance issues to the registrant's board of directors; and
- providing the registrant's board of directors with a status report on compliance systems on at least an annual basis.

The Committee also recommends that each registrant be required to appoint and register a chief risk officer ("CRO") who will report to the risk committee of the registrant's board of directors. The securities registration regime does not require the appointment of a chief risk officer. The Committee believes that persons holding positions in derivatives must address risks that normally do not exist when holding a securities position[55] and that derivatives registrants should be subject to an obligation to monitor risks on a continuous basis. As such, the Committee believes that all derivatives registrants should be required to register a CRO that will be responsible for the development and ongoing operation of a risk management framework that can effectively identify, measure, monitor and manage derivatives-related risks, including appropriate supervisory policies and procedures, including:

- developing clear policies and procedures to implement the risk management framework;
- overseeing the operation of the registrant's risk framework's systems, including conducting regular reviews of the internal risk management framework;

[55] These risks stem from a variety of factors including, but not limited to, the risk resulting from leverage that exists in many types of derivatives contracts, counterparty risk related to trading counterparties and, in many cases, an inability to liquidate an OTC derivative position during the term of the derivatives contract. In this footnote leverage refers to the fact that a party's potential liability under a derivatives contract can exceed the original cost of entering into the contract, or the original exposure under the contract, by a significant amount due to changes in the market value of the derivative or in asset that underlies the derivative.

- ensuring that appropriate risk management tools are employed to identify excessive or otherwise inappropriate risk taking;
- ensuring that derivatives activities are consistent with pre-determined objectives and strategies established by the registrant's board of directors;
- monitoring compliance with risk management policies and procedures;
- reviewing, testing and, if necessary, updating risk management systems; and
- providing the registrant's senior management team and board of directors with regular reports, at least on a quarterly basis, relating to the risk management framework, risks related to OTC derivatives and the management of those risks.

The Committee recommends that individuals acting as CCO and CRO be subject to proficiency requirements to ensure that they have the expertise and experience in relation to both compliance and the derivatives market to perform their role. The Committee further recommends that no individual may simultaneously act as UDP, CCO and CRO however in certain situations, such as where the entity is very small in size, one individual may be allowed to fill more than one role. Entities that are registered as securities dealers or advisers may have the same individual registered as the UDP or CCO of both the securities registrant and the derivatives registrant.

(iii) *Record Keeping*

The Committee recommends that registrants be required to maintain an effective record keeping system in relation to their derivatives related business including records of all derivatives trades where the registrant:

- is the counterparty to the trade;
- acts as an intermediary on behalf of a client or has provided clearing services to a client or counterparty; or
- provides advice to a client.

In addition, registrants should be required to maintain adequate records to document the risks and exposures relating to derivatives trading activities that they have been involved in whether as a counterparty, intermediary or adviser. Records will be required in a durable and intelligible form, capable of being easily accessed and printed.

The Committee recommends that registrants be required to maintain, at a minimum:

- in the case of derivatives dealers or LDPs, transaction records that fully document all transactions entered into by the registrant as principal and, in the case of a derivatives dealer, transactions where the dealer acts as an intermediary on behalf of clients, including records relating to the current valuation of the transaction and exposures resulting from the transaction. These records would include:
    - for OTC derivatives trades and where appropriate for derivatives trades executed on a trading facility, information identifying the counterparty to each derivatives trade;
    - records of all communication with clients or counterparties relating to the terms and conditions of a derivatives contract, including a record of when such communications occurred;
    - documents describing the transaction including the contract and all documents referenced in that contract;
    - records of all reports made to a trade repository;
    - records of interactions with clearing agencies, clearing houses and central counterparties and with third-parties providing clearing services;
    - records of all transactions where the registrant is facilitating the clearing of a derivatives trade on behalf of another person;
    - records regarding all collateral requirements arising from transactions not cleared through a clearing agency, clearing house or central counterparty, including records of collateral requirements, records of collateral held and collateral delivered pursuant to a derivatives trade;

- records relating to collateral held at third-party custodians including the identity of the custodians, amount and types of collateral received or delivered, and information of the counterparties in which the custodian is holding the collateral for;
- records of all orders entered on a derivatives trading facility, including a facility operated by the derivatives dealer, and a record of all trades executed on or reported to such facility; and
- information used to monitor and assess the registrant's risk exposure or the risk exposure of a client or counterparty of the registrant;

- in the case of derivatives dealers and derivatives advisers, maintain records to:
  - create an audit trail for communications with clients or counterparties pertaining to:
    - client or counterparty instructions and orders; and
    - if applicable, the advice provided to clients or counterparties, including, where applicable suitability advice, relating to derivatives trades; and
  - records of complaints made by clients or counterparties.

(iv) *Complaint handling*

The Committee recommends that registrants be required to document and, in a manner that is fair and reasonable, respond to each complaint made by any client or counterparty in relation to any of the registrant's activities relating to derivatives trading. All responses should be approved by the registrant's UDP or CCO.

(d) Honest Dealing

Each Canadian jurisdiction requires securities registrants to deal with clients fairly, honestly and in good faith.[56] The CFTC has imposed fair dealing requirement on all registrants including both swap dealers and major swap participants to communicate in a fair and balanced manner based on principles of fair dealing and good faith. [57]

The Committee recognizes that the derivatives market is different than the securities market. Often derivatives trades are executed between two large and sophisticated counterparties that negotiate the terms of a derivatives trade in the same way they would negotiate any commercial contract. Imposing a fair dealing requirement on derivatives dealers and LDPs in such circumstances is unnecessary to protect the interests of the registrant's counterparties and would place the registered entity at a disadvantage.

However the Committee does believe that registrants should be subject to a basic obligation to act honestly and in good faith whenever they provide advising or trading services to clients or trade with counterparties.

Recommendation

The Committee recommends that all registrants be subject to an obligation to act honestly and in good faith when trading in or advising on derivatives. All derivatives registrants should be precluded from misleading clients or counterparties or making any misrepresentation, including through omission, to a counterparty relating to: (i) any materials terms of a derivatives trade; or (ii) any material matters related to the market for the derivative being traded. Derivatives registrants should avoid making incomplete, inaccurate or unwarranted claims, opinions or forecasts in their communications with clients and counterparties or potential clients and counterparties. This requirement is not intended to impact a derivatives dealer's ability to negotiate commercial terms of a derivatives contract that benefit it where the contract will be between the derivatives dealer and its counterparty.

Derivatives dealers acting as an intermediary or trading with counterparties that are non-qualified parties and derivatives advisers will be subject to additional business conduct requirements, including the requirement to deal fairly, honestly and in good faith. These business conduct requirement will be discussed in part 7.2(b) below.

[56] For example, see British Columbia's Securities Rules (B.C. Reg. 194/97 under the B.C. *Securities Act* and OSC Rule 31-505 – *Conditions of Registration.*

[57] 17 CFR 23, section 23.433.

Q13: Is the Committee's proposal to impose a requirement on registrants to "act honestly and in good faith" appropriate?

(e) Requirements Relating to Client/Counterparty Assets

In any situation where a registered entity holds client or counterparty assets, including collateral provided by the client or counterparty under a derivatives trade, there is a risk that such funds can be misappropriated or subject to claims by third-parties.

The Committee outlined specific requirement relating to client or counterparty assets held by clearing agencies and clearing members of clearing agencies in the Committee's Consultation Paper 91-404 – *Derivatives: Segregation and Portability in OTC Derivatives Clearing*.[58] Specific requirements applicable to collateral posted by clients and counterparties in uncleared trades will be described in the future CSA paper dealing with capital and collateral requirements.

Q14: Are the requirements described appropriate registration requirements for derivatives dealers, derivatives advisers and LDPs? Are there any additional regulatory requirements that should apply to all categories of registrants? Please explain your answers.

7.2 Additional Regulatory Requirements Applicable only to Derivatives Dealers and Derivatives Advisers

(a) Gatekeeper Requirements

The Committee expects derivatives dealers to have sufficient knowledge of their clients and counterparties to allow them to assess the risks that these entities represent to the dealer or the capital markets. Derivatives advisers should have the same level of knowledge of their clients.

Recommendation

The Committee recommends that derivatives dealers and derivatives advisers be required to obtain sufficient information relating to their clients and, in the case of derivatives dealers their counterparties, to allow them to act as a gatekeeper with the objective of ensuring market integrity and allow the dealer to assess their counterparty risks. In particular they should be aware of:

- the identity of their client or counterparty and, if they are not an individual, the identities of the entities that either directly or indirectly control the client or counterparty;
- potential compliance issues that may relate to the client or counterparty (for example past regulatory issues that they or their staff may have had, their access to material non-public information relating to derivative or the asset underlying the derivative); and
- other information necessary to apply anti-money laundering legislation or other comparable regulatory requirements.

(b) Registration Requirements to Protect Derivative Market Participants

(i) *Background*

The Committee believes that registered entities that have clients or counterparties that rely on their advice when conducting a derivatives trade should be subject to additional registration requirements to protect the interests of those clients and counterparties.[59] These additional registration requirements will apply where:

- a derivatives adviser is providing advice to clients;
- a derivatives dealer is providing trading related services to a clients; and

[58] Report available on various CSA websites including:

http://www.albertasecurities.com/securitiesLaw/Regulatory%20Instruments/9/Canadian%20Securities%20Administrators%20Consultation%20Paper%2091-404%20Derivatives%20%e2%80%93%20Segregation%20and%20Portability%20in%20OTC%20Derivatives%20C/4100530-v1-CSA_Consult_Paper_91-404_Derivatives_-_Seg_and_Port_in_OTC_Der_Clrng.pdf

http://www.bcsc.bc.ca/uploadedFiles/securitieslaw/policy9/91-404_[CSAConsultationPaper].pdf

http://www.osc.gov.on.ca/documents/en/Securities-Category9/csa_20120210_91-404_segregation-portability.pdf

[59] An explanation of the usage of the terms "client" and "counterparty" is provided in footnote 5 to this paper.

- if the second alternative described below is implemented, where a derivatives dealer is trading with a counterparty that is a non-qualified party unless that counterparty has retained the services of an independent, registered derivatives adviser.

(ii) *Alternative Proposals where a Derivatives Dealer trades with Non-Qualified Parties*

The Committee recognizes that a conflict of interest will exist where a derivatives dealer enters into a transaction with a counterparty that is a non-qualified party that relies on that derivative dealer for direction or advice in relation to the trade. The Committee is considering two alternatives for addressing this conflict of interest.

First Alternative

The first alternative would preclude all derivatives dealers from entering into trades with counterparties that are non-qualified parties unless those counterparties receive advice from a registered derivatives adviser in relation to that transaction. The adviser should be independent from the derivatives dealer that will be the counterparty to the proposed transaction.

This alternative will effectively address the fundamental conflict of interest that will exist between a derivatives dealer and counterparties that are non-qualified parties. In each case the counterparty will be assured that it will receive unbiased advice. The Committee is, however, concerned that this alternative may result in extra costs that would discourage non-qualified parties from participating in the market, including discouraging them from hedging risks.

Second Alternative

The second alternative would require that the derivatives dealer inform counterparties that are non-qualified parties that there is a conflict of interest and provide details of the conflict in writing. In addition, the dealer would be required to advise the counterparty that they have the right to obtain independent advice before entering into the transaction. If the non-qualified party chooses not to have an adviser for that transaction, they would have to sign an acknowledgement indicating that they were electing not to obtain independent advice.

The Committee is concerned that the elements of the second proposal may not be effective in addressing the inherit conflict of interest with their counterparty.

(iii) *Business Conduct Requirements*

The Committee recommends that derivatives advisers, derivatives dealers acting as an intermediary on behalf of clients and, if the second alternative described in part 7.2(b)((ii) above is implemented, derivatives dealers trading with counterparties that are non-qualified parties[60] be subject to the additional requirements described below. The business conduct requirements described in this part are comparable to the obligations that swaps dealers owe to clients, including clients that are "special entities"[61] under U.S. regulations.[62]

The requirements described in this part 7.2(b)(iii) will not apply to a derivatives dealer where:

- the counterparty to the trade has a registered derivatives dealer trading on their behalf or is being advised on the trade by a registered derivatives adviser;

- the relationship between the derivatives dealer and the counterparty to a trade is solely the result of being counterparties to a derivatives trade executed through the facilities of a publicly accessible, multi-dealer trading platform; or

- the derivatives dealer's services in relation to a trade are limited to providing clearing services to a counterparty to the trade.

[60] The requirements will only apply to derivatives dealers trading with counterparties that are non-qualified persons if the second option described earlier in the paper is adopted. If the first option is chosen derivatives dealers will only be able to trade with counterparties that are non-qualified persons where that person has retained the services of an independent derivatives adviser. Where such an adviser has been retained, a derivatives dealer would not be subject to any of the obligations described below.

[61] Under U.S. legislation, special entities include federal agencies, states, state agencies, cities and other political subdivisions of a state, employee benefit plans, governmental plans and endowments.

[62] The concept of special entities under U.S. regulations is very different from the concept of non-qualified party discussed above. The Committee is not recommending the adoption of a special entity concept. Canadian entities that would be comparable to U.S. "special entities" (as that term is defined in both the U.S. *Commodities Exchange Act* [62] and *Securities Exchange Act of 1934*[62]), may or may not be a qualified party to derivatives trades.

(A) *Know your client/counterparty*

The Committee recommends that, before (a) trading on behalf of a client when acting as an intermediary in relation to a trade, or (b) if the second alternative described in part 7.2(b)((ii) above is implemented, trading with a counterparty that is a non-qualified party, the derivatives dealer and its representatives be required to take reasonable steps to know its client under (a) or counterparty under (b). Similarly a derivatives adviser and its representatives should be required to take reasonable steps to know each of its clients. Knowing a client or counterparty will include:

- understanding the person's financial circumstances and level of understanding of derivatives and the derivatives market;
- understanding the nature of the person's business activities and the types of derivatives trades the person intends to execute;
- understanding the person's general objectives for entering into derivatives trades, including whether their trades will generally be for speculative or hedging purposes;
- where the trade is for hedging purposes, understanding the risks that the person is seeking to manage; and
- understanding the person's risk tolerances.

The Committee recommends that derivatives dealers and derivatives advisers be required to take reasonable steps to update the information:

- on a periodic basis; and
- where the person takes steps to enter into a transaction that is inconsistent with the person's general objectives or is materially inconsistent with their past trading activity.

(B) *Suitability*

The Committee recommends that, before (a) trading on behalf of a client or when acting as an intermediary in relation to a trade or, (b) if the second alternative described in part 7.2(b)((ii) above is implemented, trading with a counterparty that is a non-qualified party, the derivatives dealers and their representatives be required to determine that the derivative trade is suitable for their client under (a) or counterparty under (b). Derivatives advisers and their representatives will be subject to the same suitability obligation when advising a client. The registrant will meet this requirement by:

- determining whether a derivative is a suitable instrument for the person, considering their objectives and risk tolerances; and
- where the derivatives dealer or derivatives adviser determines that a derivatives trade is suitable, the derivatives dealer or derivatives adviser must determine the suitability of a specific derivatives instrument for that person. The dealer must have an adequate understanding of the features and risks of the specific derivative that they are trading and must determine that these features and risks are suitable given the needs of the person.

When considering suitability the derivatives registrant must consider both the immediate impact of the trade as well as future risks resulting from the trade. Where a trade is for hedging purposes the derivatives registrant should determine whether existing trades are likely to remain suitable risk management tools in the future. Where the relationship between the registrant and its client or counterparty is ongoing, the registrant must, periodically, consider whether the outstanding positions of the client or counterparty continue to effectively achieve their objectives.

(C) *Conflicts of Interest*

The Committee recommends that registered derivatives dealers and their representatives, when (a) trading on behalf of a client or acting as an intermediary in relation to a trade or, (b) if the second alternative described in part 7.2(b)((ii) above is implemented, trading with a counterparty that is a non-qualified party, derivatives dealers and those entities' representatives be subject to a requirement to take reasonable steps to identify:

- existing material conflicts of interest; and
- material conflicts of interest that reasonably would be expected to arise during the duration of a derivatives trade,

between themselves and each of those clients and counterparties. Derivatives advisers and their representatives will be subject to the same obligation when advising a client.

Where a representative identifies a material conflict of interest they would be subject to a requirement to report the conflict to the supervisor or other person with the authority to address conflict of interest issues. Where the derivatives dealer or derivatives adviser has identified a material conflict of interest, it would be required to:

- take reasonable steps to address the conflict of interest; or
- if the conflict can not be reasonably addressed, either:
    - disclose to each applicable client and counterparty that is a non-qualified party, in writing and in a timely manner:
        - the nature and extent of the conflict of interest and describe any actions the dealer will take to manage the conflict or interest; and
        - that the counterparty has the right to obtain third-party advice before entering into the trade; or
    - where disclosure is not an adequate method for addressing the conflict of interest, take steps to end the situations that result in conflicts of interest.

(D) *Fair Dealing*

In addition to the general obligation to act honestly when interacting with their clients or counterparties, as discussed in part 7.1(d), derivatives dealers and their representatives, when (a) trading on behalf of a client or acting as an intermediary in relation to a trade or, (b) if the second alternative described in part 7.2(b)((ii) above is implemented, trading with a counterparty that is a non-qualified party, should be required to deal fairly, honestly and in good faith. Derivatives advisers and their representatives will be subject to the same obligation to act fairly, honestly and in good faith when advising a client. This will include:

- not making any incomplete, inaccurate or unwarranted claims, opinions or forecasts;
- providing information that gives the client or counterparty a sound basis to evaluate the facts of the derivatives trade;
- providing balanced information relating to the benefits, opportunities, costs and risks relating to a derivatives trade; and
- when trading with a non-qualified party as a counterparty, ensuring that the terms of the trade are fair, balancing the interests of the derivatives dealer and its counterparty.

The obligation to deal fairly, honestly and in good faith will also apply to the registered representatives of derivatives dealers and advisers.

7.3 Additional Regulatory Requirements Applicable only to Derivatives Dealers

The requirements described in this part apply regardless of whether the derivatives dealer's clients have retained the services of a derivatives adviser in relation to the trade.

(a) Pre-trade Reports

The Committee recommends that derivatives dealers acting on behalf of clients or, if the second alternative described in part 7.2(b)((ii) above is implemented, counterparties that are non-qualified parties be required to provide additional information to allow the client or counterparty to understand the terms of a trade and the costs that they will incur to execute the trade. These transaction reports should be delivered prior to the trade being executed. This information should include:

- disclosure of all fees payable by the client or counterparty in relation to the trade, including fees relating to the clearing and settlement of the trade;

- disclosure of all other compensation to be paid by the client or counterparty to the derivatives dealer in relation to the trade;[63] and

- a detailed description of the risks to and the rights and responsibilities of the client or counterparty under the terms of the trade.

(b) Post-trade Reports

The Committee recommends that derivatives dealers acting on behalf of clients or, if the second alternative described in part 7.2(b)((ii) above is implemented, counterparties that are non-qualified parties be required to provide a trade confirmation within a reasonable time after the conclusion of the derivatives trade.

The trade confirmation should describe the principal economic terms of the trade. Specific requirements relating to the trade confirmation will be described in the model provincial rule on registration.

(c) Account Statements

The Committee recommends that derivatives dealers be required to deliver regular statements to clients and counterparties that are non-qualified parties describing their outstanding positions relating to trades executed with the derivatives dealer or on their behalf by the derivatives dealer. In addition to describing each outstanding trade, the statements would include a variety of information, including:

- a description of all material amendments to outstanding derivatives contracts during the reporting period, including terminations, assignments, selling, or other acquisition or disposition of rights and obligations;

- the current market value of the derivative and a description of how it is calculated;

- the client's exposure resulting from the derivative contract; and

- types and current value of the collateral received from the client.

Q15: Should derivatives dealers dealing with qualified parties be subject to business conduct standards such as the ones described in part 7.2(b)(iii) above? If so, please explain what standards should apply.

Q16: Do you have a preference between the two proposals relating to the regulation of a derivatives dealer trading with counterparties that are non-qualified parties? Is there another option to address the conflict of interest that the Committee should consider? Please explain your answer.

Q17: Are the recommended requirements appropriate for registrants that are derivatives dealers? If not please explain. Are there any additional regulatory requirements that should apply to registered derivatives dealers?

Q18: Are the recommended requirements appropriate for registrants that are derivatives advisers? If not please explain. Are there any additional regulatory requirements that should apply to registered derivatives advisers?

8. EXEMPTIONS FROM REGISTRATION OR REGISTRATION REQUIREMENTS

8.1 Exemption from Registration Requirements

(a) Regulated Persons

Some persons triggering registration as a derivatives dealer, a derivatives adviser or large derivatives participants will be subject to regulation by other entities with regulatory responsibilities. Where such a regime provides for equivalent supervision and regulatory requirements that are monitored and enforced to the satisfaction of Canadian securities regulators, those persons should not be subject to redundant requirements.

Recommendation

The Committee recommends that Canadian securities regulators analyze existing regulatory regimes, including requirements, compliance monitoring and enforcement, imposed by other Canadian regulatory authorities to determine whether those regimes

[63] This requirement is intended to impose obligations to disclose compensation earned as a direct result of executing the derivatives trade and is not intended to impose a requirement that the registrant disclose compensation or profit resulting from subsequent transactions related to the derivatives trade or from changes in the value of the derivatives position.

impose regulatory requirements that are, in their outcome, equivalent to those that would be implemented by securities regulatory authorities. The Committee further recommends that exemptions from registration requirements be adopted where equivalent regulatory regimes are in place.

(b) Foreign Derivatives Dealers and Advisers

An entity that is resident outside of Canada may trigger registration as a derivatives adviser or as a derivatives dealer in a Canadian jurisdiction. If such an entity is regulated as a derivatives adviser or a derivatives dealer, as applicable, in their home jurisdiction, they will be subject to regulatory requirements at home and in Canada. These requirements may be overlapping and, in some cases, conflicting.

Recommendation

The Committee recommends that foreign derivatives advisers and derivatives dealers be exempted from specific regulatory requirements in Canada where they are subject to an equivalent regulatory regime in their home jurisdiction. In these circumstances the foreign entity will still be required to register in all Canadian jurisdictions where it carries on business.

Where an equivalent regime does exist in the foreign entity's home jurisdiction, exemptions may be provided for requirements that apply to the entity, including:

- financial and solvency requirements;
- requirements relating to entity-level controls including requirements related to compliance and risk management systems; and
- specific requirements relating to entity-level record keeping.

These entities will not be exempt from the registration requirements described in parts 7.2(iii) and 7.3, if applicable, when dealing with Canadian clients and counterparties.

To benefit from the exemption foreign derivatives dealers and advisers will be expected to provide the relevant Canadian authorities with adequate information to allow them to determine whether the regulatory regime in their home jurisdiction is substantially equivalent to Canadian requirements.

This recommendation will require foreign dealers trading with Canadian counterparties, including qualified parties, or for derivatives dealers or derivatives advisers that act for Canadian clients, to register in the Canadian jurisdiction where the client or counterparty resides before entering into the derivatives trade or providing advice. This registration requirement will apply in all circumstances, including where the Canadian counterparty or client has operations in the foreign derivative dealer's home jurisdiction and the trade is booked there.

(c) Foreign LDPs

The Committee understands that an entity that would trigger the obligation to register as a LDP in any Canadian jurisdiction, but is a foreign resident, may already be subject to regulation in their home jurisdiction. The imposition of equivalent requirements in Canada could lead to duplicate regulation and would be inefficient.

Recommendation

The Committee recommends that foreign entities triggering the obligation to register as a LDP be required to register in each jurisdiction where their trading obligations exceed the prescribed thresholds. The Committee also recommends that foreign LDPs be exempted from specific registration requirements where that entity is subject to equivalent regulatory requirements in its home jurisdiction.

To benefit from the exemption large derivatives participants will be expected to provide the relevant Canadian authorities with adequate information to allow them to determine whether the regulatory requirements in their home jurisdiction are substantially equivalent to the applicable Canadian requirements.

Q19: The Committee is recommending that foreign resident derivative dealers dealing with Canadian entities that are qualified parties be required to register but be exempt from a number of registration requirements. Is this recommendation appropriate? Please explain.

Q20: Is the Committee's recommendation to exempt foreign resident derivatives dealers from Canadian registration requirements where equivalent requirements apply in their home jurisdictions appropriate? Please explain.

Q21: Should foreign derivatives dealers or advisers not registered in Canada be exempt from registration requirements where such requirements solely result from such entities trading with the Canadian federal government, provincial governments or with the Bank of Canada?

8.2 Exemptions from the Requirement to Registration

(a) Dealers Providing Advice

Derivatives dealers will often provide clients or counterparties with advice as an element of trading services. Often this advice is in connection with a trade that the derivatives dealer could make on behalf of the client or counterparty and assists that client or counterparty in making trading decisions.

Recommendation

The Committee recommends that a person registered as a derivatives dealer be exempt from the obligation to register as a derivatives adviser where:

- the obligation to register as a derivatives adviser results solely from the provision of advice in relation to a derivatives trade;
- the advice is not in relation to an account over which that the derivatives dealer has discretionary trading authority;
- the derivatives dealer does not charge a fee for the provision of the advice; and
- the derivatives dealer has complied with all of the registration requirements applicable to a derivatives adviser as described in part 7 of this paper.

(b) Governments

In some cases municipal, provincial, territorial or federal governments, or crown corporations, may carry on activities that could trigger registration as a derivatives dealer, derivatives adviser or as a LDP.

Recommendation

The Committee recommends that Canadian federal, provincial, territorial and municipal governments not be subject to an obligation to register. The Committee also recommends that federal and provincial crown corporations whose obligations are fully guaranteed by the applicable government should be exempt from the requirement to register as a LDP or as a derivatives dealer where the entity's trading activity is restricted to trading as a counterparty with persons that are qualified parties. This exemption is appropriate as governments and crown corporations whose obligations are guaranteed represent little risk to the market as they can rely on government resources to satisfy their obligations. However, where these crown corporations are acting as a derivatives adviser or as a derivatives dealer intermediating trades or trading with non-qualified counterparties the clients and counterparties of these entities should benefit from the same regulatory protections that they would receive when dealing with derivatives advisers or derivatives dealers that are not crown corporations.

A crown corporation would not be exempt from a requirement to register where it:

- triggers registration as a derivatives adviser by advising entities that are not governments or crown corporations;
- triggers registration as a derivatives dealer and intermediates trades on behalf of clients that are not governments or crown corporations; or
- triggers registration as a derivatives dealer and trades with counterparties that are non-qualified parties.

Where a crown corporation is subject to an obligation to register the Committee recommends that the corporation be exempted from complying with the regulatory requirements described in part 7.1 of this paper where that corporation is subject to equivalent regulatory or oversight requirements.

The Committee does not recommend an exemption from the requirement to register for or from registration requirements for:

- domestic crown corporations whose obligations are not guaranteed by the applicable government;
- corporations owned by municipal governments;
- foreign governments; or
- corporations owned or controlled by foreign governments.

Foreign governments and corporations owned by foreign governments may benefit from the exemption for foreign derivatives dealers and advisers set out in part 8.1(b) above where such an exemption is applicable.

Q22: Is the proposal to exempt crown corporations whose obligations are fully guaranteed by the applicable government from registration as a LDP and, in the circumstances described, as a derivatives dealer appropriate? Should entities such as crown corporations whose obligations are not fully guaranteed, foreign governments or corporation owned or controlled by foreign governments benefit from comparable exemptions? Please provide an explanation for your answer.

(c) Clearing Agencies

Clearing agencies,[64] particularly central counterparties, may carry out a variety of activities which may cause them to carrying on the business of trading derivatives. The Committee recommends that, where a clearing agency has been recognized (or exempt from recognition) not be subject to a requirement to register as a derivatives dealer, derivatives adviser or a LDP where the obligation to register results solely from carrying on the ordinary business as a clearing agency.

(d) Transactions with Affiliated Entities

The CFTC in its final rule defining "swap dealer" has indicated that transaction between majority owned affiliates be excluded from swap dealer determination. The CFTC noted that swaps "between persons under common control may not involve interaction with unaffiliated persons that we believe is the hallmark of the elements that refer to holding oneself out as a dealer or being commonly known as a dealer".[65]

The Committee takes a similar view. Interaction between affiliated entities would not be activity that would typically be considered to be the business of trading.

Recommendation

The Committee recommends that persons that would be subject to registration as either a derivatives dealer or a derivatives adviser solely as a result of trading with or on behalf of or providing derivatives-related advice to a person that is their affiliate be exempt from the requirement to register as a derivatives dealer or derivatives adviser.

For the purposes of this part, two entities will be considered to be affiliated if:

- one is controlled, either directly or indirectly, by the other;
- both are controlled, either directly or indirectly, by a common entity.

Q23: Are the proposed registration exemptions appropriate? Are there additional exemptions from the obligation to register or from registration requirements that should be considered but that have not been listed?

9. QUESTIONS FOR PUBLIC COMMENT

Q1: Should investment funds be subject to the same registration triggers as other derivatives market participants? If not, what registration triggers should be applied to investment funds?

[64] In some jurisdictions clearing agencies are referred to as clearing houses. All references to clearing agencies in this paper are intended to also refer to clearing houses.

[65] Federal Register Volume 77, Issue 100\340\.

Q2: What is the appropriate standard for determining whether a person is a qualified party? Should the standard be based on the financial resources or the proficiency of the client or counterparty? If the standard is based on financial resources should it be based on the net assets of the client or counterparty, gross annual revenues of the client or counterparty, or some other factor or factors?

Q3: Should registration as a derivatives dealer be subject to a *de minimis* exemption similar to the exemption adopted by U.S. regulators? Please indicate why such an exemption is appropriate.

Q4: Are derivatives dealer, derivatives adviser and LDP the correct registration categories? Should the Committee consider recommending other or additional categories?

Q5: Are the factors listed the correct factors that should be considered in determining whether a person is in the business of trading derivatives? Please explain your answer.

Q6: The Committee is not proposing to include frequent derivatives trading activity as a factor that we will consider when determining whether a person triggers registration as a derivative dealer. Should frequent derivatives trading activity trigger an obligation to register where an entity is not otherwise subject to a requirement to register as a derivatives dealer or a LDP? Should entities that are carrying on frequent derivatives trading activity for speculative purposes be subject to a different registration trigger than entities trading primarily for the purpose of managing their business risks?

Q7: Is the proposal to impose derivatives dealer registration requirements on parties providing clearing services appropriate? Should an entity providing these clearing services only to qualified parties be exempt from regulation as a derivatives dealer?

Q8: Are the factors listed the correct factors that should be considered in determining whether a person is in the business of advising on derivatives?

Q9: Are the factors listed for determining whether an entity is a LDP appropriate? If not what factors should be considered? What factors should the Committee consider in determining whether an entity, as a result of its derivatives market exposures, could represent a serious adverse risk to the financial stability of Canada or a province or territory of Canada?

Q10: Is the Committee's proposal to only register derivative dealer representatives where they are dealing with clients or when dealing with counterparties that are non-qualified parties appropriate?

Q11: Is it appropriate to impose category or class specific proficiency requirements?

Q12: Is the proposed approach to establishing proficiency requirements appropriate?

Q13: Is the Committee's proposal to impose a requirement on registrants to "act honestly and in good faith" appropriate?

Q14: Are the requirements described appropriate registration requirements for derivatives dealers, derivatives advisers and LDPs? Are there any additional regulatory requirements that should apply to all categories of registrants? Please explain your answers.

Q15: Should derivatives dealers dealing with qualified parties be subject to business conduct standards such as the ones described in part 7.2(b)(iii) above? If so, please explain what standards should apply.

Q16: Do you have a preference between the two proposals relating to the regulation of a derivatives dealer trading with counterparties that are non-qualified parties? Is there another option to address the conflict of interest that the Committee should consider? Please explain your answer.

Q17: Are the recommended requirements appropriate for registrants that are derivatives dealers? If not please explain. Are there any additional regulatory requirements that should apply to registered derivatives dealers?

Q18: Are the recommended requirements appropriate for registrants that are derivatives advisers? If not please explain. Are there any additional regulatory requirements that should apply to registered derivatives advisers?

Q19: The Committee is recommending that foreign resident derivative dealers dealing with Canadian entities that are qualified parties be required to register but be exempt from a number of registration requirements. Is this recommendation appropriate? Please explain.

Q20: Is the Committee's recommendation to exempt foreign resident derivatives dealers from Canadian registration requirements where equivalent requirements apply in their home jurisdictions appropriate? Please explain.

Q21: Should foreign derivatives dealers or advisers not registered in Canada be exempt from the obligation to register where such requirements solely result from such entities trading with the Canadian federal government or provincial governments or with the Bank of Canada?

Q21: Is the proposal to exempt crown corporations whose obligations are fully guaranteed by the applicable government from registration as a LDP and, in the circumstances described, as a derivatives dealer appropriate? Should entities such as crown corporations whose obligations are not fully guaranteed, foreign governments or corporation owned or controlled by foreign governments benefit from comparable exemptions? Please provide an explanation for your answer.

Q23: Are the proposed registration exemptions appropriate? Are there additional exemptions from the obligation to register or from registration requirements that should be considered but that have not been listed?

Schedule A

Registration Requirement	Derivative Dealers	Derivative Advisers	Large Derivative Participants	Individual Registrants
Proficiency requirements for staff (7.1(a))	X	X	X	
Minimum capital requirements (7.1(b)(i))	X	X	X	
Margin requirements (7.1(b)(ii))	X		X	
Insurance requirements (7.1(b)(iii))	X	X	X	
Financial records and reporting (7.1(b)(iv))	X	X	X	
Compliance and Risk Management Systems (7.1(c)(i))	X	X	X	X
Appointment of UDP, CCO and CRO (7.1(c)(ii))	X	X	X	
Record keeping (7.1(c)(iii))	X	X	X	
Complaint handling (7.1(c)(iv))	X	X	X	
Honest Dealing (7.1(d))	X	X	X	
Client/counterparty assets (7.1(e))	X		X	
Gatekeeper obligation (7.2(a))	X	X		
Know your client/counterparty (7.2(b)(iii)(A))	X*	X		X*
Suitability (7.2(b)(iii)(B))	X*	X		X*
Conflicts of interest (7.2(b)(iii)(C))	X*	X		X*
Fair dealing (7.2(b)(iii)(D))	X*	X		X*
Pre-trade reports (7.3(a))	X*			
Post-trade reports (7.3(b))	X*			
Client account statements (7.3(c))	X*			

* These requirements only apply to dealers and their representatives when trading for clients or with counterparties that are non-qualified parties.

1.1.3 Notice of Agreement among certain provincial securities regulators in support of the outsourcing and management of the System for Electronic Document Analysis and Retrieval (SEDAR), the System for Electronic Disclosure by Insiders (SEDI), the National Registration Database (NRD), and certain other nationally shared information technology systems that serve securities regulatory purposes and functions (CSA National Systems)

April 18, 2013

NOTICE OF AGREEMENT AMONG CERTAIN PROVINCIAL SECURITIES REGULATORS IN SUPPORT OF THE OUTSOURCING AND MANAGEMENT OF THE SYSTEM FOR ELECTRONIC DOCUMENT ANALYSIS AND RETRIEVAL (SEDAR), THE SYSTEM FOR ELECTRONIC DISCLOSURE BY INSIDERS (SEDI), THE NATIONAL REGISTRATION DATABASE (NRD), AND CERTAIN OTHER NATIONALLY SHARED INFORMATION TECHNOLOGY SYSTEMS THAT SERVE SECURITIES REGULATORY PURPOSES AND FUNCTIONS (CSA NATIONAL SYSTEMS)

The Ontario Securities Commission, the British Columbia Securities Commission, the Alberta Securities Commission and the Autorité des marchés financiers have recently entered an agreement addressing a number of governance matters relating to the oversight and management of the new service provider that will operate the CSA National Systems once the agreements with the current service provider expire (Agreement).

The Agreement establishes a governance framework for the oversight and management of matters related to the CSA National Systems, provides for the designation of a party to perform certain functions relating to the operation of the CSA National Systems on behalf of the other parties, outlines how user fees will be established, collected and used, and addresses the allocation and payment of liabilities arising in connection with supplier agreements and the CSA National Systems.

The Agreement is being published today in the Bulletin in accordance with section 143.10 of the *Securities Act*. This agreement was delivered to the Minister of Finance on April 11, 2013, and is subject to Ministerial approval.

Questions may be referred to:

Minami Ganaha
Senior Legal IT Counsel
General Counsel's Office
(416) 593 – 8170
mganaha@osc.gov.on.ca

AGREEMENT IN SUPPORT OF THE OUTSOURCING AND MANAGEMENT OF THE CSA NATIONAL SYSTEMS

This agreement ("**Agreement**") is entered into as of April 2, 2013 ("**Effective Date**") among the British Columbia Securities Commission ("**BCSC**"), Alberta Securities Commission ("**ASC**"), Ontario Securities Commission ("**OSC**") and Autorité des marchés financiers ("**AMF**") (collectively, the "**Principal Administrators**" or "**PAs**").

Recitals:

A. The Principal Administrators (together with the Investment Industry Regulatory Organization of Canada in the case of NRD (as defined below)) are parties to certain agreements with CDS Inc. pursuant to which CDS Inc. operates the following information technology systems on behalf and for the benefit of the members of the Canadian Securities Administrators ("CSA") and certain self – regulatory organizations:

(a) **"SEDAR"** – the System for Electronic Document Analysis and Retrieval and the associated SEDAR public access website – www.sedar.com;

(b) **"SEDI"** – the System for Electronic Disclosure by Insiders accessible via www.sedi.ca; and

(c) **"NRD"** – the National Registration Database accessible via www.nrd.ca,

(each a "**CSA National System**", and collectively with other CSA shared information technology systems that serve securities regulatory purposes and functions, the "**CSA National Systems**").

B. The Principal Administrators wish to document certain agreements, understandings and arrangements between and among the Principal Administrators in connection with:

(a) in the immediate, the issuance of a request for proposals for the provision of "Systems Services and Administrative Processes for the CSA National Systems" (the "**Systems Operations RFP**"); and generally for the issuance of requests for proposals and similar competitive procurement processes ("**RFPs**") for the acquisition of goods and/or services relating to the CSA National Systems;

(b) in the immediate, the master services agreement resulting from the Systems Operations RFP (the "**Systems Operations MSA**"); and generally for agreements between third party service providers ("**Suppliers**") and the PAs ("**Supplier Agreements**") relating to the CSA National Systems; and

(c) certain operational functions relating to the CSA National Systems that will be undertaken by one or more PAs on behalf of the PAs as a group, rather than a new Supplier.

C. The CSA National Systems and the activities of the CSA IT Systems Office will be supervised by a governance committee, consisting of the Executive Directors or equivalents of each of the Principal Administrators together with the Executive Director or equivalent of another CSA member as selected by the other CSA members as a non – voting participant of said committee (the "**Governance Committee**").

D. Concurrent with the execution of this Agreement, the Principal Administrators are entering into an intellectual property ownership and licensing agreement to define their rights and obligations in respect of the intellectual property rights in the CSA National Systems (the "**IP Agreement**").

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Principal Administrators agree as follows:

1. RFP Process and RFP Representative.

(a) *Appointment.* The PAs may appoint, and delegate authority to, one or more representative PAs (each, an "**RFP Representative**") to issue RFPs relating to one or more CSA National Systems on behalf of the CSA, all of the PAs, or a subset thereof. For each such RFP:

(i) the RFP Representative will issue and manage the RFP and take the lead in negotiating the resulting contract (except in the case of a jointly issued RFP);

(ii) the Chief Information Officer (the "**CIO**") of the CSA IT Systems Office will represent the collective interests of the PAs and the CSA, and will be the business prime, reporting to and taking instructions from the Governance Committee;

(iii) the CSA IT Systems Office will instruct and work with and through the RFP Representative and its staff to prepare, issue and manage the RFP and the resulting negotiations and contract; external resources (e.g. legal counsel, specialist consultants) may be engaged upon approval of the Governance Committee; and

(iv) the Governance Committee will determine funding sources and budget for each RFP and the acquired goods or services, whether from System Fees (as defined below), Existing Surplus Amounts (as defined below), CSA funds, funds contributed by each of the PAs, or otherwise.

(b) *Appointment; RFP Specific Terms.* The appointment of an RFP Representative for any RFP to be issued on behalf of the CSA relating to one or more CSA National Systems, and any terms or conditions specific to that RFP, will be determined by the PAs through the Governance Committee.

(c) *Scope of Authority.* The general scope of the RFP Representative's authority to act on behalf of the PAs in connection with an RFP, and any limitations, are set out in Attachment 1 to this document.

2. Designated PAs.

(a) *Appointment.* The PAs may appoint, and delegate authority to, one or more representative PAs (each, a "**Designated PA**") to act as a Designated PA to perform one or more functions on behalf of all of the PAs.

(b) *Scope of Authority.* The general scope of a Designated PA's authority to act on behalf of the PAs, and any limitations, are set out in Attachment 2.

(c) *Specific Functions etc.* The appointment of a Designated PA and any specific functions, activities or limitations ascribed to a Designated PA will be determined by the PAs through the Governance Committee, and may be set forth in a schedule that, once mutually agreed, will be attached to and form part of this Agreement, or otherwise documented. The schedules in respect of the Systems Operations MSA and all ancillary documents associated therewith are attached to this document as Attachment 2(A), Attachment 2(B) and Attachment 2(C).

(d) *Funding.* The Governance Committee will determine how the costs and expenses (including resource salaries and fees) incurred by the Designated PA in performing the Designated PA's functions will be reimbursed, whether from System Fees (as defined below), Existing Surplus Amounts (as defined below), CSA funds, funds contributed by each of the PAs and others, or otherwise.

(e) *Resignation and Transition.* A Designated PA may not resign as Designated PA until a successor is appointed. The Governance Committee will use best efforts to agree upon and appoint a new Designated PA within 60 days of being notified of the current Designated PA's intention to resign. The outgoing and incoming Designated PA, with the guidance and assistance of the CIO of the CSA IT Systems Office, will develop and agree upon a transition plan that will ensure a seamless transition from one to the other.

3. Administrative Representative.

(a) *Appointment.* The Governance Committee will confirm the appointment of the CIO of the CSA IT Systems Office as the Administrative Representative under each Supplier Agreement (the "**Administrative Representative**").

(b) *Scope of Authority.* The general scope of the Administrative Representative's authority to act on behalf of the PAs under the Supplier Agreements, and any limitations, are set out in Attachment 3.

(c) *Specific Functions etc.* Any specific functions, activities or limitations ascribed to the Administrative Representative in connection with a particular Supplier Agreement will be determined by the Governance Committee, and may be set forth in a schedule that, once mutually agreed, will be attached to and form part of this Agreement, or otherwise documented.

4. Security and Integrity of the CSA National Systems. In order to protect the security and integrity of the CSA National Systems and associated data, each PA acknowledges and agrees that:

(a) it will only access or use the CSA National Systems using valid user IDs and passwords issued by either (i) the CSA IT Systems Office, or (ii) the PA itself pursuant to a delegated administration function, to specific employees or individual contract personnel of the PA; it will be entirely responsible for any access or use of the CSA National Systems and associated data by its employees and individual contract personnel, or by any

other person using a user ID of the PA; and it will implement and maintain security controls in accordance with industry standards to control the access and use of the CSA National Systems and associated data, and its user IDs and passwords;

(b) it will not use the CSA National Systems and associated data in any manner that, based on the reasonable knowledge or belief of such PA, could disable, impair or interfere with all or any part of the CSA National Systems and associated data, or their use by any other person; and

(c) if the PA, or anyone using any user ID of the PA, accesses or uses the CSA National Systems or associated data in a manner contrary to this Agreement, the CSA IT Systems Office may temporarily suspend the applicable user IDs or otherwise prevent or restrict access or use of all or part of the CSA National Systems and associated data in order to protect the security or integrity of same. Any such suspension shall continue until such time as the unauthorized access or use has ceased and appropriate measures and safeguards have been put in place by such PA in order to ensure that no further unauthorized access or use occurs.

5. System Fees and Fee Rule. Each PA acknowledges and agrees that:

(a) the operation, improvement and renewal of the CSA National Systems will be funded through:

(i) system user fees ("**System Fees**") imposed on filers under a National Instrument or regulation in each jurisdiction, as may be updated from time to time;

(ii) other revenues earned in connection with the CSA National Systems (for example, revenues earned in connection with data distribution) (collectively with System Fees, the "**Funds**"); and

(iii) surplus funds accumulated under operations agreements for SEDAR, SEDI and NRD between the PAs (and IIROC in the case of NRD) on one hand and CDS Inc. on the other hand ("**Existing Surplus Amounts**"), the administration and use of which are governed by surplus application agreements among the PAs (and IIROC in the case of NRD).

(b) if the PA is unable to adopt or update its rule / regulation for the payment of System Fees, the PA: (i) will be responsible for ensuring that an amount equal to the System Fees that would have been collected under a fee rule / regulation in its jurisdiction is otherwise collected and paid to a Designated PA; and (ii) will be responsible for any shortfall in such amounts;

(c) System Fees will be set by the Governance Committee in consultation with CSA members. The Governance Committee will consider the cost of operating, maintaining and enhancing the CSA National Systems when determining the System Fees.

6. **Use of Funds.** Each PA acknowledges and agrees that the Funds will be collected directly by a service provider and paid into a special purpose pool of funds to be managed for the PAs by one or more Designated PAs, and to be used by the PAs toward the payment of costs and expenses associated with the operation and development of the CSA National Systems (including any new national systems for the CSA developed from time to time), including:

(a) reducing fees payable by market participants or others in connection with the access and use of any CSA National System;

(b) any liabilities arising from or relating to the CSA National Systems or the operation, development or oversight thereof;

(c) paying or funding the costs and expenses of developing, modifying, enhancing, redesigning or replacing the CSA National Systems, including development of new national systems for the CSA;

(d) paying or funding any costs or expenses associated with the operation of the CSA National Systems, including paying or funding any costs or expenses:

(i) of third party service providers to perform functions in connection with the operation and development and/or oversight of the CSA National Systems;

(ii) of the CSA IT Systems Office (and any successor thereof);

(iii) associated with transitioning from CDS Inc. to one or more third party service providers, or transitioning from the current environment to any future proposed environment(s);

(iv) incurred by one or more PAs arising from or relating to a third party claim made in connection with any request for proposals or other process for the procurement of goods or services relating to a CSA National System or the operation thereof;

(v) of any Designated PA, including any third party liability arising from or relating to:

a. the Designated PA's performance of the Designated PA's functions on behalf of the Principal Administrators; or

b. any Supplier Agreements entered into by a Designated PA in the performance of, and in connection with, the Designated PA's functions on behalf of the PAs; and

(vi) incurred by a PA relating to the replacement of a Designated PA by a successor Designated PA; and

(e) such other costs and expenses relating to the CSA National Systems as may be authorized by the Governance Committee.

7. Rules and Regulations. Each PA will work with all other CSA members on, and use best efforts to ensure the enactment and approval of, all regulations, rules, companion policies, notices, exemption orders, blanket orders or similar directives, and all amendments thereof, as necessary within its jurisdiction to mandate the funding, use and operation of the CSA National Systems.

8. Term and Termination. This Agreement will commence on the Effective Date and will continue until the date when there are no RFPs or Supplier Agreements in effect and all Funds have been applied and distributed in accordance with this Agreement.

9. Withdrawal of a PA from this Agreement.

(a) *Notice.* A PA may only withdraw from this Agreement on no less than 180 days written notice provided that the PA has also withdrawn from all Supplier Agreements; if the withdrawing PA is also a Designated PA, such PA will be deemed to have given notice of its intention to resign as Designated PA in accordance with Section 2.

(b) *Withdrawal from a Supplier Agreement.* If a PA withdraws from a Supplier Agreement, it must do so in accordance with the terms thereof, and such PA will be responsible for all termination fees and charges, and any incremental cost increases incurred by the other PAs under that Supplier Agreement for the remainder of the then current term. The remaining PAs agree to use reasonable efforts to minimize such termination charges and incremental costs.

(c) *Continued Liabilities.* A withdrawing PA will remain liable for its share of any liabilities under this Agreement (as determined in accordance with Section 11) arising prior to the date of its withdrawal.

10. Representations and Warranties. Each of the PAs warrants and represents that the execution, delivery and performance of this Agreement: (a) are within its powers, (b) have been or will be duly authorized by all necessary proceedings, and (c) do not and will not contravene or constitute a default under, and do not and will not conflict with any judgment, decree or order, or any contract, agreement, or other undertaking or covenant applicable to such PA.

11. Allocation of Liability.

(a) *Third Party Liabilities of RFP Representative / Designated PAs.* To the extent that an RFP Representative incurs any third party liability arising from or relating to an RFP, or to the extent a Designated PA incurs any third party liability arising from or relating to a Supplier Agreement, the PAs hereby agree to pay such amounts from the Funds or Existing Surplus Amounts (subject to the terms of any applicable surplus application agreement). Notwithstanding the foregoing, the RFP Representative or Designated PA will be obligated to pay for any such amounts arising from any acts or omissions of such RFP Representative or Designated PA arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty hereunder by such RFP Representative or Designated PA.

(b) *Generally.* To the extent not covered by the foregoing, each of the PAs agrees that any third party liability arising from or relating to a Supplier Agreement, or arising from or relating to a CSA National System, will be allocated as follows:

(i) to the extent arising as a result of a PA acting of its own accord and not on behalf of the PAs acting with their authority, such amounts shall be paid by that PA itself;

(ii) in all other circumstances, such amounts shall be paid from the Funds or Existing Surplus Amounts (subject to the terms of any applicable surplus application agreement).

To the extent any such amounts are to be paid from the Funds and/or Existing Surplus Amounts and (A) there are insufficient funds available to cover the amount, or (B) the nature of the liability does not fall within the scope of permitted uses of the Funds or Existing Surplus Amounts, then the PAs shall each pay an equal share of the outstanding amount.

(c) *Other Liabilities of RFP Representative / Designated PAs.* The Principal Administrators agree that a RFP Representative or Designated PA will not, nor will any director, officer, employee or agent of a RFP Representative or Designated PA, be subject to any liability whatsoever to the PAs or any other person, in tort, contract or otherwise, in connection with its activities as RFP Representative or Designated PA, as applicable, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation of liability will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by such RFP Representative or Designated PA hereunder. Except as to the extent provided in this Agreement, each RFP Representative and Designated PA will not be subject to any liabilities, obligations, demands, judgments, costs, charges or expenses against or with respect to the Funds and resort will be had solely to the Funds for the payment thereof.

12. Governance. The governance framework set out in Attachment 4 to this Agreement will apply to the oversight and management of the matters contemplated in this Agreement.

13. Dispute Resolution. In the event a dispute arises under this Agreement, or the IP Agreement, the parties shall attempt to resolve the dispute promptly by notifying the other party in writing and following the escalation procedure set forth below:

(a) *Initial Step – Executive Director Level.* If a party provides written notice to the other parties of a dispute, the Executive Directors or equivalent of the PAs will attempt to resolve the dispute, and will initially meet (in person or by telephone) for that purpose within fifteen (15) business days of receipt of the written notice.

(b) *Second Step – Chair Level.* If the parties are unable to resolve the dispute within thirty (30) days after the first meeting described in paragraph (a) above (or such longer period as may be agreed upon), the Executive Directors or equivalent will refer the matter to the Chairs of the PAs, who will initially meet (in person or by telephone) to attempt to resolve the dispute or disagreement within thirty (30) days of such referral.

(c) *Third Step – Court Proceeding or Arbitration.* If the Chairs are unable to resolve the dispute within thirty (30) days after their initial meeting (or such longer time as may be agreed), then a party may refer the dispute to the courts or the PAs may agree to arbitrate such dispute.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws in force in the province of Ontario and the federal laws of Canada applicable therein. Each Principal Administrator hereby irrevocably attorns to the non – exclusive jurisdiction of courts of the province of Ontario or the Federal Court of Canada sitting in such province, as applicable.

15. Miscellaneous.

(a) A PA may not assign all or any portion of its rights or obligations under, or interest in, this Agreement without the prior written consent of each other PA, such consent not arbitrarily withheld.

(b) No waiver of any default, breach, or non – compliance under this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise expressly provided, will be limited to the specific breach so waived.

(c) If any of the terms or portions of terms in this Agreement are held to be invalid or unenforceable by a court of competent jurisdiction, such term or portion of a term will be severed, restricted or eliminated to the minimum extent necessary and will be deemed superseded by a valid enforceable term or portion of a term that most closely matches the intent of the original provision and the remaining provisions in this Agreement will otherwise remain in full force and effect.

(d) No modification of or amendment to the terms of this Agreement will be valid or binding unless set out in writing and duly executed by each party.

(e) This Agreement constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of any of the parties in respect of the subject matter hereof.

(f) The term "including" means "including without limiting the generality of the foregoing". Headings are for convenience only and will not affect the interpretation of this Agreement.

(g) Notwithstanding any other provision of this Agreement, Sections 9(b), 9(c), 11, 13, 14 and 15 and all other provisions of this Agreement necessary to give effect thereto will survive the expiration or termination of this Agreement and remain in full force and effect.

(h) Each party will from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require in order to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

(i) This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which taken together will be deemed to constitute one and the same instrument.

(j) This Agreement, as it pertains to the OSC, comes into effect as of the date hereof once approved by the Minister in Ontario pursuant to section 143.10 of the *Securities Act* (Ontario).

IN WITNESS WHEREOF, the duly authorized signatories of the parties have signed this Agreement as of the date first indicated above.

ALBERTA SECURITIES COMMISSION

Per: "William S. Rice"

Per: "David C. Linder"

BRITISH COLUMBIA SECURITIES COMMISSION

Per: "Paul Bourque"

Per: _____

ONTARIO SECURITIES COMMISSION

Per: "Maureen Jensen"

AUTORITÉ DES MARCHÉS FINANCIERS

Per: "Mario Albert"

ATTACHMENT 1

RFP REPRESENTATIVE – GENERAL FUNCTIONS AND LIMITATIONS

1. Functions

The RFP Representative will have authority to perform the following functions (the "**RFP Functions**"):

(a) any and all functions and activities associated with the preparation and issuance of the relevant RFP;

(b) any and all functions and activities in the procurement process driven by the relevant RFP up to, but not including, the execution of a Supplier Agreement;

(c) any other functions and activities ascribed to the RFP Representative in a schedule to this Agreement in respect of a particular RFP;

(d) any other functions and activities ascribed to the RFP Representative and agreed to in writing by the Governance Committee; and

(e) all other functions and activities necessary or incidental thereto.

2. Limitations

The following limitations will apply to the RFP Representative:

(a) all RFPs will be subject to review and comment or approval (the latter where the PA will be signing the contract as a party) by each PA before being issued;

(b) all contracts will be subject to review, and comment or approval (the latter where the PA will be signing the contract as a party) by each PA before being executed;

(c) any other limitation agreed to in writing by the Governance Committee or set forth in a schedule to this Agreement in respect of a particular RFP.

