The Ontario Securities Commission

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

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NOTICE OF MINISTERIAL APPROVAL OF
ONTARIO SECURITIES COMMISSION RULE 91-506 DERIVATIVES: PRODUCT DETERMINATION

AND

ONTARIO SECURITIES COMMISSION RULE 91-507 TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING

January 3, 2013

Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* and Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* have received Ministerial approval pursuant to section 143.3(3)(a) of the *Securities Act* (Ontario).

The Rules were published in the Bulletin on November 14, 2013. See (2013) 36 OSCB 11015. The Rules are effective December 31, 2013. The text of the Rules is reproduced in Chapter 5 of this Bulletin.

1.2 Notices of Hearing

1.2.1 A25 Gold Producers Corp. 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
A25 GOLD PRODUCERS CORP., DAVID AMAR, JAMES STUART ADAMS and AVI AMAR

NOTICE OF HEARING
(Sections 127 and 127.1)

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 located at 20 Queen Street West, 17th Floor, on January 16, 2014 at 10:00 a.m., or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is to consider whether, in the Commission's opinion, it is in the public interest for the Commission to make the following orders:

(i) that trading in any securities or derivatives by A25 Gold Producers Corp. ("A25), David Amar, James Stuart Adams ("Adams"), and Avi Amar (collectively, the "Respondents") cease permanently or for such period as is specified by the Commission, pursuant to paragraph 2 of subsection 127(1) of the Act;

(ii) that the acquisition of any securities by the Respondents is prohibited permanently or for such other period as is specified by the Commission, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

(iii) that any exemptions contained in Ontario securities law do not apply to the Respondents permanently or for such period as is specified by the Commission, pursuant to paragraph 3 of subsection 127(1) of the Act;

(iv) that the Respondents be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

(v) that David Amar, Adams, and Avi Amar (collectively, the "Individual Respondents") resign all positions that they hold as a director or officer of any issuer, registrant or investment fund manager, pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act;

(vi) that the Individual Respondents be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager permanently or for such period as is specified by the Commission, pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act;

(vii) that the Respondents be prohibited from becoming or acting as a registrant, as an investment fund manager, or as a promoter permanently or for such period as is specified by the Commission, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

(viii) that the Respondents each pay an administrative penalty of not more than $1 million for each failure by that Respondent to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;

(ix) that each Respondent disgorge to the Commission any amounts obtained as a result of non-compliance by that Respondent with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;

(x) that the Respondents pay the costs of the Commission's investigation and the costs of or related to any hearing before the Commission, pursuant to section 127.1 of the Act; and

(xi) such other order as the Commission considers appropriate.

BY REASON OF the allegations as set out in the Statement of Allegations of Staff of the Commission dated December 18, 2013, and such further allegations as counsel may advise and the Commission may permit;

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

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

DATED at Toronto this 19th day of December, 2013.

"Josée Turcotte"
per John Stevenson
Secretary to the Commission

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

AND

IN THE MATTER OF
A25 GOLD PRODUCERS CORP., DAVID AMAR, JAMES STUART ADAMS and AVI AMAR

STATEMENT OF ALLEGATIONS OF STAFF OF THE ONTARIO SECURITIES COMMISSION

Staff of the Ontario Securities Commission (the "Commission") make the following allegations:

I. OVERVIEW

1. This proceeding relates to A25 Gold Producers Corp. ("A25"), David Amar, James Stuart Adams ("Adams") and Avi Amar (collectively, the "Respondents") selling securities of A25 through fraudulent means, unregistered trading, and illegal distributions.

2. Between March 1, 2007 and December 31, 2012, (the "Relevant Period"), the Respondents raised from Ontario in excess of €1 million from investors in Canada and Europe and, in addition, the Respondent David Amar profited in excess of €770,000 from the sale of A25 shares on the Frankfurt Stock Exchange.

3. By this conduct, the Respondents breached sections 25, 53, 126.1, and 129.2 of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), and acted in a manner that was contrary to the public interest.

II. THE RESPONDENTS

4. A25 is a corporation incorporated in the province of British Columbia on March 1, 2007. It is operated out of David Amar's condominium in Toronto, Ontario.

5. David Amar is a resident of Toronto, Ontario. David Amar is the directing mind of and a de facto director of A25. He controls A25. David Amar is the directing mind of and is an officer and a director of Worldwide Graphite Producers Ltd. ("Worldwide Graphite") and Western Fortune Graphite Ltd. ("Western Fortune"), which are the companies that sold mining claims to A25.

6. Adams is a resident of Toronto, Ontario. He is a director of A25 and carried the title of President of A25 during the Relevant Period. Adams is the sole director of and controls Integral Transfer Agency Inc., which is A25's share transfer agent.

7. Avi Amar is a resident of Toronto, Ontario. He is the son of David Amar. He is a director of A25 and carried the titles of Secretary and Treasurer of A25 during the Relevant Period. He is also an officer and director of Western Fortune and Worldwide Graphite.

III. FRAUDULENT CONDUCT

a. The Circumstances

8. Between March 2007 and December 2010, the Respondents caused or permitted A25 to acquire mining claims from Western Fortune and Worldwide Graphite (the "Mining Claim Transfers"). These mining claims were sold to A25 at prices much higher than it cost to stake and maintain them; and, in some cases, they were sold to A25 shortly after they were staked.

9. As consideration for the Mining Claim Transfers, A25 agreed to provide Western Fortune and Worldwide Graphite cash payments over time and A25 shares. During the Relevant Period, A25 made some of these cash payments. A25 defaulted on paying the remainder of the cash payments, and they remained a liability of A25.

10. As a result of the Mining Claim Transfers,

    a. David Amar, the directing mind of Western Fortune and Worldwide Graphite, directly or indirectly, owned or controlled substantially all of the 30 million outstanding shares of A25.

b. As well, the cash payment liabilities owed by A25 to Western Fortune and Worldwide Graphite arising from the Mining Claims Transfers remained to be paid; and, any money raised by A25 from the sale of its shares or otherwise would need to be paid to Western Fortune and Worldwide Graphite to satisfy these liabilities.

c. Furthermore, as a result of A25's default on the cash payments, depending on the terms of the Mining Claim Transfer agreements, Western Fortune and Worldwide Graphite could either revoke the ownership of the mining claims from A25 or not be required to transfer ownership to A25 (as some of the agreements did not have ownership being transferred until full payment was received).

11. Within a listing application submitted on or about September 1, 2008 to the Frankfurt Stock Exchange, A25 provided the names of its 53 shareholders that it said held a total of 30 million shares. In fact, at the time of the application to the Frankfurt Stock Exchange, David Amar owned or controlled all of the shares of A25.

12. The only A25 shares that were listed on the Frankfurt Stock Exchange were the 30 million A25 shares owned or controlled, directly or indirectly, by David Amar as a result of the initial Mining Claim Transfers.

13. David Amar, Adams, and Avi Amar (collectively, the "Individual Respondents") caused A25 to hire salespersons and an escrow agent who marketed and sold A25 treasury shares directly to approximately 49 investors in Canada and Europe in 2009 and 2010. David Amar also hired salespersons, brokers and an escrow agent who marketed and sold the shares he owned or controlled and that were listed on the Frankfurt Stock Exchange. Commissions arising from these sales for salespersons, brokers and escrow agents ranged from 35% to as high as 71%.

14. Throughout 2010, the Individual Respondents caused A25 to issue a series of press releases that provided A25 investors or prospective investors an inaccurate, incomplete, and/or misleading indication of the number of mining claims acquired by A25. These press releases referred to the following mineral properties: Golden Peak, White Star, Prident, IXL, Pillars of Boaz, and tenure 689804. In fact, during this period, there was only a single acquisition by A25 of mineral tenure 689804 that was completed on or about November 26, 2010.

15. On or about November 17, 2010, David Amar caused Worldwide Graphite to write to A25's Board of Directors to "authorize and direct" them to consolidate A25's shares 1000:1 (the "Share Consolidation"). Worldwide Graphite represented to the A25 Board that it and its shareholders directly owned or controlled through proxy votes 72.28% of the issued and outstanding shares of A25. A25's Board, including Adams and Avi Amar, passed a resolution authorizing the Share Consolidation, and proceeded to implement the Share Consolidation.

b. Deceit, Falsehood, or Other Fraudulent Means

16. Within the sales approach used for A25 securities during the Relevant Period, the Respondents and/or their salespersons, brokers or escrow agents misled A25 investors and prospective A25 investors by failing to state facts and/or concealing facts, including, among other facts, that:

a. the Mining Claim Transfers were related party transactions;

b. David Amar was the directing mind of A25 and of the parties that sold the mining claims acquired by A25 in the Mining Claim Transfers;

c. David Amar had determined the terms of the Mining Claim Transfers including the price;

d. the mining claims acquired by A25 in the Mining Claim Transfers were sold to A25 at prices much higher than it cost to stake and maintain the mining claims; and, in some cases, they were sold to A25 shortly after they were staked;

e. as a result of A25's default on some of the cash payments owing under the terms of the Mining Claims Transfers, depending on the wording of the specific Mining Claims Transfer agreement, Western Fortune and Worldwide Graphite could either revoke the mining claims acquired by A25 in the Mining Claims Transfers or not be required to transfer ownership to A25;

f. A25 had obtained its listing on the Frankfurt Stock Exchange by misrepresenting the nature of its shareholdings. As of the date of listing, David Amar, directly or indirectly, owned or controlled all the A25 shares listed to be sold on the Frankfurt Stock Exchange; and

g. the money raised from the sale of A25 treasury shares would be used substantially to pay commissions of salespersons, brokers and/or escrow agents for selling and marketing the A25 shares, and to repay A25's cash payment liabilities owed indirectly to David Amar as a result of the Mining Claim Transfers.

17. Additionally, within the sales approach used for A25 securities during the Relevant Period, the Respondents and/or their salespersons, brokers or escrow agents provided or participated in providing information to A25 investors and prospective A25 investors that was false, inaccurate and/or misleading with respect to, but not limited to, the following matters:

    a. the current state of and future plans for the development of the A25 mining claims,

    b. the number of mining claims acquired by A25, and

    c. the use of funds raised by the distribution of the A25 shares.

c. Deprivation

18. Once in possession of funds from A25 investors through the sale of A25 treasury shares, the Respondents caused or participated in causing the funds raised to be utilized for purposes other than as intended and disclosed to the investors. In particular, of the approximately €1 million raised from A25 investors,

    a. none was used to explore or improve the A25 mining claims;

    b. approximately 71% was used to pay commissions to salespersons, brokers and/or escrow agents; and

    c. approximately 29% was used not to A25's benefit but for the personal benefit of the Respondents and/or of David Amar, with Avi Amar and Adams' knowledge or in circumstances that they ought reasonably to have had knowledge.

19. Furthermore, during the Relevant Period, David Amar profited in excess of €770,000 from the sale on the Frankfurt Stock Exchange of A25 shares owned or controlled directly or indirectly by him.

20. After the Share Consolidation and within the Relevant Period, David Amar used investor funds and additional Mining Claim Transfers (including some that were initiated prior to the Share Consolidation but closed after the Share Consolidation) to acquire post-Share Consolidation A25 shares and to leave himself again as the owner, directly and indirectly, of substantially all of the outstanding A25 shares.

d. Conclusion

21. By this conduct, during the Relevant Period, the Respondents directly or indirectly engaged or participated in an act, practice or course of conduct relating to A25 securities that they knew or reasonably ought to have known perpetrated a fraud on persons purchasing A25 securities, contrary to section 126.1 of the Act.

IV. UNREGISTERED TRADING

22. During the Relevant Period, none of the Respondents were registered in any capacity with the Commission.

23. During the Relevant Period, the Respondents participated in acts, solicitations, conduct, or negotiations, directly or indirectly, in furtherance of the sale or disposition of A25 securities for valuable consideration, in circumstances where there were no exemptions available to the Respondents under the Act. Among other things, the Respondents engaged from Ontario salespersons, brokers, and/or escrow agents, or representatives of A25 who contacted members of the public in Canada and Europe to solicit them to purchase A25 securities.

24. Through these acts, the Respondents traded in securities without being registered to trade in securities contrary to section 25 of the Act as that section existed at the time the conduct at issue commenced in March 2007, contrary to section 25(1) of the Act, as subsequently amended on September 28, 2009.

V. ILLEGAL DISTRIBUTIONS

25. No prospectus or preliminary prospectus was filed with the Commission and no receipt for them has ever been issued by the Director as required by subsection 53(1) of the Act with respect to the trades of A25 securities set out above.

26. The trading of A25 securities as set out above constituted distributions of these securities by the Respondents in circumstances where there were no prospectus exemptions available to them under the Act contrary to section 53(1) of the Act.

VI. LIABILITY OF DIRECTORS AND OFFICERS

27. During the Relevant Period, the Individual Respondents as directors and/or officers of A25, including as de facto directors or officers of A25, authorized, permitted or acquiesced in A25's non-compliance with Ontario securities law, and accordingly, failed to comply with Ontario securities law contrary to section 129.2 of the Act.

VII. CONDUCT CONTRARY TO THE PUBLIC INTEREST

28. By reason of the foregoing, the Respondents engaged in conduct contrary to the public interest.

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

Dated at Toronto this 18th day of December, 2013.

1.3 News Releases

1.3.1 OSC's Investor Advisory Panel Releases Annual Report

FOR IMMEDIATE RELEASE
December 18, 2013

OSC'S INVESTOR ADVISORY PANEL RELEASES ANNUAL REPORT

TORONTO – The Investor Advisory Panel has submitted its Annual Report 2012-13 to the Ontario Securities Commission (OSC). The Report summarizes the Panel's current activities and priorities as well as its recommendations to the Commission on proposals of importance for investor protection.

During the past year, the Panel provided its input to the Commission on a number of proposals whose approval and implementation would dramatically improve the current investor protection regime for Canadian investors. These include Canadian Securities Administrators' (CSA) discussion papers exploring the appropriateness of introducing a statutory best interest standard and a review of current mutual fund fee structures, as well as a proposal requiring the provision of an ombudservice for clients of CSA registrants. The Panel conducted investor outreach to more than 2,000 Ontarians to explore their relationships with their financial advisors and how they perceive and use investment products. (Strengthening Investor Protection in Ontario-Speaking with Ontarians) This research informs and supports our positions regarding the need for Canadian regulators to introduce a best interest duty standard, proficiency and title reforms and to eliminate current conflicted mutual fund compensation structures which undermine Canadian investors' ability to ensure their retirement security.

The Panel evaluates Commission policies and proposals from an investor protection perspective which seeks to ensure that advisors are the true agent of the client and put their clients' interests first; regulators do not permit conflicted remuneration practices which can bias advisors' advice and product recommendations and thereby harm investors' financial outcomes; advisors are required to have appropriate skills and qualifications and to use only informative and accurate business and professional titles; and investors have access to fair, timely and independent complaint handling, enforcement and compensation.

"While we are fully committed to thoughtful, careful analysis and a measured regulatory response, we believe that the slow pace of reform in Canada is unacceptable", said IAP Chair Connie Craddock. "It's time for Canadian regulators to move beyond discussion and study and raise the bar on investor protection".

The Investor Advisory Panel is an independent advisory panel to the Ontario Securities Commission. Its mandate is to solicit and represent the views of investors on the Commission's policy and rule making initiatives. The panel is comprised of 9 members appointed by the Chair of the Commission following a public application process and on the advice of a selection committee of up to three Commissioners. The Panel provides regular reporting through our Investor Advisory Panel website (www.osc.gov.on.ca) , published reports, submissions and letters to the Commission and its Annual Report.

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1.3.2 Canadian Securities Regulators Seek Comment on Derivatives Rule Relating to Mandatory Central Counterparty Clearing

FOR IMMEDIATE RELEASE
December 19, 2013

CANADIAN SECURITIES REGULATORS SEEK COMMENT ON
DERIVATIVES RULE RELATING TO MANDATORY CENTRAL COUNTERPARTY CLEARING

Montréal –Members of the Canadian Securities Administrators (CSA) today published for comment the CSA Staff Notice 91-303 – *Proposed Model Provincial Rule on Mandatory Central Counterparty Clearing of Derivatives* (the "Proposed Model Rule").

The Proposed Model Rule describes requirements for central counterparty clearing of over-the-counter (OTC) derivatives transactions with the intention of improving transparency in the derivatives market and enhancing the overall mitigation of risks. It was developed following comments received on CSA Consultation Paper 91-406 *OTC Central Counterparty Clearing*, published in June 2012.

The Proposed Model Rule is divided into two rule-making areas:

- requirement to submit a clearable derivative to a central counterparty for clearing (including proposed end-user and intragroup exemptions), and
- determination of derivatives subject to the requirement to submit for central counterparty clearing.

Following the present consultation, the CSA will review all comments received and make appropriate amendments to the Proposed Model Rule and the follow the process ensuring that specific rules will be implemented in each province or territory.

The CSA, the council of the securities regulators of Canada's provinces and territories, co-ordinates and harmonizes regulation for the Canadian capital markets.

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1.3.3 Canadian Securities Regulators Mandate OBSI's Dispute Resolution Service for Registered Dealers and Advisers

FOR IMMEDIATE RELEASE
December 19, 2013

CANADIAN SECURITIES REGULATORS MANDATE
OBSI'S DISPUTE RESOLUTION SERVICE FOR REGISTERED DEALERS AND ADVISERS

Toronto – The Canadian Securities Administrators (CSA) today published final amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. These amendments would require all registered dealers and advisers to use the Ombudsman for Banking Services and Investments (OBSI) as the common dispute resolution service (DRS), except in Québec where the mediation regime administered by the Autorité des marchés financiers will continue to apply.

Requiring that OBSI's independent dispute resolution services be made available to clients is an important component of the CSA's investor protection framework. The CSA have determined it is appropriate to mandate this requirement for exempt market dealers and portfolio managers, which CSA members directly oversee. Today's amendments now hold all registered dealers and advisers (outside of Québec) to the same requirement. Self-regulatory organizations (SROs) had already mandated their members to make OBSI's DRS available to their clients and this requirement will continue to apply.

"Mandating all registered dealers and advisers to offer dispute resolution services through OBSI is in the best interest of both investors and registrants. Customer complaints will be held to an independent and uniform standard that will establish a level playing field in terms of service levels, costs and outcomes," said Bill Rice, Chair of the CSA and Chair and CEO of the Alberta Securities Commission.

The CSA is committed to continue its work with OBSI to ensure it has the capacity to effectively discharge its mandate. Published today, participating CSA members and OBSI have entered into a memorandum of understanding (MOU) that creates an oversight framework for OBSI to meet the standards set out by the CSA.

Included in the MOU is a commitment to an independent evaluation of OBSI's operations and practices within two years of the amendments coming into force and a requirement that OBSI have a fair, transparent and appropriate process for setting fees and allocating costs across its membership.

The amendments to NI 31-103 come into force May 1, 2014, to allow for ministerial approvals required in some jurisdictions. There will be a three-month transition period for registered firms who are not currently OBSI members to comply with the amendments. The transition period will end August 1, 2014. The amendments and the OBSI MOU can be found on CSA member websites.

The CSA, the council of the securities regulators of Canada's provinces and territories, coordinates and harmonizes regulation for the Canadian capital markets.

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1.3.4 CSA Announces Service Transition Cutover Date for Information Management Services

FOR IMMEDIATE RELEASE
January 3, 2014

CSA ANNOUNCES SERVICE TRANSITION CUTOVER DATE
FOR INFORMATION MANAGEMENT SERVICES

Toronto – The Canadian Securities Administrators (CSA) announced in April 2013 the signing of a new service agreement with CGI Information Systems and Management Consultants Inc. Under the agreement, CGI will assume responsibility for the hosting, operation and maintenance of the System for Electronic Document Analysis and Retrieval (SEDAR), the System for Electronic Disclosure by Insiders (SEDI) and the National Registration Database (NRD).

The date for the cutover from the previous service provider to CGI for all SEDAR, SEDI and NRD related services is scheduled for January 13, 2014. Systems will not be available to market participants from 8pm ET Friday January 10, 2014 to 7am ET Monday January 13, 2014.

New SEDAR desktop software will be available on January 13, 2014 and installation of this software must take place within two weeks of the cutover date for users to continue to have access to the SEDAR system. Additional information on this installation requirement will be posted on the SEDAR website and provided in a separate news release.

Users of the SEDI and NRD systems do not need to do anything in preparation for or as a result of the transition.

Questions concerning the information provided in this release or relating to the transition in general may be directed to CSAsystransition@csa-acvm.ca.

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1.3.5 OSC Panel Issues Sanctions Against Kolt Curry, Laura Mateyak, American Heritage Stock Transfer Inc., and American Heritage Stock Transfer, Inc. for Breaches of the Securities Act

FOR IMMEDIATE RELEASE
December 23, 2013

OSC PANEL ISSUES SANCTIONS AGAINST KOLT CURRY, LAURA MATEYAK, AMERICAN HERITAGE STOCK TRANSFER INC., AND AMERICAN HERITAGE STOCK TRANSFER, INC. FOR BREACHES OF THE SECURITIES ACT

TORONTO – In a decision released today, an Ontario Securities Commission (OSC) panel ordered Kolt Curry (Curry), American Heritage Stock Transfer Inc. (AHST Ontario), American Heritage Stock Transfer, Inc. (AHST Nevada), to jointly pay an administrative penalty of $100,000 for breaches of the *Securities Act*. Laura Mateyak (Mateyak) was ordered to pay a penalty of $2,500. Curry and the companies were also ordered to pay hearing costs of $60,000.

Curry and the companies were sanctioned for their roles in an "advance fee scheme" in which they sent more than 10,000 letters enclosing securities and making false statements. Mateyak was found to have acquiesced in the breaches in her capacity as an officer and director of AHST Ontario.

Curry, AHST Ontario and AHST Nevada were also reprimanded and permanently banned from trading in or acquiring securities, from relying on any exemptions in Ontario securities law, from acting as a director or officer of an issuer and from acting as a registrant, an investment fund manager or as a promoter. Mateyak received five year bans in the same categories. Curry and Mateyak were also banned from telephoning residences for the purpose of trading in securities.

On May 16, 2013, the parties filed Agreed Facts and the Commission issued an order finding that Curry and the AHST Companies had traded securities without registration, illegally distributed securities and made prohibited representations contrary to section 44(2) of the *Securities Act*.

In a separate decision released on August 7, 2013, the Commission found that Sandy Winick provided Curry with the contents of the "Nanotech Letter" and the addresses of the recipients, as well as arranged to pay for the printing and mailing of more than 10,000 letters and securities. The Commission found that, in doing so, Winick had traded without registration and engaged in an illegal distribution of securities.

The sanctions hearing was held on October 10, 2013. A copy of the Reasons and Decision on Sanctions in this matter is available on the OSC website at www.osc.gov.on.ca.

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

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1.4 Notices from the Office of the Secretary

1.4.1 Pro-Financial Asset Management Inc.

FOR IMMEDIATE RELEASE
December 17, 2013

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

AND

IN THE MATTER OF
PRO-FINANCIAL ASSET MANAGEMENT INC.

TORONTO – The Commission issued an Order in the above named matter with certain provisions. The Temporary Order is extended to January 24, 2014. The hearing is adjourned to January 21, 2014 at 11:00 a.m.

A copy of the Order dated December 13, 2013 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.2 Global RESP Corporation and Global Growth Assets Inc.

FOR IMMEDIATE RELEASE
December 17, 2013

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

AND

IN THE MATTER OF
GLOBAL RESP CORPORATION AND
GLOBAL GROWTH ASSETS INC.

TORONTO – The Commission issued an Order in the above named matter pursuant to section 127 of the Act that the hearing is adjourned to January 9, 2014 at 10:30 a.m.

OFFICE OF THE SECRETARY
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1.4.3 Ernst & Young LLP

FOR IMMEDIATE RELEASE
December 18, 2013

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

AND

IN THE MATTER OF
ERNST & YOUNG LLP

TORONTO – The Commission issued an Order in the above named matter which provides that the Respondent's proposed disclosure motion will not proceed on December 19, 2013, without prejudice to the Respondent's right to bring such further motion as may be necessary at a later date.

A copy of the Order dated December 17, 2013 is available at www.osc.gov.on.ca.

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1.4.4 Blackwood & Rose Inc. et al.

FOR IMMEDIATE RELEASE
December 18, 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 – Following the hearing on the merits held In Writing in the above named matter, the Commission issued its Reasons and Decision.

A copy of the Reasons and Decision dated December 17, 2013 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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1.4.5 Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)

FOR IMMEDIATE RELEASE
December 18, 2013

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

AND

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

TORONTO – The Commission issued its Reasons and Decision on Sanctions and Costs with respect to Medra in the above noted matter.

The Commission also issued an Order pursuant to Sections 127 and 127.1 of the Act in the above named matter.

A copy of the Reasons and Decision on Sanctions and Costs with respect to Medra and the Order dated December 17, 2013 are available at www.osc.gov.on.ca.

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1.4.6 International Strategic Investments et al.

FOR IMMEDIATE RELEASE
December 18, 2013

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

AND

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

TORONTO – The Commission issued an Order in the above named matter with certain provisions. The dates for the previously ordered hearing on the merits are vacated and pursuant to Rule 11.5, the hearing on the merits shall proceed as a written hearing. Staff and any participating Respondents will attend at a date appointed by the panel after May 5, 2014, to answer questions, make submissions or make any necessary witnesses available for cross-examination.

A copy of the Order dated December 12, 2013 is available at www.osc.gov.on.ca.

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1.4.7 Global Energy Group, Ltd. et al.

FOR IMMEDIATE RELEASE
December 19, 2013

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

AND

IN THE MATTER OF
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

TORONTO – The Commission issued an Order in the above named matter which provides that the Temporary Order is extended against Rash until January 31, 2014 and the hearing to consider a further extension of the Temporary Order is adjourned to January 29, 2014 at 10:30 a.m.

A copy of the Order dated December 17, 2013 is available at www.osc.gov.on.ca.

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1.4.8 A25 Gold Producers Corp. et al.

FOR IMMEDIATE RELEASE
December 19, 2013

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

AND

IN THE MATTER OF
A25 GOLD PRODUCERS CORP., DAVID AMAR,
JAMES STUART ADAMS and AVI AMAR

TORONTO – The Office of the Secretary issued a Notice of Hearing on December 19, 2013 setting the matter down to be heard on January 16, 2014 at 10:00 a.m. or as soon thereafter as the hearing can be held in the above named matter. The hearing will be held at the offices of the Commission at 20 Queen Street West, 17th Floor, Toronto.

A copy of the Notice of Hearing dated December 19, 2013 and Statement of Allegations of Staff of the Ontario Securities Commission dated December 18, 2013 are available at www.osc.gov.on.ca.

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1.4.9 Northern Securities Inc. et al.

FOR IMMEDIATE RELEASE
December 20, 2013

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

AND

IN THE MATTER OF
NORTHERN SECURITIES INC.,
VICTOR PHILIP ALBOINI,
DOUGLAS MICHAEL CHORNOBOY AND
FREDERICK EARL VANCE

AND

IN THE MATTER OF
DECISIONS OF A HEARING PANEL OF THE
INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA
DATED JULY 23, 2012 AND NOVEMBER 10, 2012

TORONTO – The Commission issued its Decision and Reasons in the above named matter.

A copy of the Decision and Reasons dated December 19, 2013 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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1.4.10 Kolt Curry et al.

FOR IMMEDIATE RELEASE
December 23, 2013

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

AND

IN THE MATTER OF
KOLT CURRY, LAURA MATEYAK,
AMERICAN HERITAGE STOCK TRANSFER INC., and
AMERICAN HERITAGE STOCK TRANSFER, INC.

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

A copy of the Reasons and Decision on Sanctions and Costs and the Order dated December 20, 2013 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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1.4.11 Moncasa Capital Corporation and John Frederick Collins

FOR IMMEDIATE RELEASE
December 23, 2013

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

AND

IN THE MATTER OF
MONCASA CAPITAL CORPORATION and
JOHN FREDERICK COLLINS

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

A copy of the Reasons and Decision on Sanctions and Costs and the Order dated December 20, 2013 are available at www.osc.gov.on.ca.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 ESI Entertainment Systems Inc. – s. 1(10(a)(ii)

Headnote

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

Applicable Legislative Provisions

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

December 16th, 2013

ESI Entertainment Systems Inc.
8610 Glenlyon Parkway
Unit 130
Burnaby, BC V5J 0B6

Dear Sirs/Mesdames:

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

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

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

The Applicant has represented to the Decision Makers that:

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

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

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

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

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

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

2.1.2 Dundee Industrial Limited Partnership

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Filer wants to reorganize its business – Filer has both designated exchangeable securities and designated credit support securities – exemptions in sections 13.3 and 13.4 technically not available – relief granted subject to Filer meeting certain conditions.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, ss. 13.1(2), 13.3, 13.4.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, ss. 8.5, 8.6(2).
National Instrument 52-110 Audit Committees, ss. 1.2(g), 8.1(2).

December 10, 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
DUNDEE INDUSTRIAL LIMITED PARTNERSHIP
(the "Filer")

DECISION

Background

The principal regulator has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the "**Legislation**") granting the Filer an exemption from the following:

1. the continuous disclosure requirements (the "**Continuous Disclosure Requirements**") contained in National Instrument 51-102 *Continuous Disclosure Obligations* ("**NI 51-102**"), as amended from time to time; and

2. the certification requirements (the "**Certification Requirements**") contained in National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, as amended from time to time;

collectively, the "**Exemption Sought**".

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

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

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

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

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

1. The Filer is a limited partnership formed under the laws of the Province of Ontario on December 21, 2010.

2. The Filer's head office is located at 30 Adelaide Street East, Suite 1600, Toronto, Ontario, M5C 3H1

3. Dundee Industrial Real Estate Investment Trust ("**Dundee Industrial REIT**") is an unincorporated, open-ended real estate investment trust created by a declaration of trust dated October 4, 2012, as amended and restated.

4. Dundee Industrial REIT's head office is located at 30 Adelaide Street East, Suite 1600, Toronto, Ontario, M5C 3H1.

5. Dundee Industrial REIT is a reporting issuer in each of the Provinces of Canada.

6. DIR Industrial Properties Inc. ("**DIR Inc.**") is a corporation incorporated under the laws of the Province of Ontario on July 19, 2013.

7. DIR Inc. is a direct subsidiary of the Filer.

8. DIR Inc. is a reporting issuer in each of the Provinces of Canada other than Quebec.

9. Dundee Real Estate Investment Trust ("**Dundee REIT**") is an unincorporated, open-ended real estate investment trust created by a declaration of trust dated May 9, 2003, as amended and restated.

10. Dundee REIT's head office is located at 30 Adelaide Street East, Suite 1600, Toronto, Ontario, M5C 3H1.

11. Dundee REIT is a reporting issuer in each of the Provinces of Canada.

12. Dundee Industrial (GP) Inc., a corporation incorporated under the laws of Ontario on December 21, 2010 and a wholly-owned subsidiary of Dundee Industrial REIT, is the general partner of the Filer.

13. The limited partnership interests in the Filer consist of LP Class A Units ("**LP A Units**") and LP Class B Units ("**LP B Units**"). Dundee Industrial REIT owns all of the issued and outstanding LP A Units of the Filer. All of the issued and outstanding LP B Units of the Filer are owned by subsidiaries of Dundee REIT.

14. The LP B Units are, in all material respects, economically equivalent to the units of Dundee Industrial REIT ("**REIT Units**") on a per unit basis. The LP B Units are exchangeable on a one-for-one basis for REIT Units at any time at the option of the holder, unless the exchange would jeopardize Dundee Industrial REIT's status as a "mutual fund trust" or a "real estate investment trust" under the *Income Tax Act* (Canada) or create significant risk that Dundee Industrial REIT would be subject to tax under paragraph 122(1)(b) of the *Income Tax Act* (Canada) or such exchange would be contrary to solvency requirements or other provisions of applicable law or contravene the provisions of the declaration of trust of Dundee Industrial REIT relating to ownerhip by non-residents of Canada. Each holder of LP B Units is also the holder of an identical number of "special trust units" of Dundee Industrial REIT issued in connection with the issuance of LP B Units and which provide voting rights with respect to Dundee Industrial REIT. The special trust units are not transferrable separately from the LP B Units to which they relate.

15. As of September 30, 2013, there were 16,282,096 LP B units outstanding representing approximately 23% of the outstanding REIT Units on a fully-exchanged basis.

16. All of the issued and outstanding common shares of DIR Inc., being the only voting securities of DIR Inc., are owned by the Filer. DIR Inc. is not a "subsidiary" of the Filer nor of Dundee Industrial REIT as such term is defined in subsection 1.2(4) of the *Securities Act* (Ontario).

17. As of September 30, 2013, DIR Inc. had $19,420,000 aggregate principal amount of 6.25% convertible unsecured subordinated debentures due November 30, 2017 ("**Convertible Debentures**") issued and outstanding. The Convertible Debentures are convertible into redeemable preference shares ("**Redeemable Preference Shares**") of DIR Inc. at a conversion price of $5.55 per share. The trust indenture ("**Trust Indenture**") governing the Convertible Debenture provides that, in accordance with the terms of the Redeemable Preference Shares, each Redeemable Preference Share will be redeemed by DIR Inc. immediately following its issuance in consideration for 0.4485 REIT Units.

18. The Convertible Debentures are listed and posted for trading on the Toronto Stock Exchange.

19. Dundee Industrial REIT has provided a full and unconditional guarantee (as contemplated by section 13.4 of NI 51-102) of DIR Inc.'s obligations under the Trust Indenture.

20. The Filer is proposing to reorganize its business, subject to the receipt of this decision granting the Exemption Sought. Such reorganization will include the following steps:

    (a) DIR Inc. will incorporate a new wholly-owned subsidiary corporation ("**New GP**") under the laws of Ontario;

    (b) DIR Inc. and New GP will form a new limited partnership ("**New LP**") under the laws of Ontario, of which New GP will be the sole general partner and DIR Inc. will be the sole limited partner;

    (c) DIR Inc. will transfer to New LP properties with an estimated fair market value of between $150 million and $160 million, representing approximately 70% of the total fair market value of the assets of DIR Inc., in consideration for an increase in capital in New LP and the assumption by New LP of existing mortgages associated with the transferred properties; and

    (d) DIR Inc. will transfer all of the shares of New GP and the limited partnership interest in New LP to the Filer in repayment of existing indebtedness owing by DIR Inc. to the Filer.

21. The Trust Indenture provides that, in connection with the proposed transfer (the "**Transfer**") to the Filer of the shares of New GP and the partnership interest in New LP, the Filer must agree to be bound by the terms of the Trust Indenture with the same effect as if it had been named as a principal obligor because the Transfer constitutes a transfer of all or substantially all of the assets of DIR Inc. Accordingly, upon completion of the Transfer, the Filer (as successor to and co-obligor with DIR Inc.) will become jointly and severally liable for all obligations under the Trust Indenture in respect of the Convertible Debentures.

22. Upon completion of the Transfer, by virtue of becoming a co-obligor for the Convertible Debentures, the Filer will become a reporting issuer pursuant to paragraph (c) of the definition of reporting issuer in subsection 1(1) of the *Securities Act* (Ontario).

23. Neither Dundee Industrial REIT nor DIR Inc. is in default of any of its obligations under the securities legislation of any of the Provinces of Canada in which it is a reporting issuer.

24. There are no insiders of the Filer other than Dundee Industrial REIT and Dundee Industrial (GP) Inc. who are not also insiders of Dundee Industrial REIT.

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 effective upon the Transfer being completed provided that:

1. Dundee Industrial REIT continues to beneficially own all of the outstanding voting securities of the Filer;

2. the Filer continues to satisfy all the conditions set forth in subsection 13.4(2.1) of NI 51-102, other than paragraph 13.4(2.1)(a) insofar as it incorporates by reference paragraph 13.4(2)(c) of NI 51-102 and except as modified as follows:

    (a) any reference to parent credit supporter in section 13.4 of NI 51-102 shall mean Dundee Industrial REIT;

    (b) any reference to credit support issuer in section 13.4 of NI 51-102 shall mean the Filer;

    (c) any reference to subsidiary credit support issuer in section 13.4 of the NI 51-102 shall include DIR Inc.; and

    (d) any reference to designated credit support securities in section 13.4 of NI 51-102 shall include the Convertible Debentures.

3. the Filer does not issue any securities other than:

    (a) designated credit support securities (as such term is defined in NI 51-102) for which Dundee Industrial REIT has provided a full and unconditional guarantee;

(b) securities, including LP A Units, issued to and held by Dundee Industrial REIT or an affiliate of Dundee Industrial REIT;

(c) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches or credit unions, financial services cooperatives, insurance companies or other financial institutions;

(d) securities issued under the exemption from the prospectus requirement in section 2.35 of National Instrument 45-106 *Prospectus and Registration Exemptions* ("**NI 45-106**");

(e) LP B Units or other designated exchangeable securities (as such term is defined in NI 51-102) for which Dundee Industrial REIT is the issuer of the underlying security (as such term is defined in NI 51-102); and

(f) the Convertible Debentures in respect of which the Filer will become a co-obligor at the time of completion of the Transfer.

4. the Filer does not have any securities outstanding other than:

(a) designated credit support securities (as such term is defined in NI 51-102) for which Dundee Industrial REIT has provided a full and unconditional guarantee;

(b) securities, including LP A Units, issued to and held by Dundee Industrial REIT or an affiliate of Dundee Industrial REIT;

(c) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches or credit unions, financial services cooperatives, insurance companies or other financial institutions;

(d) securities issued under the exemption from the prospectus requirement in section 2.35 of NI 45-106;

(e) LP B Units or other designated exchangeable securities (as such term is defined in NI 51-102) for which Dundee Industrial REIT is the issuer of the underlying security (as such term is defined in NI 51-102); and

(f) Convertible Debentures.

5. Pursuant to the Trust Indenture, on and after the date of the Transfer, the Filer continues to be a co-obligor for the due and punctual payment of the principal amount of the Convertible Debentures, the interest thereon and all other moneys payable under the Trust Indenture and Dundee Industrial REIT continues to provide a guarantee of the payments to be made by the Filer in respect of the Convertible Debentures.

6. The Filer concurrently sends to all holders of designated exchangeable securities (as such term is defined in NI 51-102), including the LP B Units, all disclosure materials that are sent to holders of REIT Units in the manner and at the time required by securities legislation.

7. Dundee Industrial REIT includes in all mailings of proxy solicitation materials to holders of designated exchangeable securities (as such term is defined in NI 51-102) a clear and concise statement that:

(a) explains the reason the mailed materials relate solely to Dundee Industrial REIT;

(b) indicates that the designated exchangeable securities are the economic equivalent to the underlying units (as such term is defined in NI 51-102); and

(c) describes the voting rights associated with the designated exchangeable securities.

8. In respect of the Certification Requirements, the Filer continues to satisfy the conditions for relief from the Continuous Disclosure Requirements set forth above in paragraphs 1, 2, 3, 4, 5, 6 and 7.

"Sonny Randhawa"
Manager
Corporate Finance Branch

2.1.3 DIR Industrial Properties Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Filer is proposing to reorganize its business and conditions from previous relief from exemptions related to its credit support issuer structure no longer applies – Filer obtained relief from continuous disclosure requirements, certification requirements and audit committee requirements in connection with a reorganization – Filer unable to rely on exemption for credit support issuers in applicable legislation since Filer's convertible debentures do not convert immediately into securities of credit supporter and warrants are outstanding and entity other than subsidiary credit supporter provided alternative credit support for the payments to be made – relief subject to conditions – relief pursuant to subsection 158(1.1) of the Business Corporations Act (Ontario) that an offering corporation is authorized to dispense with its audit committee as filer obtained relief related to credit support issuer – filer exempt from audit committee requirements of National Instrument 52-110 Audit Committees – Relief from audit committee requirements of National Instrument 52-110 conditional upon issuer continuing to satisfy conditions of credit support issuer relief.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, ss. 13.1(2), 13.4.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, ss. 8.5, 8.6(2).
National Instrument 52-110 Audit Committees, ss. 1.2(g), 8.1(2).
Business Corporations Act, R.S.O. 1990, c. B.16, s. 158(1.1).

December 10, 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
DIR INDUSTRIAL PROPERTIES INC.
(the "Filer")

DECISION

Background

The principal regulator has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the "**Legislation**") granting the Filer an exemption from the following:

1. the continuous disclosure requirements (the "**Continuous Disclosure Requirements**") contained in National Instrument 51-102 – *Continuous Disclosure Obligations* ("**NI 51-102**"), as amended from time to time;

2. the certification requirements (the "**Certification Requirements**") contained in National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings*, as amended from time to time; and

3. the audit committee requirements contained in Section 158 of the *Business Corporations Act* (Ontario) (the "**OBCA**"), as amended from time to time (the "**OBCA Audit Committee Requirements**";

collectively, the "**Exemption Sought**".

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

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

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

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

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

1. The Filer is a corporation incorporated under the laws of the Province of Ontario on July 19, 2013.

2. The Filer's head office is located at 30 Adelaide Street East, Suite 1600, Toronto, Ontario, M5C 3H1.

3. The Filer is a reporting issuer in each of the Provinces of Canada other than Quebec.

4. Dundee Industrial Real Estate Investment Trust ("**Dundee Industrial REIT**") is an unincorporated, open-ended real estate investment trust created by a declaration of trust dated October 4, 2012, as amended and restated.

5. Dundee Industrial REIT's head office is located at 30 Adelaide Street East, Suite 1600, Toronto, Ontario, M5C 3H1.

6. Dundee Industrial REIT is a reporting issuer in each of the Provinces of Canada.

7. Dundee Industrial Limited Partnership ("**Dundee Industrial LP**") is a limited partnership formed under the laws of the Province of Ontario on December 21, 2010.

8. Dundee Industrial LP is a subsidiary of Dundee Industrial REIT.

9. The Filer is a subsidiary of Dundee Industrial LP.

10. By decision (the "**Existing Decision**") dated August 13, 2013 (See *In the Matter of DIR Industrial Properties Inc.* (2013), 36 O.S.C.B. 8356), the Filer has been exempted from the Continuous Disclosure Requirements, the Certification Requirements and the OBCA Audit Committee Requirements, among other things, subject to the satisfaction of certain conditions.

11. As of September 30, 2013, the Filer had $19,420,000 aggregate principal amount of 6.25% convertible unsecured subordinated debentures due November 30, 2017 ("**Convertible Debentures**") issued and outstanding. The Convertible Debentures are convertible, at the option of the holder, into redeemable preference shares ("**Redeemable Preference Shares**") of the Filer at a conversion price of $5.55 per share. The trust indenture ("**Trust Indenture**") governing the Convertible Debenture provides that, in accordance with the terms of the Redeemable Preference Shares, each Redeemable Preference Share will be redeemed by the Filer immediately following its issuance in consideration for 0.4485 units of Dundee Industrial REIT ("**REIT Units**").

12. As of September 30, 2013, 21,607 warrants ("**Warrants**") to acquire Redeemable Preference Shares of the Filer at an exercise price of $5.00 per Redeemable Preference Share (and, in accordance with the terms of such shares, each Redeemable Preference Share will be redeemed immediately following its issuance for 0.4485 REIT Units) were outstanding and held by four holders in the following amounts:

    (a) 6,611 Warrants;

    (b) 5,555 Warrants;

    (c) 8,334 Warrants; and

    (d) 567 Warrants.

13. The Convertible Debentures are listed and posted for trading on the Toronto Stock Exchange.

14. The Convertible Debentures are not "designated credit support securities", as defined in subsection 13.4(1) of NI 51-102, because on conversion of the Convertible Debentures the holders will receive Redeemable Preference Shares

which will be immediately redeemed for 0.4485 units of Dundee Industrial REIT rather than being convertible, in the first instance, for 0.4485 units of Dundee Industrial REIT and because, although the Filer is controlled by Dundee Industrial REIT, the Filer is not a subsidiary of Dundee Industrial REIT (as defined in subsection 1.2(4) of the *Securities Act* (Ontario)).

15. Dundee Industrial REIT has provided a full and unconditional guarantee (as contemplated by section 13.4 of NI 51-102) of the Filer's obligations under the Trust Indenture.

16. The Filer is proposing to reorganize its business, subject to the receipt of the decision granting the Exemption Sought. Such reorganization will include the following steps:

    (a) The Filer will incorporate a new wholly-owned subsidiary corporation ("**New GP**") under the laws of Ontario;

    (b) The Filer and New GP will form a new limited partnership ("**New LP**") under the laws of Ontario, of which New GP will be the sole general partner and the Filer will be the sole limited partner;

    (c) The Filer will transfer to New LP properties with an estimated fair market value of between $150 million and $160 million, representing approximately 70% of the total fair market value of the assets of the Filer, in consideration for an increase in capital in New LP and the assumption by New LP of existing mortgages associated with the transferred properties; and

    (d) The Filer will transfer all of the shares of New GP and the limited partnership interest in New LP to Dundee Industrial LP in repayment of existing indebtedness owing by the Filer to Dundee Industrial LP.

17. The Trust Indenture provides that, in connection with the proposed transfer (the "**Transfer**") to Dundee Industrial LP of the shares of New GP and the partnership interest in New LP, Dundee Industrial LP must agree to be bound by the terms of the Trust Indenture with the same effect as if it had been named as a principal obligor because the Transfer constitutes a transfer of all or substantially all of the assets of the Filer. Accordingly, upon completion of the Transfer, Dundee Industrial LP (as successor to and co-obligor with the Filer) will become jointly and severally liable for all obligations under the Trust Indenture in respect of the Convertible Debentures.

18. Upon completion of the Transfer, by virtue of becoming a co-obligor for the Convertible Debentures, Dundee Industrial LP will have provided "alternative credit support" in respect of the Convertible Debentures contrary to the first condition in the Existing Decision because paragraph 13.4(2)(k) of NI 51-102 will not be satisfied. As a result, the Filer will no longer be able to rely on the relief in the Existing Decision.