ATTACHMENT 2

DESIGNATED PA – GENERAL FUNCTIONS AND LIMITATIONS

1. Functions

A Designated PA will have authority to perform the following functions (the "**DPA Functions**"):

(a) any and all functions and activities set out in any Supplier Agreement that are to be performed by a Designated PA;

(b) any other functions and activities ascribed to a Designated PA in a schedule to this Agreement;

(c) any other functions and activities ascribed to a Designated PA and agreed to by the Governance Committee; and

(d) all other functions and activities necessary or incidental thereto.

2. Limitations

The following limitations will apply to a Designated PA:

(a) each Designated PA must obtain the approval of the Governance Committee prior to incurring, in the aggregate, any unbudgeted expenses exceeding (I) 10% of that Designated PA's budget (from the Funds) for that fiscal year, or (II) such other threshold amount as may be determined by the Governance Committee from time to time;

(b) each Designated PA shall report on its DPA Functions at each Governance Committee meeting and as otherwise requested;

(c) any other limitation set forth in a schedule to this Agreement; and

(d) any other limitation agreed to by the Governance Committee.

ATTACHMENT 2(A)

OPERATIONS DPA

1. Appointment

The Ontario Securities Commission is appointed as the Operations DPA in connection with the Systems Operations MSA for the administration of financial management processes to support the operating accounts and for the oversight of the CSA IT Systems Office, as further described below.

2. Funding

All costs and expenses incurred by the Operations DPA in performing the Operations DPA Functions shall be paid from the Funds.

3. Additional DPA Functions

In addition to the DPA Functions set forth in Attachment 2, and the Operations DPA Functions set forth in the Systems Operations MSA, the Operations DPA will have authority to perform the following additional functions:

(a) Financial Management / Bank Accounts.

(i) receipt of transfers of Funds from Supplier (for certainty, excluding regulatory fees), or directly collect these amounts from end users;

(ii) deduct amounts from the Funds to be paid to Supplier for Supplier's services and remit the same to Supplier;

(iii) deduct a Designated PA's expenses from the Funds and remit the same to the applicable Designated PA;

(iv) deduct the CSA IT Systems Office expenses from the Funds;

(v) deduct any other expenses associated with the CSA National Systems that the Governance Committee agree upon from the Funds;

(vi) remit any surplus Funds to the PA tasked with holding such surplus Funds;

(vii) create and maintain a separate electronic set of accounts and banking arrangements in order to receive and manage Funds, and make disbursements;

(viii) provide financial reporting as required to the Governance Committee and the CSA IT Systems Office; and

(b) CSA IT Systems Office Support.

As and to the extent agreed upon by the Governance Committee.

4. Limitations

The Operations DPA will deposit any Funds it holds in one or more segregated accounts, each of which may be a deposit/chequing or investment account and must be held with a bank listed in Schedule I or II to the Bank Act (Canada) or a trust company registered under applicable provincial or federal legislation.

ATTACHMENT 2(B)

IP DPA

1. Appointment

The Alberta Securities Commission is appointed the IP DPA in connection with:

(a) the Systems Operations MSA, and

(b) the IP Agreement

for administration and management of certain intellectual property related to the CSA National Systems.

2. Funding

All costs and expenses incurred by the IP DPA in performing the IP DPA Functions shall be paid from the Funds.

3. Additional DPA Functions

In addition to the DPA Functions set forth in Attachment 2, the IP DPA Functions set forth in the Systems Operations MSA, and the IP DPA functions set forth in the IP Agreement, the IP DPA will have authority to perform the following additional functions on behalf of the PAs:

(a) Intellectual Property Administration and Management. Holding, administering and managing intellectual property related to the CSA National Systems in accordance with the IP Agreement;

(b) CSA Member Participation. Entering into and executing agreements (in a form unanimously approved in advance by the Principal Administrators) with other members of the CSA granting for the access and use of the CSA National Systems and related matters;

(c) SRO Participation. Entering into and executing agreements (in a form unanimously approved in advance by the Governance Committee) with self – regulatory organizations for the access and use of the CSA National Systems and related matters;

(d) CSA National Systems End – User / Subscriber Management.

(i) taking assignment of agreements with end users / subscribers for access to or use of the applicable CSA National System; and

(ii) entering into and executing replacement agreements (substantially in a form approved in advance by the Governance Committee) with end users / subscribers for access to or use of a CSA National System; and

(e) External Distribution of Certain Regulatory Data. Entering into and executing subscription agreements (substantially in a form approved in advance by the Governance Committee) with customers for the distribution of publicly available regulatory data from SEDAR and SEDI, and in limited cases, certain regulatory data from NRD and for such other data distribution services relating to the CSA National Systems as may be approved by the Governance Committee.

ATTACHMENT 2(C)

DESIGNATED PA FOR HOLDING AND MANAGEMENT OF SURPLUS FUNDS

1. Appointment

The Ontario Securities Commission is appointed the Surplus Management DPA to receive, hold and manage any surplus Funds for the Principal Administrators and deal with the surplus Funds as directed by the Governance Committee as provided herein. For greater certainty, the parties do not intend to constitute the Surplus Management DPA as trustee of a trust.

2. Funding

All costs and expenses incurred by the Surplus Management DPA in performing the surplus management functions, including any costs relating to the services of an investment advisor, shall be paid or deducted from the Funds.

3. Functions and Limitations

(a) Upon the receipt of Funds from the Operations DPA, and subject to paragraph (b) below, the Surplus Management DPA will deposit those Funds in one or more segregated accounts, each of which may be a deposit/chequing or investment account and must be held with a bank listed in Schedule I or II to the Bank Act (Canada) or a trust company registered under applicable provincial or federal legislation.

(b) Notwithstanding paragraph (a), the Surplus Management DPA may, in its discretion, invest the Funds in accordance with an investment policy that is approved by the Governance Committee, the prime consideration of which will be the protection of principal and the selection of maturities appropriate to anticipated cash flow needs.

(c) The Surplus Management DPA may, in its discretion, retain the services of an investment advisor to assist in the investment and management of the Funds, in accordance with any investment policy that may be established pursuant to paragraph (b).

(d) Except as provided under paragraph (c), the Surplus Management DPA may only withdraw or direct the payment of Funds if such withdrawal or direction has been approved by the Governance Committee.

(e) For greater certainty, paragraph (d) above does not apply to a transfer of Funds from one account to another in accordance with paragraphs (a) or (b) above.

ATTACHMENT 3

ADMINISTRATIVE REPRESENTATIVE – GENERAL FUNCTIONS AND LIMITATIONS

1. Functions

The Administrative Representative will have authority to perform the following functions under any Supplier Agreements (the "**AR Functions**"):

(a) any and all functions and activities set out in any Supplier Agreement that are to be performed by the Administrative Representative;

(b) be responsible for the ongoing management of Supplier relationships;

(c) act as the primary point of contact for Suppliers with respect to the performance of the Supplier Agreements;

(d) execute binding change orders under the Supplier Agreements on behalf of the PAs, subject to the limitations set forth below; and

(e) any other functions and activities ascribed to the Administrative Representative in a schedule to this Agreement in respect of a Supplier Agreement.

2. Limitations

The following limitations will apply to the Administrative Representative:

(a) the Administrative Representative must obtain approval from the Governance Committee to authorize the Supplier to execute any changes under a Supplier Agreement with value greater than $100,000;

(b) any other limitation set forth in a schedule to this Agreement in respect of a Supplier Agreement; and

(c) any other limitation agreed to by the Governance Committee.

ATTACHMENT 4

GOVERNANCE

1. Governance Committee

The Governance Committee will consist of the Executive Directors or equivalent of the BCSC, ASC, OSC and AMF (the "**Voting Participants**") together with the Executive Director or equivalent of one other CSA member as selected by the other CSA members (the "**Non-PA Jurisdictions**") as a non-voting participant (collectively with the Voting Participants, the "**Participants**").

2. Responsibilities

The Governance Committee will manage the business and affairs with respect to the CSA National Systems and oversee the activities of the CSA IT Systems Office, except as otherwise provided in Section 8 and as delegated to a RFP Representative, Designated PA, or Administrative Representative.

The Governance Committee will provide strategic direction and guidance to the CIO on CSA IT investments and their impact on other regulatory areas.

3. Chair

The Voting Participants will elect from among themselves a Chair at the first meeting of the Governance Committee. Thereafter, the position of Chair will rotate annually among Voting Participants based on an west to east rotation or as otherwise determined by the Voting Participants. The Chair will preside at all meetings of the Governance Committee if present, and if not present, the Voting Participants will elect an alternative Chair from among themselves to preside at the meeting.

4. Secretary

A representative of the CSA Secretariat will be Secretary of meetings of the Governance Committee. The Secretary will keep records of all proceedings and decisions of the Governance Committee and the Participants and distribute copies thereof to each Participant promptly thereafter, and keep copies of all correspondence and documentation received and sent by the Participants and each Participant will have the right to examine the same and take copies thereof.

5. Quorum

A quorum for a meeting of the Governance Committee,

(a) pertaining to any matters requiring unanimous approval of Voting Participants as described in Section 8, will be all Voting Participants; and

(b) pertaining to any other matters, will be at least three Voting Participants, provided that best efforts are made to ensure that all Voting Participants are available for each meeting.

If at any meeting a quorum is not present in person or by conference telephone, the meeting will be adjourned and rescheduled.

6. Voting

Except as otherwise provided in Section 8, on any matter to be decided by the Governance Committee, decisions will be made by majority vote and the Voting Participants will be entitled to cast one vote each. In case of a tie vote, the Chair of the meeting is not entitled to a second or casting vote.

7. Procedures

(1) Meetings of the Governance Committee will be governed by the following:

(a) meetings of the Governance Committee

(i) will be held at least quarterly, and

(ii) may be held any other time

and, unless otherwise agreed by the Participants, will be called by the Chair or any Participant upon not less than 10 business days prior notice;

(b) notice of any meeting of the Governance Committee will be sent to each Participant; such notice will be followed by an agenda prepared by the Chair or the other Participant calling the meeting, as the case may be, no later than 5 business days prior to the meeting date, that sets forth those matters to be considered at the meeting;

(c) the parties will use best efforts to ensure all Participants are available for meetings of the Governance Committee;

(d) with the approval of a simple majority of the Voting Participants, the business conducted at any meeting of the Governance Committee may include business in addition to that set out in the agenda;

(e) subject to prior notice of such meeting in the normal manner as is required by this Agreement, meetings of the Governance Committee may be conducted by means of telephone or other communications facilities as permit all persons participating in the meeting to hear each other, and a representative participating in such a meeting by such means is deemed present at that meeting; and

(f) no notice calling a meeting of the Governance Committee will be required if all the Participants are present or those absent have waived notice in writing of such meeting in advance.

(2) Subject to Section 8, each Participant agrees to abide by the decisions of the Governance Committee.

8. Unanimous Approval of Matters

Notwithstanding any other provision of this Agreement, the following matters will require the unanimous approval of the Voting Participants:

(a) any financial commitments in excess of the lesser of (i) $5 million and (ii) 15% of the accumulated surplus at such date;

(b) significant changes to the design of the systems; and

(c) any changes to System Fees.

9. Signed Instruments in Lieu of Meeting

Any matter to be decided by the Governance Committee may be passed by resolution signed by each of the Voting Participants in any number of counterparts.

1.1.4 Notice of Agreement among certain provincial securities regulators in respect of the ownership and licensing of the intellectual property comprising the System for Electronic Document Analysis and Retrieval (SEDAR), the System for Electronic Disclosure by Insiders (SEDI), and the National Registration Database (NRD) (CSA National Systems)

April 18, 2013

NOTICE OF AGREEMENT AMONG CERTAIN PROVINCIAL SECURITIES REGULATORS IN RESPECT OF THE OWNERSHIP AND LICENSING OF THE INTELLECTUAL PROPERTY COMPRISING THE SYSTEM FOR ELECTRONIC DOCUMENT ANALYSIS AND RETRIEVAL (SEDAR), THE SYSTEM FOR ELECTRONIC DISCLOSURE BY INSIDERS (SEDI), AND THE NATIONAL REGISTRATION DATABASE (NRD) (CSA NATIONAL SYSTEMS)

The Ontario Securities Commission, the British Columbia Securities Commission, the Alberta Securities Commission and the Autorité des marchés financiers have recently entered an agreement outlining how the intellectual property comprising the CSA National Systems will be owned as between the parties, and how it will be licensed to third parties for their access and use. This agreement also documents how data filed in the CSA National Systems may be accessed and used by securities regulators, certain self-regulatory organizations, other permitted third parties, and the public.

The Agreement is being published today in the Bulletin in accordance with section 143.10 of the *Securities Act*. This agreement was delivered to the Minister of Finance on April 11, 2013, and is subject to Ministerial approval.

Questions may be referred to:

Minami Ganaha
Senior Legal IT Counsel
General Counsel's Office
(416) 593-8170
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CSA NATIONAL SYSTEMS INTELLECTUAL PROPERTY OWNERSHIP AND LICENSING AGREEMENT

This CSA National Systems intellectual property ownership and licensing agreement (the "**Agreement**") is entered into as of April 2, 2013 ("**Effective Date**") between and among the British Columbia Securities Commission (" **BCSC**"), Alberta Securities Commission ("**ASC**"), Ontario Securities Commission ("**OSC**") and Autorité des marchés financiers ("**AMF**") (collectively, the "**Principal Administrators**" or "**PAs**").

Recitals:

A. The Principal Administrators (together with the Investment Industry Regulatory Organization of Canada ("**IIROC**") in the case of NRD (as defined below)) are parties to certain agreements with CDS (collectively, the "**CSA National Systems Operations Agreements**") pursuant to which CDS operates the following information technology systems on behalf and for the benefit of the members of the CSA and certain self-regulatory organizations (collectively, "**SROs**", and each, an "**SRO**"):

   (a) **"SEDAR" –** the System for Electronic Document Analysis and Retrieval and the associated SEDAR public access website – www.sedar.com;

   (b) **"SEDI"** – the System for Electronic Disclosure by Insiders accessible via www.sedi.ca; and

   (c) **"NRD"** – the National Registration Database accessible via www.nrd.ca,

   (each a "**CSA National System**", and collectively the "**CSA National Systems**").

B. Upon expiry of the CSA National Systems Operations Agreements, the ownership of each of SEDAR, the SEDAR.com website, SEDI and NRD, among other things, as well as certain associated third party licenses, are to be assigned and transferred to the Principal Administrators (and IIROC in the case of NRD);

C. The Principal Administrators wish to document certain agreements, understandings and arrangements between and among the Principal Administrators in connection with, among other things:

   (a) how the ownership of the intellectual property associated with the CSA National Systems will be held among themselves;

   (b) how the licensing of certain access and use rights to the CSA National Systems and to data associated therewith will be undertaken; and

   (c) how the aforesaid intellectual property and data will be administered and managed.

D. Given the impending expiration of the CSA National Systems Operations Agreements, the Principal Administrators have issued a request for proposals for the provision of "Systems Services and Administrative Processes for the CSA National Systems" (the "Systems Operations RFP") pursuant to which a service provider (the "MSA Supplier") will be engaged pursuant to a new master services agreement (the "MSA") to operate the CSA National Systems;

E. Concurrent with the execution of this Agreement, the Principal Administrators are entering into the Agreement in Support of the Outsourcing and Management of the CSA National Systems (the "Back-to-Back Agreement") that, among other things, documents certain agreements, understandings and arrangements between and among the Principal Administrators relating to, among other things, certain operational functions relating to the CSA National Systems that will be undertaken by one or more PAs on behalf of the PAs as a group.

F. Pursuant to the terms of the Back-to-Back Agreement, the CSA National Systems and the activities of the CSA IT Systems Office in relation thereto will be supervised by a governance committee consisting of the Executive Directors or their equivalents of each of the Principal Administrators together with the Executive Director or equivalent of such other CSA member as selected by the remaining CSA Members as a non-voting participant of said committee (the "Governance Committee").

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Principal Administrators agree as follows:

1. Definitions. In this Agreement, and in addition to those terms that are otherwise defined in the preamble and recitals to this Agreement, the following terms shall have the following meanings:

1.1 **"Associated Data"** means such data associated with a CSA National System that is or was entered by or on behalf of: (a) Filers in order to meet the regulatory requirements of a CSA Member or SRO; and (b) a CSA Member or SRO in the performance of its regulatory mandate.

1.2 **"CDS"** means CDS INC.

1.3 **"CDS Limited"** means The Canadian Depository for Securities Limited.

1.4 **"CSA"** means the Canadian Securities Administrators, a voluntary umbrella organization of Canada's provincial and territorial securities regulators whose objective is to improve, coordinate and harmonize regulation of the Canadian capital markets.

1.5 **"CSA Filer Data"** shall have the meaning set forth in Section 6.1(b) of this Agreement.

1.6 **"CSA Member"** means a Canadian provincial or territorial securities regulator that is a member of the CSA.

1.7 **"CSA Regulatory Notes"** shall have the meaning set forth in Section 6.1(c) of this Agreement.

1.8 **"COTS"** means generally commercially available software owned by a third party other than CDS or CDS Limited and used in association with the CSA National Systems.

1.9 **"Data Distribution Customers"** means customers who have entered into an agreement to receive, in bulk, Filer Data associated with one or more CSA National Systems.

1.10 **"Domain Names"** means all domain names that are or have been adopted, used, procured, created or developed in association with one or more of the CSA National Systems, including those described in Schedule A, and all goodwill associated therewith.

1.11 **"Embedded IP"** means Intellectual Property Rights, including in and to software that is not generally commercially available, owned by a third party other than CDS or CDS Limited and incorporated into the CSA National Systems.

1.12 **"End Users"** means end users of or subscribers to one or more CSA National Systems, other than Public Users and Data Distribution Customers.

1.13 **"Filer Data"** means, collectively, such data associated with a CSA National System that is or was entered by or on behalf of Filers in order to meet the regulatory requirements of a CSA Member or SRO.

1.14 **"Filers"** means filers of securities information (including issuers, registrants and firms).

1.15 **"Intellectual Property Rights"** means:

(a) any and all proprietary rights anywhere in the world provided under: (i) patent law; (ii) copyright law (including moral rights); (iii) trade-mark law; (iv) design patent or industrial design law; (v) semi-conductor chip, mask work or integrated circuit topography law; or (vi) any other statutory provision or common law principle applicable to this Agreement, including trade secret law, that may provide a right in either hardware, software, content, documentation, confidential information, trade-marks, ideas, formulae, algorithms, concepts, inventions, processes or know-how generally, or the expression or use of such hardware, software, content, documentation, confidential information, trade-marks, ideas, formulae, algorithms, concepts, inventions, processes or know-how;

(b) any and all applications, registrations or any other evidence of a right in any of the foregoing; and

(c) any and all licences, sublicenses, franchises, agreements, waivers and benefits of waivers of the intellectual property rights set out in paragraphs (a) or (b) above, all past, present and future income and proceeds from the intellectual property rights set out in paragraphs (a) or (b) above, and all rights to damages and profits by reason of the past, present or future infringement or violation of any of the intellectual property rights set out in paragraphs (a) or (b) above.

1.16 **"IP DPA"** shall have the meaning set forth in Section 2.1 of this Agreement.

1.17 **"PA Filer Data"** shall have the meaning set forth in Section 6.2(a) of this Agreement.

1.18 **"PA Notes"** shall have the meaning set forth in Section 6.2(b) of this Agreement.

1.19 **"PA Regulatory Data"** shall have the meaning set forth in Section 6.2 of this Agreement.

1.20 **"Proprietary IP"** means Intellectual Property Rights including in and to proprietary software and related documentation that are used in association with or incorporated into the CSA National Systems, but excluding COTS and Embedded IP.

1.21 **"Public Users"** means visitors that access one or more publicly available Internet websites comprising, among other things, the CSA National Systems, such access governed by the published website terms of use for each respective system.

1.22 **"Regulators"** means, collectively, the CSA Members and the SROs.

1.23 **"Scribe Software"** means the software specifically used by CDS Innovations Holding Inc. as of the Effective Date to generate bulk Filer Data files for distribution to Data Distribution Customers.

1.24 **"Trademarks"** means all trademarks (including domain names when used as trademarks) that are or have been adopted, used, procured, created or developed in association with one or more of the CSA National Systems, including those described in Schedule A, and all goodwill associated therewith.

1.25 **"Transition Date"** means, in respect of each CSA National System, the date on which the MSA Supplier takes over the operation of that CSA National System.

2. Intellectual Property Designated Principal Administrator.

2.1 *IP DPA.* Pursuant to the terms and conditions of the Back-to-Back Agreement, the PAs have appointed and delegated authority to the ASC to act as the designated Principal Administrator for the administration and management of certain intellectual property related to the CSA National Systems ("**IP DPA**"). The scope of the IP DPA's authority and duties are as set for in this Agreement and in the Back-to-Back Agreement.

2.2 *Resignation and Transition.* The IP DPA may not resign as the IP DPA until a successor is appointed. The Governance Committee will use its best efforts to agree upon and appoint a new IP DPA within 60 days of being notified of the then current IP DPA's intention to resign. The incoming IP DPA and the outgoing IP DPA, with the guidance and assistance of the Chief Information Officer of the CSA IT Systems Office, will develop and agree upon a transition plan that will ensure a seamless transition from one to the other, including ensuring that (a) the outgoing IP DPA, in its capacity as a PA, is granted the same rights by the incoming IP DPA as the other PAs were previously granted by the outgoing IP DPA pursuant to the terms of this Agreement, and (b) the outgoing IP DPA, in its capacity as a PA, grants the same rights to the incoming IP DPA as the other PAs previously granted to the outgoing IP DPA pursuant to the terms of this Agreement.

2.3 *Assignment.* With effect on the date of the outgoing IP DPA's resignation, the outgoing IP DPA shall assign to the incoming IP DPA at least all of the following, in accordance with the transition plan described above in Section 2.2, whether or not the outgoing IP DPA remains a party to the Back-to-Back Agreement:

(a) all right, title, and interest that the outgoing IP DPA has in or to all trade-marks and domain names related to the CSA National Systems, and all goodwill associated therewith, including, for greater certainty, all right, title and interest in and to the Trademarks and Domain Names;

(b) all licenses or sublicenses to COTS held by the outgoing IP DPA;

(c) all agreements to which the outgoing IP DPA is a party with the MSA Supplier or other third party service providers relating to the CSA National Systems, but only to the extent it is a party to such agreements in its capacity as IP DPA and not, for further certainty, as a PA;

(d) all agreements to which the outgoing IP DPA is a party with other CSA Members, SROs, End Users, Public Users or Data Distribution Customers for their access and use of the CSA National Systems and related matters; and

(e) all other rights, title or interest that the outgoing IP DPA has, to the exclusion of the other PAs, by virtue of its role as the IP DPA.

3. Ownership of Rights and Licenses in the CSA National Systems.

3.1 *Allocation of Rights and Licenses.* Each PA acknowledges, confirms and agrees that upon the termination or expiry of each CSA National Systems Operations Agreement, the Intellectual Property Rights in the respective CSA National System will be held as follows:

(a) *Proprietary IP.* The PAs shall, throughout the world and as tenants in common, own all right, title and interest in and to the Proprietary IP (excluding Trademarks and Domain Names) in equal and undivided shares.

(b) *Embedded IP.* The PAs shall, throughout the world and as tenants in common, have and hold the licenses in respect of the Embedded IP in equal and undivided shares.

(c) *COTS Assignment to Supplier.* The PAs shall cause CDS and CDS Limited, as applicable, to assign all assignable licenses in respect of COTS to the MSA Supplier and, in respect of any other COTS that may be required, the PAs shall, pursuant to the MSA or otherwise, require the MSA Supplier to procure such other COTS.

(d) *COTS License from Supplier.* The PAs shall cause the MSA Supplier to grant to the IP DPA such licenses or sublicenses to access and use any COTS held by Supplier as may be necessary in order to enable the IP DPA to grant the access and use rights contemplated in Articles 6, 7 and 8 herein, failing which, the IP DPA will itself procure such licenses, sublicenses or other rights as may be required.

(e) *Trademarks and Domain Names.* The IP DPA shall solely and exclusively, throughout the world, own the Trademarks and Domain Names, including for the avoidance of doubt, the SEDAR trademark.

(f) *Scribe Software.* If the PAs purchase the Scribe Software, the PAs shall, throughout the world and as tenants in common, own all right, title and interest in and to the Scribe Software in equal and undivided shares.

(g) *Further Assurances.* Each PA hereby undertakes to execute such documents and instruments and take such further actions as may be necessary in order to (i) effect, perfect or evidence the ownership of Intellectual Property Rights as described in this Article 3, and to obtain and maintain applications and registrations therefor, and (ii) effectively carry out or better evidence or perfect the full intent and meaning of this Agreement. Without limiting the generality of the foregoing, the PAs agree to (A) enter into an agreement with CDS and CDS Limited to amend the terms of the CSA National Systems Operations Agreements to require CDS and/or CDS Limited (as the case may be) to assign the ownership and license rights in the CSA National Systems, and if applicable the Scribe Software, to the PAs or the IP DPA in the manner contemplated in this Article 3, and (B) require the MSA Supplier, pursuant to the MSA or otherwise, to grant such rights to the IP DPA as contemplated in this Article 3.

4. Assignment of SEDAR Trademark to IP DPA.

4.1 *Assignment by CSA Members to ASC.* The IP DPA shall, pursuant to the terms of a participation agreement to be entered by it with each CSA Member other than the PAs, request each such member to assign and transfer (or cause the appropriate entity in its jurisdiction to assign and transfer) to the IP DPA all of its right, title, interest and benefit, if any, in and to the SEDAR trade-mark (including all associated goodwill).

4.2 *Assignment by PAs to IP DPA.* Each PA, other than the IP DPA, hereby agrees to assign and transfer (or cause the appropriate entity in its jurisdiction to assign and transfer) to the IP DPA all of its right, title, interest and benefit, if any, in and to the SEDAR trade-mark (including all associated goodwill).

5. Restrictions on PA and IP DPA Use of CSA National Systems and Data.

5.1 *Use Restrictions.* Except as otherwise set out herein:

(a) *PA Covenants.* Each PA hereby covenants and agrees that it shall not exercise any rights deriving from its co-ownership of the Proprietary IP, Embedded IP, and CSA Filer Data and CSA Regulatory Notes (which shall, for greater certainty, exclude its own PA Regulatory Data) other than for the purposes of accessing, using and operating, for the benefit of the Regulators, the CSA National Systems, such access and use to be only through the functionality and interfaces of the CSA National Systems and only for the purpose of fulfilling such PA's regulatory mandate. Any other use of the Proprietary IP, Embedded IP, and CSA Filer Data and CSA Regulatory Notes by such PA (which shall, for greater certainty, exclude its own PA Regulatory Data) will require the prior consent of each of the other PAs, including an agreement for an appropriate accounting of

any revenue and profit or loss arising therefrom. The foregoing shall not apply to a PA while such PA is acting in the capacity of the IP DPA;

(b) *IP DPA Covenants.* Each PA hereby covenants and agrees that, if and when acting in the capacity of the IP DPA, it shall not exercise any rights deriving from its co-ownership of the Proprietary IP, Embedded IP, and CSA Filer Data and CSA Regulatory Notes (which shall, for greater certainty, exclude its own PA Regulatory Data), or any rights deriving from its ownership of the Trade-marks and Domain Names, other than for the purposes of accessing, using and operating, for the benefit of the Regulators, the CSA National Systems, such access and use to be only through the functionality and interfaces of the CSA National Systems and only for the purpose of fulfilling such PA's regulatory mandate. Any other use of the Trade-marks and Domain Names, Proprietary IP, Embedded IP, and CSA Filer Data and CSA Regulatory Notes by such PA (which shall, for greater certainty, exclude its own PA Regulatory Data) will require the prior consent of each of the other PAs, including an agreement on an appropriate accounting of revenues and profits or losses arising therefrom.

5.2 *No Sale, Assignment, etc. without Consent.* For greater certainty, except as otherwise set out herein or with the prior consent of each of the other PAs, no PA shall sell, assign, transfer, license or encumber its Intellectual Property Rights related to the CSA National Systems, including the Proprietary IP, all licenses to Embedded IP, CSA Filer Data and CSA Regulatory Notes (excluding for greater certainty its own PA Regulatory Data), all licenses to COTS, the Trade-marks and Domain Names, and any licenses to use the Trade-marks and Domain Names.

5.3 *Changes to CSA National Systems.* For further certainty, any changes or modifications to the CSA National Systems will be addressed pursuant to the governance and decision making framework set forth in the Back-to-Back Agreement.

5.4 *Fees.* For further certainty, the treatment of fees or revenues received by the MSA Supplier from End Users, Data Distribution Customers, and others, if any, shall be addressed pursuant to the Back-to-Back Agreement, any agreements between one or more of the PAs and the other CSA Members, and any agreements between one or more of the PAs and SROs, as the case may be.

6. License Grants by IP DPA to Principal Administrators.

6.1 *Systems and Data.* Subject to the terms and conditions of this Agreement, and with effect in respect of each CSA National System on the Transition Date therefor, the IP DPA hereby grants to each other PA (to the extent each other PA may require such a license from the IP DPA to access and use the subject matter below) a non-exclusive right to access and use:

(a) the applicable CSA National System;

(b) such data associated with the applicable CSA National System that is or was entered by or on behalf of Filers in order to meet the regulatory requirements of any other CSA Member or an SRO ("**CSA Filer Data**");

(c) such data, other than CSA Filer Data, associated with the applicable CSA National System that is or was entered by or on behalf of any other CSA Member or an SRO in the performance of its regulatory mandate ("**CSA Regulatory Notes**");

such access and use being provided through the functionality and interfaces of the applicable CSA National System and being exercised by the PA for the purpose of fulfilling its regulatory mandate. Each PA acknowledges and agrees that CSA Filer Data and CSA Regulatory Notes may not be used, retained or disclosed by the PA for any purpose other than to fulfill its regulatory mandate (except when acting as the IP DPA, in which case the provisions of Article 8 also apply), unless the PA has received the consent of all affected CSA Members and all affected SROs.

6.2 *PA's own PA Regulatory Data Excluded from Restrictions.* For the avoidance of doubt, for each PA:

(a) data associated with each CSA National System that is or was entered by or on behalf of Filers in order to meet the regulatory requirements of that PA ("**PA Filer Data**"); and

(b) data associated with each CSA National System that is or was entered by or on behalf of that PA in the performance of its regulatory mandate ("**PA Notes**");

in either case being accessed and used through the functionality and interfaces of the applicable CSA National System (collectively, "**PA Regulatory Data**"), is the sole property of that PA and may be used, retained or disclosed by that PA

in its sole discretion subject only to and in accordance with such laws as may be applicable to that PA in respect of any data that is included in its PA Regulatory Data.

6.3 *PA Responsibilities for own IT.* Each PA will remain responsible for all of its own internal IT and communications connections (including their costs) used by that PA to access or use the CSA National Systems and corresponding Associated Data, and for all of that PA's own back-up and restoration requirements in relation to same.

6.4 *Trademark License.* Effective in respect of each CSA National System on the Transition Date therefor, the IP DPA hereby grants to each other PA a non-exclusive license to use, advertise and display the Trademarks in association with the access, use and operation of the corresponding CSA National System through the functionality and interfaces thereof. Each such PA shall exercise such rights in compliance with all applicable laws and in accordance with the quality standards set forth from time to time for the use of same by the IP DPA. For this purpose and acting reasonably, the IP DPA shall be entitled to request that each other PA furnish representative specimens, samples or mock-ups of any business materials or web sites that may include use of the Trademarks.

7. PA Acknowledgements Regarding Data.

7.1 *Ownership of Certain Data.* Each PA acknowledges and agrees that, as between itself and the other PAs, (a) the PAs as a group jointly own and retain, as tenants in common, all right, title and interest (including all Intellectual Property Rights) in and to the Associated Data of each CSA National System (excluding its own PA Regulatory Data) in equal and undivided shares, and (b) it is not granted any rights therein other than those expressly granted under this Agreement.

7.2 *Acknowledgement re PA Regulatory Data.* Each PA acknowledges and agrees that, as between itself and the other PAs, (a) each other PA owns and retains all right, title and interest (including all Intellectual Property Rights) in and to that PA's respective PA Regulatory Data, and (b) it is not granted any rights therein other than those expressly granted under this Agreement. Each PA's respective PA Regulatory Data is provided by or through that PA on an "as is" and "as available" basis, without any representations, warranties or conditions of any kind.

7.3 *Acknowledgements re Access and Use of Data.* Each PA acknowledges and agrees that:

(a) its respective PA Regulatory Data may be accessed and used by each other CSA Member and by SROs (the latter in respect of NRD only) for the purpose of such entities fulfilling their respective regulatory mandates, and that the IP DPA is hereby authorized to grant a license thereto with such effect;

(b) the IP DPA will recognize and acknowledge, in favour of each other CSA Member and in favour of each SRO (the latter in respect of NRD only), such non-exclusive rights respectively in and to data associated with the CSA National Systems that is or was entered by or on behalf of Filers in order to meet the regulatory requirements of each such CSA Member or SRO, and respectively in and to data associated with the CSA National Systems that is or was entered by or on behalf of each such CSA Member or SRO in the performance of their regulatory mandates, which non-exclusive rights shall substantially conform, with necessary changes, to the rights recognized and acknowledged in favour of the PA in respect of its own PA Regulatory Data herein;

(c) the IP DPA will grant non-exclusive rights in respect of the following data to certain other users:

(i) to other CSA Members and SROs, as outlined above in paragraphs 7.3(a) and 7.3(b);

(ii) to Filers and to Data Distribution Customers, Filer Data, to the extent required to facilitate their permitted access and use of the CSA National Systems and/or Filer Data that they are authorized to use;

(iii) to third party service providers that provide services related to the CSA National Systems, the Associated Data therefor, to the extent required in order to perform the applicable services; and

(iv) to such other third parties as may be authorized by the Governance Committee, subject to obtaining appropriate consents from all affected CSA Members and all affected SROs, such portions of the Filer Data as may be determined by the Governance Committee to be necessary or appropriate.

8. Authorization to Grant Certain Rights and Licenses

8.1 *Authorization.* The PAs hereby authorize the IP DPA to grant the following rights and licenses which may come into effect in respect of each CSA National System no earlier than on the Transition Date therefor:

(a) *CSA Members.* To each CSA Member other than the PAs, (i) a non-exclusive license to access and use the CSA National Systems and the corresponding Associated Data, and (ii) a license to use, advertise and display the Trademarks in association with the access and use of the corresponding CSA National System. Such rights and licenses shall be set forth in a separate agreement with each such entity and shall include terms substantially similar to those set forth in Articles 6 and 7 of this Agreement. The form and content of such agreements shall be subject to the final approval of the PAs.

(b) *SROs.* To SROs, with respect to NRD only, a non-exclusive license to access and use NRD and the corresponding Associated Data. Such rights and licenses shall be set forth in a separate agreement with each such entity and shall include terms substantially similar to those set forth in Articles 6 and 7 of this Agreement. The form and content of such agreements shall be subject to the final approval of the PAs.

(c) *Suppliers.*

(i) *MSA Supplier.* To the MSA Supplier: (A) a license to access, use and operate the CSA National Systems, and to access the corresponding Associated Data to the extent required in order to perform the applicable services; and (B) a licence to use, advertise and display the Trademarks and Domain Names in association with the operation of the CSA National Systems; all in accordance with the terms and conditions of the MSA;

(ii) *Other Suppliers.* To other third party service providers, to the extent required to perform the services for which they are engaged (A) a license to access, use and operate the CSA National Systems, and to access the corresponding Associated Data; and (B) a licence to use, advertise and display the Trademarks and/or Domain Names in association with the operation of the CSA National Systems; all in accordance with the terms and conditions of a service agreement, the form and content of which shall be subject to the final approval of the Governance Committee.

(d) *End Users.* To End Users, pursuant and subject to, as the case may be, individual subscription agreements, terms of service, or user agreements, each substantially in a form approved in advance by the Governance Committee, a non-exclusive license to access and use those CSA National Systems and such Filer Data as to which End Users may be so authorized, through the functionality and interfaces provided by the CSA National Systems. Notwithstanding the foregoing, for those End Users existing as of the applicable Transition Date, the IP DPA shall be assigned, pursuant to an assignment from CDS, all existing individual subscription agreements, terms of service and user agreements, together with the benefit of all consents and waivers in respect of data that CDS has received to date.

(e) *Public Users.* To Public Users, pursuant and subject to those website terms of use which are in effect on the applicable Transition Date, and as amended from time to time with the approval of the Governance Committee, a non-exclusive license to access and use those CSA National Systems and such Filer Data as to which Public Users may be so authorized, through the functionality and interfaces provided by the CSA National Systems.

(f) *Other Third Parties.* To other third parties, pursuant and subject to a license agreement, a non-exclusive license to access and use certain Filer Data, as may be authorized by the Governance Committee but subject to obtaining appropriate consents from all affected Regulators.

(g) *Data Distribution Customers.* To Data Distribution Customers, pursuant and subject to data distribution subscription agreements substantially in a form approved in advance by the Governance Committee, a non-exclusive license to receive in bulk and to use, including to republish, certain Filer Data to which such customers may be so authorized. Notwithstanding the foregoing, for those Data Distribution Customers existing as of the applicable Transition Date, the IP DPA shall be assigned all existing data distribution subscription agreements with Data Distribution Customers then held by CDS or its Affiliates, to the extent agreed upon by CDS. The PAs acknowledge and agree that the IP DPA may provide, operate and manage existing and new data distribution subscription agreements through the intermission of the MSA Supplier.

9. Withdrawal of a PA.

9.1 *Withdrawing from the Back-to-Back Agreement.* The withdrawal of a PA from the Back-to-Back Agreement pursuant to Section 9 thereof shall be deemed to be a withdrawal from this Agreement, and if the withdrawing PA is also the IP DPA, the giving of notice of such withdrawal shall be deemed to be notice of the withdrawing PA's intention to resign as IP DPA in accordance with Section 2.1.

(a) *PA Regulatory Data.* The withdrawing PA will be provided with a complete copy of its PA Regulatory Data, current to the effective date of such withdrawal. The withdrawing PA shall have no right to receive copies of any such further data that is submitted or processed by way of the CSA National Systems subsequent to the effective date of such withdrawal, except pursuant to a subsequent agreement with the remaining PAs.

(b) *Continued Liabilities.* A withdrawing PA will remain liable for its share of any liabilities under the Agreement (as determined in accordance with Section 9(c) of the Back-to-Back Agreement) arising prior to its withdrawal.

10. Term and Termination.

(a) This Agreement will commence on the Effective Date and will continue, with respect to each CSA National System, until the date that the PAs cease to own and administer such CSA National System.

(b) Upon any such termination, the Trademarks and Domain Names associated with the applicable CSA National System shall be retained by the IP DPA for use in association with the successor system therefor, unless the IP DPA will not be participating in the operation of that successor system, in which case, the IP DPA shall assign the Trademarks and Domain Names to a PA that is participating in the operation of the successor system.

11. Representations and Warranties. Each of the PAs warrants and represents that the execution, delivery and performance of this Agreement: (a) are within its powers, (b) have been or will be duly authorized by all necessary proceedings, and (c) do not and will not contravene or constitute a default under, and do not and will not conflict with any judgment, decree or order, or any contract, agreement, or other undertaking or covenant applicable to such PA.

12. Indemnities. Each PA agrees to indemnify and hold harmless the other PAs against all damages, losses, costs, expenses or liabilities (including reasonable legal fees and costs) suffered or incurred by the other PAs or any of their affiliates, employees, officers and directors, arising from any third party claims related to the first PA's use of the CSA National Systems or Associated Data, including in relation to making a record from the CSA National Systems or Associated Data accessible to the public following its receipt by the first PA, in error or otherwise. Upon receiving notice of any such claim, the affected PAs will promptly give full particulars thereof to the first PA and that PA will have sole control of the defence of such claim and all related settlement negotiations. If any settlement requires an affirmative obligation of, results in any ongoing liability to, or prejudices or detrimentally impacts one or more of the other PA's in any way, then such settlement shall require the affected PA's prior written consent (not to be unreasonably withheld or delayed). In the event of any conflict or inconsistency between the terms of this Section 12 and the terms of Section 11 of the Back-to-Back Agreement, the terms of Section 11 of the Back-to-Back Agreement will govern.

13. Dispute Resolution. In the event a dispute arises under this Agreement, the parties shall attempt to resolve the dispute using the process set forth in the Back-to-Back Agreement.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws in force in the province of Alberta and the federal laws of Canada applicable therein. Each PA hereby irrevocably attorns to the non-exclusive jurisdiction of courts of the province of Alberta or the Federal Court of Canada sitting in such province, as applicable.

15. Miscellaneous.

(a) A PA may not assign all or any portion of its rights or obligations under, or interest in, this Agreement without the prior written consent of each other PA, such consent not arbitrarily withheld.

(b) No waiver of any default, breach, or non-compliance under this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise expressly provided, will be limited to the specific breach so waived.

(c) If any of the terms or portions of terms in this Agreement are held to be invalid or unenforceable by a court of competent jurisdiction, such term or portion of a term will be severed, restricted or eliminated to the minimum extent necessary and will be deemed superseded by a valid enforceable term or portion of a term that most closely matches the intent of the original provision and the remaining provisions in this Agreement will otherwise remain in full force and effect.

(d) No modification of or amendment to the terms of this Agreement will be valid or binding unless set out in writing and duly executed by each party.

(e) This Agreement constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of any of the parties in respect of the subject matter hereof.

(f) The term "including" means "including without limiting the generality of the foregoing". Headings are for convenience only and will not affect the interpretation of this Agreement.

(g) Notwithstanding any other provision of this Agreement, Articles 1, 3 (excluding Sections 3.1(c) and (d)), 4, 5 (excluding Section 5.3), 12, 13, 14, 15 and Sections 6.2, 7.1, 7.2, and 10(b), and all other provisions of this Agreement necessary to give effect thereto will survive the expiration or termination of this Agreement and remain in full force and effect.

(h) This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which taken together will be deemed to constitute one and the same instrument.

(i) This Agreement, as it pertains to the OSC, comes into effect as of the date hereof once approved by the Minister in Ontario pursuant to section 143.10 of the *Securities Act* (Ontario).

IN WITNESS WHEREOF, the duly authorized signatories of the parties have signed this Agreement as of the date first indicated above.

ALBERTA SECURITIES COMMISSION

Per: "William S. Rice"

Per: "David C. Linder"

BRITISH COLUMBIA SECURITIES COMMISSION

Per: "Paul Bourque"

Per: _____

ONTARIO SECURITIES COMMISSION

Per: "Maureen Jensen"

AUTORITÉ DES MARCHÉS FINANCIERS

Per: "Mario Albert"

SCHEDULE A

Trademark	Registration No.	Associated CSA National System
SEDI	TMA587,520	SEDI
NRD	TMA601,812	NRD
BDNI	TMA601,816	NRD
SEDAR	TMA474,211	SEDAR

Domain Name	Associated CSA National System
SEDAR.COM	SEDAR
SEDAR.ORG	SEDAR
SEDAR.CA	SEDAR
SEDI.CA	SEDI
NRD.CA	NRD

1.1.5 Notice of Agreement among certain provincial securities regulators and the Investment Industry Regulatory Organization of Canada (IIROC) with respect to the administration and application of surplus funds generated by the operation of the National Registration Database (NRD)

April 18, 2013

NOTICE OF AGREEMENT AMONG CERTAIN PROVINCIAL SECURITIES REGULATORS AND THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC) WITH RESPECT TO THE ADMINISTRATION AND APPLICATION OF SURPLUS FUNDS GENERATED BY THE OPERATION OF THE NATIONAL REGISTRATION DATABASE (NRD)

The Ontario Securities Commission, the British Columbia Securities Commission, the Alberta Securities Commission, the Autorité des marchés financiers and IIROC have amended and restated their agreement concerning the administration and application of surplus funds generated by the operation of NRD (Amended and Restated NRD Surplus Application Agreement).

The Amended and Restated NRD Surplus Application Agreement is being published today in the Bulletin in accordance with section 143.10 of the *Securities Act*. This agreement was delivered to the Minister of Finance on April 11, 2013, and is subject to Ministerial approval.

Questions may be referred to:

Minami Ganaha
Senior Legal IT Counsel
General Counsel's Office
(416) 593-8170
mganaha@osc.gov.on.ca

AMENDED AND RESTATED NRD SURPLUS APPLICATION AGREEMENT

This Agreement is amended and restated as of the 2nd day of April, 2013 among Investment Industry Regulatory Organization of Canada ("**IIROC**") and British Columbia Securities Commission ("**BCSC**") and Alberta Securities Commission ("**ASC**") and Ontario Securities Commission ("**OSC**") and Autorité des marchés financiers ("**AMF**") (collectively, the "**Principal Regulators**").

WHEREAS each of the Principal Regulators is a party to the NRD Operations Agreement dated June 13, 2003 with CDS Inc., as amended (the "**NRD Agreement**"), pursuant to which CDS Inc. operates the National Registration Database ("**NRD**") for and on their behalf;

WHEREAS the BCSC, ASC, OSC and AMF (collectively, the "**Principal Administrators**") also operate other information technology systems which perform securities regulatory functions, including the System for Electronic Document Analysis and Retrieval (and any replacement system thereof, collectively, "**SEDAR**") and the System for Electronic Disclosure by Insiders (and any replacement system thereof, collectively, "**SEDI**", and all such systems, including SEDAR, SEDI, the NRD System and any new systems developed from time to time, collectively, the "**CSA National Systems**");

WHEREAS the Principal Regulators periodically receive royalty payments from CDS Inc. under the NRD Agreement in connection with the commercial dissemination of certain data by CDS Inc. (the "**Royalty Payments**");

WHEREAS the Principal Regulators entered into a surplus application agreement dated as of the 29th day of October, 2008 ("**NRD Surplus Application Agreement**") respecting the administration and application of the operating surplus amounts that have accumulated under the NRD Agreement and any further operating surplus amounts accumulating thereunder from NRD operations, including any interest or other amounts earned thereon (the "**NRD Funds**");

WHEREAS the Principal Administrators have publicly issued a request for proposals to seek new service arrangements for the operation of certain information technology systems including, among others, NRD, SEDAR and SEDI (the "**New Arrangements**");

WHEREAS once the NRD Agreement expires and the New Arrangements come into effect, IIROC will no longer participate in the administration and management of NRD or any replacement system thereof (collectively, "**NRD System**");

WHEREAS the Principal Regulators desire to amend and restate the NRD Surplus Application Agreement in its entirety and establish the terms and conditions governing the administration and application of the NRD Funds and the Royalty Payments (collectively, the "**Funds**").

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The Principal Regulators shall appoint a designee (the "**Designee**") from among themselves to receive, hold and manage the Funds for them and deal with the Funds as directed by them as provided herein. For greater certainty, the parties do not intend to constitute the Designee as trustee of a trust. The Designee may be replaced from time to time upon the mutual consent of the Principal Regulators. The Principal Regulators hereby confirm that the OSC shall continue as the Designee until such time as it resigns or is replaced. Upon the receipt of Funds from CDS Inc., and subject to section 2 below, the Designee will deposit those Funds in one or more segregated accounts, each of which may be a deposit/chequing or investment account and must be held with a bank listed in Schedule I or II to the *Bank Act* (Canada) or a trust company registered under applicable provincial or federal legislation.

2. Notwithstanding section 1, the Designee may, in its discretion, invest the Funds in accordance with an investment policy that is approved by the Principal Administrators, the prime consideration of which will be the protection of principal and the selection of maturities appropriate to anticipated cash flow needs.

3. The Designee may, in its discretion, retain the services of an investment advisor to assist in the investment and management of the Funds, in accordance with any investment policy that may be established pursuant to section 2.

4. The Designee will deduct or direct the deduction from the Funds any out-of-pocket expenses it incurs in administering and investing the Funds, including any costs relating to the services of an investment advisor.

5. Except as provided under section 4, the Designee may only withdraw or direct the payment of Funds if such withdrawal or direction has been authorized in writing by a duly authorized representative of each one of the Principal Regulators.

6. For greater certainty, section 5 above does not apply to a transfer of Funds from one account to another in accordance with sections 1 or 2 of this Agreement.

7. The Principal Regulators agree that the Funds shall be used by them toward one or more of the following:

   (a) developing, modifying, enhancing, redesigning or replacing the NRD System, including the funding of a proportionate share (allocated among SEDAR, SEDI, the NRD System and any other applicable information technology system, "**Proportionate Share**") of any shared redevelopment services for the CSA National Systems;

   (b) funding any Shortfall (as defined in the NRD Agreement) as contemplated under subsections 9.3 (iii) and 9.3 (v) of the NRD Agreement;

   (c) funding any costs and expenses related to the NRD System or the operation thereof that are incurred under the New Arrangements (including a Proportionate Share of any costs and expenses shared among the CSA National Systems) to the extent that the revenues generated from the operation of the NRD System are not sufficient to cover such costs and expenses;

   (d) reducing fees payable by market participants in connection with the access and use of the NRD System;

   (e) paying any costs or expenses associated with the operation of the NRD System, including but not limited to paying or funding:

      (i) a Proportionate Share of the operating costs and expenses of the CSA IT Systems Office (and any successor thereof);

      (ii) any liabilities arising from or relating to the NRD Agreement or any other future arrangements relating to the operation of the NRD System, including a Proportionate Share of any liabilities arising under the New Arrangements;

      (iii) a Proportionate Share of the costs and expenses associated with transitioning from CDS Inc. to one or more third party service providers, or transitioning from the current environment provided under the NRD Agreement to any future proposed environment(s) under any New Arrangements including with respect to transition services shared by the CSA National Systems (such as data center, data network, user and billing, and service desk services);

      (iv) any costs or expenses incurred by one or more Principal Regulators arising from or relating to a third party claim made in connection with any request for proposals or other process for the procurement of goods or services relating to the NRD System or the operation thereof;

      (v) a Proportionate Share of the costs and expenses of any Principal Administrator that is appointed by the others of them to perform functions on their behalf in connection with the operation and/or oversight of the CSA National Systems (each, a "Designated PA"), including any third party liability arising from or relating to:

         (A) the Designated PA's performance of the Designated PA's functions on behalf of the Principal Administrators, including the functions performed under the New Arrangements; or

         (B) any third party agreements entered into by a Designated PA in the performance of, and in connection with, the Designated PA's functions on behalf of the Principal Administrators;

      (vi) a Proportionate Share of any transition costs and expenses incurred by a Principal Regulator relating to the replacement of a Designated PA by a successor Designated PA; and

      (vii) a Proportionate Share of such other costs and expenses that may be mutually agreed upon by the Principal Administrators.

   The Principal Regulators agree that "Proportionate Share" should be calculated based on actual usage or cost in accordance with the principles of fairness, transparency and understandability to limit, to the extent possible, cross-subsidization between the various CSA National Systems and to ensure that the introduction of additional systems unrelated to the registrant community does not increase the Proportionate Share allocated to the NRD System.

8. The Principal Regulators agree that the Designee will not, nor will any director, officer, employee or agent of the Designee, be subject to any liability whatsoever to the Principal Regulators or any other person, in tort, contract or otherwise, in connection with the Funds or activities in relation to the Funds, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation of liability will not apply in respect of any

action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Designee hereunder. Except as to the extent provided in this Agreement, the Designee will not be subject to any debts, liabilities, obligations, demands, judgments, costs, charges or expenses against or with respect to the Funds and resort will be had solely to the Funds for the payment thereof.

9. Each of the Principal Regulators warrants and represents that the execution, delivery and performance of this Agreement (a) are within its powers, (b) have been or will be duly authorized by all necessary proceedings, and (c) do not and will not contravene or constitute a default under, and do not and will not conflict with any judgment, decree or order, or any contract, agreement, or other undertaking or covenant applicable to such Principal Regulator.

10. Effective as of the date hereof, this Agreement: (a) amends and restates in its entirety, the NRD Surplus Application Agreement, (b) constitutes the entire agreement between the Principal Regulators pertaining to the subject matter hereof, and (c) replaces and supersedes all prior agreements, negotiations and understandings between the Principal Regulators with respect to the Funds, including the NRD Surplus Application Agreement.

11. In this Agreement, the term "including" means "including without limiting the generality of the foregoing".

12. This Agreement shall govern the administration and application of the Funds until the later of (a) the termination or expiry of the NRD Agreement, and (b) the application and distribution of all Funds in accordance with this Agreement. For the avoidance of doubt, amounts generated pursuant to the operation of the NRD System under the New Arrangements are not included within the Funds.

13. This Agreement shall be governed by and construed in accordance with the laws in force in the province of Ontario and the federal laws of Canada applicable therein. The Principal Regulators hereby irrevocably attorn to the jurisdiction of courts of the province of Ontario or the Federal Court of Canada sitting in such province.

14. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, including any fax counterpart, and it shall not be necessary when making proof of this Agreement to account for more than one counterpart.

15. This agreement, as it pertains to the OSC, comes into effect as of the date hereof once approved by the Minister in Ontario pursuant to section 143.10 of the *Securities Act* (Ontario).

IN WITNESS WHEREOF, the duly authorized signatories of the parties have signed this Agreement as of the date first indicated above.

ALBERTA SECURITIES COMMISSION

Per: "William S. Rice"

Per: "David C. Linder"

BRITISH COLUMBIA SECURITIES COMMISSION

Per: "Paul Bourque"

Per: _____

ONTARIO SECURITIES COMMISSION

Per: "Maureen Jensen"

AUTORITÉ DES MARCHÉS FINANCIERS

Per: "Mario Albert"

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

Per: "Keith Persaud"

Per: "Rossana Di Lieto"

1.1.6 Notice of Agreement among certain provincial securities regulators with respect to the administration and application of surplus funds generated by the operation of the System for Electronic Document Analysis and Retrieval (SEDAR) and the System for Electronic Disclosure by Insiders (SEDI)

April 18, 2013

NOTICE OF AGREEMENT AMONG CERTAIN PROVINCIAL SECURITIES REGULATORS WITH RESPECT TO THE ADMINISTRATION AND APPLICATION OF SURPLUS FUNDS GENERATED BY THE OPERATION OF THE SYSTEM FOR ELECTRONIC DOCUMENT ANALYSIS AND RETRIEVAL (SEDAR) AND THE SYSTEM FOR ELECTRONIC DISCLOSURE BY INSIDERS (SEDI)

The Ontario Securities Commission, the British Columbia Securities Commission, the Alberta Securities Commission, the Autorité des marchés financiers and IIROC have amended and restated their agreement concerning the administration and application of surplus funds generated by the operation of SEDAR and SEDI (Amended and Restated SEDAR and SEDI Surplus Application Agreement).

The Amended and Restated SEDAR and SEDI Surplus Application Agreement is being published today in the Bulletin in accordance with section 143.10 of the *Securities Act*. This agreement was delivered to the Minister of Finance on April 11, 2013, and is subject to Ministerial approval.

Questions may be referred to:

Minami Ganaha
Senior Legal IT Counsel
General Counsel's Office
(416) 593-8170
mganaha@osc.gov.on.ca

AMENDED AND RESTATED SEDAR AND SEDI SURPLUS APPLICATION AGREEMENT

This surplus application agreement is amended and restated as of the 2nd day of April, 2013 among the British Columbia Securities Commission ("**BCSC**"), Alberta Securities Commission ("**ASC**"), Ontario Securities Commission ("**OSC**") and Autorité des marchés financiers ("**AMF**") (collectively, the "**Principal Administrators**").

WHEREAS each of the Principal Administrators entered into the following agreements with CDS Inc.:

(a) the System for Electronic Disclosure by Insiders ("**SEDI**") Development and Operations Agreement dated October 26, 2001, as amended (the "**SEDI Agreement**"); and

(b) the System for Electronic Document Analysis and Retrieval ("**SEDAR**") Operations Agreement dated August 1, 2004, as amended (the "**SEDAR Agreement**");

WHEREAS for the purposes hereof, references to SEDI and to SEDAR shall be deemed to include reference to any replacement system thereof;

WHEREAS the Principal Administrators also operate other information technology systems which perform securities regulatory functions, including the system known as the National Registration Database (and any replacement system thereof, collectively, "**NRD**", and all such systems, including SEDAR and SEDI and any new systems developed from time to time, collectively, the "**CSA National Systems**");

WHEREAS the Principal Administrators periodically receive royalty payments from CDS Inc. under the SEDI Agreement and SEDAR Agreement in connection with the commercial dissemination of certain data by CDS Inc. (the "**Royalty Payments**");

WHEREAS the Principal Administrators entered into a surplus application agreement dated May 19, 2005 (the "**SEDAR Surplus Application Agreement**") respecting the administration and application of an initial operating surplus amount (the "**Initial SEDAR Surplus**") and any annual operating surplus amounts ("**Annual SEDAR Surplus**") accumulating under the SEDAR Agreement, including any interest or other amounts earned thereon (collectively, the "**SEDAR Funds**");

WHEREAS an operating surplus has accumulated under the SEDI Agreement (the "**Existing SEDI Surplus**") and the Principal Administrators wish to establish the terms and conditions governing the administration and application of the Existing SEDI Surplus and any annual operating surpluses ("**Annual SEDI Surplus**") accumulating under the SEDI Agreement from SEDI operations, including any interest or other amounts earned thereon (collectively, the "**SEDI Funds**");

WHEREAS the Principal Administrators have publicly issued a request for proposals to seek new service arrangements for the operation of certain information technology systems including, among others, SEDI, SEDAR and NRD (the "**New Arrangements**");

WHEREAS the Principal Administrators desire to amend and restate the SEDAR Surplus Application Agreement in its entirety and establish the terms and conditions governing the administration and application of the SEDAR Funds, the SEDI Funds and the Royalty Payments (collectively, the "**Funds**");

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The Principal Administrators shall appoint a designee (the "**Designee**") from among themselves to receive, hold and manage the Funds for them and deal with the Funds as directed by them as provided herein. For greater certainty, the parties do not intend to constitute the Designee as trustee of a trust. The Designee may be replaced from time to time upon the mutual consent of the Principal Administrators. The Principal Administrators hereby confirm that the OSC shall continue as the Designee until such time as it resigns or is replaced. Upon the receipt of Funds from CDS Inc., and subject to section 2 below, the Designee will deposit those Funds in one or more segregated accounts, each of which may be a deposit/chequing or investment account and must be held with a bank listed in Schedule I or II to the *Bank Act* (Canada) or a trust company registered under applicable provincial or federal legislation.

2. Notwithstanding section 1, the Designee may, in its discretion, invest the Funds in accordance with an investment policy that is approved by the Principal Administrators, the prime consideration of which will be the protection of principal and the selection of maturities appropriate to anticipated cash flow needs.

3. The Designee may, in its discretion, retain the services of an investment advisor to assist in the investment and management of the Funds, in accordance with any investment policy that may be established pursuant to section 2

4. The Designee will deduct or direct the deduction from the Funds any out-of-pocket expenses it incurs in administering and investing the Funds, including any costs relating to the services of an investment advisor.

5. Except as provided under section 4, the Designee may only withdraw or direct the payment of Funds if such withdrawal or direction has been authorized in writing by a duly authorized representative of each one of the Principal Administrators.

6. For greater certainty, section 5 above does not apply to a transfer of Funds from one account to another in accordance with sections 1 or 2 of this Agreement.

7. The Principal Administrators agree that the Funds shall be used by them toward the payment of costs and expenses associated with the operation and development of the CSA National Systems, including:

   (a) reducing fees payable by market participants or others in connection with the access and use of any CSA National System;

   (b) funding any financial deficiencies contemplated under Section 8.07(d) of the SEDI Agreement or Shortfall (as defined in the SEDI Agreement) as contemplated under Sections 8.08(e), 8.08(g) and 8.08(l) of the SEDI Agreement;

   (c) funding any Shortfall (as defined in the SEDAR Agreement) as contemplated under Sections 9.2.5, 9.2.7 and 9.2.12 of the SEDAR Agreement;

   (d) any liabilities arising from or relating to the SEDAR Agreement, the SEDI Agreement, the New Arrangements, the CSA National Systems or the operation, development or oversight thereof;

   (e) paying or funding the costs and expenses of developing, modifying, enhancing, redesigning or replacing the CSA National Systems, including development of new national systems for the CSA;

   (f) paying or funding any costs or expenses associated with the operation of the CSA National Systems, including paying or funding any costs or expenses:

      (i) of third party service providers to perform functions in connection with the operation and development and/or oversight of the CSA National Systems;

      (ii) of the CSA IT Systems Office (and any successor thereof);

      (iii) associated with transitioning from CDS Inc. to one or more third party service providers, or transitioning from the current environment to any future proposed environment(s) under any New Arrangements;

      (iv) incurred by one or more Principal Administrators arising from or relating to a third party claim made in connection with any request for proposals or other process for the procurement of goods or services relating to a CSA National System or the operation thereof;

      (v) of any Principal Administrator that is appointed by the others of them to perform functions on their behalf in connection with the operation and/or oversight of the CSA National Systems (each, a "**Designated PA**"), including any third party liability arising from or relating to:

         a. the Designated PA's performance of the Designated PA's functions on behalf of the Principal Administrators, including the functions performed under the New Arrangements; or

         b. any third party agreements entered by a Designated PA in the performance of, and in connection with, the Designated PA's functions on behalf of the Principal Administrators; and

      (vi) incurred by a Principal Administrator relating to the replacement of a Designated PA by a successor Designated PA; and

   (g) such other costs and expenses relating to the CSA National Systems as may be mutually agreed upon by the Principal Administrators.

8. The Principal Administrators agree that the Designee will not, nor will any director, officer, employee or agent of the Designee, be subject to any liability whatsoever to the Principal Administrators or any other person, in tort, contract or otherwise, in connection with the Funds or activities in relation to the Funds, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation of liability will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Designee hereunder. Except as to the extent provided in this Agreement, the Designee will not be subject to any debts, liabilities, obligations, demands, judgments, costs, charges or expenses against or with respect to the Funds and resort will be had solely to the Funds for the payment thereof.

9. Each of the Principal Administrators warrants and represents that the execution, delivery and performance of this Agreement (a) are within its powers, (b) have been or will be duly authorized by all necessary proceedings, and (c) do not and will not contravene or constitute a default under, and do not and will not conflict with any judgment, decree or order, or any contract, agreement, or other undertaking or covenant applicable to such Principal Administrator.

10. Effective as of the date hereof, this Agreement: (a) amends and restates in its entirety, the SEDAR Surplus Application Agreement, (b) constitutes the entire agreement between the Principal Administrators pertaining to the subject matter hereof, and (c) replaces and supersedes all prior agreements, negotiations and understandings between the Principal Administrators with respect to the Funds, including the SEDAR Surplus Application Agreement.

11. In this Agreement, the term “including” means “including without limiting the generality of the foregoing”.

12. This Agreement shall govern the administration and application of the Funds until the later of: (a) the termination or expiry of the SEDAR Agreement and the SEDI Agreement, and (b) the application and distribution of all Funds in accordance with this Agreement. For the avoidance of doubt, amounts generated pursuant to the operation of SEDAR and SEDI under the New Arrangements are not included within the Funds.

13. This Agreement shall be governed by and construed in accordance with the laws in force in the province of Ontario and the federal laws of Canada applicable therein. The Principal Administrators hereby irrevocably attorn to the jurisdiction of courts of the province of Ontario or the Federal Court of Canada sitting in such province.

14. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, including any fax counterpart, and it shall not be necessary when making proof of this Agreement to account for more than one counterpart.

15. This Agreement, as it pertains to the OSC, comes into effect as of the date hereof once approved by the Minister in Ontario pursuant to section 143.10 of the *Securities Act* (Ontario).

IN WITNESS WHEREOF, the duly authorized signatories of the parties have signed this Agreement as of the date first indicated above.

ALBERTA SECURITIES COMMISSION

Per: “William S. Rice”

Per: “David C. Linder”

BRITISH COLUMBIA SECURITIES COMMISSION

Per: “Paul Bourque”

Per: _____

ONTARIO SECURITIES COMMISSION

Per: “Maureen Jensen”

AUTORITÉ DES MARCHÉS FINANCIERS

Per: “Mario Albert”

1.2 Notices of Hearing

1.2.1 Richard Bruce Moore – ss. 127, 127.1

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

AND

IN THE MATTER OF
RICHARD BRUCE MOORE

NOTICE OF HEARING
(Pursuant to sections 127 and 127.1
of the Securities Act)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act"), at the offices of the Commission at 20 Queen Street West, 17th Floor, commencing on the 16th day of April, 2013 at 10:00 a.m. or as soon thereafter as the hearing can be held;

TO CONSIDER whether it is in the public interest to approve a settlement agreement dated April 8, 2013 entered into between Staff of the Commission ("Staff") and Richard Bruce Moore pursuant to sections 127 and 127.1 of the Act;

BY REASON OF the allegations set out in the Statement of Allegations of Staff, dated April 11, 2013, and such additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that any party to the proceeding may be represented by counsel 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 proceeding.

DATED at Toronto this 11th day of April 2013.

"John Stevenson"
Secretary to the Commission

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

AND

IN THE MATTER OF
RICHARD BRUCE MOORE

STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION

Staff of the Ontario Securities Commission ("Staff") allege the following.

I. OVERVIEW

1. These allegations concern trading by (Richard) Bruce Moore ("Moore") in the securities of two issuers:

   i. trading in 2010 in the securities of Tomkins plc ("Tomkins"), an issuer with securities trading on the London Stock Exchange ("LSE"). Tomkins was not a reporting issuer in Ontario (the "Tomkins Conduct"); and

   ii. trading in 2012 in the securities of HOMEQ Corporation ("HOMEQ") (the "HOMEQ Conduct").

II. THE RESPONDENT

2. Moore is a resident of Toronto, Ontario. Moore was employed by CIBC World Markets ("CIBC") for approximately 20 years in commercial banking, corporate banking, and investment banking. For approximately 9 years, he worked from CIBC's office in London, England, returning to Canada in August, 2008.

3. In 2010, Moore was a Managing Director, Investment Banking (Diversified) at CIBC in Toronto, Ontario. In this role, Moore was responsible for covering clients in a broad range of business sectors, including Canada Pension Plan Investment Board ("CPPIB").

4. I n 2012, Moore was an employee of UBS Securities Canada Inc. ("UBS") in Toronto, Ontario. His title was Managing Director, Investment Banking, Diversified Industrials. In this role, Moore was responsible for covering clients in a broad range of business sectors, including Birch Hill Equity Partners ("Birch Hill").

III. MOORE'S CONDUCT

A. The Tomkins Conduct

5. In June and July 2010, Moore placed orders to purchase securities of Tomkins in two brokerage accounts located on the Channel Island of Jersey (the "offshore accounts"). The offshore accounts were opened in 2008 and were linked to two international pension plans that Moore established in 2002 to hold earnings from Moore's work for CIBC in the United Kingdom. Moore transferred the international pension plans to a new trustee in Jersey in 2008 in anticipation of his return to Canada. The Tomkins purchases were the first transactions in the offshore accounts. Moore did not disclose the offshore accounts to CIBC in Toronto as required by its compliance policies.

6. In total, Moore purchased 212,000 shares of Tomkins on the LSE (at a cost of £508,249.90). The purchases were the single-largest equity purchases of Moore's life by value.

7. In June 2010 Moore decided to purchase securities of Tomkins because he deduced that it would likely be acquired by CPPIB.

8. Moore reached this conclusion as a result of his previous knowledge of Tomkins obtained from public sources including rumours that it would be the subject of a takeover, his observations of a friend and senior representative of CPPIB ("Mr. A.") and comments of a general nature made by Mr. A. about work that he was involved in for CPPIB. These interactions with Mr. A. occurred over the course of several months, including on social occasions.

9. Among other information, Moore learned from Mr. A. that he was working on a transaction for CPPIB that required US $2 billion in financing involving a company in Europe and the U.S. The final piece of information that ultimately led Moore to deduce that the identity of CPPIB's target was Tomkins was Moore's observation of Mr. A's chance interaction with the CEO of

Tomkins (the "CEO") at a charity event. Mr. A. declined to introduce Moore to the CEO, or to reveal his identity. Later that day another person volunteered the CEO's identity to Moore.

10. The following business day, Moore took steps to initiate the purchase of a portion of the Tomkins securities described above.

11. In no specific instance did Mr. A ever provide Moore with any material, generally undisclosed information.

12. On July 19, 2010, the day of the announcement by Tomkins of the approach by CPPIB and Onex Corporation, the closing price of Tomkins shares increased 31.6% from the previous day's close.

13. Moore's profit from the LSE trades based on the 20-day average price of the Tomkins shares following July 19, 2010 was CDN $275,611.54.

B. The HOMEQ Conduct

(a) Moore Received Material Information Inadvertently

14. On March 22, 2012, Moore received an email from a partner at Birch Hill (Mr. "B"), which had an attachment entitled *Birch Hill Equity Partners, Project Monaco, Summit (Investment Recommendation), March 26, 2012, A confidential presentation)* – (the "Recommendation").

15. The Recommendation disclosed a material fact concerning Birch Hill's proposal to acquire HOMEQ. In particular, the Recommendation stated that the "[HOMEQ] Board has concluded the auction process with Birch Hill emerging as the winning bidder at $9.50/share price" (the "Material Fact").

16. The email containing the Material Fact was sent to Moore in error through inadvertence by Mr. B in addressing the email with the Auto-Complete addressing function of Birch Hill's email software. Even though Birch Hill was a client of UBS, Moore was not supposed to receive the email and the confidential information attached to it. Although Moore was frequently interacting with Mr. B in relation to another matter in or about March 2012, Moore had no involvement in the HOMEQ transaction. Instead of returning the email and advising Mr. B that he had received the email in error, Moore took steps to purchase securities of HOMEQ.

(b) Moore's Purchases of HOMEQ Securities

17. Moore took immediate steps to purchase shares of HOMEQ. Between March 23 and March 27, Moore purchased HOMEQ securities in a brokerage account that was located on the Channel Island of Jersey as follows:

Date	Volume Purchased	Total Cost (CDN)
Mar 23/12	11,200	$89,033.59
Mar 26/12	7,400	$59,108.60
Mar 27/12	12,000	$96,381.87
Total	**30,600**	**$244,524.06**

18. When purchased by Birch Hill, Moore's shares in HOMEQ would have generated proceeds of approximately $290,700, representing a gross profit of approximately $46,175. The profit of the HOMEQ trades based on the 20-day average price of the HOMEQ shares following the public announcement made by HOMEQ and Birch Hill on March 30, 2012 was $43,268.94.

(c) Moore in a Special Relationship with HOMEQ

19. Moore was in a special relationship with HOMEQ pursuant to section 76(5)(a)(iii) of the Act. Moore learned of the Material Facts from Mr. B, who was in a special relationship with HOMEQ, in circumstances where Moore knew or ought reasonably to have known that Mr. B was a person in such a relationship.

20. As of March 22, 2012, Birch Hill had taken the following steps:

i. restricted trading internally on HOMEQ securities as of August 5, 2010;

ii. completed a substantial amount of due diligence;

iii. retained lawyers to assist them with the bid in August 2010 and had ongoing discussions concerning the acquisition with the lawyers from January 2012;

iv. retained financial advisors to assist them with the bid on November 24, 2011 and had ongoing discussions concerning the acquisition with the financial advisors from then;

v. signed a confidentiality agreement with HOMEQ as of Jan. 31, 2012; and

vi. negotiated a price of $9.50 with HOMEQ's board on or about March 15, 2012, which was the winning bid in HOMEQ's auction process.

21. Consequently, as of March 22, 2012, Birch Hill's interest in acquiring HOMEQ had evolved into a proposal to do so.

(d) Moore Had Knowledge of the Material Fact with Respect to HOMEQ that Had Not Been Generally Disclosed

22. At the time of the HOMEQ purchases, Moore had knowledge of the Material Fact with respect to HOMEQ that had not been generally disclosed.

IV. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

A. The Tomkins Conduct

23. Moore's conduct involving the purchase of securities of Tomkins as outlined above fell below the standard of behaviour expected from someone in Moore's position and given his extensive experience in the capital markets industry. In particular, he ought not to have made use of information obtained in part by virtue of his position as an employee of a registrant prior to its general disclosure to the public.

24. Consequently Moore's conduct was contrary to the public interest.

B. The HOMEQ Conduct

25. Moore's HOMEQ Conduct was contrary to s. 76(1) of the Act and contrary to the public interest. It was abusive of the capital markets and to confidence in the capital markets.

26. In particular, Moore misused confidential information belonging to Birch Hill for his personal profit. This conduct fell markedly below the high standard of behaviour expected from someone in Moore's position and given his extensive experience in capital markets industry.

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

DATED at Toronto, Ontario, this 11th day of April 2013.

1.4 Notices from the Office of the Secretary

1.4.1 Morgan Dragon Development Corp. et al.

FOR IMMEDIATE RELEASE
April 10, 2013

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 the Withdrawal Motion be heard in writing; and that Crawley Meredith Brush Mackewn LLP is granted leave to withdraw as representative for Ricketts.

A copy of the Order dated April 9, 2013 is available at www.osc.gov.on.ca.

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1.4.2 Morgan Dragon Development Corp. et al.

FOR IMMEDIATE RELEASE
April 10, 2013

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

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT
BETWEEN STAFF OF THE
ONTARIO SECURITIES COMMISSION and
MORGAN DRAGON DEVELOPMENT CORP.,
JOHN CHEONG (aka KIM MENG CHEONG),
and HERMAN TSE

TORONTO – Following a hearing held today, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and Morgan Dragon Development Corp., John Cheong (aka Kim Meng Cheong) and Herman Tse.

A copy of the Order dated April 10, 2013 and Settlement Agreement dated April 10, 2013 are available at www.osc.gov.on.ca.

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1.4.3 Ground Wealth Inc. et al.

FOR IMMEDIATE RELEASE
April 11, 2013

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

AND

IN THE MATTER OF
GROUND WEALTH INC., ARMADILLO ENERGY INC.,
PAUL SCHUETT, DOUG DEBOER, JAMES LINDE,
SUSAN LAWSON, MICHELLE DUNK,
ADRION SMITH, BIANCA SOTO and TERRY REICHERT

TORONTO – The Commission issued a Temporary Order in the above named matter which provides that pursuant to subsections 127(1), 127(7) and 127(8) of the Act:

1. The February 2013 Temporary Order is extended to June 7, 2013, or until further order of the Commission, as against the respondents GWI, Armadillo Texas, DeBoer, Dunk and Smith;

2. A further hearing shall be held before the Commission on June 6, 2013, at 11:00 a.m. or on such other date and time as may be set by the Office of the Secretary; and

3. Any further notices or orders in this matter shall proceed under a single style of cause of the proceeding initiated by the February 1, 2013 Notice of Hearing, being "IN THE MATTER OF GROUND WEALTH INC., MICHELLE DUNK, ADRION SMITH, JOEL WEBSTER, DOUGLAS DeBOER, ARMADILLO ENERGY INC., ARMADILLO ENERGY, INC. AND ARMADILLO ENERGY LLC."

A copy of the Temporary Order dated April 8, 2013 is available at www.osc.gov.on.ca.

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1.4.4 Ground Wealth Inc. et al.

FOR IMMEDIATE RELEASE
April 11, 2013

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

AND

IN THE MATTER OF
GROUND WEALTH INC., MICHELLE DUNK,
ADRION SMITH, JOEL WEBSTER,
DOUGLAS DEBOER, ARMADILLO ENERGY INC.,
ARMADILLO ENERGY, INC.,
and ARMADILLO ENERGY LLC

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

1. The hearing in this matter is adjourned to June 6, 2013, at 11:00 a.m., or on such other date and time as may be set by the Office of the Secretary; and,

2. Any further notices and orders in this matter shall proceed under a single style of cause of the proceeding initiated by the February 1, 2013 Notice of Hearing, being "IN THE MATTER OF GROUND WEALTH INC., MICHELLE DUNK, ADRION SMITH, JOEL WEBSTER, DOUGLAS DeBOER, ARMADILLO ENERGY INC., ARMADILLO ENERGY, INC. AND ARMADILLO ENERGY LLC."

A copy of the Order dated April 8, 2013 is available at www.osc.gov.on.ca.

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1.4.5 Blackwood & Rose Inc. et al.

FOR IMMEDIATE RELEASE
April 11, 2013

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

AND

IN THE MATTER OF
BLACKWOOD & ROSE INC., STEVEN ZETCHUS and
JUSTIN KRELLER (also known as JUSTIN KAY)

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

(i) the Temporary Order is extended to May 21, 2013 or until further order of the Commission; and

(ii) the hearing is adjourned to May 17, 2013 at 10:00 a.m., or such other date or time as provided by the Office of the Secretary and agreed to by the parties, for the purpose of conducting a status hearing and to consider a further extension of the Temporary Order.

A copy of the Temporary Order dated April 10, 2013 is available at www.osc.gov.on.ca.

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1.4.6 Richard Bruce Moore

FOR IMMEDIATE RELEASE
April 11, 2013

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

AND

IN THE MATTER OF
RICHARD BRUCE MOORE

TORONTO – The Office of the Secretary issued a Notice of Hearing in the above noted matter for a hearing to consider whether it is in the public interest to approve the settlement agreement entered into between Staff of the Commission and Richard Bruce Moore. The hearing will be held on April 16, 2013 at 10:00 a.m. at the offices of the Commission at 20 Queen Street West, 17th Floor, Toronto, Ontario.

A copy of the Notice of Hearing dated April 11, 2013 and Statement of Allegations of Staff of the Ontario Securities Commission dated April 11, 2013 are available at www.osc.gov.on.ca.

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1.4.7 Myron Sullivan II et al.

FOR IMMEDIATE RELEASE
April 12, 2013

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

AND

IN THE MATTER OF
MYRON SULLIVAN II formerly known as
FRED MYRON GEORGE SULLIVAN,
GLOBAL RESPONSE GROUP (GRG) CORP., and
IMC – INTERNATIONAL MARKETING
OF CANADA CORP.

TORONTO – The Commission issued an Order in the above noted matter which provides that the hearing in this matter is adjourned to April 25, 2013 at 11:00 a.m.

A copy of the Order dated April 12, 2013 is available at www.osc.gov.on.ca.

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1.4.8 Michael Robert Shantz and Canada Pacific Consulting Inc.

FOR IMMEDIATE RELEASE
April 12, 2013

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

AND

IN THE MATTER OF
MICHAEL ROBERT SHANTZ and
CANADA PACIFIC CONSULTING INC.

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

(a) Staff's application to proceed by way of written hearing is granted;

(b) Staff's materials in respect of the written hearing shall be filed no later than April 26, 2013;

(c) The Respondents' responding materials, if any, shall be served and filed no later than May 10, 2013; and

(d) Staff's reply materials, if any, shall be served and filed no later than May 17, 2013.

A copy of the Order dated April 12, 2013 is available at www.osc.gov.on.ca.

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1.4.9 New Hudson Television LLC & James Dmitry Salganov

FOR IMMEDIATE RELEASE
April 12, 2013

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

AND

IN THE MATTER OF
NEW HUDSON TELEVISION LLC &
JAMES DMITRY SALGANOV

TORONTO – The Commission issued an Order in the above named which provides that the status hearing shall continue on June 6, 2013 at 10:00 a.m. or such other date and time as set by the Office of the Secretary.

A copy of the Order dated April 9, 2013 is available at www.osc.gov.on.ca.

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1.4.10 Steven George Conville

FOR IMMEDIATE RELEASE
April 12, 2013

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

AND

IN THE MATTER OF
A DECISION OF THE INVESTMENT INDUSTRY
REGULATORY ORGANIZATION OF CANADA

AND

IN THE MATTER OF
STEVEN GEORGE CONVILLE

TORONTO – The Commission issued an Order in the above named matter, which provides that the IIROC Penalty Decision is stayed, pursuant to subsection 8(4) of the Act and Rule 14.7 of the Rules, pending the determination of the Conville Application and the IIROC Application.

A copy of the Order dated April 12, 2013, Conville Application dated March 10, 2013 and IIROC Application dated April 5, 2013 are available at www.osc.gov.on.ca.

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1.4.11 Juniper Fund Management Corporation et al.

FOR IMMEDIATE RELEASE
April 12, 2013

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

AND

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

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

The Commission also issued an Order which provides that the parties shall appear before the Commission on June 14, 2013 at 10:00 a.m. at the offices of the Commission at 20 Queen Street West, Toronto, ON, for the sanctions and costs hearing.

A copy of the Reasons and Decision and the Order dated April 11, 2013 are available at www.osc.gov.on.ca.

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1.4.12 Sandy Winick et al.

FOR IMMEDIATE RELEASE
April 15, 2013

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

AND

IN THE MATTER OF
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 CORP.
(aka LIQUID GOLD INTERNATIONAL INC.),
and NANOTECH INDUSTRIES INC.

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

1. on consent of the parties, the written hearing is converted to an oral Hearing on the Merits to be heard on May 15th and 16th, 2013, pursuant to Rule 11.5 of the Rules of Procedure;

2. the affidavits filed by Staff and counsel for Kolt Curry, Mateyak and AHST Ontario in the written hearing will stand for the evidence in-chief on the Hearing on the Merits;

3. the Hearing on the Merits will start with cross-examinations by counsel for the respondents on the affidavits filed by Staff, followed by re-examinations, if appropriate and Staff may then cross examine Kolt Curry and Mateyak on their affidavits, followed by re-examinations, if appropriate;

4. Staff shall have until May 23rd, 2013 to file supplemental written submissions, if any;

5. the respondents shall have until May 27th, 2013 to file supplemental written submissions, if any; and

6. oral submissions for the Hearing on the Merits shall be heard on May 30th, 2013 at 10:00 a.m.

A copy of the Order dated April 12, 2013 is available at www.osc.gov.on.ca.

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1.4.13 Ronald James Ovenden et al.

FOR IMMEDIATE RELEASE
April 12, 2013

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

AND

IN THE MATTER OF
RONALD JAMES OVENDEN,
NEW SOLUTIONS CAPITAL INC.,
NEW SOLUTIONS FINANCIAL CORPORATION AND
NEW SOLUTIONS FINANCIAL (II) CORPORATION

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN STAFF OF
THE ONTARIO SECURITIES COMMISSION,
NEW SOLUTIONS FINANCIAL CORPORATION AND
NEW SOLUTIONS FINANCIAL (II) CORPORATION

TORONTO – The Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and New Solutions Financial Corporation and New Solutions Financial (II) Corporation.

A copy of the Order dated April 10, 2013 and Settlement Agreement dated March 28, 2013 are available at www.osc.gov.on.ca.

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1.4.14 JV Raleigh Superior Holdings Inc. et al.

FOR IMMEDIATE RELEASE
April 15, 2013

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

AND

IN THE MATTER OF
JV RALEIGH SUPERIOR HOLDINGS INC.,
MAISIE SMITH (also known as MAIZIE SMITH) and
INGRAM JEFFREY ESHUN

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

(i) pursuant to Rules 11.4 and 11.5 of the *Rules of Procedure*, Staff's application to conduct this hearing in writing is granted;

(ii) a copy of this Order be provided to the Respondents;

(iii) the Respondents will have until April 22, 2013 to serve and file any response to Staff's written submissions;

(iv) if the Respondents file no written responses, the Commission will proceed to render a decision in this matter; and

(v) if the Respondents file written responses, Staff shall have until April 29, 2013 to serve and file any reply.

A copy of the Order dated April 15, 2013 is available at www.osc.gov.on.ca.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 C.A. Bancorp Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application to vary a decision of the Commission – Reporting issuer seeking relief so that it can continue to file financial statements in accordance with old Canadian GAAP (rather than IFRS) – Issuer was previously granted relief for periods relating to the issuer's financial year beginning on January 1, 2011 and ending on December 31, 2011 and the issuer's financial year beginning on January 1, 2012 and ending on December 31, 2012 (collectively, the issuer's deferred financial years) – Issuer applied for a variation to extend the issuer's deferred financial years for one additional year to include the financial year beginning on January 1, 2013 and ending on December 31, 2013 – In particular, the issuer is seeking relief from the requirements in Part 3 of National Instrument 52-107 that would apply to financial statements for periods relating to the issuer's deferred financial years – The issuer is also seeking relief from the IFRS related amendments to the continuous disclosure, prospectus, certification and audit committee rules (collectively, the rules) that came into force on January 1, 2011 and that would apply to periods relating to the issuer's deferred financial years – The issuers is an "investment company" as defined in Accounting Guideline 18 Investment Companies (AcG-18) in the Handbook of the Canadian Institute of Chartered Accountants – the Canadian Accounting Standards Board decided that investment companies, as defined in and applying AcG-18, will only be required to adopt IFRS for annual periods beginning on or after January 1, 2014 – Relief granted, subject to a number of conditions.

Applicable Legislative Provisions

National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards, Parts 3 and 4.
National Instrument 51-102 Continuous Disclosure Obligations.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings.
National Instrument 52-110 Audit Committees.
National Instrument 41-101 General Prospectus Requirements.
National Instrument 44-101 Short Form Prospectus Distributions.
National Instrument 44-102 Shelf Distributions.

April 2, 2013

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
C.A. BANCORP INC.
(the "Applicant")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Applicant under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") for a variation of a decision dated May 16, 2011 (the "**Prior Exemption Order**") which exempted the Applicant from:

1. the requirements of Part 3 of National Instrument 52-107 – *Acceptable Accounting Principles and Auditing Standards* ("**NI 52-107**") that apply to financial statements, financial information, operating statements and *pro forma* financial statements for periods relating to the Applicant's financial year beginning on January 1, 2011 and ending on December 31, 2011 and the Applicant's financial year beginning on January 1, 2012 and ending on December 31, 2012 (collectively, the "**Applicant's Deferred Financial Years**");

2. the amendments to National Instrument 51-102 – *Continuous Disclosure Obligations (*"**NI 51-102**") related to International Financial Reporting Standards ("**IFRS**") that came into force on January 1, 2011 and that apply to documents required to be prepared, filed, delivered or sent under NI 51-102 for periods commencing on January 1, 2011 and relating to the Applicant's Deferred Financial Years;

3. the IFRS-related amendments to National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* ("**NI 52-109**") that came into force on January 1,, 2011 and that apply to annual filings and interim filings for periods relating to the Applicant's Deferred Financial Years; and

4. the IFRS-related amendments to National Instrument 52-110 – *Audit Committees* ("**NI 52-110**") that came into force on January 1, 2011 and that apply to periods relating to the Applicant's Deferred Financial Years,

The Applicant applies to the principal regulator for a variation of the Prior Exemption Order such that the Applicant's Deferred Financial Years be extended to include the Applicant's financial year beginning January 1, 2013 and ending December 31, 2013 (the "**Variation Sought**").

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 Applicant has provided notice that section 4,7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon Territory, Northwest Territories and Nunavut (the "**Passport Jurisdictions**").

Interpretation

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

Representations

This decision is based on the following facts represented by the Applicant, in support of the Prior Exemption Order, that;

The Applicant

1. The Applicant is a company existing under the *Business Corporations Act* (Alberta).

2. The head office of the Applicant is located at 225a MacPherson Avenue, Suite 201, Toronto, Ontario, M4V lAl. The registered office of the Applicant is located at 3700 Canterra Tower, 400 Third Avenue SW, Calgary, Alberta, T2P 4H2.

3. The Applicant is a reporting issuer or equivalent in the Jurisdiction and the Passport Jurisdictions. The Applicant is not in default of its reporting issuer obligations under the Legislation or the legislation of the Passport Jurisdictions.

4. The Applicant is a publicly traded Canadian merchant bank and alternative asset manager that provides investors with access to a range of private equity and other alternative asset class investment opportunities. The Applicant has focused on investments in small- and middle-capitalization public and private companies, with emphasis on the industrials, infrastructure and financial services sectors.

5. The authorized share capital of the Applicant consists of an unlimited number of Common Shares, an unlimited number of Class A preference shares, issuable in series, an unlimited number of Class B preference shares, issuable in series, an unlimited number of Class C preference shares, issuable in series (collectively, the "**Preference Shares**"), of which 12,269,280 Common Shares and no Preference Shares of the Applicant are issued and outstanding.

6. The Common Shares are listed and posted for trading on the Toronto Stock Exchange under the symbol "BKP". The Common Shares are not listed or quoted on any other exchange or market in Canada or elsewhere.

7. The Applicant's financial year end is December 31.

Status

8. The Applicant is an "investment company" as defined in Accounting Guideline 18 – Investment Companies ("**AcG-18**") in the Handbook of the Canadian Institute of Chartered Accountants (the "**Handbook**").

9. The Applicant is not an investment fund as that term is defined in the *Securities Act* (Ontario).

10. As part of the changeover to IFRS in Canada, the Canadian Accounting Standards Board ("**AcSB**") has incorporated IFRS into the Handbook as Canadian GAAP for most publicly accountable enterprises. As a result, the Handbook contains two sets of standards for public companies:

    (a) Part 1 of the Handbook – Canadian GAAP for publicly accountable enterprises that applies for financial years beginning on or after January 1, 2011; and

    (b) Part V of the Handbook – Canadian GAAP for public enterprises that is the pre-changeover accounting standards ("**old Canadian GAAP**").

11. On October 1, 2010, the AcSB published amendments to Part 1 of the Handbook that provide a one-year deferral of the transition to IFRS for investment companies. The amendments required investment companies, as defined in and applying AcG-18, to adopt IFRS for annual periods beginning on or after January 1, 2012. Subsequently, at its meeting on January 12, 2011, the AcSB decided to extend the deferral for an additional year and in March 2011 issued amendments to Part 1 of the Handbook so that investment companies, as defined in and applying AcG-18, will only be required to adopt IFRS for annual periods beginning on or after January 1, 2013.

12. As part of the changeover to IFRS, NI 52-107 was repealed and replaced effective January 1, 2011. In the new version of NI 52-107,

    (a) Part 3 contains requirements based on IFRS and applies to financial statements, financial information, operating statements and *pro forma* financial statements for periods relating to financial years beginning on or after January 1, 2011; and

    (b) Part 4 contains requirements based on an old Canadian GAAP and applies to financial statements, financial information, operating statements and *pro forma* financial statements for periods relating to financial years beginning before January 1, 2011.

13. As part of the changeover to IFRS, IFRS-related amendments were made to NI 51-102, NI 52-109 and NI 52-110 (collectively, the "**Rules**") and these amendments came into force on January 1, 2011. Among other things, the amendments replace old Canadian GAAP terms and phrases with IFRS terms and phrases and contain IFRS-specific requirements. The amendment instruments for the Rules contain transition provisions that provide that the IFRS-related amendments only apply to documents required to be filed under the Rules for periods relating to financial years beginning on or after January 1, 2011. Therefore, during the IFRS transition period,

    (a) issuers filing financial statements prepared in accordance with old Canadian GAAP will be required to comply with the versions of the Rules that contain old Canadian GAAP terms and phrases; and

    (b) issuers filing financial statements that comply with IFRS will be required to comply with the versions of the Rules that contain IFRS terms and phrases and IFRS-specific requirements.

14. On October 8, 2010, the Canadian Securities Administrators ("**CSA**") published CSA Staff Notice 81-320 *Update on International Financial Reporting Standards for Investment Funds* ("**Notice 81-320**") which indicated that, given the October 1, 2010 amendments to the Handbook that provided for a deferral to the transition to IFRS for investment companies, the CSA would defer finalizing IFRS-related amendments to rules related to investment funds,

15. NI 52-107 and the Rules apply to the Applicant. Since Part 3 of NI 52-107 and the IFRS-related amendments to the Rules do not have a provision providing for a two-year deferral of the transition to IFRS for investment companies subject to NI 52-107 and the Rules, the Applicant applied for the original exemption granted in the Prior Exemption Order.

16. During the Applicant's Deferred Financial Years, the Applicant has complied with, and continues to comply with, section 1,13 of Form 51-102F1 *Management's Discussion and Analysis* ("**MD&A**") by providing an updated discussion of the

Applicant's preparations for changeover to IFRS in its annual and interim MD&A, In particular, the Applicant will discuss the expected effect on the financial statements, or state that the effect cannot be reasonably estimated.

The Applicant has represented the following additional facts in support of the Variation Sought:

17. Consistent with the terms of the Prior Exemption Order, for the years ended December 31, 2011 and for the current year ending December 31, 2012, the Applicant has applied, and continues to apply, AcG-18 in the preparation of its financial statements,

18. The AcSB has again deferred the transition to IFRS for investment companies. On February 29, 2012, the AcSB issued amendments to the CICA Handbook to further defer the adoption of IFRS by investment companies from January 1, 2013 to January 1, 2014.

19. On March 30, 2012, the CSA published a revised CSA Staff Notice 81-320 (Revised) *Update on International Financial Reporting Standards for Investment Funds*, which indicates that, given the amendments to the Handbook that provided for a deferral to the transition to IFRS for investment companies, the CSA would defer finalizing any IFRS-related amendments to rules related to investment funds. The CSA has deferred the adoption of IFRS by investment funds under NI 81-106 until January 1, 2014.

20. The Applicant acknowledges that if the Variation Sought is granted the Applicant:

    (a) Will be subject to Part 3 of NI 52-107 and the IFRS-related amendments to the Rules for periods relating to financial years beginning on or after January 1, 2014, and

    (b) Will not have the benefit of the 30 day extension to the deadline of filing the first interim financial report in the year of adopting IFRS in respect of an interim period beginning on or after January 1, 2011, as set out in the IFRS related amendments to 51-102, since that extension does not apply if the first interim financial report is in respect of an interim period ending after March 30, 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 Variation Sought is granted provided that:

1. the Applicant continues to be an investment company, as defined in and applying AcG-18.

2. the Applicant provides the communication as described and in the manner set out in paragraph 16 above;

3. the Applicant complies with the requirements in Part 4 of NI 52-107 for all financial statements (including interim financial statements), financial information, operating statements and *pro forma* financial statements for periods relating to the Applicant's deferred financial years, as if the expression "January 1, 2011" in subsection 4.1(2) were read as "January 1, 2014";

4. the Applicant complies with the version of NI 51-102 that was in effect on December 31, 2010 (together with any amendments to NI 51-102 that are not related to IFRS and that come into force after January 1, 2011) for all documents required to be prepared, filed, delivered, or sent under NI 51-102 for periods relating to the Applicant's Deferred Financial Years;

5. the Applicant complies with the version of NI 41-101 that was in effect on December 31, 2010 (together with any amendments to NT 41-101 that are not related to IFRS and that come into effect after January 1, 2011) for any preliminary prospectus, amendment to a preliminary prospectus, final prospectus or amendment to a final prospectus of the Applicant which includes or incorporates by reference financial statements of the Applicant in respect of periods relating to the Applicant's Deferred Financial Year's;

6. the Applicant complies with the version of NI 44-101 that was in effect on December 31, 2010 (together with any amendments to NI 44-101 that are not related to EFRS and that come into effect after January 1, 2011) for any preliminary short form prospectus, amendment to a preliminary short form prospectus, final short form prospectus or amendment to a final short form prospectus of the Applicant which includes or incorporates by reference financial statements of the Applicant in respect of periods relating to the Applicant's Deferred Financial Years;

7. the Applicant complies with the version of NI 44-102 that was in effect on December 31, 2010 (together with any amendments to NI 44-102 that are not related to IFRS and that come into effect after January 1, 2011) for any preliminary base shelf prospectus, amendment to a preliminary base shelf prospectus, base shelf prospectus, amendment to a base shelf prospectus or shelf prospectus supplement of the Applicant which includes or incorporates by reference financial statements of the Applicant in respect of periods relating to the Applicant's Deferred Financial Years;

8. the Applicant complies with the version of NI 52-109 that was in effect on December 31, 2010 (together with any amendments to NI 52-109 that are not related to IFRS and that come into effect after January 1, 2011) for all annual filings and interim filings for periods relating to the Applicant's Deferred Financial Years;

9. the Applicant complies with the version of NI 52-110 that was in effect on December 31, 2010 (together with any amendments to NI 52-110 that are not related to IFRS and that come into effect after January 1,2011) for periods relating to the Applicant's Deferred Financial Years;

10. if, notwithstanding this decision, the Applicant decides not to rely on the Variation Sought and files an interim financial report prepared in accordance with IFRS for an interim period in a deferred financial year, the Applicant must, at the same time:

    (a) restate, in accordance with IFRS, any interim financial statements for any previous interim period in the same deferred financial year (each, a "**Previous Interim Period**") that were originally prepared in accordance with old Canadian GAAP and filed pursuant to this decision, and

    (b) file a restated interim financial report prepared in accordance with IFRS for each Previous Interim Period, together with corresponding restated interim MD&A and certificates required by NI 52-109. For greater certainty, any restated interim financial report for a Previous Interim Period must comply with applicable securities legislation (including Part 3 of NI 52-107 and the amendments to Part 4 of NI 51-102 that came into force on January 1, 2011) and any restated interim financial report for the first interim period in the deferred financial year must include the opening IFRS statement of financial position at the date of transition to IFRS; and

11. if, notwithstanding this decision, the Applicant decides not to rely on the Variation Sought and files annual financial statements prepared in accordance with IFRS for a deferred financial year, the Applicant must, at the same time (unless previously done pursuant to paragraph 9 immediately above):

    (a) restate, in accordance with IFRS, any interim financial statements for any Previous Interim Period that were originally prepared in accordance with old Canadian GAAP and filed pursuant to this decision, and

    (b) file a restated interim financial report prepared in accordance with IFRS for each Previous Interim Period, together with corresponding restated interim MD&A and certificates required by NI 52-109. For greater certainty, any restated interim financial report for a Previous Interim Period must comply with applicable securities legislation (including Part 3 of NI 52-107 and the amendments to Part 4 of NI 51-102 that came into force on January 1, 2011) and any restated interim financial report for the first interim period in the deferred financial year must include the opening IFRS statement of financial position at the date of transition to IFRS.

DATED this 2nd day of April, 2013.

"Cameron McInnis"
Chief Accountant
Ontario Securities Commission

2.1.2 Pipeworx Ltd. and PLH Canada Holdings Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Offeror granted exemption from Part 2 of Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids and Part XX of the Securities Act (Ontario) in connection with the offer's bid for the outstanding securities of a non-reporting issuer – Offeror cannot rely on the "not a reporting issuer" exemption because it has 52 beneficial security holders, excluding employees and former employees – Security holders of the Offeror include directors, officers, employees, independent contractors, accredited investors, and people that have close relationships with its employees, officers and directors.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 104(2)(c).

Citation: Pipeworx Ltd., Re, 2013 ABASC 138

April 8, 2013

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

AND

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

AND

IN THE MATTER OF
PIPEWORX LTD. (Pipeworx) AND
PLH CANADA HOLDINGS INC. (Buyer)
(collectively, the Filers)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Buyer from the take-over bid requirements contained in the Legislation in connection with a take-over bid proposed to be made by the Buyer to acquire all of the issued and outstanding common shares of Pipeworx (the **Exemption Sought**).

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

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

(b) the Filers have provided notice that Subsection 4.7(1) of Multilateral Instrument 11 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia and Saskatchewan; and

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 or Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (**MI 62-104**) have the same meanings if used in this decision, unless otherwise defined herein.

Representations

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

1. Pipeworx is a corporation subsisting under the laws of Alberta pursuant to the *Business Corporations Act* (Alberta).

2. The Buyer is a private investment and holding company incorporated under the laws of British Columbia.

3. The principal and head office of Pipeworx is located in Acheson, Alberta.

4. Pipeworx is engaged directly and through its subsidiaries in the oil and gas services industry in Canada, specifically the pipeline, well-site and related facility construction sectors. The assets and employees of Pipeworx are located in British Columbia and Alberta and the revenues of Pipeworx are generated from British Columbia, Alberta and Saskatchewan.

5. Pipeworx is not a "reporting issuer" for the purposes of securities legislation in any jurisdiction in Canada and there is no published market in respect of the common shares of Pipeworx (the **Shares**).

6. The Buyer is currently contemplating an offer to acquire all of the issued and outstanding Shares (the **Bid**). The proposed Bid would constitute a "take-over bid" as that term is defined in MI 62-104.

7. According to Pipeworx's securities register, there are currently 66 registered security holders, of whom:

   (a) 42 reside in Alberta, holding 977,200 Shares or 84.475% of the issued and outstanding Shares;

(b) 14 reside in British Columbia, holding 168,721 Shares or 14.585% of the issued and outstanding Shares;

(c) 2 reside in Saskatchewan, holding 8,594 Shares or 0.743% of the issued and outstanding Shares;

(d) 1 resides in Ontario, holding 2,273 Shares or 0.196% of the issued and outstanding Shares.

8. However, based on information supplied by and on behalf of Pipeworx management, and after eliminating double-counting of registered holders, there are currently 64 beneficial security holders, of whom:

(a) 46 reside in Alberta, holding 982,502 Shares or 84.934% of the issued and outstanding Shares;

(b) 17 reside in British Columbia, holding 168,721 Shares or 14.585% of the issued and outstanding Shares;

(c) 1 reside in Saskatchewan, holding 5,495 Shares or 0.475% of the issued and outstanding Shares;

(d) none reside in Ontario.

9. Of the 64 beneficial security holders, based on the information supplied by and on behalf of Pipeworx management:

(a) 5 security holders are current employees of Pipeworx;

(b) 4 security holders are former employees of Pipeworx or former employees of an entity that was an affiliate of Pipeworx at the time of that employment, and who while in that employment were, and have continued after that employment to be, security holders of Pipeworx;

(c) 2 security holders are holding companies wholly owned by employees; and

(d) 1 security holder is an investment account in trust for an employee.

10. Accordingly, Pipeworx has 52 beneficial security holders, excluding employees and former employees.

11. Section 4.3 of MI 62-104 (the **NRI Exemption**), which exempts certain transactions from the formal take-over bid requirements, is available if:

(a) the offeree issuer is not a reporting issuer;

(b) there is no published market for the securities that are the subject of the bid; and

(c) the number of security holders of the offeree issuer is less than 50, excluding employees and former employees of the target issuer and its "affiliates" (as that term is defined in MI 62-104).

12. The Buyer cannot rely on the NRI Exemption because the number of security holders of Pipeworx slightly exceeds the 50 security holder limit. However, Pipeworx is fundamentally a closely held private business and most of its security holders are directors, officers, employees, contractors, accredited investors, and people that have close relationships with its employees, officers and directors.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted.

For the Commission:

“William Rice, QC”
Chair

“Stephen Murison”
Vice-Chair

2.1.3 Quadrus Investment Services Ltd.

Headnote

Multilateral Instrument 11-102 Passport System – National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 33-109 Registration Information (NI 33-109) – relief from certain filing requirements of NI 33-109 on an individual basis for numerous dealing representatives – relief to effect the same change to each individual's Form 33-109F4 on a bulk basis – relief similar to that contemplated in section 3.4 of Companion Policy 33-109CP to NI 33-109.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System.
National Instrument 33-109 Registration Information.
Companion Policy 33-109CP.
National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.

April 11, 2013

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
QUADRUS INVESTMENT SERVICES LTD.
(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**) exempting the Filer from the deadline in section 4.1 of National Instrument 33-109 to report the change in immediate supervisor of the Quadrus dealing representatives within 10 days of the change, and to allow the change to be made by the National Registration Database (**NRD**) Administrator, CDS Inc., on a "bulk" basis.

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in all of the other provinces and territories of Canada (the **Passport Jurisdictions**, and together with the Jurisdiction, the **Jurisdictions**).

Interpretation

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

Representations

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

1. The Filer's head office is located in London, Ontario.

2. The Filer is registered as a dealer in the category of mutual fund dealer in each Jurisdiction.

3. The Filer has approximately 4,188 dealing representatives.

4. Effective as of March 28, 2013, Anne Traczuk retired as the Filer's Chief Compliance Officer, and Lesley Duffy was appointed as the Filer's new Chief Compliance Officer.

5. The Filer's former Chief Compliance Officer, Anne Traczuk, is currently shown as the "immediate supervisor" in the Schedule G of the Forms 33-109F4 on the NRD for each of the Filer's dealing representatives.

6. As a consequence of the change in the Filer's Chief Compliance Officer, it will be necessary to change the "immediate supervisor" from Ms. Traczuk to Ms. Duffy for each of the Filer's dealing representatives, a considerable undertaking given their number, that will likely require more than 10 days to be completed.

7. As this is the only change to be made to the Forms 33-109F4 of the Filer's dealing representatives, the Filer is exploring with the NRD Administrator, CDS Inc., and the principal regulator, whether it can be effected on a "bulk" basis, rather than by making individual submissions on the NRD.

8. CDS Inc. believes that a "bulk" basis approach is feasible and is willing to do so in the limited circumstances of this case.

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 the Filer:

(a) makes acceptable arrangements with CDS Inc. for the payment of the costs associated with making the change on a bulk basis, and makes such payment in advance; and

(b) completes the change of immediate supervisor for the Filer's dealing representatives on or before June 1, 2013.

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

2.1.4 Macquarie Private Wealth Inc. and Macquarie Private Wealth Corp.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Trades by a U.S. registered broker dealer, an affiliate of an Ontario registered investment dealer whose shared premises are located in Ontario, exempted from requirements of paragraph 25(1) of the Act, for trades made to clients that are resident in the U.S.A., where the trade is made by the U.S. dealer (in its own right, or on behalf of clients that are resident in the U.S.) through individuals that are dealing representatives of both the U.S. dealer and the Ontario registrant – Individuals must be appropriately registered to make the trade on behalf of the Ontario registrant if instead the Ontario registrant were making the trade to an Ontario resident.

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Foreign registered broker-dealer and its representatives exempted, subject to certain conditions, from the dealer, adviser and underwriter registration requirements and the prospectus requirements that permit dealing with individuals referred to in sections 2.1 and 3.1 of National Instrument 35-101 – Conditional Exemption from Registration for United States Broker-Dealers and Agents, notwithstanding that the Filer has no principal office in the U.S., only has an office or other physical presence in Canada, and is not limited to trading in foreign securities.

Applicable Legislative Provisions

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 25(2), 25(3), 53.

Instruments Cited

National Instrument 35-101 Conditional Exemption from Registration for United States Broker-Dealers and Agents, ss. 2.1, 3.1.

April 12, 2013

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
MACQUARIE PRIVATE WEALTH INC. AND
MACQUARIE PRIVATE WEALTH CORP.
(the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for the Exemptions Sought, as defined below.

The Filers seek a decision, exempting:

(a) Macquarie Private Wealth Corp. (**Macquarie US**) and the individuals who are its dealing representatives or the equivalent, and who are also registered under the Legislation to trade on behalf of Macquarie Private Wealth Inc. (**Macquarie Canada**) as its dealing representatives (the **Dual Representatives**) from the dealer and dealer representative registration requirements under subsection 25(1) of the Legislation, respectively, where Macquarie US and the Dual Representatives act on behalf of Macquarie US in respect of certain trades in the Jurisdiction with, or on behalf of, clients that are resident in the United States (the **US Clients**); and

(b) Macquarie US and the Dual Representatives from the dealer/underwriter and dealer representative registration requirements under subsection 25(1) of the Legislation, the adviser and adviser representative registration requirements under subsection 25(3) of the Legislation and the prospectus requirement under section 53 of the Legislation so as to permit them to deal with an individual referred to in paragraph 2.1(c)(ii) and paragraph 3.1(d)(ii) of National Instrument 35-101(NI 35-101) – *Conditional Exemption from Registration for United States Broker-Dealers and Agents* (**NI 35-101 Clients**), and so as to permit the Dual Representatives to act on behalf of Macquarie US in respect of trades in securities with or on behalf of NI 35-101 Clients, provided that such dealings are conducted in accordance with all terms and conditions of NI 35-101, save and except for the requirements that: (i) Macquarie US have its principal place of business in the United States, (ii) Macquarie US or its agents have no office or physical presence in any jurisdiction of Canada, and (iii) Macquarie US and the Dual Representatives trade in a foreign security (as defined in NI 35-101), such relief being collectively hereinafter referred to as the "**Exemptions Sought**".

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

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

(b) The Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta, British Columbia and Quebec (the **Passport Jurisdictions**).

Interpretation

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

Representations

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

(a) Macquarie Canada is incorporated under the laws of the Province of Ontario. Its head office is located in Toronto, Ontario.

(b) Macquarie Canada is registered as an investment dealer under the Legislation or equivalent legislation of the Passport Jurisdictions and is a dealer member of the Investment Industry Regulatory Organization of Canada (**IIROC**).

(c) Macquarie Canada is not registered under United States securities laws to carry on the business of a registered broker dealer in the United States.

(d) Macquarie Canada does not trade in securities with or on behalf of US Clients (other than in respect of registered retirement savings plan accounts (**RRSPs**) held by US Clients who were formerly resident in Canada and who have moved to the United States with RRSPs).

(e) Macquarie US is a wholly-owned subsidiary of Macquarie Canada and was incorporated on March 3, 2000, under the laws of Ontario.

(f) Macquarie US and Macquarie Canada operate their head offices out of the same premises in Toronto, Ontario. Macquarie US does not currently have an office located in the United States. Wherever Macquarie US has an office in Canada, it operates out of the same premises as Macquarie Canada.

(g) Macquarie US is registered as a broker-dealer under the U.S. *Securities Exchange Act of 1934*, as amended (**SEA**), and is a member of the Financial Industry Regulatory Authority (**FINRA**).

(h) Each of the Dual Representatives is employed in one of the Filers' offices located in the Jurisdiction or the Passport Jurisdictions. In addition to being registered as a dealing representative of Macquarie Canada under the Legislation or equivalent legislation of the Passport Jurisdictions, each Dual Representative is registered as a registered representative of a FINRA member firm. There are no representatives of Macquarie US who are only registered with Macquarie US.

(i) Each of the Dual Representatives will act in either the Jurisdiction or one of the Passport Jurisdictions on behalf of Macquarie US in respect of providing trading services to US Clients and NI 35-101 Clients.

(j) Macquarie US expects that the amount of revenue derived from US Clients will represent approximately 1% of the revenue generated by Canadian clients of Macquarie Canada. If the revenue derived from US Clients exceeds 10% of the revenue generated from Canadian clients, the Filers will file forthwith a letter to the Commission advising of the

same. The letter will refer to this decision document and this requirement, the percentage of the revenue derived from US Clients, and the date on which the revenue exceeded 10% of the revenue generated from Canadian clients. The letter will also refer to the date on which the exceeded revenue threshold was discovered.