19. The Filer is an "offering corporation" under the OBCA and obligated under subsection 158(1) of the OBCA to have an audit committee, subject to the terms of the Existing Decision one of the conditions of which will be contravened upon completion of the Transfer as indicated in paragraph 18 above.

20. The board of directors of the Filer will approve the Filer's financial statements as required by subsection 159(1) of the OBCA.

21. Dundee Industrial LP and Dundee Industrial REIT require the Filer to provide them with a regular flow of financial and operating reports designed to furnish comprehensive and up-to-date information on the financial condition and results of the Filer and on its operations and, where determined to be necessary, these reports are supplemented by personal interviews with officers or other management employees of the Filer. Dundee Industrial LP and Dundee Industrial REIT maintain an experienced and professionally trained staff to review the foregoing information.

22. The Filer believes that Dundee Industrial LP, as the sole shareholder of the Filer, and Dundee Industrial REIT, as the majority shareholder of Dundee Industrial LP, will not be prejudiced if the Exemption Sought is granted.

23. Neither Dundee Industrial REIT nor the Filer is in default of any of its obligations under the securities legislation of any of the Provinces of Canada in which it is a reporting issuer.

24. There are no insiders of the Filer other than Dundee Industrial LP who are not also insiders of Dundee Industrial REIT.

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 effective upon the Transfer being completed provided that:

1. Dundee Industrial REIT is the beneficial owner of all the outstanding voting securities of the Filer;

2. Dundee Industrial LP continues to be the sole shareholder of the Filer;

3. the Filer continues to satisfy all the conditions set forth in subsection 13.4(2.1) of NI 51-102, other than paragraph 13.4(2.1)(a) insofar as it incorporates by reference paragraph 13.4(2)(c) of NI 51-102 and except as modified as follows:

   (a) any reference to parent credit supporter in section 13.4 of NI 51-102 shall mean Dundee Industrial REIT,

   (b) any reference to credit support issuer in section 13.4 of NI 51-102 shall mean the Filer,

   (c) any reference to subsidiary credit support issuer in section 13.4 of NI 51-102 shall include Dundee Industrial LP, and

   (d) any reference to designated credit support securities in section 13.4 of NI 51-102 shall include the Convertible Debentures;

4. the Filer does not issue any securities other than:

   (a) designated credit support securities (as such term is defined in NI 51-102) for which Dundee Industrial REIT has provided a full and unconditional guarantee,

   (b) securities issued to and held by Dundee Industrial REIT or an affiliate of Dundee Industrial REIT,

   (c) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches or credit unions, financial services cooperatives, insurance companies or other financial institutions,

   (d) securities issued under the exemption from the prospectus requirement in section 2.35 of National Instrument 45-106 *Prospectus and Registration Exemptions* ("**NI 45-106**"), and

   (e) Redeemable Preference Shares;

5. the Filer does not have any securities outstanding other than:

   (a) designated credit support securities (as such term is defined in NI 51-102) for which Dundee Industrial REIT has provided a full and unconditional guarantee,

   (b) securities issued to and held by Dundee Industrial REIT or an affiliate of Dundee Industrial REIT,

   (c) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches or credit unions, financial services cooperatives, insurance companies or other financial institutions,

   (d) securities issued under the exemption from the prospectus requirement in section 2.35 of NI 45-106,

   (e) the Convertible Debentures,

   (f) the Warrants, and

   (g) Redeemable Preference Shares.

6. Pursuant to the Trust Indenture, on and after the date of the Transfer, Dundee Industrial LP continues to be a co-obligor for the due and punctual payment of the principal amount of the Convertible Debentures, the interest thereon and all other moneys payable under the Trust Indenture and Dundee Industrial REIT continues to provide a guarantee of the payments to be made by the Filer in respect of the Convertible Debentures; and

7. In respect of the Certification Requirements, the Filer continues to satisfy the conditions for relief from the Continuous Disclosure Requirements set forth above in paragraphs 1, 2, 3, 4, 5 and 6.

As to the Exemption Sought (other than from the OBCA Audit Committee Requirements in the OBCA).

"Sonny Randhawa"
Manager
Corporate Finance Branch

AND UPON the Commission being satisfied that to do so would not be prejudicial to the Filer's sole shareholder;

IT IS ORDERED, pursuant to subsection 158(1.1) of the OBCA, that the Filer is authorized to dispense with an audit committee effective upon the Transfer being completed for so long as the Filer continues to satisfy the conditions for an exemption from the Continuous Disclosure Requirements above in paragraphs 1, 2, 3, 4, 5 and 6.

"James Turner"
Commissioner
Ontario Securities Commission

"Judith Robertson"
Commissioner
Ontario Securities Commission

2.1.4 Starlight U.S. Multi-Family (No. 2) Core Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 51-102 Continuous Disclosure Obligations – Application for relief from requirement in Section 8.4 of NI 51-102 to include financial statement disclosure in business acquisition report – Filer completed the acquisition of the acquisition properties – Filer has made every reasonable effort to obtain access to, or copies of, the historical accounting records in respect of the acquisition properties necessary to prepare and audit the acquisition properties financial statements, but such efforts were unsuccessful in respect of two of the properties – Filer filed a prospectus on April 3, 2013 – Prior to filing the prospectus, the Filer submitted a pre-filing requesting an interpretation that the prospectus would include satisfactory financial statements or other information as an alternative to the financial statements or other information that will be required to be included in, or incorporated by reference into, a BAR filed under Part 8 of NI 51-102 – Prospectus included the prospectus financials – Relief granted subject to conditions including provision of the acquisition financials.

Applicable Legislative Provisions

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

December 16, 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
STARLIGHT U.S. MULTI-FAMILY (NO. 2) CORE FUND
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the Decision Maker (the **Legislation**) for a decision pursuant to Section 13.1 of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) that the Filer be exempt from the requirement to include the financial statement disclosure prescribed under section 8.4 of NI 51-102 and Item 3 of Form NI 51-102F4 *Business Acquisition Report* relating to financial statement disclosure for significant acquisitions, so that the Filer does not need to include financial statements of Palm Valley (as defined herein) for the period prior to the date of its acquisition by the Vendor (as defined herein) in the business acquisition report (**BAR**) of the Filer relating to the Acquisition Transaction (as defined herein) (the **Exemption Sought**).

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

(a) the Ontario Securities Commission is the principal regulator 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 each of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (collectively, with Ontario, 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 principal, registered and head office of the Filer is located at 401 The West Mall, Suite 1100, Toronto, Ontario, M9C 5J5.

2. The Filer is a limited partnership established on September 23, 2013 under the laws of the Province of Ontario pursuant to a limited partnership agreement dated September 23, 2013, as amended and/or restated from time to time thereafter.

3. The Filer is a reporting issuer, or the equivalent thereof, in each Province of Canada and, to the best of its knowledge, information and belief, is not in default of any requirement of the Legislation.

4. The interests in the Filer are divided into five classes of limited partnership units (**Units**): class A limited partnership units (**Class A Units**), class C limited partnership units, class D limited partnership units, class F limited partnership units and class U limited partnership units (**Class U Units**). The Filer is authorized to issue an unlimited number of Units of each class. As at the date hereof, there are 3,400,000 Units outstanding.

5. The Class A Units and Class U Units of the Filer are listed and posted for trading on the TSX Venture Exchange under the symbols "UMF.A" and "UMF.U" respectively.

6. The Filer was formed for the primary purpose of indirectly acquiring, owning and operating a portfolio of diversified income-producing rental properties in the U.S. multi-family real estate market, including an initial portfolio of two properties (the Acquisition Properties) consisting of (i) a 65% interest in Falls at Eagle Creek in Houston, Texas (**Eagle Creek**) and (ii) a 100% interest in Palm Valley in Austin, Texas (**Palm Valley**).

7. On October 31, 2013, the Decision Maker issued a receipt (the **Receipt**) in respect of a final prospectus of the Filer (the **Prospectus**) relating to the initial public offering of the Units (the **IPO**) qualifying for distribution up to US$50 million of Units (as well as further Units issuable pursuant to an over-allotment option granted to the agents of the IPO).

8. The Receipt evidenced the granting by the Decision Maker of relief requested relating to financial statement presentation in the Prospectus, exempting the Filer from, among other things, the requirements of National Instrument 41-101 *General Prospectus Requirements* to include historical financial statements in respect of Palm Valley, for the period prior to the acquisition of Palm Valley by the vendor thereof (the **Vendor**) on December 8, 2011.

9. On November 15, 2013, the Filer completed its IPO of approximately US$32.7 million of Units, and on November 18, 2013, the Filer completed its acquisition of the Acquisition Properties for an aggregate purchase price of approximately US$63.6 million, satisfied, in part, by cash from the proceeds of the IPO (the **Acquisition Transaction**).

10. Other than summary internal financial information commencing May 2010 (which is incomplete and unsuitable for the purposes of preparing audited financial statements) obtained as part of its due diligence process in connection with the acquisition, the Vendor does not possess, nor has access to, and is not entitled to obtain access to, financial information in respect of Palm Valley for any period prior to its acquisition by the Vendor on December 8, 2011.

11. Starlight Investments Ltd., the promoter of the Filer for the IPO and the manager of the Filer (the **Manager**) had, without success, made (including with the assistance of the Vendor) every reasonable effort to obtain access to, or copies of, historical accounting records in respect of Palm Valley for the period prior to its acquisition by the Vendor. In particular, the entity that sold Palm Valley to the Vendor has refused to provide such historical accounting records to any of the Vendor, the Filer and the Manager.

12. The Acquisition Transaction is a "significant acquisition" for purposes of NI 51-102 and the Filer must file a BAR in respect of the Acquisition Transaction.

13. Unless otherwise exempted pursuant to section 13.1 of NI 51-102, the BAR must include or incorporate by reference the financial statements set out in section 8.4 of NI 51-102 relating to the Acquisition Properties (the **BAR Financials**).

14. The Filer will satisfy the requirements in respect of the BAR Financials by including in the BAR the following financial statements (each prepared in accordance with International Financial Reporting Standards (**IFRS**)):

    (a) in respect of Eagle Creek prior to its acquisition by Starlight U.S. Eagle Creek on September 16, 2013: audited carve-out statements of income and comprehensive income, changes in owners' equity and of cash flows for the years ended December 31, 2012, December 31, 2011 and December 31, 2010; audited carve-out statements of financial position as at December 31, 2012, December 31, 2011 and December 31, 2010; unaudited carve-out statements of income and comprehensive income, changes in owners' equity and cash flows for the interim period from January 1, 2013 to September 16, 2013 together with comparative financial information for the nine month period ended September 30, 2012; unaudited carve-out statements of income and comprehensive income for the interim period from July 1, 2013 to September 16, 2013 together with comparative financial information for the three month period ended September 30, 2012; and an unaudited statement of financial position as at September 16, 2013;

    (b) in respect of Eagle Creek after its acquisition by Starlight U.S. Eagle Creek on September 16, 2013: unaudited carve-out statements of income and comprehensive income, changes in owner's equity and cash flows for the interim period from September 16, 2013 to September 30, 2013 and an unaudited carve-out statement of financial position as at September 30, 2013;

    (c) in respect of Palm Valley after its acquisition by the Vendor on December

8, 2011: audited carve-out statements of income and comprehensive income, changes in owners' equity and cash flows for the nine months ended September 30, 2013, the year ended December 31, 2012 and the period from December 8, 2011 to December 31, 2011; audited carve-out statements of financial position as at September 30, 2013, December 31, 2012, December 31, 2011 and December 8, 2011; unaudited statements of income and comprehensive income for the three month period ended September 30, 2013, together with unaudited comparative financial information for the three and nine month periods ended September 30, 2012; and audited carve-out statements of cash flows for the nine month period ended September 30, 2013, together with unaudited comparative financial information for the nine month period ended September 30, 2012; and

(d) unaudited *pro forma* condensed consolidated financial statements of the Filer, consisting of the *pro forma* condensed consolidated statement of income (loss) and comprehensive income (loss) of the Filer for the year ended December 31, 2012 and the nine month period ended September 30, 2013 and unaudited *pro forma* condensed consolidated statement of financial position of the Filer as at September 30, 2013 and the related notes thereto, together with any additional *pro forma* statements of the Filer, and the related notes thereto, in each case prepared in accordance with IFRS.

(collectively, the **Acquisition Financials**).

Decision

The Decision Maker 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 Maker under the Legislation is that the Exemption Sought is granted with respect to the BAR provided that the Filer includes the Acquisition Financials in the BAR in respect of the Acquisition.

"Sonny Randhawa"
Manager, Corporate Finance
Ontario Securities Commission

2.1.5 Gazit-Globe Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption granted relief from requirement in NI 44-101 to incorporate by reference into a short form prospectus the Non-Incorporated Exhibits (as defined in the Decision) – Non-Incorporated Exhibits typically lengthy and incorporation by reference would therefore impose a disproportionately burdensome translation obligation of the Issuer – the terms of any Non-Incorporated Exhibit that constitute a material fact in respect of the Issuer are or will be set out in one or more of the Issuer's continuous disclosure documents that will be incorporated by reference into a short form prospectus of the Issuer

Applicable Legislative Provisions

National Instrument 44-101 Short Form Prospectus Distributions, ss. 8.1(1), 8.1(2).
Form 44-101F1 Short Form Prospectus, Items 11.1(1)1, 11.2.

November 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
GAZIT-GLOBE LTD.
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction (the "**Principal Regulator**") has received an application from the Filer for an exemption (the "**Requested Relief**") from certain requirements under sections 11.1(1)1 and 11.2 of Form 44-101F1 *Short Form Prospectus* ("**Form 44-101F1**") to include in the documents incorporated by reference in any short form prospectus of the Filer the following documents attached or incorporated by reference as exhibits to an Annual Report on Form 20-F of the Filer or an amendment thereto (collectively, a "**Form 20-F**") that is incorporated by reference in any such short form prospectus (collectively, the "**Non-Incorporated Exhibits**"):

(a) material contracts and agreements, and any amendments thereto;

(b) articles of association and memorandum of association of the Filer, and any amendments thereto;

(c) instruments defining the rights of security holders and holders of debt of the Filer or any subsidiary, and any amendments thereto;

(d) indentures and supplemental indentures, and any amendments thereto;

(e) voting trust agreements and shareholders' agreements, and any amendments thereto;

(f) management contracts or compensatory plans, contracts or arrangements in which directors or members of management participate, including stock option plans and other award or incentive plans, and any amendments thereto;

(g) statements regarding the calculation of earnings per share or other ratios included in the Form 20-F;

(h) lists of the Filer's subsidiaries; and

(i) the certifications required under (i) Rule 13a-14(a) or 15d-14(a) of the Exchange Act and (ii) Rule 13a-14(b) or 15d-14(b) and Section 1350, Chapter 63, Title 18 of the United States Code (Section 906 of the *Sarbanes-Oxley Act of 2002*).

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

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

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

Interpretation

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

Representations

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

1. The Filer is a limited liability corporation incorporated on June 11, 1982 in Israel under the Israeli Companies Law, as amended, which has its head office and registered office in Tel Aviv, Israel.

2. The ordinary shares of the Filer are listed on the Tel Aviv Stock Exchange, the New York Stock Exchange and the Toronto Stock Exchange (the "**TSX**").

3. The Filer's ordinary shares commenced trading on the TSX on October 16, 2013 at which point the Filer became a reporting issuer in Ontario. The Filer qualifies as an "SEC foreign issuer" within the meaning of section 1.1 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* ("**NI 71-102**") and an "SEC issuer" within the meaning of section 1.1 of National Instrument 51-102 *Continuous Disclosure Obligations* ("**NI 51-102**").

4. The Filer anticipates (i) filing a notice declaring its intention to be qualified to file a short form prospectus in substantially the form of Appendix A of National Instrument 44-101 *Short Form Prospectus Distributions* ("**NI 44-101**"), and (ii) filing a preliminary short form base shelf prospectus (the "**Prospectus**") in accordance with National Instrument 44-102 *Shelf Distributions* ("**NI 44-102**") in all of the Provinces and Territories of Canada (collectively, the "**Jurisdictions**") once qualified thereunder.

5. The Filer has filed on the System for Electronic Document Analysis and Retrieval ("**SEDAR**") an annual information form in the form of a Form 20-F for the year ended December 31, 2012, prepared under the United States *Securities Exchange Act of 1934*, as amended (the "**Exchange Act**") as permitted by NI 71-102 and NI 51-102, including each of the Non-Incorporated Exhibits attached to or incorporated by reference therein. The Filer will file on SEDAR any Non-Incorporated Exhibits attached to or incorporated by reference in a subsequent Form 20-F of the Filer, other than previously filed Non-Incorporated Exhibits, as soon as practicable following the filing of such disclosure documents with the U.S. Securities and Exchange Commission (the "**SEC**") and, in any event, prior to the filing of the Prospectus or any subsequently filed short form prospectus or prospectus supplement of the Filer on SEDAR.

6. The Filer is not in default of the securities legislation in any of the Jurisdictions.

7. The Filer is currently in compliance with the requirements of the Exchange Act and the United States *Securities Act of 1933*, as amended.

8. Pursuant to the Exchange Act requirements, the Non-Incorporated Exhibits are attached or incorporated by reference as exhibits to a Form 20-F.

9. As the Non-Incorporated Exhibits are attached or incorporated by reference as exhibits to a Form 20-F of the Filer that is or will be incorporated by reference in the Prospectus or any subsequently filed short form prospectus or prospectus supplement of the Filer, such Non-Incorporated Exhibits are or will be incorporated by reference in the Prospectus or such subsequently filed short form prospectus or prospectus supplement pursuant to the requirements of sections 11.1(1)1 and 11.2 of Form 44-101F1 absent the granting of the Requested Relief.

10. If the Filer filed an annual information form pursuant to Form 51-102F2 *Annual Information Form* (an "**Annual Information Form**") rather than a Form 20-F, none of the Non-Incorporated Exhibits would be required to be incorporated by reference into the Prospectus or any subsequent short form prospectus or prospectus supplement of the Filer, as the Exchange Act requirement to attach the Non-Incorporated Exhibits to a Form 20-F has no equivalent in Canadian securities law.

11. The terms of any Non-Incorporated Exhibit that constitute a material fact in respect of the Filer are or will be set out in one or more of the Filer's continuous disclosure documents that will be incorporated by reference into the Prospectus or any subsequently filed short form prospectus or prospectus supplement of the Filer.

12. Absent the granting of the Requested Relief, the Filer would be required under Section 40.1 of the *Securities Act* (Quebec) to translate into French each of the Non-Incorporated Exhibits. This translation obligation would impose significant costs and delay, which the Filer would not be required to incur if it filed an Annual Information Form rather than a Form 20-F.

13. The Filer's Application for the Requested Relief was prompted by the publication of Multilateral CSA Staff Notice 51-338 *Continuous Disclosure and Prospectus Requirements Relating to Documents Prepared under the U.S. Securities and Exchange Act of 1934* dated March 7, 2013, which set out staff's position that exhibits to a Form 20-F filed as an annual information form are incorporated by reference into a short form prospectus for the purposes of Canadian securities laws and therefore are subject to the translation requirement under section 40.1 of the *Securities Act* (Quebec).

Decision

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

The decision of the Principal Regulator under the Legislation is that the Requested Relief is granted, provided that:

(a) the Filer complies with all of the other applicable requirements of NI 44-101 and, if applicable, NI 44-102, in respect of the Prospectus and any subsequent short form prospectus or prospectus supplement;

(b) the Filer discloses in the Prospectus and any subsequent short form prospectus that it has obtained exemptive relief from the requirement to incorporate by reference in such prospectus the Non-Incorporated Exhibits, and includes a statement identifying the decision and explaining how a copy of the decision can be obtained;

(c) the Filer remains an "SEC issuer" (as defined in NI 51-102);

(d) the Filer files any Form 20-F on SEDAR concurrently with or as soon as practicable after the filing of such Form 20-F with the SEC; and

(e) the Filer files on SEDAR the Non-Incorporated Exhibits attached to or incorporated by reference in any Form 20-F of the Filer, other than previously filed Non-Incorporated Exhibits, as soon as practicable following the filing of such disclosure documents with the SEC and, in any event, prior to the filing of the Prospectus and any subsequent short form prospectus or prospectus supplement of the Filer on SEDAR.

"Sonny Randhawa"
Manager, Corporate Finance

2.1.6 Stay Gold Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – application for an order that the issuer is not a reporting issuer under applicable securities laws – issuer became a reporting issuer by filing a prospectus but the offering under the prospectus did not close – issuer does not intend to do a public offering of its securities – no securities of the issuer trade on a marketplace – requested relief granted.

Ontario Statutes

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

December 16, 2013

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, ALBERTA, SASKATCHEWAN AND NOVA SCOTIA
(the Jurisdictions)

AND

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

IN THE MATTER OF
STAY GOLD INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Makers) have received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer is deemed to have ceased 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 Nova Scotia 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

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

Representations

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

1. The Filer was incorporated under the name “Stay Gold Inc.” pursuant to the *Companies Act* (Nova Scotia) (the Companies Act) on November 19, 2010.

2. The Filer’s registered and head office is located at 17 Murdock MacKay Court, Lower Sackville, Nova Scotia.

3. The Filer is a reporting issuer in each of the Jurisdictions.

4. The Filer is not in default of any of its obligations under the Legislation as a reporting issuer.

5. The Filer is authorized to issue an unlimited number of common shares (Shares) without nominal or par value, of which 11,596,663 Shares are currently issued and outstanding and held by 47 registered holders.

6. There are an aggregate of 1,541,663 options to purchase Shares outstanding held by 17 optionholders (all of whom are shareholders of the Filer). All options will expire on or before January 31, 2014.

7. On January 7, 2013, the Filer issued a debt security evidencing a long term loan to the Filer and on May 29, 2013, the Filer issued an option to earn a 50% undivided interest in the Harrigan Cover Gold Property (the Other Securities). The Other Securities are held by a Nova Scotia company that is a close business associate of an officer and director of the Filer.

8. The Filer became a reporting issuer in the Jurisdictions upon the issuance of a receipt dated August 29, 2011, for the Filer's prospectus dated August 29, 2011, in connection with an initial public offering (the IPO) of the Filer's securities.

9. A subsequent prospectus dated May 28, 2012, for the IPO was filed on May 29, 2012, and was amended and restated on September 6, 2012 (the Prospectus).

10. Market conditions did not permit the Filer to complete the IPO. No securities of the Filer have been, or will be, distributed under Prospectus and the Filer has no current intention to seek public financing by way of an offering of securities.

11. The Filer is applying for a decision that it is not a reporting issuer in all of the jurisdictions of Canada in which it is currently a reporting issuer.

12. 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.

13. The outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by 48 securityholders. There are fewer than 15 securityholders in each of the jurisdictions of Canada, except in Nova Scotia where the Filer has 33 securityholders, and fewer than 51 securityholders in total worldwide. Of the remaining 15 securityholders (all being shareholders) that are not residents of Nova Scotia, there are 7 shareholders in Ontario, 4 shareholders in Alberta, 1 shareholder in Saskatchewan and 3 shareholders in British Columbia.

14. The 48 securityholders of the Filer are comprised of the following:

    a. 6 securityholders are directors or officers of the Filer;

    b. 1 securityholder is an employee of the Filer; and

    c. The remaining securityholders represented and warranted to the Filer that they met the requirements of one of the following exemptions or relationships in National Instrument 45-106 *Prospectus and Registration Exemptions* to purchase securities of the Filer:

        i. An "accredited investor", or

        ii. Family, close personal friend or close business associate – excluding Ontario.

15. Directors and officers of the Filer beneficially own 47.5% of the issued and outstanding securities of the Filer.

16. Effective October 4, 2013, 7 securityholders of the Filer transferred 893,340 Shares to Brendan Matheson, President and CEO of the Filer, and effective October 7, 2013, 6 securityholders of the Filer transferred 2,800,000 Shares to Gary MacKenzie, a director of the Filer (the Transfers). The Transfers were filed on SEDI, effective October 4 and October 7, 2013, respectively.

17. Except with respect to the Other Securities, the Filer currently has the same securityholders as it had prior to filing the Prospectus and except with respect to the Other Securities and the Transfers, no trading of its securities has occurred since it filed the Prospectus.

18. The British Columbia Securities Commission granted the Filer non-reporting status in British Columbia effective October 20, 2013, pursuant to British Columbia Instrument 11-502 – *Voluntary Surrender of Reporting Issuer Status*.

19. The Filer is not eligible to use the simplified procedure under CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* because it has more than 15 securityholders in Nova Scotia.

20. On November 13, 2013, the Filer issued a news release (the News Release) announcing that it had filed an application with the Jurisdictions for a decision that it ceases to be a reporting issuer and that if the requested decision is granted, the Filer will no longer be a reporting issuer in any jurisdiction in Canada and the outstanding securities of the Filer will be subject to restrictions on resale under applicable securities laws, which include that a first trade of such securities is a distribution unless the Filer is a reporting issuer in a jurisdiction in Canada at the time of the trade. The News Release was filed on SEDAR on November 13, 2013.

21. The Filer remains subject to, and bound by the Companies Act, which requires the presentation of financial statements at each annual general meeting, including information respecting the financial position of the Filer and the results of its operations required by the articles of the Filer.

22. If the Exemptive Relief Sought is granted, the Filer will no longer be a reporting issuer or equivalent in any jurisdiction in Canada.

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 Exemptive Relief Sought is granted.

“Sarah Bradley”
Chair
Nova Scotia Securities Commission

“Paul Radford”
Vice-chair
Nova Scotia Securities Commission

2.1.7 1832 Asset Management L.P.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from certain specified derivatives and custodial requirements to permit mutual funds to enter into swap transactions that are cleared through a clearing corporation – relief required because of new U.S. requirements to clear over-the-counter derivatives including swaps – decision treats cleared swaps similar to other cleared derivatives – National Instrument 81-102 Mutual Funds.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.7(1) and (4), 6.8(1), 19.1.

December 16, 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
1832 ASSET MANAGEMENT L.P.
(1832)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from 1832 (the **Filer**), pursuant to section 19.1 of National Instrument 81-102 – *Mutual Funds* (**NI 81-102**), on behalf of existing and future mutual funds that are subject to NI 81-102, that are permitted to enter into Swaps (as defined below) and for which the Filer or an affiliate of the Filer acts as manager or portfolio advisor or both (each, a **Fund**), for an exemption from:

(a) the requirement in subsection 2.7(1) of NI 81-102 that a mutual fund must not purchase an option or a debt-like security or enter into a swap or a forward contract unless, at the time of the transaction, the option, debt-like security, swap or contract has a designated rating or the equivalent debt of the counterparty, or of a person or company that has fully and unconditionally guaranteed the obligations of the counterparty in respect of the option, debt-like security, swap or contract, has a designated rating;

(b) the limitation in subsection 2.7(4) of NI 81-102 that the mark-to-market value of the exposure of a mutual fund under its specified derivatives positions with any one counterparty other than an acceptable clearing corporation or a clearing corporation that settles transactions made on a futures exchange listed in Appendix A to NI 81-102 shall not exceed, for a period of 30 days or more, 10 percent of the net asset value of the mutual fund; and

(c) the requirement in subsection 6.1(1) of NI 81-102 to hold all portfolio assets of a mutual fund under the custodianship of one custodian in order to permit each of the Funds to deposit cash and portfolio assets directly with a Futures Commission Merchant (as defined below) and indirectly with a Clearing Corporation (as defined below) as margin.

in each case, with respect to Swaps (the **Requested Relief**), on the terms and conditions provided for in this decision.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

(b) the Filer has provided notice that subsections 4.7(1) and 4.7(2) of Multilateral Instrument 11-102 – *Passport System* are intended to be relied upon in each of the provinces and territories of Canada (together with the Jurisdiction, the **Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 – *Definitions*, the *Securities Act* (Ontario) and NI 81-102 have the same meaning if used in this decision, unless otherwise defined. In addition, the following capitalized have the following meanings herein:

"CFTC" means the U.S. Commodity Futures Trading Commission;

"Clearing Corporation" means any of the Chicago Mercantile Exchange Inc., ICE Clear Credit LLC, LCH.Clearnet Limited and any other clearing organization that is permitted to operate in the Jurisdiction;

"Dodd-Frank Act" means the Dodd-Frank Wall Street Reform and Consumer Protect Act;

"Futures Commission Merchant" means a futures commission merchant that is registered with the CFTC and is a member of a Clearing Corporation;

"OTC" means over-the-counter; and

"Swaps" means swaps that are subject to a clearing determination issued by the CFTC, including fixed-to-floating interest rate swaps, basis swaps, forward rate agreements in U.S. dollars, the Euro, Pounds Sterling or the Japanese Yen, overnight index swaps in U.S. dollars, the Euro and Pounds Sterling and untranched credit default swaps on certain North American indices (CDX.NA.IG and CDX.NA.HY) and European indices (iTraxx Europe, iTraxx Europe Crossover and iTraxx Europe hiVol) at various tenors.

Representations

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

(a) 1832 is a limited partnership established under the laws of Ontario with its head office in Toronto, Ontario. 1832 is registered as: (i) a portfolio manager in all of the provinces of Canada and in the Yukon; (ii) an exempt market dealer in all of the provinces of Canada (except Prince Edward Island and Saskatchewan); (iii) an investment fund manager in Ontario, Québec and Newfoundland and Labrador; and (iv) a commodity trading manager in Ontario.

(b) The Filer, or an affiliate of the Filer, is or will be the manager and/or portfolio advisor of the Funds. In addition, from time to time, third parties who are registered as portfolio managers may act as portfolio advisors to a Fund.

(c) Each of the Funds is or will be an open-ended mutual fund trust, limited partnership or corporation established under the laws of the Province of Ontario or the laws of Canada and is or will be subject to the provisions of NI 81-102.

(d) The securities of each of the Funds are or will be qualified for distribution in the Jurisdictions pursuant to simplified prospectuses and annual information forms prepared and filed in accordance with the securities legislation of the Jurisdictions. Accordingly, each Fund is or will be a reporting issuer or the equivalent in each Jurisdiction.

(e) The investment objective and investment strategies of each Fund permit or will permit the Fund to enter into derivative transactions, including Swaps. The portfolio management team of each of the existing Funds consider Swaps to be an important investment tool that is available to it to properly manage the Fund's portfolio. Over the last five calendar years, the existing Funds have entered into credit default swaps on single names and indices that had an aggregate absolute notional value of approximately $645.5 million.

(f) Neither 1832 nor any Fund is currently in default of securities legislation in any of the Jurisdictions.

(g) The Dodd-Frank Act requires that certain OTC Swaps be cleared through Futures Commission Merchants at a Clearing Corporation. Generally, where one party to a Swap is a "U.S. person" (within the meaning attributed to such term by the CFTC) and the other party to the Swap is a mutual fund, such as a Fund, that Swap must be cleared, absent an available exception.

(h) Currently, certain Funds enter into Swaps on an OTC basis with a number of Canadian and non-U.S. international counterparties. These OTC Swaps are entered into in compliance with the derivative provisions of NI 81-102. At the earliest opportunity, the Funds would like to be in a position to enter into Swaps with U.S. counter-parties, which would be subject to the Dodd-Frank Act. These Swaps will not be permitted without the Requested Relief.

(i) In order to benefit from both the pricing benefits and reduced trading costs that the Filer is often able to achieve through its trade execution practices for its managed investment funds and from the reduced costs associated with cleared OTC derivatives as compared to other OTC trades, the Filer wishes to enter into cleared Swaps on behalf of the Funds.

(j) In the absence of the Requested Relief, the Filer may need to structure certain Swaps entered into by the Funds so as to avoid the clearing requirements of the CFTC. The Filer respectfully submits that this would not be in the best interests of the Funds and their investors for a number of reasons, as set out below.

(k) The filer strongly believes that it is in the best interests of the Funds and their investors to execute OTC derivatives with U.S. persons, including U.S. swap dealers.

(l) In its role as a fiduciary for the Funds, the Filer has determined that central clearing represents the best choice for the investors in the Funds to mitigate the legal, operational and back office risks faced by investors in the global swap markets.

(m) The Filer currently uses the same trade execution practices for all of its managed funds, including the Funds. An example of these trade execution practices is block trading, where large number of securities are purchased or sold or large derivative trades are entered into on behalf of a number of investment funds advised by the Filer. The Filer wishes to include in such practices the use of cleared Swaps where such trades are executed with a U.S. swap dealer. If the Funds are unable to employ these trade execution practices, then the Filer will have to execute trades for the Funds on a separate basis. This will increase the operational risk for the Funds, as separate execution procedures will need to be established and followed only for the Funds. In addition, the Funds would not be able to enjoy the possible price benefits and reduction in trading costs that the Filer may be able to achieve through a common practice for its family of investment funds. In the Filer's opinion, best execution and maximum certainty can best be achieved through common trade execution practices, which, in the case of OTC derivatives, involve the execution of Swaps on a cleared basis.

(n) As a member of the G20 and a participant in the September 2009 commitment of G20 nations to improve transparency and mitigate risk in derivatives markets, Canada has expressly recognized the systemic benefits that clearing OTC derivatives offers to market participants, such as the Funds. The Filer respectfully submits that the Funds should be encouraged to comply with the robust clearing requirements established by the CFTC by granting them the Requested Relief.

(o) The Requested Relief is analogous to the treatment currently afforded under NI 81-102 to other types of derivatives that are cleared, such as clearing corporation options, options on futures and standardized futures. This demonstrates that, from a policy perspective, the Requested Relief is consistent with the views of the Canadian securities authorities in respect of cleared derivative trades.

(p) For the reasons provided above, the Filer believes that it would not be prejudicial to the public interest to grant the Requested Relief.

Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted provided that, in respect of the deposit of cash and portfolio assets as margin:

(a) in Canada,

i. the Futures Commission Merchant is a member of a self-regulatory organization that is a participating member of CIPF; and

ii. the amount of margin deposited by a Fund and maintained with the Futures Commission Merchant does not, when aggregated with the amount of margin already held by the Futures Commission Merchant, exceed 10 percent of the net asset value of the Fund as at the time of deposit; and

(b) outside of Canada,

i. the Futures Commission Merchant is a member of a Clearing Corporation and, as a result, is subject to a regulatory audit;

ii. the Futures Commission Merchant has a net worth, determined from its most recent audited financial statements that have been made public or from other publicly available financial information, in excess of the equivalent of $50 million; and

iii. the amount of margin deposited by a Fund and maintained with the Futures Commission Merchant does not, when aggregated with the amount of margin already held by the Futures Commission Merchant, exceed 10 percent of the net asset value of the Fund as at the time of deposit.

This decision will terminate on the earlier of (i) the coming into force of any revisions to the provisions of NI 81-102 that address the clearing of OTC derivatives, and (ii) two years from the date of this decision.

"Vera Nunes"
Manager, Investment Funds
Ontario Securities Commission

2.1.8 Raymond James & Associates, Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions (NP 11-203) – Applicants are dealers that regularly participate in offerings of foreign securities into Canada on a private placement basis to permitted clients – when a foreign offering document is provided to prospective Canadian investors certain items of disclosure must be included in the foreign offering document – Canadian specific disclosure items are commonly included in a foreign offering document by adding a "wrapper" to the foreign offering document which contains any required Canadian disclosure – Applicants granted relief from certain disclosure requirements in the context of offerings of securities made under a prospectus exemption to Canadian investors that are permitted clients – the securities must be offered primarily in a foreign jurisdiction – the securities must be issued by an issuer that qualifies as a "foreign issuer" as defined in the decision – Applicants granted relief from the requirement in National Instrument 33-105 Underwriting Conflicts (NI 33-105) to provide disclosure on conflicts of interest between dealers and issuers provided that disclosure required for U.S. registered offerings is provided instead – Applicants granted relief from the requirement in NI 33-105 to provide disclosure of a connected issuer relationship where the issuer is a foreign government on certain conditions – Applicants granted relief from the requirement in OSC Rule 45-501 Ontario Prospectus and Registration Exemptions to include in an offering memorandum disclosure of the statutory right of action for damages and right of rescission provided to purchasers under the legislation on certain conditions – Applicants provided with a separate permission from the Director pursuant to s. 38(3) of the Securities Act(Ontario) for the making of a listing representation in an offering memorandum – Applicants provided with a separate letter from the Director confirming that the requirement in Form 45-106F1 Report of Exempt Distribution in Ontario to notify purchasers of the collection of their personal information only applies where such purchasers are individuals.

Applicable Legislative Provisions

National Instrument 33-105 Underwriting Conflicts, ss. 2.1.
OSC Rule 45-501 Ontario Prospectus and Registration Exemptions, s. 5.3.
National Instrument 45-106 Prospectus and Registration Exemptions – Form 45-106F1.
Securities Act, R.S.O. 1990, c. S.5, as am., s. 38(3).

December 16, 2013

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, ALBERTA, BRITISH COLUMBIA, MANITOBA, NEW BRUNSWICK,
NEWFOUNDLAND AND LABRADOR, NORTHWEST TERRITORIES, NOVA SCOTIA, NUNAVUT,
PRINCE EDWARD ISLAND, QUÉBEC, SASKATCHEWAN AND YUKON

AND

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

AND

IN THE MATTER OF
RAYMOND JAMES & ASSOCIATES, INC.
(THE APPLICANT)

DECISION

Background

Connected and Related Issuer Disclosure

The regulator in Ontario has received an application from the Applicant for a decision under the Legislation of the jurisdiction of the principal regulator for the following exemptions (the **Passport Exemptions**)

1. an exemption from the disclosure (the **Connected Issuer Disclosure and Related Issuer Disclosure**) required by subsection 2.1(1) of National Instrument 33-105 *Underwriting Conflicts* (NI 33-105) as specified in Appendix C of NI 33-105 in an offering memorandum as defined in the Legislation (**Offering Memorandum**) with respect to distributions of securities that meet all of the following criteria (a **Specified Exempt Distribution**):

(a) a distribution under an exemption from the prospectus requirement (**Accredited Investor Prospectus Exemption**) set out in section 2.3 of National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**),

(b) of a security offered primarily in a "foreign jurisdiction" (as defined in National Instrument 14-101 *Definitions*) (**Foreign Jurisdiction**),

(c) by the Applicant or an affiliate of the Applicant named in Schedule A attached hereto (**Affiliate**) as underwriter,

(d) to Canadian investors each of which is a "permitted client" as defined in NI 31-103 (**Permitted Client**), and

(e) of a security issued by an issuer incorporated, formed or created under the laws of a Foreign Jurisdiction, that is not a reporting issuer in any jurisdiction of Canada, and that has its head office or principal executive office outside of Canada (**Foreign Issuer**).

2. an exemption from the requirement to include Connected Issuer Disclosure in an Offering Memorandum for a Specified Exempt Distribution of a security issued or guaranteed by the government of a Foreign Jurisdiction (**Foreign Government**) and that meets all of the criteria described in (i) above other than (e); and

3. an exemption from the requirement to include Related Issuer Disclosure in an Offering Memorandum for a Specified Exempt Distribution of a security issued or guaranteed by a Foreign Government and that meets all of the criteria described in (i) above other than (e).

Right of Action Disclosure

The securities regulatory authority or regulator in each of Ontario, New Brunswick, Nova Scotia and Saskatchewan (the **Coordinated Exemptive Relief Decision Makers**) has received an application (the **Coordinated Exemptive Relief**) from the Applicant for a decision under the securities legislation of those jurisdictions for an exemption from the requirement to disclose in an Offering Memorandum with respect to a Specified Exempt Distribution, a description of the statutory right of action available to purchasers for a misrepresentation in the Offering Memorandum (the **Right of Action Disclosure**).

Process for Exemptive Relief Applications in Multiple Jurisdictions

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

(a) the OSC is the principal regulator for this application;

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

(c) the decision is the decision of the principal regulator; and

(d) the decision evidences the decision of each Coordinated Exemptive Relief Decision Maker.

Interpretation

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

Legislation means, for the local jurisdiction, its securities legislation.

Representations

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

1. The Applicant has filed Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service* (**Form 31-103F2**) in order to qualify for the international dealer exemption. Attached hereto as Schedule A is a list of the Applicant and Affiliates registered as an investment dealer, restricted dealer or exempt market dealer and/or which have filed Form 31-103F2 in order to qualify for the international dealer exemption under section 8.18 of NI 31-103.

2. The Applicant is registered as a broker-dealer and an investment adviser with the U.S. Securities and Exchange Commission and is a member of the Financial Industry Regulatory Authority, a self-regulatory organization. The Applicant is also a member of the New York Stock Exchange and the NASDAQ and is a participant firm of the Chicago Stock Exchange.

3. The Applicant, together with its Affiliates, is actively involved in underwriting public offerings and private placements in the United States and elsewhere by U.S. and other foreign issuers.

4. The Applicant and its Affiliates regularly consider extending offerings of Foreign Issuers or Foreign Governments to Canadian investors that are Permitted Clients under the Accredited Investor Prospectus Exemption.

5. If a prospectus or private placement memorandum (a **foreign offering document**) is provided to investors outside Canada, it is common practice where these offerings are extended to Canadian investors to provide the foreign offering document to Canadian investors. The foreign offering document when used in the jurisdiction constitutes an Offering Memorandum.

6. If an Offering Memorandum is provided to Canadian investors, it is required to include, depending on the jurisdiction, one or both of (i) the Connected Issuer Disclosure and Related Issuer Disclosure; and (ii) Right of Action Disclosure.

7. The Connected Issuer Disclosure and Related Issuer Disclosure prescribes summary disclosure to be included on the cover page of an Offering Memorandum, together with a cross-reference, and more detailed disclosure to be included in the body of an Offering Memorandum concerning the nature of any relationship that the issuer or any selling securityholder may have with an underwriter of the distribution or any affiliate of an underwriter, either through a significant security holding (related issuer) (**Related Issuer Disclosure**) or such that a reasonable prospective purchaser of the offered securities may be led to question if the underwriter or affiliate and the issuer or selling securityholder are independent of each other in respect of the distribution (connected issuer) (**Connected Issuer Disclosure**) and the effect the distribution may have on the underwriter or affiliate.

8. The Right of Action Disclosure provides a description of the statutory right of action for rescission or damages available to purchasers in the event of a misrepresentation in the Offering Memorandum.

9. In order to have the prescribed Canadian disclosure included in the foreign offering document, that foreign offering document may either be amended to include the prescribed Canadian disclosure, or, more commonly, a “wrapper” with the prescribed Canadian disclosure and other optional disclosure (a **Canadian wrapper**) is prepared by one or more underwriters making a Specified Exempt Distribution and attached to the face of the foreign offering document, so that the Canadian wrapper together with the foreign offering document form one document constituting a Canadian Offering Memorandum for the purposes of that offering. The underwriters making the Exempt Distribution or their affiliates provide the Canadian Offering Memorandum to purchasers in Canada.

10. An offering document for an offering registered under U.S. federal securities laws (**U.S. Registered Offerin**g) by a U.S. domestic issuer or foreign private issuer must include disclosure, pursuant to section 229.508 of Regulation S-K under the U.S. Securities Act of 1933, as amended (**1933 Act**) and FINRA Rule 5121 regarding underwriter conflicts of interest, that is substantially similar to that required by the Connected Issuer Disclosure and Related Issuer Disclosure, except that cover page disclosure is not required.

11. An offering document for a U.S. Registered Offering must identify each underwriter having a material relationship with the issuer and state the nature of the relationship. Pursuant to FINRA Rule 5121, no underwriter that has a conflict of interest may participate in a U.S. Registered Offering unless the offering document includes prominent disclosure of the nature of the conflict of interest.

12. Certain unregistered offerings (such as bank debt offerings exempt from registration under section 3(a)2 of the 1933 Act, offerings by foreign governments and securities exchange offerings exempt from registration under section 3(a)9 of the 1933 Act) are also subject to FINRA Rule 5121.

13. Right of Action Disclosure is only required in the provinces of Saskatchewan, Nova Scotia, New Brunswick and Ontario. The securities legislation of Manitoba, Prince Edward Island, Newfoundland and Labrador, Yukon, the Northwest Territories and Nunavut provide for statutory rights of rescission or damages in the event of misrepresentation in an offering memorandum, but do not mandate disclosure of the rights in the offering memorandum. The securities legislation of Alberta, British Columbia and Quebec provides for statutory rights of rescission or damages in the event of misrepresentation in an offering memorandum when the exemption in section 2.9 of NI 45-106 is relied upon.

14. The added complexity, delays and enhanced costs associated with ensuring compliance with Canadian Offering Memorandum requirements are frequently factors that issuers and underwriters take into consideration when deciding whether to include Canadian investor participation in an offering.

15. Non-Canadian issuers and underwriters will often extend the offering to Canadian institutional investors, provided that the timing requirements and incremental compliance costs do not outweigh the benefits of doing so.

16. In many cases, an offering proceeds on such an accelerated timetable that even a one-day turn-around to prepare a Canadian wrapper can make it impracticable to include participation by Canadian investors.

Decision

Each of the principal regulator and the Coordinated Exemptive Relief Decision Makers is satisfied that the decision meets the test set out in the Legislation for the relevant regulator or securities regulatory authority to make the decision.