(k) Some of the former US Clients of Macquarie US have moved to Canada with Individual Retirement Accounts (**IRA Accounts**) and wish to continue to place trades with Macquarie US in foreign securities (as defined in NI 35-101) as well as securities of issuers incorporated, continued or organized under the laws of Canada or a jurisdiction in Canada that are listed for trading or quoted on an exchange or market in Canada (collectively, **Canadian Securities**), with or for their IRA Accounts.

(l) NI 35-101 provides for exemptions from the registration requirements and prospectus requirement for U.S. broker-dealers and their agents trading with or for NI 35-101 Clients, upon satisfying certain conditions.

(m) It is a condition of the exemption for U.S. broker-dealers to have a principal place of business located in the United States. Macquarie US is unable to rely on NI 35-101 since it does not currently have a principal place of business located in the United States.

(n) It is a condition of the exemption for U.S. broker-dealers in clause (a) of Section 2.1 of NI 35-101 and for their agents in clause (b) of Section 3.1 of NI 35-101, that the broker dealer and the agent have no office or other physical presence in any jurisdiction in Canada. Macquarie US is unable to rely on NI 35-101 as it has an office or other physical presence in Canada as a result of its Toronto, Ontario head office and other Canadian offices.

(o) It is a further condition of the exemption for U.S. broker-dealers and their agents to trade only in foreign securities (as defined in NI 35-101). NI 35-101 Clients, who are now resident in Canada, wish to place trades with Macquarie US in both foreign securities and Canadian securities. Accordingly, Macquarie US and the Dual Representatives wish to trade in both foreign securities and Canadian Securities on behalf of such NI 35-101 Clients.

(p) Macquarie US will not trade in securities with or on behalf of persons who are resident in Canada other than the NI 35-101 Clients.

(q) Dual Representatives will not, on behalf of Macquarie US, solicit or contact clients that are resident or located in Canada other than the NI 35-101 Clients.

(r) The trading services offered to the NI 35-101 Clients is ancillary to Macquarie US' principal business.

(s) Where Macquarie US and the Dual Representatives trade with or on behalf of US Clients and NI 35-101 Clients, they will comply with all applicable United States securities laws in respect of those trades.

(t) Macquarie US will file with the Commission such reports as to its trading activities as the Commission may require from time to time. For purposes of the Legislation, and as a market participant, each of the Filers is required by subsection 19(1) of the Legislation to: (i) keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs, and the transactions that it executes on behalf of others; and (ii) keep such books, records and documents as may otherwise be required under the Legislation.

(u) All US Clients and NI 35-101 Clients of Macquarie US will enter into a customer agreement and associated accounting opening documentation with Macquarie US. All communications with US Clients and NI 35-101 Clients will be through Macquarie US and will be under Macquarie US branding.

(v) All US Clients will be advised at the time they enter into a customer agreement with Macquarie US (and periodically thereafter) that, if they reside in Canada, their accounts (other than their IRAs) must be transferred to Macquarie Canada or any other investment dealer registered under the Legislation.

(w) To avoid client confusion, all US Clients will also receive disclosure that explains the relationship between Macquarie US and Macquarie Canada.

(x) In addition, Macquarie US will describe in disclosure provided to US Clients at the time of account opening with Macquarie US (and annually thereafter) how US Clients may enforce any legal rights, arising out of, related to, or concerning Macquarie US' activities in the Jurisdiction or Passport Jurisdictions. The disclosure must also include a statement that Macquarie US is resident outside of the United States; Macquarie US is not registered as a dealer under the Legislation, and accordingly, the protection available to clients of a dealer registered under the Legislation will not be available to US Clients.

(y) The Filers were acquired by Macquarie Bank Limited on December 31, 2009, following which most of the senior management of the Filers was replaced with the current management team. The current management team had believed that the Filers had previously obtained the relief contained in the Exemptions Sought, and has acted in reliance upon such belief. It has since come to the attention of the current management of the Filers that such relief may not have been obtained, and the Filers now seek to address this by applying for the relief sought herein.

(z) Subject to paragraph (y), to the best of its knowledge, Macquarie US is not in default of Canadian securities laws.

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 Exemptions Sought are granted provided that:

(a) Macquarie Canada remains registered under the Legislation as an investment dealer and is a dealer member of IIROC;

(b) Macquarie US remains registered as a broker-dealer under the SEA and is a member of FINRA;

(c) Macquarie US and each of the Dual Representatives are in compliance and remain in compliance with any applicable dealer licensing or registration requirements under applicable securities legislation of the United States;

(d) When providing trading services for the benefit of NI 35-101 Clients, Macquarie US and the Dual Representatives will comply with all terms and conditions of NI 35-101 except for the requirements that:

i. Macquarie US has no office or physical presence in any jurisdiction of Canada;

ii. Macquarie US has its principal place of business located in the United States;

iii. Macquarie US and the Dual Representatives trade only in foreign securities.

(e) The relief granted with respect to trading services on behalf of NI 35-101 Clients will cease to be effective in a jurisdiction on the same date that rule amendments are made effective in the jurisdiction to the equivalent exemptions that are presently provided for in NI 35-101 where such amendments materially affect the subject matter of this decision, in respect of any such trading or advising activities of Macquarie US or the Dual Representatives carried out after that effective date.

“Edward P. Kerwin”
Commissioner
Ontario Securities Commission

“Judith Robertson”
Commissioner
Ontario Securities Commission

2.1.5 Peer 1 Network Enterprises, Inc.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – The issuer applied for a decision that it is not a reporting issuer – The outstanding securities of the issuer are beneficially owned by fewer than 50 persons and are not traded through any exchange or market – Decision granted.

Applicable Legislative Provisions

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

April 15, 2013

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ONTARIO AND ALBERTA
(THE JURISDICTIONS)

AND

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

AND

IN THE MATTER OF
PEER 1 NETWORK ENTERPRISES, INC.
(THE FILER)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer cease to be a reporting issuer in the Jurisdictions (the Exemptive Relief Sought).

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

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

(b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

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

Representations

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

1. the Filer arose from an amalgamation (the Amalgamation), under the laws of British Columbia, of Peer 1 Network Enterprises, Inc. (Peer 1) and 0957926 B.C. Ltd. (the Offeror), an indirect wholly-owned subsidiary of Cogeco Cable Inc. (Cogeco Cable);

2. upon the completion of the Amalgamation, in accordance with the laws of British Columbia, the Filer's legal name was 0957926 B.C. Ltd.;

3. immediately following the completion of the Amalgamation, the Filer's legal name was changed to Peer 1 Network Enterprises, Inc.;

4. Peer 1 was a reporting issuer in the Jurisdictions immediately prior to the Amalgamation;

5. through the Amalgamation, the Filer became, and is currently, a reporting issuer in the Jurisdictions and is not in default of the securities legislation in any of the Jurisdictions. The Filer's head office is located at Suite 1300, 777 Dunsmuir Street, Vancouver, British Columbia;

6. the Filer's authorized capital consists of an unlimited number of common shares (the Common Shares) and an unlimited number of preferred shares, of which only Common Shares are currently outstanding; the Filer has no other outstanding securities, including debt securities;

7. Cogeco Cable, through the Offeror, made an offer (the Offer), pursuant to an offer and take-over bid circular dated December 24, 2012 (the Circular), to purchase all of the issued and outstanding Common Shares of Peer 1 (other than Common Shares owned by the Offeror or any of its affiliates), and any Common Shares of Peer 1 that became issued and outstanding after the date of the Offer upon the exercise of options under Peer 1's stock option plan, at a price of $3.85 per Common Share;

8. the Offer expired at 5:00 p.m. (Vancouver time) on January 29, 2013;

9. on January 29, 2013, the Offeror took up all 124,112,692 Common Shares of Peer 1 that were validly deposited under the Offer, representing approximately 96.57% of the outstanding Common Shares (on a fully-diluted basis);

10. on January 31, 2013, the Offeror paid Computershare Investor Services Inc., as depositary under the Offer, for all the Common Shares taken up by the Offeror;

11. in the Circular, the Offeror disclosed that if the Offer was accepted by shareholders of Peer 1 who, in the aggregate, held at least 90% of the issued and outstanding Common Shares (on a fully-diluted basis and other than Common Shares held by the Offeror or any of its affiliates), the Offeror intended, to the extent possible, to acquire the Common Shares not tendered to the Offer pursuant to the compulsory acquisition provisions (the Compulsory Acquisition) of section 300 of the *Business Corporations Act* (British Columbia) (the BCBCA);

12. on January 31, 2013, pursuant to section 300 of the BCBCA, the Offeror sent to those shareholders of Peer 1 who have not accepted the Offer (the Remaining Shareholders) notice (the Acquisition Notice) that the Offeror will acquire the Common Shares of Peer 1 held by the Remaining Shareholders;

13. section 300 of the BCBCA provides that once the Acquisition Notice has been sent, the Offeror is entitled and bound to acquire all of the Common Shares of Peer 1 held by the Remaining Shareholders for the same price and on the same terms contained in the Offer in accordance with the BCBCA;

14. the Offeror delivered to Peer 1, on April 3, 2013, a copy of the Acquisition Notice and payment for the Common Shares of Peer 1 held by the Remaining Shareholders in accordance with applicable laws;

15. upon receipt of the Acquisition Notice and the payment to which the Remaining Shareholders are entitled, Peer 1 registered the Offeror as the shareholder with respect to the Common Shares held by the Remaining Shareholders;

16. the Compulsory Acquisition was completed on April 3, 2013;

17. the Common Shares of Peer 1 were de-listed on the TSX as at the market closing on March 28, 2013;

18. following the completion of the Compulsory Acquisition, Cogeco Cable proceeded with the Amalgamation, with the Filer continuing as an indirect wholly-owned subsidiary of Cogeco Cable;

19. the Filer's outstanding securities are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each Jurisdiction and fewer than 51 securityholders in total worldwide;

20. all of the outstanding securities of the Filer are indirectly, legally and beneficially owned by Cogeco Cable;

21. the Filer has no intention of accessing the capital markets in the future by issuing any further securities to the public, and has no intention of issuing any securities;

22. the Filer is not in default of any of its obligations under the securities legislation of the Jurisdictions, including its obligations to remit all filing fees in the Jurisdictions. Peer 1 applied for, and was granted exemptive relief from preparing, filing, and where required, delivering to shareholders interim financial statements and related management's discussion and analysis and certification as at and for the interim period ended December 31, 2012;

23. no securities of the Filer, 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;

24. the Filer is not a reporting issuer or the equivalent in any jurisdiction in Canada, other than the Jurisdictions;

25. the Filer did not voluntarily surrender its status as a reporting issuer in British Columbia pursuant to British Columbia Instrument 11-502 – *Voluntary Surrender of Reporting Issuer Status* because it wants to avoid the 10-day waiting period under British Columbia Instrument 11-502;

26. the Filer is not eligible to use the simplified procedure under CSA Notice 12-307 – *Applications for a Decision that an Issuer is not a Reporting Issuer* because it is a reporting issuer in the Province of British Columbia; and

27. the Filer, upon granting of the Exemptive Relief Sought, will no longer be a reporting issuer or the equivalent in any jurisdiction in Canada.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted.

"Peter Brady"
Director, Corporate Finance
British Columbia Securities Commission

2.2 Orders

2.2.1 Morgan Dragon Development Corp. et al. – Rules 1.7.4 and 11 of the OSC Rules of Procedure

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

AND

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

**ORDER
(Rules 1.7.4 and 11 of the Ontario Securities Commission Rules of Procedure (2012), 35 O.S.C.B. 10071)**

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") 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., John Cheong (aka Kim Meng Cheong), Herman Tse, Devon Ricketts ("Ricketts") and Mark Griffiths;

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

AND WHEREAS on April 8, 2013, counsel for Ricketts, Crawley Meredith Brush Mackewn LLP, filed a notice of motion, pursuant to Rule 1.7.4 of the Commission's *Rules of Procedur*e (2012), 35 O.S.C.B. 10071, for leave to withdraw as representative for Ricketts and requesting that the motion be heard in writing (the "Withdrawal Motion");

AND WHEREAS the affidavit filed by Crawley Meredith Brush Mackewn LLP states that Ricketts has been advised that disclosure is available in connection with this matter and was made aware of the dates scheduled for the merits hearing to proceed in writing;

AND WHEREAS I understand that Crawley Meredith Brush Mackewn LLP has served Ricketts with the Withdrawal Motion by email;

IT IS ORDERED that the Withdrawal Motion be heard in writing; and

IT IS FURTHER ORDERED that Crawley Meredith Brush Mackewn LLP is granted leave to withdraw as representative for Ricketts.

DATED at Toronto, this 9th day of April, 2013.

"James E. A. Turner"

2.2.2 Morgan Dragon Development Corp. et al.

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

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT
BETWEEN STAFF OF THE
ONTARIO SECURITIES COMMISSION and
MORGAN DRAGON DEVELOPMENT CORP.,
JOHN CHEONG (aka KIM MENG CHEONG),
and HERMAN TSE

ORDER

WHEREAS on March 22, 2012, the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Ac*t, R.S.O. 1990, c. S.5 (the "Act") in respect of Morgan Dragon Development Corp. ("MDDC"), John Cheong ("Cheong") and Herman Tse ("Tse") (collectively the "Settling Respondents");

AND WHEREAS on March 22, 2012, Staff of the Commission ("Staff") filed a Statement of Allegations;

AND WHEREAS on March 26, 2012, the Commission issued an Amended Notice of Hearing;

AND WHEREAS the Settling Respondents entered into a Settlement Agreement with Staff dated April 8, 2013 (the "Settlement Agreement") in relation to the matters set out in the Statement of Allegations;

AND WHEREAS the Commission issued a Notice of Hearing dated April 9, 2013 setting out that it proposed to consider the Settlement Agreement;

UPON reviewing the Settlement Agreement, the Notice of Hearing and the Statement of Allegations, and upon considering submissions from the Settling Respondents through their counsel and from Staff of the Commission;

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

IT IS HEREBY ORDERED:

1. the Settlement Agreement is hereby approved;

2. pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by the Settling Respondents shall cease for a period of 5 years from the date of the approval of the Settlement Agreement, except that:

   (a) immediately following full payment of the administrative penalty and costs orders against him set out herein Cheong shall be permitted to trade securities through a registrant and only for the account of his registered retirement savings plan, as defined in the *Income Tax Act*, R.S.C. 1985, c.1, as amended (the "Income Tax Act"); and,

   (b) immediately following full payment of the administrative penalty and costs orders against him set out herein Tse shall be permitted to trade securities through a registrant and only for the account of his registered retirement savings plan, as defined in the Income Tax Act;

3. pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by the Settling Respondents is prohibited for a period of 5 years from the date of the approval of the Settlement Agreement, except that:

   (a) immediately following full payment of the administrative penalty and costs orders against him set out herein Cheong shall be permitted to purchase securities through a registrant and only for the account of his registered retirement savings plan, as defined in the Income Tax Act; and,

   (b) immediately following full payment of the administrative penalty and costs orders against him set out herein Tse shall be permitted to purchase securities through a registrant and only for the account of his registered retirement savings plan, as defined in the Income Tax Act;

4. pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to the Settling Respondents for a period of 5 years from the date of the approval of the Settlement Agreement;

5. pursuant to clause 6 of subsection 127(1) of the Act, the Settling Respondents are reprimanded;

6. pursuant to clause 8.5 of subsection 127(1) of the Act, the Settling Respondents are prohibited for a period of 5 years from becoming or acting as a registrant;

7. pursuant to clause 8.5 of subsection 127(1) of the Act, Cheong and Tse are prohibited for a period of 5 years from becoming or acting as an investment fund manager or as a promoter;

8. pursuant to clauses 8.2 and 8.4 of subsection 127(1) of the Act, Cheong and Tse are prohibited for a period of 5 years from becoming or acting as a director or officer of a registrant or investment fund manager;

9. pursuant to clauses 7 and 8 of subsection 127(1) of the Act, Cheong and Tse shall resign all positions either of them may hold as a director or officer of MDDC, Morgan Dragon Capital Fund Inc. ("MDCF"), Morgan Dragon Land Holding Inc. ("MDLH"), Morgan Dragon Management Inc. ("MDMI") (collectively, the "Prohibited Companies"), or any successor or assignee of the Prohibited Companies, and are prohibited for a period of 5 years from the date of the approval of the Settlement Agreement from becoming or acting as a director or officer of the Prohibited Companies or their successors or assignee companies;

10. pursuant to clause 9 of subsection 127(1) of the Act, the Commission hereby orders a total administrative penalty of $75,000 for the breaches of Ontario securities law in this matter, to be designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b) of the Act, payable by the Settling Respondents as follows:

    (a) Cheong and MDDC shall be jointly and severally liable to pay an administrative penalty in the amount of $37,500; and

    (b) Tse and MDDC shall be jointly and severally liable to pay an administrative penalty in the amount of $37,500; and

11. pursuant to subsections 127.1(1) and (2) of the Act, the Commission hereby orders that a total amount of $13,000 shall be payable as investigation and hearing costs in this matter, payable by the Settling Respondents as follows:

    (a) Cheong and MDDC shall be jointly and severally liable to pay costs in the amount of $6,500; and

    (b) Tse and MDDC shall be jointly and severally liable to pay costs in the amount of $6,500.

DATED at Toronto this 10th day of April, 2013.

"James Turner"

2.2.3 Ground Wealth Inc. et al. – ss. 127(1), 127(7), 127(8)

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

AND

IN THE MATTER OF
GROUND WEALTH INC., ARMADILLO ENERGY INC.,
PAUL SCHUETT, DOUG DEBOER, JAMES LINDE,
SUSAN LAWSON, MICHELLE DUNK,
ADRION SMITH, BIANCA SOTO and TERRY REICHERT

TEMPORARY ORDER
(Subsections 127(1), (7) and (8) of the Securities Act)

WHEREAS the Ontario Securities Commission (the "Commission") issued a temporary order on July 27, 2011 (the "Temporary Order") pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that:

1. pursuant to paragraph 2 of subsection 127(1), all trading in the securities of Armadillo Energy Inc. ("the Armadillo Securities") shall cease;

2. pursuant to paragraph 2 of subsection 127(1), Armadillo Energy Inc. ("Armadillo Texas"), Ground Wealth Inc. ("GWI"), Paul Schuett ("Schuett"), Doug DeBoer ("DeBoer"), James Linde ("Linde"), Susan Lawson ("Lawson"), Michelle Dunk ("Dunk"), Adrion Smith ("Smith"), Bianca Soto ("Soto") and Terry Reichert ("Reichert") (collectively, the "Respondents to the Temporary Order") shall cease trading in all securities; and

3. pursuant to subsection 127(6), the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission;

AND WHEREAS on August 11, 2011, the Commission held a hearing to consider whether it was in the public interest to extend the Temporary Order, and heard submissions from Staff of the Commission ("Staff") and counsel for the Respondents to the Temporary Order;

AND WHEREAS on August 11, 2011, the Commission extended the Temporary Order to February 13, 2012, (the "Amended Temporary Order") on the same terms and conditions as provided for in the Temporary Order; provided that the Temporary Order shall not prevent a Respondent from trading for the Respondent's own account, solely through a registered dealer or a registered dealer in a foreign jurisdiction (which dealer must be given a copy of the Amended Temporary Order), in (a) any "exchange traded security" or "foreign exchange traded security" within the meaning of National Instrument 21-101, provided the Respondent does not own beneficially or exercise control or direction over more than 5 per cent of the voting or equity securities of the issuer of any such securities, or (b) any security issued by a mutual fund that is a reporting issuer; and provided the Respondent provides Staff with the particulars of the accounts in which such trading is to occur before any trading in such accounts occurs;

AND WHEREAS on February 8, 2012, the Commission held a hearing to consider whether it was in the public interest to extend the Amended Temporary Order pursuant to subsections 127(7) and 127(8), and heard submissions from Staff and from counsel for the Respondents to the Temporary Order;

AND WHEREAS on February 8, 2012, the Commission extended the Amended Temporary Order to August 8, 2012, (the "February 2012 Temporary Order") on the following terms:

1. pursuant to paragraph 2 of subsection 127(1), all trading in the Armadillo Securities shall cease;

2. pursuant to paragraph 2 of subsection 127(1), the Respondents to the Temporary Order shall cease trading in Armadillo Securities and/or in securities of a nature similar to Armadillo Securities, which are securities evidencing an interest in the production of barrels of oil still in the ground; and

3. this Order shall not prevent Staff from applying to the Commission for a variation of this Order if Staff considers that doing so is in the public interest;

AND WHEREAS on August 2, 2012, the Commission held a hearing to consider whether it was in the public interest to extend the February 2012 Temporary Order pursuant to subsections 127(7) and 127(8), and heard submissions from Staff and from counsel for the Respondents to the Temporary Order;

AND WHEREAS on August 2, 2012, the Commission extended the February 2012 Temporary Order until February 4, 2013, and ordered that the matter return before the Commission on February 1, 2013;

AND WHEREAS on February 1, 2013, the Commission held a hearing to consider whether it was in the public interest to further extend the February 2012 Temporary Order pursuant to subsections 127(7) and 127(8);

AND WHEREAS on February 1, 2013, Staff appeared, made submissions and requested that the February 2012 Temporary Order be extended against GWI, Armadillo Texas, DeBoer, Dunk and Smith only;

AND WHEREAS on February 1, 2013 Staff advised that they would be initiating proceedings in this matter under section 127 of the Act shortly and would not be naming Schuett, Linde, Lawson, Soto or Reichert as respondents;

AND WHEREAS on February 1, 2013, counsel for the Respondents to the Temporary Order did not appear, but email correspondence setting out his position and advising that he did not oppose the extension of the February 2012 Temporary Order to March 6, 2013 was filed by Staff;

AND WHEREAS on February 1, 2013, the Commission extended the February 2012 Temporary Order to March 6, 2013 as against the respondents GWI, Armadillo Texas, DeBoer, Dunk and Smith and ordered that a further hearing be held before the Commission on March 5, 2013 (the "February 2013 Temporary Order");

AND WHEREAS on February 1, 2013, the Commission issued a Notice of Hearing (the "Notice of Hearing") pursuant to sections 127 and 127.1 of the Act, in relation to a Statement of Allegations filed by Staff on February 1, 2013 (the "Statement of Allegations") naming as respondents GWI, Armadillo Texas, DeBoer, Dunk and Smith, as well as Joel Webster ("Webster"), Armadillo Energy, Inc., a Nevada company ("Armadillo Nevada"), and Armadillo Energy LLC, an Oklahoma company ("Armadillo Oklahoma");

AND WHEREAS on March 5, 2013, a hearing was held to consider whether it was in the public interest to further extend the February 2013 Temporary Order pursuant to subsections 127(7) and 127(8) of the Act;

AND WHEREAS on March 5, 2013, Staff appeared and made submissions and advised that Smith, GWI, Dunk and Armadillo Nevada had been successfully served with the Notice of Hearing and Statement of Allegations, but that Staff required additional time to serve the Notice of Hearing and Statement of Allegations on Webster, DeBoer, Armadillo Texas and Armadillo Oklahoma;

AND WHEREAS on March 5, 2013, counsel for GWI and Dunk appeared and made submissions and did not oppose the extension of the February 2013 Temporary Order; Smith appeared personally but made no submissions; and Armadillo Texas and DeBoer did not appear;

AND WHEREAS on March 5, 2013, the Commission continued the February 2013 Temporary Order to April 9, 2013, as against the respondents GWI, Armadillo Texas, DeBoer, Dunk and Smith, and adjourned proceedings in respect of the Temporary Order to April 8, 2013;

AND WHEREAS on April 8, 2013, a hearing was held and Staff appeared and made submissions and filed the Affidavit of Stephen Carpenter, dated March 27, 2013;

AND WHEREAS counsel for GWI, Dunk and DeBoer appeared and made submissions and did not oppose the further extension of the February 2013 Temporary Order without prejudice, and also advised that he had been in contact with Smith and that Smith also did not oppose the further extension of the February 2013 Temporary Order;

AND WHEREAS Smith and Armadillo Texas did not appear;

AND WHEREAS GWI, Armadillo Texas, DeBoer, Dunk and Smith are the only remaining respondents to the February 2013 Temporary Order and are also respondents to the proceedings initiated by the Notice of Hearing;

AND WHEREAS Shuett, Linde, Lawson, Soto and Reichert are no longer respondents to the February 2013 Temporary Order and are not respondents to the proceedings initiated by the Notice of Hearing;

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

IT IS ORDERED that, pursuant to subsections 127(1), 127(7) and 127(8) of the Act:

1. The February 2013 Temporary Order is extended to June 7, 2013, or until further order of the Commission, as against the respondents GWI, Armadillo Texas, DeBoer, Dunk and Smith;

2. A further hearing shall be held before the Commission on June 6, 2013, at 11:00 a.m. or on such other date and time as may be set by the Office of the Secretary; and

3. Any further notices or orders in this matter shall proceed under a single style of cause of the proceeding initiated by the February 1, 2013 Notice of Hearing, being "IN THE MATTER OF GROUND WEALTH INC., MICHELLE DUNK, ADRION SMITH, JOEL WEBSTER, DOUGLAS DeBOER, ARMADILLO ENERGY INC., ARMADILLO ENERGY, INC. AND ARMADILLO ENERGY LLC."

DATED at Toronto this 8th day of April, 2013.

"Mary G. Condon"

2.2.4 Ground Wealth Inc. et al.

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

AND

IN THE MATTER OF
GROUND WEALTH INC., MICHELLE DUNK,
ADRION SMITH, JOEL WEBSTER,
DOUGLAS DEBOER, ARMADILLO ENERGY INC.,
ARMADILLO ENERGY, INC.,
and ARMADILLO ENERGY LLC

ORDER

WHEREAS on February 1, 2013, 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 relation to a Statement of Allegations filed by Staff of the Commission ("Staff") on February 1, 2013, in respect of Ground Wealth Inc. ("GWI"), Michelle Dunk ("Dunk"), Adrion Smith ("Smith"), Joel Webster ("Webster"), Douglas DeBoer ("DeBoer"), Armadillo Energy Inc. ("Armadillo Texas"), Armadillo Energy, Inc. ("Armadillo Nevada"), and Armadillo Energy LLC ("Armadillo Oklahoma") (collectively, the "Respondents");

AND WHEREAS on March 5, 2013, a hearing was held and Staff appeared and made submissions and advised that Smith, GWI, Dunk and Armadillo Nevada had been successfully served with the Notice of Hearing and Statement of Allegations, but that Staff required additional time to serve the Notice of Hearing and Statement of Allegations on Webster, DeBoer, Armadillo Texas, and Armadillo Oklahoma, and the Commission adjourned the matter to continue on April 8, 2013;

AND WHEREAS on March 5, 2013, counsel for GWI and Dunk appeared and made submissions, Smith appeared personally but made no submissions; and Webster, DeBoer, Armadillo Texas, Armadillo Nevada and Armadillo Oklahoma did not appear;

AND WHEREAS April 8, 2013, a hearing was held and Staff appeared and made submissions and filed materials confirming that GWI, Dunk, Smith, Webster, DeBoer, Armadillo Texas and Armadillo Nevada had now been served with the Statement of Allegations and Notice of Hearing, and that Armadillo Oklahoma is an inactive company;

AND WHEREAS Staff filed materials confirming that disclosure was being prepared and that Staff estimated that eight weeks would be required to complete production of the electronic disclosure briefs;

AND WHEREAS counsel for GWI, Dunk and DeBoer appeared and advised that his clients did not oppose an eight week adjournment of the proceedings without prejudice, and advised that he had been in contact with Smith and that Smith also did not oppose the requested adjournment;

AND WHEREAS Smith, Webster, Armadillo Texas, Armadillo Nevada, and Armadillo Oklahoma did not appear;

AND WHEREAS there is a related temporary order, originally issued on July 27, 2011, (the "Temporary Order"), and amended and continued from time to time thereafter, which has been proceeding on the same dates as this matter;

AND WHEREAS the present respondents to the Temporary Order, being GWI, Dunk, Smith, Webster, DeBoer, Armadillo Texas, Armadillo Nevada and Armadillo Oklahoma, are all respondents to this proceeding initiated by the February 1, 2013 Notice of Hearing;

AND WHEREAS the Commission is of the opinion that it is in the public interest to do so;

IT IS HEREBY ORDERED:

1. That the hearing in this matter is adjourned to June 6, 2013, at 11:00 a.m., or on such other date and time as may be set by the Office of the Secretary; and,

2. Any further notices and orders in this matter shall proceed under a single style of cause of the proceeding initiated by the February 1, 2013 Notice of Hearing, being "IN THE MATTER OF GROUND WEALTH INC.,

MICHELLE DUNK, ADRION SMITH, JOEL WEBSTER, DOUGLAS DeBOER, ARMADILLO ENERGY INC., ARMADILLO ENERGY, INC. AND ARMADILLO ENERGY LLC."

DATED at Toronto this 8th day of April, 2013.

"Mary G. Condon"

2.2.5 Blackwood & Rose Inc. et al. – ss. 127(7), 127(8)

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

AND

IN THE MATTER OF
BLACKWOOD & ROSE INC., STEVEN ZETCHUS and JUSTIN KRELLER (also known as JUSTIN KAY)

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

WHEREAS on January 29, 2013, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 37, 127 and 127.1 of the *Securities Act*, R.S.O. 1990 c. S.5 as amended (the "Act") accompanied by a Statement of Allegations of Staff of the Commission dated January 29, 2013 with respect to Blackwood & Rose Inc. ("Blackwood"), Steven Zetchus ("Zetchus") and Justin Kreller ("Kreller") (collectively, the "Respondents");

AND WHEREAS the Notice of Hearing stated that a hearing would be held at the temporary offices of the Commission on February 19, 2013;

AND WHEREAS on February 19, 2013, Staff attended the hearing and no one appeared on behalf of the Respondents;

AND WHEREAS Staff filed the Affidavit of Peaches Barnaby sworn February 14, 2013 demonstrating service of the Notice of Hearing and Statement of Allegations on the Respondents;

AND WHEREAS the Commission previously made a temporary order in connection with this proceeding on December 18, 2012 (the 'Temporary Order");

AND WHEREAS on December 31, 2012, the Commission extended the Temporary Order to March 7, 2013 and adjourned the hearing to consider a further extension to March 6, 2013 at 10:00 a.m.;

AND WHEREAS on February 19, 2013, Staff requested that a pre-hearing conference be scheduled in this matter and that the Temporary Order be extended to the day following the pre-hearing conference to permit the parties to make submissions on a further extension of the Temporary Order at the pre-hearing conference;

AND WHEREAS on February 19, 2013, the Commission ordered that:

(i) the Temporary Order be extended to April 11, 2013 or until further order of the Commission;

(ii) the hearing date scheduled for March 6, 2013 to consider a further extension of the Temporary Order be vacated; and

(iii) the hearing be adjourned to April 10, 2013 at 10:00 a.m. for the purpose of conducting a pre-hearing conference and to consider a further extension of the Temporary Order;

AND WHEREAS on April 10, 2013, Staff attended the hearing and no one appeared on behalf of the Respondents;

AND WHEREAS Staff filed the Affidavit of Peaches Barnaby sworn April 9, 2013 demonstrating, *inter alia*, service of the Commission's order dated February 19, 2013 on the Respondents;

AND WHEREAS a confidential pre-hearing conference was held;

AND WHEREAS following the confidential pre-hearing conference, the hearing resumed and Staff requested (i) that the hearing be adjourned to a status hearing in May 2013; and (ii) that the Temporary Order be extended to the day following the status hearing to permit the parties to make submissions on a further extension of the Temporary Order at the status hearing;

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

IT IS HEREBY ORDERED that:

(i) the Temporary Order is extended to May 21, 2013 or until further order of the Commission; and

(ii) the hearing is adjourned to May 17, 2013 at 10:00 a.m., or such other date or time as provided by the Office of the Secretary and agreed to by the parties, for the purpose of conducting a status hearing and to consider a further extension of the Temporary Order.

DATED at Toronto this 10th day of April, 2013.

"James E. A. Turner"

2.2.6 Bayfield Ventures Corp. – s. 1(11)(b)

Headnote

Subsection 1(11)(b) – Order that the issuer is a reporting issuer for the purposes of Ontario securities law – Issuer already a reporting issuer in Alberta and British Columbia – Issuer's securities listed for trading on the TSX Venture Exchange – Continuous disclosure requirements in Alberta and British Columbia substantially the same as those in Ontario – Issuer has a significant connection to Ontario.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am. s. 1(11)(b).

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

AND

IN THE MATTER OF
BAYFIELD VENTURES CORP.
ORDER
(paragraph 1(11)(b))

UPON the application of Bayfield Ventures Corp. (the "**Applicant**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to paragraph 1(11)(b) of the Act that the Applicant is a reporting issuer for the purposes of Ontario securities law;

AND UPON considering the application and the recommendations of the staff of the Commission;

AND UPON the Applicant's representing to the Commission as follows:

1. The Applicant was incorporated under the laws of the Province of British Columbia under the name, "Bakra Resources Ltd." in December 8, 1986. The Applicant changed its name from Bakra Resources Ltd. to North Point Resources Ltd. effective June 14, 1994. The Applicant changed its name from North Point Resources Ltd. to Glacier Resources Ltd. effective November 2, 1998. The Applicant change its name from Glacier Resources Ltd. to Bayfield Ventures Corp. effective May 18, 2001.

2. The Applicant's head office is located at Suite 2230 – 885 West Georgia Street, Vancouver, British Columbia, V6C 3E8.

3. The Applicant's registered office is located at Suite 1710 – 1177 West Hastings Street, Vancouver, British Columbia, V6E 2L3.

4. As of the date hereof, the Applicant's authorized share capital consists of an unlimited number of common shares (the "**Common Shares**"), of which 74,128,396 Common Shares are issued and outstanding. The Applicant has outstanding obligations to issue: (i) 9,884,848 Common Shares upon the exercise of 9,884,848 outstanding common share purchase warrants; and (ii) 7,411,509 Common Shares upon the exercise of 7,411,509 outstanding common share purchase options.

5. The Applicant's Common Shares are listed and posted for trading on the TSX Venture Exchange (the "**TSXV**") under the trading symbol **BYV:TSX.V**. The Common Shares are not traded on any other stock exchange or trading or quotation system.

6. The Applicant is currently a reporting issuer in Alberta and British Columbia and has been a reporting issuer under the *Securities Act* (Alberta) (the "**Alberta Act**") since November 26, 1999 and the *Securities Act* (British Columbia) (the "**BC Act**") since May 10, 1988.

7. The Applicant is not currently a reporting issuer or the equivalent in any jurisdiction in Canada other than Alberta and British Columbia.

8. As of the date hereof, the Applicant is not on the list of defaulting issuers maintained pursuant to the Alberta Act or the BC Act and is not in default of any of its obligations under the Alberta Act or the BC Act or the rules and regulations made thereunder.

9. The continuous disclosure document requirements of the Alberta Act and the BC Act are substantially the same as the continuous disclosure requirements under the Act.

10. The materials filed by the Applicant under the Alberta Act and the BC Act are available on the System for Electronic Document Analysis and Retrieval (**SEDAR**), with July 29, 1997, being the date of the first electronic filing on SEDAR by the Applicant.

11. The Applicant is not in default of any of the rules, regulations or policies of the TSXV.

12. Pursuant to the policies of the TSXV, a listed issuer, which is not otherwise a reporting issuer in Ontario, must assess whether it has a "significant connection to Ontario" (as defined in the policies of the TSXV) and upon becoming aware that it has a significant connection to Ontario, the issuer must promptly make a bona fide application to the Commission to be deemed a reporting issuer in Ontario.

13. Pursuant to the policies of the TSXV, the Applicant has undertaken an assessment of its shareholder base to determine whether or not the Applicant has a "significant connection to Ontario" as defined in the policies of the TSXV. As a result of that assessment, the Applicant has determined that the Applicant has come to have a significant connection to Ontario in that 20,584,920 Common Shares representing 27% of the Applicant's issued and outstanding Common Shares are beneficially held directly or indirectly by residents of Ontario.

14. Neither the Applicant, nor any of its officers, directors, nor, to the knowledge of the Applicant or its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, has:

    (a) been the subject of any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority;

    (b) entered into a settlement agreement with a Canadian securities regulatory authority; or

    (c) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision.

15. To the knowledge of the Applicant, neither the Applicant, nor any of its officers, directors, nor, to the knowledge of the Applicant and its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been subject to:

    (a) any known ongoing or concluded investigations by:

        (i) a Canadian securities regulatory authority; or

        (ii) a court or regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or

    (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.

16. Neither any of the officers or directors of the Applicant, nor, to the knowledge of the Applicant and its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been at the time of such event an officer or director of any other issuer which is or has been subject to:

    (a) any cease trade or similar order, or order that denied access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, within the preceding 10 years; or

    (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.

17. The Applicant will remit all participation fees due and payable by it pursuant to Ontario Securities Commission Rule 13-502 *Fees* by no later than two business days from the date of this Order.

AND UPON the Commission being satisfied that granting this Order would not be prejudicial to the public interest;

IT IS HEREBY ORDERED pursuant to paragraph 1(11)(b) of the Act that the Applicant is a reporting issuer for the purposes of Ontario securities law.

DATED at Toronto, this 5th day of April, 2013.

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

2.2.7 Myron Sullivan II 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
MYRON SULLIVAN II formerly known as
FRED MYRON GEORGE SULLIVAN,
GLOBAL RESPONSE GROUP (GRG) CORP., and
IMC – INTERNATIONAL MARKETING
OF CANADA CORP.

ORDER
(Section 127)

WHEREAS on March 22, 2013, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Myron Sullivan II, Global Response Group (GRG) Corp., and MC – International Marketing of Canada Corp. (collectively the Respondents);

AND WHEREAS on March 22, 2013, Staff of the Commission ("Staff") filed a Statement of Allegations in respect of the same matter;

AND WHEREAS on April 12, 2013 Staff appeared before the Commission and made submissions;

AND WHEREAS on April 12, 2013, Staff filed two affidavits sworn by Lee Crann, a Law Clerk with the Commission, on April 10, 2013, which documented attempts to serve the Respondents beginning March 22, 2013, and which confirmed that on April 10, 2013 the Notice of Hearing, Statement of Allegations and disclosure (the "Materials") had been sent to an email address and that an electronic confirmation of receipt of the Materials in the name of Myron Sullivan and Global Response Group Corp. was sent from that email address to Lee Crann;

AND WHEREAS Staff have requested an adjournment to permit the Respondents time to consider the Materials and respond;

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 hearing in this matter is adjourned to April 25, 2013 at 11:00 a.m.

DATED at Toronto this 12th day of April, 2013.

"James D. Carnwath"
Commissioner

2.2.8 Michael Robert Shantz and Canada Pacific Consulting Inc. – s. 127

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

AND

IN THE MATTER OF
MICHAEL ROBERT SHANTZ and
CANADA PACIFIC CONSULTING INC.

ORDER
(Section 127)

WHEREAS on March 22, 2013, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Michael Robert Shantz and Canada Pacific Consulting Inc. (collectively, the "Respondents");

AND WHEREAS on March 22, 2013, Staff of the Commission ("Staff") filed a Statement of Allegations in respect of the same matter;

AND WHEREAS on April 12, 2013, Staff filed an affidavit sworn by Lee Crann, a law clerk for the Commission, on April 2, 2013, confirming the service on the Respondents of the Notice of Hearing, the Statement of Allegations and Staff's disclosure on March 22, 2013;

AND WHEREAS on April 12, 2013, the Commission heard an application by Staff to convert the matter to a written hearing, in accordance with Rule 11.5 of the Ontario Securities Commission *Rules of Procedure* (2012), 35 O.S.C.B. 10071, and section 5.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

AND WHEREAS the Commission is satisfied that service was effected on the Respondents:

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) Staff's application to proceed by way of written hearing is granted;

(b) Staff's materials in respect of the written hearing shall be filed no later than April 26, 2013;

(c) The Respondents' responding materials, if any, shall be served and filed no later than May 10, 2013; and

(d) Staff's reply materials, if any, shall be served and filed no later than May 17, 2013.

DATED at Toronto this 12th day of April, 2013.

"James D. Carnwath"

2.2.9 New Hudson Television LLC & James Dmitry Salganov – s. 127

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

AND

**IN THE MATTER OF
NEW HUDSON TELEVISION LLC &
JAMES DMITRY SALGANOV**

**ORDER
(Section 127 of the Securities Act)**

WHEREAS on June 8, 2011, the Ontario Securities Commission (the "Commission") issued a temporary cease trade order pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering: that all trading in New Hudson Television Corporation ("NHTV Corp.") securities and New Hudson Television L.L.C. ("NHTV LLC") securities shall cease; that NHTV Corp. and NHTV LLC and their representatives cease trading in all securities; and that any exemptions contained in Ontario securities law do not apply to NHTV Corp. and NHTV LLC (the "Temporary Order");

AND WHEREAS on June 22, 2011 it was ordered that:

(i) the Temporary Order was amended to provide that pursuant to clause 2 of subsection 127(1) of the Act, James Dmitry Salganov shall cease trading in securities of NHTV Corp. and NHTV LLC;

(ii) pursuant to subsection 127(8) of the Act, the Temporary Order as amended by (i), above, (the "Amended Temporary Order") was extended to December 20, 2011; and

(iii) the hearing to consider any further extension of the Amended Temporary Order would be held on December 19, 2011 at 9:00 a.m.;

AND WHEREAS the Amended Temporary Order was further extended by orders dated December 19, 2011 and June 22, 2012;

AND WHEREAS on October 9, 2012, the Commission issued a Notice of Hearing (the "Notice of Hearing") pursuant to sections 127 and 127.1 of the Act, accompanied by a Statement of Allegations dated October 9, 2012 (the "Statement of Allegations"), issued by Staff of the Commission ("Staff") with respect to NHTV LLC and Dmitry James Salganov, hereafter known as James Dmitry Salganov ("Salganov") (collectively, the "Respondents");

AND WHEREAS the Notice of Hearing stated that a hearing would be held at the offices of the Commission on October 19, 2012;

AND WHEREAS on October 19, 2012, Staff confirmed the Commission had received the affidavit of Peaches A. Barnaby sworn October 17, 2012, which indicated that the Notice of Hearing and Statement of Allegations were served on all the Respondents;

AND WHEREAS on October 19, 2012, Staff appeared and Salganov participated via telephone conference and made submissions, and Staff requested that the matter be adjourned until December 20, 2012, for a status hearing;

AND WHEREAS on December 20, 2012, Staff appeared and Salganov appeared on his own behalf and on behalf of NHTV LLC and made submissions, and all parties requested that the status hearing be continued on March 5, 2013 at 10:00 a.m.;

AND WHEREAS on March 5, 2013, Staff appeared and Salganov appeared on his own behalf and on behalf of NHTV LLC and made submissions, and all parties requested that the status hearing be continued on April 9, 2013 at 3:00 p.m.;

AND WHEREAS on April 9, 2013, Staff appeared and Salganov appeared on his own behalf and on behalf of NHTV LLC and made submissions, and all parties requested that the status hearing be continued on June 6, 2013 at 10:00 a.m.;

IT IS HEREBY ORDERED that the status hearing shall continue on June 6, 2013 at 10:00 a.m. or such other date and time as set by the Office of the Secretary.

DATED at Toronto this 9th day of April, 2013.

"Mary G. Condon"

2.2.10 Steven George Conville – s. 8(4) of the Act, and Rule 14.7 of the OSC Rules of Procedure

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

AND

IN THE MATTER OF
A DECISION OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AND

IN THE MATTER OF
STEVEN GEORGE CONVILLE

ORDER
(Subsection 8(4) of the Securities Act,
Rule 14.7 of the Ontario Securities Commission Rules of Procedure (2012), 35 O.S.C.B. 10071)

WHEREAS on March 10, 2013, Steven Conville ("**Conville**") filed with the Ontario Securities Commission (the "**Commission**") an application for hearing and review of decisions of a Hearing Panel of the Investment Industry Regulatory Organization of Canada ("**IIROC**") dated June 11, 2012 and February 12, 2013 (the "**IIROC Penalty Decision**") (together, the "**IIROC Decisions**"), pursuant to section 21.7 of the Securities Act, R.S.O. 1990, c. S.5, as amended (the "**Act**") (the "**Conville Application**");

AND WHEREAS on April 5, 2013, Enforcement Staff of IIROC ("**IIROC Staff**") filed a cross-application for hearing and review of the IIROC Penalty Decision (the "**IIROC Application**");

AND WHEREAS on April 8, 2013, Conville requested a stay of the IIROC Penalty Decision pending the determination of the hearing and review (the "**Stay Application**");

AND WHEREAS on April 11, 2013, IIROC Staff gave notice, in writing, that it does not oppose the Stay Application;

AND WHEREAS on April 12, 2013, Enforcement Staff of the Commission ("**OSC Staff**") gave notice, in writing, that it does not oppose the Stay Application;

AND WHEREAS it is the opinion of the Commission that the order requested is in the public interest;

IT IS ORDERED THAT the IIROC Penalty Decision is stayed, pursuant to subsection 8(4) of the Act and Rule 14.7 of the Rules, pending the determination of the Conville Application and the IIROC Application.

DATED at Toronto this 12th day of April, 2013.

"James Carnwath"

2.2.11 Juniper Fund Management Corporation et al. – ss. 127, 127.1

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

AND

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

ORDER
(Sections 127 and 127.1)

WHEREAS on March 21, 2006, 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"), accompanied by a Statement of Allegations dated March 21, 2006 filed by Staff of the Commission ("Staff") in respect of Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues) (collectively, the "Respondents");

AND WHEREAS on July 5, 2007, Staff filed an Amended Statement of Allegations;

AND WHEREAS a hearing on the merits in this matter was held before the Commission on September 19, 20, 21, 22, 23, 28, 29, October 5, November 9 and December 21, 2011, and February 14, 22, April 4, May 28, 30, June 8 and September 4, 2012;

AND WHEREAS following the hearing on the merits, the Commission issued its Reasons and Decision with respect to the merits on April 11, 2013;

IT IS ORDERED that the parties shall appear before the Commission on June 14, 2013 at 10:00 a.m. at the offices of the Commission at 20 Queen Street West, Toronto, ON, for the sanctions and costs hearing; and

IT IS FURTHER ORDERED that:

1. Staff shall file written submissions by 4:30 p.m. on May 24, 2013;

2. The Respondents shall file responding written submissions by 4:30 p.m. on June 7, 2013; and

3. Staff shall file reply written submissions (if any) by 4:30 p.m. on June 12, 2013.

DATED at Toronto this 11th day of April, 2013.

"Vern Krishna"

"Margot C. Howard"

2.2.12 Sandy Winick et al. – Rule 11.5 of the OSC Rules of Procedure

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

AND

IN THE MATTER OF
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 CORP.
(aka LIQUID GOLD INTERNATIONAL INC.),
and NANOTECH INDUSTRIES INC.

ORDER
(Rule 11.5 of the Commission's Rules of Procedure (2012), 35 O.S.C.B. 10071)

WHEREAS on January 27, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") (the "Notice of Hearing") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on January 27, 2012, to consider whether it is in the public interest to make certain orders against Sandy Winick ("Winick"), Andrea Lee McCarthy ("McCarthy"), Kolt Curry, Laura Mateyak ("Mateyak"), Gregory J. Curry ("Greg Curry"), American Heritage Stock Transfer Inc. ("AHST Ontario"), American Heritage Stock Transfer, Inc. ("AHST Nevada"), BFM Industries Inc. ("BFM"), Liquid Gold International Corp. (aka Liquid Gold International Inc.) ("Liquid Gold"), and Nanotech Industries Inc. ("Nanotech") (collectively, the "Respondents");

AND WHEREAS on February 16, 2012, a first appearance hearing was held and the matter was adjourned to a pre-hearing conference on March 23, 2012;

AND WHEREAS on March 23, 2012, it was ordered that the hearing on the merits in this matter shall commence on November 12, 2012, and continue until November 21, 2012, except that the hearing will not sit on November 20, 2012 (the "Hearing on the Merits");

AND WHEREAS Winick, Greg Curry and Nanotech have never participated in this hearing, although properly served with the Notice of Hearing and Staff's Statement of Allegations;

AND WHEREAS on October 17, 2012, the Commission ordered, pursuant to Rule 11.5 of the Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the "*Rules of Procedure*"), that the Hearing on the Merits shall proceed as a written hearing, in accordance with the following schedule:

1. Staff shall file evidentiary briefs in the form of affidavits, as well as written submissions on the relevant facts and law, with the Secretary's Office no later than November 30, 2012;

2. The Respondents shall file any responding materials by January 11, 2013;

3. Staff shall file any reply submissions or evidence by January 25, 2013; and

4. Staff and any participating Respondents will attend at a date appointed by the panel after January 25, 2013, to answer questions, make submissions or make any necessary witnesses available for cross-examination;

AND WHEREAS on January 11, 2013, Staff filed a motion pursuant to Rule 3 of the Rules of Procedure seeking to sever the proceeding as against the respondents McCarthy, Liquid Gold and BFM (the "Motion");

AND WHEREAS on January 15, 2013, Staff and counsel for McCarthy, BFM and Liquid Gold appeared and consented to the Motion;

AND WHEREAS on January 15, 2013, counsel for Kolt Curry, Mateyak and AHST Ontario appeared and took no position on the Motion, but sought an extension of the October 17, 2012 order;

AND WHEREAS on January 15, 2013, the other respondents did not appear or provide submissions;

AND WHEREAS on January 21, 2013, the Commission ordered that the application to sever is granted and the matter, as against McCarthy, BFM and Liquid Gold, is adjourned to a date to be fixed by the office of the Secretary of the Commission in consultation with counsel;

AND WHEREAS on January 21, 2013, it was further ordered that a hearing shall take place on April 4, 2013 at 10:00 a.m., to provide counsel for Kolt Curry, Mateyak and AHST Ontario and the remaining parties an opportunity to make submissions as to how the matter should proceed;

AND WHEREAS on March 1, 2013, counsel for Kolt Curry, Mateyak and AHST Ontario filed a motion in writing requesting an order to vary the Commission's order of October 17, 2012;

AND WHEREAS on March 6, 2013, Staff consented to the form of the order as attached to the Motion Record filed by counsel for Kolt Curry, Mateyak and AHST Ontario;

AND WHEREAS on March 7, 2013, the Commission ordered that, pursuant to Rules 3.3 and 11 of the *Rules of Procedure*, the Commission's order of October 17, 2012 is varied to permit:

a. the Respondents to file any responding materials by no later than March 8, 2013; and

b. Staff to file any reply materials by no later than March 29, 2013;

AND WHEREAS on April 4, 2013, Staff appeared and counsel for Kolt Curry, Mateyak and AHST Ontario appeared and made submissions, the other respondents did not appear or provide submissions, and all parties requested that the written hearing be converted to an oral Hearing on the Merits;

IT IS HEREBY ORDERED that:

1. on consent of the parties, the written hearing is converted to an oral Hearing on the Merits to be heard on May 15th and 16th, 2013, pursuant to Rule 11.5 of the *Rules of Procedure*;

2. the affidavits filed by Staff and counsel for Kolt Curry, Mateyak and AHST Ontario in the written hearing will stand for the evidence in-chief on the Hearing on the Merits;

3. the Hearing on the Merits will start with cross-examinations by counsel for the respondents on the affidavits filed by Staff, followed by re-examinations, if appropriate and Staff may then cross examine Kolt Curry and Mateyak on their affidavits, followed by re-examinations, if appropriate;

4. Staff shall have until May 23rd, 2013 to file supplemental written submissions, if any;

5. the respondents shall have until May 27th, 2013 to file supplemental written submissions, if any; and

6. oral submissions for the Hearing on the Merits shall be heard on May 30th, 2013 at 10:00 a.m.

DATED at Toronto this 12th day of April, 2013.

"James D. Carnwath"

2.2.13 Ronald James Ovenden 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
RONALD JAMES OVENDEN,
NEW SOLUTIONS CAPITAL INC.,
NEW SOLUTIONS FINANCIAL CORPORATION AND
NEW SOLUTIONS FINANCIAL (II) CORPORATION**

AND

**IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN STAFF OF
THE ONTARIO SECURITIES COMMISSION,
NEW SOLUTIONS FINANCIAL CORPORATION AND
NEW SOLUTIONS FINANCIAL (II) CORPORATION**

**ORDER
(Section 127)**

WHEREAS on March 28, 2013, 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 "*Securities Act*") in respect of Ronald James Ovenden ("Ovenden"), New Solutions Capital Inc. ("NSCI"), New Solutions Financial Corporation ("NSFC") and New Solutions Financial (II) Corporation ("NSFII");

AND WHEREAS on March 28, 2013, Staff of the Commission ("Staff") filed a Statement of Allegations in respect of the same matter;

AND WHEREAS NSFC and NSFII entered into a Settlement Agreement with Staff dated March 28, 2013 (the "Settlement Agreement") in relation to certain matters set out in the Statement of Allegations;

AND WHEREAS on April 1, 2013, the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act* in respect of the Settlement Agreement dated March 28, 2013;

AND WHEREAS on April 11, 2012, the Commission ordered that all trading in the securities of NSFC, NSFII, New Solutions Financial (III) Corporation ("NSFIII") and New Solutions Financial (VI) Corporation ("NSFVI") cease immediately, that NSCI, NSFC, NSFII, NSFIII, NSFVI, their employees and representatives and Ovenden cease trading in all securities of NSFC, NSFII, NSFIII and NSFVI immediately, that any exemptions contained in Ontario securities law do not apply to NSCI, NSFC, NSFII, NSFIII, NSFVI, their employees and representatives and Ovenden, and that the order take effect immediately and expire on the fifteenth day after its making unless extended by an order of the Commission (the "Temporary Order");

AND WHEREAS the Temporary Order was extended on April 25, 2012 and October 11, 2012 and currently continues until May 10, 2013;

UPON reviewing the Settlement Agreement, the Notices of Hearing, the Statement of Allegations and the Temporary Order and upon considering the submissions of NSFC and NSFII through their counsel and of Staff;

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

IT IS HEREBY ORDERED THAT:

(a) the Settlement Agreement is approved;

(b) neither NSFC nor NSFII shall apply for or obtain registration with the Commission;

(c) NSFC and NSFII shall each permanently cease trading in any securities and derivatives;

(d) NSFC and NSFII shall each permanently cease acquisitions of any securities;

(e) any exemptions in Ontario securities law shall not apply to NSFC and NSFII permanently;

(f) NSFC and NSFII shall each be reprimanded;

(g) NSFC and NSFII are prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter; and

(h) the Temporary Order shall cease to apply to NSFC and NSFII as of the date of this order.

DATED at Toronto this 10th day of April, 2013.

"Edward P. Kerwin"

2.2.14 JV Raleigh Superior Holdings Inc. et al. – Rules 11.4 and 11.5 of the OSC Rules of Procedure

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

AND

**IN THE MATTER OF
JV RALEIGH SUPERIOR HOLDINGS INC.,
MAISIE SMITH (also known as MAIZIE SMITH) and
INGRAM JEFFREY ESHUN**

**ORDER
(Rules 11.4 and 11.5 of the Commission's
Rules of Procedure (2012), 35 O.S.C.B. 10071)**

WHEREAS on February 22, 2013, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of JV Raleigh Superior Holdings Inc. ("JV Raleigh"), Maisie Smith (also known as Maizie Smith) ("Smith") and Ingram Jeffrey Eshun ("Eshun") (together, the "Respondents");

AND WHEREAS on February 15, 2013, Staff of the Commission ("Staff") filed a Statement of Allegations in respect of the same matter;

AND WHEREAS on March 6, 2013, the Commission considered the adjournment request of Eshun and heard an application by Staff to convert the matter to a written hearing, in accordance with Rule 11.5 of the Ontario Securities Commission *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the "*Rules of Procedure*"), and subsection 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "*Statutory Procedures Act*");

AND WHEREAS the Respondents did not appear, although properly served as evidenced by the affidavit of Lee Crann sworn February 28, 2013;

AND WHEREAS pursuant to Rule 9.2 of the *Rules of Procedure*, the Commission considered the relevant factors in deciding whether to grant an adjournment;

AND WHEREAS the Commission perceived no immediate threat to Ontario's capital markets and noted that Eshun has advised the Commission that he intends to retain counsel;

AND WHEREAS on March 6, 2013, the Commission ordered, without precluding Eshun or the other Respondents from objecting to a written hearing, that:

(a) Staff shall file material in respect of the hearing, and provide such material to the Respondents, no later than March 8, 2013;

(b) The Respondents shall advise the Commission whether or not they have retained counsel, and the name of such counsel, no later than April 8, 2013;

(c) Respondents' counsel, if any, shall advise the Commission whether or not the Respondents object to a written hearing, no later than April 8, 2013;

(d) If the Respondents do not object to a written hearing, the Respondents' responding materials, if any, shall be filed with the Commission and provided to all other parties no later than April 15, 2013; and

(e) If the Respondents do object to a written hearing, the Commission shall hold a hearing on April 15, 2013 at 9:00 a.m. to determine whether to continue the hearing as a written hearing pursuant to Rule 11 or as an oral hearing pursuant to Rule 10 of the *Rules of Procedure*;

AND WHEREAS on April 3, 2013 the Commission received correspondence from Eshun which indicated that he had not retained counsel and had not yet returned to Ontario and in which Eshun requested an adjournment of the hearing to May 22, 2013;

AND WHEREAS on April 4, 2013 the Commission dismissed the request for an adjournment and ordered that a hearing would be held on April 15, 2013 at 9:00 a.m. for the sole purpose of determining whether this matter shall proceed in writing;

AND WHEREAS on April 15, 2013, Staff appeared before the Commission and made submissions;

AND WHEREAS on April 15, 2013, the Respondents did not appear or make submissions;

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

IT IS ORDERED that:

(i) pursuant to Rules 11.4 and 11.5 of the *Rules of Procedure*, Staff's application to conduct this hearing in writing is granted;

(ii) a copy of this Order be provided to the Respondents;

(iii) the Respondents will have until April 22, 2013 to serve and file any response to Staff's written submissions;

(iv) if the Respondents file no written responses, the Commission will proceed to render a decision in this matter; and

(v) if the Respondents file written responses, Staff shall have until April 29, 2013 to serve and file any reply.

DATED at Toronto this 15th day of April, 2013.

"Alan J. Lenczner"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Morgan Dragon Development Corp. et al.

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

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION and
MORGAN DRAGON DEVELOPMENT CORP.,
JOHN CHEONG and HERMAN TSE

PART I – INTRODUCTION

1. By Amended Notice of Hearing dated March 26, 2012, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make orders, as specified therein, against Morgan Dragon Development Corp. ("MDDC"), John Cheong ("Cheong"), Herman Tse ("Tse"), Devon Ricketts ("Ricketts") and Mark Griffiths ("Griffiths") (collectively, the "Respondents"; MDDC, Cheong and Tse, collectively referred to as the "Settling Respondents"). The Amended Notice of Hearing was issued in connection with the allegations set out in the Statement of Allegations of Staff of the Commission ("Staff") dated March 22, 2012.

2. The Commission will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of the Settling Respondents.

PART II – JOINT SETTLEMENT RECOMMENDATION

3. Staff agree to recommend settlement of the proceeding initiated by the Amended Notice of Hearing, dated March 26, 2012, against the Settling Respondents (the "Proceeding") in accordance with the terms and conditions set out below. The Settling Respondents consent to the making of an order in the form attached as Schedule "A," based on the facts set out below.

PART III – AGREED FACTS

4. For this proceeding, and any other regulatory proceeding commenced by securities regulatory authorities in Canada, the Settling Respondents agree with the facts as set out in Part III of this Settlement Agreement. To the extent the Settling Respondents do not have direct personal knowledge of certain facts as described below, the Settling Respondents believe the facts to be true and accurate.

5. Unless specifically stated to the contrary, the facts set out in this agreement concern events taking place from September 2007 through July 2011 (the "Material Time").

OVERVIEW

6. During the Material Time, Cheong and Tse and their employees, including Ricketts and Griffiths, solicited the sale of Limited Partnership Units ("LP Units"), which constituted securities as defined in the Act, from Ontario to residents of Alberta, British Columbia, Saskatchewan and Alberta ("LP Investors"). The majority of the LP Units were sold through MDDC, an Ontario corporation. The LP Units were sold in circumstances where no registration or prospectus exemption was available. Some of the LP Investors would not have met the income or asset requirements to be accredited investors if the accredited investor exemption had been available in the circumstances.

7. Although MDDC was registered with securities regulators during parts of the Material Time, the majority of the solicitations and sales of the LP Units was conducted through MDDC sales staff who were not registered in any jurisdiction to engage in the business of trading in securities, and who sold securities for MDDC as their primary job function.

THE RESPONDENTS

8. MDDC is a company incorporated pursuant to the laws of Ontario with its head office in Markham, Ontario. MDDC is in the business of promoting and distributing units of limited partnerships that hold and develop interests in real estate in the Province of Saskatchewan.

9. On May 15, 2009, MDDC registered with the Commission as a Limited Market Dealer ("LMD"), and continued its registration with the Commission as an Exempt Market Dealer ("EMD") on September 28, 2009. On October 5, 2010, MDDC also became registered as an EMD with securities regulators in British Columbia, Alberta and Manitoba. MDDC has not been registered with any securities regulator in any capacity since January 27, 2012.

10. Cheong, also known as Kim Meng Cheong, is an Ontario resident and is the Secretary, the Treasurer, and a Director of MDDC, and also holds the title of Managing Director of the company. From May 15, 2009 until January 27, 2012, Cheong was designated as MDDC's Dealing Representative. Cheong was also designated as MDDC's Designated Compliance Officer while MDDC was registered as a Limited Market Dealer, and became the Chief Compliance Officer after MDDC's transition to the Exempt Market Dealer regime in September 2009. Cheong owns 50% of the shares of MDDC and is a directing mind of the company.

11. Tse is a Saskatchewan resident and is the President and a Director of MDDC. Tse operates MDDC's Saskatoon office. Tse's activities were primarily directed to developing the real estate assets in Saskatchewan. He did not have any direct involvement with investors or with the sale of LP Units. From May 15, 2009 until January 27, 2012, Tse was designated as MDDC's Ultimate Designated Person. Tse owns 50% of the shares of MDDC and is a directing mind of the company.

12. On January 27, 2012, following an opportunity to be heard, the Deputy Director, Compliance and Registrant Regulation Branch, ordered that Cheong, Tse and MDDC were permanently suspended as registrants (the "CRR Decision"). The Deputy Director's findings, in written reasons dated February 10, 2012, included that Cheong, Tse and MDDC had relied on an unavailable prospectus exemption, had failed to collect KYC information and ensure suitability of trades, and had failed to deal fairly, honestly and in good faith with clients.

13. Ricketts is an Ontario resident. Ricketts has never been registered with the Commission in any capacity. Throughout the Material Time, Ricketts was employed by MDDC to sell and solicit the sale of LP Units on behalf of MDDC and to train and supervise a staff of unregistered telephone salespeople engaged in the same activity. During the Material Time, Ricketts held the job title of "Office Manager."

14. Griffiths is an Ontario resident. From April 2008 through July 2011, Griffiths was employed at MDDC selling LP Units with the job titles of "Senior Sales Representative" and "Senior Marketing Consultant." Griffiths has never been registered with the Commission in any capacity.

PARTICULARS

Illegal Distribution and Trading Without Registration

15. The Respondents' distribution of LP Units was accomplished through an organized campaign of telephone solicitation conducted from MDDC's offices in Markham, Ontario. The distribution of LP Units was overseen by Cheong and managed by Ricketts. Sales calls were made by Ricketts, Griffiths and other MDDC sales staff, all of whom were employed to sell securities as their primary job function, and compensated on the basis of a commission of between 8% and 10% of the value of the securities they sold.

16. Ricketts and Griffiths both made cold calls to prospective and existing LP Investors for the sole purpose of selling them LP Units, as well as corresponding with them regarding the purchase of LP Units and coordinating the signing of subscription

agreements and the receipt of investor funds by MDDC once LP Units were purchased. Cheong supervised this activity, and also spoke to and corresponded with potential and existing investors for the purpose of selling securities.

17. Except as indicated above, after MDDC, Cheong and Tse registered with the Commission in May 2009, Cheong, Tse and MDDC improperly delegated the tasks of calling and making presentations to investors and assisting investors with filling out forms to unregistered sales representatives. Cheong's direct involvement in the sales process was limited to putting his name on correspondence to investors delivering subscription agreements, offering memoranda and newsletters.

18. In some cases, the Respondents failed to take adequate steps to ensure that the LP Investors were either accredited investors or qualified for any other exemption available under Ontario securities law. In some cases, the Respondents did not adequately explain the definitions of "accredited investor" or "financial assets" or other relevant terms to prospective purchasers, and did not follow up with investors who provided documentation to MDDC in which they purported to rely on exemptions that could not possibly have applied to them.

19. The Respondents sold units in three limited partnerships registered under the *Limited Partnerships Act*, R.S.O. 1990, c. L.16, as amended, which are as follows:

a. MD Land Pool Limited Partnership ("Phase 1"). The general partner of Phase 1 is Morgan Dragon Capital Fund Inc. ("MDCF"), an Ontario corporation;

b. MD Land Pool Phase 2 Limited Partnership ("Phase 2"). The general partner of Phase 2 is Morgan Dragon Land Holding Inc. ("MDLH"), an Ontario corporation; and

c. MD Land Pool Dundurn Limited Partnership ("Dundurn") (Phase 1, Phase 2 and Dundurn are collectively referred to as the "Limited Partnerships"). The general partner of Dundurn is Morgan Dragon Management Inc. ("MDMI"), an Ontario corporation, (MDCF, MDLH and MDMI are collectively referred to as the "General Partners").

20. Cheong and Tse each own 50% of the General Partners and are the directing minds of these corporations.

21. From September 2007 through June 2008, the Respondents sold units of Phase 1 to 46 LP Investors and raised approximately $2,236,000. To date, MDCF has sold $564,000, net of fees, worth of real estate lots. MDCF has entered into agreements, which have not yet closed, to sell $1,926,320, net of fees, worth of Phase 1 real estate lots. There is one final real estate lot which has not been sold. It is valued at $110,000, net of fees.

22. From July 2008 through March 2009, the Respondents sold units of Phase 2 to 38 LP Investors and raised approximately $2,113,000. MDLH has entered into an agreement, which has not yet closed, to sell all Phase 2 real estate lots. The agreement is valued $2,508,000, net of fees.

23. From July 30, 2009, through December 31, 2010, the Respondents sold units of Dundurn to at least 39 LP Investors and raised a total of $898,000. MDMI has not yet sold any Dundurn real estate lots.

24. In total, the Respondents raised approximately $5,247,000 from the distribution of LP Units.

25. The solicitation and sale of LP Units by the Respondents constituted trading and acts in furtherance of trading, as defined in the Act.

26. The LP Units sold by the Respondents were not previously issued and the trading of such securities was a distribution, as defined in the Act.

27. No preliminary prospectus or prospectus was ever filed by any of the Limited Partnerships or by MDDC, nor was any receipt issued by the Director.

PART IV – CONDUCT CONTRARY TO THE ACT AND CONTRARY TO THE PUBLIC INTEREST

28. By virtue of the securities-related conduct described above, MDDC admits that:

(a) From the commencement of the Material Time to May 14, 2009, MDDC engaged in or held itself out as engaging in the business of trading in securities without being registered to do so, in circumstances in which no exemption was available, contrary to s. 25(1)(a) of the Act;

(b) From May 15, 2009, to the conclusion of the Material Time, MDDC retained employees whose primary job function was to engage in or hold themselves out as engaging in the business of trading in securities without being registered to do so, in circumstances in which no exemption was available, contrary to s. 25(1)(a) of the Act, as that section existed at the time the conduct commenced, and contrary to s. 25(1) of the Act, as subsequently amended on September 28, 2009; and,

(c) Throughout the Material Time, MDDC distributed securities without a preliminary prospectus and prospectus having been filed and receipts having been issued for them by the Director, and without an exemption from the prospectus requirement, contrary to section 53(1) of the Act.

29. MDDC admits and acknowledges that it acted contrary to the public interest by contravening Ontario securities law as set out in paragraph 28 above.

30. By virtue of the securities-related conduct described above, Cheong admits that

(a) From the commencement of the Material Time to May 14, 2009, Cheong engaged in or held himself out as engaging in the business of trading in securities without being registered to do so, in circumstances in which no exemption was available, contrary to s. 25(1)(a) of the Act;

(b) From May 15, 2009, to the conclusion of the Material Time, Cheong retained employees whose primary job function was to engage in or hold themselves out as engaging in the business of trading in securities without being registered to do so, in circumstances in which no exemption was available, contrary to s. 25(1)(a) of the Act, as that section existed at the time the conduct commenced, and contrary to s. 25(1) of the Act, as subsequently amended on September 28, 2009;

(c) Throughout the Material Time, Cheong distributed securities without a preliminary prospectus and prospectus having been filed and receipts having been issued for them by the Director, and without an exemption from the prospectus requirement, contrary to section 53(1) of the Act; and

(d) Throughout the Material Time, Cheong, being a director, officer and directing mind of MDDC, did authorize, permit or acquiesce in the commission of the violations of sections 25 and 53 of the Act, as set out above, by MDDC and by the employees of MDDC, contrary to section 129.2 of the Act.

31. Cheong admits and acknowledges that he acted contrary to the public interest by contravening Ontario securities law as set out in paragraph 30 above.

32. By virtue of the securities-related conduct described above, Tse admits that throughout the Material Time, Tse, being a director, officer and directing mind of MDDC, did authorize, permit or acquiesce in the commission of the violations of sections 25 and 53 of the Act, as set out above, by MDDC and by the employees of MDDC, contrary to section 129.2 of the Act.

33. Tse admits and acknowledges that he acted contrary to the public interest by contravening Ontario securities law as set out in paragraph 32 above.

PART V – RESPONDENTS' POSITION

34. MDDC requests that the settlement hearing panel consider the following mitigating circumstances:

(a) Cheong has arranged for a local developer to take over the development of Dundurn and to deal with any unsold lots in the other developments and anticipates that MDDC will be wound up after the remaining real estate assets are sold, if not sooner;

(b) All three General Partners have purchased real estate assets with the funds raised from investors. In the case of Phases 1 and 2, the investors will receive a small profit if the real estate lots that are currently under contract close as scheduled;

(c) As a result of the CRR Decision described above, MDDC has not been registered with the Commission since January 27, 2012, and is subject to a permanent suspension; and

(d) Prior to this matter and the CRR Decision, MDDC had no previous record of securities regulatory proceedings against it.

35. Cheong requests that the settlement hearing panel consider the following mitigating circumstances:

(a) Prior to the settlement hearing in this matter, Cheong will provide Staff with certified funds in the amount of $10,000 as an initial payment of the administrative penalty and costs order flowing from this settlement agreement;

(b) All three General Partners have purchased real estate assets with the funds raised from investors. In the case of Phases 1 and 2, the investors will receive a small profit if the real estate lots that are currently under contract close as scheduled;

(c) As indicated above, Cheong has arranged for a local developer to take over the development of Dundurn and to deal with any unsold lots in the other developments and anticipates that MDDC will be wound up after the remaining real estate assets are sold, if not sooner;

(d) Cheong did not draw a significant salary from MDDC during the Material Time;

(e) As a result of the CRR Decision, Cheong has not been registered with the Commission since January 27, 2012, and is subject to a permanent suspension; and

(f) Prior to this matter and the CRR Decision, Cheong had no previous record of securities regulatory proceedings against him.

36. Tse requests that the settlement hearing panel consider the following mitigating circumstances:

(a) Prior to the settlement hearing in this matter, Tse will provide Staff with certified funds in the amount of $5,000 as an initial payment of the administrative penalty and costs order flowing from this settlement agreement;

(b) All three General Partners have purchased real estate assets with the funds raised from investors. In the case of Phase 1 and 2, the investors will receive a small profit, if the real estate lots that are currently under contract close as scheduled;

(c) Tse did not draw a significant salary from MDDC during the Material Time;

(d) As a result of the CRR Decision described above, Tse has not been registered with the Commission since January 27, 2012, and is subject to a permanent suspension; and

(e) Prior to this matter and the CRR Decision, Tse had no previous record of securities regulatory proceedings against him.

PART VI – TERMS OF SETTLEMENT

37. The Settling Respondents agree to the terms of settlement listed below.

38. The Commission will make an order, pursuant to subsection 127(1) of the Act, that:

(a) the Settlement Agreement is approved;

(b) trading in any securities by the Settling Respondents shall cease for a period of 5 years from the date of the approval of the Settlement Agreement, except that:

1. immediately following full payment of the administrative penalty and costs orders against him set out herein Cheong shall be permitted to trade securities through a registrant and only for the account of his registered retirement savings plan, as defined in the *Income Tax Act*, 1985, c.1, as amended (the "Income Tax Act"); and,

2. immediately following full payment of the administrative penalty and costs orders against him set out herein Tse shall be permitted to trade securities through a registrant and only for the account of his registered retirement savings plan, as defined in the Income Tax Act;

(c) the acquisition of any securities by the Settling Respondents is prohibited for a period of 5 years from the date of the approval of the Settlement Agreement, except that:

1. immediately following full payment of the administrative penalty and costs orders against him set out herein Cheong shall be permitted to purchase securities through a registrant and only for the account of his registered retirement savings plan, as defined in the Income Tax Act; and,

2. immediately following full payment of the administrative penalty and costs orders against him set out herein Tse shall be permitted to purchase securities through a registrant and only for the account of his registered retirement savings plan, as defined in the Income Tax Act;

(d) any exemptions contained in Ontario securities law do not apply to the Settling Respondents for a period of 5 years from the date of the approval of the Settlement Agreement;

(e) the Settling Respondents are reprimanded;

(f) the Settling Respondents are prohibited for a period of 5 years from becoming or acting as a registrant;

(g) Cheong and Tse are prohibited for a period of 5 years from becoming or acting as an investment fund manager or as a promoter;

(h) Cheong and Tse are prohibited for a period of 5 years from becoming or acting as an officer or director of a registrant or investment fund manager;

(i) Cheong and Tse shall resign all positions either of them may hold as a director or officer of any of the General Partners and MDDC, or their successors or assignee companies, and are prohibited for a period of 5 years from the date of the approval of the Settlement Agreement from becoming or acting as a director or officer of the General Partners or MDDC or their successors or assignee companies;

(j) The Commission will order a total administrative penalty of $75,000, for the breaches of Ontario securities law in this matter, payable as follows:

1. Cheong and MDDC shall be jointly and severally liable to pay an administrative penalty in the amount of $37,500; and

2. Tse and MDDC shall be jointly and severally liable to pay an administrative penalty in the amount of $37,500;

(k) The Commission will order that a total amount of $13,000 shall be payable as investigation and hearing costs in this matter, payable as follows:

1. Cheong and MDDC shall be jointly and severally liable to pay costs in the amount of $6,500; and

2. Tse and MDDC shall be jointly and severally liable to pay costs in the amount of $6,500.

39. Any amounts paid to the Commission under the administrative penalty order in this matter shall be allocated to or for the benefit of third parties, in accordance with subsection 3.4(2)(b) of the Act.

40. The Settling Respondents undertake to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the sanctions set out in paragraph 38 above.

PART VII – STAFF COMMITMENT

41. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against any of the Settling Respondents in relation to the facts set out in Part III herein, subject to the provisions of paragraph 42 below.

42. If this Settlement Agreement is approved by the Commission, and at any subsequent time any of the Settling Respondents fails to comply with any of the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against the particular Settling Respondent based on, but not limited to, the facts set out in Part III herein as well as the breach of the Settlement Agreement.

43. The Commission remains entitled to bring any proceedings necessary to recover any amounts the Settling Respondents are ordered to pay as a result of any order imposed pursuant to this agreement.

PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

44. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and the Settling Respondents for the scheduling of the hearing to consider the Settlement Agreement.

45. Staff and the Settling Respondents agree that this Settlement Agreement will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding the Settling Respondents' conduct in this matter, unless the parties agree that further facts should be submitted at the settlement hearing.

46. If this Settlement Agreement is approved by the Commission, the Settling Respondents agree to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

47. If this Settlement Agreement is approved by the Commission, neither Staff nor any of the Settling Respondents will make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

48. Whether or not this Settlement Agreement is approved by the Commission, the Settling Respondents agrees that they will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

PART IX – DISCLOSURE OF SETTLEMENT AGREEMENT

49. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule "A" is not made by the Commission:

(a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and the Settling Respondents leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and the Settling Respondents; and

(b) Staff and the Settling Respondents shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions and negotiations.

50. The terms of this Settlement Agreement will be treated as confidential by all parties hereto, but such obligations of confidentiality shall terminate upon commencement of the public hearing. The terms of the Settlement Agreement will be treated as confidential forever if the Settlement Agreement is not approved for any reason whatsoever by the Commission, except with the written consent of the Settling Respondents and Staff or as may be required by law.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

51. This Settlement Agreement may be signed in one or more counterparts, which together will constitute a binding agreement.

52. A facsimile copy of any signature will be as effective as an original signature.

Dated this 8th day of April, 2013.

STAFF OF THE ONTARIO SECURITIES COMMISSION

"Tom Atkinson"
Director, Enforcement Branch
Ontario Securities Commission

Signed in the presence of:

"Bruce O'Toole"
Witness:

"John Cheong"
John Cheong, Director:
Morgan Dragon Development Corp.

Dated this “8th” day of April, 2013

Signed in the presence of:

“Bruce O’Toole”	“John Cheong”
Witness:	John Cheong

Dated this “10th” day of April, 2013

Signed in the presence of:

“Bruce O’Toole”	“Herman Tse”
Witness:	Herman Tse

Dated this “10th” day of April, 2013

Schedule "A"

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

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION and
MORGAN DRAGON DEVELOPMENT CORP.,
JOHN CHEONG and HERMAN TSE

ORDER

WHEREAS on March 22, 2012, the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act* (the "Act") in respect of Morgan Dragon Development Corp. ("MDDC"), John Cheong ("Cheong") and Herman Tse ("Tse") (collectively the "Settling Respondents");

AND WHEREAS on March 22, 2012, Staff of the Commission filed a Statement of Allegations;

AND WHEREAS on March 26, 2012, Staff of the Commission filed an Amended Notice of Hearing;

AND WHEREAS the Settling Respondents entered into a Settlement Agreement dated April 8, 2013 (the "Settlement Agreement") in relation to the matters set out in the Statement of Allegations;

AND WHEREAS the Commission issued a Notice of Hearing dated April 8, 2013 setting out that it proposed to consider the Settlement Agreement;

UPON reviewing the Settlement Agreement, the Notice of Hearing and the Statement of Allegations, and upon considering submissions from the Respondents through their counsel and from Staff of the Commission;

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

IT IS HEREBY ORDERED:

1. the Settlement Agreement is hereby approved;

2. pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by the Settling Respondents shall cease for a period of 5 years from the date of the approval of the Settlement Agreement, except that:

   (a) immediately following full payment of the administrative penalty and costs orders against him set out herein Cheong shall be permitted to trade securities through a registrant and only for the account of his registered retirement savings plan, as defined in the *Income Tax Act*, 1985, c.1, as amended (the "Income Tax Act"); and,

   (b) immediately following full payment of the administrative penalty and costs orders against him set out herein Tse shall be permitted to trade securities through a registrant and only for the account of his registered retirement savings plan, as defined in the Income Tax Act;

3. pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by the Settling Respondents is prohibited for a period of 5 years from the date of the approval of the Settlement Agreement, except that:

(a) immediately following full payment of the administrative penalty and costs orders against him set out herein Cheong shall be permitted to purchase securities through a registrant and only for the account of his registered retirement savings plan, as defined in the Income Tax Act; and,

(b) immediately following full payment of the administrative penalty and costs orders against him set out herein Tse shall be permitted to purchase securities through a registrant and only for the account of his registered retirement savings plan, as defined in the Income Tax Act;

4. pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to the Settling Respondents for a period of 5 years from the date of the approval of the Settlement Agreement;

5. pursuant to clause 6 of subsection 127(1) of the Act, the Settling Respondents are reprimanded;

6. pursuant to clause 8.5 of subsection 127(1) of the Act, the Settling Respondents are prohibited for a period of 5 years from becoming or acting as a registrant;

7. pursuant to clause 8.5 of subsection 127(1) of the Act, Cheong and Tse are prohibited for a period of 5 years from becoming or acting as an investment fund manager or as a promoter;

8. pursuant to clause 8.4 of subsection 127(1) of the Act, Cheong and Tse are prohibited for a period of 5 years from becoming or acting as a director or officer of a registrant or investment fund manager;

9. pursuant to clauses 7 and 8 of subsection 127(1) of the Act, Cheong and Tse shall resign all positions either of them may hold as a director or officer of MDDC, Morgan Dragon Capital Fund Inc. ("MDCF"), Morgan Dragon Land Holding Inc. ("MDLH"), Morgan Dragon Management Inc. ("MDMI") (collectively, the "Prohibited Companies"), or any successor or assignee of the Prohibited Companies, and are prohibited for a period of 5 years from the date of the approval of the Settlement Agreement from becoming or acting as a director or officer of the Prohibited Companies or their successors or assignee companies;

10. pursuant to clause 9 of subsection 127(1) of the Act, the Commission hereby orders a total administrative penalty of $75,000 for the breaches of Ontario securities law in this matter, to be allocated under section 3.4(2)(b) to or for the benefit of third parties, payable by the Settling Respondents as follows:

    (a) Cheong and MDDC shall be jointly and severally liable to pay an administrative penalty in the amount of $37,500; and

    (b) Tse and MDDC shall be jointly and severally liable to pay an administrative penalty in the amount of $37,500;

11. pursuant to clauses (1) and (2) of section 127.1 of the Act, the Commission hereby orders that a total amount of $13,000 shall be payable as investigation and hearing costs in this matter, payable by the Settling Respondents as follows:

    (a) Cheong and MDDC shall be jointly and severally liable to pay costs in the amount of $6,500; and

    (b) Tse and MDDC shall be jointly and severally liable to pay costs in the amount of $6,500.

DATED at Toronto this _____ of April, 2013.

3.1.2 Juniper Fund Management Corporation et al.

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

AND

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

REASONS AND DECISION

Hearing:	September 19- 23, 28-29, 2011 October 5, 2011 November 9, 2011 December 21, 2011 February 14 and 22, 2012 April 4, 2012 May 28 and 30, 2012 June 8, 2012 September 4, 2012		
Decision:	April 11, 2013		
Panel:	Vern Krishna, QC	–	Chair of the Panel
	Margot C. Howard, CFA	–	Commissioner
Appearances:	Derek Ferris	–	For Staff of the Commission
	Roy Brown (a.k.a. Roy Brown-Rodrigues)	–	For himself
	No one appeared for Juniper Fund Management Corporation, Juniper Income Fund and Juniper Equity Growth Fund		

TABLE OF CONTENTS

REASONS AND DECISION

I. OVERVIEW

A. Background

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") to consider whether the respondents, the Juniper Fund Management Corporation ("**JFM**"), Juniper Income Fund ("**JIF**"), Juniper Equity Growth Fund ("**JEGF**") and Roy Brown ("**Brown**") (collectively, the "**Respondents**") breached certain provisions of the Act and acted contrary to the public interest.

[2] A temporary cease trade order was first issued against JIF and JEGF in this matter on March 8, 2006 and was subsequently varied and extended from time to time (the "**Temporary Order**"). Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) dated May 18, 2006, Grant Thornton Limited was appointed as receiver of all the assets, undertakings and properties of JFM, JIF, and JEGF under section 129 of the Act (in such capacity, the "**Receiver**"). On February 22, 2008, the Temporary Order was revoked by Order of the Commission to permit the Receiver to distribute monies to JEGF and JIF unitholders.

[3] The merits proceeding in this matter was commenced by a Notice of Hearing issued by the Commission on March 21, 2006 pursuant to sections 127 and 127.1 of the Act in connection with a Statement of Allegations filed by Staff of the Commission ("**Staff**") on the same day. Staff further filed an Amended Statement of Allegations on July 5, 2007 alleging that in 2005 and 2006 the Respondents breached various sections of the Act and National Instruments 81-102 ("**NI 81-10**2") and 81-106 ("**NI 81-106**"), which can be summarized into five main areas as follows:

(a) The Respondents failed to maintain proper books and records in respect of JIF and JEGF (collectively, the "**Funds**") (subsections 19.1 of the Act, 18.1 of NI 81-102, and 14.2(1) and 14.4 of NI 81-106);

(b) JFM was not properly registered or exempt from the registration requirements in the Act (subsection 25(1)(a) of the Act, which was in force at the time the alleged conduct took place);

(c) The Respondents failed to provide full, true and plain disclosure of all material facts relating to the Funds and mislead Staff of the Commission (subsections 56(1) of the Act and 15.2 of NI 81-102);

(d) The Respondents engaged in inappropriate transactions within the Funds (subsections 111(1)(a), 111(2)(c)(ii), 111(3), and 112 of the Act and 2.6, 6.1(1), and 6.1(6) of NI 81-102); and

(e) JFM and Brown breached the statutory standard of care required in respect of the Funds (subsection 116(1) of the Act and 9.4, and 11.1 of NI 81-102).

[4] Staff has also alleged that Brown, as an officer and director of JFM, authorized, permitted or acquiesced in the conduct referred to above and is responsible for JFM's breaches of securities law pursuant to s. 129.2 of the Act.

[5] The hearing on the merits in this matter (the "**Merits Hearing**") was first scheduled to commence on April 7, 2008. The Merits Hearing was adjourned on March 31, 2008, June 6, 2008 and November 5, 2010. On January 24, 2011, the Commission ordered that the Merits Hearing commence on September 14, 2011 and continue for 12 days as scheduled thereafter. Ultimately, for reasons described in further detail below, the Merits Hearing was protracted, commencing on September 19, 2011 and concluding on September 4, 2012. The Merits Hearing was 17 days in total.

B. Summary of Findings

[6] Staff must prove its allegations on the balance of probabilities (*Re Sunwide Finance Inc.* (2009), 32 O.S.C.B. 4671, ("***Re Sunwide***") at paragraphs 26 to 28, applying *F. H. v. McDougall*, [2008] S.C.J. No. 54 (S.C.C.) ("***F.H. v. McDougall***")). This is the civil standard of proof. We must scrutinize the evidence with care and be satisfied whether it is more likely than not that the allegations occurred (*F.H. v. McDougall*, above, at paragraph 49).

[7] We find that on a balance of probabilities, Staff satisfied their evidentiary burden at the Merits Hearing. The Respondents' conduct at issue arose when Brown decided to bring the record keeping and fund accounting tasks for the Funds in-house. Many of the Respondents' failures to comply with Ontario securities law began with the poor recording of the Funds' activities. The Respondents' failure to maintain proper books and records led to the very lack of transparency that this Commission is wary of and led to breaches of the Act and NI 81-102 and NI 81-106, as described herein.

[8] Brown and JFM engaged in improper encumbrances of the Funds by permitting JEGF to guarantee JFM's balances in its NBCN margin accounts. The Respondents encumbered the JEGF assets when funds were borrowed for non-JEGF purposes. While JFM, as trustee, would have been permitted to use borrowed funds on a *de minimis* basis for purposes of short term cash management of JEGF redemptions and to settle securities transactions, they did not borrow for these purposes. The encumbrances were improper, not disclosed to the JEGF unitholders and contrary to the public interest.

[9] The Respondents also diverted funds by using the margin available in the NBCN JEGF Custodial Account (defined below) for their personal benefit. The Respondents borrowed funds from that account for purposes contrary to the Act and, in doing so, placed the JEGF assets at risk. The assets in the NBCN JEGF Custodial Account were assets belonging to JEGF and not to the Respondents.

[10] In reaching our decision, we are mindful of some of the mitigating factors in this proceeding. At the time that Brown was concerned that the Funds might not be able to meet redemption requests by the Funds' unitholders, he contacted his counsel and the Commission in order to find a resolution to the issues that he was able to identify at that time. When the Commission indicated that the JFM, JEGF and JIF books and records were insufficient, Brown contacted his accountant to audit the Funds and create a reconciliation spreadsheet. Brown also attended four days of voluntary interviews with Staff at the Commission, which provided a significant amount of helpful information.

[11] Ultimately, however, the Respondents were not competent to participate in the capital markets and, as a result, caused financial harm to the Funds' unitholders.

C. Procedural History

[12] The procedural history of this hearing has involved a purposeful balancing of the various interests in this matter. Upon each adjournment request, the Panel weighed the Respondents' and the investors' interests in reaching its decision. The following is a summary describing the Panel's focused balancing act in reaching its decisions on the multiple adjournment requests both prior to the commencement of and throughout the Merits Hearing.

a) Pre-hearing Adjournments

[13] On August 25, 2011, approximately three weeks before the scheduled start date of the Merits Hearing, Brown brought a confidential motion before a Panel, which was held *in camera*, requesting an adjournment *sine die* based on medical grounds. That Panel denied Brown's motion (the "**Adjournment Decision**") and issued confidential reasons on September 7, 2011 in respect thereto.

[14] On September 16, 2011, Brown brought a motion before this Panel pursuant to section 144 of the Act to revoke or vary the Adjournment Decision which dismissed his motion for an adjournment. We denied Brown's section 144 motion and issued public reasons on November 24, 2011 (*Re Juniper Fund Management Corporation et al* (2011), 34 O.S.C.B. 12103 (the "**November Reasons**")).

[15] Paragraphs 40 to 43 of the November Reasons give a detailed account of the history of this proceeding and state the following:

> [40] This matter has a long procedural history dating back to 2006 and there have been a number of adjournments. The following is a summary of key dates and adjournment requests and this chronology was also considered in the initial Adjournment Decision:
>
> - The alleged violations of the Act occurred in 2005 and 2006. The Commission issued the Temporary Order on March 8, 2006, and the merits proceeding in this

matter was commenced on March 21, 2006 by way of a Notice of Hearing issued in connection with the Statement of Allegations;

- Between March 8, 2006 and September 4, 2007, there were nine appearances at which the matter was adjourned because the investigation of Staff and the investigation of the Receiver were on-going. Brown opposed the adjournment of the matter at some of these appearances;

- On September 4, 2007, the Commission ordered the merits hearing to commence on April 7, 2008;

- On March 31, 2008, the Commission heard a motion for Brown's request to adjourn the merits hearing on the grounds that he was no longer represented by counsel, he had not seen Staff's disclosure volumes which were served on his former counsel and needed additional time to prepare for the merits hearing. Staff opposed the adjournment request and indicated that Staff counsel was not available to attend on June 16, 2008. The Commission adjourned the merits hearing to June 16, 2008;

- On June 4, 2008, Staff brought a motion to adjourn the merits hearing on the basis of unavailability of Staff counsel. On June 6, 2008, the Commission ordered, on consent, that the merits hearing would commence on a date to be set by a pre-hearing conference commissioner or such other date as agreed to by the parties and confirmed by the Office of the Secretary. No pre-hearing conference dates were scheduled at that time;

- In January 2009, the Office of the Secretary tentatively scheduled the merits hearing for June 15 to 19, 2009, but Brown indicated that he could not attend the merits hearing on those dates for medical reasons;

- Throughout 2009 and during early 2010, Staff contacted Brown on various occasions to set dates for a pre-hearing conference, but Brown indicated that he would not be able to represent himself at either a pre-hearing conference or the merits hearing due to his health issues and financial situation;

- A pre-hearing conference took place on March 2, 2010. The pre-hearing conference was continued on April 30, 2010, at which the Commission scheduled the merits hearing to commence on November 15, 2010;

- Pre-hearing conferences were held on June 16, 2010, October 1 and 20, 2010 and November 1, 2010;

- By order dated November 5, 2010, the Commission adjourned the merits hearing due to Commission unavailability;

- On January 24, 2011, the Commission ordered that the merits hearing commence on September 14, 2011;

- On August 25, 2011, a confidential hearing was held to consider an adjournment request from Brown. The Adjournment Decision ordered that the merits hearing shall commence on September 16, 2011, rather than on September 14, 2011, and shall proceed on the other scheduled dates set out in the order in this matter dated January 24, 2011.

[41] To summarize, the alleged misconduct took place six years ago, and the allegations have been outstanding for five years. There have been four adjournments. In our view, it is necessary to hear this matter and have some finality. This proceeding cannot be adjourned indefinitely.

[42] There is a cost to delaying merits hearings. The Commission's hearings calendar is busy and it would be difficult to reschedule the matter and have it heard in the near future. Staff and the Receiver have spent time and effort preparing for this merits hearing and to adjourn it again would create additional preparation costs in the future.

> **III. CONCLUSION**
>
> [43] The Panel considers it in the public interest to proceed with the merits hearing. Brown's motion to vary the Adjournment Decision is dismissed. While the hearing on the merits must proceed, Brown may make requests for reasonable accommodation during the hearing. In addition, the Panel will permit Brown's doctor to testify, on a voluntary basis, solely on the issue of reasonable accommodation if Brown consents and is present (either by telephone conference or in person). In our view, Brown should have the opportunity to participate if his doctor will be providing information about his condition and reasonable accommodations.

[16] Ultimately, we determined that the JEGF and JIF unitholders would be prejudiced by a further adjournment of the Merits Hearing. Staff was prepared to proceed and arranged for many witnesses to give evidence. In addition to scheduling inconveniences caused to these witnesses, we were mindful that the memories of witnesses may fade over time and further delay may affect the quality of their oral testimony. In terms of costs incurred, the Receiver gave evidence that 95% of JEGF assets have been distributed and there remains approximately $450,000 in trust to cover professional fees and final distributions. Each time the matter is adjourned the Receiver has to prepare for the case, which work is billed to the Funds, which reduces the amount available for distribution to the unitholders. We found this to be an unfair burden to the unitholders at this point in time. Further, the Receiver cannot wind up the Funds until this proceeding is completed, which means that unitholders will have to wait longer to get any amounts owing to them and to have this matter resolved if an adjournment was granted.

[17] For all of these reasons, we determined that the balance tipped in favour of investor interests and, as such, an adjournment was denied subject to Brown's requests for reasonable accommodations during the course of the hearing.

b) The Merits Hearing

[18] The Merits Hearing commenced on September 19, 2011 and continued periodically for a total of 17 days. No one represented JFM, JEGF and JIF. Brown represented himself only and participated at the merits hearing for portions of the hearing day on the following dates:

- By telephone conference on: September 19, and 20, 2011; October 5, 2011; November 9, 2011; December 21, 2011; February 14 and 22, 2012; April 4, 2012; May 28, 2012; May 30, 2012; and September 4, 2012; and
- In person on: June 8, 2012.

[19] During the Merits Hearing, on several occasions Brown raised objections to the proceeding continuing and requested multiple adjournments. Although he did not comply with Rules 3 (motions) and 9 (adjournments) of the Commission's *Rules of Procedure*, we considered each objection, request and motion carefully and balanced Brown's interest and the interest of unitholders and the public interest and ruled on each objection, request and motion. The following is a summary of all of Brown's procedural request, objections and motions during the Merits Hearing.

[20] Nine days of the Merits Hearing were dedicated solely to Brown's multiple adjournment requests. At the start of the Merits Hearing, Brown indicated his inability to participate, arguing the same grounds he raised during his two previous adjournment motions (as described in detail at paragraphs 25 to 27 the November Reasons), and he did not attend any of the September 2011 hearing dates. On October 5, 2011, prior to the close of Staff's case, Brown appeared before the Panel by teleconference to request an adjournment such that he could have further time to review the transcripts of Staff's witnesses from the September 2011 hearing dates in order to prepare his defence of the allegations against him and to determine whether he would like to bring a motion to recall and cross-examine any of Staff's witnesses. We granted Brown's request for further time to respond and asked Brown to file supporting evidence of his inability to participate in the Merits Hearing going forward.

[21] On November 9, 2011 and December 21, 2011, Brown appeared before the Panel by teleconference and sought adjournments on each of these dates. Brown filed a letter dated December 20, 2011 from his doctor indicating that his condition remained unchanged since the Adjournment Decision was rendered in August. There was no indication in the letter of any timeframe for when Brown would be fit to participate in a hearing, nor was there any guideline provided setting out any manner in which Brown may be accommodated such that he could participate in the Merits Hearing. Notwithstanding the limited evidence submitted by Brown, we agreed to adjourn the Merits Hearing to February 14, 2012 at which time Brown could bring his motion to recall any of Staff's witnesses that he wished to cross-examine. Subsequent dates in February and March were booked for the conclusion of the Merits Hearing.

[22] On February 14, 2012, Brown appeared before the Panel by teleconference and made a request to adjourn the Merits Hearing for approximately 60 days on the basis that his medical condition prevented him from participating in his motion to recall Staff's witnesses as scheduled. Brown did not submit any evidence in support of his request. We withheld our decision and

requested the parties to re-attend to continue the motion on February 22, 2012 in order to allow Brown time to provide the Commission with supporting evidence.

[23] On February 22, 2012, Brown submitted a confidential medical file that contained his medical test history (the "**Confidential Medical File**"). In our opinion, it was not appropriate to engage in an analysis of the Confidential Medical File as it did not contain any relevant information with respect to Brown's actual ability to participate in the Merits Hearing. Notwithstanding, on February 22, 2012, in an attempt to balance the public interest with Brown's interests, we granted Brown a final adjournment on a peremptory basis until April 4, 2012. The exchange between the Chair of the Panel and Brown at pages 10-11 of the transcript from the February 22nd appearance specifies that this was a peremptory adjournment:

> THE CHAIR:
>
> … The hearing will proceed on a preemptory [*sic*] basis, Mr. Brown. That means there'll be no further adjournments, and we will proceed with or without you participating on those dates. So you should make every effort to be present on the phone or through counsel.
>
> MR. BROWN: That's my question. What is the protocol for the Commission in a situation like this? Can I do a hearing or my Respondents hearing in person and by phone or just in person?
>
> THE CHAIR: We will allow you to do it by phone ...

[24] Further, we dispensed with the requirement for Brown to bring a motion to recall Staff's witnesses and ordered, among other things, that Brown need only provide a list of those witnesses that he wished to recall in advance of the next appearance.

[25] Prior to the April 4, 2012 hearing date, Brown served Staff with a list of witnesses whom he wished to recall for cross-examination; however, on April 4th Brown requested a further adjournment on medical grounds. Brown did not provide any supporting evidence. In balancing the public interest with Brown's interests, we agreed to grant Brown one final adjournment and set the concluding hearing dates for May 28, 29, 30, 31, and June 1, 8, 20, and 22, 2012.

[26] On May 28, 2012, Brown sought an adjournment of the Merits Hearing on medical grounds and requested that he be allowed until September to enter his defence by way of written interrogatories to Staff's witnesses and by way of affidavit evidence. Brown did not submit any evidence to support his motion. We denied Brown's request for an adjournment but granted his request to submit written interrogatories for Staff's witnesses by May 30, 2012, in accordance with the previously scheduled Merits Hearing dates.

[27] On May 30, 2012, Brown brought another motion to adjourn the Merits Hearing on the basis that he was not able to submit written interrogatories in the time prescribed and indicated that he would not be able to do so in the coming days due to his medical condition. Brown did not submit any evidence to support his motion. We denied Brown's request to adjourn the Merits Hearing but granted Brown his request to submit his defence by way of affidavit evidence by no later than June 8, 2012 in accordance with the previously scheduled Merits Hearing dates. At that time, Staff closed its case. We ordered that Brown was permitted to testify by way of videoconference on June 8, 2012 instead of by affidavit if he chose to do so and further ordered that Staff could cross-examine Brown by videoconference in order to accommodate Brown.

[28] On June 8, 2012, Brown appeared before the Commission in-person to bring another motion to adjourn the Merits Hearing based on medical grounds. He did not submit any evidence to support his motion. Brown advised that if his request for an adjournment was not granted he would not be able to participate in the Merits Hearing. We denied Brown's request for an adjournment and, in light of Brown's submissions, we determined that the defence's case was closed and set dates for closing submissions as follows: Staff were to serve and file written closing submissions by June 22, 2012, Brown was to file responding submissions on August 20, 2012, and Staff was to file a reply by August 31, 2012. The parties were ordered to attend before the Commission for oral closing submissions on September 4, 2012.

[29] On August 22, 2012, Brown sent an email to the Registrar of the Commission advising that he would not be filing any closing submissions. On September 4, 2012, Brown briefly appeared before the Panel by teleconference to ask about the process going forward. Brown did not make any submissions and did not stay on the telephone to listen to Staff's closing submissions. After Brown asked his procedural questions he terminated the conference call. Staff then delivered their closing submissions and the Merits Hearing was concluded.

[30] Throughout the Merits Hearing we balanced all of the interests affected by this proceeding. In particular, we were mindful of Brown's right to a fair hearing, the rights of the Funds' unitholders, and the public interest at large. After the Merits Hearing commenced, we granted Brown a number of adjournments to accommodate him. Notwithstanding that Brown provided minimal evidence of his inability to participate in the Merits Hearing, we repeatedly deferred to his interests and offered him numerous accommodations including the ability to participate by teleconference, videoconference, and in-writing. On April 4, 2012, we advised Brown that his request for an adjournment was being granted for the last time subject to any further evidence

of his ability to participate. He indicated his understanding of the Panel's decision. On May 30, 2012, however, Brown requested a further adjournment without any new evidence. Commissioner Krishna reminded Brown of his previous exchange with the Panel:

> We have once again gone through the exercise of balancing of the various interests that we did earlier on April the 4th. And at that time I said at page 35 of the same transcript where I render the decision at line 12, I can only repeat now what I said at that time that there are various interests, including your own private interest, Mr. Brown, and your medical condition but that there are other interests that we must also take into account, other interests being those of investors, witnesses, and generally the public interest to have proceedings proceed on a timely basis.
>
> At that time I said in the decision, "In balancing these various interests, we have decided once again to tip the scales in your favour, Mr. Brown. We will grant you one final adjournment in respect of this matter and let your private interests outweigh those of all the other interests that we have considered. But I think you have indicated and should understand there is a limit to how many times the Commission will consider your interest over and above those of the public interest."
>
> And when I asked you, "Mr. Brown, do you understand what I have just said?" You said, "Yes, I do." And I asked you, "Yes. You have made that clear and you indicated your willingness to proceed and you understand we will proceed then on the dates indicated with the witnesses that you have indicated."
>
> And at page 36 of that transcript at line 24 I say, "Do you understand that?" And you answer, "Yes. I understand that. I agree and I agree there is a limit to all of this and for me. So, I understand all of that." And I said, "Good." And you said, "All too clearly."
>
> Well, there is nothing further that I can add to those reasons of April the 4th. We have had to consider exactly the same – the same interests, the same balancing process that we always do, and that is your own private interests versus the public interest. And we have now reached the limit that I spoke about on April the 4th.
>
> And so it is our decision that the motion to vary the decision is denied because it would be prejudicial to the public interest.
>
> (Transcript of Merits Hearing, May 30, 2012 at pages 29 and 30)

[31] Ultimately, as stated above, we determined that the balance of interest tipped in favour of concluding the Merits Hearing in order to bring finality to this matter, provide closure to the Funds' unitholders and protect the public interest.

D. Background

a) The Respondents

JFM

[32] JFM is the fund manager, trustee and fund administrator of the Funds. JFM is not registered in any capacity with the Commission but is a market participant by virtue of being a fund manager for the Funds.

JEGF

[33] JEGF is a mutual fund trust that was originally established on November 15, 1985. According to its simplified prospectus dated July 5, 2005, as amended, JEGF invests in equity and equity-related securities of companies listed on Canadian and foreign stock exchanges. Effective October 7, 2005, JEGF merged with three funds: The Capstone Balanced Fund, the Capstone Canadian Equity Fund and the Capstone Global Equity Fund (the "**Merged Capstone Funds**"). As a result of the merger, unitholders of the Merged Capstone Funds received units in JEGF equivalent in value to their holdings in the Merged Capstone Funds. As of February 26, 2006, the total value of net assets of JEGF was approximately CAD $12,300,000.

JIF

[34] JIF was formerly called the Capstone Cash Management Fund, a Canadian money market fund organized as a mutual fund trust. The Capstone Cash Management Fund was renamed JIF and its investment objectives were changed to those of an income fund. As of February 26, 2006, the total value of net assets of JIF was approximately $350,000.

Brown

[35] Until the Court appointment of the Receiver, Brown was a director of JFM. Brown is president, chief executive officer and sole shareholder of JFM and is also known by his legal name of Roy Brown-Rodrigues. Brown was the principal administrator and controlled the daily operations of JFM. Brown was the direct contact with Staff during the compliance review of JFM and the Funds.

b) Other Relevant Entities

NBCN Inc.

[36] NBCN Inc. ("**NBCN**") was the custodian of the portfolio assets for the Funds. As custodian, NBCN held the underlying securities of the Funds. NBCN's role as custodian was to provide portfolio settlement services and to safeguard the portfolio assets. NBCN is registered with the Commission as a broker and investment dealer. NBCN's custodial accounts for the Funds were: 27R000A/E (referred to interchangeably in the evidence as 27R000 or 27R000E and referred to herein as the "**NBCN JEGF Custodial Account**") and 27R003E for JEGF, and 27R002E for JIF. The NBCN JEGF Custodial Account was opened as a cash account and later converted to a margin account in the name of JFM, in trust for JEGF, collateralized by JEGF's assets as described further in NBCN's evidence herein.

[37] The custodial agreement executed between NBCN and JFM dated August 19, 2004 was amended and revised by the Amended and Revised Custodial Agreement dated December 22, 2005 (the "**Custodial Agreement**"). The Custodial Agreement stipulated that NBCN would provide JEGF with custodial services related to portfolio safe keeping and transaction settlement services. NBCN did not provide JFM with fund accounting, payment services for fund expenses, unitholder recording, transfer agent services, or NAV calculation services.

[38] JFM had two margin accounts with NBCN: 27R001E (the "**NBCN JFM 27R001E Margin Account**") and 27R005E. The NBCN JFM 27R001E Margin Account was ultimately the subject of discussions between Brown and NBCN due to a disparity between their records of the amount of JEGF units held in that account.

National Bank Financial Ltd.

[39] National Bank Financial Ltd. ("**NBFL**") is a Canadian investment dealer. NBFL operated one margin account for Brown numbered 116KRZ-E ("**Brown's NBFL Margin Account**"). NBFL is registered with the Commission.

RBC Dominion Securities Inc.

[40] RBC Dominion Securities Inc. ("**RBCDS**") is a Canadian investment dealer. RBCDS operated a personal margin account for Brown from approximately 2000 to November 2005 numbered 537-05421-27 (Brown's "**RBCDS Account**"). In November 2005, Brown's RBCDS Account was closed and the account was transferred to NBFL. RBCDS is registered with the Commission.

PolySecurities Asset Management Corp.

[41] PolySecurities Asset Management Corp. ("**PAM**") is a private Ontario company incorporated on June 23, 2003. Brown is a 3% shareholder of PAM and a former president and a director of PAM but he resigned in December 2003. Les Kobli, an individual that represented himself as Senior Vice-President Operations of JFM and was listed as the President of PAM in its corporate profile report dated December 2005, held 88% of the shares in PAM. PAM's series B preference shares are portfolio assets of JEGF. PAM is not an equity or equity-related exchange traded security. JEGF's investment in PAM took place in February 2004, prior to Brown's acquisition of all shares of JFM in May 2004 and after his resignation as officer of PAM. Brown was a principal shareholder, officer and director of an affiliated company, Polysecurities Inc. ("**Poly Inc.**"), which was a registered limited market dealer that was inactive through the compliance period in 2005 and that voluntarily surrendered its registration on January 1, 2006.

CIBC

[42] There were a number of bank accounts opened at Canadian Imperial Bank of Commerce (**"CIBC**") in relation to Brown, some of which included the following:

(a) In February 2005, Brown and his wife, Marnie-Brown Rodrigues ("**Marnie Brown**"), opened an account at CIBC in the name of Southgate Mortgage and Income Trust (the "**Southgate Trust**").

(b) In March 2005, Brown opened an account at CIBC for the Juniper Pooled Income and Property Fund and was the authorized signing authority for this account.

(c) In 2005, JIF held an account at CIBC and Brown, as trustee, was the authorized signatory for the JIF account. Jennifer Purves ("**Purves**") and Jennifer Bryl ("**Bryl**"), were employees of JFM and were delegated deposit inquiry authorities in December 2005 and February 2006 respectively.

(d) JEGF held a series of accounts at CIBC starting in February 2005, all of which were set up by Brown.

Southgate Mortgage and Income Trust

[43] The Southgate Trust is a trust held for the benefit of Brown. As mentioned above, the Southgate Trust has an account at CIBC, the signatories for which are Brown and Marnie Brown. The trustees of the Southgate Trust are Marnie Brown, Tony Rodrigues and Bonnie Burgess.

Felcom Data Services

[44] Felcom Data Services ("**Felcom**") was a mutual fund services provider that provided clients a range of back office services including fund valuation, fund accounting, unit holder record keeping, and transferring services to mutual fund companies. In or around July 2005, Felcom entered into a Security Holder Services Agreement with JFM which provided that Felcom would act as registrar, transfer agent, order processing and distribution/disbursement agent for JFM. Felcom and JFM terminated their relationship in or around the end of 2005. Felcom was acquired by CIBC Mellon in October 2009.

II. ALLEGATIONS

[45] There was a long list of allegations presented by Staff in the Merits Hearing, which can be summarized into five main areas as follows. Staff allege that:

(a) The Respondents failed to maintain proper books and records in respect of the Funds;

(b) JFM was not properly registered or exempt from the registration requirements in the Act;

(c) The Respondents failed to provide full, true and plain disclosure of all material facts relating to the Funds and mislead Staff of the Commission;

(d) The Respondents engaged in inappropriate transactions within the Funds; and

(e) JFM and Brown breached the statutory standard of care required in respect of the Funds.

[46] It is the conduct of the Respondents, as described above, that Staff allege resulted in the breach of various sections of the Act and NI 81-102 and NI 81-106. Specifically, in the Amended Statement of Allegations filed on July 5, 2007, Staff allege that:

(a) JFM and/or Brown has/have misrepresented its/his/their ownership interests in JEGF units to RBCDS, NBCN, NBFL, and Staff.