The decision of the principal regulator under the Legislation is that the Passport Exemptions are granted, provided that:

(a) the Applicant and its Affiliates shall deliver to each prospective purchaser of securities under a Specified Exempt Distribution a notice, substantially in the form of Schedule B attached hereto, prior to the first reliance on this Decision for distributions of securities to such prospective purchaser and the purchaser provides in return a written acknowledgement and consent to reliance by the Applicant or its Affiliates upon this Decision;

(b) for a Specified Exempt Distribution by a Foreign Issuer, any Offering Memorandum provided by the Applicant or its Affiliates complies with the disclosure requirements applicable to a U.S. Registered Offering with respect to disclosure of underwriter conflicts of interest between the Applicant or its Affiliates and the issuer or selling securityholder, whether or not the offering is a U.S. Registered Offering;

(c) if Related Issuer Disclosure would have been required for a Specified Exempt Distribution of securities issued or guaranteed by a Foreign Government, any Offering Memorandum provided by the Applicant or its Affiliates:

  (i) complies with the disclosure requirements applicable to a U.S. Registered Offering with respect to disclosure of underwriter conflicts of interest between the Applicant or Affiliate and the issuer or selling securityholder, whether or not the offering is a U.S. Registered Offering; or

  (ii) contains the disclosure specified in Appendix C of NI 33-105 to be included in the body of a prospectus or other document;

(d) on a monthly basis (unless and until otherwise notified in writing by the Director of the Corporate Finance Branch of the principal regulator), the Applicant will deliver to the Director of the Corporate Finance Branch of the principal regulator (within ten days of the last day of the previous month), a list of the Specified Exempt Distributions it or an Affiliate has made in reliance on this Decision, if any, stating the name of the issuer, the security distributed, the total value of the offering in Canadian dollars, the value in Canadian dollars of the securities distributed in Canada by the Applicant and its Affiliates, the date of the Form 45-106F1 *Report of Exempt Distribution* (Form 45-106F6 *British Columbia Report of Exempt Distribution* in British Columbia) filed with applicable regulators and the jurisdictions in which it was filed;

(e) each Form 45-106F1 filed with the principal regulator by an Applicant or an Affiliate in connection with a Specified Exempt Distribution shall be filed using the electronic version of Form 45-106F1 available on the website of the principal regulator; and

(f) the Passport Exemptions shall terminate on the earlier of: (i) the date that is three years after the date of this Decision and (ii) the date that amendments to the Legislation become effective in each jurisdiction of Canada that provide for substantially the same relief as the Passport Exemptions.

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

AND

The decision of the Coordinated Review Decision Makers under the Legislation is that the Coordinated Exemptive Relief is granted, provided that:

(a) the Applicant and its Affiliates shall deliver to each prospective purchaser of securities under a Specified Exempt Distribution a notice, substantially in the form of Schedule B attached hereto, prior to the first reliance on this Decision for distributions of securities to such prospective purchaser and the purchaser provides in return a written acknowledgement and consent to reliance by the Applicant or its Affiliates upon this Decision; and

(b) the Coordinated Exemptive Relief shall terminate in a particular jurisdiction on the earlier of: (i) the date that is three years after the date of this Decision and (ii) the date that amendments to the Legislation become effective in the jurisdiction that provide for substantially the same relief as the Coordinated Exemptive Relief.

"Christopher Portner"
Commissioner
Ontario Securities Commission

"Deborah Leckman"
Commissioner
Ontario Securities Commission

SCHEDULE A

The Applicant and its Affiliates Registered as an Investment Dealer, Restricted Dealer or Exempt Market Dealer and/or Which Have Filed Form 31-103F2 in Order to Qualify for the International Dealer Exemption

Applicant and Affiliates	Registration Status	Exempt International Dealer	Exempt Market Dealer	Restricted Dealer	Investment Dealer
Raymond James					
Raymond James & Associates, Inc.	Relying on the International Dealer Exemption	Ontario, Alberta, British Columbia, New Brunswick, Quebec			
Raymond James Ltd.	Registered as an Investment Dealer				All provinces and territories of Canada

SCHEDULE B

FOREIGN SECURITY PRIVATE PLACEMENTS

NOTICE TO CLIENTS

We may from time to time sell to you as principal or agent securities of Foreign Issuers or securities of or guaranteed by Foreign Governments sold into Canada on a prospectus exempt basis (Foreign Security Private Placements). On ●, 2013, the Canadian Securities Administrators issued a decision (the Decision) exempting us and our affiliates from certain disclosure obligations applicable to such transactions on the basis that you are a permitted client as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registration Requirements*. The Decision is available at www.osc.gov.on.ca and terminates on the earlier of three years after the date of the Decision and the date amendments to the Legislation come into effect in each jurisdiction in Canada that provide for substantially the same relief as the Decision. Capitalized terms used but not otherwise defined in this notice have the meanings ascribed to such terms in the Decision.

It is a requirement of the Decision that we notify you of the following two matters set forth in this notice.

1. Statutory Rights of Action

If, in connection with a Foreign Security Private Placement, we deliver to you an offering document that constitutes an offering memorandum under applicable securities laws in Canada, you may have, depending on the province or territory of Canada in which the trade was made to you, remedies for rescission or damages if the offering memorandum and any amendment thereto contains a misrepresentation, provided that the remedies for rescission or damages are exercised by you within the time limit prescribed by the securities legislation of your province or territory. You should refer to any applicable provisions of the securities legislation of your province or territory for the particulars of these rights or consult with a legal advisor.

2. Relationship between the Issuer or Selling Securityholder and the Underwriters

We or our affiliates in respect of a Foreign Security Private Placement may have an ownership, lending or other relationship with the issuer of such securities or a selling securityholder that may cause the issuer or selling securityholder to be a "related issuer" or "connected issuer" to us or such affiliate under Canadian securities law (as those terms are defined in National Instrument 33-105 *Underwriting Conflicts*). Under the terms of the Decision, the offering document for a private placement by a Foreign Issuer will disclose underwriter conflicts of interest in accordance with the requirements of U.S. federal securities laws and of the Financial Industry Regulatory Authority, a self-regulatory organization in the United States, applicable to an offering registered under the 1933 Act. The Decision grants an exemption from the requirement to include connected issuer disclosure or cover page related issuer disclosure in an offering document for a private placement of securities of or guaranteed by a Foreign Government.

Please note the following for your information.

3. Canadian Federal Income Tax Considerations

The offering document in respect of the Foreign Security Private Placement may not contain a discussion of the Canadian tax consequences of the purchase, holding or disposition of the securities offered. You are advised to consult your own tax advisor regarding the Canadian federal income tax considerations relevant to the purchase of securities offered in a Foreign Security Private Placement having regard to your particular circumstances. The Canadian federal income tax considerations relevant to you may differ from the income tax considerations described in the offering document and such differences may be material and adverse.

Dated ●, 2013

CLIENT ACKNOWLEDGEMENT, CONSENT AND REPRESENTATION

I _____, on behalf of _____, acknowledge receipt of the Notice to Clients dated _____, 2013 and consent to Foreign Security Private Placements made to us by way of offering documents prepared and delivered in reliance on an exemption from the disclosure requirements described in the decision of the Canadian Securities Administrators dated ●, 2013, and represent that _____ is a "permitted client" as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registration Requirements* and an "accredited investor" as defined in National Instrument 45-106 *Prospectus and Registration Exemptions*.

Per: _____ Date: _____
Authorized Signatory

I have authority to bind the company

Name: _____

Title: _____

2.1.9 Gazit-Globe Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Filer wants to put in place a credit support issuer structure, but is unable to rely on the exemption for credit support issuers in applicable securities legislation – Relief granted from continuous disclosure requirements, certification requirements, insider reporting requirements, audit committee requirements and corporate governance requirements – Filer unable to rely on exemption for credit support issuer in applicable securities legislation since the Filer is an SEC foreign issuer relying on the continuous disclosure exemptions in National Instruments 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuer and therefore does not meet the test for a parent credit support issuer in the applicable securities legislation – Relief subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, ss. 107, 121(2)(a)(ii).
National Instrument 51-102 Continuous Disclosure Obligations, ss. 13.1(2), 13.4.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, ss. 8.5, 8.6(2).
National Instrument 52-110 Audit Committees, ss. 1.2(g), 8.1(2).
National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI), s. 6.1(2).
National Instrument 55-104 Insider Reporting Requirements and Exemptions, s. 10.1(2).
National Instrument 58-101 Disclosure of Corporate Governance Practices, ss. 1.3(c), 3.1(2).

December 9, 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
GAZIT-GLOBE LTD.
(THE FILER)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting:

(a) Gazit Canada Financial Inc. (the **Issuer**) from the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) (the **Continuous Disclosure Requirements**);

(b) the Issuer from the requirements of National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109**) (the **Certification Requirements**);

(c) insiders of the Issuer from the insider reporting requirement (as defined in National Instrument 14-101 *Definitions* (**NI 14-101**)) (the **Insider Reporting Requirements**);

(d) the Issuer from the requirements of National Instrument 52-110 *Audit Committees* (**NI 52-110**) (the **Audit Committee Requirements**);

(e) the Issuer from the requirements of National Instrument 58-101 *Disclosure of Corporate Governance Practices* (**NI 58-101**) (the **Corporate Governance Requirements**),

in each case to accommodate the issuance by the Issuer of debt securities guaranteed by the Filer (the **Debt Securities**) (collectively, the **Exemption Sought**).

Furthermore, the principal regulator in the Jurisdiction has received a request from the Filer for a decision that the application and this decision be kept confidential and not be made public until the earlier of: (a) the date on which the Issuer and/or the Filer issues a news release announcing that the Issuer has entered into an agreement relating to an offering of Debt Securities; (b) the date on which the Issuer and/or the Filer otherwise publicly announce an offering of Debt Securities; (c) the date on which the Issuer files a preliminary short form prospectus relating to an offering of Debt Securities; (d) the date on which the Filer advises the Ontario Securities Commission (the **OSC**), as the principal regulator, that there is no longer any need for the application and the decision document to remain confidential; and (e) the date that is 90 days after the date of the decision document (the **Confidentiality Sought**).

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

(a) the OSC is the principal regulator for this application; and

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

Interpretation

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

Representations

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

The Filer

1. The Filer is a corporation existing and incorporated under the laws of Israel with its principal executive offices in Tel Aviv, Israel.

2. The ordinary shares (the **Shares**) of the Filer are listed on the Tel Aviv Stock Exchange, the New York Stock Exchange and the Toronto Stock Exchange (**TSX**) under the symbol "GZT". The Shares have been listed on the Tel Aviv Stock Exchange since 1983, and on the New York Stock Exchange since December, 2011. The Shares were listed on the TSX on October 16, 2013.

3. The Filer is a reporting issuer in Ontario, and intends to become a reporting issuer in all other Jurisdictions upon the filing of a base shelf prospectus. The Filer is a U.S. Securities and Exchange Commission (the **SEC**) foreign issuer within the meaning of section 1.1 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**NI 71-102**) and relies on the exemptions set out in Part 4 of NI 71-102. With respect to NI 52-109, the Filer intends to file annual certifications in reliance on section 8.1 thereof and interim certifications in reliance on subection 8.2(1) thereof.

4. The Filer is one of the world's largest owners and operators of supermarket-anchored shopping centres. The Filer has direct or indirect interests in, or entities holding interests in, over 620 properties, with a gross leasable area of approximately 73 million square feet. These properties are geographically diversified across over 20 countries, including the United States, Canada, Finland, Sweden, Poland, Czech Republic, Israel, Germany and Brazil. The Filer acquires, develops and redevelops well-located, supermarket-anchored neighbourhood and community shopping centres in densely-populated areas with high barriers to entry and attractive demographic trends. The Filer's properties are typically located in countries characterized by stable gross domestic product (**GDP**) growth, political and economic stability and strong credit ratings. The Filer owns approximately 45% of the outstanding common shares of First Capital Realty Inc., which is a reporting issuer in the Jurisdictions. In addition, the Filer is active in North America in the healthcare real estate sector.

5. The Filer is subject to the continuous disclosure and filing requirements of Israeli Securities Laws, 5728-1968 (the **Israeli Law**), pursuant to which the Filer publishes and files annual and interim financial statements in accordance with International Financial Reporting Standards. Under Israeli Law, the Filer is required to file an annual report no later than three months following the end of the Filer's fiscal year end. This annual report must include a management discussion and analysis (**MD&A**) and audited financial statements, together with a report regarding the effectiveness of the internal auditing of financial reporting and disclosure (the Israeli equivalent to the requirement under the U.S. Sarbanes Oxley

Act of 2002 (the **Israeli "SOX" equivalent**)). The Filer is required to file interim reports no later than two months following the end of each fiscal quarter (March 31st, June 30th, and September 30th). Each interim report must include: (i) interim reviewed (unaudited) financial statements, (ii) MD&A for the interim period, (iii) updates on material changes in the description of the Filer's business, and (iv) a report regarding the effectiveness of the internal auditing of financial reporting and disclosure (the Israeli "SOX" equivalent).

6. The Filer also files "immediate reports" on the occurrence of certain events, generally not later than the first trading day following the occurrence of such event. These "immediate reports" are required to be filed with respect to any event or matter which deviates from the regular course of business of the Filer on account of its nature, scope or potential results, and which has, or may have, a material effect on the Filer, or which may materially affect the price of the Filer's securities. Other specific reporting rules are applicable in circumstances including, among others: the purchase of a substantial asset; changes in the articles of association or memorandum of association of the Filer; or merger.

7. In addition to the above, the Israeli Securities Authority may require the Filer to submit an immediate report regarding any event or matter if, in its opinion, information regarding the same is of importance to a reasonable investor considering the purchase or sale of securities of the Filer.

8. As a U.S. "foreign private issuer", the Filer complies with the requirements of the applicable U.S. rules and does not rely on any exemption from the foreign private issuer regime. With respect to its interim financial statements and interim MD&A, Filer files its translated Israeli financial statements and MD&A with the U.S. Securities and Exchange Commission approximately contemporaneously with their filing in Israel, together with the Israeli "SOX" equivalent certificates. The Filer intends to also file certificates in relation to its interim financial statements and MD&A in compliance with the section 302 of the U.S Sarbanes Oxley Act of 2002.

9. The Filer is not in default of any requirement of Israeli Law, the U.S. rules applicable to it as a "foreign private issuer", the Legislation or equivalent legislation in any of the Jurisdictions.

The Issuer

10. The Debt Securities will be: (a) issued by the Issuer, an entity that is a wholly-owned indirect subsidiary of the Filer; and (b) guaranteed by the Filer.

11. The Issuer is a corporation formed under the laws of Ontario, with a capital structure consisting of an unlimited number of common shares. All of the issued and outstanding shares of the issuer are owned by Gazit Canada Inc., which is an indirect wholly-owned subsidiary of the Filer.

12. Prior to the issuance of a receipt for a final short form prospectus of the Issuer qualifying the distribution of the Debt Securities, the Issuer will not be a reporting issuer in any of the jurisdictions of Canada.

13. The Issuer will operate as a financing company and will have no significant assets or liabilities unrelated to the Debt Securities and will not have any ongoing business operations of its own.

14. The Filer will be a "credit supporter" (as defined in NI 51-102).

15. The Issuer will be a "credit support issuer" (as defined in NI 51-102).

16. By virtue of subsection 13.4(4) of NI 51-102, the Filer is unable to meet the test set forth in subparagraph 13.4(2)(b)(ii) of NI 51-102.

17. It is proposed that the Issuer distribute the Debt Securities to the public pursuant to a short form prospectus in respect of the distribution of the Debt Securities, filed in each of the Jurisdictions, in reliance upon sections 2.4 of National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**) and National Instrument 44-102 *Shelf Distributions* (**NI 44-102**). The short form prospectus will be prepared pursuant to the short form procedures contained in NI 44-101 and, if applicable, NI 44-102 and will comply with the requirements set out in Form 44-101F1 *Short Form Prospectus* and, if applicable, NI 44-102.

18. The Debt Securities will be governed by a trust indenture (the **Indenture**), to be entered into among the Issuer and a trustee and governed by the laws of Ontario.

19. The Filer will provide a full and unconditional guarantee (the **Guarantee**) of the payments to be made by the Issuer in respect of the Debt Securities, as stipulated in agreements governing the rights of holders of the Debt Securities, that result in the holders of such securities being entitled to receive payment from the Filer within 15 days of any failure by

the Issuer to make a payment, as contemplated by paragraph (d) of the definition of "designated credit support security" in Item 13.4 of NI 51-102.

20. As a result of the Guarantee, the holders of the Debt Securities in substance have a greater interest in the financial condition of the Filer than they have in the Issuer.

Offering of Securities

21. At the time of the filing of any short form prospectus or shelf prospectus supplement in connection with an offering of Debt Securities:

    (a) the Issuer will comply with all of the filing requirements and procedures set out in NI 44-101 and, if applicable, NI 44-102, except as permitted by the Legislation;

    (b) the prospectus will be prepared in accordance with the short form prospectus requirements of NI 44-101 and, if applicable, NI 44-102 except as permitted by the Legislation;

    (c) the Filer will continue to be a reporting issuer under the Legislation;

    (d) the prospectus will incorporate by reference the documents of the Filer set forth under Item 11.1 of Form 44-101F1;

    (e) the prospectus disclosure required by Item 11 of Form 44-101F1 will be addressed by incorporating by reference the Filer's public disclosure documents referred to in paragraph 21(d) above; and

    (f) the Filer will continue to satisfy all of the criteria in section 2.2 of NI 44-101, as applicable, pursuant to Part 4 of NI 71-102.

22. Prior to issuing any Debt Securities:

    (a) the Filer will provide its Guarantee in respect of the Debt Securities; and

    (b) the Issuer will enter into the Indenture.

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:

1. in respect of the Continuous Disclosure Requirements, the Issuer and the Filer continue to satisfy the conditions set out in subsection 13.4(2.1) of NI 51-102, except as modified as follows:

    (a) any reference to parent credit supporter in section 13.4 of NI 51-102 shall be deemed to include the Filer notwithstanding its indirect ownership of the Issuer through Gazit Canada Inc.;

    (b) subsection 13.4(4) of NI 51-102 does not apply to the Filer (the **SEC Foreign Issuer Relief**) if:

        (i) the Filer continues to be a reporting issuer,

        (ii) the Filer continues to be a SEC foreign issuer (as defined in NI 71-102) and only relies on the exemptions in Part 4 of NI 71-102,

        (iii) to the extent that the Filer complies with the foreign private issuer disclosure regime under U.S. securities law, it does not rely on any exemption from that regime,

        (iv) if the Issuer has issued Debt Securities, the summary financial information referred to in paragraph 13.4(2.1)(c) of NI 51-102 will be reconciled to the consolidated financial statements of the Filer,

        (v) if the Issuer has issued Debt Securities that remain outstanding, the Filer files a material change report as set out in Part 7 of NI 51-102 in respect of any material change in the affairs of the Filer that is not reported or filed by the Filer on SEC Form 6-K,

(vi) the Filer includes in the prospectus of the Issuer financial statements or other information about any acquisition that would have been or would be a significant acquisition for the purposes of Part 8 of NI 51-102 that the Filer has completed or has progressed to a state where a reasonable person would believe that the likelihood of the Filer completing the acquisition is high if the inclusion of the financial statements is necessary for the prospectus to contain full, true and plain disclosure of all material facts relating to the securities being distributed. The requirement to include financial statements or other information must be satisfied by including or incorporating by reference (a) the financial statements or other information as set out in Part 8 of NI 51-102, or (b) satisfactory alternative financial statements or other information, unless at least 9 months of the operations of the acquired business or related businesses are incorporated into the Filer's current annual financial statements included or incorporated by reference in the prospectus of the Issuer,

(vii) if the Issuer has not completed a public offering of Debt Securities in Canada by the date that is five years after the date of this decision, the SEC Foreign Issuer relief will expire on the date that is five years after the date of this decision.

2. in respect of the Certification Requirements, the Audit Committee Requirements and the Corporate Governance Requirements, the Filer and the Issuer continue to satisfy the conditions for relief from the Continuous Disclosure Requirements set forth above.

3. in respect of the Insider Reporting Requirements, an insider of the Issuer can only rely on the Exemption Sought so long as:

(a) the insider complies with the conditions in paragraphs 13.4(3)(b) and (c) of NI 51-102, and

(b) the Filer and the Issuer continue to satisfy the conditions for relief from the Continuous Disclosure Requirements set forth above.

Furthermore, the decision of the principal regulator is that the Confidentiality Sought is granted.

As to the Exemption Sought (other than from the Insider Reporting Requirements in the *Securities Act* (Ontario)) and the Confidentiality Sought in this regard.

"Sonny Randhawa"
Manager, Corporate Finance
Ontario Securities Commission

As to the Exemption Sought from the Insider Reporting Requirements in the *Securities Act* (Ontario) and the Confidentiality Sought in this regard.

"Christopher Portner"
Commissioner
Ontario Securities Commission

"Deborah Leckman"
Commissioner
Ontario Securities Commission

2.1.10 Brandes Investment Partners & Co.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from certain specified derivatives and custodial requirements to permit mutual funds to enter into swap transactions that are cleared through a clearing corporation – relief required because of new U.S. requirements to clear over-the-counter derivatives including swaps – decision treats cleared swaps similar to other cleared derivatives – National Instrument 81-102 Mutual Funds.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.7(1) and (4), 6.8(1), 19.1.

December 17, 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
BRANDES INVESTMENT PARTNERS & CO.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**), pursuant to section 19.1 of National Instrument 81-102 *Mutual Funds* (**NI 81-102**), exempting each Existing Bridgehouse Fund (as defined below) and all current and future mutual funds managed by the Filer that enter into Swaps (as defined below) in the future (each, a **Future Bridgehouse Fund** and, together with the Existing Bridgehouse Funds, each, a **Bridgehouse Fund** and, collectively, the **Bridgehouse Funds**):

(i) from the requirement in subsection 2.7(1) of NI 81-102 that a mutual fund must not purchase an option or a debt-like security or enter into a swap or a forward contract unless, at the time of the transaction, the option, debt-like security, swap or contract has a designated rating or the equivalent debt of the counterparty, or of a person or company that has fully and unconditionally guaranteed the obligations of the counterparty in respect of the option, debt-like security, swap or contract, has a designated rating;

(ii) from the limitation in subsection 2.7(4) of NI 81-102 that the mark-to-market value of the exposure of a mutual fund under its specified derivatives positions with any one counterparty other than an acceptable clearing corporation or a clearing corporation that settles transactions made on a futures exchange listed in Appendix A to NI 81-102 shall not exceed, for a period of 30 days or more, 10 percent of the net asset value of the mutual fund; and

(iii) from the requirement in subsection 6.1(1) of NI 81-102 to hold all portfolio assets of a mutual fund under the custodianship of one custodian in order to permit each Bridgehouse Fund to deposit cash and other portfolio assets directly with a Futures Commission Merchant (as defined below) and indirectly with a Clearing Corporation (as defined below) as margin,

in each case, with respect to cleared Swaps (the **Requested Relief**).

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

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

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

Interpretation

Terms defined in NI 81-102, National Instrument 14-101 *Definitions*, and MI 11-102 have the same meaning if used in this decision, unless otherwise defined. Capitalized terms used in this decision have the following meanings:

"CFTC" means the U.S. Commodity Futures Trading Commission

"Clearing Corporation" means any of the Chicago Mercantile Exchange Inc., ICE Clear Credit LLC, LCH.Clearnet Limited and any other clearing organization that is permitted to operate in the Canadian Jurisdiction where the Bridgehouse Fund is located

"Dodd-Frank" means the Dodd-Frank Wall Street Reform and Consumer Protection Act

"Existing Bridgehouse Funds" means Lazard Emerging Markets Multi-Strategy Fund and Lazard Global Equity Income Fund

"Futures Commission Merchant" means any futures commission merchant that is registered with the CFTC and is a member of a Clearing Corporation

"OTC" means over-the-counter

"Portfolio Advisor" means each of the Filer and each affiliate of the Filer and each third party portfolio manager retained from time to time by the Filer as portfolio sub-advisor to manage all or a portion of the investment portfolio of one or more Bridgehouse Funds

"Swaps" means the swaps that are, or will become, subject to a clearing determination issued by the CFTC, including fixed-to-floating interest rate swaps, basis swaps, forward rate agreements in U.S. dollars, the Euro, Pounds Sterling or the Japanese Yen, overnight index swaps in U.S. dollars, the Euro and Pounds Sterling and untranched credit default swaps on certain North American indices (CDX.NA.IG and CDX.NA.HY) and European indices (iTraxx Europe, iTraxx Europe Crossover and iTraxx Europe HiVol) at various tenors

"U.S. Person" has the meaning attributed thereto by the CFTC

Representations

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

1. The Filer is, or will be, the investment fund manager of each Bridgehouse Fund. The Filer is registered as an investment fund manager, a portfolio manager, an exempt market dealer and a mutual fund dealer in the Jurisdiction. The Filer is also registered as a portfolio manager and an exempt market dealer in all of the Other Jurisdictions, as a mutual fund dealer in all of the Other Jurisdictions except the Province of Quebec and as an investment fund manager in the Provinces of Quebec and Newfoundland and Labrador. The head office of the Filer is in Toronto, Ontario.

2. The Filer is, or will be, the portfolio manager to the Bridgehouse Funds. Either an affiliate of the Filer or a third party portfolio manager is, or will be, the portfolio sub-advisor to some or all of the Bridgehouse Funds.

3. Each Bridgehouse Fund is, or will be, a mutual fund created under the laws of the Jurisdiction and is, or will be, subject to the provisions of NI 81-102.

4. Neither the Filer nor the Bridgehouse Funds are, or will be, in default of securities legislation in any of the Canadian Jurisdictions.

5. The securities of each Bridgehouse Fund are, or will be, qualified for distribution pursuant to a prospectus that was, or will be, prepared and filed in accordance with the securities legislation of the Canadian Jurisdictions. Accordingly, each Bridgehouse Fund is, or will be, a reporting issuer or the equivalent in each of the Canadian Jurisdictions.

6. The investment objective and investment strategies of each Bridgehouse Fund permit, or will permit, the Bridgehouse Fund to enter into derivative transactions, including Swaps. Each Portfolio Advisor for the Existing Bridgehouse Funds considers Swaps to be an important investment tool that is available to it to manage each Existing Bridgehouse Fund's portfolio. Although the Existing Bridgehouse Funds do not currently enter into Swaps, the Portfolio Advisor for the

Existing Bridgehouse Funds intends to put in place the arrangements required to permit the Existing Bridgehouse Funds to begin to enter into Swaps.

7. Dodd-Frank requires that certain OTC derivatives be cleared through a Futures Commission Merchant at a clearing organization recognized by the CFTC. Generally, where one party to a Swap is a U.S. Person and the other party to the Swap is a mutual fund, such as a Bridgehouse Fund, that Swap must be cleared, absent an available exception, after June 10, 2013. With respect to entities such as the Bridgehouse Funds, the compliance date for the clearing of iTraxx CDS indices was July 25, 2013.

8. Currently, the Existing Bridgehouse Funds may enter into derivatives on an OTC basis with Canadian, U.S. and other international counterparties. These OTC derivatives are entered into in compliance with the derivative provisions of NI 81-102.

9. In order to benefit from both the pricing benefits and reduced trading costs that a Portfolio Advisor may be able to achieve through its trade execution practices for its advised investment funds and other accounts and from the reduced costs associated with cleared OTC derivatives as compared to other OTC trades, the Filer wishes to have the Bridgehouse Funds have the ability to enter into cleared Swaps.

10. In the absence of the Requested Relief, each Portfolio Advisor will need to structure the Swaps entered into by the Bridgehouse Funds so as to avoid the clearing requirements of the CFTC. The Filer respectfully submits that this would not be in the best interests of the Bridgehouse Funds and their investors for a number of reasons, as set out below.

11. The Filer strongly believes that it is in the best interests of the Bridgehouse Funds and their investors to be able to execute OTC derivatives with U.S. Persons, including U.S. swap dealers.

12. In its role as a fiduciary for the Bridgehouse Funds, the Filer has determined that central clearing represents the best choice for the investors in the Bridgehouse Funds to mitigate the legal, operational and back office risks faced by investors in the global swap markets.

13. A Portfolio Advisor may use the same trade execution practices for all of its advised investment funds and other accounts, including the Bridgehouse Funds. An example of these trade execution practices is block trading, where large number of securities are purchased or sold or large derivative trades are entered into on behalf of a number of investment funds and other accounts advised by one Portfolio Advisor. These practices include the use of cleared Swaps if such trades are executed with a U.S. swap dealer. If the Bridgehouse Funds are unable to employ these trade execution practices, then each affected Portfolio Advisor will have to create separate trade execution practices only for the Bridgehouse Funds and will have to execute trades for the Bridgehouse Funds on a separate basis. This will increase the operational risk for the Bridgehouse Funds, as separate execution procedures will need to be established and followed only for the Bridgehouse Funds. In addition, the Bridgehouse Funds will no longer be able to enjoy the possible price benefits and reduction in trading costs that a Portfolio Advisor may be able to achieve through a common practice for its advised funds and other accounts. In the Filer's opinion, best execution and maximum certainty can best be achieved through common trade execution practices, which, in the case of OTC derivatives, involve the execution of Swaps on a cleared basis.

14. As a member of the G20 and a participant in the September 2009 commitment of G20 nations to improve transparency and mitigate risk in derivatives markets, Canada has expressly recognized the systemic benefits that clearing OTC derivatives offers to market participants, such as the Bridgehouse Funds. The Filer respectfully submits that the Bridgehouse Funds should be encouraged to comply with the robust clearing requirements established by the CFTC by granting them the Requested Relief.

15. The Requested Relief is analogous to the treatment currently afforded under NI 81-102 to other types of derivatives that are cleared, such as clearing corporation options, options on futures and standardized futures. This demonstrates that, from a policy perspective, the Requested Relief is consistent with the views of the Canadian securities authorities in respect of cleared derivative trades.

16. For the reasons provided above, the Filer submits that it would not be prejudicial to the public interest to grant the Requested Relief.

Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted provided that, in respect of the deposit of cash and portfolio assets as margin:

(a) in Canada,

(i) the Futures Commission Merchant is a member of a SRO that is a participating member of CIPF; and

(ii) the amount of margin deposited and maintained with the Futures Commission Merchant does not, when aggregated with the amount of margin already held by the Futures Commission Merchant, exceed 10 percent of the net asset value of the Bridgehouse Fund as at the time of deposit; and

(b) outside of Canada,

(i) the Futures Commission Merchant is a member of a Clearing Corporation and, as a result, is subject to a regulatory audit;

(ii) the Futures Commission Merchant has a net worth, determined from its most recent audited financial statements that have been made public or from other publicly available financial information, in excess of the equivalent of $50 million; and

(iii) the amount of margin deposited and maintained with the Futures Commission Merchant does not, when aggregated with the amount of margin already held by the Futures Commission Merchant, exceed 10 percent of the net asset value of the Bridgehouse Fund as at the time of deposit.

This decision will terminate on the earlier of (i) the coming into force of any revisions to the provisions of NI 81-102 that address the clearing of OTC derivatives, and (ii) two years from the date of this decision.

“Vera Nunes”
Manager, Investment Funds Branch
Ontario Securities Commission

2.1.11 Nylcap Canada Genpar Inc.

Headnote

Ontario Securities Commission Rule 13-502 Fees (OSC Rule 13-502) establishes a fee regime where the participation fee for a registered firm is based on the firm's revenues attributable to its capital markets activity in Ontario. The registrant's corporate structure does not allow it to adequately meet the requirements of OSC Rule 13-502. The registrant is seeking a decision granting relief from the requirement to calculate the participation fee that it pays to the Ontario Securities Commission in the manner prescribed by Part 3 of OSC Rule 13-502.

Applicable Legislative Provisions

OSC Rule 13-502 Fees, Part III Form 13-502F4.

December 16, 2013

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

AND

IN THE MATTER OF
NYLCAP CANADA GENPAR INC.
(the Filer)

DECISION

Background

The Ontario Securities Commission (the **OSC**) has received an application from the Filer (the "**Application**") for a decision under the securities legislation of Ontario (the "**Legislation**") for an exemption under section 6.1 of OSC Rule 13-502 *Fees* (the **Fees Rule**):

(a) from the requirements of Part 3 of the Fees Rule such that the amount of the capital called from Ontario-resident investors of NYLCAP Select Manager Canada Fund, LP (the "**Canadian Fund**") by NYLCAP Select Manager Cayman Fund, L.P. (the "**Cayman Fund**") in connection with the payment of the management fee payable by NYLCAP Select Manager Fund, LP (the "**Main Fund**") to GoldPoint Partners LLC ("**GPP**") be used as the starting point in line 1 titled "Gross revenue for relevant fiscal year" of Part III Advisers, Other Dealers, and Unregistered Capital Markets Participation of Form 13-502 F4 *Capital Markets Participation Fee Calculation* ("**Form 13-502F4**"); and

(b) from the requirement in section 4.1 of the Fees Rule to pay a fee for its filing of this exemption application (together with (a), the "**Exemption Sought**").

Interpretation

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

Representations

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

1. The Filer is a corporation formed under the laws of the Province of New Brunswick. The head office of the Filer is located in the State of New York, United States.

2. The Filer is registered as an investment fund manager in Ontario.

3. The Filer is, to the best of its knowledge, not in default of any requirements of the securities legislation of Ontario.

4. As a registered firm in Ontario, the Filer must pay, for each of its financial years, the participation fee shown in Appendix B of the Fees Rule that applies to it according to the Filer's specified Ontario revenues earned from its capital market activities as calculated under Part III of Form 13-502 F4 *Capital Markets Participation Fee Calculation*.

5. The Filer acts as the investment fund manager for the Canadian Fund.

6. In accordance with section 3.4 of the Fees Rule, the Filer's specified Ontario revenue for its reference fiscal year is calculated by multiplying:

   (a) its gross revenues, as shown in its audited financial statements prepared for the reference fiscal year, less specified deductions, by

   (b) its Ontario percentage for the reference fiscal year.

7. The Filer does not charge a management fee for acting as the investment fund manager of the Canadian Fund and its sole compensation is from the 0.001% interest in the Canadian Fund that it holds. The Filer therefore does not report any gross revenues on its audited financial statements for the reference fiscal year.

8. The Canadian Fund is a limited partner in the Cayman Fund, a limited partnership formed under the laws of the Cayman Islands, which in turn is a limited partner in the Main Fund, a limited partnership formed under the laws of Delaware.

9. GPP acts as the investment fund manager to the Cayman Fund and the Main Fund and is paid management fees by the limited partners of the Main Fund, which include the Cayman Fund. To the extent that the Cayman Fund's limited partners are required to make capital contributions to the Cayman Fund (whether for portfolio investments or Cayman Fund expenses), the Canadian Fund as a limited partner of the Cayman Fund will also be so required, and as such the limited partners of the Canadian Fund will be required to make their pro rata portion of such capital contribution, based on the proportion that their capital commitment bears to the total capital commitments made to the Canadian Fund.

   The management fee payable to GPP is payable by the Cayman Fund as a limited partner of the Main Fund, and in turn by the Canadian Fund as a limited partner of the Cayman Fund. Each limited partner of the Canadian Fund is assessed its pro rata portion of the Main Fund management fee, based on the proportion that such limited partner's capital commitment bears to the total capital commitments made to the Canadian Fund (and that in turn the Cayman Fund's capital commitment bears to the total capital commitments to the Main Fund). Amounts attributable to the Main Fund management fee are contributed by the Canadian Fund to the Cayman Fund, and then by the Cayman Fund to the Main Fund.

10. Upon review of the structure of the Filer and of the Canadian Fund, Staff of the Ontario Securities Commission ("**OSC Staff**") expressed concern that given the structure of the Canadian Fund and the fact that the Filer does not earn any revenue for acting as the investment fund manager for the Canadian Fund, the Filer's calculation of its participation fee required by Form 13-502F4 does not reflect the Filer's capital market activity in Ontario.

11. In order for the Filer to accurately capture its capital market activity in Ontario, the Filer will calculate its capital markets participation fee using the amount of the capital called from Ontario-resident investors of the Canadian Fund by the Cayman Fund in connection with the payment of the management fee payable by the Main Fund to GPP as the starting point in line 1 titled "Gross revenue for relevant fiscal year" of Part III of Form 13-502F4.

12. The capital called from Ontario-resident investors by the Cayman Fund will, therefore, subject to any deductions represent the "Revenue subject to participation fee" reported in line 8 of Part III of Form 13-502F4 for the reference fiscal year.

13. The Ontario percentage for the reference fiscal year reported in line 9 of Form 13-502F4 will be 100% to reflect the fact that 100% of the Filer's "Revenue subject to participation fee" reported in line 8 of Form 13-502F4 is attributable to capital markets activities in Ontario.

Decision

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

The decision of the Ontario Securities Commission under the Legislation is that the Exemption Sought is granted, provided that:

(a) the Filer files supporting documentation to show how each component that went in to calculating line 1 of Part III of Form 13-502F4 was calculated.

This Decision shall expire on the sooner of:

a) Any change to how the capital is called from Ontario-resident investors by the Cayman Fund in connection with the payment of the management fee payable by the Main Fund to GPP.

b) 90 days after any material changes in the Filer's business and operations.

c) 90 days after a material change to the manner in which the management fee is charged.

d) Immediately preceding the wind up of the Canadian Fund; and

e) Immediately preceding a change in the Fees Rule that would require a change to the manner in which the Filer's participation fee is calculated.

"Marrianne Bridge"
Deputy Director
Compliance and Registrant Regulation
Ontario Securities Commission

2.1.12 University of Toronto Asset Management Corporation

Headnote

Ontario Securities Commission Rule 13-502 Fees (OSC Rule 13-502) establishes a fee regime where the participation fee for a registered firm is based on the firm's revenues attributable to its capital markets activity in Ontario. The registrant's corporate structure does not allow it to adequately meet the requirements of OSC Rule 13-502. The registrant is seeking a decision granting relief from the requirement to calculate the participation fee that it pays to the Ontario Securities Commission in the manner prescribed by Part 3 of OSC Rule 13-502.

Applicable Legislative Provisions

OSC Rule 13-502 Fees, Part III Form 13-502F4.

December 18, 2013

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

AND

IN THE MATTER OF
UNIVERSITY OF TORONTO
ASSET MANAGEMENT CORPORATION
(the Filer)

DECISION

Background

The Ontario Securities Commission (the **OSC**) has received an application from the Filer (the **Application**) for a decision under the securities legislation of Ontario (the **Legislation**) for an exemption under section 6.1 of OSC Rule 13-502 *Fees* (the **Fees Rule**):

(a) from the requirements of Part 3 of the Fees Rule such that the amount of costs and expenses that are recovered from the University of Toronto (the **UofT**) and as shown on the Filer's audited financial statements as "Recoveries from University of Toronto" (the **Cost Recovery Amount**) be used as the starting point in line 1 titled "Gross revenue for relevant fiscal year" of Part III *Advisers, Other Dealers, and Unregistered Capital Markets Participants* of Form 13-502 F4 *Capital Markets Participation Fee Calculation* (**Form 13-502F4**); and

(b) from the requirement in section 4.1 of the Fees Rule to pay a fee for its filing of this exemption application (together with (a), the **Exemption Sought**).

Interpretation

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

Representations

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

1. The Filer is a corporation without share capital that was incorporated by letters patent on April 25, 2000 by The Governing Council of the UofT under the *Corporations Act* (Ontario).

2. The Filer is registered as a portfolio manager and as an investment fund manager in Ontario.

3. Various agreements, including a service agreement, delegation of authority and an investment management agreement, govern the economic and business relationship between the Filer and the UofT.

4. As a registered firm in Ontario, the Filer must pay, for each of its financial years, the participation fee shown in Appendix B of the Fees Rule that applies to it according to the Filer's specified Ontario revenues as calculated under Part III of Form 13-502 F4.

5. The Filer acts as the portfolio manager on behalf of certain assets for the UofT including endowments, pension funds and scholarship funds (collectively, the **UofT funds**), including acting as portfolio manager and investment fund manager of certain pooled funds (the **pooled funds**) that are only distributed to the UofT funds.

6. The Filer does not provide any services or perform any registerable activity on behalf of any other parties other than the UofT funds.

7. The Filer does not charge a management fee for acting as the portfolio manager or as investment fund manager on behalf of the UofT and the funds. The Filer therefore does not report any gross revenues on its audited financial statements for its reference fiscal year.

8. In accordance with an agreement between the UofT and the Filer, the UofT has agreed to pay the Cost Recovery Amount to the Filer. As a result, the Filer will never generate any gross revenues, nor any profit or loss.

9. Upon a review of the structure of the Filer, staff of the OSC (**OSC Staff**) expressed concern that given the fact that the Filer does not earn any

revenue for acting as the portfolio manager or as the investment fund manager for the UofT and the UofT funds, the Filer's calculation of its participation fee required by Form 13-502F4 does not reflect the Filer's capital market activity in Ontario.

10. In order for the Filer to accurately capture its capital market activity in Ontario, the Filer will calculate its capital markets participation fee using the Cost Recovery Amount as the starting point in line 1 titled "Gross revenue for relevant fiscal year" of Part III of Form 13-502F4.

11. The Cost Recovery Amount will, therefore, subject to any deductions, represent the "Revenue subject to participation fee" reported in line 8 of Part III of Form 13-502F4 for the Filer's reference fiscal year.

12. The Ontario percentage for the Filer's reference fiscal year reported in line 9 of Form 13-502F4 will be 100% to reflect the fact that 100% of the Filer's "Revenue subject to participation fee" reported in line 8 of Form 13-502F4 is attributable to capital markets activities in Ontario.

Decision

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

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

This Decision shall expire on the sooner of:

a) Any change to how the Filer is compensated for its activities as portfolio manager and as investment fund manager for the UofT funds and the pooled funds.

b) 90 days after any material changes in the Filer's business and operations.

c) Immediately preceding a change in the Fees Rule that would require a change to the manner in which the Filer's participation fee is calculated.

"Marrianne Bridge"
Deputy Director
Compliance and Registrant Regulation
Ontario Securities Commission

2.1.13 Ewing Morris & Co. Investment Partners Ltd. and Ewing Morris Opportunities Trust Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from the mutual fund self-dealing restrictions in the Securities Act (Ontario) to allow pooled funds to invest in securities of underlying funds under common management – relief subject to certain conditions.

Applicable Legislative Provisions

Securities Act (Ontario), R.S.O. 1990, c. S.5, as am., ss. 111(2)(b), 111(2)(c), 111(3), 113.

December 18, 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
EWING MORRIS & CO. INVESTMENT PARTNERS LTD. (the Filer) AND
EWING MORRIS OPPORTUNITIES TRUST FUND (the First Top Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on its behalf and on behalf of the First Top Fund and any other mutual fund which is not a reporting issuer and may be established and managed by the Filer in the future (together with the First Top Fund, the **Top Funds**), which invests its assets in Ewing Morris Opportunities Fund LP (the **First Underlying Fund**) or any other investment fund which is not a reporting issuer and may be established, advised or managed by the Filer in the future (together with the First Underlying Fund, the **Underlying Funds**), for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Top Funds and the Filer from:

(a) the restriction in the Legislation which prohibits a mutual fund in Ontario from knowingly making an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder;

(b) the restriction in the Legislation which prohibits a mutual fund in Ontario from knowingly making an investment in an issuer in which:

  (i) any officer or director of the mutual fund, its management company or distribution company or an associate of any of them, or

  (ii) any person or company who is a substantial securityholder of the mutual fund, its management company or its distribution company,

  has a significant interest; and

(c) the restriction in the Legislation which prohibits a mutual fund in Ontario, its management company or its distribution company from knowingly holding an investment described in paragraph (a) or (b) above

(collectively, the **Requested Relief**).

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

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

Interpretation

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

Representations

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

The Filer

1. The Filer is a corporation established under the laws of Ontario with its head office located in Toronto, Ontario.

2. The Filer is registered as an investment fund manager, portfolio manager and exempt market dealer in Ontario, as a portfolio manager and exempt market dealer in Alberta and as an exempt market dealer in British Columbia.

3. The Filer is or will be the investment fund manager of the Top Funds and the Underlying Funds.

4. The Filer is or will be the portfolio manager for the Top Funds and the Underlying Funds. The Filer may also act as a distributor of the securities of the Top Funds and Underlying Funds not otherwise sold through another registered dealer.

5. The Filer is not a reporting issuer in any jurisdiction and is not in default of securities legislation in any jurisdiction.

6. An officer and director of the Filer, who is also a substantial security holder of the Filer, currently has a significant interest in the First Underlying Fund. In the future, other officers and/or directors of the Filer may also be substantial security holders of the Filer and have a significant interest in an Underlying Fund. In addition, in the future, officers and/or directors of the Filer may be substantial security holders of a Top Fund and have a significant interest in an Underlying Fund.

Top Funds

7. The First Top Fund will be an investment trust established under the laws of Ontario in or around January 2014. The future Top Funds will be structured as limited partnerships, trusts or corporations under the laws of Ontario or another jurisdiction of Canada.

8. The securities of each Top Fund are or will be sold solely to investors pursuant to exemptions from the prospectus requirements in accordance with National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**).

9. Each of the Top Funds will be a “mutual fund” as defined in securities legislation of the jurisdictions in which the Top Funds are distributed.

10. The First Top Fund’s investment objectives will be to achieve preservation and growth of capital through superior securities selection, which will be achieved primarily by investing in securities of the First Underlying Fund.

11. None of the Top Funds will be a reporting issuer in any jurisdiction of Canada.

12. The First Top Fund is not in default of securities legislation of any jurisdiction of Canada.

Underlying Funds

13. The First Underlying Fund is a limited partnership established under the laws of Ontario by declaration dated August 24, 2011. The future Underlying Funds will be structured as limited partnerships, trusts or corporations under the laws of Ontario or another jurisdiction of Canada or foreign jurisdiction.

14. The general partner of the First Underlying Fund is Ewing Morris Opportunities GenPar Ltd., an affiliate of the Filer. The general partner of each future Underlying Fund that is structured as a limited partnership will be an affiliate of the Filer.

15. Each of the Underlying Funds has, or will have, separate investment objectives and investment strategies.

16. The First Underlying Fund was formed for the purpose of providing consistent positive absolute returns. The First Underlying Fund does not invest in other investment entities managed by the Filer or its affiliates.

17. In Canada, securities of each Underlying Fund are, or will be, sold solely to investors pursuant to exemptions from the prospectus requirements in accordance with NI 45-106.

18. Each of the Underlying Funds is, or will be, an "investment fund" as defined in securities legislation of the jurisdictions in which the Top Funds are distributed.

19. None of the Underlying Funds is, or will be, a reporting issuer in any jurisdiction of Canada.

20. The First Underlying Fund is not in default of securities legislation of any jurisdiction of Canada.

Fund-on-Fund Structure

21. The First Top Fund is being, and other Top Funds may be, created by the Filer to allow investors in the Top Funds to obtain indirect exposure to the investment portfolio of the Underlying Funds and their investment strategies through, primarily, direct investments by the Top Funds in securities of the Underlying Funds (the **Fund-on-Fund Structure**). Rather than running the First Top Fund's and the First Underlying Fund's investment portfolios as separate pools, the Filer wishes to make use of economies of scale by managing an investment pool in the Underlying Fund. Unlike the First Underlying Fund, which is a limited partnership, the First Top Fund is being formed as a trust for the purpose of accessing a broader base of investors, including registered retirement savings plans and other investors that may not or wish not to invest directly in a limited partnership. Rather than running the First Top Fund's and each Underlying Fund's investment portfolios as separate pools, the Filer wishes to make use of economies of scale by managing only one investment pool, in the Underlying Funds.

22. An investment by a Top Fund in an Underlying Fund is, or will be, compatible with the investment objectives of the Top Fund.

23. The investments held by the First Underlying Fund are considered to be liquid. To the extent illiquid securities are held by a Top Fund or an Underlying Fund, such illiquid securities will only comprise an immaterial portion of the portfolio of the applicable Top Fund or Underlying Fund. Where a Top Fund or Underlying Fund holds illiquid securities, the remainder of such Top Fund's or Underlying Fund's portfolio will be managed to provide sufficient liquidity to fund redemptions in the ordinary course.

24. The Top Funds and the Underlying Funds have, or will have, matching valuation dates. The First Top Fund and the First Underlying Fund are valued monthly.

25. Securities of the Top Funds and the Underlying Funds have, or will have, matching redemption dates. The First Top Fund and the First Underlying Fund are redeemable monthly.

26. A Top Fund will not purchase or hold securities of an Underlying Fund unless:

    (a) the Underlying Fund invests less than 10% of its net assets in other mutual funds other than mutual funds that are "money market funds" (as defined by National Instrument 81-102 *Mutual Funds* (**NI 81-102**)) or that issue "index participation units" (as defined by NI 81-102);

    (b) no management fees or incentive fees are payable by a Top Fund that, to a reasonable person, would duplicate a fee payable by an Underlying Fund for the same service;

    (c) no sales fees or redemption fees are payable by a Top Fund in relation to its purchases or redemptions of securities of an Underlying Fund;

    (d) the Filer does not cause the securities of an Underlying Fund held by a Top Fund to be voted at any meeting of the securityholders of the Underlying Fund except that the Top Fund may arrange for the securities it holds of the Underlying Fund to be voted by the beneficial holders of securities of the Top Fund; and

(e) the offering memorandum, where available, or other disclosure document of a Top Fund will be provided to all investors of the Top Fund and will disclose:

(i) that the Top Fund may purchase securities of the Underlying Funds;

(ii) that the Filer is the investment fund manager of both the Top Funds and the Underlying Funds, if applicable;

(iii) the approximate or maximum percentage of net assets of the Top Fund that it is intended be invested in securities of the Underlying Funds; and

(iv) the process or criteria used to select the Underlying Funds, if applicable.

27. Prior to the time of purchase of securities of a Top Fund, an investor will be provided with a copy of the Top Fund's offering memorandum, where available, as well as disclosure about the relationships and potential conflicts of interest between the Top Fund and the Underlying Funds.

28. Securityholders of a Top Fund will receive, on request, a copy of the Top Fund's audited annual and interim financial statements. The financial statements of each Top Fund will disclose its holdings of securities of Underlying Funds.

29. Securityholders of a Top Fund will receive, on request, a copy of the offering document, if available, and the annual and interim financial statements, of any Underlying Fund in which the Top Fund invests.

Generally

30. The amounts invested from time to time in an Underlying Fund by a Top Fund, either alone or together with the other Top Funds, may exceed 20% of the outstanding voting securities of the Underlying Fund. As a result, each Top Fund could, either alone or together with Top Funds, become a substantial securityholder of an Underlying Fund. The Top Funds are, or will be, related mutual funds by virtue of common management by the Filer.

31. In addition, the Fund-on-Fund Structure may result in a Top Fund investing in an Underlying Fund in which an officer or director of the Filer has a significant interest and/or a Top Fund investing in an Underlying Fund in which a person or company who is a substantial securityholder of the Top Fund or the Filer has a significant interest.

32. Since the Top Funds and the Underlying Funds do not offer their securities under a simplified prospectus, they are not subject to NI 81-102 and therefore the Top Funds and the Underlying Funds are unable to rely upon the exemption codified under subsection 2.5(7) of NI 81-102.

33. In the absence of the Requested Relief, each Top Fund would be precluded from purchasing and holding securities of an Underlying Fund due to the investment restrictions contained in the Legislation.

34. Each investment by a Top Fund in an Underlying Fund represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Top Fund.

Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted provided that:

(a) securities of the Top Funds are distributed in Canada solely pursuant to exemptions from the prospectus requirements in NI 45-106;

(b) the investment by a Top Fund in an Underlying Fund is compatible with the fundamental investment objectives of the Top Fund;

(c) no Top Fund will invest in an Underlying Fund unless the Underlying Fund invests less than 10% of its net assets in other mutual funds other than mutual funds that are "money market funds" (as defined by NI 81-102) or that issue "index participation units" (as defined by NI 81-102);

(d) no management fees or incentive fees are payable by a Top Fund that, to a reasonable person, would duplicate a fee payable by an Underlying Fund for the same service;

(e) no sales fees or redemption fees are payable by a Top Fund in relation to its purchases or redemptions of securities of an Underlying Fund;

(f) the Filer does not cause the securities of an Underlying Fund held by a Top Fund to be voted at any meeting of the securityholders of the Underlying Fund except that the Top Fund may arrange for the securities it holds of the Underlying Fund to be voted by the beneficial holders of securities of the Top Fund;

(g) the offering memorandum, where available, or other disclosure document of a Top Fund will disclose:

a. that the Top Fund may purchase securities of the Underlying Funds;

b. the fact that the Filer is the investment fund manager of both the Top Funds and the Underlying Funds, if applicable;

c. the approximate or maximum percentage of net assets of the Top Fund that it is intended be invested in securities of the Underlying Funds; and

d. the process or criteria used to select the Underlying Funds, if applicable; and

(h) prior to the time of investment, securityholders of a Top Fund will be provided with disclosure with respect to each person, if any, that has a significant interest in the Underlying Funds through investments made in securities of such Underlying Funds. Securityholders in a Top Fund will also be advised of the potential conflicts of interest which may arise from such relationships. The foregoing disclosure will be contained in any offering memorandum prepared in connection with a distribution of securities of the Top Fund, or if no offering memorandum is prepared, in another document provided to investors of the Top Fund.

“AnneMarie Ryan”
Vice-Chair
Ontario Securities Commission

“James E. A. Turner”
Commissioner
Ontario Securities Commission

2.1.14 TD Waterhouse Canada Inc. and Broadridge Investor Communications Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from the Securities Act to permit a dealer who uses proprietary technology, provided by Broadridge, to send or deliver the Fund Facts instead of the simplified prospectus to satisfy current prospectus delivery requirements subject to conditions – the right of withdrawal and right of rescission under securities legislation apply to the sending and delivery of the Fund Facts – sunset clause on relief – terms and conditions consistent with CSA Staff Notice 81-321 Early Use of the Fund Facts to Satisfy Prospectus Delivery Requirements.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 71, 147.

December 18, 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
TD WATERHOUSE CANADA INC.
(TDWCI)

AND

IN THE MATTER OF
BROADRIDGE INVESTOR COMMUNICATIONS CORPORATION
(BROADRIDGE)

DECISION

Background

The principal regulator in the Jurisdiction (the **Principal Regulator**) has received an application from TDWCI and Broadridge (together with TDWCI, the **Filers**) for a decision under the securities legislation of the Principal Regulator (**Legislation**) for exemptive relief to permit a Dealer (as defined below) to send or deliver the most recently filed fund facts document (**Fund Facts**) to satisfy the requirement contained in the Legislation that obligates a dealer to send or deliver, within a specified time period and in a specified manner, the prospectus, and any amendment to the prospectus (**Delivery Requirement**), in respect of an order or subscription to purchase securities of a Fund (as defined below) (the **Exemption Sought**).

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

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

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

Interpretation

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

Dealers means all registered dealers, including TDWCI, who have entered into, or who may wish to enter into, a written agreement with Broadridge to use Smart Document Fulfillment Services pursuant to which Broadridge will deliver, on behalf of such dealers, electronically and/or in paper form, the Fund Facts to clients of such dealers in the manner described herein.

Right of Withdrawal means the right, given to a purchaser under the Legislation, to withdraw from a purchase order for a security of a mutual fund if the dealer from whom the purchaser purchases the security receives written notice evidencing the intention of the purchaser not to be bound by the purchase order within two days of receipt of the latest prospectus sent or delivered in compliance with the Delivery Requirement. In Québec, this right is called the right to rescind. Collectively, these rights are referred to as the Rights of Withdrawal.

Right of Rescission means the right of action, under the Legislation, for rescission or damages against a dealer for failure of the dealer to send or deliver the prospectus to a purchaser of a security to whom a prospectus was required to be sent or delivered but was not sent or delivered in compliance with the Delivery Requirement. In Québec, such a purchaser may apply to have the transaction rescinded or the price revised, at the purchaser's option, without prejudice to the purchaser's claim for damages. Collectively, these rights are referred to as the Rights of Rescission.

Representations

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

The Filers

1. Broadridge is a corporation incorporated under the laws of Nova Scotia with its head office located in Mississauga, Ontario.

2. Broadridge is in the business of investor communications and provides services to investment fund managers and dealers who distribute mutual fund securities to facilitate the composition, production and delivery of investor communications and disclosure documents.

3. Broadridge offers a suite of services that are capable of on-demand processing and delivering of Fund Facts and other disclosure documents, as follows:

   (a) Smart Document Fulfillment™ – an electronic delivery and print-on-demand fulfillment process for delivering transaction confirmations and related documents to investors;

   (b) e-SP Lite™ – an electronic delivery of disclosure documents to investors;

   (c) Smart Prospectus® – a transaction-driven data processing and print-on-demand fulfillment service for delivering transaction confirmations and related documents to investors; and

   (d) Smart Advisor™ – a communication platform for on-demand delivery of multiple media types through various communication channels to investors

   (collectively known as **Smart Document Fulfillment Services**).

4. Smart Document Fulfillment Services effects delivery of Fund Facts in accordance with the Delivery Requirement, to investors on behalf of the Dealers who have entered into, or may wish to enter into, contracts with Broadridge.

5. TDWCI is registered as an investment dealer in each of the provinces and territories of Canada and is a member of the Investment Industry Regulatory Organization of Canada. Its head office is located in Toronto, Ontario.

6. TDWCI is not in default of securities legislation in any Jurisdiction.

7. In accordance with the terms and conditions of exemptive relief granted by the Ontario Securities Commission to certain investment fund managers on August 26, 2011 (the **Past Decision**), TDWCI is delivering Fund Facts in paper format using Smart Document Fulfillment Services. The Exemption Sought will allow TDWCI to also deliver Fund Facts for funds managed by those investment fund managers who did not receive exemptive relief in the Past Decision.

8. Each Dealer is, or will be, registered as a dealer in one or more of the Jurisdictions. A Dealer is, or will be, a member of either (i) the Investment Industry Regulatory Organization of Canada, or (ii) the Mutual Fund Dealers Association of Canada, or their successors.

9. The Dealers distribute a range of mutual funds (each, a **Fund**, or collectively, the **Funds**) which are offered for sale on a continuous basis, in one or more of the Jurisdictions, pursuant to a simplified prospectus (each, a **Prospectus**) prepared in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**).

10. Pursuant to the Delivery Requirement, the Dealers have the obligation to send or deliver a Prospectus to a purchaser of a security of a Fund within two days of the purchase of the security.

Point of Sale Project

11. Pursuant to the Canadian Securities Administrators' (the **CSA**) point of sale disclosure project for Funds (the **Project**), the CSA has determined that it is desirable to create a summary disclosure document called the fund facts document (defined above as **Fund Facts**).

12. CSA Staff Notice 81-319 *Status Report on the Implementation of Point of Sale Disclosure for Mutual Funds* dated June 18, 2010, outlines the CSA's decision to implement the Project in stages.

13. Stage 1 of the Project became effective on January 1, 2011, by amending NI 81-101 and related instruments mandating a Fund to prepare and file a Fund Facts on SEDAR for each relevant class or series of the Fund, and having the Fund Facts posted to the Fund's or its manager's website and delivered to any person upon request, at no cost.

14. Stage 2 of the Project requires delivery of the Fund Facts instead of the Prospectus to satisfy the Delivery Requirement. On June 13, 2013, the CSA published final amendments to implement Stage 2 of the Project (the **Stage 2 Amendments**). The Stage 2 Amendments contain a transition period requiring dealers to send or deliver the Fund Facts instead of the Prospectus to satisfy the Delivery Requirement as of June 13, 2014 (the **Effective Date**).

15. CSA Staff Notice 81-321 *Early Use of the Fund Facts to Satisfy Prospectus Delivery Requirements* dated February 24, 2011 (**CSA Notice 81-321**) encourages the filing of applications for exemptive relief to allow the early use of the Fund Facts to satisfy the Delivery Requirement.

Early Use of Fund Facts

16. The Filers have determined that it would be desirable to apply for exemptive relief consistent with the Stage 2 Amendments prior to the Effective Date and, accordingly, require an exemption to use the Fund Facts to satisfy the Delivery Requirement, as contemplated by CSA Notice 81-321.

17. The Dealers have entered into, or may wish to enter into, contracts with Broadridge to use Smart Document Fulfillment Services for the electronic and/or paper delivery of the Fund Facts to satisfy the Delivery Requirement.

18. Smart Document Fulfillment Services, proprietary technology of Broadridge, contains a document repository that catalogues and maintains the Fund Facts which have been filed with securities regulators. The Fund Facts are obtained through a near-real-time feed from the System for Electronic Document Analysis and Retrieval (**SEDAR**). Smart Document Fulfillment Services enables electronic and/or paper delivery of the most recently filed Fund Facts corresponding to a client's purchase of Funds.

19. Smart Document Fulfillment Services offer the Dealers a record of the date, time and manner of delivery (i.e., electronically or by mail) of the Fund Facts, as well as a record of the version of the Fund Facts delivered, enabling compliance reporting and record-keeping for audit purposes.

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:

1. A Fund Facts that is being sent or delivered in accordance with this Decision will not be attached to, or bound with another Fund Facts or with any other document except in a manner contemplated and permitted in the Stage 2 Amendments.

2. Any Dealer relying on the ability to send or deliver Fund Facts in lieu of the Prospectus grants to an investor purchasing the securities of a Fund a right equivalent to the Rights of Withdrawal upon the sending or delivery of the Fund Facts. The Rights of Withdrawal and the Rights of Rescission will no longer apply if the Fund Facts is sent or delivered to an

investor in accordance with the time period and in the manner specified for the Prospectus under the Delivery Requirement.

3. The clients of a Dealer relying on this Decision will receive notice (the **Notice**), at or before the time they receive the Fund Facts, indicating that they will have rights equivalent to the Rights of Withdrawal and Rights of Rescission for the sending or delivery of the Fund Facts, which includes wording substantially similar to the following:

> The Fund Facts for the securities you purchased is being sent or delivered to you instead of the simplified prospectus. You will continue to have the equivalent rights and protections otherwise applicable under securities law as if you were sent or delivered the simplified prospectus. Depending on your province or territory, you may have the right to:
>
> - withdraw from an agreement to buy securities of mutual funds within two business days after you receive a fund facts document; or
>
> - cancel your purchase within 48 hours after you receive confirmation of the purchase.
>
> For more information, see the securities law of your province or territory or ask a lawyer.

4. Prior to a Dealer relying on the ability to send or deliver Fund Facts in lieu of the Prospectus, Broadridge or an agent of Broadridge provides to the Dealer

   (a) a copy of this Decision;

   (b) a disclosure statement informing the Dealer of the implications of this Decision; and

   (c) a form of acknowledgment of the matters referred to in paragraph 5 below, to be signed and returned by the Dealer to Broadridge or its agent.

5. A Dealer seeking to rely on this Decision to send or deliver the Fund Facts in lieu of the Prospectus will, prior to doing so:

   (a) acknowledge receipt of a copy of this Decision providing the Exemption Sought;

   (b) appoint Broadridge as its service provider for the delivery, in electronic and/or paper form, of the Fund Facts through a Smart Document Fulfillment service as described in this Decision;

   (c) confirm that it will provide a right equivalent to the Rights of Withdrawal attached to the sending or delivery of the Fund Facts;

   (d) instruct Broadridge to provide the Notice referred to in paragraph 3 above to the Dealer's clients, in a document other than the Fund Facts, but delivered prior to or contemporaneously with the Fund Facts;

   (e) confirm that clients of the Dealer will continue to be able to request a copy of the Prospectus at no cost by contacting the Dealer;

   (f) confirm that the Dealer has in place written policies and procedures to ensure that there is compliance with the conditions of this Decision;

   (g) consent to Broadridge providing to staff of the Principal Regulator the name of the Dealer, and identifying the Dealer as having entered into an agreement with Broadridge and providing such information regarding the Dealer's reliance on the Exemption Sought as staff of the Principal Regulator may request, including providing staff of the Principal Regulator with a copy of the acknowledgment and agreement referred to in subparagraph (h) below; and

   (h) deliver to Broadridge a signed acknowledgment and agreement binding the Dealer to the foregoing.

6. In the event a Fund Facts is not sent or delivered in accordance with this Decision, a Dealer will send or deliver a Prospectus, and the Rights of Rescission will continue to apply to the failure to send or deliver the Prospectus.

7. Broadridge will maintain records of all Dealers who have entered into agreements on the terms specified herein and will notify staff of the Principal Regulator within 10 business days of the end of each month of the names of such Dealers and provide such other information regarding the Dealer's reliance on this Decision as staff of the Principal Regulator

may request, including providing staff of the Principal Regulator with a copy of the acknowledgment and agreement referred to in paragraph 5 hereof.

8. The Exemption Sought terminates on the Effective Date.

"Anne Marie Ryan"
Commissioner
Ontario Securities Commission

"James Turner"
Vice-Chair
Ontario Securities Commission

2.1.15 CIBC Asset Management Inc. et al.

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) – Ontario Securities Commission Rule 33-506 Registration Information (OSC Rule 33-506) – Derivatives Regulation (Québec) – Relief from certain filing requirements of NI 33-109, OSC Rule 33-506 and Derivatives Regulation (Québec) in connection with a bulk transfer of business locations and registered and non-registered individuals under an amalgamation in accordance with section 3.4 of Companion Policy 33-109CP to NI 33-109 and section 3.3 of Companion Policy 33-506CP to OSC Rule 33-506.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 33-109 Registration Information, ss. 2.2, 2.3, 2.5, 3.2, 4.2, 7.1.
Companion Policy 33-109CP to National Instrument 33-109 Registration Information, s. 3.4.
National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.
Ontario Securities Commission Rule 33-506 (Commodity Futures Act) Registration Information, ss. 2.2, 2.3, 2.4, 3.2, 4.3, 7.1.
Companion Policy 33-506CP to Ontario Securities Commission Rule 33-506 Registration Information, s. 3.3.
Derivatives Act (Québec), s. 86.
Derivatives Regulation (Québec), s. 11.1.

December 20, 2013

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO AND QUÉBEC

AND

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

AND

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

AND

IN THE MATTER OF
CIBC ASSET MANAGEMENT INC. (CAMI),
CIBC GLOBAL ASSET MANAGEMENT INC. (CGAM) AND
CIBC PRIVATE INVESTMENT COUNSEL INC.
(CPIC, and together with CAMI and CGAM, the Filers)

DECISION

Background

The securities regulatory authority or regulator in Ontario has received an application from the Filers, on behalf of a new amalgamated entity, CIBC Asset Management Inc. (**Amalco**, described further below), for

(a) a decision (the **Passport Exemption Sought**) under the securities legislation of the jurisdiction of the principal regulator (the **Legislation**) for relief from the requirements contained in sections 2.2, 2.3, 2.5, 3.2 and 4.2 of National Instrument 33-109 *Registration Information* (**NI 33-109**) pursuant to section 7.1 of NI 33-109; and

(b) a decision (the **Ontario-only Exemption Sought**) under the CFA for relief from the requirements contained in sections 2.2, 2.3, 2.4, 3.2 and 4.3 of Ontario Securities Commission Rule 33-506 *Registration Information* (**OSC Rule 33-506**) pursuant to section 7.1 of OSC Rule 33-506;

to allow the bulk transfer (the **Bulk Transfer**) of all of the registered individuals and permitted individuals, as well as all of the business locations, of each of CAMI, CGAM and CPIC to Amalco on or about January 1, 2014 in accordance with section 3.4 of the Companion Policy to NI 33-109 and section 3.3 of the Companion Policy to OSC Rule 33-506, respectively.

The securities regulatory authority or regulator in Québec (the **Derivatives Decision Maker**) has also received an application from the Filers for a decision under the securities legislation of Québec, which includes derivatives legislation, for relief from section 11.1 of the *Derivatives Regulation* (Québec) pursuant to section 86 of the *Derivatives Act* (Québec) (the **Derivatives Legislation**) to allow the Bulk Transfer of all registered individuals and permitted individuals under the Derivatives Legislation and all of the associated locations of CGAM to Amalco on or about January 1, 2014 in accordance with section 3.4 of the Companion Policy to NI 33-109 (the **Derivatives Exemption Sought**).

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

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

(b) the Filers have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon by the Filers in each jurisdiction of Canada outside of Ontario (together with Ontario, the **Jurisdictions**),

(c) the decision with respect to the Passport Exemption Sought and the Ontario-only Exemption Sought is the decision of the principal regulator; and

(d) the decision with respect to the Derivatives Exemption Sought evidences the decision of the Derivatives Decision Maker.

Interpretation

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

Representations

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

CAMI

1. CAMI is currently registered as an adviser in the category of portfolio manager under securities legislation in each of the Jurisdictions and, in addition, is registered under securities legislation in Ontario, Québec and Newfoundland and Labrador as an investment fund manager. CAMI is also registered as an adviser in the category of commodity trading manager under the CFA in Ontario.

2. CAMI's head office is located in Ontario.

3. CAMI is not in default of securities legislation in any of the Jurisdictions. CAMI is also not in default of commodity futures legislation in Ontario.

CGAM

4. CGAM is currently registered as an adviser in the category of portfolio manager under securities legislation in each of the Jurisdictions and, in addition, is registered under securities legislation in Ontario, Québec and Newfoundland and Labrador as an investment fund manager. CGAM is also registered as an adviser in the category of commodity trading manager under the CFA in Ontario, and as an adviser in the category of derivatives portfolio manager under Derivatives Legislation in Québec.

5. CGAM's head office is located in Québec.

6. CGAM is not in default of securities legislation in any of the Jurisdictions. CGAM is also not in default of commodity futures legislation in Ontario.

CPIC

7. CPIC is registered as an adviser in the category of portfolio manager under securities legislation in each of the Jurisdictions. CPIC is also registered as a financial planning firm in Québec under the Act respecting the distribution of financial products and services.

8. CPIC's head office is located in Ontario.

9. CPIC is not in default of securities legislation in any of the Jurisdictions.

The Amalgamation

10. On or about January 1, 2014, CAMI, CGAM and CPIC will amalgamate (the **Amalgamation**) to form Amalco. Following the Amalgamation, the head office of Amalco will be CAMI's current head office location, which is located in Toronto, Ontario.

11. Effective on or about January 1, 2014, all of the current registrable activities, business and operations of the Filers will become the responsibility of Amalco. Amalco will assume all of the existing registrations and approvals for all of the registered individuals and permitted individuals of the Filers, and will also assume all of the business locations of the Filers. It is not anticipated that there will be any disruption in the ability of Amalco to conduct the respective businesses of CAMI, CGAM and CPIC on behalf of their respective clients, and Amalco will be able to advise and trade (as and where applicable) on behalf of such clients immediately after the Amalgamation.

12. For greater certainty, Amalco will assume all registered advising representatives, registered associate advising representatives and permitted individuals from the Filers respectively. The ultimate designated person (**UDP**) currently shared by CAMI and CGAM will be the UDP of Amalco. The chief compliance officer (**CCO**) currently shared by each of the Filers will be the CCO of Amalco. Amalco will also assume the Filers' portfolio manager registrations under securities legislation in each of the Jurisdictions, CGAM's derivatives portfolio manager registration in Québec, CAMI's and CGAM's commodity trading manager registration under the CFA and CPIC's financial planning firm registration in Québec.

13. Amalco will be registered in the same categories of registration and in the same jurisdictions as CAMI, CGAM and CPIC were registered immediately prior to the Amalgamation. Amalco will be subject to, and will comply with, all applicable securities legislation (including the Derivatives Legislation) and commodity futures legislation.

14. Amalco will carry on the same business in substantially the same manner as the Filers carried on separately immediately prior to the Amalgamation, including carrying on the business with all of the same personnel and business locations.

15. A client communication plan has been developed and clients of the Filers will be advised in writing of the Amalgamation. For CGAM's institutional clients, notification will be provided pursuant to a written letter. Retail clients will be provided with notification that will be included in an upcoming quarterly statement mailing.

16. The officers and directors of Amalco will be comprised of a combination of certain officers and directors of CAMI, CGAM and CPIC, including Amalco assuming the UDP currently shared by CAMI and CGAM as well as the CCO currently shared by each of the Filers.

17. The compliance department of Amalco will carry on in substantially the same manner with substantially the same personnel as the compliance departments of each of the Filers, and there will be written policies and procedures for Amalco based on the written policies and procedures of each of the Filers. There will be no change in CCO as the CCO shared by each of the Filers will be the CCO for Amalco.

18. The Bulk Transfer will not impact the ability of Amalco to comply with all applicable regulatory requirements or its ability to satisfy any obligations in respect of the clients of the Filers.

19. Given the significant number of registered individuals and permitted individuals, as well as business locations, of the Filers to be transferred to Amalco, it would be unduly time-consuming and difficult to transfer manually through individual National Registration Database (**NRD**) submissions all affected individuals and business locations to Amalco in accordance with the requirements set out in NI 33-109 and OSC Rule 33-506 if the Passport Exemption Sought, the Ontario-only Exemption Sought and the Derivatives Exemption Sought are not granted. Moreover, it is important that the transfer of the affected business locations and individuals occur on the same date (i.e. the date of the Amalgamation), in order to ensure that there is no interruption in registration.

Decision

Each of the principal regulator and the Derivatives Decision Maker is satisfied that the decision meets the test set out in the Legislation, the CFA and the Derivatives Legislation, respectively, for the relevant regulator or securities regulatory authority to make the decision.

The decision of the principal regulator under the Legislation and under the CFA is that each of the Passport Exemption Sought and the Ontario-only Exemption Sought is granted provided that the Filers make acceptable arrangements with CDS Inc. for the payment of the costs associated with the Bulk Transfer, and make such payment in advance of the Bulk Transfer.

The decision of the Derivatives Decision Maker under the Derivatives Legislation is that the Derivatives Exemption Sought is granted provided that the Filers make acceptable arrangements with CDS Inc. for the payment of the costs associated with the Bulk Transfer, and make such payment in advance of the Bulk Transfer.

“Marrianne Bridge”
Deputy Director
Compliance and Registrant Regulatio0n
Ontario Securities Commission

2.1.16 Enbridge Gas Distribution Inc. et al.

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards (NI 52-107), s. 5.1 – the Filers request relief from the requirements under section 3.2 of NI 52-107 that financial statements be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises to permit the Filers to prepare their financial statements in accordance with U.S. GAAP.

Applicable Legislative Provisions

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

Citation: Enbridge Gas Distribution Inc., Re, 2013 ABASC 567

December 20, 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
ENBRIDGE GAS DISTRIBUTION INC., ENBRIDGE PIPELINES INC.
AND ENBRIDGE INCOME FUND
(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 under the securities legislation (the **Legislation**) of the Jurisdictions seeking exemption (the **Exemption Sought)** from the requirements of section 3.2 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (**NI 52-107**) that financial statements (a) be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises and (b) disclose an unreserved statement of compliance with IFRS in the case of annual financial statements and an unreserved statement of compliance with IAS 34 in the case of an interim financial report.

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 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island, Nova Scotia, and Newfoundland and Labrador; and

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

Interpretation

In this decision:

(a) unless otherwise defined herein, terms defined in National Instrument 14-101 *Definitions*, MI 11-102 or NI 52-107 have the same meaning; and

(b) “activities subject to rate regulation” has the meaning ascribed in the Handbook.

Representations

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

1. Enbridge Inc. (**EI**) and Enbridge Pipelines Inc. (**EPI**) are continued under the *Canada Business Corporations Act* and each of their head offices is located in Calgary, Alberta.

2. Enbridge Gas Distribution Inc. (**EGD**) is governed by the *Business Corporations Act* (Ontario) and its head office is located in Toronto, Ontario.

3. Enbridge Income Fund (**EIF**) is an unincorporated open-ended trust established under the laws of Alberta and its head office is located in Calgary, Alberta.

4. EI and each of the Filers is a reporting issuer or equivalent in the Jurisdictions and each of the Passport Jurisdictions.

5. Each of EPI, EGD and EIF became a reporting issuer by distributing by prospectus debt securities that remain outstanding and publicly-held.

6. EI and each of the Filers represents on its own behalf that it is not in default of securities legislation in any jurisdiction in Canada.

7. Each of EI, EPI, EGD and EIF has activities subject to rate regulation.

8. Each of EPI and EGD is a wholly-owned indirect subsidiary of EI.

9. Through various holdings, EI has a significant economic interest in EIF.

10. The financial statements of each of the Filers are consolidated into the financial statements of EI.

11. EI is an SEC issuer and relies on subsection 3.7 of NI 52-107 to file financial statements prepared in accordance with U.S. GAAP. The Filers are not SEC issuers and, therefore, cannot rely on that provision.

12. By orders cited as *Re Enbridge Inc.*, 2011 ABASC 106 and *Re Enbridge Income Fund*, 2011 ABASC 314, each of EGD, EPI and EIF have been granted relief substantially similar to the Exemption Sought (collectively, the **Existing Relief**).

13. The Existing Relief will expire not later than 1 January 2015.

14. The International Accounting Standards Board (**IASB**) continues to work on a project focusing on accounting specific to activities subject to rate regulation. It is not yet known when this project will be completed or whether IFRS will include a specific standard that is mandatory for entities with activities subject to rate regulation.

Decision

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

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

(a) the Existing Relief is revoked;

(b) the Exemption Sought is granted to each Filer in respect of the Filer's financial statements required to be filed on or after the date of this order, provided that the Filer prepares those financial statements in accordance with U.S. GAAP; and

(c) the Exemption Sought will terminate in respect of a Filer on the earliest of the following:

(i) 1 January 2019;

(ii) if that Filer ceases to have activities subject to rate regulation, the first day of the Filer's financial year that commences after the Filer ceases to have activities subject to rate regulation; and

(iii) the effective date prescribed by the IASB for the mandatory application of a standard within IFRS specific to entities with activities subject to rate regulation.

For the Commission:

"Stephen Murison"
Vice-Chair

"Fred Snell, FCA"
Member

2.2 Orders

2.2.1 Trapeze Asset Management Inc. et al. – s. 144

Headnote

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

Applicable Legislative Provisions

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

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

AND

IN THE MATTER OF
TRAPEZE ASSET MANAGEMENT INC. AND TRAPEZE CAPITAL CORP.
AND ACCOUNTHOLDERS LISTED IN SCHEDULE "A" AND CANORO RESOURCES LTD.

ORDER
(Section 144 of the Act)

WHEREAS on August 23, 2011, a Director of the Ontario Securities Commission (the "**Commission**") made an order under paragraph 2 of subsection 127(1) of the Act that all trading in and all acquisitions of securities of Canoro Resources Ltd. ("**Canoro**"), whether direct or indirect, shall cease until further order by the Director (the "**Canoro CTO**");

AND WHEREAS Trapeze Asset Management ("**TAMI**"), Trapeze Capital Corp. ("**TCC**") and certain accountholders listed in Schedule A (the "**Accountholders**") (together with TAMI and TCC, the "**Applicants**") have made an application pursuant to section 144 of the Act (the "**Application**") for a partial revocation of the Canoro CTO to permit the sale by the Applicants of the Canoro Shares (as defined below) solely for the purpose of establishing a tax loss;

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

AND UPON the Applicants having represented to the Commission that:

1. Canoro is a reporting issuer in Ontario, British Columbia, Alberta, Saskatchewan and Manitoba.

2. TAMI is an Ontario corporation and is registered as a portfolio manager, exempt market dealer and investment fund manager under the Act.

3. TCC is an Ontario corporation and is registered as an investment dealer under the Act.

4. The Accountholders are resident in Ontario.

5. TAMI holds 9,542,813 common shares of Canoro on behalf of managed accounts and TCC holds 4,270,699 common shares of Canoro on behalf of managed accounts.

6. The Accountholders hold 479,100 common shares of Canoro (collectively the 14,292,612 common shares held by TAMI, TCC and the Accountholders are herein referred to as the "**Canoro Shares**").

7. The Canoro CTO was made by the Commission because Canoro failed to file the following continuous disclosure materials as required by Ontario securities law:

(a) audited annual financial statements for the year ended March 31, 2011;

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

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

8. The Canoro Shares were acquired prior to the date of the Canoro CTO.

9. The Applicants will effect the proposed trades of the Canoro Shares (the "**Canoro Disposition**") solely for the purpose of enabling them to establish a tax loss in respect of such Canoro Disposition.

10. It is intended that the Canoro Shares will be sold at a price of $0.00001 per share for aggregate proceeds of $142.93, solely for the purpose of establishing tax losses.

11. The purchaser of the Canoro Shares will be resident in Ontario and will be a sophisticated purchaser who understands that such shares have no market value, the purpose of the proposed trades and the nature of the Canoro CTO.

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

13. Each of the Applicants and the purchaser are not aware of any material information concerning the affairs of Canoro that has not been generally disclosed.

14. The purchaser will purchase and hold the Canoro Shares, as principal.

15. The purchaser of the Canoro Shares will be provided with a copy of the Canoro CTO and a copy of this Order prior to the Canoro Disposition.

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

AND WHEREAS the Director being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED, pursuant to section 144 of the Act, that the Canoro CTO be partially revoked solely to permit the Canoro Disposition provided that:

1. Prior to the completion of the Canoro Disposition, the purchaser of the Canoro Shares will:

   (a) receive:

      (i) a copy of the Canoro CTO; and

      (ii) a copy of this Order;

   (b) provide the Applicants with signed and dated acknowledgements which clearly state that the Canoro CTO remains in effect, and that the issuance of a partial revocation of a cease trade order does not guarantee the issuance of a full revocation in the future; and

2. The Applicants undertake to make available copies of the written acknowledgements referred to in paragraph 1(b) to staff of the Commission upon request.

DATED in Toronto this 12th day of December, 2013.

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

SCHEDULE A
ACCOUNTHOLDERS

1051937 Ontario Ltd.
Samarth Tosaria
Thelma and Saul Shulman
David Moscovitz

2.2.2 Pro-Financial Asset Management Inc. – ss. 127(1), (2) and (8)

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

AND

IN THE MATTER OF
PRO-FINANCIAL ASSET MANAGEMENT INC.

ORDER
(Subsections 127(1), (2) and (8))

WHEREAS on May 17, 2013, the Commission issued a temporary order (the "Temporary Order") with respect to PFAM pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering that:

(i) pursuant to paragraph 1 of subsection 127(1) of the Act, the registration of PFAM as a dealer in the category of exempt market dealer is suspended and the following terms and conditions apply to the registration of PFAM as an adviser in the category of portfolio manager ("PM") and to its operation as an investment fund manager ("IFM"):

a. PFAM's activities as a PM and IFM shall be applied exclusively to the Managed Accounts and to the Pro-Hedge Funds and Pro-Index Funds; and

b. PFAM shall not accept any new clients or open any new client accounts of any kind in respect of the Managed Accounts;

(ii) pursuant to subsection 127(6) of the Act, the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission;

AND WHEREAS on May 28, 2013, the Commission ordered: (i) the Temporary Order be extended to June 27, 2013; (ii) the hearing to consider whether to further extend the terms of the Temporary Order and/or to make any further order as to PFAM's registration proceed on June 26, 2013 at 10:00 a.m.;

AND WHEREAS on June 26, 2013, the Commission ordered that: (i) the Temporary Order be extended to July 15, 2013; and (ii) the affidavit of Michael Denyszyn sworn May 24, 2013 not be marked as an exhibit until the next appearance in the absence of a Commission order to the contrary; and the hearing to consider this matter proceed on July 12, 2012;

AND WHEREAS on July 11, 2013, the Commission ordered that: (i) the Temporary Order be extended to July 22, 2013; (ii) the hearing be adjourned to July 18, 2013 at 11:00 a.m.; and (iii) the hearing date of July 12, 2013 at 10:00 a.m. be vacated;

AND WHEREAS on July 18, 2013, PFAM brought a motion (the "First PFAM Motion") that the hearing be held *in camera* and that the affidavits of Michael Denyszyn sworn May 24 and June 24, 2013 and the affidavit of Michael Ho sworn July 17, 2013 (collectively the "Staff Affidavits") either not be admitted as evidence or else be treated as confidential documents and the parties agreed that the motion should be heard *in camera*;

AND WHEREAS on July 18, 2013, PFAM's counsel filed supporting documents (the "PFAM Materials") in support of the First PFAM Motion and counsel for PFAM and Staff made oral submissions and filed written submissions;

AND WHEREAS on July 22, 2013, the Commission ordered:

(i) the Temporary Order be extended to August 26, 2013;

(ii) leave be granted to the parties to file written submissions in respect of the First PFAM Motion;

(iii) the Staff Affidavits, the transcript of the PFAM motion, the PFAM Materials, written submissions filed by Staff and PFAM and other documents presented during the course of the First PFAM Motion shall be treated as confidential documents until further direction or order of the Commission; and

(iv) the hearing be adjourned to August 23, 2013 at 10:00 a.m.;

AND WHEREAS on August 23, 2013, Staff filed with the Commission the affidavit of Michael Ho sworn August 22, 2013 and PFAM's counsel filed the affidavit of Stuart McKinnon dated August 23, 2013 but the parties did not seek to mark these affidavits as exhibits;

AND WHEREAS on August 23, 2013, Staff and counsel for PFAM advised the Commission that the parties had agreed on the terms of a draft order;

AND WHEREAS on August 23, 2013, PFAM requested that the hearing be held *in camera* so PFAM's submissions on certain confidentiality issues could be heard and Staff did not oppose PFAM's request;

AND WHEREAS on August 27, 2013, the Commission ordered:

(i) the Temporary Order be extended to October 11, 2013;

(ii) the affidavit of Michael Ho sworn August 22, 2013 and the affidavit of Stuart McKinnon sworn August 23, 2013 be treated as confidential documents until further order of the Commission;

(iii) PFAM will deliver to Staff the final PPN reconciliation report by 4:30 p.m. on September 30, 2013; and

(iv) the hearing to consider whether to: (i) make any further order as to PFAM's registration as an adviser in the category of PM or in respect of its operation as an IFM, as a result of PFAM's ongoing capital deficiency; and/or (ii) otherwise vary or extend the terms of the Temporary Order, proceed on October 9, 2013 at 11:00 a.m.;

AND WHEREAS on October 9, 2013, PFAM brought a second motion (the "Second PFAM Motion") for an order that the hearing be held *in camera* and for a confidentiality order treating as confidential documents: (i) the Staff and PFAM affidavits; (ii) all facta and correspondence exchanged by Staff and PFAM; and (iii) any transcript of this and prior *in camera* proceedings;

AND WHEREAS on October 9, 2013, PFAM's counsel filed written submissions dated October 8, 2013, the affidavit of Stuart McKinnon sworn October 7, 2013 and the affidavit of Kenneth White sworn October 7, 2013 in support of the Second PFAM Motion and Staff filed written submissions dated October 9, 2013 and the affidavit of Michael Ho sworn October 8, 2013 and opposed the request for an *in camera* hearing and for the confidentiality order;

AND WHEREAS on October 9, 2013, the Commission heard submissions from counsel on the Second PFAM Motion *in camera* and the Commission requested the parties to prepare a draft order that, among other matters, addressed the confidentiality of documents filed with the Commission and permitted BNP Paribas Canada and Société Générale Canada (the "Banks") to review certain documents attached to Staff affidavits dealing substantively with the PPN reconciliation process, provided the Banks treated such documents as confidential;

AND WHEREAS on October 11, 2013, the Commission ordered that:

(i) the Temporary Order be extended to December 15, 2013;

(ii) the affidavit of Michael Ho sworn October 8, 2013, the affidavit of Stuart McKinnon sworn October 7, 2013, the affidavit of Kenneth White sworn October 7, 2013 and the written submissions of the parties dated October 8 and 9, 2013 shall be treated as confidential documents until further order of the Commission; and

(iii) the hearing to consider whether to: (i) make any further order as to PFAM's registration as an adviser in the category of PM or in respect of its operation as an IFM, as a result of PFAM's ongoing capital deficiency; and/or (ii) otherwise vary or extend the terms of the Temporary Order, shall proceed on December 12, 2013 at 10:00 a.m.;

AND WHEREAS on October 17, 2013, the Commission ordered (the "October 17, 2013 Order") that:

(i) the affidavit of Michael Ho sworn October 8, 2013, the affidavit of Stuart McKinnon sworn October 7, 2013, the affidavit of Kenneth White sworn October 7, 2013 and the written submissions of the parties dated October 8 and 9, 2013 shall be treated as confidential documents until further order of the Commission;

(ii) the previous orders as to confidentiality made by the Commission on July 22, 2013 and August 27, 2013 shall remain in force until further order or direction of the Commission; and

(iii) documents related to the PPN reconciliation process listed on Schedule "A" to the October 17, 2013 Order be provided to counsel for the Banks on condition that the Banks treat those documents as confidential documents and not provide copies to any third party without further direction or order of the Commission;

AND WHEREAS on September 30, 2013, PFAM agreed to sell to another portfolio manager (the "Purchaser") PFAM's interest in all of the investment management contracts for the Pro-Index funds and the Managed Accounts (the "First Transaction"). In a second transaction, an investor has agreed to purchase through a corporation (the "Investor") all of the shares of the Purchaser (the "Second Transaction").:

AND WHEREAS on October 22, 2013, the Purchaser and PFAM filed a notification letter providing Compliance and Registrant Regulation Branch ("CRR Branch") Staff with notice ("Notice") of the application filed under section 11.9 and 11.10 of National Instrument 31-103 – Registration Requirements, Exemptions and Ongoing Registrant Obligations ("NI 31-103") relating to the First Transaction and the Second Transaction (collectively, the "Transactions");

AND WHEREAS on November 5, 2013, the staff member of the CRR Branch conducting the review of the Notice requested copies of the affidavits of Michael Denyszyn sworn May 24 and June 24, 2013, the affidavits of Michael Ho sworn July 17, August 22 and October 8, 2013, the affidavits of Stuart McKinnon sworn July 17, August 23 and October 7, 2013, the affidavit of Kenneth White sworn October 7, 2013 and the submissions of Staff and Pro-Financial Asset Management Inc. ("PFAM") (collectively, the "Confidential Documents");

AND WHEREAS on November 12, 2013, PFAM filed an application with the Investment Funds Branch ("IF Branch") of the Commission for an order under section 5.5 of National Instrument 81-102 – Mutual Funds ("NI 81-102") for approval of the Purchaser as investment fund manager of the Pro-Index Funds and the Purchaser applied on October 24, 2013 for registration in the investment fund manager category for this purpose;

AND WHEREAS on November 13, 2013, Staff filed a Notice of Motion returnable on a date to be determined by the Secretary's office seeking an Order that Staff of the Enforcement Branch be permitted to provide some or all of the Confidential Documents to certain staff members of the CRR Branch and the IF Branch;

AND WHEREAS on November 25, 2013, the Commission ordered that:

(i) Staff of the Enforcement Branch be permitted to provide the Confidential Documents to the following persons:

a. the staff members of the CRR Branch assigned to review the Notice;

b. the staff member who has been designated to act in the capacity of the Director on behalf of the CRR Branch for the purposes of deciding whether to object to the Notice;

c. the staff members of the IF Branch who have been assigned to review the application made by PFAM or the Purchaser under section 5.5 of NI 81-102; and

d. the staff member who has been designated to act in the capacity of the "Director" for the purposes of deciding whether to approve the application under section 5.5 of NI 81-102;

(ii) The CRR staff members assigned to review the Notice be permitted to provide relevant information derived from the Confidential Documents ("Relevant Information") to PFAM, the Purchaser and their counsel involved in the Notice as part of the CRR staff members' review and analysis of the Notice on condition that the recipients of such information treat it as confidential and not provide it to any third party without further direction or order of the Commission;

(iii) The IF staff members assigned to review the application for change of fund manager be permitted to provide Relevant Information to PFAM, the Purchaser and their counsel involved in the application filed under NI 81-102 as part of the Investment Funds staff members' review and analysis of the application on condition that the recipients of such information treat it as confidential and not provide it to any third party without further direction or order of the Commission;

(iv) The CRR staff members assigned to review the Notice be permitted to provide Relevant Information to the Investor or its counsel with the consent of PFAM; and

(v) The parties may seek direction from the Commission in the event that the CRR staff members and PFAM cannot agree on whether Relevant Information should be provided to the Investor or its counsel:

AND WHEREAS Staff has filed an affidavit of Michael Ho sworn December 10, 2013 attaching a letter from counsel to Investment Administration Solution Inc. ("IAS"), PFAM's recordkeeper for the PPNs, requesting a copy of the PPN reconciliation report submitted by PFAM to Staff;

AND WHEREAS PFAM's counsel provided to Staff and to the Commission and made submissions based on an affidavit of Stuart McKinnon sworn December 11, 2013;

AND WHEREAS on December 12, 2013, Staff and counsel for PFAM appeared before the Commission and made submissions on: (i) the appropriate form of order to govern the provision of the Confidential Documents to other members of Staff of the Commission; and (ii) whether IAS should receive copies of the PPN reconciliation reports submitted by PFAM to Staff;

AND WHEREAS, whether or not this order may be necessary in the circumstances, the Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED that:

1. The Confidential Documents may be provided to any member of Staff of the Commission, as necessary in the course of their duties.