(b) From February to May 2005 inclusive, Brown and JFM made four purchases totaling $4,450,000 of JEGF units on margin through RBCDS and NBCN and kept the proceeds for his/its/their own use and did not ensure that the purchase monies were paid to JEGF (the "**Off-Book Purchases**"). The alleged Off-Book Purchases were:

(i) On February 7, 2005, Brown purchased 143,143.706 JEGF units for $900,000 in Brown's RBCDS Account. The RBCDS cheque in the amount of $900,000 was deposited into JEGF's Bank of Montreal account 1029-480 which account was not included in JEGF's accounting records.

(ii) On March 1, 2005, Brown purchased 220,025.46 JEGF units for $1,400,000 through Brown's RBCDS Account. RBCDS settled the purchase through a wire transfer to JEGF's BMO account 1029-499 which was an account listed on JEGF's accounting records. On March 8, 2005, $1,400,000 was wired out immediately to JEGF's CIBC bank account 68-04519 which account was not included in JEGF's accounting records.

(iii) On March 11, 2005, Brown purchased 110,733.212 JEGF units for $700,000 through JFM's NBCN Account. At the request of Brown, a manual cheque in the amount of $700,000 payable to JEGF was provided to JFM. The NBCN cheque in the amount of $700,000 was deposited to JEGF's CIBC account 68-04519 which account was not included in JEGF's accounting records.

(iv) On May 19, 2005, Brown purchased 220,503.0073 JEGF units through JFM's NBCN Account. On the instructions of Brown, NBCN wire transferred $1,450,000 to JEGF's CIBC bank account 68-04519 which account was not included in JEGF's accounting records.

(c) The JEGF units that were the subject of the Off-Book Purchases were:

(i) Not recorded in JEGF's books and records maintained by JFM and provided to Staff contrary to the record-keeping requirements in subsection 19(1) of the Act and section 18.1 of NI 81-102 and contrary to the public interest;

(ii) Not recorded in JEGF's daily NAV calculations contrary to section 14.4 of NI 81-106; and

(iii) Not deposited and retained in the NBCN JEGF Custodial Account contrary to section 11.1 of NI 81-102 and subsection 116(1) of the Act.

Brown and JFM's failure to deposit the funds from the Off-Book Purchases of JEGF units to the NBCN JEGF Custodial Account was conduct contrary to section 11.1 of NI 81-102 and contrary to subsection 116(1) of the Act.

(d) Brown and JFM maintained two sets of records for JEGF in order to (a) mislead RBCDS and NBCN as to the balance of JEGF units held in Browns' RBCDS Account and in JFM's NBCN account; and (b) redeem units "acquired" in the Off-Book Purchases.

(e) The redemptions of units not owned or paid for at the time by JFM and/or Brown was conduct contrary to subsection 9.4 of NI 81-102 and contrary to the public interest.

(f) The redemptions of JEGF units by Brown and related parties amounted to interest-free loans to JFM from the JEGF unitholders and as such JFM's and Brown's conduct was a breach of their fiduciary duty to JEGF and the JEGF unitholders and a breach of their statutory duty of care owed to JEGF pursuant to subsection 116(1) of the Act.

(g) Brown used the margin available from the transfer of JEGF units to its NBCN margin account for his own benefit including (a) a payment to Brown's and Marnie Brown's line of credit and (b) a purchase of JEGF units in the names of JFM and the Southgate Trust. Accordingly, JFM's and Brown's use of JEGF's NBCN custodial account was contrary to section 2.6 of NI 81-102 by borrowing cash or providing a security interest over JEGF's portfolio assets.

(h) JFM and/or Brown has/have improperly permitted JEGF to guarantee JFM's outstanding cash balances in accounts including both of JFM's margin account at NBCN contrary to section 112 of the Act and section 2.6 of NI 81-102.

(i) Brown mislead Staff during his interviews on April 18, 25, 26 and May 2, 2006 (the "**Brown Interview**s") concerning the following:

(i) That any discrepancy in the number of JEGF units in JFM's NBCN Account and Brown's NBFL Account was due to problems with JFM's record keeping system;

(ii) The existence of units of Juniper Equity Growth (Private Class Series) Fund;

(iii) The relationship between Brown and Windrush Abbey Leasing Limited ("**Windrush**");

(iv) The relationship between Brown and PAM;

(v) The relationship between Brown and the Southgate Trust;

(vi) Brown failed to identify all of JEGF's and JFM's bank accounts and advised Staff that all such past and present bank accounts had been identified;

(vii) The role of Felcom as JFM's transfer agent and the services provided to JFM by Felcom;

(viii) The number of JEGF units transferred in-kind to NBCN; and

(ix) The transfers of JEGF units to Stonewall Landscape Ltd. and D-Tech Consulting.

(j) JEGF provided prohibited loans to JFM contrary to subsection 111(1)(a) and section 112 of the Act and contrary to the public interest.

(k) JFM acted as a mutual fund dealer for purchases and redemptions in units of the Funds without being registered as a mutual fund dealer contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

(l) JFM and Brown did not exercise its powers and discharge their duties honestly, in good faith and in the best interests of the Funds and did not exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, contrary to subsection 116(1) of the Act and contrary to the public interest. JFM and Brown breached their statutory duty of care to the Funds by:

(i) Failing to ensure that the proceeds from the sale of units were paid to JEGF;

(ii) Maintaining two sets of unitholder records for JEGF;

(iii) Redeeming JEGF units which had not yet been paid for;

(iv) Making in-kind transfer of JEGF units which units had not been recorded on JEGF's books and records maintained by JFM;

(v) Improperly issuing or transferring JEGF units in the names of JFM and Brown which were not properly issued JEGF units or which were not owned by either JFM or Brown;

(vi) Borrowing amounts secured by JEGF's Custodial Account;

(vii) Failing to prepare accurate NAV calculations for the Funds which resulted in material NAV errors;

(viii) Failing to keep proper books and records contrary to subsection 19(1) of the Act; and

(ix) Failing to ensure that the Funds' portfolio holdings complied with the fundamental investment objectives of the Funds and with Ontario securities law.

(m) JEGF's investment of $400,000 in preferred shares of PAM is contrary to subsections 111(2)(c)(ii) and 111(3) of the Act and contrary to the public interest. After its merger, JEGF held securities that were inconsistent with its fundamental investment objectives contrary to the public interest.

(n) JFM has acted as custodian or sub-custodian of assets of JEGF in the investment in PAM, and cash and GICs of JEGF were not properly held with the custodian of JEGF contrary to subsection 6.1(1) of NI 81-102.

(o) JEGF's simplified prospectus, information circular and annual information form ("**AIF**") contained misleading or untrue statements contrary to subsections 56(1) and/or 122(1) of the Act and contrary to the public interest.

(p) The Funds' website at www.juniperfund.ca and press releases contained untrue or misleading sales communications contrary to subsection 15.2(1) of NI 81-102 and contrary to the public interest.

(q) Brown, as an officer and director of JFM, has authorized, permitted or acquiesced in breaches of subsections 19(1), 25(1)(a), 56(1), 111(1)(a), 111(2)(c)(ii), 111(3), 112, 116(1) and 122(1) of the Act and in breaches of subsections 2.6, 6.1(1), 6.1(6), 9.4, 11.1, 15.2(1) and 18.1 of NI 81-102 and subsections 14.2(1) and 14.4 of NI 81-106 and in doing so has acted contrary to section 129.2 of the Act and engaged in a conduct contrary to the public interest.

III. EVIDENCE

A. The Agreed Statement of Facts

[47] On or around September 14, 2011, the Respondents and Staff entered into an Agreed Statement of Facts (the "**Agreed Facts**"), which was marked as exhibit 10 at the Merits Hearing. The Agreed Facts relate to some of the factual background of the allegations in issue. The Respondents did not admit any of Staff's allegations in the Agreed Facts.

B. Staff's Evidence

[48] Staff called the following eleven witnesses at the Merits Hearing:

(a) Trevor Walz and Naomi Chak on behalf of Staff;

(b) Cindy Phillips and Richard Walkowiak as representatives of NBCN;

(c) Ronald Landry and John Nyssen as representatives of Felcom;

(d) Jody Coulson, Karen Anderson, and Gary Tamura as representatives of RBCDS;

(e) Goretti Moniz as a representative of CIBC; and

(f) Daniel Wootton as a representative of the Receiver.

a) Trevor Walz

[49] At the time of the Merits Hearing, Trevor Walz ("**Walz**") was a senior accountant with the Compliance and Registrant Regulation branch of the Commission. Walz was asked to perform a compliance review of JFM, in its capacity as fund manager for the Funds, as a result of discussions in November 2005 between Brown, his counsel, and the Commission.

[50] On or about November 12, 2005, Brown and JFM's legal counsel contacted Staff to request either a temporary cease trade order or an extension of the settlement period required for paying redemptions beyond the legal requirement under NI 81-102 from trade date plus three days ("**T+3**") to plus five days. The request was made in order to address the redemptions in the Autumn of 2005 by the Merged Capstone Funds' unitholders. Brown advised Walz that a significant number of these redemptions were attributable to a letter by Capstone Consultants Ltd. ("**Capstone Consultants**") dated October 31, 2005 which was mailed to certain Merged Capstone Funds' unitholders.

[51] Capstone Consultants was established by Morgan Meighen & Associates Limited ("**MMA**") to execute trades in the Merged Capstone Funds. Capstone Consultants' letter dated October 31, 2005 stated that since management of the Merged Capstone Funds had been transferred from MMA to JFM, Capstone Consultants would be ceasing operations as a mutual fund dealer effective November 30, 2005. The letter advised that account holders could make arrangements with JFM to transfer their accounts to another mutual fund dealer to effect Juniper trades on their behalf. Walz testified that Brown advised him that he believed that the Capstone Consultants letter caused a large amount of redemption requests soon thereafter. Brown also pointed out that the Funds had different investment objectives than the original Capstone Merged Funds. In the end, JFM did not file an application to amend its settlement requirements; however, Staff became concerned about whether JFM was meeting its standard of care to the Funds and whether the Funds were able to meet redemption requests by investors within the T+3 legal requirement.

[52] Walz testified that he conducted an on-site visit at JFM's offices commencing on December 13, 2005 for two and a half days. The compliance review extended into early 2006 through phone, email and fax. In preparation for the compliance review, Walz examined:

(a) The Commission database and determined that Brown was the principal, shareholder, officer and director of a company called Poly Inc., a limited market dealer;

(b) Articles on SEDAR describing the merger with the Capstone Merged Funds;

(c) The JEGF simplified prospectus dated July 5, 2005 wherein he learned there were A and F class series of units available for purchase in JEGF and that, effective August 1, 2005, there would be a private class series of units offered only to accredited investors in Toronto. During the on-site review, however, Brown advised Walz that only the A class series of units had been sold;

(d) The JEGF AIF listing JFM as trustee, manager, registrar and transfer agent for JEGF.

[53] Walz outlined the objectives of the compliance review as follows:

(a) To obtain comfort that the portfolio assets of the Funds existed and were of good quality;

(b) To make sure that JFM, and the Funds were in good financial condition;

(c) To investigate the JEGF holdings in PAM given its similar name to Poly Inc.; and

(d) To make sure JFM was operating at an appropriate standard for managers of public mutual funds, keeping proper books and records.

[54] Walz testified that during the on-site review in December 2005 he discovered that JFM's most recent bank reconciliation statements and custodian statements regarding the Funds were dated as of June 30, 2005 notwithstanding that the Funds were priced daily. Walz determined that JFM was calculating a net asset value for the Funds using third party records – the amounts shown per the custodial statements for securities and the bank statements for the cash balances – and not their own reconciliations.

[55] During his testimony, Walz referred to a "Compliance Field Review Books and Records Request" that he sent to Brown on December 5, 2005, prior to his on-site visit, and which contained numerous documentary requests. He testified that the responses he received from JFM to some of the requests were as follows:

(a) Request #12: Offering Memorandum and Subscription Agreement for any non-prospectus funds – JFM said that none existed.

(b) Request #18: A log of all manual adjustments to fund prices – JFM advised that there were no manual adjustments.

(c) Request #20: List of NAV pricing errors, including the date, amount, and nature of the error – JFM advised that there were no NAV pricing errors.

(d) Request #19: List of fund securities written down, or those with stale prices – JFM advised that there were no such securities written down or with stale prices.

(e) Request #23: Copies of marketing materials for the Funds: JFM advised that there were no marketing materials other than JFM's website.

[56] At the end of the on-site review, Walz concluded that redemptions in the Funds had stabilized and all redemption requests had been met and were up to date. Further, the portfolio investments of the Funds were liquid and were of blue chip quality except for the investment in PAM. However, the findings from the balance of the compliance review caused Walz concern that:

(a) The cash and bank reconciliations for the Funds were not available and as such he was not able to find comfort with the existence and/or accuracy of the cash and security balances for the Funds;

(b) There was an issue with the suitability of the portfolio assets in JEGF in that approximately $1.4 million (11%) of JEGF's net assets were offside the investment objectives of JEGF because they were made up of securities in debentures that were not equity or equity-related securities trading on an exchange; and

(c) The investment in PAM was (a) in preferred shares of a private company, which was also offside for not being on an exchange, and (b) Les Kobli, an individual appearing to be an officer or director of JEGF, held 88% of the shares in PAM, contrary to section 111 of the Act, which prohibits a mutual fund from investing in a company in which an officer or director of the fund's management company owns more than 10% of the shares.

[57] Walz testified that the preliminary findings also found that there was an unreconciled $1.2 million on the JFM books, $676,744 of which was the difference in the various security positions for JEGF that were on the JFM accounting records for JEGF but not on the custodial statements at NBCN, and which included the PAM preferred shares and a CIBC GIC. In attempting to reconcile the JFM records with the NBCN records, Walz found there was a shortfall where the accounting records of JFM showed higher values than the custodial records, including a cash difference of $536,000 greater shown on the Funds' financial statements than what was shown by the bank and custodial statements for the Funds.

[58] Following the conclusion of the preliminary compliance review, Brown hired a chartered accountant to prepare proper reconciliations, which provided Walz with comfort that as of the end of 2005 there existed a proper valuation of JEGF's portfolio of securities. With respect to the debentures in the JEGF portfolio, Walz was satisfied that two of the debenture holdings were convertible debentures that could be converted to common shares of their respective issuers that do trade on an exchange and as such were acceptable holdings for JEGF. Brown committed to having the other debenture holdings disposed of by April 30, 2006, which was acceptable to Walz. With respect to PAM, due to the illiquid market, Brown was concerned about how quickly he could dispose of these holdings. Ultimately, Walz agreed to allow JFM until June 30, 2006 to dispose of the PAM shares or to otherwise make JEGF whole.

[59] Going forward with the compliance review, Walz found discrepancies in the JEGF, NBCN and CIBC reconciliations as of December 31, 2005. In comparing cash balances, Walz found a shortfall of $206,521.87, affecting the calculation of the NAV value of JEGF. Accordingly, Walz's position changed from the on-site visit as at December 13, 2005 when it was determined that there was an unreconciled cash balance of $536,341.63 to there being an unreconciled cash balance of $206,521.97 as at December 31, 2005. Likewise, Walz found discrepancies in the same reconciliations for JIF that amounted to a shortfall of $19,211.57. In the case of both JEGF and JIF, the shortfall amounted to a material error in the NAV calculations for the Funds within the standards of the Investment Funds Institute of Canada.

[60] Walz reviewed the JEGF account opening documents that he received from NBCN, which included a cash account opened on October 21, 2004 and ultimately changed on February 18, 2005 to a margin account held in the name of JFM in trust for JEGF numbered 27R000 being the NBCN JEGF Custodial Account. Walz reviewed a number of transfers by JFM that appeared to navigate money intended for JEGF through the BMO JFM account. Walz said that it was not until March 1, 2006, after speaking with NBCN, that he discovered the NBCN JFM 27R001E Margin Account that NBCN claimed held 600,000 JEGF units as of January 31, 2006. Brown had not mentioned the NBCN JFM 27R001E Margin Account to him notwithstanding his direct requests for this kind of information. Within the NBCN JFM 27R001E Margin Account, JFM appeared to have borrowed approximately $1.8 million leveraged against its JEGF units. Further, Walz learned of Brown's NBFL Margin Account that held $800,000 in the form of 100,000 JEGF units and with $350,000 borrowed against those. Prior to this conversation with NBCN, Walz believed that Brown held no units in JEGF and that JFM held 94,000-95,000 JEGF units. Upon conducting the proper reconciliation, however, Walz determined that the 600,000 JEGF units held in the NBCN JFM 27R001E Margin Account did not in fact exist, significantly diminishing NBCN's security interest and making the NAV calculations of the JEGF units materially incorrect. It was at this point that a cease trade order was contemplated.

b) Cindy Phillips

[61] At the time of the Merits Hearing, Cindy Phillips ("**Phillips**") was Vice President of Finance at NBCN. She testified that she became involved with the Respondents when, on February 14, 2006, she was asked by her colleagues to discuss the reconciliations on the JFM accounts and Brown's NBFL Margin Account. Phillips' evidence was that at a meeting with Brown on February 24, 2006, Brown provided her with a draft reconciliation that he had prepared and that showed the discrepancy in the number of units in his records in the NBCN JFM 27R001E Margin Account from NBCN's records. Brown's draft reconciliation showed approximately 67,600.06 units in the NBCN JFM 27R001E Margin Account in contrast to NBCN's records which showed 591,335 units in that account. Phillips stated that in NBCN's opinion, Brown's records showed an understatement of approximately 520,000 units and that Brown did not provide any supporting information for his draft reconciliation.

[62] Phillips' personal notes from the February 24th meeting state that the discrepancy appears to have started in September 2005 when NBCN recorded a transfer-in of 171,430 JEGF units per instructions received from Brown, however, Brown's reconciliation only shows 71,430 units transferred-in. Further, on November 29, 2005, NBCN received instructions from Brown to transfer-in 246,964 units but Brown's reconciliation shows a transfer-in of only 24,696.45 units.

[63] Phillips stated that she also talked to Brown at that time about Brown's Personal NBFL Margin Account, which held approximately 120,000 JEGF units. The security position on this account as of December 31, 2005 was a market value of $858,027 and a debit balance of $407,934, leaving equity of approximately $450,000. Phillips asked if Brown would liquidate the assets in Brown's NBFL Margin Account to cover the debit cash balances in the NBCN JFM 27R001E Margin Account but Brown refused, suggesting that any such liquidation would affect the net asset value of JEGF. Phillips testified that his reasoning did not make sense to her.

[64] Phillips described a further reconciliation that she conducted between Brown's document and the bank's records and determined that there should be 591,335 units in the NBCN JFM 27R001E Margin Account. When asked about where Phillips believed the missing units went on the JFM records, she gave two responses: 1. Brown claimed that these transfers never took place and 2. Brown cancelled the missing units.

[65] Phillips reviewed NBCN's documents which show a transfer-in of 171,430 units to the NBCN JFM 27R001E Margin Account on September 8, 2005, where the transferor is identified as JEGF. She could not provide evidence that the units being transferred into the NBCN JFM 27R001E Margin Account did in fact exist at the time; however, she gave evidence that the Authorization to Transfer form was filled out and signed by Brown on behalf of JEGF, and that the bank did not fill out the document itself. She explained that the transfer department at NBCN would validate the units with an independent record keeper such as FundSERV ("**FundSERV**") or Felcom but in some instances JFM was acting as its own record keeper and in those cases the bank would do a reconciliation at the end of the month. She stated that for NBFL, the total number of units outstanding for all clients at NBFL would be confirmed with the unitholder record-keeper. NBFL would receive a third-party reconciliation at the end of the month of total units outstanding.

[66] Phillips reviewed her understanding of the NBCN JEGF Custodial Account and confirmed that if a debit in this margin account were created, the amounts owing would first be covered by liquidating the assets in the account, which belong to JEGF,

and if the assets were not sufficient to cover that debit, NBCN would look to JFM, the trustee of the account, to obtain assets to settle the debit.

[67] Phillips also referred to a transaction record of the NBCN JFM 27R001E Margin Account dated March 16, 2005 where 110,733 units of JEGF were purchased for $700,000, which was paid for by $400,000 cash from the JFM funds and $300,000 in debit – both amounts were paid from the NBCN JFM 27R001E Margin Account. The Brown reconciliation states that this was a transfer-in of units and not a "buy"; however, there was no evidence to support Brown's reconciliation.

[68] After the February 24th meeting, a number of follow-up steps were planned at NBCN and Brown was to provide Phillips with further reconciliation information. After reviewing the information received from Brown, NBCN decided to contact the Commission, which conversation ultimately led to the cease trade order dated March 8, 2006.

[69] Phillips described two Statement of Claims that were issued as against JFM and Brown for the debit cash balance in the NBCN JFM 27R001E Margin Account and Brown's NBFL Margin Account, respectively. Ultimately these claims were entered as proof of claims in the Funds' receivership proceedings and were settled by the Receiver for a combined total of $2,154,389 from JEGF's assets for both claims, resulting in a loss of $588,212 for NBCN.

c) Richard Walkowiak

[70] At the time of the Merits Hearing, Richard Walkowiak ("**Walkowiak**") was a Senior Facilitator at NBCN. His job description included providing services such as trade execution, trade settlement, and custodial services to independent portfolio managers like Brown. At the Merits Hearing, Walkowiak referred to a spreadsheet created by NBCN that he called a "gap analysis" that is essentially a chart showing the discrepancies in the historical activity in the JFM accounts as per NBCN's books and records with the information provided to NBCN by Brown (the "**NBCN Spreadsheet**").

[71] One of the appendices to the NBCN Spreadsheet is an email from Brown to Walkowiak wherein Brown requested to deposit $420,000 into the NBCN JFM 27R001E Margin Account and then to use that account to purchase $700,000 worth of JEGF units. In this same email, Brown indicates that the JEFG FundSERV account is offline at the time. Walkowiak also identified a screen print of Brown placing the $700,000 order for 110,773.2121 units. Walkowiak testified that he never found any evidence of this being a transfer-in rather than a purchase.

[72] Walkowiak testified that in his experience most funds hire an independent company to do their record keeping. JFM had hired Felcom but ultimately JFM took on the record keeping task itself such that JFM wore the hat of fund manager and unitholder record keeper. Walkowiak testified that, in his experience, this is extremely rare.

[73] Walkowiak referred to an NBCN form that was filled out by JFM called "Authorization to Transfer Non-Registered Account," which was a request by JFM to transfer 171,430 JEGF units into the NBCN JFM 27R001E Margin Account. Walkowiak explained that originally, on September 14, 2005, NBCN incorrectly booked the transfer-in for 171.430 JEGF units but that this was adjusted to the correct amount of 171,430 units on September 16, 2005.

[74] Walkowiak also identified an in-kind transfer request by JFM of 246,964.00 JEGF units to the NBCN JFM 27R001E Margin Account dated November 25, 2005. He noted that NBCN initially booked the transfer-in for 246.964 JEGF units and referred to an email from him to Brown dated November 30, 2005 whereby he asked for clarification of whether it should have been 246,964.00 units. Brown's response in the email was that it should have been for 246,964.00 units and, in response, NBCN booked the corrected entry. Notwithstanding this email correspondence, Brown's own reconciliation states that the number of units transferred in was 24,696.45, which is inconsistent with his point-in-time email dated November 30, 2005.

d) Jody Coulson

[75] At the time of the Merits Hearing, Jody Coulson ("**Coulson**") was an associate advisor with RBCDS and testified that he is registered as such with the Commission. Brown became a client of Coulson's in 2000.

[76] Coulson referred to a printout of Brown's RBCDS Account which shows a transaction on February 7, 2005 whereby Brown purchased 143,145 JEGF units for $900,000. The notes to that transaction state that a prospectus was mailed to Brown because this was his initial purchase of units in JEGF. Coulson said that he processed this purchase himself. He noted that it was an unusual purchase because this was Brown's own mutual fund that he was starting himself and it did not come recommended to him by RBCDS. Coulson noted that he took extra notes regarding Brown's RBCDS Account because he had never dealt with a client like Brown who was running his own mutual fund and purchasing units in his own mutual fund through RBCDS.

[77] Coulson referred to a Morningstar report dated December 31, 2004, which gave him background on JEGF. It shows the top fifteen holdings of JEGF, showing that 10% of the JEGF portfolio was invested in Poly Inc. Coulson testified that Brown had also opened an account with RBCDS on behalf of Poly Inc.

[78] Coulson reviewed the purchase and sales in Brown's RBCDS account, noting that on June 13, 2005, Brown sold 70,631 JEGF units for a credit of $460,000 which was marked "unsolicited" indicating that RBCDS did not recommend this sale. As part of his notes, Coulson had a comment that Brown sold these JEGF units to put into a real estate deal with his father, which funds Brown had indicated he intended to bring back into this account. On that same day, the compliance group at RBCDS instructed Coulson that there were to be no new orders of Juniper allowed. Concerns were raised about the net asset values and the unit numbers reconciling with the JFM records.

[79] On July 26, 2005, Brown tried to transfer certain JEGF units held in his RBCDS account to another brokerage firm but RBCDS would not allow the transfer without a minimum cash payment of $550,000 in order to cover the margin. Brown did not want to make this deposit and as such the transfer never took place. Ultimately, on September 27, 2005, Brown delivered a CIBC bank draft of $518,000 for deposit into Brown's RBCDS Account to cover the margin in order that he could transfer out the JEGF units. The units were transferred to NBFL.

[80] Finally, Coulson stated that he had never heard of a Juniper Equity Growth Private Class Series Fund nor had he seen any reference to such in his files upon review. Further, he stated that a private class did not show up during the due diligence with the compliance department and the national credit department or any of the correspondence with Brown. He denied ever seeing a memo from Brown to Coulson at volume 9, tab N, page 194 of Staff's hearing brief of documents dated February 4, 2005, wherein Brown refers to a purchase of JEGF units, complaining that the wrong units were purchased and he gives the codes for the equity and private class funds as JEF001 and JEF001P (the "**Private Class Memo**"). Notwithstanding the date of this memo, the first purchase of the JEGF units by Brown at RBCDS took place on February 7, 2005, according to the evidence submitted at the hearing, as referred to herein. Coulson denied having seen the Private Class Memo and could not reconcile why it would be dated three days earlier than the transaction it appears to refer to.

e) Karen Anderson

[81] At the time of the Merits Hearing, Karen Anderson ("**Anderson**") was the supervisor of mutual fund reconciliations with RBCDS. Her responsibilities included ensuring that the RBCDS records balance with fund company records of units and to reconcile any discrepancies. With respect to JEGF, Anderson stated that because it was a manual fund, RBCDS depended on the fund company itself to send its client statements to reconcile against RBCDS' records. In a case where a discrepancy appears between RBCDS' records and a fund's records, the fund company is contacted and requested to send relevant documentation such as faxes of trade confirmations or transaction screens as well as explanations for the discrepancy. If there are classes within a fund there would be a separate report for each class. If a discrepancy is less than .001, an investigation would be unlikely; however, where the discrepancy measures as low as .003 of a unit, an investigation would take place.

[82] Anderson became involved with JEGF when one of her staff members reported to her that there was a reconciliation issue and backup was not forthcoming from JEGF. Anderson reviewed two JFM documents that were confirmations of a purchase order of JEGF units dated February 7 and March 7, 2005, respectively. The former order was for 143,145.7064 units at $6.2873 for an amount of $900,000 and the second order was for 219,990.8861 units at $6.3639 for an amount of $1,400,000. A notation on the second order showed that there was a discrepancy in the price per unit on JFM's records for the March 7, 2005 transaction versus RBCDS' records, which had it priced at $6.3629 per unit. Anderson referred to various correspondence wherein she requests back up information from Brown about discrepancies between number of units and/or unit price. At one point, Brown acknowledged that the discrepancy was due to human error on his part and indicated he would correct JFM's records. Anderson advised that JEGF was the only Juniper fund she dealt with and that she had never heard of a Juniper Equity Growth Private Class Series during her dealings with Brown.

f) Ronald Landry

[83] At the time of the Merits Hearing, Ronald Landry ("**Landry**") was the executive director of ETF Services at CIBC Mellon. He joined CIBC Mellon after it acquired Felcom in October of 2009. Prior to being with CIBC Mellon, Landry was the president of Felcom. Felcom was in the "back office" business and provided a range of client services including fund valuation, fund accounting, unit holder record keeping, and transferring services to mutual fund companies.

[84] Landry's first dealing with Brown and JFM was in July 2005 when he prepared a proposal for providing transfer agent services to JFM. JFM wished to keep fund accounting in-house and only sought transfer agent services. Landry understood that up until approaching Felcom, JFM had done their own transfer agent and record keeping services. Brown advised Felcom that JFM had one retail prospectus fund on FundServ valued daily and was looking to start two new pooled funds. Landry stated that Brown also advised him that JFM had recently bought four funds sold only in Ontario but were looking to go multi-jurisdictional. Landry prepared and sent a proposal to Brown on July 6, 2005 and also sent a draft form of a "Securityholder Services Agreement" (the "**Felcom Services Agreement**") which provided that Felcom would act as registrar, transfer agent, order processing and distribution/disbursement agent. Ultimately, a revised version of this agreement was accepted by Brown. Schedule "A" to the Felcom Services Agreement listed four Juniper funds that were included in Felcom's services: JEGF, JIF, Juniper Equity Growth Private Series Fund, and Juniper Pooled Income Fund.

[85] Landry stated that Felcom had a daily checklist of tasks to perform for JFM. One of the tasks was to email "share proofs" which were a daily print out of the units outstanding at the start of the day, the purchases, redemptions, etc., through the day, and the closing balance of units. Landry noted that this information was needed in order to calculate JFM's NAV to determine the per unit values of the various funds. Another of Felcom's tasks was to email the JFM "cash proofs" which shows the nature of any transaction, such as subscription, redemption, etc., in order that JFM knew what to book into the fund accounting records.

[86] Landry then described the breakdown of JFM's relationship with Felcom, which began with a series of emails dated November 3, 2005, wherein Brown instructed Felcom to make certain account transfers and Felcom, in response, expressed its opinion that it was not permitted to do so. In the emails, Felcom requested proof of JFM's power to do this in its declaration of trust with JEGF. The emails sparked a series of questions between Brown and Felcom about the nature of Felcom's services and ultimately resulted in the termination of the Felcom Services Agreement. Landry stated that JFM wanted Felcom to act as an agent for JFM which would remain the official transfer agent and registrar of the funds, but Felcom was not prepared to limit its role to an administrative one.

g) Gary Tamura

[87] Gary Tamura ("**Tamura**") is a lawyer whose career history includes positions held with the Commission, a secondment to the U.S. Securities Exchange Commission, the Toronto Stock Exchange, and in-house counsel with the Royal Bank of Canada Law Group with RBC Wealth Management, RBC Capital Markets and, at the time of giving evidence at the Merits Hearing, as director and senior counsel of the RBC Law Group based in Hong Kong. Tamura gave his evidence by teleconference from Hong Kong.

[88] Tamura testified that he first encountered Brown in July 2005 when he was contacted by RBC's business and credit groups as a result of Brown's RBCDS Account being significantly under margin. Tamura believed that the cause of the under margin was the transfer of a number of JEGF units from the RBCDS nominee name to Brown personally, reducing the collateral that effectively underpinned the account. This transfer had been executed without RBCDS' consent and caused concern for the bank as it no longer retained control of the JEGF units or had collateral for the amounts borrowed in Brown's RBCDS Account. Ultimately, an agreement was reached between RBCDS and Brown to right the margin balance by paying into the account, which he did, and to no longer be an account holder with RBCDS. Brown deposited $518,000 into Brown's RBCDS Account to satisfy the debts owing. Tamura identified a cheque payable to JFM for $900,000 issued by RBCDS in relation to a trade of the JEGF units. He identified that the cheque was deposited into a BMO account according the markings on the back of the cheque.

[89] Tamura stated that he had never heard of Juniper Equity Growth Private Class Series in his dealings with Brown. He investigated within RBCDS if any of the advisors or individuals in the mutual funds operations group had heard of this private class series and no one had indicated any knowledge of this fund.

h) John Nyssen

[90] At the time of the Merits Hearing, John Nyssen ("**Nyssen**") was the manager of Investment Fund Administration Manufacturers with Desjardins. From 1998 to 2007, he was manager of Fund Administration at Felcom in charge of the transfer team and trust accounting team, processing mutual fund transactions for various clients, among other things. The transfer agent team processed mutual fund transactions coming in for different mutual fund company clients. His overall work experience has been focused on mutual fund administration strictly on the unitholder side.

[91] Nyssen first came into contact with Brown and JFM when they approached Felcom in 2005 to engage their transfer agent system. Nyssen understood that when Brown approached Felcom, JFM's transfer agent system was in-house. Nyssen's evidence was that Brown, on behalf of JFM, hired Felcom to be the record holder transfer agent for JFM but not to do any trust accounting. Felcom's tasks for JFM involved keeping unitholder records for investors inside of certain funds, recording the total number of units at the end of each day, processing all of the trades, and doing a daily report. Notwithstanding that Felcom did not provide JFM with any trust accounting services, Felcom would confirm the amount of money that should have moved for purchase or redemption for JFM to pay FundSERV or directly to a broker. Nyssen stated that JFM's funds included JEGF, JIF and a private fund called the Juniper General Investment Fund, and that all of these funds were listed on their system. JEGF was valued daily, which meant that Felcom reported the number of units outstanding on a daily basis in order that JEGF could self-calculate the price of their units.

[92] Nyssen testified that he only dealt with the two Funds and did not deal with the other pooled funds listed in the Felcom Services Agreement. He also noted that there was a fund called Juniper General Investment Fund that was launched subsequent to the execution of the Felcom Services Agreement.

[93] His evidence was that Brown provided Felcom with two different versions of an excel spreadsheet listing the unitholders of the various funds. Felcom had to manually input these numbers into their system, and then going forward would provide share proofs and cash proofs as described by Ron Landry.

[94] Nyssen recalled that on September 8, 2005, Brown sent a document to Felcom from NBCN to do a transfer of 171.430 JEGF units to the NBCN JFM 27R001E Margin Account. Nyssen testified that the transfer was mistakenly processed as 171,430 units and was corrected to be 171.430 units. He further recalled that on October 21, 2005, Brown sent him an email stating that JFM had to go offline FundSERV Inc. in order to work on reconciling a discrepancy in the fund accounting of JFM. Once JFM was offline FundSERV, transactions could only occur manually which would require permission by Brown to complete.

[95] Nyssen recalled the breakdown in the relationship between Felcom and JFM began in or around late October 2005, when Brown asked Nyssen's employee to change the name of one of the JFM account holders from Dorothy Huele to Marnie Brown. Felcom refused to do the transfer because it did not appear to be one and the same person and Felcom did not have instructions directly from Dorothy Huele to do this. After this incident, the relationship between Felcom and Brown began to deteriorate. Brown wanted Felcom to provide certain administrative support services but not registrar and transfer agent services. Brown proposed that JFM would act as its own transfer agent. Felcom was not comfortable with this proposal as the Felcom Services Agreement indicated that Felcom was to act as registrar and transfer agent. Felcom refused to release only these tasks and responsibilities and were not prepared to let JFM be the transfer agent.

[96] Nyssen testified that he found it odd that JFM would go offline FundSERV as none of Felcom's other clients did this. He also thought it strange in his experience that JFM took care of its own trust accounting – something that clients would normally hire Felcom to do. At the end of their relationship, Felcom returned JFM's records in the same form of excel spreadsheet as it was first received by them. Brown took issue with the state of the records that were returned and indicated that there were great discrepancies in the account information at that time.

i) Goretti Moniz

[97] At the time of the Merits Hearing, Goretti Moniz ("**Moniz**") was a Financial Services Associate with CIBC dealing with higher net worth clients and had been in that position for 11 years in total. Moniz first met Brown when she was an associate to Kevin Henderson, the advisor who was managing Brown's accounts at CIBC sometime between 2003 and 2005. Moniz provided the back office, administrative services for Brown.

[98] Moniz identified account opening documents with CIBC dated February 7, 2005 for the Southgate Trust, the signatories of which were Brown and Marnie Brown. Brown is a beneficiary of the Southgate Trust and the trustees are Marnie Brown, Tony Rodrigues, and Bonnie Burgess. Moniz also identified an account opened for the Juniper Pooled Income and Property Fund on March 7, 2005, the principal of which was Brown. The authorized signing authority for this account was Brown. Brown, as trustee, was also the authorized signatory for a JIF account at CIBC and he delegated deposit inquiry authority to Purves in December 2005 and Bryl in February 2006, both of whom were understood to be JFM employees.

[99] Moniz identified a number of deposits and debits on the JEGF CIBC accounts. She identified a cheque drawn on one of the JEGF CIBC accounts that shows a subheading under JEGF, "(Private Class Series)", in the amount of $400,000 made out to PAM. Notwithstanding the subheading, the legal account holder on the cheque is JEGF. Moniz also identified a cheque drawn on the NBCN JEGF Custodial Account in the amount of $700,000 and a JEGF CIBC account statement reflecting a February 18, 2005 inter-transfer of $900,000 between two of JEGF's accounts at CIBC. She identified a credit of $1,399,990 on March 8, 2005 wired into one of the JEGF CIBC accounts and a debit memo for $1 million on March 9, 2005 coming out of one of the CIBC JEGF accounts. On March 14, 2005, there was a deposit into one of the CIBC JEGF accounts of $700,000 and on May 19, 2005 there was an incoming wire transfer of $1,449,990 deposited and a debit the same day in the amount of $1,450,035 from the same CIBC JEGF account.

j) Daniel Wootton

[100] At the time of the Merits Hearing, Daniel Wootton ("**Wooton**") was a senior manager at Grant Thornton Limited ("**Grant Thornton**," as defined above, the "**Receiver**"). Grant Thornton became the court-appointed Receiver of JFM, JIF and JEGF on May 18, 2006 to take possession of the operations and assets of these Juniper entities to preserve and protect their assets and operations and to work with the unitholders to see if the Funds should continue or be wound up. As noted above, Staff sought the appointment of the Receiver after NBCN, the custodian of the Funds, raised concerns regarding the existence of certain units which they had previously thought were held in the NBCN JFM 27R001E Margin Account. Wootton testified that the Funds no longer exist today. In November 2007, the Receiver held a unitholder meeting where the unitholders of the Funds voted in favour of the Funds being wound up and having the assets under management paid out.

[101] Wooton first met Brown on the day following the appointment of the Receiver when he attended the JFM premises to take control of the Juniper entities. Fifteen days following its appointment, on May 30, 2006, the Receiver prepared a report to advise the Court of its activities and findings and sought court-approval to enter into an interim management agreement with JFM, portfolio manager of the Funds, to ensure that the Funds would continue to be traded in accordance with the trust indenture.

[102] One of the Receiver's first tasks was to determine the whereabouts of $900,000 that was withdrawn in February 2005. Wooton's evidence was that Brown was not forthcoming with this information but that Brown ultimately worked with the Receiver to create an affidavit with flow charts attached as appendices thereto that attempt to demonstrate the flow of funds between 26 different bank accounts related to the Respondents. This affidavit was part of the Second Receiver's report, which was filed with the Superior Court of Justice in or around October 6, 2006 and entered as an exhibit in the Merits Hearing.

The Movement of $900,000 (February 2005)

[103] Wootton reviewed a flow chart that showed the movement of $900,000 beginning on February 10, 2005. Specifically, the chart shows $900,000 deposited into a BMO JEGF trust account on February 10, 2005 arriving from Brown's RBCDS Account for the purchase of units in the JEGF Private Class Series. On February 11, 2005, the $900,000 is deposited into a CIBC account for "JEGF Private Class Series". Shortly after this deposit, two amounts are withdrawn from the CIBC account: (1) on February 23, 2005, $460,000 is transferred back into Brown's RBCDS Account, and (2) On February 25, 2005, $400,000 is paid to a joint CIBC account between Roy Brown and Marnie Brown. One week later, $410,000 is transferred from the CIBC joint account to Brown's RBCDS Account for a total deposit in that account of $870,000. The original $900,000 transaction is recorded on Brown's RBCDS Account statement as a purchase of JEGF units. Accordingly, Wooton pointed out that, ultimately, on March 1, 2005, as a result of this flow of funds, Brown's RBCDS Account ends up with both the JEGF units valued at $900,000 and the cash amount paid in respect of those units in the amount of $870,000.

The Movement of $1.4 Million (March 9-11, 2005)

[104] Wootten reviewed a second flow chart that showed the movement of $1.4 million. On March 4, 2005, $1.4 million was withdrawn from Brown's RBCDS Account and deposited into a BMO JEGF account for the purchase of JEGF units. On March 8, 2005, $1.4 million minus a $10 transaction fee, being $1,399,990, was withdrawn from the BMO JEGF account and paid to a JEGF Private Class account at CIBC. On March 9, 2005, the funds were withdrawn from the JEGF Private Class account at CIBC as follows: (1) $1 million was deposited into a Juniper Pooled Income and Property Fund account at CIBC, and (2) on March 11, 2005, $400,000 was deposited into Poly Inc.'s corporate account, then transferred to the BMO JEGF Account and again, transferred to the NBCN JFM 27R001E Margin Account.

The Movement of $1,248,000 (March 24-April 27, 2005)

[105] Wootton reviewed another cash flow chart which follows the movement of $1,248,000. On March 24, 2005, $1,248,000 was transferred from the NBCN JEGF Custodial Account to the JEGF BMO Account. On that same day, the same amount minus a $10 transaction fee, being $1,247,990 was transferred to the Juniper Pooled Income & Property Fund CIBC account, where it was pooled with the $1,000,000 (referred to in (ii) above) such that the CIBC account had $2.25 million. On March 31, 2005, $2.2 million was transferred to the JEGF CIBC trust account. On that same day, $580,000 was also deposited into the JEGF CIBC trust account, received from a JFM CIBC corporate account. On April 13, 2005, $2,780,000, was transferred from the JEGF CIBC trust account back into the Juniper Pooled Income and Property Fund CIBC account.

[106] On April 21, 2005, two transfers were made from the Juniper Pooled Income and Property Fund CIBC account: (1) $1.2 million was transferred to the Browns' joint CIBC account, and (2) $450,000 was transferred to the JFM CIBC corporate account. The following day, $450,000 was transferred from the JFM CIBC corporate account to the Browns' joint CIBC account.

[107] On April 27, 2005, $1,699,948 was transferred from the Browns' joint CIBC account to Brown's lawyer and used to pay Brown's personal mortgage on his home. Ultimately, however, Wootton testified that he discovered that a new mortgage was taken as against Brown's house in Marnie Brown's name and no equity was left in the home.

The Movement of $700,000 (March 15-23, 2005)

[108] Wootton reviewed another cash flow chart which followed the movement of $700,000. On March 14, 2005, $700,000 was transferred from the NBCN JFM 27R001E Margin Account to the JEGF Private Class account at CIBC and is recorded on NBCN's books as a purchase of JEGF units. On March 16, 2005, three fund transfers from the CIBC JEGF Private Class account took place: (1) $375,000 was transferred to a JFM BMO corporate account which was transferred the same day to the NBCN JEGF Custodial Account; (2) $75,000 was transferred to a PAM BMO account; and (3) $250,000 was transferred to the Juniper Pooled Income & Property Fund CIBC account, and then on March 23, 2006, this $250,000 was transferred to Windrush Abbey's corporate account at BMO – a corporation wholly controlled by Brown.

The Movement of $500,000 (May 27 – June 6, 2005)

[109] Wooton reviewed another cash flow chart which followed the movement of $500,000. On May 27, 2005, JFM redeemed 108,000 units in JEGF for proceeds in the amount of $700,000 which amount was transferred from the NBCN JEGF Custodial Account to the NBCN JFM 27R001E Margin Account. On June 2, 2006, $500,000 was transferred from the NBCN JFM 27R001E Margin Account to the JEGF BMO Account and that same day then transferred to JFM's corporate BMO

Account. On June 3, 2006, $499,900 was transferred from the JFM BMO account to the JFM CIBC account (68-04810). On June 6, 2006, $500,000 was transferred from the CIBC JFM account to the Browns' CIBC joint account.

The Movement of $1,450,000 (May 19, 2005)

[110] Wootton reviewed another cashflow chart which followed the movement of $1,400,000. On May 19, 2005, $1,450,000 was transferred three times: (1) from the NBCN JFM 27R001E Margin Account to the JEGF BMO account, then (2) to the JEGF Private Class Series Fund CIBC account, and then (3) to the NBCN JEGF Custodial Account. Wootton stated that although the original transaction from JFM to JEGF is recorded on JFM's books as a purchase of 229,503.007 JEGF units, Brown did not agree that this purchase took place.

[111] With respect to the securities in the NBCN JFM 27R001E Margin Account, Wootton's evidence was that over 230,000 JEGF units were in the account. With respect to the transactions taking place in the flow charts prepared in collaboration with Brown, Wootton made the following observation:

> We did review the transactions through the NBCN accounts and it was our conclusions that none of the monies borrowed under the credit facility margin account were used to purchase Equity Fund units, and that the funds borrowed from NBCN were not deposited into the Equity Fund operating account or the general pool of Equity Fund assets under management.
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> (Transcript of Merits Hearing, September 28, 2011 at page 162)

[112] He continued to state that although the banking statements reflected that there were JEGF units on deposit in each of the margin accounts in the Receiver's investigation; it could not see those units being properly created.

[113] With respect to the Juniper Equity Growth Private Class Series Fund, Wootton testified that the Receiver received a copy of the trust deed for the fund, reviewed the available records for it as well as the fund's bank statements and ultimately concluded that the bank account was "relatively inactive".

[114] The Receiver concluded that NBCN borrowings were not used for the benefit of JEGF. It could not find any evidence on the trade blotter or recorded or referenced in the net asset value statements of JEGF that any units were traded. The Receiver found that some of the accounts listed in the Juniper records for related parties were showing negative unitholdings, raising concern that units were being redeemed that were not properly purchased. Specifically, the Receiver looked at dates in the NBCN JFM 27R001E Margin Account statements where there were withdrawals from the margin account and, although the units were being increased or decreased respectively on the NBCN account statements, the same transactions did not appear to the Receiver to be reflected in JFM's records.

[115] Wootton referred to a document prepared by the Receiver entitled "Juniper Equity Growth Fund Review of Related Parties" which contained information obtained from JFM's office computers. The chart provides details of related party transactions during the time that JFM was the fund trustee, fund manager, transfer agent and fund accountant. The chart reflects a trade entered on January 4, 2005 for the purchase of 75,171.647 units of JEGF in the Windrush Abbey account, which is a related party. The records indicate that the units were paid by cheque dated June 30, 2005; however, in working with Brown to source the funds the Receiver discovered that no such payment existed and, in fact, the units were paid in four payments between March and December, 2005. Notwithstanding that the units were not paid for in January, the JFM records indicated that on February 2, 2005, there was a redemption of 71,179.782 JEGF units in the Windrush Abbey account for $449,898.93. Brown was unable to explain to the Receiver the reason for the notation of a June 30th payment.

[116] Ultimately, the Receiver came to discover Felcom on its own and not by information given from Brown. After reviewing Felcom's records, the Receiver discovered 500,000-700,000 more units reflected on the Felcom records between August 2005 and December 2005. As a result of this discovery, the Receiver revisited its analysis of the JFM records. After reviewing the Felcom records and the JFM records, the Receiver discovered that the number of units that were pledged to the RBCDS, NBCN and NBFL margin accounts were very similar to the discrepancy between the JFM records and the Felcom records. Staff allege that this evidences that JFM was maintaining two sets of books and records, one set with Felcom that is materially different from the set maintained by JFM, and that, when looking at those differences, it is clear that these differences relate to these pledged units. Wootton testified that Brown was asked about this discrepancy during his examination in the receivership proceedings and that Brown did not have any explanation.

[117] The Receiver reviewed the actions of NBCN, NBFL and RBCDS and determined that the banks each respectively took the proper steps that they should have to verify that the funds withdrawn from the respective Juniper and Brown margin accounts were in the form of a cheque made payable to the JEGF or wire transfer to JEGF directly and the banks understood it would be deposited to the benefit of the JEGF to complete the transaction. Wooton stated that when Brown was specifically asked about certain transactions, he indicated that some of those purchases that the banks understood were for JEGF units were in fact purchases of the Private Class series or in-kind transfers between accounts and not purchases of JEGF units. The

Receiver concluded that the monies taken from the RBCDS and NBCN margin accounts were in fact diverted from their intended purpose of purchasing JEGF units. Ultimately, NBCN and NBFL made a claim as secured creditors in the receivership proceedings. As noted above, the final payment to NBCN and NBFL in the receivership proceedings was approximately $2,154,000, which reduced the value to JEGF unitholders by 16%.

[118] In the fifth report of the Receiver to the Court, the Receiver detailed its conclusion that where the payment, for the purchase for JEGF units were made outside of the T+3 requirements and not paid at the time due, this resulted in opportunity costs for JEGF wherein they should have had those proceeds to invest and the related party benefited from an interest-free loan. When asked about the overall loss to investors, Wootton responded as follows:

> Q. … In terms of the amounts owing, the loss to investors, from your perspective as the receiver, how would you quantify those for us?
>
> A. We would look to the amount that was paid to NBCN and NBFL because that relates to units where we don't see the proceeds relating to those purchases going to the benefit and staying to the benefit of the Equity Fund. So, we see that as a dilution. That would be one amount.
>
> The second amount would be the result of the receiver's review of the netting out process of related party account holdings, and the result of the T-3 [*sic*] market timing transactions and adjustments which result in approximately 11,100 units of Equity Fund units that would be due from the related party accounts to the fund. So, we would want to value those units. We'll consider that as a loss because that's due to the Equity Fund.
>
> In addition, you could calculate any opportunity cost where those proceeds should have been a part of the Equity Fund at the time that those transactions took place so that the Equity Fund could benefit from those proceeds and realize on the general appreciation that occurred in the fund.
>
> ….
>
> We've looked at a couple of ways of valuing the units that would be due as a result of the market timing. And if we look at the value of the fund or at least the price of the fund at the time of the receivership and the Cease Trade Order, which was approximately $7.39, the total value would be about $84,000 and change with respect to those units, plus the payments to NBCN and NBFL for the 2,154,000 approximate amount. And we have not done any calculations to quantify any opportunity costs but that would be something that we would look at too.
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> (Transcript of Merits Hearing, September 29, 2011 at pages 53-55)

[119] With respect to the JEGF 10% investment in PAM, Wootton stated that JFM's records showed a receivable of approximately $400,000 on the NAV statements for JEGF but that these funds were not collectible because PAM had no assets.

[120] Ultimately, the JEGF unitholders voted (1) in favour of liquidating the JEGF and distributing the asset on a pro rata basis, (2) in favour of approving the Receiver's agreement to enter into a mutual release with NBCN, NBFL and JFM, (3) against holding back $250,000 to commence legal proceeding against JFM and its principal, and (4) against holding back $250,000 to pursue an investigation on the officers and directors of JFM and whether they complied with their statutory duties. As at the time of the Merits Hearing, Wootton's evidence was that approximately 95% of the JEGF assets were distributed to unitholders, who collectively received an amount of approximately $11-12 million at approximately $6.89 per unit, with another $400,000-500,000 remaining in trust for the approximately 200 JEGF unitholders that had not yet been located.

k) Naomi Chak

[121] At the time of the Merits Hearing, Naomi Chak ("**Chak**") was a senior forensic accountant with the Enforcement Branch of the Commission. She was the primary investigator on the Juniper file with the Commission since March 22, 2006. Chak reviewed the bank statements of Brown and the Juniper entities and found various discrepancies within them. Accordingly, Chak conducted a voluntary interview of Brown over four days beginning on April 18, 2006. When asked about specific transfers of units into the JFM corporate margin account at NBCN, Chak gave evidence that Brown's explanations of such units being "transfers" were inconsistent with NBCN's records including cheques and emails showing these as purchases. For example, neither the $900,000 transaction nor the $1.4 million transaction referred to above could be found by Chak on the trade blotter or in the bank statements.

[122] Chak received a cancelled cheque in the amount of $900,000 from Tamura at RBCDS that is marked as having been deposited into a 1024-450 account. Chak testified that when she compared the bank account shown on the back of this cheque with the list provided to her from Brown's counsel she could not find the account on this list. This caused Chak concern and it was at that point that the Commission decided to seek an order to freeze all of the Juniper bank accounts on the basis that there were undisclosed accounts and $3,000,000 unaccounted for. Accordingly, the Commission sent two directions to CIBC and BMO to freeze all of the bank accounts of JFM and the Funds on the basis that there were undisclosed bank accounts and the Commission was trying to locate the $3,000,000, which included the $900,000, $1,400,000 and $700,000 transactions mentioned herein. It was at that time that Brown advised Chak of the Juniper Equity Growth Private Class Series F Fund. Upon request of Brown's counsel, Staff then received a FundSERV print-out that referenced the JEGF Private Class Series Fund. Staff then contacted FundSERV who advised that the Private Class Series fund was added onto FundSERV on December 7, 2005.

[123] Ultimately, Chak did not get any answers from Brown as to where the $900,000, $1,400,000 and $700,000 were deposited. Staff decided to seek the appointment of a Receiver on the basis that $3,000,000 was unaccounted for, bank accounts were not being disclosed to Staff and Brown had continuously failed to explain where the missing funds had gone. Chak became aware of Felcom and obtained their unitholding information for the JEGF units and found that there was discrepancy of 617,590.1137 units between Felcom's records, which had 2,509,926.5080 units listed, and JFM's records of 1,892,336.3943 units. Staff asked Chak to go over some of the transcripts of her voluntary interview with Brown wherein he denied any relationship with Windrush Abbey. Brown also denied having any relationship with Southgate Trust and told Chak that it was a trust for his children in his wife's name, notwithstanding that CIBC bank documents indicate that Brown was an authorized signatory and a partial beneficiary of the trust. Further, Chak identified a cheque dated February 25, 2005 written by Windrush Abbey for $400,000 to Marnie Brown with what appeared to Chak as Brown's signature. Finally, Chak identified two cheques made out by PAM payable to JEGF for $40,000 and $36,000, with what appeared to her to be Brown's signature dated February 23, 2005 and February 25, 2005 respectively.

C. The Brown Interviews

[124] Although Brown did not participate in the Merits Hearing, we had the benefit of reviewing the transcripts of Brown's voluntary interviews by Staff held at the Commission on April 18, 25, 26 and May 2, 2006 (the "**Brown Interviews**"), during which time he was represented by counsel. The transcripts of the Brown Interviews were accepted into evidence in their entirety and marked as exhibit 20 at the Merits Hearing, and are summarized in more detail below.

The In-House Recordkeeping: RecordSource

[125] On the first day of the Brown Interviews, Brown described what he believed to be the impetus for the matters concerning the Juniper entities. In May 2004, Brown purchased all of JFM's shares from its single shareholder and thereby took over management of JEGF. At that time, JEGF was the only fund managed by JFM. He recalled that in July or August 2004, JFM took over as trustee of JEGF from CIBC Mellon. Brown also decided that he wanted to bring the recordkeeping and fund accounting work that was previously done by CIBC Mellon in-house in order to save on costs. He believed that CIBC Mellon's charges were too high for JEGF and so he made the decision to develop a recordkeeping system that would ultimately be called RecordSource ("**RecordSource**") in order to do the fund accounting in-house.