2. The Temporary Order is extended to January 24, 2014.

3. The hearing is adjourned to January 21, 2014 at 11:00 a.m.

4. Staff shall be entitled to provide a copy of each document relating to the PPN reconciliation process listed on Schedule "A" to this order to IAS and its legal counsel on the conditions that: (i) IAS treats those documents as confidential and does not provide them (or copies of them) or disclose their contents to any third party without further direction or order of the Commission; and (ii) IAS may use such documents only for the purpose of assisting Staff in resolving the issues related to the PPN discrepancy, and for no other purpose.

DATED at Toronto this 13th day of December, 2013.

"James E. A. Turner"

Schedule “A”

1. Letter from M. Jog to D. Ferris dated April 23, 2013 (Tab 31 of M. Denyszyn affidavit sworn May 24, 2013)

2. Letter from S. Pinto to D. Ferris dated September 30, 2013 (Tab H of M. Ho affidavit sworn October 8, 2013)

2.2.3 Global RESP Corporation and Global Growth Assets Inc. – s. 127(1)

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

AND

IN THE MATTER OF
GLOBAL RESP CORPORATION AND GLOBAL GROWTH ASSETS INC.

ORDER
(Subsection 127(1))

WHEREAS on July 26, 2012, the Ontario Securities Commission ("the "Commission") ordered pursuant to subsections 127(1) and (5) that the terms and conditions ("Terms and Conditions") set out in schedules "A" and "B" of the Commission order be imposed on Global RESP Corporation ("Global RESP") and Global Growth Assets Inc. ("GGAI") (the "Temporary Order");

AND WHEREAS on August 10, 2012, the Commission extended the Temporary Order against Global RESP and GGAI until such further Order of the Commission and adjourned the hearing until November 8, 2012;

AND WHEREAS the Terms and Conditions required Global RESP and GGAI to retain a consultant (the "Consultant") to prepare and assist them in implementing plans to strengthen their compliance systems and require Global RESP to retain a monitor (the "Monitor") to contact all new clients as defined and set out in the Terms and Conditions ("New Clients');

AND WHEREAS Global RESP retained Sutton Boyce Gilkes Regulatory Consulting Group Inc. as its Consultant and Monitor;

AND WHEREAS on November 2, 2013, the Commission heard Global RESP's motion to vary the Terms and Conditions imposed on Global RESP on July 26, 2012;

AND WHEREAS on November 7, 2012, the Commission ordered: (i) paragraphs 5, 6 and 7 of the Terms and Conditions deleted and replaced with new terms; (ii) the hearing be adjourned to December 13, 2012 at 10:00 a.m.; and (iii) the appearance date on November 8, 2012 be vacated;

AND WHEREAS on December 13, 2012, Staff filed the Affidavit of Lina Creta sworn December 13, 2012 and counsel for the Respondents filed the Affidavit of Clarke Tedesco sworn December 12, 2012 and the Commission adjourned the Hearing to January 14, 2013 at 9:00 a.m.;

AND WHEREAS on January 14, 2013, Staff filed the Affidavit of Lina Creta sworn January 11, 2013 and counsel for the Respondents filed the affidavits of Clarke Tedesco sworn January 11 and 14, 2013;

AND WHEREAS on January 22, 2013, the Commission ordered that the hearing be adjourned to February 6, 2013;

AND WHEREAS on February 6, 2013, Staff filed the Affidavit of Lina Creta sworn February 6, 2013 and counsel for the Respondents filed the affidavits of Clarke Tedesco sworn February 4 and 6, 2013;

AND WHEREAS on February 13, 2013, the Commission ordered that the hearing be adjourned to February 25, 2013 for the purpose of allowing the parties to make submissions on: (i) whether it is appropriate for the Commission to approve the plan submitted by the Consultant; and (ii) if it is appropriate, for the Commission to approve any terms of the plan not agreed to by Staff and the Commission ordered that the hearing on February 25, 2013 only proceed if the plan to be submitted by the Consultant had not been approved by Staff;

AND WHEREAS on February 22, 2013, Staff of the Commission approved the plans submitted by the Consultant for Global RESP and GGAI subject to an amendment being made to the Global RESP plan, which amendment was subsequently made on February 22, 2013;

AND WHEREAS on October 22, 2013, the Respondents brought a motion seeking to remove the Terms and Conditions and filed the affidavits of Natalia Vandervoort sworn October 22, 2013 and November 8, 2013 and Staff filed the Affidavit of Lina Creta sworn November 19, 2013 updating the Commission on Staff's dealings with the Monitor and the Consultant;

AND WHEREAS the Consultant provided a letter to Staff stating that the Consultant saw no reason for continuing the role of the Monitor;

AND WHEREAS on November 20, 2013, the Commission ordered that:

1. For all New Clients who invested on or before November 20, 2013, paragraphs 4, 5.1, 5.2, 5.3, 6.1, 6.2, 7 and 8 of the Terms and Conditions, as amended by the Commission Order dated November 7, 2012 continue to apply;

2. For all New Clients who invest after November 20, 2013, the role and activities of the Monitor as set out in paragraphs 4, 5.2, 5.3, 6.2 and 8 of the Terms and Conditions, as amended by the Commission Order dated November 7, 2012, and the activity of Global RESP as set out in paragraph 7 of the Terms and Conditions, as amended by the Commission Order dated November 7, 2012 are suspended;

3. Further to paragraph 9 of the Terms and Conditions, the resumption of any future monitoring or any subsequent changes to that monitoring in furtherance of the implementation of the Global RESP Plan, if any, shall take place on the recommendation of the Consultant and with the agreement of the OSC Manager and the parties may seek the direction from the Commission in the event that the parties are unable to agree on any future possible monitoring; and

4. The hearing is adjourned to December 13, 2013 at 2:00 p.m.

AND WHEREAS on December 13, 2013, counsel for the Respondents and Staff updated the Commission on the status of Staff's dealings with the Consultant and counsel for the Respondents in relation to the ongoing implementation of the Plan;

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

IT IS HEREBY ORDERED pursuant to section 127 of the Act that the hearing is adjourned to January 9, 2014 at 10:30 a.m.

DATED at Toronto this 13th day of December, 2013.

"James E. A. Turner"

2.2.4 Knowledge First Financial Inc. – ss. 144,147

Headnote

Order to amend and restate a previous order of the Commission dated March 15, 2013, In the Matter of Ontario Securities Commission Staff Notice 33-739 Termination of the Ontario Contingency Trust Fund and Certain Registered Dealers – Previous order had exempted the applicant and other filers from the requirement in subsection 110 (1) of Regulation 1015, made under the Securities Act, that the filers participate in a compensation fund or contingency trust fund that that has been approved by the Commission and satisfies certain other requirements set out in that subsection – New order provides applicant with additional time to provide notice of its exemption to its existing clients.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 144, 147.
Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., s. 110(1).

Notices Cited

Ontario Securities Commission Staff Notice 33-739 Termination of the Ontario Contingency Trust Fund (2012), 35 OSCB 10873.

Orders Cited

In the Matter of Ontario Securities Commission Staff Notice 33-739 Termination of the Ontario Contingency Trust Fund and Certain Registered Dealers (2013), 36 OSCB 2913.

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

AND

REGULATION 1015 R.R.O. 1990, AS AMENDED, MADE UNDER THE ACT
(the "Regulation")

AND

IN THE MATTER OF
ONTARIO SECURITIES COMMISSION STAFF NOTICE 33-739
TERMINATION OF THE ONTARIO CONTINGENCY TRUST FUND

AND

KNOWLEDGE FIRST FINANCIAL INC.

COMMISSION ORDERS
(Sections 144 and 147 of the Act)

Background

1. Subsection 110(1) of the Regulation requires every registered dealer, other than an exempt market dealer as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registration Obligations* (**NI 31-103**), to participate in a compensation fund or contingency trust fund that has been approved by the Commission and satisfies certain other requirements set out in that subsection (the **compensation fund participation requirement**).

2. The Ontario Contingency Trust Fund (the **OCTF** or **Plan**) is one of three compensation funds or contingency trust funds that have been approved by the Commission for the purposes of subsection 110(1) of the Regulation.

3. The terms of the OCTF are set out in a form of trust agreement (the **Trust Agreement**) that has been entered into by each participant in the Plan with the trustee (the **Trustee**) of the Plan.

4. Certain registered dealers (**OCTF Dealers**) that are not members of the Investment Industry Regulatory Organization of Canada (**IIROC**) or the Mutual Fund Dealers Association of Canada (**MFDA**) participate in the OCTF, and as such

do not participate in the corresponding approved compensation fund for members of these self-regulatory organizations.

5. OCTF Dealers comprise scholarship plan dealers and mutual fund dealers that obtained an exemption from the requirement in Ontario securities law to be a member of the MFDA.

6. As indicated in Ontario Securities Commission Staff Notice 33-739 Termination of the Ontario Contingency Trust Fund (the **OSC Notice**), the continued operation of the Plan is not financially sustainable. The Trustee has proposed that the OCTF be wound up in accordance with advice and direction from the court, and the Commission has advised the Trustee that it does not object to the Trustee pursuing such a wind-up.

7. In anticipation of the future wind-up of the OCTF, staff of the Commission invited OCTF Dealers to apply for an exemption from the compensation fund participation requirement on terms, and following the simplified procedure, set out in the OSC Notice.

Applications

Knowledge First Financial (**Knowledge First**) is registered under the Act as a dealer in the category of "scholarship plan dealer". (Knowledge First is also registered under the Act as an "investment fund manager".)

Knowledge First is currently a participant in the OCTF.

Knowledge First is one of a number of OTC Dealers (collectively, the **Filers**) that applied for and obtained an order from the Commission dated March 15, 2013, In the Matter of Ontario Securities Commission Staff Notice 33-739 *Termination of the Ontario Contingency Trust Fund and Certain Registered Dealers* (the **Previous Commission Order**) exempting the Filers from the compensation fund participation requirement, on terms set out in the Previous Commission Order which was effective on April 14, 2013 (the **Effective Date**). The attached Schedule contains a copy of the Previous Commission Order as it was published in the OSC Bulletin.

As one of the terms and conditions on its exemption in the Previous Commission Order, Knowledge First was required to provide certain disclosure (the **Existing Client Notice**) to existing clients within 60 days of the Effective Date, as more particularly set out in paragraph (i) C. of the Previous Commission Order.

Knowledge First has made an application (the **Variation Application**) to the Commission for a amendment and restatement of the Previous Commission Order, insofar as applies to Knowledge First as a Filer, to allow Knowledge First additional time to provide the Existing Client Notice.

Representations of Knowledge First

In its Variation Application, Knowledge First has represented to the Commission that:

a) Knowledge First is Canada's second-largest scholarship plan dealer, with approximately 400,000 clients in Canada.

b) Knowledge First proposes to include the Existing Client Notice as part of another general mailing to existing clients that will take place on or before December 31, 2013, in order to avoid a prohibitively expensive separate mailing of the Existing Client Notice.

c) Knowledge First has been advised by legal counsel for the Trustee that the OCTF is still in existence and that under the wind-up of the OCTF that is being pursued by the Trustee it is expected that:

   i. coverage under the OCTF will continue to be available until a "coverage end date" which will not be before January 31, 2014;

   ii. client claims may continue to be submitted to the OCTF any time up to a "claims bar date" which will not be before March 1, 2014.

d) Knowledge First is not a member of either IIROC or the MFDA, and Knowledge First is not required by Ontario securities law to be a member of either of these self-regulatory organizations.

e) Knowledge First does not now hold for its clients any funds, securities or other property ("**Client Assets**"), and since the Effective Date Knowledge First has not held any Client Assets.

f) So long as Knowledge First relies upon the exemption from the compensation fund participation requirement as herein provided, Knowledge First will not hold any Client Assets.

g) Before any person or company that was not a client of Knowledge First on the Effective Date becomes (or became) a client of Knowledge First, Knowledge First will provide (or has provided) to that person or company prominent written notice of the following:

> *Knowledge First has obtained an exemption from the requirement in Ontario securities law to participate in an approved compensation fund or contingency trust fund. These funds provide for certain compensation to eligible clients of a participating dealer who suffer a financial loss as a result of the dealer becoming insolvent and not being able to return assets which it was holding on behalf of clients.*
>
> *It is a condition of the exemption that Knowledge First not hold any client assets.*

h) By no later than December 31, 2013, Knowledge First will have sent to any person or company that is now a client of Knowledge First and was a client of Knowledge First on the Effective Date prominent written notice of the following:

> *Knowledge First has obtained an exemption from the requirement in Ontario securities law to participate in an approved compensation fund or contingency trust fund. These funds provide for certain compensation to eligible clients of a participating dealer who suffer a financial loss as a result of the dealer becoming insolvent and not being able to return assets which it was holding on behalf of clients.*
>
> *It is a condition of the exemption that Knowledge First not hold any client assets.*
>
> *Knowledge First was a participant in the Ontario Contingency Trust Fund at the time it applied for this exemption. It applied for this exemption in response to the proposed wind-up of that fund, as discussed in Ontario Securities Commission Staff Notice 33-739 Termination of the Ontario Contingency Trust Fund.*

i) Knowledge First will not rely upon the passport provisions of Canadian securities legislation to passport these Commission Orders into any other jurisdiction of Canada without the prior written consent of that other jurisdiction.

Commission Orders

In the opinion of the Commission it is not prejudicial to the public interest to make these Orders.

It is ordered by the Commission that:

i. pursuant to section 144 of the Act, the Previous Commission Order is varied to revoke the exemption from subsection 110(1) of the Regulation granted by the Commission to Knowledge First in the Previous Commission Order, and

ii. pursuant to section 147 of the Act, beginning on the date hereof, Knowledge First is exempt from subsection 110(1) of the Regulation, but only so long as:

   A. Knowledge First is not required by Ontario securities law to be a member of either IIROC or the MFDA;

   B. Knowledge First does not hold any Client Assets; and

   C. Knowledge First provides the disclosure to its clients referred to in paragraph (g) above and has provided the disclosure to its clients referred to in paragraph (h) above.

DATED at Toronto, Ontario this 16th day of December, 2013.

"Edward P. Kerwin"
Commissioner
Ontario Securities Commission

"Alan J. Lenczner"
Commissioner
Ontario Securities Commission

Schedule

IN THE MATTER OF
THE SECURITIES ACT, R.S.O. 1990, c. S.5, AS AMENDED (the "Act"),
REGULATION 1015 R.R.O. 1990, AS AMENDED, MADE UNDER THE ACT (the "Regulation")
AND ONTARIO SECURITIES COMMISSION RULE 13-502 FEES (the "Fee Rule")

AND

IN THE MATTER OF
ONTARIO SECURITIES COMMISSION STAFF NOTICE 33-739
TERMINATION OF THE ONTARIO CONTINGENCY TRUST FUND

AND

CERTAIN REGISTERED DEALERS

COMMISSION ORDER (Section 147 of the Act)

DIRECTOR EXEMPTION DECISION (Section 6.1 of the Fee Rule)

Background

1. Subsection 110(1) of the Regulation requires every registered dealer, other than an exempt market dealer as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registration Obligations* (**NI 31-103**), to participate in a compensation fund or contingency trust fund that has been approved by the Commission and satisfies certain other requirements set out in that subsection (the **compensation fund participation requirement**).

2. The Ontario Contingency Trust Fund (the **OCTF** or **Plan**) is one of three compensation funds or contingency trust funds that have been approved by the Commission for the purposes of subsection 110(1) of the Regulation.

3. The terms of the OCTF are set out in a form of trust agreement (the **Trust Agreement**) that has been entered into by each participant in the Plan with the trustee (the **Trustee**) of the Plan.

4. Twenty-nine registered dealers (**OCTF Dealers**) that are not members of the Investment Industry Regulatory Organization of Canada (**IIROC**) or the Mutual Fund Dealers Association of Canada (**MFDA**) participate in the OCTF, and as such do not participate in the corresponding approved compensation fund for members of these self-regulatory organizations.

5. OCTF Dealers comprise scholarship plan dealers and mutual fund dealers that obtained an exemption from the requirement in Ontario securities law to be a member of the MFDA.

6. As indicated in Ontario Securities Commission Staff Notice 33-739 *Termination of the Ontario Contingency Trust Fund* (the **Notice**), the continued operation of the Plan is not financially sustainable. The Trustee has proposed that the OCTF be wound up in accordance with advice and direction from the court and the Commission has advised the Trustee that it does not object to the Trustee pursuing such a wind-up.

Applications

Each of the OCTF Dealers (each, a **Filer**) listed in the attached Appendix has applied to the Commission for an order, under section 147 of the Act, exempting the Filer from the compensation fund participation requirement on the terms set out in this Order.

Each Filer has also applied to the Director, under section 6.1 of the Fee Rule, for an exemption from the requirement in section 4.1 to pay a fee for its filing of these exemption applications.

Representations of each Filer

Each Filer has represented to the Commission and the Director that:

a. The Filer is not a member of either IIROC or the MFDA, and the Filer is not required by Ontario securities law to be a member of either of these self-regulatory organizations.

b. The Filer does not now hold for its clients any funds, securities or other property (**Client Assets**).

c. So long as the Filer relies upon the exemption from the compensation fund participation requirement set out in this Order, the Filer will not hold any Client Assets.

d. Before any person or company that is not a client of the Filer on the Effective Date (defined below) becomes a client of the Filer, the Filer will provide to that person or company prominent written notice of the following:

> *The Filer has obtained an exemption from the requirement in Ontario securities law to participate in an approved compensation fund or contingency trust fund. These funds provide for certain compensation to eligible clients of a participating dealer who suffer a financial loss as a result of the dealer becoming insolvent and not being able to return assets which it was holding on behalf of clients.*
>
> *It is a condition of the exemption that the Filer not hold any client assets.*

e. Within 60 days of the Effective Date, the Filer will have provided to any person or company that is an existing client of the Filer prominent written notice of the following:

> *The Filer has obtained an exemption from the requirement in Ontario securities law to participate in an approved compensation fund or contingency trust fund. These funds provide for certain compensation to eligible clients of a participating dealer who suffer a financial loss as a result of the dealer becoming insolvent and not being able to return assets which it was holding on behalf of clients.*
>
> *It is a condition of the exemption that the Filer not hold any client assets.*
>
> *The Filer was a participant in the Ontario Contingency Trust Fund at the time it applied for this exemption. It applied for this exemption in response to the proposed wind-up of that fund, as discussed in Ontario Securities Commission Staff Notice 33-739 Termination of the Ontario Contingency Trust Fund.*

f. The Filer will not rely upon the passport provisions of Canadian securities legislation to passport this Ontario Order into any other jurisdiction of Canada without the prior written consent of that other jurisdiction.

Commission Order

In the opinion of the Commission it is not prejudicial to the public interest to make this Order.

It is ordered by the Commission pursuant to section 147 of the Act that:

(i) beginning on the Effective Date (as defined below), each of the Filers is exempt from subsection 110(1) of the Regulation, but only so long as, in the case of that Filer:

A. the Filer is not required by Ontario securities law to be a member of either IIROC or the MFDA;

B. the Filer does not hold any Client Assets; and

C. the Filer provides the disclosure to its clients referred to in paragraph (d) above and has provided the disclosure to its clients referred to in the paragraph (e) above; and

(ii) this Order shall be effective on the day that is 30 calendar days after the date hereof (the "**Effective Date**").

DATED at Toronto, Ontario this 15 day of March, 2013.

"Mary Condon"
Commissioner
Ontario Securities Commission

"James Turner"
Commissioner
Ontario Securities Commission

Director Exemption Decision

The Director is satisfied that to grant this Exemption would not be prejudicial to the public interest.

It is the decision of the Director, pursuant to section 6.1 of the Fee Rule, that each Filer is exempt from the requirement in section 4.1 of the Fee Rule to pay an activity fee for the filing by the Filer of the above-referenced applications.

DATED at Toronto, Ontario this 15 day of March, 2013.

"Marrianne Bridge"
Deputy Director
Compliance and Registrant Regulation
Ontario Securities Commission

APPENDIX

1. AGF Investments Inc.
2. BluMont Capital Corporation
3. Brandes Investment Partners & Co.
4. Children's Education Funds Inc.
5. CI Funds Services Inc.
6. Citibank Canada Investment Funds Limited
7. C.S.T. Consultants Inc.
8. Equilife Investment Management Inc.
9. Fidelity Investments Canada ULC
10. Franklin Templeton Investments Corp.
11. FT Portfolios Canada Co.
12. Global RESP Corporation
13. Invesco Canada Ltd.
14. Knowledge First Financial Inc.
15. Matco Financial Inc.
16. Mawer Investment Management Ltd.
17. MFS McLean Budden Limited
18. NexGen Financial Limited Partnership
19. Portland Investment Counsel Inc.
20. Russell Investments Canada Limited
21. Sentry Invesments Inc.
22. Strathbridge Asset Management Inc.
23. Sun Life Global Investments (Canada) Inc.

2.2.5 Ernst & Young LLP

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

AND

IN THE MATTER OF
ERNST & YOUNG LLP

ORDER

WHEREAS on December 3, 2012 the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in relation to a Statement of Allegations issued pursuant to section 127 of the *Securities Act*, R.S.O. c. S.5, as amended, with respect to Ernst & Young LLP (the "Respondent");

AND WHEREAS the Notice of Hearing stated that an initial hearing before the Commission would be held on January 7, 2013;

AND WHEREAS the Commission convened a hearing on January 7, 2013 and the matter was adjourned to a confidential pre-hearing conference to be held on March 4, 2013;

AND WHEREAS a confidential pre-hearing conference was held on March 4, 2013 and the matter was adjourned to a further confidential pre-hearing conference to be held on June 24, 2013;

AND WHEREAS a confidential pre-hearing conference was held on June 24, 2013 and the matter was adjourned to a further confidential pre-hearing conference to be held on September 6, 2013;

AND WHEREAS on September 6, 2013, the Commission ordered that the Merits Hearing shall commence on November 11, 2014 and that Staff's case shall be presented on November 11-14, 17, 19-21, 25-28, December 1, 3-5, 9-12, 15 and 17-19, or on such other dates as may be ordered by the Commission and that the Respondent's case shall be presented on January 14-16, 20-23, 26, 28-30, February 3-6, 9, 11-13, 17-20, 23, 25-27, and March 3-6, or on such other dates as may be ordered by the Commission, and that a further confidential pre-hearing be held on October 30, 2013 at 10:00 am.;

AND WHEREAS a confidential pre-hearing conference was held on October 30, 2013 and both parties made submissions and requested that a further confidential pre-hearing conference be scheduled;

AND WHEREAS on October 30, 2013 the Commission ordered, among other things, that the Respondent's proposed disclosure motion relating to matters identified to date proceed on December 19, 2013 at 10:00 a.m.;

AND WHEREAS the Respondent has advised Staff and the Commission that it does not intend to proceed with its proposed disclosure motion at this time;

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

IT IS HEREBY ORDERED THAT:

1. The Respondent's proposed disclosure motion will not proceed on December 19, 2013, without prejudice to the Respondent's right to bring such further motion as may be necessary at a later date.

DATED at Toronto this 17th day of December, 2013.

"Mary G. Condon"

2.2.6 Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation) – 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
VINCENT CICCONE and CABO CATOCHE CORP.
(a.k.a. MEDRA CORP. and MEDRA CORPORATION)**

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

WHEREAS on October 3, 2011, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") in connection with a Statement of Allegations filed by Staff of the Commission ("**Staff**") on September 30, 2011, with respect to Vincent Ciccone ("**Ciccone**") and Medra Corp.;

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

AND WHEREAS on September 7, 2012, the Commission approved a Settlement Agreement between Staff and Ciccone;

AND WHEREAS a hearing on the merits in this matter was held before the Commission on September 5, 7, 13, and 20, 2012, October 9 and 19, 2012, November 8 and 29, 2012, December 19, 2013 and April 2, 2013 with respect to Medra (the "**Merits Hearing**");

AND WHEREAS following the Merits Hearing, the Commission issued its Reasons and Decision with respect to the merits on June 18, 2013 (the "**Merits Decision**");

AND WHEREAS the Commission determined that Medra had not complied with Ontario securities law and had acted contrary to the public interest, as described in the Merits Decision;

AND WHEREAS on August 12, 2013, the Commission held a hearing with respect to the sanctions and costs to be imposed on Medra;

AND WHEREAS on December 17, 2013, the Commission released its Reasons and Decision on Sanctions and Costs with respect to Medra;

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) pursuant to paragraph 2 of subsection 127(1) of the Act, Medra shall permanently cease trading securities;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Medra shall be prohibited permanently;

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

(d) pursuant to paragraph 6 of subsection 127(1) of the Act, Medra is reprimanded;

(e) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Medra shall be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(f) pursuant to paragraph 9 of subsection 127(1) of the Act, Medra shall be required to pay an administrative penalty of $400,000 for its failure to comply with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the Act; and

(g) pursuant to subsections 127.1(1) and (2) of the Act, Medra shall be ordered to pay $69,528.75 for the costs of the Merits Hearing.

DATED at Toronto this 17th day of December, 2013.

"Vern Krishna"

2.2.7 International Strategic Investments et al.

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

AND

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

ORDER

WHEREAS on March 6, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") (the "Notice of Hearing") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on March 5, 2012, to consider whether it is in the public interest to make certain orders as against International Strategic Investments, International Strategic Investments Inc., (collectively, "ISI"), Nazim Gillani ("Gillani"), Ryan J. Driscoll ("Driscoll") and Somin Holdings Inc. ("Somin");

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

AND WHEREAS on April 3, 2012 counsel for ISI and Gillani and counsel for Driscoll appeared and made submissions;

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

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

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

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

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

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

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

AND WHEREAS on April 30, 2012, the Commission was satisfied that Somin had been served and accepted Staff's undertaking for future service;

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

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

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

AND WHEREAS on August 20, 2012, a confidential pre-hearing conference was held and Staff, counsel for Gillani and counsel for Driscoll appeared and made submissions and no one appeared on behalf of Somin or ISI;

AND WHEREAS on August 20, 2012, the Commission ordered that the confidential pre-hearing conference be adjourned to October 9, 2012;

AND WHEREAS on October 9, 2012, a confidential pre-hearing conference was held and Staff, counsel for Gillani and counsel for Driscoll appeared and made submissions and no one appeared on behalf of Somin or ISI;

AND WHEREAS on October 9, 2012, the Commission ordered that the confidential pre-hearing conference be adjourned to November 20, 2012;

AND WHEREAS on November 20, 2012, the Commission was not available to hold the confidential pre-hearing conference, Staff, counsel for Gillani and counsel for Driscoll consented via email to adjourning the confidential pre-hearing conference to December 3, 2012 and no one responded on behalf of Somin or ISI although duly notified via email;

AND WHEREAS on November 20, 2012, the Commission ordered that the confidential pre-hearing conference be adjourned to December 3, 2012;

AND WHEREAS on December 3, 2012, a confidential pre-hearing conference was held and Staff, counsel for Gillani and International Strategic Investments Inc. and counsel for Driscoll appeared and made submissions and no one appeared on behalf of Somin or International Strategic Investments;

AND WHEREAS on December 3, 2012, the Commission ordered that the confidential pre-hearing conference be adjourned to January 16, 2013;

AND WHEREAS on January 16, 2013, a confidential pre-hearing conference was held and Staff, Gillani appearing on his own behalf and on behalf of ISI, and counsel for Driscoll appeared and made submissions and no one appeared on behalf of Somin;

AND WHEREAS on January 16, 2013, the Commission ordered that the confidential pre-hearing conference be adjourned to March 5, 2013;

AND WHEREAS on March 5, 2013, a confidential pre-hearing conference was held and Staff, counsel for Gillani and ISI, and counsel for Driscoll appeared and made submissions and no one appeared on behalf of Somin;

AND WHEREAS on March 5, 2013, the Commission ordered that the confidential pre-hearing conference be adjourned to November 27, 2013;

AND WHEREAS on November 27, 2013, the confidential pre-hearing conference continued and Staff, counsel for Gillani and ISI, and Driscoll appearing on his own behalf made submissions and no one appeared on behalf of Somin;

AND WHEREAS on November 27, 2013, the Commission ordered that the hearing on the merits shall commence on January 13, 2014 and shall continue on January 15th for half a day, January 16, 20, 21, 27, 29, 30, and 31, February 3-7 inclusive, February 10, 12-14 inclusive, February 18 and 19, or on such further or other dates as may be agreed to by the parties and set by the Office of the Secretary and that the confidential pre-hearing conference be adjourned to December 5, 2013;

AND WHEREAS on December 5, 2013, the confidential pre-hearing conference continued and Staff, counsel for Gillani and ISI, and Driscoll appearing on his own behalf made submissions and no one appeared on behalf of Somin;

AND WHEREAS on December 5, 2013, the Commission ordered that the confidential pre-hearing conference be adjourned to December 12, 2013;

AND WHEREAS on December 12, 2013, the confidential pre-hearing conference continued and Staff requested that all or substantially all of the hearing on the merits be converted to a written hearing, pursuant to Rule 11.5 of the Commission's *Rules of Procedure* (the "Rules"), in accordance with the schedule set out below;

AND WHEREAS counsel for Gillani and ISI, and Driscoll appearing on his own behalf consented to this matter proceeding as a hearing in writing and no one appeared on behalf of Somin;

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

IT IS ORDERED that the dates for the previously ordered hearing on the merits are vacated and pursuant to Rule 11.5, 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 February 14, 2014;

2. The Respondents shall file any responding materials by April 14, 2014;

3. Staff shall file any reply submissions or evidence by May 5, 2014;

4. Staff and any participating Respondents will attend at a date appointed by the panel after May 5, 2014, to answer questions, make submissions or make any necessary witnesses available for cross-examination.

DATED at Toronto this 12th day of December, 2013.

"James D. Carnwath"

2.2.8 Pyramis Global Advisors, LLC et al. – ss. 78(1), 80 of the CFA

Headnote

Subsection 78(1) and Section 80 of the Commodity Futures Act (Ontario) – Revocation of previous order and relief from the adviser registration requirements of subsection 22(1)(b) of the CFA granted to a sub-adviser not ordinarily resident in Ontario in respect of advice regarding trades in commodity futures contracts and commodity futures options, subject to certain terms and conditions – Relief mirrors exemption available in section 7.3 of OSC Rule 35-502 Non-Resident Advisers made under the Securities Act (Ontario).

Applicable Legislative Provisions

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 22(1)(b), 78(1), 80.
Securities Act, R.S.O. 1990, c. S.5, as am.
Rule 35-502 Non-Resident Advisers.

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

AND

IN THE MATTER OF
PYRAMIS GLOBAL ADVISORS, LLC, FMR CO., INC.,
FIDELITY INVESTMENTS CANADA ULC AND
PYRAMIS GLOBAL ADVISORS (CANADA) ULC

ORDER
(Section 80 and Subsection 78(1) of the CFA)

UPON the application (the **Application**) of Pyramis Global Advisors, LLC (**Pyramis**), FMR Co., Inc. (the **Sub-Adviser**), Fidelity Investments Canada ULC (**Fidelity**) and Pyramis Global Advisors (Canada) ULC (**Pyramis Canada** and, together with Pyramis and Fidelity, the **Principal Advisers**) to the Ontario Securities Commission (the **Commission**) for an order:

(a) pursuant to subsection 78(1) of the CFA, revoking the exemption order granted by the Commission to the Sub-Adviser dated December 19, 2008 (the Previous Order, as described below); and

(b) pursuant to section 80 of the CFA, that the Sub-Adviser (including its directors, officers and employees) be exempt from the requirements of paragraph 22(1)(b) of the CFA in respect of acting as an adviser to Funds (as defined below) in respect of trades in commodity futures contracts and commodity futures options traded on commodity futures exchanges (the **Contracts**, as defined in subsection 1(1) of the CFA) and cleared through clearing corporations;

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

Principal Advisers

1. Pyramis is a limited liability company organized under the laws of the State of Delaware and is resident in the United States of America. Pyramis is registered as an investment adviser with the United States Securities and Exchange Commission.

2. Pyramis is registered as a portfolio manager under the *Securities Act* (Ontario) (the **OSA**) and commodity trading manager under the CFA in the province of Ontario. Pyramis is also registered in the category of international (other) under the relevant securities legislation of the provinces of Ontario and Quebec.

3. Fidelity was incorporated under the laws of Canada and has subsequently been continued under the laws of Alberta. Fidelity is resident in Ontario.

4. Fidelity is registered as a mutual fund dealer and portfolio manager under the relevant securities legislation of each of the provinces and territories of Canada. Fidelity is also registered as a commodity trading manager under the CFA in the province of Ontario. Further, Fidelity is registered as an investment fund manager under the relevant securities legislation of the provinces of Ontario, Quebec and Newfoundland and Labrador.

5. Pyramis Canada was incorporated under the laws of Alberta and is resident in Canada.

6. Pyramis Canada is registered as a portfolio manager under the relevant securities legislation of the provinces of Ontario and Quebec and as a commodity trading manager under the CFA in the province of Ontario.

Sub-Adviser

7. The Sub-Adviser is a corporation organized under the laws of the Commonwealth of Massachusetts and is resident in the United States of America. The Sub-Adviser is not required under applicable commodity futures legislation in the United States of America to be registered as a commodity trading adviser with the U.S. Commodity Futures Trading Commission nor is the Sub-Adviser required to be a member of the National Futures Association, in order to provide the Sub-Advisory Services (as defined below) to the relevant Principal Adviser.

8. The Sub-Adviser is appropriately registered or licensed or is, or will be, entitled to rely on appropriate exemptions from such registrations or licences to provide advice to the Funds pursuant to the applicable legislation of its principal jurisdiction.

9. The Sub-Adviser is not a resident of any province or territory of Canada.

10. The Sub-Adviser is not registered in any capacity under the CFA or the OSA.

The Funds

11. The Principal Advisers act as advisers to (a) certain mutual funds offered from time to time to the public in Canada that are governed by National Instrument 81-102 – *Mutual Funds* (the **Mutual Funds**), (b) certain pooled funds offered from time to time to pension plans and other institutional investors (**Private Clients**) pursuant to exemptions from the prospectus and registration requirements of securities legislation pursuant to National Instrument 45-106 – *Prospectus and Registration Exemptions* (the **Pooled Funds**), and (c) other Mutual Funds and Pooled Funds that may be established in the future in respect of which a Principal Adviser engages the Sub-Adviser to provide portfolio advisory services (the **Future Funds**, and each of the Mutual Funds, Pooled Funds and Future Funds are referred to individually as a **Fund** and collectively as the **Funds**).

12. The Funds may, as a part of their investment program, invest in Contracts.

Sub-Advisory Services

13. Each Principal Adviser may, pursuant to a written between the Principal Adviser and a Fund or Private Client:

    (a) act as an adviser (as defined in the *Securities Act* (Ontario) (the **OSA**)) to the Fund or Private Client, in respect of securities, and

    (b) act as an adviser to the Fund or Private Client, in respect of trading Contracts,

    by exercising discretionary authority to purchase or sell securities (as defined in the OSA) and Contracts on behalf of the Funds in respect of the investment portfolio of the Funds.

14. In connection with a Principal Adviser acting as an adviser to a Fund or Private Client, in respect of the purchase or sale of Contracts, that Principal Adviser may, from time to time, pursuant to a written agreement made between the Principal Adviser and the Sub-Adviser, retain the Sub-Adviser to act as an adviser to it (the **Sub-Advisory Services**), by exercising discretionary authority on behalf of the Principal Adviser, in respect of the investment portfolio of the Fund, with discretionary authority to buy or sell Contracts for the Fund, provided that:

    (a) in each case, the option or contract must be cleared through an “acceptable clearing corporation” (as defined in National Instrument 81-102 *Mutual Funds*, or any successor thereto (**NI 81-102**);

    (b) such investment are consistent with the investment objectives and strategies of the Funds; and

    (c) in no case will any trading in Contracts constitute the primary focus or investment objective of the Fund.

15. If there is any direct contact between a Fund or Private Client and a Sub-Adviser in connection with the Sub-Advisory Services, a representative of the applicable Principal Adviser, duly registered in accordance with the CFA, will be present at all times either in person or by telephone.

16. Paragraph 22(1)(b) of the CFA prohibits a person or company from acting as an adviser unless the person or company is registered as an adviser under the CFA, or is registered as a representative, a partner or an officer of a registered adviser and is acting on behalf of a registered adviser.

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

18. There is presently no rule under the CFA that provides an exemption from the adviser registration requirement in paragraph 22(1)(b) of the CFA for a person or company acting as an adviser in respect of Contracts that is similar to the exemption from the adviser registration requirement in section 25(3) of the OSA for acting as an adviser (as defined in the OSA) in respect of securities that is provided under section 7.3 of OSC Rule 35-502 *Non-Resident Advisers* (**OSC Rule 35-502**).

19. The relationship among the Principal Advisers, the Sub-Adviser and the Funds satisfies the requirements of section 7.3 of OSC Rule 35-502.

20. The Sub-Adviser will only provide the Sub-Advisory Services as long as the Principal Advisers are, and remain, registered under the CFA as advisers in the category of commodity trading manager.

21. The Principal Advisers will deliver to the Funds all applicable reports and statements under applicable securities and derivatives legislation.

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

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

    (b) the Principal Advisers have contractually agreed with the Funds to be responsible for any loss that arises out of the failure of the Sub-Adviser:

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

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

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

Disclosure

23. The prospectus or similar offering document for each Fund and for which the Principal Advisers engage the Sub-Adviser to provide the Sub-Advisory Services will include the following disclosure:

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

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

24. Prior to purchasing any securities of one or more of the Funds directly from a Principal Adviser, all investors who are Ontario residents will receive written disclosure that includes:

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

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

Previous Order

25. On December 19, 2008, the Commission granted the Sub-Adviser an exemption from the requirements of paragraph 22(1)(b) of the CFA in respect of the Sub-Advisory Services (the **Previous Order**). The Previous Order is scheduled to expire on December 19, 2013.

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

IT IS ORDERED, pursuant to subsection 78(1) of the CFA, that the Previous Order is revoked; and

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

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

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

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

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

(e) the Principal Advisers cannot be relieved by a Fund or their securityholders (including Private Clients) from their responsibility for any loss that arises out of the failure of the Sub-Adviser to meet the Assumed Obligations;

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

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

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

(g) prior to purchasing any securities of one or more of the Funds directly from the Principal Advisers, all investors who are Ontario residents will receive written disclosure that includes:

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

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

IT IS FURTHER ORDERED that this Order will terminate on the earlier of (i) the coming into force of any amendments to section 7.3 of OSC Rule 35-502, (ii) the effective date of the repeal of section 7.3 of OSC Rule 35-502, and (iii) five years from the date hereof.

DATED at Toronto, Ontario this 17 day of December, 2013.

“Annemarie Ryan”
Commissioner
Ontario Securities Commission

“Vern Krishna”
Commissioner
Ontario Securities Commission

2.2.9 Pyramis Global Advisors, LLC et al. – ss. 78(1), 80 of the CFA

Headnote

Subsection 78(1) and Section 80 of the Commodity Futures Act (Ontario) – Revocation of previous order and relief from the adviser registration requirements of subsection 22(1)(b) of the CFA granted to a sub-adviser not ordinarily resident in Ontario in respect of advice regarding trades in commodity futures contracts and commodity futures options, subject to certain terms and conditions – Relief mirrors exemption available in section 7.3 of OSC Rule 35-502 Non-Resident Advisers made under the Securities Act (Ontario).

Applicable Legislative Provisions

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 22(1)(b), 78(1), 80.
Securities Act, R.S.O. 1990, c.S.5, as am.
Rule 35-502 Non-Resident Advisers.

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

AND

IN THE MATTER OF
PYRAMIS GLOBAL ADVISORS, LLC,
PYRAMIS GLOBAL ADVISORS TRUST COMPANY,
FIDELITY INVESTMENTS CANADA ULC AND
PYRAMIS GLOBAL ADVISORS (CANADA) ULC

ORDER
(Section 80 and Subsection 78(1) of the CFA)

UPON the application (the **Application**) of Pyramis Global Advisors, LLC (**Pyramis**), Pyramis Global Advisors Trust Company (the **Sub-Adviser**), Fidelity Investments Canada ULC (**Fidelity**) and Pyramis Global Advisors (Canada) ULC (**Pyramis Canada** and, together with Pyramis and Fidelity, the **Principal Advisers**) to the Ontario Securities Commission (the **Commission**) for an order:

(a) pursuant to subsection 78(1) of the CFA, revoking the exemption order granted by the Commission to the Sub-Adviser dated December 19, 2008 (the Previous Order, as described below); and

(b) pursuant to section 80 of the CFA, that the Sub-Adviser (including its directors, officers and employees) be exempt from the requirements of paragraph 22(1)(b) of the CFA in respect of acting as an adviser to Funds (as defined below) in respect of trades in commodity futures contracts and commodity futures options traded on commodity futures exchanges (the **Contracts**, as defined in subsection 1(1) of the CFA) and cleared through clearing corporations;

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

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

Principal Advisers

1. Pyramis is a limited liability company organized under the laws of the State of Delaware and is resident in the United States of America. Pyramis is registered as an investment adviser with the United States Securities and Exchange Commission.

2. Pyramis is registered as a portfolio manager under the *Securities Act* (Ontario) (the **OSA**) and commodity trading manager under the CFA in the province of Ontario. Pyramis is also registered in the category of international (other) under the relevant securities legislation of the provinces of Ontario and Quebec.

3. Fidelity was incorporated under the laws of Canada and has subsequently been continued under the laws of Alberta. Fidelity is resident in Ontario.

4. Fidelity is registered as a mutual fund dealer and portfolio manager under the relevant securities legislation of each of the provinces and territories of Canada. Fidelity is also registered as a commodity trading manager under the CFA in the province of Ontario. Further, Fidelity is registered as an investment fund manager under the relevant securities legislation of the provinces of Ontario, Quebec and Newfoundland and Labrador.

5. Pyramis Canada was incorporated under the laws of Alberta and is resident in Canada.

6. Pyramis Canada is registered as a portfolio manager under the relevant securities legislation of the provinces of Ontario and Quebec and as a commodity trading manager under the CFA in the province of Ontario.

Sub-Adviser

7. The Sub-Adviser is a non-depository trust company chartered under the laws of the State of New Hampshire and is resident in the United States. The Sub-Adviser is not required under applicable commodity futures legislation in the United States of America to be registered as a commodity trading adviser with the U.S. Commodity Futures Trading Commission nor is the Sub-Adviser required to be a member of the National Futures Association, in order to provide the Sub-Advisory Services (as defined below) to the relevant Principal Adviser.

8. The Sub-Adviser is appropriately registered or licensed or is, or will be, entitled to rely on appropriate exemptions from such registrations or licences to provide advice to the Funds pursuant to the applicable legislation of its principal jurisdiction.

9. The Sub-Adviser is not a resident of any province or territory of Canada.

10. The Sub-Adviser is not registered in any capacity under the CFA or the OSA.

The Funds

11. The Principal Advisers act as advisers to (a) certain mutual funds offered from time to time to the public in Canada that are governed by National Instrument 81-102 – *Mutual Funds* (the **Mutual Funds**), (b) certain pooled funds offered from time to time to pension plans and other institutional investors (**Private Clients**) pursuant to exemptions from the prospectus and registration requirements of securities legislation pursuant to National Instrument 45-106 – *Prospectus and Registration Exemptions* (the **Pooled Funds**), and (c) other Mutual Funds and Pooled Funds that may be established in the future in respect of which a Principal Adviser engages the Sub-Adviser to provide portfolio advisory services (the **Future Funds**, and each of the Mutual Funds, Pooled Funds and Future Funds are referred to individually as a **Fund** and collectively as the **Funds**).

12. The Funds may, as a part of their investment program, invest in Contracts.

Sub-Advisory Services

13. Each Principal Adviser may, pursuant to a written between the Principal Adviser and a Fund or Private Client:

    (a) act as an adviser (as defined in the *Securities Act* (Ontario) (the **OSA**)) to the Fund or Private Client, in respect of securities, and

    (b) act as an adviser to the Fund or Private Client, in respect of trading Contracts,

    by exercising discretionary authority to purchase or sell securities (as defined in the OSA) and Contracts on behalf of the Funds in respect of the investment portfolio of the Funds.

14. In connection with a Principal Adviser acting as an adviser to a Fund or Private Client, in respect of the purchase or sale of Contracts, that Principal Adviser may, from time to time, pursuant to a written agreement made between the Principal Adviser and the Sub-Adviser, retain the Sub-Adviser to act as an adviser to it (the **Sub-Advisory Services**), by exercising discretionary authority on behalf of the Principal Adviser, in respect of the investment portfolio of the Fund, with discretionary authority to buy or sell Contracts for the Fund, provided that:

    (a) in each case, the option or contract must be cleared through an “acceptable clearing corporation” (as defined in National Instrument 81-102 *Mutual Funds*, or any successor thereto (**NI 81-102**);

    (b) such investment are consistent with the investment objectives and strategies of the Funds; and

    (c) in no case will any trading in Contracts constitute the primary focus or investment objective of the Fund.

15. If there is any direct contact between a Fund or Private Client and a Sub-Adviser in connection with the Sub-Advisory Services, a representative of the applicable Principal Adviser, duly registered in accordance with the CFA, will be present at all times either in person or by telephone.

16. Paragraph 22(1)(b) of the CFA prohibits a person or company from acting as an adviser unless the person or company is registered as an adviser under the CFA, or is registered as a representative, a partner or an officer of a registered adviser and is acting on behalf of a registered adviser.

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

18. There is presently no rule under the CFA that provides an exemption from the adviser registration requirement in paragraph 22(1)(b) of the CFA for a person or company acting as an adviser in respect of Contracts that is similar to the exemption from the adviser registration requirement in section 25(3) of the OSA for acting as an adviser (as defined in the OSA) in respect of securities that is provided under section 7.3 of OSC Rule 35-502 *Non-Resident Advisers* (**OSC Rule 35-502**).

19. The relationship among the Principal Advisers, the Sub-Adviser and the Funds satisfies the requirements of section 7.3 of OSC Rule 35-502.

20. The Sub-Adviser will only provide the Sub-Advisory Services as long as the Principal Advisers are, and remain, registered under the CFA as advisers in the category of commodity trading manager.

21. The Principal Advisers will deliver to the Funds all applicable reports and statements under applicable securities and derivatives legislation.

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

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

    (b) the Principal Advisers have contractually agreed with the Funds to be responsible for any loss that arises out of the failure of the Sub-Adviser:

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

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

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

Disclosure

23. The prospectus or similar offering document for each Fund and for which the Principal Advisers engage the Sub-Adviser to provide the Sub-Advisory Services will include the following disclosure:

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

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

24. Prior to purchasing any securities of one or more of the Funds directly from a Principal Adviser, all investors who are Ontario residents will receive written disclosure that includes:

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

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

Previous Order

25. On December 19, 2008, the Commission granted the Sub-Adviser an exemption from the requirements of paragraph 22(1)(b) of the CFA in respect of the Sub-Advisory Services (the **Previous Order**). The Previous Order is scheduled to expire on December 19, 2013.

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

IT IS ORDERED, pursuant to subsection 78(1) of the CFA, that the Previous Order is revoked; and

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

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

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

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

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

(e) the Principal Advisers cannot be relieved by a Fund or their securityholders (including Private Clients) from their responsibility for any loss that arises out of the failure of the Sub-Adviser to meet the Assumed Obligations;

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

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

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

(g) prior to purchasing any securities of one or more of the Funds directly from the Principal Advisers, all investors who are Ontario residents will receive written disclosure that includes:

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

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

IT IS FURTHER ORDERED that this Order will terminate on the earlier of (i) the coming into force of any amendments to section 7.3 of OSC Rule 35-502, (ii) the effective date of the repeal of section 7.3 of OSC Rule 35-502, and (iii) five years from the date hereof.

DATED at Toronto, Ontario this 17 day of December, 2013.

"Annemarie Ryan"
Commissioner
Ontario Securities Commission

"Vern Krishna"
Commissioner
Ontario Securities Commission

2.2.10 Pyramis Global Advisors, LLC et al. – ss. 78(1), 80 of the CFA

Headnote

Subsection 78(1) and Section 80 of the Commodity Futures Act (Ontario) – Revocation of previous order and relief from the adviser registration requirements of subsection 22(1)(b) of the CFA granted to a sub-adviser not ordinarily resident in Ontario in respect of advice regarding trades in commodity futures contracts and commodity futures options, subject to certain terms and conditions – Relief mirrors exemption available in section 7.3 of OSC Rule 35-502 Non-Resident Advisers made under the Securities Act (Ontario).

Applicable Legislative Provisions

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 22(1)(b), 78(1) 80.
Securities Act, R.S.O. 1990, c. S.5, as am.
Rule 35-502 Non-Resident Advisers.

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

AND

IN THE MATTER OF
PYRAMIS GLOBAL ADVISORS, LLC,
FIDELITY INVESTMENTS MONEY MANAGEMENT, INC.,
FIDELITY INVESTMENTS CANADA ULC AND
PYRAMIS GLOBAL ADVISORS (CANADA) ULC

ORDER
(Section 80 and Subsection 78(1) of the CFA)

UPON the application (the **Application**) of Pyramis Global Advisors, LLC (**Pyramis**), Fidelity Investments Money Management, Inc. (the **Sub-Adviser)**, Fidelity Investments Canada ULC (**Fidelity**) and Pyramis Global Advisors (Canada) ULC (**Pyramis Canada** and, together with Pyramis and Fidelity, the **Principal Advisers**) to the Ontario Securities Commission (the **Commission**) for an order:

(a) pursuant to subsection 78(1) of the CFA, revoking the exemption order granted by the Commission to the Sub-Adviser dated December 19, 2008 (the Previous Order, as described below); and

(b) pursuant to section 80 of the CFA, that the Sub-Adviser (including its directors, officers and employees) be exempt from the requirements of paragraph 22(1)(b) of the CFA in respect of acting as an adviser to Funds (as defined below) in respect of trades in commodity futures contracts and commodity futures options traded on commodity futures exchanges (the **Contracts**, as defined in subsection 1(1) of the CFA) and cleared through clearing corporations;

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

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

Principal Advisers

1. Pyramis is a limited liability company organized under the laws of the State of Delaware and is resident in the United States of America. Pyramis is registered as an investment adviser with the United States Securities and Exchange Commission.

2. Pyramis is registered as a portfolio manager under the *Securities Act* (Ontario) (the **OSA**) and commodity trading manager under the CFA in the province of Ontario. Pyramis is also registered in the category of international (other) under the relevant securities legislation of the provinces of Ontario and Quebec.

3. Fidelity was incorporated under the laws of Canada and has subsequently been continued under the laws of Alberta. Fidelity is resident in Ontario.

4. Fidelity is registered as a mutual fund dealer and portfolio manager under the relevant securities legislation of each of the provinces and territories of Canada. Fidelity is also registered as a commodity trading manager under the CFA in the province of Ontario. Further, Fidelity is registered as an investment fund manager under the relevant securities legislation of the provinces of Ontario, Quebec and Newfoundland and Labrador.

5. Pyramis Canada was incorporated under the laws of Alberta and is resident in Canada.

6. Pyramis Canada is registered as a portfolio manager under the relevant securities legislation of the provinces of Ontario and Quebec and as a commodity trading manager under the CFA in the province of Ontario.

Sub-Adviser

7. The Sub-Adviser is a corporation organized under the laws of the State of New Hampshire and is resident in the United States of America. The Sub-Adviser is not required under applicable commodity futures legislation in the United States of America to be registered as a commodity trading adviser with the U.S. Commodity Futures Trading Commission, nor is the Sub-Adviser required to be a member of the National Futures Association, in order to provide the Sub-Advisory Services (as defined below) to the relevant Principal Adviser.

8. The Sub-Adviser is appropriately registered or licensed or is, or will be, entitled to rely on appropriate exemptions from such registrations or licences to provide advice to the Funds pursuant to the applicable legislation of its principal jurisdiction.

9. The Sub-Adviser is not a resident of any province or territory of Canada.

10. The Sub-Adviser is not registered in any capacity under the CFA or the OSA.

The Funds

11. The Principal Advisers act as advisers to (a) certain mutual funds offered from time to time to the public in Canada that are governed by National Instrument 81-102 – *Mutual Funds* (the **Mutual Funds**), (b) certain pooled funds offered from time to time to pension plans and other institutional investors (**Private Clients**) pursuant to exemptions from the prospectus and registration requirements of securities legislation pursuant to National Instrument 45-106 – *Prospectus and Registration Exemptions* (the **Pooled Funds**), and (c) other Mutual Funds and Pooled Funds that may be established in the future in respect of which a Principal Adviser engages the Sub-Adviser to provide portfolio advisory services (the **Future Funds**, and each of the Mutual Funds, Pooled Funds and Future Funds are referred to individually as a **Fund** and collectively as the **Funds**).

12. The Funds may, as a part of their investment program, invest in Contracts.

Sub-Advisory Services

13. Each Principal Adviser may, pursuant to a written between the Principal Adviser and a Fund or Private Client:

    (a) act as an adviser (as defined in the *Securities Act* (Ontario) (the **OSA**)) to the Fund or Private Client, in respect of securities, and

    (b) act as an adviser to the Fund or Private Client, in respect of trading Contracts,

    by exercising discretionary authority to purchase or sell securities (as defined in the OSA) and Contracts on behalf of the Funds in respect of the investment portfolio of the Funds.

14. In connection with a Principal Adviser acting as an adviser to a Fund or Private Client, in respect of the purchase or sale of Contracts, that Principal Adviser may, from time to time, pursuant to a written agreement made between the Principal Adviser and the Sub-Adviser, retain the Sub-Adviser to act as an adviser to it (the **Sub-Advisory Services**), by exercising discretionary authority on behalf of the Principal Adviser, in respect of the investment portfolio of the Fund, with discretionary authority to buy or sell Contracts for the Fund, provided that:

    (a) in each case, the option or contract must be cleared through an “acceptable clearing corporation” (as defined in National Instrument 81-102 *Mutual Funds*, or any successor thereto (**NI 81-102**);

    (b) such investment are consistent with the investment objectives and strategies of the Funds; and

    (c) in no case will any trading in Contracts constitute the primary focus or investment objective of the Fund.

15. If there is any direct contact between a Fund or Private Client and a Sub-Adviser in connection with the Sub-Advisory Services, a representative of the applicable Principal Adviser, duly registered in accordance with the CFA, will be present at all times either in person or by telephone.

16. Paragraph 22(1)(b) of the CFA prohibits a person or company from acting as an adviser unless the person or company is registered as an adviser under the CFA, or is registered as a representative, a partner or an officer of a registered adviser and is acting on behalf of a registered adviser.

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

18. There is presently no rule under the CFA that provides an exemption from the adviser registration requirement in paragraph 22(1)(b) of the CFA for a person or company acting as an adviser in respect of Contracts that is similar to the exemption from the adviser registration requirement in section 25(3) of the OSA for acting as an adviser (as defined in the OSA) in respect of securities that is provided under section 7.3 of OSC Rule 35-502 *Non-Resident Advisers* (**OSC Rule 35-502**).

19. The relationship among the Principal Advisers, the Sub-Adviser and the Funds satisfies the requirements of section 7.3 of OSC Rule 35-502.

20. The Sub-Adviser will only provide the Sub-Advisory Services as long as the Principal Advisers are, and remain, registered under the CFA as advisers in the category of commodity trading manager.

21. The Principal Advisers will deliver to the Funds all applicable reports and statements under applicable securities and derivatives legislation.

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

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

    (b) the Principal Advisers have contractually agreed with the Funds to be responsible for any loss that arises out of the failure of the Sub-Adviser:

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

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

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

Disclosure

23. The prospectus or similar offering document for each Fund and for which the Principal Advisers engage the Sub-Adviser to provide the Sub-Advisory Services will include the following disclosure:

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

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

24. Prior to purchasing any securities of one or more of the Funds directly from a Principal Adviser, all investors who are Ontario residents will receive written disclosure that includes:

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

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

Previous Order

25. On December 19, 2008, the Commission granted the Sub-Adviser an exemption from the requirements of paragraph 22(1)(b) of the CFA in respect of the Sub-Advisory Services (the **Previous Order**). The Previous Order is scheduled to expire on December 19, 2013.

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

IT IS ORDERED, pursuant to subsection 78(1) of the CFA, that the Previous Order is revoked; and

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

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

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

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

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

(e) the Principal Advisers cannot be relieved by a Fund or their securityholders (including Private Clients) from their responsibility for any loss that arises out of the failure of the Sub-Adviser to meet the Assumed Obligations;

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

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

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

(g) prior to purchasing any securities of one or more of the Funds directly from the Principal Advisers, all investors who are Ontario residents will receive written disclosure that includes:

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

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

IT IS FURTHER ORDERED that this Order will terminate on the earlier of (i) the coming into force of any amendments to section 7.3 of OSC Rule 35-502, (ii) the effective date of the repeal of section 7.3 of OSC Rule 35-502, and (iii) five years from the date hereof.

DATED at Toronto, Ontario this 17 day of December, 2013.

"Annemarie Ryan"
Commissioner
Ontario Securities Commission

"Vern Krishna"
Commissioner
Ontario Securities Commission

2.2.11 Pyramis Global Advisors, LLC et al. – ss. 78(1), 80 of the CFA

Headnote

Subsection 78(1) and Section 80 of the Commodity Futures Act (Ontario) – Revocation of previous order and relief from the adviser registration requirements of subsection 22(1)(b) of the CFA granted to a sub-adviser not ordinarily resident in Ontario in respect of advice regarding trades in commodity futures contracts and commodity futures options, subject to certain terms and conditions – Relief mirrors exemption available in section 7.3 of OSC Rule 35-502 Non-Resident Advisers made under the Securities Act (Ontario).

Applicable Legislative Provisions

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 22(1)(b), 78(1), 80.
Securities Act, R.S.O. 1990, c. S.5, as am.
Rule 35-502 Non-Resident Advisers.

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

AND

IN THE MATTER OF
PYRAMIS GLOBAL ADVISORS, LLC,
FIL LIMITED,
FIDELITY INVESTMENTS CANADA ULC AND
PYRAMIS GLOBAL ADVISORS (CANADA) ULC

ORDER
(Section 80 and Subsection 78(1) of the CFA)

UPON the application (the **Application**) of Pyramis Global Advisors, LLC (**Pyramis**), FIL Limited (the **Sub-Adviser**), Fidelity Investments Canada ULC (**Fidelity**) and Pyramis Global Advisors (Canada) ULC (**Pyramis Canada** and, together with Pyramis and Fidelity, the **Principal Advisers**) to the Ontario Securities Commission (the **Commission**) for an order:

(a) pursuant to subsection 78(1) of the CFA, revoking the exemption order granted by the Commission to the Sub-Adviser dated December 19, 2008 (the Previous Order, as described below); and

(b) pursuant to section 80 of the CFA, that the Sub-Adviser (including its directors, officers and employees) be exempt from the requirements of paragraph 22(1)(b) of the CFA in respect of acting as an adviser to Funds (as defined below) in respect of trades in commodity futures contracts and commodity futures options traded on commodity futures exchanges (the **Contracts**, as defined in subsection 1(1) of the CFA) and cleared through clearing corporations;

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

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

Principal Advisers

1. Pyramis is a limited liability company organized under the laws of the State of Delaware and is resident in the United States of America. Pyramis is registered as an investment adviser with the United States Securities and Exchange Commission.

2. Pyramis is registered as a portfolio manager under the *Securities Act* (Ontario) (the **OSA**) and commodity trading manager under the CFA in the province of Ontario. Pyramis is also registered in the category of international (other) under the relevant securities legislation of the provinces of Ontario and Quebec.

3. Fidelity was incorporated under the laws of Canada and has subsequently been continued under the laws of Alberta. Fidelity is resident in Ontario.

4. Fidelity is registered as a mutual fund dealer and portfolio manager under the relevant securities legislation of each of the provinces and territories of Canada. Fidelity is also registered as a commodity trading manager under the CFA in the province of Ontario. Further, Fidelity is registered as an investment fund manager under the relevant securities legislation of the provinces of Ontario, Quebec and Newfoundland and Labrador.

5. Pyramis Canada was incorporated under the laws of Alberta and is resident in Canada.

6. Pyramis Canada is registered as a portfolio manager under the relevant securities legislation of the provinces of Ontario and Quebec and as a commodity trading manager under the CFA in the province of Ontario.

Sub-Adviser

7. The Sub-Adviser is a corporation organized under the laws of Bermuda and is resident in Bermuda. The Sub-Adviser is not registered pursuant to any applicable commodity futures legislation in Bermuda and such registration is not required in order to provide the Sub-Advisory Services (as defined below) to the relevant Principal Adviser.

8. The Sub-Adviser is appropriately registered or licensed or is, or will be, entitled to rely on appropriate exemptions from such registrations or licences to provide advice to the Funds pursuant to the applicable legislation of its principal jurisdiction.

9. The Sub-Adviser is not a resident of any province or territory of Canada.

10. The Sub-Adviser is not registered in any capacity under the CFA or the OSA.

The Funds

11. The Principal Advisers act as advisers to (a) certain mutual funds offered from time to time to the public in Canada that are governed by National Instrument 81-102 – *Mutual Funds* (the **Mutual Funds**), (b) certain pooled funds offered from time to time to pension plans and other institutional investors (**Private Clients**) pursuant to exemptions from the prospectus and registration requirements of securities legislation pursuant to National Instrument 45-106 – *Prospectus and Registration Exemptions* (the **Pooled Funds**), and (c) other Mutual Funds and Pooled Funds that may be established in the future in respect of which a Principal Adviser engages the Sub-Adviser to provide portfolio advisory services (the **Future Funds**, and each of the Mutual Funds, Pooled Funds and Future Funds are referred to individually as a **Fund** and collectively as the **Funds**).

12. The Funds may, as a part of their investment program, invest in Contracts.

Sub-Advisory Services

13. Each Principal Adviser may, pursuant to a written between the Principal Adviser and a Fund or Private Client:

    (a) act as an adviser (as defined in the *Securities Act* (Ontario) (the **OSA**)) to the Fund or Private Client, in respect of securities, and

    (b) act as an adviser to the Fund or Private Client, in respect of trading Contracts,

    by exercising discretionary authority to purchase or sell securities (as defined in the OSA) and Contracts on behalf of the Funds in respect of the investment portfolio of the Funds.

14. In connection with a Principal Adviser acting as an adviser to a Fund or Private Client, in respect of the purchase or sale of Contracts, that Principal Adviser may, from time to time, pursuant to a written agreement made between the Principal Adviser and the Sub-Adviser, retain the Sub-Adviser to act as an adviser to it (the **Sub-Advisory Services**), by exercising discretionary authority on behalf of the Principal Adviser, in respect of the investment portfolio of the Fund, with discretionary authority to buy or sell Contracts for the Fund, provided that:

    (a) in each case, the option or contract must be cleared through an “acceptable clearing corporation” (as defined in National Instrument 81-102 *Mutual Funds*, or any successor thereto (**NI 81-102**);

    (b) such investment are consistent with the investment objectives and strategies of the Funds; and

    (c) in no case will any trading in Contracts constitute the primary focus or investment objective of the Fund.

15. If there is any direct contact between a Fund or Private Client and a Sub-Adviser in connection with the Sub-Advisory Services, a representative of the applicable Principal Adviser, duly registered in accordance with the CFA, will be present at all times either in person or by telephone.

16. Paragraph 22(1)(b) of the CFA prohibits a person or company from acting as an adviser unless the person or company is registered as an adviser under the CFA, or is registered as a representative, a partner or an officer of a registered adviser and is acting on behalf of a registered adviser.

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

18. There is presently no rule under the CFA that provides an exemption from the adviser registration requirement in paragraph 22(1)(b) of the CFA for a person or company acting as an adviser in respect of Contracts that is similar to the exemption from the adviser registration requirement in section 25(3) of the OSA for acting as an adviser (as defined in the OSA) in respect of securities that is provided under section 7.3 of OSC Rule 35-502 *Non-Resident Advisers* (**OSC Rule 35-502**).

19. The relationship among the Principal Advisers, the Sub-Adviser and the Funds satisfies the requirements of section 7.3 of OSC Rule 35-502.

20. The Sub-Adviser will only provide the Sub-Advisory Services as long as the Principal Advisers are, and remain, registered under the CFA as advisers in the category of commodity trading manager.

21. The Principal Advisers will deliver to the Funds all applicable reports and statements under applicable securities and derivatives legislation.

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

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

    (b) the Principal Advisers have contractually agreed with the Funds to be responsible for any loss that arises out of the failure of the Sub-Adviser:

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

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

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

Disclosure

23. The prospectus or similar offering document for each Fund and for which the Principal Advisers engage the Sub-Adviser to provide the Sub-Advisory Services will include the following disclosure:

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

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

24. Prior to purchasing any securities of one or more of the Funds directly from a Principal Adviser, all investors who are Ontario residents will receive written disclosure that includes:

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

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

Previous Order

25. On December 19, 2008, the Commission granted the Sub-Adviser an exemption from the requirements of paragraph 22(1)(b) of the CFA in respect of the Sub-Advisory Services (the **Previous Order)**. The Previous Order is scheduled to expire on December 19, 2013.

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

IT IS ORDERED, pursuant to subsection 78(1) of the CFA, that the Previous Order is revoked; and

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

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

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

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

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

(e) the Principal Advisers cannot be relieved by a Fund or their securityholders (including Private Clients) from their responsibility for any loss that arises out of the failure of the Sub-Adviser to meet the Assumed Obligations;

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

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

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

(g) prior to purchasing any securities of one or more of the Funds directly from the Principal Advisers, all investors who are Ontario residents will receive written disclosure that includes:

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

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

IT IS FURTHER ORDERED that this Order will terminate on the earlier of (i) the coming into force of any amendments to section 7.3 of OSC Rule 35-502, (ii) the effective date of the repeal of section 7.3 of OSC Rule 35-502, and (iii) five years from the date hereof.

DATED at Toronto, Ontario this 17 day of December, 2013.

"Annemarie Ryan"
Commissioner
Ontario Securities Commission

"Vern Krishna"
Commissioner
Ontario Securities Commission

2.2.12 Global Energy Group, Ltd. 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
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

ORDER
(Subsections 127(7) and 127(8) of the Securities Act)

WHEREAS on July 10, 2008, the Ontario Securities Commission (the "Commission") issued a temporary order, pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), that all trading by Global Energy Group, Ltd. ("Global Energy") and the New Gold Limited Partnerships (the "New Gold Partnerships") (together, the "Corporate Respondents") and their officers, directors, employees and/or agents in securities of the New Gold Partnerships shall cease (the "First Temporary Order");

AND WHEREAS on July 10, 2008, the Commission ordered that the First Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

AND WHEREAS on July 15, 2008, the Commission issued a Notice of Hearing to consider, among other things, the extension of the First Temporary Order, such hearing to be held on July 23, 2008 at 11:00 a.m.;

AND WHEREAS the Notice of Hearing set out that the hearing was to consider, *inter alia*, whether, in the opinion of the Commission, it was in the public interest, pursuant to subsections 127(7) and (8) of the Act, to extend the First Temporary Order until such time as considered necessary by the Commission;

AND WHEREAS a hearing was held on July 23, 2008 at 11:00 a.m. at which Staff and counsel for Global Energy appeared, but no counsel appeared for the New Gold Partnerships;

AND WHEREAS on July 23, 2008, the First Temporary Order was continued until August 6, 2008 and the hearing in this matter was adjourned until August 5, 2008 at 3:00 p.m. on consent of Staff and counsel for Global Energy;

AND WHEREAS a hearing was held on August 5, 2008 at 3:00 p.m. at which Staff and counsel for Global Energy appeared, but no counsel appeared for the New Gold Partnerships;

AND WHEREAS on August 5, 2008, the First Temporary Order was continued until December 4, 2008 and the hearing in this matter was adjourned until December 3, 2008 at 10:00 a.m. on consent of Staff and counsel for Global Energy;

AND WHEREAS on December 3, 2008, on the basis of the record for the written hearing and on consent of Staff and counsel for Global Energy, a Panel of the Commission ordered that the First Temporary Order be extended until June 11, 2009 and that the hearing in this matter be adjourned to June 10, 2009 at 10:00 a.m.;

AND WHEREAS on June 10, 2009, Staff advised the Commission that Victor Tsatskin, a.k.a. Vadim Tsatskin ("Tsatskin"), an agent of Global Energy, would not be attending the hearing and was not opposed to Staff's request for the extension of the First Temporary Order, and no counsel had communicated with Staff on behalf of the New Gold Partnerships;

AND WHEREAS on June 10, 2009, on hearing the submissions of Staff, a Panel of the Commission ordered that the First Temporary Order be extended until October 9, 2009 and that the hearing in this matter be adjourned to October 8, 2009 at 10:00 a.m.;

AND WHEREAS on October 8, 2009, on hearing the submissions of Staff, a Panel of the Commission ordered that the First Temporary Order be extended until March 11, 2010 and that the hearing in this matter be adjourned to March 10, 2010 at 10:00 a.m.;

AND WHEREAS on March 10, 2010, on hearing the submissions of Staff, a Panel of the Commission ordered that the First Temporary Order be extended until July 12, 2010 and that the hearing in this matter be adjourned to July 9, 2010 at 11:30 a.m.;

AND WHEREAS on April 7, 2010, the Commission issued a temporary cease trade order pursuant to subsections 127(1) and 127(5) of the Act ordering the following (the "Second Temporary Order"):

i) Christina Harper ("Harper"), Howard Rash ("Rash"), Michael Schaumer ("Schaumer"), Elliot Feder ("Feder"), Tsatskin, Oded Pasternak ("Pasternak"), Alan Silverstein ("Silverstein"), Herbert Groberman ("Groberman"), Allan Walker ("Walker"), Peter Robinson ("Robinson"), Vyacheslav Brikman ("Brikman"), Nikola Bajovski ("Bajovski"), Bruce Cohen ("Cohen") and Andrew Shiff ("Shiff") (collectively, the "Individual Respondents"), shall cease trading in all securities; and

ii) that any exemptions contained in Ontario securities law do not apply to the Individual Respondents;

AND WHEREAS, on April 7, 2010, the Commission ordered that the Second Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

AND WHEREAS on April 14, 2010, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Second Temporary Order, to be held on April 20, 2010 at 3:00 p.m.;

AND WHEREAS the Notice of Hearing set out that the hearing was to consider, amongst other things, whether, in the opinion of the Commission, it is in the public interest, pursuant to subsections 127(7) and (8) of the Act, to extend the Second Temporary Order until the conclusion of the hearing, or until such further time as considered necessary by the Commission;

AND WHEREAS on April 20, 2010, a hearing was held before the Commission and none of the Individual Respondents appeared before the Commission to oppose Staff's request for the extension of the Second Temporary Order;

AND WHEREAS on April 20, 2010, the Commission was satisfied that Staff had served or made reasonable attempts to serve each of the Individual Respondents with copies of the Second Temporary Order, the Notice of Hearing, and the Evidence Brief of Staff as evidenced by the Affidavit of Kathleen McMillan, sworn on April 20, 2010, and filed with the Commission;

AND WHEREAS on April 20, 2010, the Commission considered the evidence and submissions before it and the Commission was of the opinion that: in the absence of a continuing cease-trade order, the length of time required to conclude a hearing could be prejudicial to the public interest; and, it was in the public interest to extend the Second Temporary Order;

AND WHEREAS on April 20, 2010, pursuant to subsections 127(7) and (8) of the Act, the Second Temporary Order was extended to June 15, 2010 and the hearing in this matter was adjourned to June 14, 2010 at 10:00 a.m.;

AND WHEREAS on June 14, 2010, a hearing was held before the Commission and the Commission ordered that the Second Temporary Order be extended until September 1, 2010 and the hearing be adjourned to September 1, 2010 at 1:00 p.m.;

AND WHEREAS on June 14, 2010, on hearing the submissions of Staff, a Panel of the Commission ordered that the First Temporary Order be extended until September 1, 2010 and that the hearing in this matter be adjourned to September 1, 2010 at 1:00 p.m.;

AND WHEREAS on September 1, 2010, the Commission considered the evidence and submissions before it and the Commission was of the opinion that in the absence of a continuing cease-trade order, the length of time required to conclude a hearing could be prejudicial to the public interest;

AND WHEREAS on September 1, 2010, pursuant to subsections 127(7) and 127(8) of the Act, the First Temporary Order and the Second Temporary Order were extended to November 9, 2010 and the hearing in this matter was adjourned to November 8, 2010 at 10:00 a.m.;

AND WHEREAS on September 1, 2010, it was further ordered pursuant to subsections 127(1) and (2) of the Act that, notwithstanding the Second Temporary Order, Feder is permitted to trade securities in an account in his own name or in an account of his registered retirement savings plans (as defined in the *Income Tax Act* (Canada)) in which he has the sole legal and beneficial ownership, provided that:

(i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) which is a reporting issuer; and

(ii) he carries out any permitted trading through a dealer registered with the Commission (which dealer must be given a copy of this order) and through accounts opened in his name only (the "Amended Second Temporary Order");

AND WHEREAS on November 5, 2010, the Commission approved a settlement agreement between Staff and Robinson;

AND WHEREAS on November 8, 2010, Staff, Schaumer, Shiff, Silverstein, counsel for Rash, and counsel for Pasternak, Walker and Brikman attended the hearing, Harper and Groberman had each advised Staff that they would not be attending the hearing, no person attended on behalf of the Corporate Respondents and Tsatskin, Bajovski and Cohen did not appear;

AND WHEREAS on November 8, 2010, counsel for Feder removed himself from the record due to a conflict of interest, and new counsel for Feder advised the Commission that he would need to satisfy himself that he was able to represent Feder, and would advise Staff accordingly as soon as possible;

AND WHEREAS on November 8, 2010, the Commission considered the evidence and submissions before it and the Commission was of the opinion that it was in the public interest that the First Temporary Order and the Amended Second Temporary Order be extended to December 8, 2010 and the hearing in this matter be adjourned to December 7, 2010 at 2:30 p.m.;

AND WHEREAS on December 7, 2010, Staff, Schaumer, Silverstein, counsel for Pasternak, Walker and Brikman, and an agent for new counsel for Feder attended the hearing, no person appeared on behalf of the Corporate Respondents and Harper, Rash, Tsatskin, Groberman, Bajovski, Cohen and Shiff did not appear;

AND WHEREAS on December 7, 2010, the Commission was satisfied that all of the Respondents had been properly served with notice of the hearing;

AND WHEREAS on December 7, 2010, Staff requested the extension of the First Temporary Order against the Corporate Respondents and the Amended Second Temporary Order against the Individual Respondents, and Schaumer, Silverstein, and counsel for Pasternak, Walker and Brikman consented to the extension of the Amended Second Temporary Order;

AND WHEREAS on December 7, 2010, an agent for new counsel for Feder informed the Commission that he did not have instructions as to whether Feder consented to an extension of the Amended Second Temporary Order;

AND WHEREAS on December 7, 2010, Staff informed the Commission that depending on settlement efforts, Staff might seek to bring an application to hold the next hearing in this matter in writing;

AND WHEREAS on December 7, 2010, the Commission directed that the First Temporary Order against the Corporate Respondents, and the Amended Second Temporary Order against the Individual Respondents, be consolidated into a single temporary order (the "Temporary Order");

AND WHEREAS on December 7, 2010, the Commission considered the evidence and submissions before it and the Commission was of the opinion that it was in the public interest that pursuant to subsections 127(7) and 127(8) of the Act, the Temporary Order be extended to March 3, 2011, without prejudice to Feder to bring a motion if he opposes the extension and that the hearing in this matter be adjourned to February 16, 2011 at 2:00 p.m.;

AND WHEREAS on February 16, 2011, Staff, Schaumer, Shiff and counsel for Feder attended the hearing, no person appeared on behalf of the Corporate Respondents, counsel for Pasternak, Walker and Brikman did not appear and Harper, Rash, Tsatskin, Groberman, Bajovski and Cohen did not appear;

AND WHEREAS on February 16, 2011, Staff requested the extension of the Temporary Order against the Individual Respondents and the Corporate Respondents; and Schaumer and Shiff consented to the extension of the Temporary Order;

AND WHEREAS on February 16, 2011, counsel for Feder consented to the extension of the Temporary Order of December 7, 2010, save and except for the exceptions outlined in this order;

AND WHEREAS on February 16, 2011, the Commission considered the evidence and submissions before it and the Commission was of the opinion that it was in the public interest to adjourn the hearing to May 3, 2011 at 10:00 a.m. and to further extend the Temporary Order until May 4, 2011;

AND WHEREAS on February 16, 2011, it was further ordered pursuant to subsections 127(7) and (8) of the Act, that the Temporary Order be extended to May 4, 2011, save and except that:

(a) Feder is permitted to trade securities in an account in his own name or in an account of his registered retirement savings plan (as defined in the *Income Tax Act* (Canada)) in which Feder has the sole legal and beneficial ownership, provided that:

(i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange, or NASDAQ (or their successor exchanges) which is a reporting issuer; and

(ii) Feder carries out any permitted trading through a dealer registered with the Commission (which dealer must be given a copy of this order) and through accounts opened in Feder's name only; and

(b) Feder is permitted to contact the existing shareholders of (i) Genesis Rare Diamonds (Ontario) Ltd. (ii) Kimberlite Diamond Corporation and (iii) their subsidiaries, none of which is a reporting issuer, or their counsel and to discuss/explore the potential for the sale of Feder's shares in those corporations to any or all of their existing shareholders and/or the purchase of Feder's shares in those corporations by the respective corporations for cancellation, provided that Feder's shares are not actually sold and/or purchased without Feder first obtaining a further exemption/order from the Commission that permits such sale(s) and/or purchase(s);

AND WHEREAS on May 3, 2011, Staff, Schaumer, Shiff and Silverstein attended the hearing, no one appeared on behalf of the Corporate Respondents, counsel for Pasternak, Walker and Brikman did not appear, counsel for Rash did not appear and Tsatskin, Harper, Groberman, Bajovski and Cohen did not appear;

AND WHEREAS on May 3, 2011, Staff requested an extension of the Temporary Order against the Individual Respondents and the Corporate Respondents and

Schaumer, Shiff and Silverstein did not object to an extension of the Temporary Order;

AND WHEREAS on May 3, 2011, the Commission considered the evidence and submissions before it and the Commission was of the opinion that it was in the public interest to extend the Temporary Order against all named Respondents, except Rash, to the conclusion of the hearing on the merits; to extend the Temporary Order against Rash until July 12, 2011, and to adjourn the hearing to July 11, 2011 at 10:00 a.m., at which time Rash will have the opportunity to make submissions regarding any further extension of the Temporary Order against him;

AND WHEREAS on July 11, 2011, Staff, Harper and Shiff attended the hearing and no one appeared on behalf of the Corporate Respondents, Pasternak, Walker, Brikman, Feder, Tsatskin, Schaumer, Silverstein, Groberman, Bajovski or Cohen;

AND WHEREAS on July 11, 2011, Staff informed the Commission that Rash had recently retained new counsel in a related matter, and that Rash's new counsel had advised Staff that he would not be attending the hearing;

AND WHEREAS on July 11, 2011, Staff requested a further extension of the Temporary Order against Rash;

AND WHEREAS on July 11, 2011, the Commission considered the evidence and submissions before it and the Commission was of the opinion that it was in the public interest to extend the Temporary Order against Rash to September 27, 2011, and to adjourn the hearing to September 26, 2011 at 10:00 a.m. at which time Rash would have the opportunity to make submissions regarding any further extension of the Temporary Order against him;

AND WHEREAS on September 1, 2011, the Commission approved settlement agreements between Staff and each of Pasternak, Walker and Brikman;

AND WHEREAS on September 26, 2011, Staff, Harper, Schaumer, Silverstein and Shiff attended the hearing and no one appeared on behalf of the Corporate Respondents, Feder, Rash, Tsatskin, Groberman, Bajovski or Cohen;

AND WHEREAS on September 26, 2011, Staff requested a further extension of the Temporary Order against Rash;

AND WHEREAS on September 26, 2011, the Commission ordered that the Temporary Order be extended against Rash until November 29, 2011, and that the hearing be adjourned to November 28, 2011 at 10:00 a.m.;

AND WHEREAS on November 28, 2011, Staff and Shiff attended the hearing and no one appeared on behalf of the Corporate Respondents or any of the other Individual Respondents;

AND WHEREAS the Commission was satisfied that the Corporate Respondents and the Individual Respondents had been properly served with notice of the hearing;

AND WHEREAS on November 28, 2011, Staff requested a further extension of the Temporary Order against Rash;

AND WHEREAS on November 28, 2011, the Commission ordered that the Temporary Order be extended against Rash until December 16, 2011, and that the hearing be adjourned to December 15, 2011 at 9:30 a.m.;

AND WHEREAS on November 29, 2011, the Commission approved settlement agreements between Staff and each of Silverstein and Schaumer;

AND WHEREAS on December 15, 2011, Staff attended the hearing and no one appeared on behalf of the Corporate Respondents or the Individual Respondents;

AND WHEREAS the Commission was satisfied that the Corporate Respondents and the Individual Respondents had been properly served with notice of the hearing;

AND WHEREAS on December 15, 2011 Staff requested a further extension of the Temporary Order against Rash;

AND WHEREAS on December 15, 2011, the Commission considered the evidence and submissions before it and the Commission was of the opinion that it was in the public interest to extend the Temporary Order against Rash to October 22, 2012, and to adjourn the hearing to October 19, 2012 at 10:00 a.m., without prejudice to either Staff or Rash to apply for a variation of the Temporary Order under section 144 of the Act;

AND WHEREAS on January 20, 2011, the Commission approved a settlement agreement between Staff and Feder;

AND WHEREAS on October 19, 2012, Staff attended the hearing and no one appeared on behalf of Rash;

AND WHEREAS the Commission was satisfied that Staff served or made reasonable attempts to serve the Corporate Respondents and the Individual Respondents with notice of the hearing;

AND WHEREAS on October 19, 2012, Staff requested a further extension of the Temporary Order against Rash;

AND WHEREAS on October 19, 2012, the Commission ordered that the Temporary Order be

extended against Rash until February 28, 2013, without prejudice to either Staff or Rash to apply for a variation of the Temporary Order under section 144 of the Act, and that the hearing be adjourned to February 27, 2013 at 10:00 a.m.;

AND WHEREAS on February 27, 2013, Staff attended the hearing and no one appeared on behalf of Rash;

AND WHEREAS Staff filed the Affidavit of Peaches A. Barnaby sworn February 27, 2013 (the "February 27th Affidavit") outlining service on Rash of the Commission's Order dated October 19, 2012;

AND WHEREAS the Commission was satisfied that Staff served or made reasonable attempts to serve the Corporate Respondents and the Individual Respondents with notice of the hearing;

AND WHEREAS Staff informed the Commission that Rash pleaded guilty to breaching Ontario securities law in connection with his activities as a salesperson at Global Energy in proceedings before the Ontario Court of Justice and that a hearing was scheduled for March 20, 2013, at which the parties to that proceeding may make submissions on sentence;

AND WHEREAS Staff requested a further extension of the Temporary Order to a date following the sentencing hearing;

AND WHEREAS the February 27th Affidavit set out Rash's consent, through his counsel, to the extension of the Temporary Order;

AND WHEREAS on February 27, 2013, the Commission considered the evidence and submissions before it and the Commission was of the opinion that it was in the public interest to extend the Temporary Order against Rash until April 29, 2013, without prejudice to either Staff or Rash to apply for a variation of the Temporary Order under section 144 of the Act, and to adjourn the hearing to April 26, 2013 at 11:00 a.m.;

AND WHEREAS a letter from Staff to the Secretary of the Commission, dated April 24, 2013 (the "April 24 Letter"), accompanied an Affidavit of Peaches A. Barnaby of Staff, sworn April 24, 2013 (the "April 24 Affidavit"), which outlined service on Rash of the Commission's Order dated February 27, 2013;

AND WHEREAS in the April 24 Affidavit, it is stated that the sentencing hearing in respect of Rash commenced on March 20, 2013 and is scheduled to continue on July 17, 2013, and that counsel for Rash consents to a further extension of the Temporary Order against Rash to a date following the sentencing hearing on July 17, 2013;

AND WHEREAS in the April 24 Letter, Staff requests that:

(i) the oral hearing scheduled for April 26, 2013 proceed in writing and that the date for the oral hearing be vacated;

(ii) the Temporary Order be extended to a date following the sentencing hearing on July 17, 2013; and

(iii) the hearing be adjourned to the business day immediately preceding that date;

AND WHEREAS the Commission considered the April 24 Letter and the April 24 Affidavit and was of the opinion that it was in the public interest to order that:

(i) the oral hearing scheduled for April 26, 2013 proceed in writing and the hearing date scheduled for April 26, 2013 be vacated;

(ii) the Temporary Order be extended against Rash until September 5, 2013; and

(iii) the hearing be adjourned to September 4, 2013 at 11:00 a.m.

AND WHEREAS on September 4, 2013, Staff attended the hearing and no one appeared on behalf of Rash;

AND WHEREAS Staff filed the Affidavit of Tia Faerber sworn August 28, 2013 (the "August 28 Affidavit") outlining service of the Commission's Order dated April 26, 2013 on Rash;

AND WHEREAS Staff advised the Panel that a pre-sentence report ("PSR") has been ordered in connection with Rash's sentencing hearing before the Ontario Court of Justice and the parties are scheduled to attend before Justice Gorewich in connection with the PSR on November 7, 2013 (the "PSR Hearing");

AND WHEREAS Staff requested that the Temporary Order be extended and that the hearing to consider a further extension be adjourned to a date following the PSR Hearing;

AND WHEREAS the August 28 Affidavit attached correspondence from Rash's lawyer's office confirming that Rash consents to an extension of the Temporary Order to a date following the PSR Hearing;

AND WHEREAS the Commission ordered that the Temporary Order be extended against Rash until December 19, 2013 and the hearing to consider a further extension of the Temporary Order be adjourned to December 17, 2013 at 3:30 p.m;

AND WHEREAS on December 17, 2013, Staff attended the hearing and no one appeared on behalf of Rash;

AND WHEREAS Staff advised the Panel that the parties attended before Justice Gorewich on November 7, 2013 for the PSR Hearing and that, at the conclusion of that hearing, Rash was sentenced to nine months incarceration;

AND WHEREAS Staff advised the Panel that Staff has been in contact with Rash's counsel in the proceedings before the Ontario Court of Justice and Rash's counsel in those proceedings has advised Staff that he is seeking instructions from Rash as to his continued representation of Rash in connection with the proceedings before the Commission;

AND WHEREAS Staff further advised the Panel that Staff is awaiting the release of the transcript and the final reasons for judgment in connection with Rash's sentencing in the Ontario Court of Justice;

AND WHEREAS Staff requested that the Temporary Order be extended and that the hearing to consider a further extension be adjourned for approximately six weeks;

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

IT IS ORDERED THAT the Temporary Order is extended against Rash until January 31, 2014 and the hearing to consider a further extension of the Temporary Order is adjourned to January 29, 2014 at 10:30 a.m.

DATED at Toronto this 17th day of December, 2013.

"Edward P. Kerwin"

2.2.13 Kolt Curry et al. – ss. 37, 127, 127.1

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

AND

IN THE MATTER OF
KOLT CURRY, LAURA MATEYAK,
AMERICAN HERITAGE STOCK TRANSFER INC., and
AMERICAN HERITAGE STOCK TRANSFER, INC.

ORDER
(Sections 37, 127 and 127.1 of the Securities Act)

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***"), 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**");

AND WHEREAS on April 1, 2011, the Commission issued a temporary cease trade order, pursuant to subsections 127(1) and 127(5) of the *Act*, that all trading in securities of BFM, AHST Ontario, AHST Nevada and Denver Gardner Inc. cease and that all trading by Kolt Curry, Mateyak, AHST Ontario, AHST Nevada, McCarthy, Winick and Denver Gardner Inc. cease (the "**Temporary Order**");

AND WHEREAS the Temporary Order, as amended, was extended from time to time and, on March 23, 2012, was extended until the conclusion of the hearing on the merits;

AND WHEREAS on March 23, 2012, the Commission 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;

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 (the "**Written Hearing**");

AND WHEREAS on November 2, 2012, Staff filed an Amended Statement of Allegations and the Commission issued an Amended Notice of Hearing;

AND WHEREAS on November 30, 2012, Staff filed evidentiary briefs in the form of affidavits, as well as written submissions on the relevant facts and law;

AND WHEREAS on January 21, 2013, on consent of Staff and counsel for McCarthy, BFM and Liquid Gold (the "**McCarthy Respondents**"), the Commission granted an application to sever the matter, as against the McCarthy Respondents and adjourned that matter to a date to be fixed by the Office of the Secretary of the Commission in consultation with counsel;

AND WHEREAS on April 12, 2013, the Commission ordered, on consent, that the Written Hearing be converted back to an oral hearing on the merits to be heard on May 15 and 16, 2013, pursuant to Rule 11.5 of the *Rules of Procedure*;

AND WHEREAS on May 15, 2013, Staff appeared and counsel for Kolt Curry, Mateyak and AHST Ontario appeared and advised the Panel that an Agreed Statement of Facts (the "**Agreed Facts**") had been reached for Kolt Curry, Mateyak, AHST Ontario and AHST Nevada (the "**Respondents**");

AND WHEREAS on May 15, 2013, Staff, counsel for Kolt Curry, Mateyak and AHST Ontario jointly requested that the evidence on the hearing on the merits scheduled for May 15 and 16, 2013, as against the Respondents, consist of the Agreed Facts as filed, and that the hearing on the merits as it relates to the Respondents be severed from the remaining respondents;

AND WHEREAS on May 16, 2013, after reading the Agreed Facts, the Commission found that the Respondents had not complied with Ontario securities law and had acted contrary to the public interest, and ordered:

1. that the hearing as against the Respondents is severed from the main proceeding in this matter; and

2. that a Sanctions Hearing for the Respondents shall take place on August 27, 2013 at 2:30 p.m.;

AND WHEREAS on August 7, 2013, the Commission issued its Reasons and Decision with respect to the hearing on the merits of Winick and Greg Curry;

AND WHEREAS on August 26, 2013, the Commission ordered that that the sanctions and costs hearing in this matter shall take place on September 12, 2013 at 10:00 a.m.;

AND WHEREAS counsel for the Respondents filed a motion, pursuant to Rules 3 and 9 of the *Rules of Procedure*, to adjourn the sanctions hearing scheduled for September 12, 2013 (the "**Adjournment Motion**");

AND WHEREAS on September 12, 2013, the Commission ordered that:

1. pursuant to Rules 3 and 9 of the *Rules of Procedure*, the sanctions and costs hearing in this matter be adjourned and shall take place on October 10, 2013 at 11:00 a.m.; and

2. on consent of the parties, Staff may file an Amended Notice of Hearing including a request for an order under section 37 of the *Act*;

AND WHEREAS on September 26, 2013, the Commission issued a Notice of Hearing With Respect To Sanctions, which included a request for an order under section 37 of the *Act*;

AND WHEREAS the Commission held a hearing with respect to the sanctions and costs to be imposed on the Respondents on October 10, 2013;

AND WHEREAS on December 20, 2013, the Commission released its Reasons and Decision on Sanctions and Costs with respect to 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:

1. pursuant to clause 2 of subsection 127(1) of the *Act*, trading in any securities by Kolt Curry, AHST Ontario and AHST Nevada shall cease permanently;

2. pursuant to clause 2 of subsection 127(1) of the *Act*, trading in any securities by Mateyak shall cease for a period of five years;

3. pursuant to clause 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by Kolt Curry, AHST Ontario and AHST Nevada shall be prohibited permanently;

4. pursuant to clause 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by Mateyak shall be prohibited for a period of five years;

5. pursuant to clause 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law shall not apply to Kolt Curry, AHST Ontario and AHST Nevada permanently;

6. pursuant to clause 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law shall not apply to Mateyak for a period of five years;

7. pursuant to clause 6 of subsection 127(1) of the *Act*, Kolt Curry and Mateyak are reprimanded;

8. pursuant to clause 7 of subsection 127(1) of the *Act*, Kolt Curry and Mateyak shall resign any position that they hold as a director or officer of an issuer;

9. pursuant to clause 8 of subsection 127(1) of the *Act*, Kolt Curry shall be prohibited permanently from becoming or acting as a director or officer of any issuer;

10. pursuant to clause 8 of subsection 127(1) of the *Act*, Mateyak shall be prohibited for a period of five years from becoming or acting as a director or officer of any issuer;

11. pursuant to clause 8.5 of subsection 127(1) of the *Act*, Kolt Curry shall be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

12. pursuant to clause 8.5 of subsection 127(1) of the *Act*, Mateyak shall be prohibited for a period of five years from becoming or acting as a registrant, investment fund manager or as a promoter;

13. pursuant to clause 9 of subsection 127(1) of the *Act*, Kolt Curry, AHST Ontario and AHST Nevada shall pay, on a joint and several basis, an administrative penalty of $100,000 for their non-compliance with Ontario securities law, to be designated for allocation or for use by the Commission, pursuant to subsection 3.4(2)(b) of the *Act*;

14. pursuant to clause 9 of subsection 127(1) of the *Act*, Mateyak shall pay an administrative penalty of $2,500 for her non-compliance with Ontario securities law, to be designated for allocation or for use by the Commission, pursuant to subsection 3.4(2)(b) of the *Act*;

15. pursuant to subsection 127.1 of the *Act*, Kolt Curry, AHST Ontario and AHST Nevada shall pay, on a joint and several basis, $60,000 for the costs incurred in the hearing of this matter;

16. pursuant to subsection 37(1) of the *Act*, Kolt Curry shall be prohibited permanently from telephoning from a location in Ontario to any residence located in or out of Ontario for the purpose of trading in any security or in any class of securities; and

17. pursuant to subsection 37(1) of the *Act*, Mateyak shall be prohibited for a period of five years from telephoning from a location in Ontario to any residence located in or out of Ontario for the purpose of trading in any security or in any class of securities.