[126] Brown engaged a company he referred to as D-tech ("**D-tech**") to develop RecordSource. D-tech outsourced the software and database development of RecordSource to a company Brown referred to as MJC Software ("**MJC**"). CIBC Mellon officially stopped acting as record keeper for JEGF on December 1, 2004, prior to the launch of RecordSource. Accordingly, JEGF's records were recorded on an excel spreadsheet for December 2004 and January 2005. Ultimately, the JEGF unitholder list was uploaded to RecordSource, which launched on February 1, 2005.

[127] In March 2005, Brown decided to change JEGF's portfolio manager from Leon Frazer to MMA in anticipation of a merger with the Capstone Funds. MMA was the portfolio manager for the Capstone Funds at that time. Also in March 2005, Brown discovered that RecordSource was not communicating properly with FundSERV, resulting in what Brown thought were isolated errors with the unitholder account balances. The problems with RecordSource came to a head in July 2005, when Brown noticed that the errors were more widespread than originally thought and the account balances were showing higher unit amounts after redemptions instead of lower unit amounts. In order to deal with this issue, Brown decided to take JEGF off of FundSERV until RecordSource was repaired. In the interim, trades were conducted manually through JFM's internal trade order entry system. Brown said that he was advised by MJC that this was an isolated issue and that going forward everything would run properly; however, JEGF remained off FundSERV while RecordSource was reworked.

The Capstone Merger

[128] Following the merger of JEGF with the Capstone Funds on October 6, 2005, the record data of the Capstone Funds were kept separate from JEGF due to the ongoing problems with RecordSource. Brown wanted to keep the new data off RecordSource until it was running properly. At that time, JFM also switched from using PC Quote to ViewPort as the portfolio

management system to value assets, produce net asset statements and calculate the net asset values. JFM produced a merged spreadsheet that combined the Capstone Merged Funds and JEGF in order to obtain the proper amount of aggregate capital stock for Viewport. At this point in time, the record keeping was kept separate but the portfolio management system was operating with the total aggregate capital stock for both the Capstone Merged Funds and JEGF.

The Capstone Letter & Brown's Notice to the Commission

[129] By November 2005, the Capstone Consultants' letter had gone out and there was a significant increase in redemption requests by the unitholders of the former Capstone Merged Funds. Although JFM briefly attempted to go back on FundSERV around this time, Brown decided that all of the redemption requests made it too costly to wire transfer funds through FundSERV. Accordingly, the Funds came off FundSERV again so that JFM could process redemption cheques manually and deal directly with dealer requests. Ultimately, there were two large redemptions in each of JEGF and JIF, which concerned Brown and prompted him to call the Commission, along with his counsel, in order to disclose that the Funds were having a difficult time meeting their T+3 requirements.

The JFM Auditor

[130] In December 2005, Brown contacted the Funds' auditor, Barry Doerbecker, in order to resolve the ongoing account balancing problems with RecordSource. Ultimately, Brown determined that the bug discovered in the RecordSource software in July 2005 was not resolved properly and as a result the redemptions were continuously miscalculated throughout that time.

Transfers vs Buys in the NBCN NetRep System

[131] Brown explained the reason for the issues in the NBCN JFM 27R001E Margin Account were due to NBCN's NetRep system. He mistakenly assumed that he could conduct "transfers in" of JEGF units by entering them as a "buy" in the NetRep system. He explained that although he meant certain transactions to be transfers they were erroneously accounted for as purchases, resulting in the data error entries in the NBCN records. Sometime in May or June 2005, Brown realized that he was not doing the transfers-in correctly and stopped using the "buy" function on NetRep for this purpose. At no time did Brown advise NBCN that his prior "buys" were in fact transfers-in. He did not believe it was necessary to report the prior activity to NBCN even though he realized he had not executed the transfers properly.

[132] Staff took Brown to an email dated March 7, 2005, where he describes one such transaction as a $700,000 "purchase" of JEGF units through NetRep. He agrees that there is nothing in the email that indicates this was meant to be a transfer and not a purchase and that at no time did he ever advise NBCN otherwise. When asked to explain his actions, Brown said "…at the time I didn't think I needed to advise [NBCN] that these were transfers in because I knew the account was whole." (Brown Interviews Transcript, April 25, 2006 at page 147)

[133] Staff also questioned Brown about the transfer route of $400,000 that was deposited into the NBCN JFM 27R001E Margin Account. Brown explained that, in an effort to avoid a wire transfer charge, and because the necessary authorizations were not properly set up at the time for a direct transfer from JFM's BMO account into the NBCN JFM 27R001E Margin Account, Brown directed $400,000 to move from the JFM BMO account, through a JEGF account at NBCN, into the NBCN JFM 27R001E Margin Account. He said that the purpose of depositing $400,000 into the account, in addition to the $700,000 "purchase"/transfer-in of JEGF units in March, was to create an equity position in the NBCN JFM 27R001E Margin Account such that JFM had the ability to purchase and increase its position in JEGF and create a manageable margin facility that he could borrow against it if needed. Ultimately, however, there were no purchases made of JEGF shares through the NBCN JFM 27R001E Margin Account at any time.

[134] Brown referred to a second transfer-in of 229,503 units to the NBCN JFM 27R001E Margin Account on May 16, 2005, which he described as a "buy" on NBCN's NetRep system. The value of those units was $1,450,000. Brown also identified a transfer of funds into the NBCN JFM 27R001E Margin Account at that time in the amount of $800,000. Ultimately, $1,450,000 was transferred out of the NBCN JFM 27R001E Margin Account but Brown did not provide an answer as to where it was allocated.

The September and November 2005 Transfer Errors

[135] Staff directed Brown to NBCN's records that show two transfers-in to the NBCN JFM 27R001E Margin Account of 171,430 units in September and 224,964 units in November, 2005. Brown's records indicate that the transfers-in should have been 71,430 and 24,964 respectively. Brown was unable to explain the discrepancy or provide any documentation with respect to the September transfer. Regarding the November transfer, Brown explained that two errors took place: JFM erroneously requested a transfer of 224,964 units and NBCN erroneously recorded a transfer of 224.964. When Brown discovered NBCN's error, instead of advising that the transfer should have been 24,964, he confirmed the transfer should have been 224,964 units. When Staff asked him why he did not correct the number, Brown stated,

> THE INTERVIEWEE: … And all of this because of the historical context. We did not want to look like a bunch of idiots again with all of the blunders that had happened over the course of the last 60 days, because of all of the issues related to mergers, the subsequent historical position, the wrong settlement into the account, and a bunch of other administrative issues that had happened.
>
> I just – my … I made the decision at that time we're going to – rather than go back and tell them, 'By the way, the real number should be 24,000' I confirmed 246[,000] because I know he's got the form, and my decision was let's correct it internally, send a new form in to them with the revised amount…
>
> (Brown Interviews Transcript, April 25, 2006 at pages 191-192)

[136] Brown said that soon after this took place, Juniper was hit with a number of administrative problems causing him to forget about the necessary correction. He did not advise NBCN of the correction until meeting with them in February 2006.

[137] Following the transfer of these units; Brown withdrew $719,567 from the NBCN JFM 27R001E Margin Account but did not identify where the money was allocated. Staff asked Brown about two purchases of JEGF units recorded in his RBCDS account statements. The first purchase was of 143,145 JEGF units on February 7, 2005 for the amount of $900,000 and the second purchase was of 219,990 units recorded on March 4, 2005 for the amount of $1.4 million. Staff sought clarification on as to why there was no indication in the JEGF records or on the trade blotter of those purchases and as to where the $900,000 was deposited. Brown advised that he did not have any paper records of his RBCDS account.

The February 2006 NBCN Meetings

[138] Brown admitted that he did not turn his mind to the impact that the reconciliation issues would have on the collateral in the NBCN JFM 27R001E Margin Account. By January 2006, Brown realized that the debits in this account were too high when the statements were sent with the Funds' account statements. He advised that up until that time he had never reviewed any of the NBCN JFM 27R001E Margin Account statements sent to him as it was his practice to rely on his own personal records:

> Q. But you have been receiving statements from NBCN.
>
> A. But I don't open those statements up.
>
> Q. So only in January you opened the statements?
>
> A. here's context to that. I'm a person who – I think it's important that I qualify – when you say I've been 'getting statements', I normally don't open statements of any kind, whether they're sent to my home or...because I try logically to keep things in my own mind. So I didn't open these statements up.
>
> In January, we got statements all – and this one was attached with the fund statements, and it was at that time that I noticed –
>
> Q. old on. What statement? The statement of JFM account 27R001E –
>
> A. Yes.
>
> Q. – was attached to the fund statement?
>
> A. Yeah, the –
>
> Q. That's why you opened it?
>
> A. Because I – normally what happens, there was – it would come in two batches, right? They would come traditionally in – the fund statements would come in one batch. And then there were a bunch of other statements that would come in in which – shortly afterwards that I just never opened up because I was much more worried about the fund statements and putting them into the binders and keeping a record of those statements for a variety of purposes. So for whatever reason, this statement came in attached to the fund statements in January, and, in fact, I didn't open up those statements I believe until after we – I'm going by recollection here, until after we – remember, in January we're trying to do all of these four key items that we have to to meet the deadlines for Mr. Walz, the last one being on ... I forget the date, whenever it was in January.

> So my recollection is I believe I opened up that statement after that date, and that's when I recognized the issue. And my immediate reaction was – and it dawned on me what had happened. But I also didn't think that our debit balance was that high …

(Brown Interviews Transcript, April 18, 2006 at pages 64-66)

[139] On February 10, 15 and 24, 2006, Brown met with NBCN to discuss the debit issues in the NBCN JFM 27R001E Margin Account. The three matters that were discussed were (1) the reconciliation issues in the NBCN JFM 27R001E Margin Account; (2) the possibility of converting the debit balance to a commercial term loan, which NBCN did not allow; and (3) data error entries in NBCN's statements. Ultimately, by February 28, 2006, NBCN advised Brown that they intended to contact the Commission directly with their concerns about the management of the Funds and the collateral issues in the NBCN JFM 27R001E Margin Account.

Brown's Reconciliation Data

[140] Staff asked Brown about a reconciliation spreadsheet that was prepared by him and forwarded to Walz, which listed the final positions of JEGF unitholders as at the end of December 2005. The list included Brown's family members, D-tech, the Southgate Trust, Stonewall Landscaping, and Windrush Abbey. Brown stated that he did not have any relationship with Southgate Trust, which was a trust for his children with his wife as trustee, and that D-tech and Stonewall Landscaping received JEGF units in lieu of payment. Stonewall Landscaping was the landscaper for Brown's house and Brown said that he gave them his personal JEGF units in lieu of cash. With respect to Windrush Abbey, Brown stated that he held no relationship with it but that JFM paid for Windrush Abbey's purchase of JEGF units in 2005 in full.

The Delay of Settlement Dates

[141] Staff asked Brown about the delay between certain trade dates and settlement fund dates. Specifically, Staff asked Brown to explain why the JEGF trade blotter showed a purchase of 3,342.410 JEGF units by Marnie Brown on January 6, 2005 but the settlement date is listed as April 4, 2005. Likewise, Staff asked about a March 11, 2005 purchase by Southgate Trust of 39,547.57 units for consideration of $250,000 with a settlement date of June 30, 2005. Staff asked about a purchase on August 24, 2005 of 74,312.4297 JEGF units by Brown himself with a settlement date of September 27, 2005. Staff asked about a purchase of 26,337.18 JEGF units by Marnie Brown on October 28, 2005 for consideration of $186,277.61 with a settlement date of November 18, 2005. Staff asked about three more similar examples of delays between purchase and trade dates. Brown was unable to explain the delay between trade dates and settlement dates beyond the T+3 timeline.

IV. LAW & ANALYSIS

[142] The Merits Hearing involved allegations of various breaches of the Act and two National Instruments. Staff must prove its allegations on the balance of probabilities (*Re Sunwide Finance Inc*, above at paragraphs 26 to 28, applying *F. H. v. McDougall*, above). This is the civil standard of proof. We must scrutinize the evidence with care and be satisfied whether it is more likely than not that the allegations occurred (*F.H. v. McDougall*, above, at paragraph 49).

[143] The following is a summary of the law that governs the relevant alleged breaches at the time of the Respondents' impugned conduct and an analysis of the evidence submitted at the Merits Hearing and findings of this Panel in relation thereto.

A. Recordkeeping

[144] Subsection 19(1) of the Act provides as follows:

> Every market participant shall keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of others and shall keep such other books, records and documents as may otherwise be required under Ontario securities law.

[145] This subsection of the Act is supplemented by section 18.1 of NI 81-102, which provides as follows:

> A mutual fund that is not a corporation shall maintain, or cause to be maintained, up to date records of
>
> (a) the names and latest known addresses of each securityholder of the mutual fund;
>
> (b) the number and class or series of a class of securities held by each securityholder of the mutual fund; and

(c) the date and details of each issue and redemption of securities, and each distribution, of the mutual fund.

[146] Further, section 15.1 of Companion Policy 81-102CP provides:

> Section 18.1 of the Instrument requires the maintenance of securityholder records, including past records, relating to the issue and redemption of securities and distributions of the mutual fund. Section 18.1 does not require that these records need be held indefinitely. It is up to the particular mutual fund, having regard to prudent business practice and any applicable statutory limitation periods, to decide how long it wishes to retain old records.

[147] The evidence submitted at the Merits Hearing, including the Brown Interviews, demonstrates a history of questionable record keeping with respect to the Juniper entities, dating back to July 2004 when Brown took over the recordkeeping and fund accounting functions from CIBC Mellon. In the Brown Interviews, Brown gave a history of his effort to create his own recordkeeping system in RecordSource to enable JFM to do the fund accounting for JEGF. However, by March 2005 at the latest, Brown was well-aware that there were bookkeeping and fund accounting issues with JEGF. These issues went unresolved resulting in repeated inaccuracies in the books and records. Brown even describes steps that he took *not* to correct inaccuracies with NBCN in order not to look foolish to the bank. Brown and JFM did not keep books and records for the proper recording of JFM's business transactions or the transactions of the Funds in accordance with subsection 19(1) of the Act. Brown and JFM also did not act within the recordkeeping requirements described in section 18.1 of NI 81-1092 and its companion policy.

[148] Staff also allege that the Respondents breached subsections 14.2(1) and 14.4 of NI 81-106 which, during the time of the Respondents' impugned activities, provided as follows:

> **14.2 Calculation, Frequency and Currency**
>
> (1) The net asset value of an investment fund must be calculated in accordance with Canadian GAAP.
>
> …
>
> **14.4 Capital Transactions** – The investment fund must include each issue or redemption of a security of the investment fund in the next calculation of net asset value the investment fund makes after the calculation of net asset value used to establish the issue or redemption price.

[149] The law required the Respondents, as market participants, to keep proper records of their business transactions and financial affairs in general and, specifically, to maintain proper records of the specific names, addresses, unitholdings, and date and details of issues and redemptions of the Funds. Although these records do not have to be maintained indefinitely, prudent business practices and statutory limitations should guide those responsible as to when maintaining such records is no longer required.

[150] Coulson and Anderson gave evidence on behalf of RBCDS describing the reconciliation issues that the bank had with the Respondents dating back to March 2005. Anderson was advised of a discrepancy with the price per unit of JEGF between JFM's and RBCDS' records. Chak, on behalf of Staff, gave evidence that during the course of her investigation, Brown did not give her all of the account information that she requested. She came to discover unmentioned bank accounts on her own through her forensic investigation in trying to locate a missing $3 million. Her discovery of unlisted accounts led to her conclusion that it was necessary to freeze the Respondents' bank accounts.

[151] On behalf of NBCN, Phillips and Walkowiak gave consistent evidence about the discrepancy between NBCN's records and JFM's records. Although Brown provided NBCN with a JFM reconciliation spreadsheet in an effort to resolve the issues, he was unable to explain the reason for not reconciling errors in his records. Specifically, Phillips and Walkowiak described certain transactions that were requested by Brown in his personal e-mails and recorded by NBCN as purchases of JEGF units but that Brown describes as transfers. NBCN gave evidence that these transactions were recorded as purchases. This is corroborated by Brown's evidence in the Brown Interviews wherein he attributes the error to his own actions of misusing NBCN's NetRep system.

[152] During the Brown Interviews, Brown explained that he recorded certain transactions as "buys" instead of "transfers" by his own mistake but that he did not correct these transactions with NBCN. His reason was simply that he failed to understand any need to make any corrections. Brown further advised Staff that he had no paper records of his own RBCDS account – an account where, according to the flow charts that he prepared for the Receiver, a significant amount of JEGF units and funds travelled through. Brown also told Staff that at no time did he ever review the NBCN JFM 27R001E Margin Account statements until January 2006, at which time he did so by chance and, as a result, discovered the significant issues in that account. Brown's

explanation for this was that he solely relied upon his own records. Finally, when asked by Staff about the significant delay in various instances between JEGF unit purchases at settlement dates well beyond the T+3 requirement, Brown was unable to provide any explanation.

[153] Wootton, on behalf of the Receiver, described the poor accounting and recordkeeping in its review of the Respondents' records. We note that he acknowledged that Brown worked cooperatively to create the series of flow charts to illustrate the movement of funds raised through the Funds; however, the Reciever was not able to reconcile the funds raised with the purchase of JEGF units. Wootton stated that even Brown himself disagreed with some of JFM's books and records. Further, Wootton said that Brown did not even mention Felcom at any point during his discussions with Brown.

[154] We find that the activity in the Funds was inaccurately recorded. Both the Receiver and Staff concluded material errors in this regard. The NAV statements for JEGF were overstated in value with respect to its 10% investment in PAM, which the Receiver determined did not have any assets. Further, the JEGF assets were encumbered in the NBCN JFM Custodial Account in order to borrow funds for non-equity related uses, and which encumbrances were not disclosed to the unitholders.

[155] We find that the Respondents breached subsections 14.2(1) and 14.4 of NI 81-106 by failing to maintain proper books and records. Without proper unitholder records relating to the issue and redemption of securities and distributions of the Funds, it is impossible to calculate the proper NAV of the units and therefore the proper records of the Funds.

[156] The Respondents' poor recordkeeping had a significant impact on the Funds, resulting in a trail of miscalculations and errors throughout their history with RBCDS, Felcom, and NBCN and was likewise a trigger for both (1) NBCN to come to the Commission with their concerns; and (2) Chak to recommend a freeze on the bank accounts. Recordkeeping is vital for the proper, transparent maintenance of a fund and proper participation in the capital markets and the Respondents have failed to act responsibly and within the standards required in accordance with the Act and NI 81-102 and NI 81-106.

[157] Therefore, we find that the Respondents failed to keep books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of the Funds in accordance with Ontario securities law, contrary to subsection 19(1) of the Act and section 18.1 of NI 81-102, and failed to record JEGF's daily NAV calculations contrary to subsection 14.2(1) and section14.4 of NI 81-106.

B. Registration

[158] Staff have alleged that JFM breached subsection 25(1)(a) of the Act, which provided, at the time of the allegations, as follows:

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

[159] The definition of "trade" or "trading" included:

> (a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in clause (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith…
>
> …
>
> (e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing…

[160] Accordingly, Staff's allegations in respect of subsection 25(1)(a) must relate to sales or dispositions of securities and not to the purchase of a security or a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith.

[161] Staff submit that the JEGF simplified prospectus and AIF dated July 5, 2005 provide that both unit classes of JEGF were offered on a continuous basis by JFM and could be purchased through securities dealers, investment dealers, brokers and mutual fund dealers or "directly from the Fund in the Province of Ontario". Staff submit that based on the wording of the JEGF prospectus and the AIF, JFM traded in units of JEGF contrary to the Act. The impugned wording of the JEGF prospectus dated July 5, 2005 provides, under the heading "How to Purchase Units," as follows:

> Units of the Fund (the "Units") are offered on a continuous basis by The Juniper Fund Management Corporation, the Manager of the Fund (the "Manager") and through registered securities dealers, investment dealers, brokers and mutual fund dealers in the Province of Ontario.

[162] The impugned wording of the AIF dated July 5, 2005 provides, under the heading, "How to Purchase Units," as follows:

> Both unit Classes are offered on a continuous basis by the Manager and can be purchased through registered securities dealers, investment dealers, brokers and mutual fund dealers, as well as directly from the Fund in the Province of Ontario.

[163] In Walz's compliance field review dated March 14, 2006, he concluded as follows:

> You act as a mutual fund dealer for purchases and redemptions of units of the Funds. You are not registered as a mutual fund dealer. Also, the JEGF's simplified prospectus and AIF dated July 5, 2005 state that "… units … can be purchased … directly from the Fund in the Province of Ontario."

[164] At the Merits Hearing, Walz was asked about his concerns and conclusions regarding JFM acting as a mutual funds dealer:

> Q. Just to finish off the – and this was paragraph 21 of your affidavit – the preliminary results of your finding, is there anything with respect to the concern about JFM acting as a mutual fund dealer, or is that concern resolved after your compliance review?
>
> A. It was a concern we had that JFM was, in fact, acting as a dealer in mutual fund securities of JEGF and JIF without being registered as a dealer.
>
> Q. And when you were on site, did you speak to Mr. Brown about your concern, or did you do any further analysis of files or documents on site in respect of that issue?
>
> A. Yes. For a sample of trade transactions for JEGF and JIF that we examined, we did note that three out of ten transactions that we looked at, that JFM was, in fact, acting as the dealer for those trades. And we were also informed by Mr. Brown that he had in his possession cheques from investors for future purchases of mutual fund units in JEGF that he would process as the date of the post-dated cheques would come to realization, and he would process those purchase cheques himself.
>
> So those things I have described, along with the fact that the JEGF prospectus holds out that investors can directly purchase units of the fund not only with dealers but also with the fund itself indicated to me that JFM was acting as a dealer in these mutual fund securities without registration as such.
>
> (Transcript of Merits Hearing, September 20, 2011 at pages 85-86)

[165] In the Agreed Facts, the parties agree that JFM was not registered in any capacity with the Commission. The representation in the JEGF simplified prospectus and the AIF that units may be purchased directly from the Fund constitutes an act, advertisement, solicitation, and/or conduct directly in furtherance of a sale or disposition of a security for valuable consideration contrary to section 25(1)(a) of the Act, which was in force during the time the conduct took place. We are satisfied that the simplified prospectus, the AIF, and Walz's evidence of sampling trade transactions of the Funds establishes that JFM engaged in trading and acts in furtherance of trades while unregistered when no exemptions were available to them and therefore breached subsection 25(1)(a) of the Act.

[166] We find that JFM acted as a mutual fund dealer for purchases and redemptions in units of the Funds without being registered as a mutual fund dealer contrary to subsection 25(1)(a) of the Act, which was in force at the time the conduct occurred.

C. Full, True & Plain Disclosure

[167] In the Agreed Facts, Staff and Brown agree that JEGF's simplified prospectus, information circular and AIF contained certain inaccurate statements with respect to (a) who calculates the NAVs; (b) the name of the auditor; (c) the amount of the minimum initial investment; and (d) the minimum amount of the aggregate NAV value at which JEGF has the right of redemption. Staff and Brown further agree that the Juniper website and press release dated November 14, 2005 were inaccurate in stating that JFM managed assets of $130 million when it actually managed assets of $15 million, among other ancillary statements. Staff claim that these admissions establish a breach of subsection 56(1) of the Act and subsection 15.2(1) of NI 81-102.

[168] Subsection 56(1) of the Act provides as follows:

> 56. (1) A prospectus shall provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed and shall comply with the requirements of Ontario securities law.

[169] During the time of the Respondents' impugned conduct, subsection 15.2(1) of NI 81-102 provided as follows:

> (1) Despite any other provision of this Part, no sales communication shall
>
> (a) be untrue or misleading; or
>
> (b) include a statement that conflicts with information that is contained in the preliminary simplified prospectus, the preliminary AIF, the simplified prospectus or AIF,
>
> (i) of a mutual fund, or
>
> (ii) in which an asset allocation service is described.

[170] We find that the inaccurate statements in the simplified prospectus, information circular and AIF are all misleading and in breach of the required disclosure obligations in the Act. The four inaccuracies listed with respect to the representations made in the simplified prospectus, information circular and AIF are symptomatic of the poor administration practices of the Respondents and, although material, are not at the core of the issues in this proceedings.

[171] The representation that JFM managed assets of $130 million when in fact it managed only $15 million worth of assets is, in our opinion, a material overstatement. Staff did not lead any evidence at the Merits Hearing in respect of this allegation; however, Brown did agree to this fact in the Agreed Facts and it is on that basis that we find that this inaccuracy in fact took place and was in breach of subsection 15.2(1) of NI 81-102 and subsection 56(1) of the Act.

[172] We find that the Respondents failed to provide full, true and plain disclosure in the JEGF simplified prospectus of all material facts contrary to subsection 56(1) of the Act and the JEGF simplified prospectus, information circular and AIF contained certain inaccurate and misleading statements contrary to subsection 15.2(1) of NI 81-102.

D. Prohibited Investments & Loans by Mutual Funds

[173] In the Amended Statement of Allegations, Staff allege that JEGF provided prohibited loans and held prohibited investments contrary to sections 111(1)(a), 111(2)(c)(ii), 111(3) and 112 of the Act and paragraph 2.6 of NI 81-102. Staff further allege that JFM and Brown breached their custodial obligations contrary to subparagraphs 6.1(1) and (6) of NI 81-102.

[174] The relevant sections of the Act in respect of these allegations are as follows:

> 111. (1) No mutual fund in Ontario shall knowingly make an investment by way of loan to,
>
> (a) any officer or director of the mutual fund, its management company or distribution company or an associate of any of them;
>
> …
>
> (2) No mutual fund in Ontario shall knowingly make an investment,
>
> …

(c) in an issuer in which,

…

(ii) any person or company who is a substantial security holder of the mutual fund, its management company or its distribution company,

has a significant interest.

(3) No mutual fund in Ontario or its management company or its distribution company shall knowingly hold an investment made after the 15th day of September, 1979 that is an investment described in this section.

112. No mutual fund or its management company or its distribution company shall knowingly enter into any contract or other arrangement that results in its being directly or indirectly liable or contingently liable in respect of any investment by way of loan to, or other investment in, a person or company to whom it is by section 111 prohibited from making a loan or in which it is prohibited from making any other investment, and for the purpose of section 111 any such contract or other arrangement shall be deemed to be a loan or an investment, as the case may be.

[175] As at the time of the Respondents' impugned conduct, the relevant sections of NI 81-102 provided as follows:

2.6 Investment Practices - A mutual fund shall not

(a) borrow cash or provide a security interest over any of its portfolio assets unless

(i) the transaction is a temporary measure to accommodate requests for the redemption of securities of the mutual fund while the mutual fund effects an orderly liquidation of portfolio assets, or to permit the mutual fund to settle portfolio transactions and, after giving effect to all transactions undertaken under this subparagraph, the outstanding amount of all borrowings of the mutual fund does not exceed five percent of the net assets of the mutual fund taken at market value at the time of the borrowing,

(ii) the security interest is required to enable the mutual fund to effect a specified derivative transaction under this Instrument, is made in accordance with industry practice for that type of transaction and relates only to obligations arising under that particular specified derivatives transaction, or

(iii) the security interest secures a claim for the fees and expenses of the custodian or a sub-custodian of the mutual fund for services rendered in that capacity as permitted by subsection 6.4(3);

…

6.1 General – (1) Except as provided in sections 6.8 and 6.9, all portfolio assets of a mutual fund shall be held under the custodianship of one custodian that satisfies the requirements of section 6.2.

…

(6) Despite any other provisions of this Part, the manager of a mutual fund shall not act as custodian or sub-custodian of the mutual fund.

[176] Staff rely on Walz's conclusions, based on the information provided to him by Brown, that JFM was improperly using the funds in the NBCN JEGF Custodial Account for its own and Brown's purposes and not for JEGF's purposes:

… I would not have an issue at all if JFM had, in fact, borrowed on behalf of JEGF for purposes of it being used on a de minimis basis to fund unit holder redemption requests or to settle portfolio securities for JEGF.

> The issue at hand is it was not used for those purposes. It was, in fact, as acknowledged by JFM, used for its own purposes and benefit for the reasons we've already discussed.
>
> (Transcript of Merits Hearing, September 20, 2011 at pages 132-133).

[177] Staff also rely on Walz's evidence regarding JEGF's investment in PAM that Les Kobli, an individual appearing to be an officer or director of JEGF, held 88% of the shares in PAM. Staff submit that JEGF was prohibited from making an investment in PAM in accordance with subsection 111(2) of the Act, which prohibits a mutual fund from investing in a company in which an officer or director of the fund's management company owns more than 10% of the shares.

[178] Walz' evidence regarding JEGF's liability with respect to the nature of the NBCN JEGF Custodial Account was corroborated by Phillips' evidence wherein she confirmed that if a debit were created in the NBCN JEGF Custodial Account, the amounts owing would first be covered by liquidating the JEGF assets in the account and if the assets were not sufficient to cover that debit, NBCN would look to JFM, the trustee of the account, to obtain assets to settle the debit.

[179] Further, Wootton reviewed the charts created with Brown's assistance and submitted into evidence at the Merits Hearing, which demonstrate the flow of $1,248,000 from the NBCN JEGF Custodial Account to, ultimately, be applied against the mortgage of Brown's residential property.

[180] We find that JEGF made an investment by way of loan to Brown and JFM contrary to subsections 111(1) and 112 of the Act, and section 2.6 of NI 81-102. JFM caused JEGF to knowingly enter into a prohibited arrangement resulting in JEGF being liable in respect of JFM's actions. The borrowing that occurred in this account was not de minimus and was not used for short term cash management of redemptions. Although JFM was permitted to borrow against the JEGF assets in the NBCN JEGF Custodial Account for specific purposes, JFM and Brown used borrowed funds from that account for purposes contrary to the Act and, in doing so, placed the JEGF assets at risk. Further, JFM was prohibited from making an investment in PAM, contrary to subsections 111(2) and 111(3) of the Act.

[181] Therefore, we find that JEGF provided prohibited loans and held prohibited investments contrary to sections 111 and 112 of the Act and paragraph 2.6 of NI 81-102 and, in doing so, the Respondents breached their custodial obligations contrary to subparagraphs 6.1(1) and (6) of NI 81-102.

E. Standard of Care

[182] Staff alleges that Brown and JFM have breached their statutory duty of care contrary to subsection 116(1) of the Act, which provides as follows:

> 116. (1) Every person or company responsible for the management of a mutual fund shall exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the mutual fund, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.
>
> (2) For the purposes of subsection (1), a person or company is responsible for the management of a mutual fund if he, she or it has legal power or right to control the mutual fund or if in fact the person or company is able to do so.

[183] Staff further alleges that, in breaching their statutory duty of care to JEGF and JEGF unitholders, Brown and JFM engaged in conduct in breach of sections 9.4 and 11.1 of NI 81-102. The salient parts of these sections in relation to Staff's allegations are as follows:

> 9.4 Delivery of Funds and Settlement
>
> (1) A principal distributor, a participating dealer, or a person or company providing services to the principal distributor or participating dealer shall forward any cash received for payment of the issue price of securities of a mutual fund to an order receipt office of the mutual fund so that the cash arrives at the order receipt office as soon as practicable and in any event no later than the third business day after the pricing date.
>
> …
>
> 11.1 Principal Distributors
>
> (1) Cash received by a principal distributor of a mutual fund, or by a person or company providing services to the mutual fund or the principal distributor, for investment in, or on the redemption of,

> securities of the mutual fund, or on the distribution of assets of the mutual fund, until disbursed as permitted by subsection (3),
>
> (a) shall be accounted for separately and be deposited in a trust account or trust accounts established and maintained in accordance with the requirements of section 11.3; and
>
> (b) may be commingled only with cash received by the principal distributor or service provider for the sale or on the redemption of other mutual fund securities.

Fiduciary Duty Owed to Unitholders

[184] Staff rely on the jurisprudence developed under fiduciary duty provisions found in section 134 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 and section 122(1) of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44. Staff submits that the principles developed in regard to fiduciary duties owed by directors to corporations are applicable by analogy to the fiduciary duty owed by mutual fund managers to the mutual fund unitholders. Staff rely on one of the seminal cases regarding fiduciary duty:

> The statutory fiduciary duty requires directors and officers to act honestly and in good faith vis-à-vis the corporation. They must respect the trust and confidence that have been reposed in them to manage the assets of the corporation in pursuit of the realization of the objects of the corporation. They must avoid conflicts of interest with the corporation. They must avoid abusing their position to gain personal benefit. They must maintain the confidentiality of information they acquire by virtue of their position. Directors and officers must serve the corporation selflessly, honestly and loyally: see K. P. McGuinness, *The Law and Practice of Canadian Business Corporations* (1999), at p. 715. (*Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68, [2004] 3 SCR 461 at para. 35)

Duty of Care Owed to Investors

[185] Staff submits that an objective standard should be applied in determining whether or not the Respondents breached their statutory duty of care owed to the unitholders. Staff rely on this Commission's decision in *Re AGF Funds Inc.* (2005), 28 O.S.C.B. 73 at paragraph 6:

> In order for there to be fairness and confidence in Ontario's capital markets it is critical that mutual fund managers faithfully and diligently fulfill their duty to fully protect the best interest of their funds (and the investors in those funds) such that certain investors are not given preferential treatment to the detriment of others. Ontario's investors must be in a position to believe that their investment will be treated with the utmost care by those in whose trust they are placed.

[186] The evidence presented at the Mertis Hearing demonstrated that Brown and JFM breached their statutory obligations under section 116 of the Act by failing to act in the best interests of the Funds. There are many examples of the Respondents' failure to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, including, but not limited to:

(a) Failing to advise NBCN of incorrect transfers-in and purchases of JEGF units when the Respondents knew they had given NBCN incorrect information;

(b) Failing to record the Off-Book Purchases;

(c) Failing to maintain proper daily NAV calculations for the units in the Funds;

(d) Borrowing against JEGF's assets through the NBCN JEGF Custodial Account for purposes that were not related to JEGF;

(e) Failing to require related parties to settle purchases and redemptions within three business days of the trade date;

(f) Engaging in prohibited investments;

(g) Failing to maintain proper and accurate books and records of the Funds; and

(h) JFM failing to be properly registered as a mutual fund dealer.

[187] Staff further alleged that Brown, as an officer and director of JFM, is responsible for JFM's breaches of securities law pursuant to section 129.2 of the Act, which provides as follows:

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

[188] In *Re Momentas Corp. (*2006), 29 O.S.C.B. 7408 at paragraph 118, this Commission determined that the threshold for finding a director or officer liable pursuant to section 129.2 of the Act is low:

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

[189] We find that the Respondents have breached their statutory duty of care owed to the Funds and unitholders contrary to subsection 116(1) of the Act and that the Respondents have failed to properly settle and deposit funds in accordance with sections 9.4 and 11.1 of NI 81-102.

[190] By his own admission, Brown was the primary person in charge of all aspects of JFM and the Funds, and as such we find that he is liable under section 129.2 of the Act for authorizing, permitting and acquiescing in all of the JFM's breaches of Ontario securities law.

[191] Therefore, we find that Brown, as an officer and director of JFM, authorized, permitted and acquiesced in breaches of subsections 19(1), 25(1)(a), 56(1), 111, 112, and 116(1) of the Act, subsections 2.6, 6.1(1), 6.1(6), 9.4, 11.1, 15.2(1) and 18.1 of NI 81-102, and subsections 14.2(1) and 14.4 of NI 81-106 and, pursuant to section 129.2 of the Act is liable for JFM's breaches of Ontario Securities law and engaged in a conduct contrary to the public interest.

VI. CONCLUSION

[192] We find that the Respondents acted contrary to the public interest and contravened Ontario securities law through the following breaches of the Act and National Instruments:

(a) The Respondents failed to keep books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of the Funds in accordance with Ontario securities law, contrary to subsection 19(1) of the Act and section 18.1 of NI 81-102, and failed to record JEGF's daily NAV calculations contrary to subsection 14.2(1) and section14.4 of NI 81-106;

(b) JFM acted as a mutual fund dealer for purchases and redemptions in units of the Funds without being registered as a mutual fund dealer contrary to subsection 25(1)(a) of the Act, which was in force at the time the conduct occurred;

(c) The Respondents failed to provide full, true and plain disclosure in the JEGF simplified prospectus of all material facts contrary to subsection 56(1) of the Act and the JEGF simplified prospectus, information circular and AIF contained certain inaccurate and misleading statements contrary to subsection 15.2(1) of NI 81-102;

(d) JEGF provided prohibited loans and held prohibited investments contrary to sections 111 and 112 of the Act and paragraph 2.6 of NI 81-102 and, in doing so, the Respondents breached their custodial obligations contrary to subparagraphs 6.1(1) and (6) of NI 81-102;

(e) The Respondents breached their statutory duty of care contrary to subection 116(1) of the Act and have failed to properly settle and deposit funds in accordance with sections 9.4 and 11.1 of NI 81-102; and

(f) Brown, as an officer and director of JFM, authorized, permitted and acquiesced in breaches of subsections 19(1), 25(1)(a), 56(1), 111, 112, and 116(1) of the Act, subsections 2.6, 6.1(1), 6.1(6), 9.4, 11.1, 15.2(1) and

18.1 of NI 81-102, and subsections 14.2(1) and 14.4 of NI 81-106 and, pursuant to section 129.2 of the Act is liable for JFM's breaches of Ontario Securities law and engaged in a conduct contrary to the public interest.

[193] For the reasons outlined above, we will issue an order directing the parties to appear before the Commission on June 14, 2013 at 10:00 a.m. at the offices of the Commission at 20 Queen Street West, Toronto, ON, for the sanctions and costs hearing. The schedule for filing submissions is as follows:

1. Staff shall file written submissions by 4:30 p.m. on May 24, 2013;

2. The Respondents shall file responding written submissions by 4:30 p.m. on June 7, 2013; and

3. Staff shall file reply written submissions (if any) by 4:30 p.m. on June 12, 2013.

Dated at Toronto this 11th day of April, 2013.

"Vern Krishna"

"Margot C. Howard"

3.1.3 Ronald James Ovenden et al.

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

AND

IN THE MATTER OF
RONALD JAMES OVENDEN,
NEW SOLUTIONS CAPITAL INC.,
NEW SOLUTIONS FINANCIAL CORPORATION AND
NEW SOLUTIONS FINANCIAL (II) CORPORATION

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN STAFF OF
THE ONTARIO SECURITIES COMMISSION,
NEW SOLUTIONS FINANCIAL CORPORATION AND
NEW SOLUTIONS FINANCIAL (II) CORPORATION

PART I – INTRODUCTION

1. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Securities Act*") it is in the public interest for the Commission to make certain orders in respect of New Solutions Financial Corporation ("NSFC") and New Solutions Financial (II) Corporation ("NSFII").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding commenced by Notice of Hearing (the "Proceeding") against NSFC and NSFII according to the terms and conditions set out in Part VI of this settlement agreement (the "Settlement Agreement"). NSFC and NSFII agree to the making of an order in substantially the same form attached as Schedule "A" based on the facts set out below.

PART III – AGREED FACTS

3. For the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, NSFC and NSFII agree with the facts as set out in this Part III of this Settlement Agreement.

Ovenden and the New Solutions Companies

Ronald James Ovenden

4. Ronald James Ovenden ("Ovenden") is 57 years old and a resident of Georgetown, Ontario. Ovenden was registered with the Commission in various capacities throughout the relevant period, January 1, 2009 to January 5, 2012 (the "Relevant Period"). As of January 19, 2009, Ovenden was registered as a trading officer, and approved as a designated compliance officer and director of New Solutions Capital Inc. ("NSCI"). On September 28, 2009, with the implementation of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103"), the trading officer category was changed to dealing representative and officer, the designated compliance officer approval category was removed, and NSCI's registration category of limited market dealer ("LMD") was changed to exempt market dealer ("EMD").

5. Ovenden was registered as the ultimate designated person ("UDP") and chief compliance officer ("CCO") of NSCI on March 4, 2010. Ovenden's CCO category of registration was surrendered on October 13, 2010. On October 18, 2010, Ovenden's registration as a dealing representative was surrendered because he did not meet the new proficiency requirements under NI 31-103. Ovenden remained with NSCI as an officer, director and registered UDP until April 26, 2012, when his registration was suspended.

6. Ovenden was the sole director and officer of each of NSCI, NSFC and NSFII (collectively the "New Solutions Companies") during the Relevant Period.

7. Throughout the Relevant Period, Ovenden was the sole directing and controlling mind of each of the New Solutions Companies.

New Solutions Capital Inc.

8. NSCI is an Ontario corporation, and was registered as an LMD from June 14, 2006 until January 1, 2009, when its registration was suspended for non-payment of annual participation fees. NSCI's registration as an LMD was reinstated on January 19, 2009. On September 28, 2009, NSCI's LMD registration category was changed to EMD with the implementation of NI 31-103. NSCI's registration was suspended on April 26, 2012.

9. NSCI traded in debentures issued by NSFII.

New Solutions Financial (II) Corporation

10. NSFII was incorporated federally and has never been registered with the Commission. NSFII was not a reporting issuer in Ontario during the Relevant Period.

11. NSFII issued debentures to investors throughout Canada.

New Solutions Financial Corporation

12. NSFC was incorporated in Ontario and has never been registered with the Commission.

13. NSFC managed and administered NSFII. NSFII advanced funds raised from investors who purchased NSFII debentures to NSFC. NSFC in turn advanced the funds to persons and companies in the form of factored receivables and loans.

Trades in NSFII Debentures to Investors

14. During the Relevant Period, Ovenden and the New Solutions Companies made approximately 190 trades in debentures of NSFII to new and existing investors with a value of approximately $25,000,000.00.

Misrepresentations and Omissions

15. Through interactions with investors and potential investors, and documents provided to them, referred to below, NSFC and NSFII misled and/or failed to properly inform investors and potential investors about the true state of affairs of NSFC and its underlying portfolio, and the risks associated with investing in NSFII debentures.

16. NSFC and NSFII also failed to properly inform investors and potential investors that their funds would be loaned to companies owned and/or controlled directly or indirectly by Ovenden, to Ovenden's associates, friends and/or family members and/or to companies owned and/or controlled directly or indirectly by Ovenden's associates, friends and/or family members.

(a) Promotional Materials and Offering Memoranda

17. During the Relevant Period, investors and potential investors were variously provided with:

- NSFC Semi-Annual Reports dated February 2009, August 2009, February 2010, Summer 2010 and Winter 2011;
- a brochure entitled "New Solutions Financial (II) Corporation 1-Year, 3-Year, 5-Year Non-Redeemable, Non-Convertible Secured Term Debentures" (the "Debentures Brochure");
- a brochure entitled "Top 5 Questions for New Solutions Financial (II) Corporation Secured Term Debentures" (the "Top 5 Brochure");
- a brochure entitled "A Conservative Entrepreneurial Investment" (the "Conservative Brochure");
- an NSFII offering memorandum dated December 15, 2008 (the "2008 OM"); and
- an NSFII offering memorandum dated August 10, 2010 (the "2010 OM").

(b) Risks Associated with Investment

18. The February 2009 Semi-Annual Report was co-signed by Ovenden as Chair and Chief Executive Officer of NSFC. It stated that NSFC offered "**safe above market returns** to [its] investors" with the objective of maximizing returns "while maintaining an acceptable risk profile in all the lending transactions [it] become[s] involved in." The same report also provided that "the **success of [its] borrowers** continue[s] to be the prime factors in [its] success."

19. The brochures included claims that:

- the investments were "**[b]acked by a portfolio of managed receivables from companies with deemed "A" credit ratings or better**" and offered "safety of investment from: [d]iversification of [the] underlying borrower pool" (Debentures Brochure);
- "[d]iversification of [an] **"A" rated or better quality accounts receivable** pool" (Debentures Brochure);
- "[NSFC]...will use proceeds to lend/factor against **"A" rated or better**[1] accounts receivables owed to borrowing merchants" (Top 5 Brochure);
- "An Investment in New Solutions Financial Corporation Debentures Provides Access to:...**[c]onservative structure and historical surplus security"** (Conservative Brochure); and
- "A stringent approach to asset based lending provides an investor **an acceptable low-risk way to generate returns**." (Conservative Brochure).

20. Contrary to the statements referred to above, NSFC provided bridge loans, asset-based financing services and other credit facilities to high risk entities.

(c) Loans to Ovenden's Companies, His Associates' Companies and Others

21. While the 2008 and 2010 OMs each contained a section entitled "Risk Factors," neither disclosed that a substantial portion of the total dollar amount of outstanding loans were made to companies owned and/or controlled directly or indirectly by Ovenden, to Ovenden's associates, friends and/or family members and/or to companies owned and/or controlled directly or indirectly by Ovenden's associates, friends and/or family members.

22. Ovenden co-signed a certificate dated December 15, 2008 by which he certified that the 2008 OM did not contain a misrepresentation. Ovenden signed a certificate dated August 10, 2010 by which he certified that the 2010 OM did not contain a misrepresentation.

23. As at June 30, 2009, at least 34% of the outstanding advances made by NSFC were to companies owned and/or controlled directly or indirectly by Ovenden. During the same period, at least 24% of the outstanding advances made by NSFC were to Ovenden's associates, friends and/or family members and/or to companies owned and/or controlled directly or indirectly by Ovenden's associates, friends and/or family members.

(d) Quality of Loans

24. Each of the Semi-Annual Reports contained a statement that for each dollar of investment, a specified amount was held in security value. In the Semi-Annual Reports during the Relevant Period, the purported security values ranged from $1.81 to $2.20 for each dollar of investment.

25. During the course of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "CCAA") proceeding described below, after the sale of the most valuable asset, as at January 2013, gross realizations on the security were only $0.08 per $1.00.

Proceeding under the *Companies' Creditors Arrangement Act*

26. On application made by NSFC, NSFII, New Solutions Financial (III) Corporation, New Solutions Financial (VI) Corporation and 2055596 Ontario Limited (the "Companies"), pursuant to the *CCAA*, the Ontario Superior Court of Justice issued an order (the "*CCAA* Order") on April 11, 2012 granting protection to the Companies. The *CCAA* Order was subsequently extended on May 7, 2012, July 31, 2012, October 4, 2012, November 29, 2012, December 6, 2012 and January 25, 2013. Under the *CCAA* Order, MNP Ltd. was appointed as monitor for the Companies to monitor the business and financial affairs of the Companies. The *CCAA* proceeding is ongoing.

[1] Emphasis in original. All other emphasis added in this part (b).

PART IV – CONDUCT CONTRARY TO THE PUBLIC INTEREST

27. In the manner described above, NSFC and NSFII engaged in conduct contrary to the public interest during the Relevant Period.

PART V – TERMS OF SETTLEMENT

28. NSFC and NSFII agree to the terms of settlement set out below.

29. The Commission will make an order pursuant to subsection 127(1) of the *Securities Act* that:

(a) the Settlement Agreement is approved;

(b) neither NSFC nor NSFII shall apply for or obtain registration with the Commission;

(c) NSFC and NSFII shall each permanently cease trading in any securities and derivatives as of the date of the order approving this Settlement Agreement (the "Order");

(d) NSFC and NSFII shall each permanently cease acquisitions of any securities as of the date of the Order;

(e) any exemptions in Ontario securities law shall not apply to NSFC and NSFII permanently as of the date of the Order;

(f) NSFC and NSFII shall each be reprimanded; and

(g) NSFC and NSFII are prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter.

30. NSFC and NSFII consent to a regulatory order made by any securities regulatory authority containing any or all of the sanctions set out in paragraph 29, above. These sanctions may be modified to reflect the provisions of the relevant securities law in that jurisdiction.

PART VI – STAFF COMMITMENT

31. If this Settlement Agreement is approved by the Commission, Staff will not commence any other proceeding under Ontario securities law against NSFC and NSFII respecting the facts set out in Part III of the Settlement Agreement, subject to the provisions of paragraph 32 below.

32. If the Commission approves this Settlement Agreement and NSFC and/or NSFII fail to comply with any of the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against NSFC and/or NSFII. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as any breach of the Settlement Agreement.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

33. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.

34. Staff, NSFC and NSFII agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing regarding NSFC's and NSFII's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

35. If the Settlement Agreement is approved by the Commission, NSFC and NSFII each agree to waive all of their rights to a full hearing, judicial review or appeal of the matter under the *Securities Act*.

36. If the Commission approves this Settlement Agreement, none of the parties will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

37. Whether or not the Commission approves this Settlement Agreement, neither NSFC nor NSFII will use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

38. If the Commission does not approve this Settlement Agreement or does not make the Order in substantially the same form as attached at Schedule "A":

(a) this Settlement Agreement and all discussions and negotiations between Staff, NSFC and NSFII before the settlement hearing takes place will be without prejudice to Staff, NSFC and NSFII; and

(b) Staff, NSFC and NSFII will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

39. The parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality regarding the terms of the Settlement Agreement. If the Commission does not approve the Settlement Agreement, the parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

40. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

41. A facsimile or email copy of any signature shall be as effective as an original signature.

DATED this 28th day of March, 2013

"New Solutions Financial Corporation by its Court-Appointed Chief Restructuring Organization 4th & Meadowbrook Consulting Inc. per Robert So"

New Solutions Financial Corporation
I have authority to bind the corporation.

DATED this 28th day of March, 2013

"New Solutions Financial (II) Corporation by its Court-Appointed Chief Restructuring Organization 4th & Meadowbrook Consulting Inc. per Robert So"

New Solutions Financial (II) Corporation
I have authority to bind the corporation.

DATED this 28th day of March, 2013

"Tom Atkinson"
Tom Atkinson, Director
Enforcement Branch

Ontario Securities Commission

"Schedule A"

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

AND

IN THE MATTER OF
RONALD JAMES OVENDEN,
NEW SOLUTIONS CAPITAL INC.,
NEW SOLUTIONS FINANCIAL CORPORATION AND
NEW SOLUTIONS FINANCIAL (II) CORPORATION

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN STAFF OF
THE ONTARIO SECURITIES COMMISSION,
NEW SOLUTIONS FINANCIAL CORPORATION AND
NEW SOLUTIONS FINANCIAL (II) CORPORATION

ORDER
(Section 127)

WHEREAS on March 28, 2013, 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 "*Securities Act*") in respect of Ronald James Ovenden ("Ovenden"), New Solutions Capital Inc. ("NSCI"), New Solutions Financial Corporation ("NSFC") and New Solutions Financial (II) Corporation ("NSFII");

AND WHEREAS on March 28, 2013, Staff of the Commission ("Staff") filed a Statement of Allegations in respect of the same matter;

AND WHEREAS NSFC and NSFII entered into a Settlement Agreement dated March 28, 2013 (the "Settlement Agreement") in relation to certain matters set out in the Statement of Allegations;

AND WHEREAS the Commission issued a Notice of Hearing in respect of the Settlement Agreement dated March 28, 2013;

AND WHEREAS on April 11, 2012, the Commission ordered that all trading in the securities of NSFC, NSFII, New Solutions Financial (III) Corporation ("NSFIII") and New Solutions Financial (VI) Corporation ("NSFVI") cease immediately, that NSCI, NSFC, NSFII, NSFIII, NSFVI, their employees, representatives and Ovenden cease trading in all securities of NSFC, NSFII, NSFIII, and NSFVI immediately, that any exemptions contained in Ontario securities law do not apply to NSCI, NSFC, NSFII, NSFIII, NSFVI, their employees, representatives and Ovenden, and that the order take effect immediately and expire on the fifteenth day after its making unless extended by an order of the Commission (the "Temporary Order");

AND WHEREAS on April 25, 2012 the Commission extended the Temporary Order for a period of 6 months until October 12, 2012 at 9:00 a.m. and adjourned the hearing of the matter to October 11, 2012 or such other date or time as set by the Office of the Secretary and agreed to by the parties (the "April Order");

AND WHEREAS on October 11, 2012 the Commission extended the Temporary Order until May 10, 2013 and adjourned the hearing of the matter to May 9, 2013 at 10:00 a.m. or to such other date or time as set by the Office of the Secretary and agreed to by the parties (the "October Order");

UPON reviewing the Settlement Agreement, the Notices of Hearing, the Statement of Allegations, the Temporary Order, the April Order and the October Order, and upon considering the submissions of NSFC and NSFII through their counsel and of Staff;

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

IT IS HEREBY ORDERED that:

(a) the Settlement Agreement is approved;

(b) neither NSFC nor NSFII shall apply for or obtain registration with the Commission;

(c) NSFC and NSFII shall each permanently cease trading in any securities and derivatives as of the date of the order approving this Settlement Agreement (the "Order");

(d) NSFC and NSFII shall each permanently cease acquisitions of any securities as of the date of the Order;

(e) any exemptions in Ontario securities law shall not apply to NSFC and NSFII permanently as of the date of the Order;

(f) NSFC and NSFII shall each be reprimanded;

(g) NSFC and NSFII are prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter; and

(h) the Temporary Order, the April Order and the October Order are vacated only in respect of NSFC and NSFII.

DATED at Toronto this _____ day of _____ 2013.

_____

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date Permanent Order	Date of Lapse/Revoke
Blue Horizon Industries Inc.	12 Apr 13	24 Apr 13		
Caspian Energy Inc.	12 Apr 13	24 Apr 13		
Bucking Horse Energy Inc.	12 Apr 13	24 Apr 13		
Argosy Energy Inc.	10 Apr 13	22 Apr 13		

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order

THERE ARE NO ITEMS FOR THIS WEEK.