DATED at Toronto this 20th day of December, 2013.

"James D. Carnwath"

2.2.14 Moncasa Capital Corporation and John Frederick Collins – ss. 37, 127, 127.1

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

AND

**IN THE MATTER OF
MONCASA CAPITAL CORPORATION and
JOHN FREDERICK COLLINS**

**ORDER
(Sections 37, 127 and 127.1 of the Securities Act)**

WHEREAS on March 6, 2012, a Notice of Hearing was issued by 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") with respect to a Statement of Allegations issued by Staff of the Ontario Securities Commission ("Staff") on the same day, to consider whether Moncasa Capital Corporation ("Moncasa") and John Frederick Collins ("Collins") (collectively, the "Respondents") breached the Act and acted contrary to the public interest;

AND WHEREAS on December 3, 2012, an Amended Statement of Allegations was issued by Staff;

AND WHEREAS the Commission conducted the hearing on the merits in this matter with respect to the Respondents on January 21, 22, 23, 24 and March 13, 2013;

AND WHEREAS on May 17, 2013, the Commission issued its Reasons and Decision on the merits in this matter (*Re Moncasa Capital Corp.* (2013), 36 O.S.C.B. 5320 (the "Merits Decision"));

AND WHEREAS the Commission is satisfied that Moncasa and Collins have not complied with Ontario securities law and have acted contrary to the public interest, as outlined in the Merits Decision;

AND WHEREAS on July 11, 2013, the Commission conducted a hearing with respect to the sanctions and costs to be imposed in this matter (the "Sanctions and Costs Hearing");

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

IT IS HEREBY ORDERED:

(a) that trading in any securities by the Respondents cease permanently, pursuant to paragraph 2 of section 127(1) of the Act;

(b) that the acquisition of any securities by the Respondents is prohibited permanently, pursuant to paragraph 2.1 of section 127(1) of the Act;

(c) that any exemptions contained in Ontario securities law do not apply to the Respondents permanently, pursuant to paragraph 3 of section 127(1) of the Act;

(d) that the Respondents be reprimanded, pursuant to paragraph 6 of section 127(1) of the Act;

(e) that Collins resign all positions that he holds as a director or officer of any issuer, registrant or investment fund manager, pursuant to paragraphs 7, 8.1 and 8.3 of section 127(1) of the Act;

(f) that Collins is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, pursuant to paragraphs 8, 8.2 and 8.4 of section 127(1) of the Act;

(g) that the Respondents are prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter, pursuant to paragraph 8.5 of section 127(1) of the Act;

(h) that the Respondents are required to pay on a joint and several basis an administrative penalty in the amount of $400,000 for failure to comply with Ontario securities law, pursuant to paragraph 9 of section 127(1) of the Act, which amount is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;

(i) that the Respondents are required to disgorge on a joint and several basis to the Commission the amount of $1,231,800 obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of section 127(1) of the Act, which amount is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;

(j) that the Respondents pay on a joint and several basis costs in the amount of $280,721.02 that were incurred by or on behalf of the Commission in respect of the investigation and the hearing of this matter, pursuant to section 127.1 of the Act; and

(k) that the Respondents are permanently prohibited to call at a residence or telephone from a location in Ontario to a residence located in or out of Ontario for

the purpose of trading in any security or derivative or in any class of securities or derivatives, pursuant to section 37 of the Act.

DATED at Toronto, Ontario this 20th day of December, 2013.

"Edward P. Kerwin"

2.2.15 Inova Resources Limited – s. 1(10)(a)(ii)

Headnote

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

Applicable Legislative Provisions

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

December 16, 2013

Dentons Canada LLP
15th Floor, 850 – 2nd Street SW
Calgary, AB T2P 0R8

Dear Sirs/Mesdames:

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

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

In this order, "securityholder" means, for a security, the beneficial owner of the security. The Applicant has represented to the Commission that:

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

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

(c) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer; and

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

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

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

2.2.16 BNY Mellon Asset Management Canada Ltd. and Standish Mellon Asset Management Company LLC – s. 80 of the CFA

Headnote

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

Applicable Legislative Provisions

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 1(1), 22(1)(b), 80.
Securities Act, R.S.O. 1990, c. S.5, as am., s. 25(3).
Ontario Securities Commission Rule 35-502 Non-Resident Advisers, s. 7.3.

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

AND

IN THE MATTER OF
BNY MELLON ASSET MANAGEMENT CANADA LTD. AND
STANDISH MELLON ASSET MANAGEMENT COMPANY LLC

ORDER
(Section 80 of the CFA)

UPON the application (the ***Application***) of BNY Mellon Asset Management Canada Ltd. (the ***Principal Adviser***) and Standish Mellon Asset Management Company LLC (the ***Sub-Adviser***) to the Ontario Securities Commission (the ***Commission***) for an order, pursuant to section 80 of the CFA, that the Sub-Adviser and any individuals engaging in, or holding themselves out as engaging in, the business of advising others as to trading in commodity futures contracts and commodity futures options (collectively, ***Contracts*** as defined in subsection 1(1) of the CFA) when acting on behalf of the Sub-Adviser in respect of the Advisory Services (as defined below) (the ***Representatives***) be exempt, for a specified period of time, from the adviser registration requirement in paragraph 22(1)(b) of the CFA when acting as an adviser for the Principal Adviser in respect of the Clients (as defined below) with regard to trades in Contracts traded on commodity futures exchanges and cleared through clearing corporations;

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

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

Principal Adviser

1. The Principal Adviser is a corporation incorporated under the laws of the Province of Ontario and its principal business office is in Toronto, Ontario.

2. The Principal Adviser is currently registered (i) in each jurisdiction of Canada as an adviser in the category of portfolio manager and as a dealer in the category of exempt market dealer under securities legislation, (ii) in Ontario as an investment fund manager under securities legislation, and (iii) in Ontario as an adviser in the category of commodity trading manager under the CFA.

3. The Principal Adviser is an indirect wholly-owned subsidiary of The Bank of New York Mellon Corporation, a global financial services company providing a full-spectrum of banking and related services including asset management, wealth management, custody, treasury, and clearing services. As such, the Principal Adviser leverages the global expertise of investment professionals at its affiliates worldwide.

Sub-Adviser

4. The Sub-Adviser is a limited liability company organized under the laws of the State of Delaware, United States of America. The head office of the Sub-Adviser is located in Boston, Massachusetts in the United States of America. The

Sub-Adviser is currently registered as an investment adviser with the U.S. Securities and Exchange Commission (the **SEC**) and is a registered commodity trading advisor with the U.S. Commodity Futures Trading Commission (the **CFTC**).

5. The Sub-Adviser is appropriately registered or licensed to provide advice to the Clients pursuant to the applicable legislation of its principal jurisdiction.

6. The Sub-Adviser is not a resident of any province or territory of Canada.

7. The Sub-Adviser is not registered in any capacity under the CFA or the *Securities Act* (Ontario) (the **OSA**).

8. The Sub-Adviser is an affiliate of the Principal Adviser; for this purpose, an "affiliate" means any entity that is controlled by The Bank of New York Mellon Corporation or other ultimate parent company of the Principal Adviser, as the case may be, and "control" and any derivation thereof, means the possession, directly or indirectly, of the power to direct or significantly influence the management and policies/business or affairs of an entity whether through ownership of voting securities or otherwise.

The Clients

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

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

11. The Principal Adviser offers the portfolio management services of the Sub-Adviser to the respective Clients that choose to have exposure to capital markets and Contracts in which the Sub-Adviser has experience and expertise.

12. The Investment Funds and Pooled Funds are or will be formed in Ontario where the Principal Adviser is registered as an adviser in the category of commodity trading manager.

Advisory Services

13. The Principal Adviser may, pursuant to a written investment management agreement with each Client:

    (a) act as an adviser (as defined in the OSA) to that Client in respect of securities (as defined in the OSA), and

    (b) act as an adviser to that Client in respect of trading in Contracts,

    by exercising discretionary authority to purchase or sell securities (as defined in the OSA) and Contracts on behalf of the Clients in respect of the investment portfolio of the Clients.

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

    (a) in each case, the Contracts must be cleared through an "acceptable clearing corporation" (as defined in National Instrument 81-102 *Mutual Funds*, or any successor thereto (**NI 81-102**); and

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

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

16. The Principal Adviser delivers, and will continue to deliver, to the Clients all applicable reports and statements required under applicable securities, commodity futures, and derivatives legislation.

17. If there is any direct contact between a Client and a Sub-Adviser in connection with the Advisory Services, a representative of the Principal Adviser, duly registered in accordance with Ontario commodity futures law, will be present at all times either in person or by telephone.

18. Paragraph 22(1)(b) of the CFA prohibits a person or company from acting as an adviser unless the person or company is registered as an adviser under the CFA, or is registered as a representative, a partner or an officer of a registered adviser and is acting on behalf of a registered adviser.

19. By providing the Advisory Services, the Sub-Adviser and its Representatives will be engaging in, or holding themselves out as engaging in, the business of advising others as to trading in Contracts and, in the absence of being granted the requested relief, would be required to register in the appropriate category of registration under the CFA.

20. There is presently no rule under the CFA that provides an exemption from the adviser registration requirement in paragraph 22(1)(b) of the CFA that is similar to the exemption from the adviser registration requirement in section 25(3) of the OSA which is provided under section 7.3 of Ontario Securities Commission Rule 35-502 *Non-Resident Advisers* (**OSC Rule 35-502**).

21. The relationship between the Principal Adviser, the Sub-Adviser and each Client satisfies the applicable requirements of section 7.3 of OSC Rule 35-502, namely that:

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

    (b) the Principal Adviser has contractually agreed with the Clients to be responsible for any loss that arises out of the failure of the Sub-Adviser:

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

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

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

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

Disclosure

23. The prospectus or similar offering document for each Investment Fund or Pooled Fund or other Investment Funds or Pooled Funds that may be established in the future and for which the Principal Adviser engages the Sub-Adviser to provide the Advisory Services (each a **Future Fund**) will include the following disclosure:

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

    (b) a statement that there may be difficulty in enforcing any legal rights against the Sub-Adviser (or any of its Representatives) because the Sub-Adviser is resident outside of Canada and all or substantially all of its assets are situated outside of Canada.

24. Where an Investment Fund, Pooled Fund or Future Fund does not prepare a prospectus or similar offering document or where a Client enters into an investment management agreement with the Principal Adviser for a Managed Account or other Managed Accounts that may be established in the future (each a **Future Managed Account**), all investors of these Clients or the Client itself, as applicable, who are Ontario residents will receive prior written disclosure of the engagement that includes:

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

(b) a statement that there may be difficulty in enforcing any legal rights against the Sub-Adviser (or any of its Representatives) because the Sub-Adviser is resident outside of Canada and all or substantially all of its assets are situated outside of Canada.

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

IT IS ORDERED, pursuant to section 80 of the CFA, that the Sub-Adviser and its Representatives are exempt from the adviser registration requirement in paragraph 22(1)(b) of the CFA in respect of acting as a sub-adviser for the Principal Adviser in respect of the Clients with regard to trades in Contracts, provided that at the relevant time that such activities are engaged in:

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

(b) the Sub-Adviser and its Representatives are appropriately registered or licensed to provide the Advisory Services to the Clients pursuant to the applicable legislation of the principal jurisdiction of the Sub-Adviser;

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

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

(e) the Principal Adviser cannot be relieved by a Client or the Client's securityholders, as applicable, from the Principal Adviser's responsibility for any loss that arises out of the failure of the Sub-Adviser to meet the Assumed Obligations;

(f) the prospectus or similar offering document for each Investment Fund, Pooled Fund or Future Fund will include the following disclosure:

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

(ii) a statement that there may be difficulty in enforcing any legal rights against the Sub-Adviser (or any of its Representatives) because the Sub-Adviser is resident outside of Canada and all or substantially all of its assets are situated outside of Canada; and

(g) where an Investment Fund, Pooled Fund or Future Fund does not prepare a prospectus or similar offering document or where a Client enters into an investment management agreement with the Principal Adviser for a Managed Account or Future Managed Account, all investors of these Clients or the Client itself, as applicable, who are Ontario residents will receive prior written disclosure of the engagement that includes:

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

(ii) a statement that there may be difficulty in enforcing any legal rights against the Sub-Adviser (or any of its Representatives) because the Sub-Adviser is resident outside of Canada and all or substantially all of its assets are situated outside of Canada.

IT IS FURTHER ORDERED, that this Order will terminate on the earlier of (i) the coming into force of any amendments to section 7.3 of OSC Rule 35-502, (ii) the effective date of the repeal of section 7.3 of OSC Rule 35-502, and (iii) five years from the date hereof.

DATED at Toronto, Ontario this 20th day of December, 2013.

"Edward P. Kerwin"
Commissioner
Ontario Securities Commission

"Christopher Portner"
Commissioner
Ontario Securities Commission

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Blackwood & Rose Inc. et al. – s. 127

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

AND

IN THE MATTER OF
BLACKWOOD & ROSE INC., STEVEN ZETCHUS and
JUSTIN KRELLER (also known as JUSTIN KAY)

REASONS AND DECISION
(Section 127 of the Securities Act)

Hearing:	In Writing		
Decision:	December 17, 2013		
Panel:	James E. A. Turner	–	Vice-Chair
Submissions:	Carlo Rossi	–	For Staff of the Ontario Securities Commission

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REASONS AND DECISION

I. INTRODUCTION

[1] This proceeding arises out of a Notice of Hearing issued by the Ontario Securities Commission (the "**Commission**") dated January 29, 2013, 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, also dated January 29, 2013, filed by Staff of the Commission ("**Staff**") against Blackwood & Rose Inc. ("**Blackwood**"), Steven Zetchus ("**Zetchus**") and Justin Kreller ("**Kreller**") (collectively, the "**Respondents**").

[2] On August 12, 2013, the Commission ordered that, pursuant to Rule 11.5 of the Commission's *Rules of Procedure* (2012), 35 OSCB 10071 (the "***Rules of Procedure***"), the hearing on the merits would proceed as a written hearing.

[3] Staff filed written submissions on August 26, 2013. None of the Respondents filed written materials. In addition to their written submissions, Staff relies on the affidavit of Wayne Vanderlaan ("**Vanderlaan**"), sworn August 26, 2013 (the "**Vanderlaan Affidavit**") in support of their request for sanctions against the Respondents. Staff also filed an affidavit of service of Tia Faerber, addressing service of key documents (including Staff submissions and the Vanderlaan Affidavit) on the Respondents.

A. Brief Overview of the Facts

Overview

[4] Zetchus incorporated Blackwood in August 2012. Shortly after, he rented an office in Ottawa and began portraying Blackwood to members of the public as an established and "specialized boutique firm" engaged in the business of trading in securities.

[5] Kreller was hired by Zetchus to be a salesperson at Blackwood around late September 2012.

[6] Between September 2012 and December 2012 (the "**Material Time**"), the Respondents held themselves out as engaging in the business of trading in securities and through misrepresentations, deceit and other fraudulent means solicited members of the public in the United States to transfer funds to Blackwood purportedly in furtherance of transactions involving the purchase and/or sale of securities.

The Gigapix Scheme

[7] During the Material Time, Zetchus and Kreller solicited shareholders in Gigapix Studios, Inc. ("**Gigapix**" and the "**Gigapix Shareholders**") to send funds to Blackwood purportedly to facilitate the sale of the Gigapix shares held by the Gigapix Shareholders (the "**Gigapix Scheme**").

[8] As part of the Gigapix Scheme, the Gigapix Shareholders were informed by Zetchus and Kreller that Blackwood had buyers for their Gigapix shares but that various payments were required to be made by the Gigapix Shareholders in order to complete the sales. These representations were false and were solely designed to extract money from the Gigapix Shareholders.

[9] Zetchus and Blackwood raised approximately USD $15,000 from three Gigapix Shareholders. All three of these Gigapix Shareholders are U.S. residents.

[10] The funds transferred by the Gigapix Shareholders were misappropriated by Zetchus and were not used to further any transactions involving the purchase of Gigapix shares by the Gigapix Shareholders.

[11] No sales of securities by the Gigapix Shareholders were completed and the Gigapix Shareholders have received no consideration for their payments to Blackwood.

The Respondents Held themselves out as Engaging in the Business of Trading in Securities

[12] In addition to the Gigapix Scheme, during the Material Time, the Respondents otherwise held themselves out as engaging in the business of trading in securities and engaged in acts in furtherance of trades in securities as outlined below.

[13] During the Material Time, Zetchus and Kreller, through Blackwood, solicited U.S. residents to send funds to Blackwood for the purported purpose of opening an account with Blackwood and to purchase shares Blackwood purportedly held in several companies including Toon Goggles, Inc., Barrick Gold Corporation ("**Barrick**") and Dundee Precious Metals Inc. ("**Dundee**").

[14] To entice potential investors, Zetchus and Kreller informed investors that Blackwood had purchased the shares in Dundee and Barrick from a distressed brokerage and offered to sell the shares below their market value. Blackwood held no such shares and Zetchus and Kreller used deceit, falsehood and other fraudulent means to solicit funds from the potential investors in this manner.

[15] No funds were raised from these solicitations.

[16] This matter came to Staff's attention as a result of a referral from an examiner for the Wisconsin Department of Financial Institutions, Division of Securities (the "**Examiner**"). On December 11, 2012, an individual who identified himself as "Justin Kay" telephoned the Examiner and attempted to solicit him to purchase shares in Toon Googles, Barrick and Dundee.

B. Temporary Order

[17] On December 18, 2012, the Commission issued a temporary cease trade order that all trading of securities by the Respondents shall cease (the "**Temporary Order**"). The Temporary Order also provided that any exemptions contained in Ontario securities law do not apply to any of the Respondents. The Temporary Order, as amended, was extended from time to time, and on August 12, 2013, it was extended until the conclusion of the merits hearing.

C. The Respondents

[18] Blackwood was incorporated under the *Canada Business Corporations Act* on August 8, 2012.

[19] Zetchus is a resident of Ontario. Zetchus incorporated Blackwood and has been its sole director and directing mind since its incorporation. Blackwood's registered address is the address of Zetchus's family home in Ottawa.

[20] Zetchus rented an office for Blackwood in Ottawa, Ontario (the "**Blackwood Office**") and created a website for the company (the "**Blackwood Website**").

[21] Kreller is a resident of Ontario and from October 2012 to December 2012 was a salesperson at Blackwood. Kreller used the alias "Justin Kay" when corresponding with investors.

[22] None of the Respondents have ever been registered in any capacity with the Commission.

II. PRELIMINARY ISSUES

A. Failure of the Respondents to Participate

[23] Staff provided a number of affidavits of service as evidence that Staff served each of the Respondents with respect to this proceeding in accordance with the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**") and the Commission's *Rules of Procedure*. None of the Respondents participated in this written hearing.

[24] Subsection 6(1) of the SPPA requires that a tribunal provide "reasonable notice of the hearing" to the parties to a proceeding. Subsection 7(1) of the SPPA permits a tribunal to proceed in the absence of a party when that party has been given notice of the hearing. Similarly, subsection 7(2) of the SPPA permits a tribunal to proceed where notice of a written hearing has been given and the party fails to participate. Subsection 7(2) of the SPPA states:

> [7](2) Where notice of a written hearing has been given to a party to a proceeding in accordance with this Act and the party neither acts under clause 6 (4) (b) [to satisfy the tribunal that there is good reason for not holding a written hearing] nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party is not entitled to any further notice in the proceeding.

[25] Further, Rule 7.1 of the Commission's *Rules of Procedure* provides:

> Failure to Participate – If a Notice of Hearing has been served on any party and the party does not attend the hearing, the Panel may proceed in the party's absence and that party is not entitled to any further notice in the proceeding.

[26] The Commission has exercised its jurisdiction in a number of proceedings to proceed with a matter when it is satisfied that a respondent who has not appeared or participated has been given adequate notice (see *Re Sunwide Finance Inc.* (2009), 32 OSCB 4671 ("***Sunwide***") at para. 18; *Re First Global Ventures, S.A.* (2007), 30 OSCB 10473 at paras. 110-112 and *Lehman Brothers & Associates Corp. (Re)* (2011), 34 OSCB 12717 ("***Lehman Brothers***") at paras. 18-34).

[27] On December 19, 2012, Vanderlaan attended the Blackwood Office for the purpose of serving the Commission's Temporary Order dated December 18, 2012 on the Respondents. Both Zetchus and Kreller provided Vanderlaan with their respective contact information, including their e-mail addresses. Zetchus and Kreller were served with the Notice of Hearing and the Statement of Allegations at the e-mail addresses they provided to Vanderlaan. They were also served with all subsequent orders of the Commission setting down dates in connection with this matter.

[28] None of the Respondents attended at any of the appearances in this matter. Staff brought a motion to have the oral hearing converted into a written hearing (the "**Motion**") pursuant to Rule 11 of the Commission's *Rules of Procedure*.

[29] Neither Zetchus nor Kreller attended or participated in the Motion on August 12, 2013. However, Zetchus responded to service of Staff's Motion materials by indicating that he took no position on the Motion.

[30] The Commission granted Staff's Motion by order dated August 12, 2013 (the "**August 12 Order**") and set a schedule for the service and filing of documents in connection with this written hearing.

[31] The August 12 Order was served on Zetchus and Blackwood by e-mail to Zetchus at the address he provided to Vanderlaan and that he has previously used to correspond with Staff. The August 12 Order was served on Kreller personally by process server.

[32] I am satisfied that the Notice of Hearing of this written hearing, the Statement of Allegations and notice of the Motion were served on the Respondents, that Staff took reasonable steps to provide notice of this proceeding to the Respondents and that I am entitled to proceed in their absence in accordance with section 7 of the SPPA and Rule 7.1 of the Commission's *Rules of Procedure*.

B. Jurisdiction over the Respondents

[33] The Commission has jurisdiction to proceed against a respondent where there is trading in securities in Ontario and where there is a substantial connection between the conduct at issue and Ontario (see *Lehman Brothers*, supra, at paras. 35-37 and *Al-Tar Energy Corp. (Re)* (2010), 33 OSCB 5535 at paras. 45-52 ("***Al-Tar***").

[34] There is ample evidence providing a substantial connection to Ontario in this case, including the following:

(a) Blackwood is a Canadian corporation with its registered office in Ottawa, Ontario;

(b) the Blackwood Office was located in Ottawa, Ontario;

(c) Zetchus and Kreller are residents of Ontario;

(d) the solicitation of investors took place from the Blackwood Office in Ottawa, Ontario;

(e) the Blackwood bank accounts were at bank branches located in Ontario; and

(f) the Gigapix Shareholders sent their funds to the Blackwood Office, or wired them directly to the Blackwood bank accounts.

[35] Where there is trading in securities with a substantial connection to Ontario the Commission is entitled to exercise its jurisdiction over respondents. The panel in *Lehman Brothers* found:

> In this case, the offers to purchase TBS shares were made to investors outside Ontario. […] In addition, Lehman Corp. purported to operate from outside Ontario, namely, from Montreal, Quebec. However, the evidence discloses that some substantial aspects of each transaction occurred within Ontario. Investor funds were sent to accounts located in Toronto on the instructions of Lehman Corp. and Marks. These accounts were opened and maintained by either Lounds or Higgins, both Ontario residents, in the name of Emerson or Triad, both sole proprietorships established and registered in Ontario. The evidence shows that investor funds were withdrawn and disbursed in Toronto for the benefit of these two Ontario residents.
>
> We find that there is a substantial connection to Ontario thereby entitling the Commission to exercise jurisdiction over the Respondents.
>
> (*Lehman Brothers*, *supra*, at paras. 35-37)

[36] I find that the conduct of the Respondents has a substantial connection to Ontario, justifying the exercise of my jurisdiction under the Act. Further, it is clear that the conduct referred to in paragraphs [34] and [35] constitute acts in furtherance of trades in Ontario and therefore trading by the Respondents in Ontario for purposes of the Act.

III. EVIDENCE

A. Standard of Proof

[37] The standard of proof in this written hearing is the civil standard of proof on a balance of probabilities. (*F.H. v. McDougall*, [2008] 3 S.C.R. 41 at para. 46 ("***McDougall***")).

[38] In *McDougall*, the Supreme Court of Canada made clear that there is only one civil standard of proof. That standard requires proof on a balance of probabilities. This standard requires a trier of fact to decide "whether it is more likely than not that the event occurred" (*McDougall*, *supra*, at paras. 40, 43-44). In order to meet that standard, the evidence must be clear, convincing and cogent (*McDougall*, *supra*, at para. 49).

[39] The Supreme Court of Canada's decision in *McDougall* has been applied by the Commission in numerous hearings before it.

B. Admissibility of Evidence

[40] The Commission has broad discretion to admit relevant evidence that might not otherwise be admissible as evidence in a court, including hearsay evidence, subject to the weight given to such evidence. Subsection 15(1) of the SPPA states:

> What is admissible in evidence at a hearing
>
> 15.(1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
>
> (a) any oral testimony; and
>
> (b) any document or other thing, relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

[41] In *Rex Diamond Mining Corp. v. Ontario Securities Commission*, the Ontario Divisional Court confirmed that "the Commission is expressly entitled by statute to consider hearsay evidence" and that "hearsay evidence is not, in law, necessarily less reliable than direct evidence." Justice Nordheimer, speaking for the Court, specifically rejected the appellants' submission that it was improper for the Commission to rely on hearsay evidence (*Rex Diamond Mining Corp. v. Ontario Securities Commission* (2010) ONSC 3926 at para. 4 ("***Rex Diamond***")).

[42] Staff submits that all of the hearsay statements that Staff relies upon to prove the allegations against the Respondents are consistent with each other and are corroborated by the documentary evidence as a whole.

[43] None of the Respondents appeared or objected to Staff's Motion that the hearing on the merits proceed in writing and, accordingly the Respondents have waived any right to object to the admissibility of hearsay evidence in this hearing.

[44] The weight to be accorded to hearsay evidence must be determined by the panel. Care must be taken to avoid placing undue reliance on uncorroborated evidence that lacks sufficient indicia of reliability (*Starson v. Swayze*, [2003] 1 S.C.R. 722 at para. 115; *Sunwide*, *supra*, at para. 22). I will admit the hearsay evidence tendered by Staff, subject to my consideration of the weight to be given to that evidence.

Use of Compelled Evidence and Testimony

[45] The Commission has held that Staff is "entitled to use the information and materials of its investigation (i.e., compelled testimony gathered pursuant to sections 11 and 13 of the Act) in [the] merits hearing which is directly related to the investigation" (*Al-Tar*, *supra*, at para. 40).

[46] In *Boock*, the Commission noted that a "principal purpose of compelled testimony is to permit Staff to obtain relevant documents and evidence for use at a hearing." The Commission stated that while compelled testimony is a form of hearsay, a merits panel has discretion to determine the basis upon which such evidence may be used at a hearing.

[47] In *Sextant*, the Commission admitted compelled testimony from a respondent having concluded that to do so was consistent with the regulatory regime established by sections 16 to 18 of the Act, was not prohibited by subsection 9(2) of the *Evidence Act*, R.S.O. 1990, and did not contravene the respondent's Charter rights (*Al-Tar*, *supra*, at para. 40, *Boock (Re)* (2010), 33 OSCB 1589 ("***Boock***") at paras. 106 and 109 and *Sextant Capital Management Inc. (Re)*, (2011) 34 OSCB 5829 ("*Sextant*") at paras. 7, 9, 16 and 24).

[48] Both *Sextant* and *Boock* relied on the Alberta Court of Appeal's decision in *Brost*. In that case, the Court considered whether the Alberta Securities Commission (the "**ASC**") had properly admitted and relied on transcripts of the respondents' compelled examinations and stated:

> The use of the appellants' hearsay statements was not a situation like that in *British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 3, 123 D.L.R. (4th) 462 [*Branch*], where the question was whether the information and evidence acquired by investigators could be used on a derivative basis for a criminal, or quasi-criminal, law purpose. The use made of the content of the investigative interviews conducted in this case was not outside the scope of the very regulatory proceedings for which the authority to investigate was enacted. As noted in Branch, at para. 64, "[a]11 those who enter into [the securities] market know or are deemed to know the rules of the game." Accordingly, they do not have a reasonable expectation that the content of their investigative interviews will not be used for the purposes of the Act.
>
> (*Alberta (Securities Commission) v. Brost* [2008], A.J. No. 1071 at para. 38)

[49] In support of the allegations, Staff relies primarily on the Vanderlaan Affidavit, sworn August 26, 2013 and entered as Exhibit 1 to this written hearing.

[50] As previously noted, none of the Respondents participated in this written hearing. Accordingly, none of the Respondents tendered evidence or made submissions.

[51] In this case, as in *Sextant*, Staff was carrying out the regulatory mandate of the Act in interviewing Zetchus and Kreller (the "**Individual Respondents**"). That evidence was obtained for a *bona fide* purpose under the Act: use at a Commission hearing. Staff submits that the transcripts should be admitted to fulfill that purpose.

[52] Further, Staff submits that the transcripts of evidence given under oath are highly relevant to the matters to be decided in this proceeding. They are the transcripts of the testimony of the Individual Respondents themselves, the central figures in this proceeding and the architects of the impugned transactions. The transcripts directly relate to the conduct in issue.

[53] The Individual Respondents made admissions in the compelled examinations. In giving that testimony, the Individual Respondents were under oath, there was a court reporter present transcribing the statements contemporaneously and the admissions have significant indicia of reliability. When viewed within the context of the evidence as a whole, including the statements and supporting documents provided by investors or potential investors, the records for the Blackwood bank accounts and other documentary evidence, the admissions are consistent and corroborate the evidence as a whole. Staff submits that the admissions are properly admissible and should be accorded significant weight by the Panel.

[54] A panel may consider a respondent's admissions as consistent with and corroborative of the evidence as a whole in making its findings. However, the panel should be skeptical when considering self-serving statements (*Global Partners Capital (Re)* (2011), 33 OSCB 7783 at paras. 34-35 and 38).

[55] Staff submits that the evidence introduced by Staff by means of the Vanderlaan Affidavit is consistent and reliable.

[56] Based on the foregoing, I find that the evidence tendered by Staff is admissible (including the Vanderlaan Affidavit and compelled testimony of the Respondents given under oath) and I base my findings and conclusions on the totality of that evidence. In admitting the transcripts, I would note that my decision to do so might be different in a contested hearing where parties are objecting to the admission of transcripts of compelled testimony.

IV. LAW

[57] In this matter, I must consider allegations and Staff submissions related to:

(a) fraud, contrary to subsection 126.1(b);

(b) unregistered trading, contrary to subsection 25(1); and

(c) the liability of directors and officers.

A. Fraud

[58] Subsection 126.1(b) of the Act prohibits conduct relating to securities that a person or company knows or reasonably ought to know would perpetrate a fraud. Subsection 126.1(b) of the Act states:

> 126.1 Fraud and Market Manipulation – A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities […] that the person or company knows or reasonably ought to know […]
>
> (b) perpetrates a fraud on any person or company.

[59] In previous decisions, this Commission has adopted the interpretation of the fraud provision in provincial securities legislation established by the British Columbia Court of Appeal in *Anderson v. British Columbia (Securities Commission)* (2004), 192 B.C.C.A. 7 ("***Anderson***") at para. 26; leave to appeal to the Supreme Court of Canada denied [2004], S.C.C.A. No. 81 (S.C.C.). In *Anderson*, the British Columbia Court of Appeal held that the fraud provision in the British Columbia *Securities Act*, which is substantially similar to the Ontario provision, requires proof of the same elements of fraud as in a prosecution under the *Criminal Code*. The fraud provision in the Act merely broadens the ambit of liability to those who knew or reasonably ought to have known that a person or company engaged in conduct that perpetrated a fraud. The words "knows or reasonably ought to know" do not diminish the onus on Staff to prove that a person accused of fraud has subjective knowledge of the facts concerning the dishonest or deceitful acts.

[60] The Commission has also referred to the legal test for fraud set out in the leading criminal case of *Théroux* (*R. v. Théroux*, [1993] 2 S.C.R. 5 (S.C.C.) ("***Théroux***") at para. 27). In *Théroux*, the Court summarized the elements of fraud:

> …the *actus reus* of the offence of fraud will be established by proof of:
>
> 1. the prohibited act be it an act of deceit, a falsehood or some other fraudulent means; and
>
> 2. deprivation caused by the prohibited act, which may consist in actual loss or putting of the victim's pecuniary interests at risk.
>
> Correspondingly, the *mens rea* of fraud is established by proof of:
>
> 1. subjective knowledge of the prohibited act; and
>
> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist of knowledge that the victim's pecuniary interest is put at risk).
>
> *Théroux*, *supra*, at para. 27.

[61] Accordingly, the act of fraud is established by two elements: a dishonest act and deprivation. The dishonest act is established by proof of deceit, falsehood or other fraudulent means. A dishonest act may be established by proof of "other fraudulent means." Other fraudulent means encompasses all other means other than deceit or falsehood, which can properly be characterized as dishonest and is "determined objectively, by reference to what a reasonable person would consider to be a dishonest act" (*Théroux*, *supra*, at para. 17). The courts have included within the meaning of "other fraudulent means" the "use of corporate funds for personal purposes, non-disclosure of important facts, exploiting the weakness of another, unauthorized diversion of funds, and unauthorized arrogation of funds or property" (*Théroux*, *supra*, at para. 18). The use of investors' funds in an unauthorized manner has been determined to be "other fraudulent means" (*R. v. Currie*, [1984] O.J. No. 147 (Ont. C.A.) pp. 3-4).

[62] The second element of the *actus reus* of fraud, deprivation, is established by proof of detriment, prejudice or risk of prejudice to the economic interests of the victims caused by the dishonest act. Actual economic loss suffered by the victim may establish deprivation, but it is not required. Prejudice or risk of prejudice to an economic interest is sufficient (*Théroux*, *supra*, at paras. 16-17; *R. v. Olan*, [1978] 2 S.C.R. 1175 at p. 6).

[63] The mental element of fraud is established by proof of subjective knowledge of the prohibited act and subjective knowledge that the prohibited act would have the deprivation of another as a consequence. The subjective knowledge can be inferred from the totality of the evidence (*Théroux*, *supra*, at para. 29).

[64] There is ample evidence in the Vanderlaan Affidavit demonstrating that the Respondents engaged in conduct relating to securities that they knew or reasonably ought to have known would perpetrate a fraud on the Gigapix Shareholders in connection with the Gigapix Scheme.

[65] The Respondents deceived investors with respect to the nature of the Gigapix Scheme and the Gigapix Shareholders suffered actual loss of all amounts they sent to Blackwood.

[66] Zetchus represented Blackwood to be an established firm with a broad and reputable client base. The Blackwood Website described Blackwood as a "specialized boutique firm, serving Venture Capital Companies, Corporate & Institutional Clients, as well as Individual Consumers, Small and Middle Market Businesses and Large Corporations with a full range of Market Data & Trending Metrics Research". The Blackwood Website also indicated, among other things, that Blackwood:

- [serves] more than 2000 consumer and small business relationships;
- offers industry leading support through a suite of innovative services;
- serves clients in more than 20 countries;
- has relationships with U.S. Fortune 500 companies and Fortune Global 500; and
- has a team of analysts that provide specialized data research and trending metrics.

[67] In reality, the evidence shows that Blackwood had only been established in August 2012, had no clients, no business relationships, no analysts, no innovative services and the only deposits, other than those from the Gigapix Shareholders, into the Blackwood bank accounts came from Zetchus's mother and from the sale of a list of potential investors to an individual that Zetchus declined to name in his compelled interview.

[68] The Gigapix Shareholders were all solicited by Blackwood on the basis that Blackwood could arrange for the sale of their shares. The Individual Respondents' own admissions in the compelled testimony acknowledge that the solicitations were based on deceitful representations about Blackwood's business and about its role in the fictitious acquisition of Gigapix shares.

[69] Kreller lied about his name and made representations to the Gigapix Shareholders that he knew or ought to have known were false and misleading. Kreller knew that the salespersons at Blackwood used aliases; he saw the information on the Blackwood website and acknowledged that he knew it was inaccurate. He knew he was not working for an established firm and he knew or ought to have known that by soliciting two of the Gigapix Shareholders on the basis of these fraudulent representations that a deprivation would likely result.

[70] Kreller attempted to mislead the Examiner and others by telling them that Blackwood had acquired shares from a distressed brokerage and offered to sell shares that Blackwood did not in fact own. Kreller also suggested to one potential investor that Blackwood had "insider information" with respect to Barrick and Dundee, when it in fact did not.

[71] Kreller was reckless as to the consequences of his actions, including the risk that perpetuating Zetchus's misrepresentations would result in a deprivation of two of the Gigapix Shareholders.

[72] Staff submits that Zetchus knew that the representations he was making to the Gigapix Shareholders were untrue and that he used deceitful representations to: (i) obtain money from the Gigapix Shareholders purportedly to further a transaction involving the sale of their Gigapix shares; (ii) extract a further payment from one of the Gigapix Shareholders using high pressure tactics to convince her that she had to send a wire payment on an urgent basis as her cheque had not cleared and time was of the essence; (iii) attempt to extract further payments on the basis of fictitious meetings with the Securities and Exchange Commission; and (iv) stall for time by misleading two of the Gigapix Shareholders into thinking they would receive a refund.

[73] Further, Zetchus provided various documents to investors that he created to further the deception that give an air of legitimacy to Blackwood and the purported transactions involving the Gigapix shares, including a letter of intent/guarantee and a client agreement purporting to confirm that the funds sent to Blackwood would be held in trust as a security deposit.

[74] All of the actions and representations made by Zetchus and Kreller were made on behalf of Blackwood. It was Blackwood that purported to carry out the Gigapix Scheme.

[75] Zetchus spent the funds received from the Gigapix Shareholders for his own personal purposes.

[76] Based on the foregoing, Staff has established dishonest acts on the part of Blackwood, Zetchus and Kreller and a deprivation to the Gigapix Shareholders. The evidence establishes subjective awareness and subjective intent on the part of Blackwood, Zetchus and Kreller to perpetrate a fraud.

B. Trading Without Registration

[77] Staff submits that Blackwood, Zetchus and Kreller traded in securities and engaged in and held themselves out as engaging in the business of trading in securities without registration, in circumstances in which no exemption from the dealer registration requirement was available, contrary to section 25 of the Act.

[78] Subsection 25(1) of the Act provides that:

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

i. Trade in a Security

[79] The definition of "trade" or "trading" under subsection 1(1) of the Act is a broad one, which includes any sale or disposition of a security for valuable consideration and any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of such a sale or disposition.

ii. Acts in Furtherance of a Trade

[80] The Commission has adopted a contextual approach to determining whether non-registered individuals or companies have engaged in acts in furtherance of a trade. The contextual approach examines "the totality of the conduct and the setting in which the acts have occurred" and focuses on the effect the acts had on those to whom they were directed (*Re Momentas Corp.* (2006), 29 OSCB 7408 ("***Momentas***") at para. 77).

[81] A variety of conduct has been found by the Commission to constitute acts in furtherance of trade, including:

(a) providing potential investors with subscription agreements to execute;

(b) distributing promotional materials concerning potential investments;

(c) issuing and signing share certificates;

(d) preparing and disseminating materials describing investment programs;

(e) preparing and disseminating forms of agreements for signature by investors;

(f) conducting information sessions with groups of investors;

(g) meeting with individual investors;

(h) accepting investor funds for the purpose of an investment; and

(i) setting up a website that offers securities to investors.

(*Momentas*, *supra*, at para. 80; *Re Lett (*2004), 27 OSCB 3215 ("***Lett***") at paras. 48-51 and 64; *Re Allen* (2005), 28 OSCB 8541 at para. 85; *Re Limelight Entertainment Inc.* (2008), 31 OSCB 1727 ("***Limelight***") at para. 133; *Re First Federal Capital (Canada) Corp.* (2004), 27 OSCB 1603 at para. 45)

[82] Accordingly, steps taken to facilitate the administrative aspects of trading have been found by the Commission to be an act in furtherance of a trade. In *Lett*, investors transferred, deposited or caused to be deposited funds into the bank accounts of the corporate respondents, which had been opened by an individual respondent. The Commission found that the investors' funds were deposited into the bank accounts and accepted by the respondents for purposes of selling securities and held that the respondents had engaged in acts in furtherance of trades (*Lett*, *supra*, at paras. 60 and 64).

iii. Definition of Security

[83] The definition of "security" in subsection 1(1)(e) of the Act includes "a bond, debenture, note or other evidence of indebtedness or a share, stock, unit, unit certificate, participation certificate, certificate of share or interest".

iv. Findings Regarding Trading without Registration

[84] The evidence in this case overwhelmingly establishes that the Respondents engaged in and held themselves and itself out as engaging in the business of trading in securities.

[85] I find that the evidence establishes that:

(a) Blackwood was held out, through the Blackwood Website and the representations to members of the public by Zetchus and Kreller, as an established firm engaged in the business of trading in securities;

(b) the Gigapix Shareholders were solicited by the Respondents to: (i) send funds to purportedly open trading accounts with Blackwood; (ii) purchase shares in two publicly listed companies: Barrick and Dundee, and one private company; and (iii) sell shares they held in Gigapix, on the basis of deceitful representations made by the Respondents in connection with that solicitation;

(c) the Respondents sent emails and other documents to the Gigapix Shareholders in support of their solicitations that purported to, among other things, confirm the terms of transactions involving the purchase or sale of securities, provide deposit instructions to the investors, record the investors' investment preferences, provide Blackwood with authority to undertake trades on the investors' behalf, and promote transactions involving the sale of securities;

(d) Blackwood received funds from the Gigapix Shareholders in connection with the purported transactions involving the sale of their Gigapix shares and Zetchus and Kreller profited from their conduct; and

(e) Kreller worked on a commission basis and received a commission for one of the transactions.

[86] The Respondents were not registered with the Commission in any capacity during the Material Time.

[87] Based on the foregoing, I find that the Respondents engaged in and held themselves out as engaging in the business of trading in securities without registration under the Act.

[88] Staff submits that in the breaching of section 25 of the Act, the Respondents engaged in the deceitful conduct referred to in paragraphs [66] to [74] of these reasons. I find that conduct of the Respondents to have been contrary to the public interest.

v. Availability of Exemptions

[89] Once Staff has established that a respondent has engaged in an activity for which registration or a prospectus exemption is required, the onus is on the respondent to prove facts establishing the availability of an exemption (*Limelight*, *supra*, at para. 142). The Respondents did not appear on this matter and they have not established the availability of any such exemption.

C. Directors and Officers

[90] Section 129.2 of the Act provides that:

> 129.2 Directors and Officers – 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 of person who authorized, permitted or acquiesced in the noncompliance 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 had been made against the company or person under section 127.