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Northland Resources S.A.	05 Apr 13	17 Apr 13			

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
03/01/2012 to 12/01/2012	6	Autonomy Global Marco Fund Limited - Units	175,607,550.00	1,093,755.44
11/21/2012	3	Adroit Resources Inc. - Common Shares	37,500.00	750,000.00
03/07/2013	56	Agcapita Farmland Fund III - Units	868,200.00	173,640.00
02/14/2013 to 02/22/2013	12	Aldridge Minerals Inc. - Common Shares	15,028,914.03	31,639,819.00
03/22/2013	1	ATAC Resources Ltd. - Units	12,960,000.00	9,600,000.00
03/12/2013	3	Burlington Northern Santa Fe, LLC. - Debentures	31,088,641.00	15,250.00
03/28/2013	23	Canada Fluorspar Inc. - Flow-Through Units	1,245,399.30	4,151,331.00
03/22/2013	1	Capital One, National Association - Note	5,112,500.00	1.00
03/28/2013	1	Carlyle Holdings II Finance L.L.C. - Note	5,056,824.74	1.00
03/21/2013	10	CellAegis Devices Inc. - Preferred Shares	802,808.60	36,130.00
03/21/2013	8	CenturyLink, Inc. - Notes	21,762,125.00	8.00
02/26/2013 to 02/28/2013	2	Colwood City Centre Limited Partnership - Notes	65,000.00	65,000.00
03/28/2013	1	Compania Minera Milpo - Note	253,900.00	1.00
03/18/2013	5	Compass Gold Corporation - Common Shares	456,250.01	13,035,714.00
12/31/2012	16	Doubleview Capital Corp. - Units	393,122.00	7,862,440.00
04/09/2013	2	Duluth Metals Limited - Debentures	30,000,000.00	2.00
04/03/2013	22	Empower Technologies Corporation - Common Shares	216,500.00	4,330,000.00
04/12/2013	4	Entourage Metals Ltd. - Common Shares	36,000.00	225,000.00
03/27/2013	1	Fidelity & Guaranty Life Holdings, Inc. - Note	8,160,000.00	1.00
03/15/2013	3	Firestone Ventures Inc. - Common Shares	0.00	300,000.00
01/03/2012	1	Generation IM Fund PLC - Generation IM Global Equity Fund - Units	8,667,406.86	54,584.09
04/02/2013	1	Go Greek Yogurt, LLC - Units	20,296.00	20,000.00
04/05/2013	6	Golden Dawn Minerals Inc. - Units	66,810.00	227,000.00
03/12/2013	2	Hertz Global Holdings Inc. - Common Shares	311,311.44	15,003.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/15/2012 to 12/15/2012	41	HughesLittle Balanced Fund - Units	3,961,157.00	357,335.00
01/15/2012 to 12/15/2012	28	HughesLittle Value Fund - Units	9,555,956.00	697,772.00
04/05/2013	10	Intertainment Media Inc. - Units	290,000.00	290.00
03/26/2013	1	Jefferies Finance LLC & JFin Co-Issuer Corporation - Note	10,200,000.00	1.00
03/12/2013	1	Kedaara Capital I Limited - Common Share	30,762,000.00	1.00
03/28/2013	6	Kik interactive Inc. - Preferred Shares	15,233,996.40	1,181,179.00
03/05/2013 to 03/08/2013	17	League IGW Real Estate Investment Trust - Units	533,022.65	533,022.65
02/25/2013 to 03/01/2013	53	League IGW Real Estate Investment Trust - Units	1,027,537.82	1,027,537.82
03/11/2013 to 03/15/2013	22	League IGW Real Estate Investment Trust - Units	363,986.23	363,986.23
03/11/2013	1	Levi Strauss & Co. - Note	2,217.89	1.00
04/01/2013	110	Maverick Energy Inc. - Preferred Shares	3,237,176.00	3,195,100.00
03/20/2013	2	MDC Partners Inc. - Notes	2,053,600.00	2.00
03/27/2013	620	Mesquite Logistics Canada Financial Corp. - Debentures	310,000.00	620.00
03/12/2013	2	MGIC Investment Corporation - Notes	717,780.00	2.00
02/26/2013	4	Michael Kors Holdings Limited - Common Shares	19,598,200.00	310,000.00
11/07/2012	12	MinCore Inc. (Amended Form 45-106F1) - Common Shares	1,685,000.00	16,850,000.00
01/31/2013	11	Mitomics Inc. - Note	876,854.00	1.00
03/28/2013	5	Noveko International Inc. - Common Shares	360,000.00	6,000,000.00
02/25/2013 to 03/06/2013	24	NS Oil and Gas Ltd. - Common Shares	1,600,000.00	8,000,000.00
03/12/2013	5	NXP B.V. and NXP Funding LLC - Notes	6,952,500.00	5.00
03/13/2013	3	NXP Semiconductors N.V. - Common Shares	9,863,700.00	305,000.00
03/28/2013	2	PetroLogistics LP/PetroLogistics Finance Corp. - Notes	2,031,200.00	2.00
03/22/2013	35	Pitchblack Resources Ltd. - Units	1,100,000.00	11,000,000.00
03/15/2013	6	Quick Revenue Code Inc. - Common Shares	750,000.00	3,000,000.00
03/08/2013	21	Rapier Gold Inc. - Common Shares	2,563,244.90	8,195,033.00
03/04/2013	3	RDA Microelectronics, Inc. - American Depository Shares	2,521,800.00	270,000.00
01/31/2012 to 12/31/2012	17	Red Sky Partners Fund - Units	3,770,000.00	34,311.22

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
12/15/2011	19	Redstone Investment Corporation - Notes	1,093,000.00	N/A
01/16/2012	14	Redstone Investment Corporation - Notes	1,220,000.00	N/A
03/20/2013 to 03/28/2013	9	Redstone Investment Corporation - Notes	580,140.00	N/A
01/18/2011 to 03/28/2012	140	Redstone Investment Corporation - Units	15,017,493.72	N/A
04/02/2013	7	Revolution Resources Corp. - Common Shares	557,580.00	7,965,428.00
01/01/2012 to 12/31/2012	64	Richmond Equity Fund - Units	20,303,830.00	1,529,230.00
01/01/2012 to 11/05/2012	841	ROI High Income Private Placement Fund (formerly, High Yield Private Placement Fund) - Units	77,868,857.08	2,198,476.12
01/01/2012 to 12/31/2012	108	ROI Institutional Private Placement Fund - Units	5,686,500.43	55,154.96
01/01/2012 to 03/12/2012	500	ROI Private Placement Fund - Units	84,069,383.71	724,674.78
01/01/2012 to 12/31/2012	255	ROI Strategic Private Placement Fund - Units	38,396,534.86	1,150,678.98
03/27/2013	1	Royal Bank of Canada - Notes	2,034,000.00	20,000.00
03/28/2013	3	Royal Bank of Canada - Notes	2,685,000.00	26,850.00
03/18/2013	1	salesforce.com, inc. - Note	2,043,400.00	1.00
03/07/2013	3	Sealed Air Corporation - Notes	15,556,020.00	3.00
03/21/2013	16	Search Minerals Inc. - Units	1,200,000.00	24,000,000.00
03/28/2013	1	Sector Re V Ltd - Note	15,168,385.13	1.00
02/15/2013 to 02/22/2013	48	SecureCare Investments Inc. - Bonds	1,528,230.00	N/A
03/15/2013	34	Skyline Apartment Real Estate Investment Trust - Investment Trust Interests	7,654,220.25	577,677.00
03/12/2013	4	Steel Dynamics, Inc. - Notes	12,817,500.00	4.00
04/12/2013	1	Sulliden Gold Corporation Ltd. - Units	23,999,999.88	26,966,292.00
01/01/2012 to 12/31/2012	2	TD Emerald 2020 Retirement Target Date Pooled Fund Trust - Units	3,720,416.63	348,952.53
01/01/2012 to 12/31/2012	1	TD Emerald 2030 Retirement Target Date Pooled Fund Trust - Units	4,826,300.59	405,918.93
01/01/2012 to 12/31/2012	1	TD Emerald 2040 Retirement Target Date Pooled Fund Trust - Units	4,289,361.47	360,305.32
01/01/2012 to 12/31/2012	1	TD Emerald 2050 Retirement Target Date Pooled Fund Trust - Units	2,670,907.91	226,321.67
01/01/2012 to 12/31/2012	6	TD Emerald 20+ Strip Bond Pooled Fund Trust - Units	124,747,942.49	10,629,638.47

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/01/2012 to 12/31/2012	1	TD Emerald Active Canadian Long Bond Pooled Fund Trust - Units	85,454,134.75	8,544,524.82
01/01/2012 to 12/31/2012	1	TD Emerald Active Canadian Long Bond Pooled Fund Trust - Units	85,454,134.75	8,544,524.82
01/01/2012 to 12/31/2012	3	TD Emerald Active Core Canadian Bond Pooled Fund Trust - Units	58,673,410.96	5,591,389.01
01/01/2012 to 12/31/2012	32	TD Emerald Canadian Bond Pooled Fund Trust - Units	246,357,717.14	22,351,893.24
01/01/2012 to 12/31/2012	1	TD Emerald Canadian Core Plus Bond Pooled Fund Trust - Units	25,960,000.00	2,552,425.05
01/01/2012 to 12/31/2012	4	TD Emerald Canadian Equity Market Neutral Fund - Units	3,361,757.84	365,418.88
01/01/2012 to 12/31/2012	12	TD Emerald Canadian Equity Market Pooled Fund Trust II - Units	52,386,661.40	7,168,226.89
01/01/2012 to 12/31/2012	1	TD Emerald Canadian Government Bond Pooled Fund Trust - Units	29,609,165.53	2,812,389.40
01/01/2012 to 12/31/2012	13	TD Emerald Canadian Long Bond Broad Market Pooled Fund Trust - Units	123,637,873.73	10,524,331.81
01/01/2012 to 12/31/2012	21	TD Emerald Canadian Long Bond Pooled Fund Trust - Units	298,281,317.69	24,208,455.43
01/01/2012 to 12/31/2012	5	TD Emerald Canadian Long Government Bond Pooled Fund Trust - Units	114,217,257.30	9,972,111.27
01/01/2012 to 12/31/2012	13	TD Emerald Canadian Market Capped Pooled Fund Trust - Units	134,664,726.16	98,282,389.62
01/01/2012 to 12/31/2012	10	TD Emerald Canadian Real Return Bond Pooled Fund Trust - Units	33,026,165.90	2,129,742.24
01/01/2012 to 12/31/2012	4	TD Emerald Enhanced Canadian Equity Pooled Fund Trust - Units	4,381,193.28	489,404.58
01/01/2012 to 12/31/2012	2	TD Emerald Enhanced Hedged U.S. Equity Pooled Fund Trust - Units	1,482,757.49	204,518.50
01/01/2012 to 12/31/2012	3	TD Emerald Enhanced U.S. Equity Pooled Fund Trust - Units	5,140,007.06	407,870.44
01/01/2012 to 12/31/2012	13	TD Emerald Global Equity Pooled Fund Trust - Units	331,847,307.47	51,228,315.23
01/01/2012 to 12/31/2012	4	TD Emerald Hedged Synthetic International Equity Pooled Fund Trust - Units	91,794,553.54	10,778,945.40
01/01/2012 to 12/31/2012	7	TD Emerald Hedged Synthetic U.S. Equity Pooled Fund Trust - Units	26,047,737.26	3,149,729.00
01/01/2012 to 12/31/2012	8	TD Emerald Hedged U.S. Equity Pooled Fund Trust II - Units	28,701,962.68	2,940,476.75
01/01/2012 to 12/31/2012	3	TD Emerald Low Volatility All World Equity Pooled Fund Trust - Units	52,984,805.07	5,004,674.47
01/01/2012 to 12/31/2012	16	TD Emerald Low Volatility Canadian Equity Pooled Fund Trust - Units	193,051,905.56	14,600,068.80

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/01/2012 to 12/31/2012	10	TD Emerald Low Votality Global Equity Pooled Fund Trust - Units	43,896,398.86	3,591,562.72
01/01/2012 to 12/31/2012	6	TD Emerald North American Equity Pairs Fund - Units	4,867,722.93	533,590.55
01/01/2012 to 12/31/2012	26	TD Emerald Pooled U.S. Fund - Units	265,277,838.07	13,455,284.09
01/01/2012 to 12/31/2012	1	TD Emerald Provincial Long Bond Pooled Fund Trust - Units	39,264,257.41	3,442,039.63
01/01/2012 to 12/31/2012	1	TD Emerald Retirement Income Pooled Fund Trust - Units	684,814.95	65,976.91
01/01/2012 to 12/31/2012	1	TD Emerald Retirement Income Pooled Fund Trust - Units	684,814.95	65,976.91
01/01/2012 to 12/31/2012	4	TD Emerald U.S. Equity Market Neutral Fund - Units	3,051,028.33	280,894.44
01/01/2012 to 12/31/2012	3	TD Lancaster Balanced Fund II - Units	970,926.63	103,347.68
01/01/2012 to 12/31/2012	2	TD Lancaster Canadian Equity Fund - Units	3,572,551.51	457,641.29
01/01/2012 to 12/31/2012	17	TD Lancaster Fixed Income Fund II - Units	186,413,390.18	12,770,270.79
01/30/2013 to 03/15/2013	6	Telson Resources Inc. - Units	630,000.00	6,300,000.00
04/02/2013	140	Terrace Energy Corp. - Notes	25,000,000.00	140.00
03/12/2013	2	The Geo Group, Inc. - Notes	3,084,403.20	2.00
02/28/2013	9	The Hertz Corporation - Notes	6,093,600.00	9.00
10/21/2012	2	Trilennium Solutions Inc. - Common Shares	30,000.00	600,000.00
03/26/2013	1	United States Steel Corporation - Note	2,033,200.00	1.00
03/28/2013	4	Vista Gold Corp. - Common Shares	0.00	125,798.00
04/01/2013	1	VMS Ventures Inc. - Common Shares	21,250.00	62,500.00
03/27/2013	15	Walter Energy, Inc. - Notes	6,463,665.00	15.00
03/14/2013	41	Walton AZ Coolidge Landing Investment Corporation - Common Shares	671,420.00	67,142.00
03/14/2013	4	Walton AZ Coolidge Landing LP - Units	734,153.59	71,381.00
03/14/2013	52	Walton CA Highland Falls Investment Corporation - Common Shares	1,293,360.00	32,334.00
03/14/2013	16	Walton CA Highland Falls LP - Units	1,059,689.77	41,213.00
03/14/2013	25	Walton Income 6 Investment Corporation - Common Shares	889,000.00	2,500.00
03/14/2013	15	Walton U.S. Dollar Income I Corporation - Bonds	150,803.82	9,779.75

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
03/13/2013	2	WireIE Holdings International Inc. - Debentures	5,000,000.00	2.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Aston Hill Global Resource & Infrastructure Class
Aston Hill Global Resource & Infrastructure Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated April 8, 2013
NP 11-202 Receipt dated April 10, 2013
Offering Price and Description:
Series A, F and I shares and Series A, F and I units
Underwriter(s) or Distributor(s):
Aston Hill Asset Management Inc.
Promoter(s):
Aston Hill Asset Management Inc.
Project #2042909

Issuer Name:
CARS and PARS Programme
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated April 10, 2013
NP 11-202 Receipt dated April 10, 2013
Offering Price and Description:
Coupons And ResidualS (''CARS'') and and Par Adjusted Rate Securities (''PARS'') Programme
(''CARS and PARS Programme'')
Strip Coupons, Strip Residuals and Strip Packages (including packages of Strip Coupons and PARS) derived by RBC Dominion Securities Inc., BMO Nesbitt Burns Inc., CIBC World Markets Inc., National Bank Financial Inc.,
Scotia Capital Inc. and TD Securities Inc. from up to Cdn $5,000,000,000.00 of Debt Obligations of Various Canadian Corporations, Trusts and Partnerships
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC
CIBC WORLD MARKETS INC
NATIONAL BANK FINANCIAL INC
SCOTIA CAPITAL INC
TD SECURITIES INC.
Promoter(s):
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC
CIBC WORLD MARKETS INC
NATIONAL BANK FINANCIAL INC
SCOTIA CAPITAL INC
TD SECURITIES INC.
Project #2043137

Issuer Name:
Dundee Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated April 15, 2013
NP 11-202 Receipt dated April 15, 2013
Offering Price and Description:
$200,005,000.00 - 5,525,000 REIT Units, Series A
Price: $36.20 per Unit
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
CANACCORD GENUITY CORP.
DUNDEE SECURITIES LTD.
BROOKFIELD FINANCIAL CORP.
DESJARDINS SECURITIES INC.
HSBC SECURITIES (CANADA) INC.
NATIONAL BANK FINANCIAL INC.
Promoter(s):
-
Project #2044809

Issuer Name:
Eclipse Residential Mortgage Investment Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated April 9, 2013
NP 11-202 Receipt dated April 10, 2013
Offering Price and Description:
Maximum: $100,000,000.00 -10,000,000 Class A Shares
$10.00 per Class A Share
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
Promoter(s):
MCAP FINANCIAL CORPORATION
Project #2042915

Issuer Name:
EnerVest Diversified Income Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated April 9, 2013
NP 11-202 Receipt dated April 9, 2013
Offering Price and Description:
Warrants to Subscribe for up to * Units at a Subscription Price of $ *
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2042773

Issuer Name:
Leisureworld Senior Care Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated April 10, 2013
NP 11-202 Receipt dated April 10, 2013
Offering Price and Description:
$68,510,000.00 - 5,525,000 Subscription Receipts each representing the right to receive one Common Share
Price: $12.40 per Subscription Receipt and
$40,000,000.00 4.65% Extendible Convertible Unsecured Subordinated Debentures
Price:$1000.00 per Debenture
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
CANACCORD GENUITY CORP.
RAYMOND JAMES LTD.
MACQUARIE CAPITAL MARKETS CANADA LTD.
NATIONAL BANK FINANCIAL INC.
Promoter(s):
-
Project #2043154

Issuer Name:
Master Credit Card Trust II
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated April 12, 2013
NP 11-202 Receipt dated April 12, 2013
Offering Price and Description:
Up to $4,000,000,000.00 Credit Card Receivables-Backed Notes
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Promoter(s):
Bank of Montreal
Project #2044317

Issuer Name:
North American Preferred Share Fund (formerly North American Preferred Share Advantage Fund)
Principal Regulator - Ontario
Type and Date:
Amendment dated April 12, 2013 to Preliminary Long Form Prospectus dated February 28, 2013
NP 11-202 Receipt dated April 12, 2013
Offering Price and Description:
Maximum: $* - * Unit
$25.00 per Unit
Minimum Purchase: 100 Units
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
GMP Securities L.P.
Scotia Capital Inc.
TD Securities Inc.
Macquarie Private Wealth Inc.
Raymond James Ltd.
Canaccord Genuity Corp.
Desjardins Securities Inc.
Dundee Securities Ltd.
Manulife Securities Incorporated
Promoter(s):
Propel Capital Corporation
Project #2020496

Issuer Name:
Polymet Mining Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated April 10, 2013
NP 11-202 Receipt dated April 10, 2013
Offering Price and Description:
US$60,000,000.00 Offering of Rights to Subscribe for up to * Common Shares
Price: US$ * per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2043251

Issuer Name:
Timbercreek U.S. Multi-Residential Opportunity Fund #1
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated dated April 8, 2013
NP 11-202 Receipt dated April 9, 2013
Offering Price and Description:
Maximum: C$50,000,000.00 of Class A Units and/or Class B Units
Maximum * Class A Units and/or * Class B Units
Price: C$* per Class A Unit and C$* per Class B Unit
Minimum Purchase: 1,000 Class A Units or 500,000 Class B Units
Underwriter(s) or Distributor(s):
RAYMOND JAMES LTD.
CIBC WORLD MARKETS INC.
GMP SECURITIES L.P.
MANULIFE SECURITIES INCORPORATED
NATIONAL BANK FINANCIAL INC.
BMO NESBITT BURNS INC.
CANACCORD GENUITY CORP.
SCOTIA CAPITAL INC.
DUNDEE SECURITIES LTD.
MACQUARIE CAPITAL MARKETS CANADA LTD.
Promoter(s):
TIMBERCREEK ASSET MANAGEMENT INC.
Project #2041675

Issuer Name:
Wolfpack Capital Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary CPC Prospectus dated April 11, 2013
NP 11-202 Receipt dated April 12, 2013
Offering Price and Description:
Minimum Offering: $200,000.00.00 - 2,000,000 Common Shares
Maximum Offering: $300,000.00.00 - 3,000,000 Common Shares
Price: $0.10 per Offered Share
Underwriter(s) or Distributor(s):
Macquarie Private Wealth Inc.
Promoter(s):
Wolfpack Capital Corp.
Project #2044512

Issuer Name:
Black Birch Capital Acquisition III Corp.
Principal Regulator - Ontario
Type and Date:
Amendment dated April 5, 2013 to Final CPC Prospectus dated January 16, 2013
NP 11-202 Receipt dated April 12, 2013
Offering Price and Description:
Minimum Offering: $300,000.00 or 3,000,000 Common Shares
Maximum Offering: $1,900,000.00 or 19,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Macquarie Private Wealth Inc.
Promoter(s):
Paul Haber
Project #1994530

Issuer Name:
CARFINCO FINANCIAL GROUP INC.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated April 10, 2013
NP 11-202 Receipt dated April 10, 2013
Offering Price and Description:
$15,015,000.00 Treasury Offering - (1,540,000 common shares)
$7,020,000.00 Secondary Offering - (720,000 common shares)
Price: $9.75 per Offered Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Stonecap Securities Inc.
Industrial Alliance Securities Inc.
Promoter(s):
-
Project #2039712

Issuer Name:
Horizons Australian Dollar Currency ETF
Horizons US Dollar Currency ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated April 11, 2013
NP 11-202 Receipt dated April 15, 2013
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2024320

Issuer Name:
Industrial Alliance Insurance and Financial Services inc.
Principal Regulator - Quebec
Type and Date:
Final Shelf Prospectus dated April 10, 2013
NP 11-202 Receipt dated April 10, 2013
Offering Price and Description:
$1,000,000,000.00.00 - Debt Securities, Class A Preferred Shares, Common Shares, Subscription Receipts, Warrants, Share Purchase Contracts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2031220

Issuer Name:
iShares Diversified Monthly Income Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated April 9, 2013
NP 11-202 Receipt dated April 11, 2013
Offering Price and Description:
Mutual Fund Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Blackrock Asset Management Canada Limited
Promoter(s):
-
Project #2026751

Issuer Name:
iShares Dow Jones Canada Select Growth Index Fund
iShares S&P/TSX SmallCap Index Fund
iShares Dow Jones Canada Select Value Index Fund
iShares Dow Jones Canada Select Dividend Index Fund
iShares S&P/TSX Capped Energy Index Fund
iShares S&P/TSX Equity Income Index Fund
iShares Jantzi Social Index Fund
iShares S&P/TSX Capped Financials Index Fund
iShares S&P/TSX Capped Composite Index Fund
iShares S&P/TSX Capped Information Technology Index Fund
iShares S&P/TSX 60 Index Fund
iShares S&P/TSX Capped Materials Index Fund
iShares S&P/TSX Completion Index Fund
iShares S&P/TSX Capped REIT Index Fund
iShares S&P/TSX Capped Consumer Staples Index Fund
iShares S&P/TSX Capped Utilities Index Fund
iShares S&P/TSX Venture Index Fund
iShares DEX Universe Bond Index Fund
iShares DEX All Corporate Bond Index Fund
iShares DEX Floating Rate Note Index Fund
iShares DEX All Government Bond Index Fund
iShares DEX HYBrid Bond Index Fund
iShares DEX Long Term Bond Index Fund
iShares DEX Real Return Bond Index Fund
iShares DEX Short Term Bond Index Fund
iShares DEX Short Term Corporate Universe + Maple Bond Index Fund
iShares MSCI Brazil Index Fund
iShares China Index Fund
iShares MSCI Emerging Markets IMI Index ETF
iShares MSCI EAFE IMI Index ETF
iShares MSCI Emerging Markets Index Fund
iShares CNX Nifty India Index ETF (formerly iShares S&P CNX Nifty India Index Fund)
iShares S&P Latin America 40 Index Fund
iShares S&P 500 Index ETF
iShares MSCI World Index Fund
iShares S&P/TSX Global Base Metals Index Fund
iShares S&P/TSX Global Gold Index Fund
iShares S&P Global Healthcare Index Fund (CAD-Hedged)
iShares U.S. High Dividend Equity Index Fund (CAD-Hedged)
iShares MSCI EAFE Index Fund (CAD-Hedged)
iShares NASDAQ 100 Index Fund (CAD-Hedged)
iShares S&P 500 Index Fund (CAD-Hedged)
iShares Russell 2000 Index Fund (CAD-Hedged)
iShares S&P/TSX North American Preferred Stock Index Fund (CAD-Hedged)
iShares J.P. Morgan USD Emerging Markets Bond Index Fund (CAD-Hedged)
iShares U.S. High Yield Bond Index Fund (CAD-Hedged)
iShares U.S. IG Corporate Bond Index Fund (CAD-Hedged)
iShares MSCI EAFE Minimum Volatility Index Fund
iShares MSCI Emerging Markets Minimum Volatility Index Fund
iShares MSCI USA Minimum Volatility Index Fund
iShares MSCI Canada Minimum Volatility Index Fund
iShares MSCI All Country World Minimum Volatility Index Fund
Principal Regulator - Ontario

Type and Date:
Final Long Form Prospectus dated April 9, 2013
NP 11-202 Receipt dated April 10, 2013
Offering Price and Description:
Mutual Fund Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Blackrock Asset Management Canada Limited
BlackRock Asset Management Canada Limited
Promoter(s):
-
Project #2026766

Issuer Name:
NEI Ethical American Multi-Strategy Fund (formerly Ethical American Multi-Strategy Fund)
NEI Ethical Balanced Fund (formerly Ethical Balanced Fund)
NEI Ethical Canadian Dividend Fund (formerly Ethical Canadian Dividend Fund)
NEI Ethical Global Dividend Fund (formerly Ethical Global Dividend Fund)
NEI Ethical Global Equity Fund (formerly Ethical Global Equity Fund)
NEI Ethical Growth Fund (formerly Ethical Growth Fund)
NEI Ethical International Equity Fund (formerly Ethical International Equity Fund)
NEI Ethical Select Canadian Balanced Portfolio (formerly Ethical Select Canadian Balanced Portfolio)
NEI Ethical Select Canadian Growth Portfolio (formerly Ethical Select Canadian Growth Portfolio)
NEI Ethical Select Conservative Portfolio (formerly Ethical Select Conservative Portfolio)
NEI Ethical Select Global Balanced Portfolio (formerly Ethical Select Global Balanced Portfolio)
NEI Ethical Select Global Growth Portfolio (formerly Ethical Select Global Growth Portfolio)
NEI Ethical Select Income Portfolio (formerly Ethical Select Income Portfolio)
NEI Ethical Special Equity Fund (formerly Ethical Special Equity Fund)
NEI Canadian Bond Fund (formerly Ethical Income Fund)
NEI Income Fund
NEI Money Market Fund (formerly Northwest Money Market Fund)
NEI Northwest Canadian Dividend Fund (formerly Northwest Canadian Dividend Fund)
NEI Northwest Canadian Equity Fund (formerly Northwest Canadian Equity Fund)
NEI Northwest EAFE Fund (formerly Northwest EAFE Fund)
NEI Northwest Global Equity Fund (formerly Northwest Global Equity Fund)
NEI Northwest Growth and Income Fund (formerly Northwest Growth and Income Fund)
NEI Northwest Macro Canadian Asset Allocation Fund (formerly Northwest Macro Canadian Asset Allocation Fund)
NEI Select Canadian Balanced Portfolio (formerly Northwest Select Canadian Balanced Portfolio)
NEI Select Canadian Growth Portfolio (formerly Northwest Select Canadian Growth Portfolio)
NEI Select Conservative Portfolio (formerly Northwest Select Conservative Portfolio)
NEI Select Global Balanced Portfolio (formerly Northwest Select Global Balanced Portfolio)
NEI Select Global Growth Portfolio (formelry Northwest Select Global Growth Portfolio)
NEI Select Global Maximum Growth (formerly Northwest Select Global Maximum Growth Portfolio)
NEI Northwest Specialty Equity Fund (formerly Northwest Specialty Equity Fund)
NEI Northwest Specialty Global High Yield Bond Fund (formerly Northwest Specialty Global High Yield Bond Fund)

NEI Northwest Specialty Growth Fund Inc. (formerly Northwest Specialty Growth Fund Inc.)
NEI Northwest Specialty High Yield Bond Fund (formerly Northwest Specialty High Yield Bond Fund)
NEI Northwest Macro Canadian Equity Fund (formerly Northwest Specialty Innovations Fund)
NEI Northwest Tactical Yield Fund (formerly Northwest Tactical Yield Fund)
NEI Northwest U.S. Dividend Fund (formerly NEI Northwest U.S. Equity Fund)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated March 1, 2013 to Final Simplified Prospectus, Annual Information Form and Fund Facts (NI 81-101) dated July 3, 2012
NP 11-202 Receipt dated April 11, 2013
Offering Price and Description:
Series A, Series F and Series I securities @ Net Asset Value
Underwriter(s) or Distributor(s):
Credential Asset Management Inc.
Credential Asset Management Inc.
Credential Asset Management
n/a
Promoter(s):
Northwest & Ethical Investments Inc.
Project #1917486

Issuer Name:
NEI Ethical Growth Fund (formerly Ethical Growth Fund)
NEI Ethical Select Canadian Balanced Portfolio (formerly Ethical Select Canadian Balanced Portfolio)
NEI Ethical Select Canadian Growth Portfolio (formerly Ethical Select Canadian Growth Portfolio)
NEI Northwest Specialty Growth Fund Inc. (formerly Northwest Specialty Growth Fund Inc.)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated March 1, 2013 to Final Simplified Prospectus and Annual Information Form dated July 3, 2012
NP 11-202 Receipt dated April 11, 2013
Offering Price and Description:
Series A, Series F and Series I Securities
Underwriter(s) or Distributor(s):
Credential Asset Management Inc.
Credential Asset Management Inc.
Credential Asset Management
Promoter(s):
Northwest & Ethical Investments Inc.
Project #1917486

Issuer Name:
NEI Northwest EAFE Corporate Class (formerly Northwest EAFE Corporate Class)
NEI Northwest U.S. Dividend Corporate Class (formerly NEI Northwest U.S. Equity Corporate Class)
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated March 21, 2013 to Final Simplified Prospectus and Annual Information Form dated October 31, 2012
NP 11-202 Receipt dated April 10, 2013
Offering Price and Description:
Series A and F Securities
Underwriter(s) or Distributor(s):
Credential Asset Management Inc.
Credential Asset Management Inc.
Promoter(s):
Northwest & Ethical Investments L.P.
Project #1965610

Issuer Name:
Sprott Enhanced Balanced Fund
Sprott Enhanced Equity Class
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated April 5, 2013
NP 11-202 Receipt dated April 9, 2013
Offering Price and Description:
Series A, Series A1, Series F, Series F1 and Series I, Series T and Series FT Securities @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
SPROTT ASSET MANAGEMENT LP
Project #2018687

Issuer Name:
Sprott Gold Bullion Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated April 5, 2013
NP 11-202 Receipt dated April 9, 2013
Offering Price and Description:
Series A, Series F and Series I Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
SPROTT ASSET MANAGEMENT LP
Project #2019316

Issuer Name:
TD Emerald Balanced Fund
TD Emerald Canadian Bond Index Fund
TD Emerald Canadian Equity Index Fund
TD Emerald Canadian Short Term Investment Fund
TD Emerald Canadian Treasury Management - Government of Canada Fund
TD Emerald Canadian Treasury Management Fund
TD Emerald International Equity Index Fund
TD Emerald U.S. Market Index Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus, Annual Information Form and Fund Facts dated April 11, 2013
NP 11-202 Receipt dated April 12, 2013
Offering Price and Description:
Institutional Class and Class B Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
TD Asset Management Inc.
Project #2017321

Issuer Name:
TD Private Bond Capital Yield Fund
TD Private Canadian Blue Chip Dividend Fund
TD Private Canadian Blue Chip Equity Fund
TD Private Canadian Bond Income Fund
TD Private Canadian Bond Return Fund
TD Private Canadian Corporate Bond Fund
TD Private Canadian Diversified Yield Fund
TD Private Canadian Equity Plus Fund
TD Private Canadian Strategic Opportunities Fund
TD Private Canadian Value Fund
TD Private International Equity Fund
TD Private International Stock Fund
TD Private Target Return Fund
TD Private Target Return Plus Fund
TD Private U.S. Blue Chip Equity Currency Neutral Fund
TD Private U.S. Blue Chip Equity Fund
TD Private U.S. Corporate Bond Fund
TD Private U.S. Mid-Cap Equity Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated March 27, 2013
NP 11-202 Receipt dated April 9, 2013
Offering Price and Description:
Mutual Fund Units at Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
TD Asset Management Inc.
Project #2014803

Issuer Name:
Vanguard FTSE Canada Index ETF (formerly Vanguard MSCI Canada Index ETF))
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated March 28, 2013 to Final Long Form Prospectus dated October 15, 2012
NP 11-202 Receipt dated April 9, 2013
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Vanguard Investments Canada Inc.
Project #1957989

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change of Registration Category	PineBridge Investments Canada Inc.	From: Investment Fund Manager , Portfolio Manager and Exempt Market Dealer To: Portfolio Manager and Exempt Market Dealer	April 4, 2013
Change of Registration Category	Altrinsic Global Advisors, LLC	From: Portfolio Manager and Exempt Market Dealer To: Portfolio Manager, Exempt Market Dealer and Investment Fund Manager	April 9, 2013
New Registration	Cado Investment Fund Management Inc.	Investment Fund Manager	April 12, 2013
Change of Registration Category	Fairbank Investment Management Limited	From: Portfolio Manager To: Portfolio Manager and Investment Fund Manager	April 15, 2013
Consent to Suspension (Pending Surrender)	CFI Capital Inc.	Investment Fund Manager	April 15, 2013

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Chapter 13

SROs, Marketplaces and Clearing Agencies

13.2 Marketplaces

13.2.1 Lynx ATS – Notice of Initial Operations Report and Request for Comment

LYNX ATS

NOTICE OF INITIAL OPERATIONS REPORT AND REQUEST FOR COMMENT

Omega Securities Inc (OSI) intends to begin operating a second trading platform Lynx ATS. This Notice of Initial Operations is being published in accordance with the process established in OSC Staff Notice 21-706 *Marketplaces' Initial Operations and Material System Changes*. In accordance with OSC Staff Notice 21-706, the Ontario Securities Commission and OSI request participants to provide comment on the information provided in this Notice. Comments on the proposed changes should be in writing and submitted by Tuesday, May 21, 2013 to:

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

And

Richard J. Millar
Chief Compliance Officer
Omega Securities Inc.
100 Lombard St. Suite 101
Toronto, ON M5C 1M3
Richard.millar@omegaats.com

Comments received will be made public on the OSC website. Upon completion of the review by OSC staff, and in the absence of any regulatory concerns, notice will be published to confirm the completion of Commission staff's review and to outline the intended date for the commencement of operations.

If you have any questions concerning the information below please contact Richard J Millar, CCO for Omega ATS, at 416 646 2764 or Richard.millar@omegaats.com

Overview

Omega Securities Inc (OSI) the parent company of Omega ATS intends to introduce a second trading marketplace, Lynx ATS, in Q4 of 2013. With the consolidation of Maple and the recent approval of CX2, OSI believes it is necessary for its competitiveness to operate a second marketplace. With the Maple driven market consolidation, the emergence of new marketplaces is the only way to ensure the competitive pricing and innovative solutions our industry requires. OSI will have no additional charges for Lynx ATS market data, connection fees, and subscription fees. With respect to trading fees, OSI is proposing to introduce a maker/taker model for Lynx ATS.

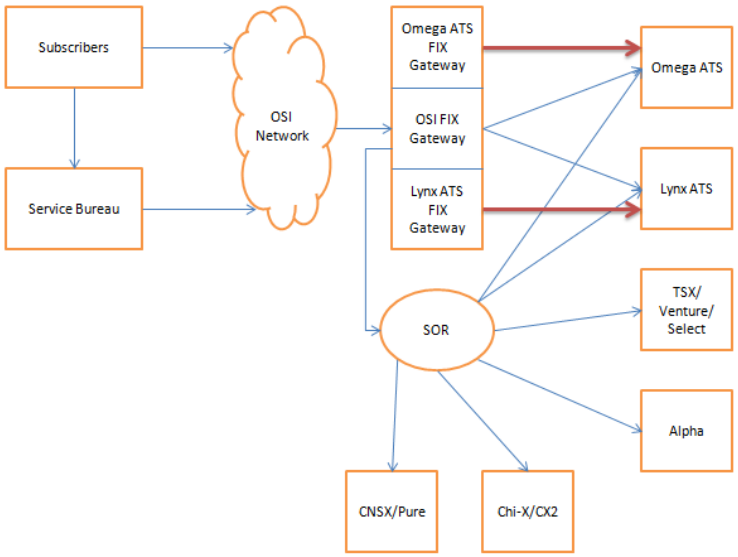
Lynx ATS will initially have all the same order types and functionality of Omega ATS, having two marketplaces will allow OSI to tailor our innovative pricing, services and order types to the various segments of the trading community.

Subscription

All subscribers currently subscribed to Omega ATS will be eligible to subscribe to Lynx ATS. Subscribers may opt to subscribe to either Omega ATS, Lynx ATS or both. Lynx ATS will have no additional connectivity, data fee, or membership fee. Each subscriber must be:

- A member in good standing of IIROC, registered as a dealer with at least one Canadian provincial securities regulatory authority,
- be a Clearing and Depository Services Inc (CDS) participant or have a clearing arrangement with a carrying broker, custodian, or other institution that is a CDS participant.
- A subscriber that has executed a Subscriber Agreement and has a Subscriber Information Form on file with OSI, the parent company of Omega ATS and Lynx ATS.

Access To Lynx ATS



Subscribers will access Lynx ATS by way of existing IP-based infrastructures, such as secure VPN Internet portals or existing commercial vertical networks. Lynx ATS will be accessible to any secure IP network, including private Broker-to-Broker networks.

As illustrated above Omega ATS and Lynx ATS operate separately, there is no requirement to subscribe to both marketplaces. Subscribers, have the option of connecting to Lynx ATS through their existing Omega ATS FIX connection, through our SOR, or to connect directly to Lynx ATS only. FIX connections that are directly connected to Lynx ATS only will not be able to access Omega ATS.

Subscribers may interface their OMS software with Lynx ATS by writing to Lynx's standards based FIX 4.2 API for order entry. All displayed orders (*i.e.*, full depth of book) are provided to our subscribers and to any valid market data vendor.

Order Matching and Execution

Lynx ATS is a fully automated system. Order-entry, order matching, and trade executions are fully automated. Orders are entered electronically by subscribers and match according to the established, non-discretionary methods embedded in the Lynx ATS matching engine (Thymex).

Full Depth-of-Book Visibility

Lynx ATS will publicly disseminate pre-trade order data in real-time and electronically through one or more information vendors. Lynx ATS order and trade information is to be disseminated as part of the Information Processors Consolidated Data Feed (CDF) and the Canadian Best Bid/Best Offer (CBBO), from where it will be redistributed by data vendors. The principal order-entry systems will also disseminate order and trade information real-time to their users.

Price/Time Priority

All eligible orders will match within Lynx ATS according to a strict price/time priority (with the exception of intentional crosses, which will be granted time priority over other orders on the book at the same price level).

Price Increments

Price increments comply with the minimum permitted under UMIR: currently, full penny increments, except for stocks trading at less than $0.50, which may be traded at half-penny increments. Mid-market pegged orders may execute at sub-UMIR increments. Government of Canada debt issues and corporate debt securities will trade in 1/10,000th of a cent increment.

Board Lot Sizes

Board lot sizes will be set to equal Standard Trading Units (as defined under the UMIR) based on the previous-day closing price on the listing exchange on which the stock is listed.

Trading Hours

OSI will operate Lynx ATS as a continuous auction market operating from 8:30 a.m. to 5:00 p.m. Eastern Time.

Securities Traded

Lynx ATS will support the trading of TSX-listed and TSX Venture-listed securities, CNSX-listed, NYSE-listed (in Canada in Canadian Dollars), NASDAQ-listed (in Canada in Canadian dollars), AMEX-listed securities (in Canada in Canadian dollars), listed and unlisted Government of Canada Fixed Income securities and Canadian corporate (public corporations) Fixed Income securities.

Market Data and Trade Reporting

Lynx ATS will report accurate and timely information regarding its trade executions for Canadian listed stocks to all information vendors carrying the Lynx ATS market data feed including the information processor TMX Datalinx. The Lynx ATS market data feed is a separate feed from Omega ATS, but utilizes the same ITCH 3.0 and SOUP 2.0 protocol for unicast, or OSI's proprietary lightway protocol for multicast. In addition, all principal order-entry applications used by dealers in Canada (IRESS, Fidessa, Frontline, Exegy, ORC Software and ITS) will display real-time Lynx ATS order and trade data.

Electronic confirmations of the principal trade details (execution price, volume and time of execution) will be sent to subscribers upon execution. This will include the attributes for the order including, time order was submitted into the Lynx ATS system, broker and trader ID, account type, regulation ID, symbol, price, side, size, executed portion, order changes and price if applicable. The drop copy will be generated near real time and sent to the recipient when the order is accepted into our system, or the trade is executed.

Quotations and executions for unlisted securities will be reflected near real-time on the Omega/Lynx ATS website.

As orders flow from the subscriber FIX gateways into the databases, and as executions occur, they generate the ITCH market data feed which is to be transported to subscribers via the SoupTCP unicast protocol or via a proprietary lightweight multicast protocol. This multicast feed is intended to broadcast two simultaneous ITCH market data feeds externally to multiple Lynx subscribers as an alternative to the unicast feed. This market data feed carries the full depth of book. Lynx ATS will offer a unicast only Level 1 feed which carries the top of book data as well as execution messages. Lynx ATS provides a FIX protocol-based feed to be used as the IIROC Market Regulation Feed.

Order Types and Features

Lynx ATS will support only limit orders and not market orders. All orders placed on Lynx ATS are “day” orders.

Subscribers have the option of attributing an order to their related PO or Subscriber number or entering the order anonymously. By default, all orders entered on Lynx ATS are attributed, and if a subscriber wishes to attribute, they can submit the appropriate value in the anonymous FIX tag on order entry.

The initial constraints that may be imposed on an order by Lynx ATS subscribers (in addition to the limit price) are the following:

- *Limit Order* – Lynx ATS will only execute a limit order at or better than the specified limit price in the order. Any unexecuted portion of a limit order that does not cancel will be posted to Lynx ATS at the limit price or better for price protected orders.

- *Immediate or Cancel (IOC)* – Lynx ATS will attempt to match as many shares as possible for an IOC order. The unfilled portion of the IOC order will be immediately cancelled.

- *All or None (AON)* – Lynx ATS will only fill an AON order with a matching order that has an equal or greater number of shares. The AON order will be immediately rejected if there are not enough shares to fill the order.

- *Fill or Kill (FOK)* – A Lynx ATS FOK order will be treated as identical to an AON.

- *Post Only* – A subscriber will be able to specify that an order be "Post Only" (i.e., it does not immediately remove liquidity from the order book). However, if an order marked "Post Only" is priced beyond the best price on the other side of the Lynx ATS market, then the order is rejected to prevent a crossed market. In order to prevent a locked market, if a second incoming post only order is priced at the other side of the Lynx ATS market, this order will be rejected.

Crosses

The UMIR by-pass marker will be fully supported for IOC and crosses only. Any other order type submitted to Lynx ATS with the by-pass marker will be rejected (in particular, day orders marked by-pass will be rejected).

- *Intentional By-Pass Cross* – A trade that occurs when two accounts of the same subscriber buy and sell the same security at an agreed price and volume. Crosses on Lynx ATS will receive time priority. All intentional crosses on Lynx are by-pass crosses. They will not interact with hidden liquidity. All crosses must be flagged by the user with the Intentional By-Pass Cross and DAO markers. Intentional By-Pass Crosses not so marked by the user will be rejected by Lynx ATS. **Since it is a subscriber's responsibility to displace better priced liquidity in the context of the CBBO prior to putting up a by-pass cross outside the context of the current market, an Intentional By-Pass Cross outside the bid ask spread is not interfered with by same-priced liquidity or better priced hidden liquidity.**

- *Internal By-Pass Cross* – A trade identical to the Intentional By-Pass Cross except the originating orders from the subscriber is between managed accounts that have the same beneficial owner. An Internal By-Pass cross marker will be automatically attached to the trade-print by Lynx ATS to be disseminated publicly over the Lynx ATS market data feed.

- *Basis Cross* **–** A trade whereby a basket of securities or an index participation unit is transacted at prices achieved through the execution of related exchange-traded derivative instruments which may include index futures, index options and index participation units in an amount that will correspond to an equivalent market exposure. A Basis Cross will not be subject to any interference. In accordance with UMIR, prior to execution, the subscriber shall report details of the transaction to IIROC.

- *VWAP Cross* **–** A transaction for the purpose of executing a trade at a volume-weighted average price of a security traded for a continuous period on or during a trading day on Canadian exchanges or alternative trading systems. The volume weighted average price is the ratio of value traded to total volume. In accordance with UMIR, where applicable, prior to execution, the subscriber shall report details of the transaction to IIROC.

Other Order Types

- *Pegged Order* – The order will allow subscribers to peg orders to the near, mid or far-side of the market as determined by the CBBO, with a limit price which is the maximum match price for a buy or the minimum match price of a sell order. Pegged order matching logic is based strictly on price-time priority and will match as if they were limit orders at that price. A pegged order loses time priority every time it is re-priced. Subscribers will have the option of specifying an offset on the order that will increment or decrement the price of the order from the appropriate peg level: near, mid or far.

- Primary Peg orders are visible orders which will peg to the CBBO on the same side of the pegged order. A Primary Peg buy order will peg to the best bid and a Primary Peg sell order will peg to the best offer. Only a "0" offset is supported for the Primary Peg order type.

- Market Peg orders are visible orders which will peg to the CBBO on the opposite side of the pegged order. A Market Peg buy order will peg to the best offer and a Market Peg sell order will peg to the best bid. Market Peg orders must have an offset value greater than "0" to prevent locked or crossed markets.

- Peg Offsets are used to adjust the peg price by a specified increment either closer to or further away from the pegged orders reference price.

- Mid Point Peg orders are hidden orders that are always priced at the mid point between the CBBO. These orders can execute at the half penny for stocks with one penny tick increments and at the quarter penny for stocks with half penny increments dependent on the mid point calculation at the time of execution. As with all of Lynx ATS' pegged orders, subscribers can specify a limit price.

- *Iceberg Order* – Iceberg orders are limit orders that allow our subscribers to enter the full quantity of their limit order, but exposes to the market book only a fraction of the full order (minimum one board lot). The iceberg order will refresh the fractional quantity selected automatically until the full quantity of the order is completed. The undisclosed volume will have no priority over disclosed volumes at a given price. The "refreshed volume" created after the fulfilling of a disclosed fraction of the complete order will take its natural place in time sequence at a given price as any new order.

- *Odd Lot/ Mixed Lot facility* (to be available Q1 2014 after launch) – The Odd Lot/ Mixed Lot facility for Lynx ATS (provided by OSI), provides additional competition in this limited market segment. OSI's odd lot facility (also found on Omega ATS) will be the only such facility to offer single share odd lot trading, (all other marketplaces only have All or Nothing orders). Any odd lot order placed on the Lynx ATS will be able to trade in increments as little as a single share. The Lynx ATS odd lot book will rely on natural price discovery and allow the auction of odd lot portions down to as little as one share without the intervention of market makers.

  Odd lots are quantities that do not conform to the regular board lots which are determined by the prior days' closing price. A board lot is 100 shares for a security with a previous day closingprice at or greater than $1.00, 500 shares for a security with a previous day closing price at or greater than $0.10 but less than $1.00, and 1000 shares for a security with a previous day closing price less than $0.10.

- *Opening Limit Bid/Offer (SOR/OPR)* – (OLBO) (to be available Q1 2014 after launch) This order type is intended to encourage immediate post-open participation on Lynx ATS by placing the orders to the top of book at the open.

  OLBO orders will only be able to be submitted prior to the TSX market open of 9:30am. When the order is accepted by Lynx ATS, the order will be held in an inactive state during the pre-market phase, between the Lynx ATS open at 8:30am until the TSX COP dissemination at approximately 9:30am. The OLBO will not interact with any liquidity during this time. When the *TSX COP is disseminated, all OLBO orders will become active, taking on an aggressive or passive nature dependent on the COP price relative to the CBBO at the open. Passive orders will automatically be posted at the best bid or offer and aggressive orders can be flagged to route or be re-priced by the OPR marker*.

Other System Capabilities of the Lynx ATS trading engine:

Order Protection

Lynx ATS will offer subscribers order protection functions which would include, the ability to re-price, cancel, route the order away, or submit the order as a DAO with no protection. By default, the order protection feature is active and has been set to automatically re-price the order prior to being booked to Lynx ATS. A re-priced order will fall into conventional time price priority after re-pricing, the order loses time priority every time it is re-priced. Subscribers have the ability to specify their own defaults by order entry session with individual order over-rides.

Self-trade prevention

Lynx ATS will offer a self-trade prevention option for our subscribers, in order to prevent orders from the same trader ID or within the same firm from trading against each other. Upon request, Lynx ATS will provide a subscriber with a value to include in the self trade prevention FIX tag. When two orders with the same self-trade prevention value would interact, one of the orders would be cancelled. The side that is cancelled, active or passive is configurable at the firm level. All orders belonging to this firm will follow this setting. Lynx ATS will provide multiple self-trade prevention values to a broker so a group of trader IDs may be set prevent self-trading, but still interact with other internal liquidity.

Risk Controls

Lynx ATS will provide our subscribers with features to limit their risk when trading on Lynx ATS. In conjunction with the self-trade prevention, Lynx ATS will offer additional controls giving subscribers the ability to set limits on the size, and or the value of the order, per order, per trader, or aggregate of traders. When a subscriber submits an order which would exceed the limit of their exposure, the order will be rejected by indicating the order exceeds limit parameters. When orders are cancelled and the outstanding volume or value moves below the preset threshold, additional orders will be accepted again. Volume and value limits will be set in advance and cannot be modified intraday.

Clearly Erroneous Trade Policy

IIROC has the authority to amend orders and/or cancel trades. Lynx ATS will have the ability to amend and cancel trades. In the event of a voluntary bust (where both counter parties agree to the cancellation), Lynx ATS will inform IIROC of the impending action. Trades cancelled on trade date will not be included in the CDS trade file and will be removed from the trading record. In such cases, modified trade information will be included in Lynx ATS' CDS file and trading tape. In the event one party does not agree to a voluntary cancellation, the contra can contact IIROC to request a review.

In the event of a system based erroneous trade or trades, OSI would follow the following procedure:

- Upon detection by either the Subscriber or OSI the function would be halted.
- Inform all impacted parties Subscribers, Vendors, and Regulators.
- OSI would assess the condition and determine the severity and scope of the impact
- OSI would resolve the condition and report to the impacted parties (Subscribers, Vendors, Regulators).

Procedures for clearance and settlement of transactions

Lynx ATS will upload an end-of-day batch report of daily trade activity to CDS, which will clear and settle all trades under its net settlement facility. Subscribers or their Clearing Parties will thereby rely on their existing arrangements with CDS to clear and settle trades executed on Lynx ATS. Lynx ATS will not accommodate trading in any issue that is not eligible for clearing and settlement on CDS. Concerning debt securities, settlements will be conducted through CDS on a trade for trade basis on all additional securities being added to Lynx except where the security traded is eligible for CNS. Prices of executed trades for debt securities will have the accrued interest added therefore one net figure will be reported to CDS for matching and settlement purposes.

Chapter 25

Other Information

25.1 Consents

25.1.1 Falcon Gold Corp. – s. 4(b) of the Regulation

Headnote

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the Business Corporations Act (B.C.).

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 181.
Securities Act, R.S.O. 1990, c. S.5, as am.

Regulations Cited

Regulation made under the Business Corporations Act, O. Reg. 289/00, as am., s. 4(b).

IN THE MATTER OF
THE REGULATION MADE UNDER
THE BUSINESS CORPORATIONS ACT
(ONTARIO), R.S.O. 1990, c. B-16, AS AMENDED
(the "OBCA"), R.R.O. 1990, REGULATION 289/00
(the "Regulation")

AND

IN THE MATTER OF
FALCON GOLD CORP.

CONSENT
(Subsection 4(b) of the Regulation)

UPON the application of Falcon Gold Corp. (the "Applicant") to the Ontario Securities Commission (the "Commission") requesting a consent from the Commission to continue in another jurisdiction pursuant to subsection 4(b) of the Regulation;

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant was incorporated under the OBCA on November 24, 2006 under the name Chesstown Capital Inc. The Applicant changed its name to Falcon Gold Corp. on July 18, 2011. The Applicant's subsidiaries are Templer Gold Corp., a company incorporated under the laws of the Province of British Columbia, and 2287991 Ontario Inc., a company incorporated under the laws of the OBCA, both of which are wholly-owned.

2. The Applicant was initially listed as a capital pool company. Its qualifying transaction dealt with the acquisition of the shares of Apex Royalty Corporation which in turn owned the Burton Mining Property, a property currently owned and operated by the Applicant.

3. The Applicant is a Canadian mineral exploration company focused on generating, acquiring and exploring mining opportunities in the Americas. Its head and principal office is located at 855 Brant Street, Burlington, Ontario, L7R 2J6.

4. The Applicant intends to apply to the Director under the OBCA pursuant to section 181 of the OBCA for authorization to continue under the *Business Corporations Act* (British Columbia) ("BCBCA") under its current name.

5. Pursuant to subsection 4(b) of the Regulation, where a corporation is an offering corporation, its application for continuance as a corporation under the BCBCA must be accompanied by a consent from the Commission. The Applicant intends to apply for continuation under the BCBCA as soon as it receives consent from the Commission.

6. The authorized share capital of the Applicant consists of an unlimited number of common shares of which 25,756,941 common shares were issued and outstanding as fully paid and non-assessable as at March 20, 2013. The common shares are listed for trading on the TSX Venture Exchange under the symbol "FG". The Applicant's common shares are not listed on any other exchange.

7. The Applicant is an offering corporation under the OBCA and is a reporting issuer under the securities legislation of British Columbia, Alberta and Ontario. The Applicant is not a reporting issuer or the equivalent in any other jurisdiction. The Applicant intends to remain a reporting issuer in all jurisdictions in which it is currently a reporting issuer following the continuance. However, the Applicant will apply to make the British Columbia Securities Commission its principal regulator following the continuance.

8. The Applicant intends to continue trading on the TSX Venture Exchange under the symbol "FG" following the continuance.

9. The Applicant is not in default of any of the provisions of the OBCA, the securities legislation of any jurisdiction in Canada or the regulations or rules made under the securities legislation of any jurisdiction in Canada.

10. The Applicant is not a party to any proceedings or, to the best of its knowledge, information and belief, any pending proceedings under the OBCA or the securities legislation of any jurisdiction of Canada.

11. The Applicant is not in default of any rules, regulations or policies of the TSX Venture Exchange.

12. The proposed continuance form of Articles were presented to the shareholders of the Applicant for their approval at an annual and special meeting of shareholders held on October 29, 2012 (the "Meeting"), by way of a special resolution (the "Continuance Resolution"), the text of which is set out in the Applicant's management information circular dated September 4, 2012 and filed on SEDAR on October 4, 2012 (the "Information Circular"). The Continuance Resolution was approved by the shareholders at the Meeting; proxies received by the Applicant representing 8,126,122 common shares, or 99% of the votes cast, were voted in favour of the Continuance Resolution. None of the shareholders of the Applicant exercised dissent rights pursuant to section 185 of the OBCA.

13. The Circular included full disclosure of the reasons for, and the implications of, the proposed continuance, a summary of material differences between the BCBCA and OBCA and a description of the shareholders' dissent rights in connection with the proposed continuance pursuant to section 185 of the OBCA.

14. The material rights, duties and obligations of a corporation governed by the BCBCA and Notice of Articles and Articles are substantially similar to those governing a corporation under the OBCA.

15. The continuance is proposed as the Applicant wishes to be domiciled in a jurisdiction more relevant and appropriate to the Applicant's business and its shareholders, and will also be relocating its head office to British Columbia for administrative convenience.

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

THE COMMISSION HEREBY CONSENTS to the continuance of the Applicant as a corporation under the BCBCA.

DATED at Toronto, Ontario this 12th day of April, 2013.

"Judith Robertson"
Commissioner
Ontario Securities Commission

"Edward P. Kerwin"
Commissioner
Ontario Securities Commission

Index