[91] The threshold for a finding of liability against a director or officer under section 129.2 of the Act is low. Merely acquiescing in the conduct or activity in question will attract liability. As stated in *Momentas*:

> 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 [*sic*] the conduct or activity in question will satisfy the requirement of liability. The degree of knowledge of

> [*sic*] intention found in each of the terms "authorize", "permit" and "acquiesce" varies significantly. "Acquiesce" means to agree or consent quietly without protest. "Permit" means to allow, consent, tolerate, give permission, particularly in writing. "Authorize" means to give official approval or permission, to give power or authority or to give justification.

(*Momentas*, *supra*, at para. 118)

[92] A "director" is defined in subsection 1(1) of the Act to include "a director of a company or an individual performing a similar function or occupying a similar position for any person."

[93] Zetchus was the sole director and directing mind of Blackwood during the Material Time and he authorized, permitted and acquiesced in all the conduct undertaken on behalf of Blackwood. Among other things, the evidence shows that Zetchus:

(a) incorporated Blackwood;

(b) rented the office space on behalf of Blackwood and hired salespersons;

(c) supervised Kreller;

(d) created the Blackwood Website;

(e) opened the Blackwood bank accounts and was the sole signatory on those accounts;

(f) solicited the Examiner; and

(g) misappropriated the funds that the Gigapix Shareholders sent to Blackwood.

[94] Zetchus was a director and officer of Blackwood and I find that he authorized, permitted and acquiesced in Blackwood's non-compliance with Ontario securities law described in these reasons. Accordingly, he is deemed pursuant to section 129.2 of the Act to have also failed to comply with Ontario securities law.

V. CONCLUSION

[95] Based on the foregoing I find that:

(a) each of the Respondents engaged in and held themselves out as engaging in the business of trading in securities without registration in circumstances in which no exemption from registration was available, contrary to section 25 of the Act;

(b) each of the Respondents directly or indirectly engaged in or participated in an act, practice or course of conduct relating to securities which they knew, or reasonably ought to have known, perpetrated a fraud on investors, contrary to subsection 126.1(b) of the Act;

(c) Zetchus authorized, permitted or acquiesced in Blackwood's non-compliance with Ontario securities law and is therefore deemed under section 129.2 of the Act to also have not complied with Ontario securities law; and

(d) each of the Respondents' conduct was contrary to the public interest and harmful to the integrity of the Ontario capital markets.

[96] Staff should contact the Secretary of the Commission within 30 days of this decision to schedule a sanctions hearing.

DATED at TORONTO this 17th day of December, 2013.

"James E. A. Turner"

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

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

AND

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

REASONS AND DECISION ON SANCTIONS AND COSTS WITH RESPECT TO MEDRA

Hearing:	August 12, 2013		
Decision:	December 17, 2013		
Panel:	Vern Krishna, C.M., Q.C.		Commissioner and Chair of the Panel
Counsel:	Catherine Weiler Michelle Vaillancourt	–	For Staff of the Commission
		–	No one appeared on behalf of Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)

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REASONS AND DECISION ON SANCTIONS AND COSTS WITH RESPECT TO MEDRA

I. BACKGROUND

A Introduction

[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 it is in the public interest to make an order with respect to sanctions and costs against Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation) ("**Medra**" or the "**Respondent**").

[2] Prior to the hearing on the merits (the "**Merits Hearing**"), Vincent Ciccone ("**Ciccone**"), who was also named as a respondent in this matter, settled with Enforcement Staff of the Commission ("**Staff**"). On September 7, 2012, the Commission approved a settlement agreement between Staff and Ciccone (*Re Ciccone* (2012), 35 O.S.C.B. 8417 (the "**Ciccone Settlement**"); *Re Ciccone* (2012) 35 O.S.C.B. 8413 (the "**Ciccone Settlement Order**")).

[3] The Merits Hearing commenced as an oral hearing on September 5, 2012, was adjourned from time to time to address disclosure issues and Staff's request to convert the hearing to a written hearing, continued as a written hearing on December 3, 2012 and concluded as an oral hearing on April 2, 2013. The decision on the merits was issued on June 18, 2013 (*Re Ciccone* (2013), 36 O.S.C.B. 6487 (the "**Merits Decision**")).

[4] On June 18, 2013, an order was issued ordering that a hearing to determine sanctions and costs would be held on July 18, 2013. By order of the Commission dated July 2, 2013, the date for the hearing to determine sanctions and costs was changed to August 12, 2013.

[5] On August 12, 2013, a hearing was held to consider submissions regarding sanctions and costs against the Respondent (the "**Hearing**"). Staff appeared at the Hearing and made oral submissions, which were supported by:

- written submissions, dated July 12, 2013 ("**Staff's Written Submissions**"), accompanied with a Brief of Authorities;
- the Affidavit of Michelle Spain sworn July 11, 2013 (the "**Affidavit of Michelle Spain**"), regarding the costs Staff seeks and is appended with a Bill of Costs (the "**Bill of Costs**");
- the Affidavit of Sharon Nicolaides sworn July 12, 2013 (the "**Affidavit of Sharon Nicolaides**") regarding service on the Respondent of Staff's Written Submissions;
- an e-mail sent from Staff to the Registrar on August 9, 2013, regarding the disgorgement amount Staff seeks;
- a copy of the Commission's sanctions and costs decision in *Re Shallow Oil & Gas Inc.* (2013), 36 O.S.C.B. 191 ("***Shallow Oil***"); and
- a copy of the schedules of disbursements from Staff's closing submissions from the Merits Hearing (the "**Disbursement Schedules**").

[6] No one appeared on behalf of the Respondent for either the Merits Hearing or the Hearing. The Respondent also did not file or serve any submissions on sanctions and costs. Based on the Affidavit of Sharon Nicolaides, I am satisfied that the Respondent received notice of the Hearing and that I may proceed in the absence of the Respondent, in accordance with subsection 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, and Rule 7.1 of the Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the "***Rules of Procedure***").

B. The Merits Decision

[7] In the Merits Decision, I concluded that between April 2008 and December 2009 (the "**Material Time**"):

(a) Medra traded, and engaged in the business of trading, securities without registration, contrary to subsection 25(1)(a) of the Act, as that subsection existed prior to September 28, 2009, and subsection 25(1), on and after September 28, 2009, and contrary to the public interest;

(b) Medra engaged in a distribution of securities without filing a prospectus, contrary to subsection 53(1) of the Act and contrary to the public interest;

(c) Medra engaged in fraud, contrary to section 126.1(b) of the Act and contrary to the public interest; and

(d) Medra engaged in a course of conduct related to its securities with a view of creating a misleading appearance of trading activity or an artificial price of those securities, contrary to the public interest.

(Merits Decision, supra at para. 86)

[8] At the Merits Hearing, Ciccone described Medra as being in the business of raising funds for investments in resort properties in Mexico, Cancun. Medra had two projects in Cancun, Mexico (together, the "**Projects**"). During the Material Time, Ciccone was the Chief Executive Officer and President of Medra, and, subsequently, Jeffery Jensen (a.k.a. Jeffery Jensen Anuth, "**Jensen**") assumed control of the company. Ciccone was also the sole director and officer of Ciccone Group Inc. ("**Ciccone Group**").

[9] I found that Medra "sold shares to more than 100 or 200 investors and raised a total of approximately $7,770,478" in consideration for the shares that were sold to investors ("**Medra Shares**") (Merits Decision, *supra* at para. 58).

II. SANCTIONS AND COSTS REQUESTED BY STAFF

[10] Staff has requested that the following sanctions orders and costs orders be made against Medra:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, that Medra permanently cease trading securities;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, that the acquisition of any securities by Medra is prohibited permanently;

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

(d) pursuant to paragraph 6 of subsection 127(1) of the Act, that Medra be reprimanded;

(e) pursuant to paragraph 8.5 of subsection 127(1) of the Act, that Medra be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(f) pursuant to paragraph 9 of subsection 127(1) of the Act, that Medra be required to pay an administrative penalty of $400,000 for its failure to comply with Ontario securities law;

(g) pursuant to paragraph 10 of subsection 127(1) of the Act, that Medra disgorge to the Commission $7,431,305[1] as a result of its non-compliance with Ontario securities law; and

(h) pursuant to subsections 127.1(1) and (2) of the Act, that Medra be ordered to pay the costs of the Merits Hearing.

(Staff's Written Submissions, *supra* at para. 12)

[11] Staff submits that its requested sanctions and costs orders are appropriate in view of Medra's very serious misconduct (Staff's Written Submissions, *supra* at para. 12). Staff submits that the sanctions it proposes are proportionate to Medra's conduct and will deter Medra and similar like-minded respondents from engaging in such conduct in the future, provided that meaningful consequences are attached to Medra's conduct.

[12] As previously discussed, no submissions on sanctions and costs were provided by the Respondent.

III. SANCTIONS ANALYSIS

A. The Law on Sanctions

[13] The Commission's mandate, set out in section 1.1 of the Act, is: (a) to provide protection to investors from unfair, improper or fraudulent practices; and (b) to foster fair and efficient capital markets and confidence in capital markets. In pursuing the purposes of the Act, the Commission must have regard to the principles described in subsection 2.1 of the Act, namely:

(a) requirements for timely, accurate and efficient disclosure of information;

(b) restrictions on fraudulent and unfair market practices and procedures; and

(c) requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

[14] Subsection 127(1) of the Act provides that the Commission may make certain orders in the public interest. Where market conduct engages the animating principles of the Act, the Commission may exercise its public interest jurisdiction even if the Commission does not conclude that an abuse has occurred (*Re Biovail Corp.* (2010), 33 O.S.C.B. 8914 ("***Re Biovail Corp.***") at para. 382). In exercising its public interest jurisdiction, the Commission must act in a protective and preventative manner, as stated by the Commission in *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 ("***Mithras***"):

[1] On August 9, 2013, Staff sent an e-mail to the Registrar of the Commission and to Jensen, who, according to Staff, is the current president of Medra. In the e-mail, Staff corrected the disgorgement amount it seeks from an amount of $7,542,434 to $7,431,305. The correction made to the disgorgement order amount was also discussed by Staff in its oral submissions at the Hearing. Please refer to paragraph 41, below, for more discussion on the disgorgement amount requested by Staff.

> … We are not here to punish past conduct; that is the role of the courts … We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient.
>
> (*Mithras*, *supra* at pp. 1610-1611)

[15] The Supreme Court of Canada has described the Commission's public interest jurisdiction as follows:

> …the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the OSC under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets.
>
> (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 ("***Asbestos***") at para. 43)

[16] In determining appropriate sanctions, the Commission has identified a number of factors to be considered when determining the appropriate sanctions to be imposed. They include:

(a) the seriousness of the allegations proved;

(b) the respondent's experience in the marketplace;

(c) the level of a respondents' activity in the marketplace;

(d) the size of any profit (or loss avoided) from the illegal conduct;

(e) the restraint any sanctions may have on the ability of a respondent to participate without check in the capital markets;

(f) the size of any financial sanction or voluntary payment;

(g) the restraint any sanction may have on the ability of the respondent to participate without check in the capital markets; and

(h) any mitigating factors.

(*Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746; *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 ("***M.C.J.C. Holdings Inc.***") at 1134-1136)

[17] General deterrence is an important factor in imposing sanctions and the Supreme Court of Canada has stated that "… it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative" (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60). The Commission will also consider the specific circumstances of each case and ensure that sanctions are proportionate to those circumstances (*M.C.J.C. Holdings Inc.*, *supra* at 1134).

B. Application of the Factors

[18] The sanctions imposed against the Respondent in this matter must protect both investors and the capital markets in Ontario. These sanctions must also be fair and proportional to the Respondent's misconduct. Having regard to the factors that are summarized in paragraphs 16 and 17 above, I consider the following factors to be of particular relevance:

1. The Seriousness of the Allegations

[19] I agree with Staff's submission that Medra's conduct harmed the integrity of, and investor confidence in, the capital markets. The conduct of the Respondent was very serious. The Respondent's misconduct not only was found to be contrary to the public interest, but also led to multiple contraventions of the Act over a period of 21 months. During the Material Time, Medra was not registered to trade securities under the Act, the securities in question were not previously issued, no prospectuses were filed and no exemptions from registration or prospectus requirements were available to Medra (Merits Decision, *supra* at paras. 59, 64, 66 and 70).

[20] In the Merits Decision, I found that Medra engaged in fraud, contrary to subsection 126.1(b) of the Act, by making false and misleading statements to investors and by engaging in acts of deceit or falsehood (Merits Decision, *supra* at paras. 79 and

82). Funds received from the sale of Medra Shares from treasury were deposited into two accounts for Medra at TD Financial Group (together, the "**Medra Accounts**"). Some investor funds were transferred to accounts held in the name of Ciccone Group (the "**Ciccone Group Accounts**"), which were then dispersed for various uses, including: investment with Axcess Automation LLC; and, transfers to Ciccone's personal accounts at TD Financial Group (the "**Ciccone Personal Accounts**"), which were then transferred to Ciccone's trading accounts at TD Waterhouse (the "**Ciccone Trading Accounts**"). I found that Medra, through its directing mind Ciccone, knew that the representations to investors regarding the use of funds was false, misleading and would cause deprivation to investors by exposing them to risks of loss that were not contemplated by them (Merits Decision, *supra* at para. 81).

[21] Moreover, the evidence established that Medra engaged in conduct related to its securities with a view to create a misleading appearance of trading activity or an artificial price for those securities. Ciccone, who was Medra's directing mind during the Material Time, purchased Medra Shares on the Pink Sheets LLC in the over-the-counter securities market in the U.S. (the "**Pink Sheets**") using funds raised from the distribution of Medra Shares, and accumulated a fairly sizable holding of such shares as a result. I found that the purchase of Medra Shares by Ciccone using funds that were raised from the distribution of Medra Shares "was done with a view to increase the price of Medra Shares and not for any legitimate purpose" (Merits Decision, *supra* at para. 85).

[22] At the Merits Hearing, the evidence of Michael Ho ("**Ho**"), a forensic account with the Enforcement Branch of the Commission, could not match all of the raised funds to Medra's list of shareholders. Staff also noted that it was not possible to directly identify the ultimate use of the majority of investor funds, due to the commingling of funds. However, in the Merits Decision, I accepted Ho's explanation that the name of a depositor is not always provided in the supporting documents of the bank and that the use of some investor funds were not applied to the purchase of properties for the Projects. As such, I found that Medra received a total of approximately $7,770,478 through its non-compliance of the Act (Merits Decision, *supra* at para. 58).

2. Medra's Experience and Level of Activity in the Capital Markets

[23] The level of the Respondent's activities in the marketplace and the amounts raised by the Respondent were significant. As referred to above, Medra's misconduct took place over a period of 21 months and resulted in approximately $7.7 million raised through the sale of Medra shares. Despite its high level of activity in the capital markets, there was no record presented to me at the Merits Hearing that Medra had been a reporting issuer in Ontario, filed a prospectus with the Commission or was registered under the Act during the Material Time.

3. The Size of Any Profit or Loss Avoided from Illegal Conduct

[24] Medra must be accountable for its misuse of investor funds during the Material Time. In relation to the flow of investor funds, the evidence established that some of the funds raised from investors were not used to purchase properties for the Projects, as represented to investors, namely:

(a) on April 24, 2008, $800,000 was transferred from the Medra Accounts to the Ciccone Group Accounts and US$800,000 was transferred to an account in the name of Axcess Automation LLC;

(b) from November 2008 to May 2009, amounts totaling $595,000 and US$650,000 were transferred from the Ciccone Group Accounts to the Ciccone Personal Accounts;

(c) from November 2008 to June 2009, amounts totaling $521,000 and US$757,000 were transferred from the Ciccone Personal Accounts to the Ciccone Trading Accounts;

(d) on a net basis, amounts totaling $913,612.18 and US$142,621.41 were transferred from the Medra Accounts to the Ciccone Group Accounts; and

(e) from January 2, 2009 to October 21, 2009, Ciccone spent over $1.5 million to purchase Medra Shares on the Pink Sheets through the Ciccone Trading Accounts.

(Merits Decision, *supra* at paras. 38, 43, 77 and 78)

[25] The Respondent raised approximately $7.7 million from investors in breach of the Act and contrary to the public interest. Additionally, the misuse of investor funds was not disclosed to investors and Medra knew that its fraudulent actions would cause deprivation to its investors.

4. Specific and General Deterrence

[26] Given the seriousness of its conduct, orders removing Medra permanently from the capital markets and imposing a significant administrative penalty are proportionate to its misconduct. These sanctions will not only reflect the harm done to investors, they will also send a message to Medra and to like-minded individuals that involvement in these types of illegal and fraudulent schemes will result in severe sanctions. I agree with Staff's submission that the sanctions imposed must also deter foreign companies that are similarly situated to Medra to show that similar conduct will not be tolerated in Ontario's capital markets (Staff's Written Submissions, *supra* at para. 25).

5. Sanctions of the Ciccone Settlement

[27] The Commission has held that the overall financial sanctions imposed on each respondent is a relevant consideration in imposing administrative penalties and disgorgement (*Re Sabourin* (2010), 33 O.S.C.B. 5299 ("***Sabourin***") at para. 59). In the Ciccone Settlement, Ciccone agreed to permanent market and trading bans and was reprimanded for his misconduct. In terms of financial sanctions and orders, Ciccone agreed to pay an administrative penalty of $750,000, a disgorgement order of $15,497,586 and costs of $100,000. The disgorgement order related to four distributions of securities, one of which involved the distribution of Medra Shares and units of Medra's Founding Partners Program (collectively, "**Medra Securities**"). In calculating the total disgorgement order, $8,395,778 was attributed to the distribution of Medra Securities (the Ciccone Settlement, *supra* at para. 45).

[28] I note that the monetary sanctions of the Ciccone Settlement reflect Ciccone's acknowledgement of wrongdoing and his cooperation with Staff; those mitigating factors are not present for Medra. However, the Ciccone Settlement involved multiple illegal distributions of securities, which spanned over a longer time period than the Material Time involved in this case.

[29] Additionally, the Ciccone Settlement involved the sale of Medra Securities and not just the sale of Medra Shares. In its written submissions for the Merits Hearing, Staff withdrew its allegation that Medra sold units of Medra's Founding Partners Program to at least 15 investors. The deposits relating to the purchase of units of Medra's Founding Partners Program totaled US$1,279,000 (Merits Decision, *supra* at para. 45 and footnote 2).

6. Mitigating Factors

[30] I agree with Staff's submission that there are no mitigating factors for the Respondent in this case.

C. Market and Trading Bans

[31] The Supreme Court of Canada has held that in exercising its public interest powers under subsection 127(1) of the Act, the Commission must be mindful that, "s. 127(1) is a regulatory provision. The sanctions under the section are preventive in nature and prospective in orientation" (*Asbestos*, *supra* at para. 45). The Respondent's misconduct led to multiple breaches of the Act, including fraud, and approximately $7.7 million was raised through the illegal distribution of Medra Shares over a sustained period of 21 months. Medra's past actions demonstrate that it will pose a considerable future risk if it is permitted to continue to operate in the capital markets of Ontario.

[32] Taking into account the sanctioning factors listed in paragraphs 16 and 17, above, and the circumstances of this case, I find that it is in the public interest to permanently restrain the Respondent from any future market participation. I conclude that it is in the public interest to impose permanent trading, acquisition and exemption bans on Medra and permanently prohibit Medra from becoming or acting as a registrant, as an investment fund manager or as a promoter. I further find it appropriate to reprimand Medra, in order to affirm that the Commission will not tolerate the illegal and fraudulent conduct engaged by Medra in the past or in the future. These orders will serve to remove the Respondent from the capital markets and to protect the investing public.

D. Administrative Penalty

[33] The Commission's public interest jurisdiction allows it to impose sanctions under section 127 of the Act, even if there is no breach of Ontario securities law or any conduct inconsistent with a policy statement; however, this public interest jurisdiction must be exercised with some caution and restraint (*Re Biovail Corp.*, *supra* at para. 374). Under paragraph 9 of subsection 127(1) of the Act, I am entitled to impose an administrative penalty of not more than $1 million in connection with each failure of the Respondent to comply with the Act. For Medra's three breaches of the Act, the maximum penalty is $3 million.

[34] Staff requests an administrative penalty of $400,000, considering the significant disgorgement order it requests at $7,431,305 (Transcript, Hearing, p. 43, line 22 to p. 44, line 6). Staff relies on the Commission's decisions in *Re Borealis International Inc.* (2011), 34 O.S.C.B. 5261 ("***Borealis***") and *Sabourin* to demonstrate that the Commission has ordered administrative penalties against both the directing minds of corporations and corporate respondents in cases involving unregistered trading, illegal distribution and fraud or conduct contrary to the public interest. I have reviewed these cases in

considering the range of administrative penalties that have been ordered by the Commission against respondents involved in similar misconduct.

[35] I agree with Staff's submission that the circumstances of this case warrant a significant administrative penalty and that such a penalty will achieve specific and general deterrence. I accept that the administrative penalty requested by Staff is appropriate and proportional to the circumstances in this case and is within the range of penalties ordered by the Commission against respondents involved in similar misconduct. I therefore order that Medra pay an administrative penalty in the amount of $400,000, and that the amounts paid to the Commission in satisfaction of the administrative penalty order is to be designated for allocation or for use by the Commission, pursuant to subsection 3.4(2)(b) of the Act.

E. Disgorgement

1. The Law on Disgorgement

[36] Pursuant to paragraph 10 of subsection 127(1) of the Act, the Commission may order a person or company who has not complied with Ontario securities law to disgorge to the Commission "any amounts obtained as a result of the non-compliance" with Ontario securities law. This Commission has described the purpose of the disgorgement remedy as follows:

> … [T]he objective of the disgorgement remedy is to deprive a wrongdoer of ill-gotten gains, reflecting the view that it would be inappropriate for those who contravene Ontario securities law to be able to retain any illegally obtained profits …
>
> …
>
> … [T] the legal question is not whether a respondent "profited" from the illegal activity but whether the respondent "obtained amounts" as a result of that activity. In our view, this distinction is made in the Act to make clear that all money illegally obtained from investors can be ordered to be disgorged, not just the "profit" made as a result of the activity …
>
> (*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 ("***Limelight***") at paras. 47 and 49)

[37] In *Limelight*, the Commission held that it should consider the following non-exhaustive list of factors when contemplating a disgorgement order, in addition to the general factors for sanctioning:

(a) whether an amount was obtained by a respondent as a result of non-compliance with the Act;

(b) the seriousness of the misconduct and the breaches of the Act and whether investors were seriously harmed;

(c) whether the amount that a respondent obtained as a result of non-compliance with the Act is reasonably ascertainable;

(d) whether the individuals who suffered losses are likely to be able to obtain redress; and

(e) the deterrent effect of a disgorgement order on the respondents and other market participants.

(*Limelight*, *supra* at para. 52)

[38] Staff has the onus of proving, on a balance of probabilities, the amounts obtained by a respondent as a result of its non-compliance with the Act.

2. Staff's Submissions on Disgorgement

[39] Staff submits that the total amount obtained by Medra from investors, less the amounts repaid to investors, should be disgorged based on consideration of the following factors:

(a) Medra obtained approximately $7.7 million as a result of its non-compliance with Ontario securities law;

(b) Medra's conduct was very serious and resulted in significant harm to investors;

(c) the amounts Medra obtained as a result of its non-compliance are reasonably ascertainable;

(d) the majority of the 100 to 200 investors have not been repaid and are unlikely ever to recover their funds; and

(e) a disgorgement order in this case would be an effective specific and general deterrent.

(Staff's Written Submissions, *supra* at para. 30)

[40] Staff submits that there is no clear evidence that Medra made any payouts to investors. However, Staff informed me about two disbursements: one disbursement was made from the Medra Accounts that may have been an investor payout, as the recipient appeared on the Medra shareholder list; the second disbursement may have been made in relation to the Projects in Mexico, as the receiving individual was located in Puerto Aventura, Mexico. The amounts of these two disbursements were CDN $3,643.50 and USD $200,000, respectively.

[41] On August 9, 2013, the Registrar of the Commission received an e-mail from Staff (the "**August 9 E-mail**") stating that the latter amount of USD $200,000 was included in error. The correct reference should have been to a larger amount of USD $317,000. This amount related to payments made out of Medra's U.S. bank account to persons whose names appeared on the Founders Package list and whose names may also have appeared on Medra's shareholder list. To demonstrate how this number was reached, Staff presented me with a copy of the Disbursement Schedules at the Hearing. Staff indicated in the August 9 E-mail that it is possible that some or all of these payments may have been made for the redemptions of Medra Shares, and, as such, the amount of USD $317,000 (i.e., CDN $335,529.50) should be deducted from the amount of CDN $7,770,478, being the total amount raised from the purchase of Medra Shares. As a result, the total disgorgement amount Staff requests is CDN $7,431,305.

[42] Staff submits that the Ciccone Settlement related to largely the same conduct that was at issue in the Merits Hearing with respect to Medra, but that the time periods were slightly different and the amounts included in the disgorgement order included the amounts raised from both the distribution of Medra Shares and from the Founding Partners Program (Transcript, Hearing, p. 18, ll. 1-12). In the Ciccone Settlement, the net amount attributed to the distribution of Medra Securities was $8,395,778 (the Ciccone Settlement, *supra* at para. 45). Staff now seeks an order for disgorgement of $7,431,305 from Medra itself, not on a joint and several basis with Ciccone. If this request is granted, the amount of the combined disgorgement orders would exceed the amount obtained by Ciccone and Medra as a result of their non-compliance with Ontario securities law.

[43] Staff's request raises the question whether the Commission has authority to make disgorgement orders that exceed the amount actually obtained as a result of the non-compliance with Ontario securities that gave rise to the proceeding. Staff relies on *Shallow Oil* to demonstrate that the Commission has imposed such disgorgement orders in the past. Staff took me to paragraph 54 of *Shallow Oil*, *supra* which states:

> Staff suggested that I should deduct from any disgorgement order the amount of $49,600 representing the aggregate amount of the other disgorgement orders made by the Commission against other participants involved in the Shallow Oil stock fraud. I am not prepared to do that. The Respondents obtained $205,000 from investors in contravention of the Act and should, in the circumstances, be ordered to disgorge the full amount so obtained. In my view, in imposing a disgorgement order, I am not required to take account of what the Respondents may have done with the moneys they obtained from investors, including whether the use of such moneys forms the basis for disgorgement orders against other persons involved in the same investment scheme. In my view, that conclusion is consistent with the Commission's decisions in *Re Limelight Entertainment Inc.* (2008), 31 OSCB 12030 and *Re Sabourin* (2010), 33 OSCB 5299. I am not suggesting that in other circumstances it may not be appropriate to reduce the amount of a disgorgement order in light of other relevant orders made by the Commission or other regulatory authorities. That is an issue for determination by the Commission panel imposing the particular sanctions. I am simply deciding in this case that doing so is not legally required and is not appropriate in these circumstances.

[44] Staff submits, based on *Shallow Oil*, that when there is a settling respondent and a non-settling respondent, and both parties are equally culpable for the misconduct at issue, the non-settling respondents' disgorgement order should not, or need not, take into account the settling respondents' disgorgement order (Transcript, Hearing, p. 41, ll. 18-23).

[45] Staff also relied on *Sabourin* as a precedent for making disgorgement orders against a number of respondents that, in total, exceeded the amount obtained from investors, although the Commission sought to avoid double-counting in that case (*Sabourin*, *supra* at paras. 70-72; Transcript, Hearing, p. 36, line 4 to p. 38 , line 18).

3. Analysis on Disgorgement

[46] Medra did not generate revenue from its business. Rather, the evidence demonstrated that the majority of the funds in the Medra Accounts came from the illegal distribution of Medra Shares from treasury (Merits Decision, *supra* at para. 35). Therefore, I am satisfied that, on a balance of probabilities, the $7,770,478 raised from the sale of Medra Shares was obtained

by Medra as a result of its non-compliance with the Act. I find that it is in the public interest that Medra be ordered to disgorge the entire amount it obtained as a result of its non-compliance with the Act.

[47] However, as Ciccone was ordered, in the Ciccone Settlement, to disgorge the amount obtained by Medra, I prefer not to make another disgorgement order, this time against Medra, with respect to the same amount obtained as a result of the same non-compliance by the parties.

[48] The circumstances in this case are distinguishable from both *Sabourin* and *Shallow Oil*. In particular, this matter involves a settlement that dealt with multiple distributions of securities, only one of which (the distribution of Medra Shares) is at issue before me. The Ciccone Settlement did not stipulate how the total disgorgement order of $15,497,586 would be allocated to each of the four distributions. I also note that the amount of the disgorgement order against Ciccone ($8,395,778) is greater than the amount Staff requests against Medra ($7,431,405).

[49] Ciccone was the President, Chief Executive Officer and, most importantly, the directing mind of Medra during the Material Time. It was through the actions of Ciccone that Medra was found to be liable for breaching the Act and for acting contrary to the public interest. In these circumstances, and consistent with my findings in the Merits Decision, I find no reason to treat Ciccone and Medra as separate entities that warrant separate disgorgement orders to be made against them. Staff did not provide sufficient evidence for me to do so, nor has it provided any evidence to show that Medra illegally obtained funds that are not covered by the disgorgement amount in the Ciccone Settlement Order.

[50] The authority granted by paragraph 10 of subsection 127(1) is limited. "If a person or company has not complied with Ontario securities law," the Commission has authority to order "the person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance." Where funds flow through multiple persons and companies, Staff bears the onus of proving the amount obtained by each person or company against whom the disgorgement order is requested. In this case, I find that the amounts obtained by Medra through its non-compliance have been accounted for in the disgorgement amount ordered against Ciccone in the Ciccone Settlement Order.

[51] I note that the circumstances in this case are unique. If Staff and Ciccone had not entered into the Ciccone Settlement, this would likely have been an appropriate case for an order that Ciccone and Medra disgorge the amount they obtained as a result of their distribution of the Medra Shares on a joint and several basis. Alternatively, if the disgorgement order in the Ciccone Settlement was reduced by the amount that Medra allegedly obtained as a result of the illegal distribution of Medra Shares, in light of the ongoing proceeding against Medra, which did not settle, I may have been prepared to make the disgorgement order requested against Medra. However, in the circumstances before me now, I am not persuaded to make the disgorgement order sought by Staff, or that it is in the public interest for me to do so.

[52] Consequently, I dismiss Staff's request for a disgorgement order of $7,431,305 against Medra.

III. COSTS ANALYSIS

[53] Pursuant to section 127.1 of the Act, the Commission has the discretion to order a person or company to pay the costs of an investigation or hearing if the Commission is satisfied that the person or company has not complied with Ontario securities law or has not acted in the public interest.

[54] Staff seeks an order for the payment of $69,528.75 for the costs of the Merits Hearing. Staff prepared and filed the Bill of Costs for the period of September 8, 2012 to June 24, 2013. Staff began calculating its Bill of Costs after September 7, 2012, which was the date of the Ciccone Settlement Order. Staff's Bill of Costs reflects the time spent by two litigation employees, an investigation employee and a law clerk. The Bill of Costs did not include any disbursements, time spent by assistants or law students, time spent in respect of this Hearing or any investigation time up to and including September 7, 2012. More specifically, Staff did not include any time before September 7, 2012 with respect to Allister Field, an investigator, or Amy Tse, a forensic accountant with the Enforcement Branch of the Commission. The claim for costs have been calculated by reference to the hourly rates approved by the Commission in other cases (for example, *Re XI Biofuels Inc.* (2010), 33 O.S.C.B. 10963 at paras. 82 and 103) and by reference to the *Rules of Civil Procedure*[2] in relation to the time requested for the law clerk in this matter.

[55] Although it was served with the Affidavit of Michelle Spain, which appended the Bill of Costs, the Respondent did not serve a response setting out any objections to Staff's request for costs, pursuant to Rule 18.1(4) of the *Rules of Procedure*.

[56] In *Re Ochnik* (2006), 29 O.S.C.B. 5917 ("***Ochnik***"), the panel identified criteria that was considered by the Commission in past decisions when awarding costs:

[2] Costs Subcommittee of the Civil Rules of Procedure Committee, "Information for the Profession" (2005), online: Court of Appeal for Ontario <http://www.ontariocourts.ca/coa/en/notices/adminadv/rates.htm>.

(a) failure by Staff to provide early notice of an intention to seek costs may result in a reduced costs award;

(b) the seriousness of the charges and the conduct of the parties;

(c) abuse of process by a respondent may be a factor in increasing the amount of costs;

(d) the greater investigative/hearing costs that the specific conduct of a respondent tends to require in the case; and

(e) the reasonableness of the costs requested by Staff.

(*Ochnik*, *supra* at para. 29)

[57] Applying the factors from Ochnik and the factors listed in Rule 18.2 of the Rules of Procedure, I find the following factors to be relevant in imposing a costs order against Medra:

(a) an Amended Notice of Hearing was issued by the Commission on May 3, 2012 to notify the respondents in this matter that Staff would be seeking investigation and hearing costs against them;

(b) serious allegations were made by Staff against Medra in its Amended Statement of Allegations, dated May 2, 2012, and dealt with conduct that involved a substantial amount of investor funds and led to multiple contraventions of the Act, including fraud, and conduct contrary to the public interest;

(c) Staff has taken a conservative approach in assessing the amount of costs, particularly since investigative costs prior to September 8, 2012 are not included; and

(d) this matter involved preliminary issues at the Merits Hearing related to Staff's disclosure of materials to Medra and Staff's request to proceed by way of a written hearing.

[58] Having reviewed Staff's Bill of Costs, heard Staff's oral submissions at the Hearing and considered the relevant factors in *Ochnik* and Rule 18.2 of *Rules of Procedure*, I agree with Staff that the amount of $69,528.75 is appropriate, conservative and reasonable, given Medra's serious misconduct. As such, I will order that Medra pay the cost of the Merits Hearing in the amount of $69,528.75.

IV. CONCLUSION

[59] For the reasons set out above, I find that it is necessary to protect investors in Ontario and the integrity of Ontario's capital markets, and that it is in the public interest, to make the orders set out below. In my view, the sanctions imposed are proportionate to the circumstances and the conduct of Medra and will deter the Respondent and other like-minded individuals from engaging in similar misconduct in the capital markets in the future.

[60] I will issue a separate order giving effect to my decision on sanctions and costs as follows:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, that Medra shall permanently cease trading securities;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, that the acquisition of any securities by Medra shall be prohibited permanently;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law shall not apply to Medra permanently;

(d) pursuant to paragraph 6 of subsection 127(1) of the Act, that Medra is reprimanded;

(e) pursuant to paragraph 8.5 of subsection 127(1) of the Act, that Medra shall be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(f) pursuant to paragraph 9 of subsection 127(1) of the Act, that Medra shall be required to pay an administrative penalty of $400,000 for its failure to comply with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the Act; and

(g) pursuant to subsections 127.1(1) and (2) of the Act, that Medra shall be ordered to pay $69,528.75 for the costs of the Merits Hearing.

[61] I dismiss Staff's request for a disgorgement order against Medra for $7,431,305.

DATED at Toronto this 17th day of December, 2013.

"Vern Krishna"

3.1.3 Northern Securities Inc. et al. – ss. 8(3), 21.7

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

AND

IN THE MATTER OF
NORTHERN SECURITIES INC., VICTOR PHILIP ALBOINI,
DOUGLAS MICHAEL CHORNOBOY AND FREDERICK EARL VANCE

AND

IN THE MATTER OF
DECISIONS OF A HEARING PANEL OF THE
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA
DATED JULY 23, 2012 AND NOVEMBER 10, 2012

DECISION AND REASONS
(Section 21.7 and Subsection 8(3) of the Securities Act)

Hearing:	February 14, 15 and 20, 2013		
Decision:	December 19, 2013		
Panel:	James E. A. Turner	–	Vice Chair and Chair of the Panel
	Judith N. Robertson	–	Commissioner
Counsel:	David Hausman Jeffrey A. Kaufman	–	For the Applicants
	James D. G. Douglas Charles Corlett	–	For the Investment Industry Regulatory Organization of Canada
	Yvonne B. Chisholm Catherine V. Weiler	–	For the Ontario Securities Commission

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DECISION AND REASONS

A. INTRODUCTION

[1] Northern Securities Inc. ("**NSI**"), Victor Philip Alboini ("**Alboini**"), Douglas Michael Chornoboy ("**Chornoboy**") and Frederick Earl Vance ("**Vance**") (collectively, the "**Applicants**") brought an application (the "**Application**") under section 21.7 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") for a hearing and review by the Ontario Securities Commission (the "**Commission**") of a decision on the merits and on sanctions and costs (*Re Northern Securities* (2012) IIROC 63, the "**IIROC Decision**") of a hearing panel (the "**IIROC Panel**") of the Investment Industry Regulatory Organization of Canada ("**IIROC**"). The hearing conducted by the IIROC Panel on the merits and on sanctions and costs is referred to as the "**IIROC Hearing**".

[2] The Application was heard over three days on February 14, 15, and 20, 2013 (the "**Application Hearing**"). These are our reasons and decision on the Application.

1. The Applicants

[3] The following background facts were admitted by the Applicants in the IIROC Hearing and are set out in paragraph 4 of the IIROC Decision:

> 1. NSI is a Type 2 introducing broker. At all material times, being from 2006 to 2011, NSI was a registrant of the IDA, and subsequently IIROC. At all material times, NSI was also registered as an Investment Dealer and was a Participating Organization of the Toronto Stock Exchange ("TSX") and therefore was a Participant under the Universal Market Integrity Rules ("UMIR").
>
> 2. NSI is a full service firm with its head office in Toronto, Ontario. NSI carries on retail trading, institutional trading and corporate finance work.
>
> 3. Alboini has been NSI's Ultimate Designated Person ("UDP") and its Chief Executive Officer ("CEO") since June 1999. Alboini has also been a Registered Representative ("RR") at NSI since at least 1999.
>
> 4. Chornoboy has been NSI's Chief Financial Officer ("CFO") since June 2006 and Vance has been NSI's Chief Compliance Officer ("CCO") since October 2006.
>
> 5. At all material times, Alboini, Chornoboy and Vance were registrants of the IDA and, subsequently, IIROC.
>
> 6. NSI was at all material times wholly owned by Northern Financial Corporation ("NFC").

7. NFC is a public company and its shares are traded on the TSX.

8. At all material times, Alboini was a shareholder of NFC and its President and CEO.

9. Jaguar Financial Corporation ("Jaguar") is a publicly traded company whose shares are traded on the TSX. At all material times, NFC and Alboini were shareholders of Jaguar and Alboini was its President and CEO. During the material time, Jaguar opened and held multiple accounts at NSI, and Alboini was the RR for all of those accounts.

10. Chornoboy has been the CFO for NFC since June 2006 and for Jaguar since December 2006.

11. At all material times, Jaguar, NFC and NSI shared their physical premises.

We have adopted the foregoing definitions for purposes of these reasons.

2. History of the Matter

(a) The IIROC Allegations

[4] IIROC issued a Notice of Hearing on July 29, 2011, setting out the allegations against the Applicants. The allegations that were addressed at the IIROC Hearing were the following:

> Count 1
>
> Between August and November 2008, Alboini, as Ultimate Designated Person and a Registered Representative at NSI, engaged in a trading practice which improperly obtained access to credit for his client, Jaguar Financial Corporation, and in doing so risked the capital of both NSI and its carrying broker, thereby engaging in business conduct unbecoming or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1.
>
> Count 2
>
> Between August and November 2008, Vance, as Chief Compliance Officer, failed to adequately supervise Alboini's trading activity involving Jaguar Financial Corporation and other NSI clients, contrary to IIROC Dealer Member Rules 1300.1, 1300.2, and 2500.
>
> Count 3
>
> From 2006 to 2010, NSI, Alboini, as Ultimate Designated Person, and Vance, as Chief Compliance Officer, repeatedly failed to ensure that:
>
> (a) NSI corrected deficiencies found in three business conduct compliance reviews and one trading conduct review; and
>
> (b) NSI had adequate policies, procedures and practices in place;
>
> thereby engaging in conduct unbecoming or detrimental to the public interest, contrary to IDA By-law 29.1, IIROC Dealer Member Rule 29.1, UMIR 7.1 and UMIR Policy 7.1.
>
> Count 5(a)
>
> NSI, Alboini, as Ultimate Designated Person, and Chornoboy, as Chief Financial Officer from February 2008 to February 2009, filed or permitted to be filed inaccurate Monthly Financial Reports which failed to account for leasehold improvement costs, thereby misstating NSI's risk adjusted capital, contrary to IDA By-law 17.2, and IIROC Dealer [sic].
>
> (IIROC Decision, *supra*, at para. 2)

We will refer to these allegations as **Count 1**, **Count 2**, **Count 3** and **Count 5(a)**, respectively.

[5] At the beginning of the IIROC Hearing, IIROC Staff withdrew the allegations in Count 4 and Count 5(b) of the IIROC Notice of Hearing (IIROC Decision, *supra*, at para. 3).

(b) The IIROC Decision

[6] The merits portion of the IIROC Hearing was held on May 7 to June 1, July 3, 4, and 23, 2012. The IIROC Panel issued a formal decision and findings on the merits on July 23, 2012, with reasons to follow (IIROC Decision, *supra*, at para. 43; see paragraph 288 of these reasons).

[7] The IIROC sanctions and costs hearing was held on October 11 and 12, 2012.

[8] The IIROC Panel released the IIROC Decision on November 10, 2012. That decision included written reasons for the IIROC Decision on the merits and as to sanctions and costs.

[9] In the IIROC Decision, the IIROC Panel found that IIROC Staff had proved the allegations contained in Count 1, Count 2, Count 3 and Count 5(a). Specifically, the IIROC Panel's findings were as follows:

> **Count 1:** Between August and November 2008, Alboini, as Ultimate Designated Person and a Registered Representative at NSI, engaged in a trading practice which improperly obtained access to credit for his client, Jaguar Financial Corporation, and in doing so risked the capital of both NSI and its carrying broker, thereby engaging in business conduct unbecoming or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1.
>
> **Count 2:** Between August and November 2008, Vance, as Chief Compliance Officer, failed to adequately supervise Alboini's trading activity involving Jaguar Financial Corporation and other NSI clients, contrary to IIROC Dealer Member Rules 1300.1, 1300.2, and 2500.
>
> **Count 3:** From 2006 to 2010, NSI, Alboini, as Ultimate Designated Person, and Vance, as Chief Compliance Officer, repeatedly failed to ensure that NSI corrected deficiencies found in three business conduct reviews and one trading review, thereby engaging in conduct unbecoming or detrimental to the public interest, contrary to IDA By law 29.1 and IIROC Dealer Member Rule 29.1.
>
> **Count 5(a):** NSI, Alboini, as Ultimate Designated Person, and Chornoboy, as Chief Financial Officer, from February 2008 to February 2009, filed or permitted to be filed inaccurate Monthly Financial Reports which failed to account for leasehold improvement costs, thereby misstating NSI's risk adjusted capital, contrary to IDA By-law 17.2 and IIROC Dealer [sic].
>
> (IIROC Decision, *supra*, at para. 143)

[10] The IIROC Panel imposed the following sanctions and costs in the IIROC Decision:

> Alboini: The Panel orders that Alboini pay a fine in the amount of $500,000 in respect of Count 1, in the amount of $100,000 in respect of Count 3 and in the amount of $25,000 in respect of Count 5(a), for a total fine of $625,000, and that Alboini pay costs in the amount of $125,000, such total fine and costs to be paid within 30 days of the date of the decision. The Panel also orders that Alboini disgorge the commissions earned by him in respect of the trades made in NSI's TA Account between August and November 2008, the amount thereof to be disclosed to IIROC by NSI and paid within 30 days of the date of this decision. The Panel also orders that Alboini be suspended from approval by or registration with IIROC in all capacities for two years commencing 14 days after the date of this decision, and that Alboini be permanently barred from approval by, or registration with IIROC as a UDP anywhere in the industry commencing 14 days after the date of this decision.
>
> Vance: The Panel orders that Vance pay a fine of $25,000 in respect of Count 2 and a fine of $25,000 in respect of Count 3 for a total fine of $50,000, and that Vance pay costs in the amount of $50,000, such total fine and costs to be paid within 30 days of the date of the order. In addition, the Panel orders that Vance be suspended from approval by, or registration with IIROC in any supervisory capacity including acting as Chief Compliance Officer anywhere in the industry, for a period of 3 months commencing 14 days after the date of this order in respect of Count 2 and the same suspension for concurrent period [sic] of 3 months in respect of Count 3.
>
> NSI: The Panel order [*sic*] that NSI pay a fine of $250,000 in respect of Count 3 and a fine of $50,000 in respect of Count 5(a), for a total fine of $300,000, and that NSI pay costs in the amount of $150,000, such total fine and costs to be paid within 30 days after the date of this decision.

Chornoboy: The Panel orders that Chornoboy pay a fine of $25,000 in respect of Count 5(a) and that he pay costs in the amount of $15,000, such fine and costs to be paid within 30 days after the date of this decision.

(IIROC Decision, *supra*, at paras. 254 to 257; see Schedule B)

The Application and Motion for a Stay

[11] On August 20, 2012, following the IIROC Panel's decision on the merits, the Applicants made the Application to the Commission requesting that the IIROC Decision be set aside, that the Commission dismiss or stay any further proceedings by IIROC relating to the IIROC allegations, and, in the alternative, that a new hearing be held before an independent IIROC panel.

[12] After the issuance of the IIROC Decision on the merits and with respect to sanctions and costs on November 10, 2012, the Applicants brought a motion to stay the sanctions and costs imposed on the Applicants by the IIROC Panel pending the determination of the Application. On November 19, 2012, the Commission granted a stay of the IIROC Decision until December 18, 2012, and the stay motion was adjourned to December 17, 2012 (*Re Northern Securities Inc.* (2012), 35 O.S.C.B. 10676). On December 17, 2012, the Commission ordered that the stay be extended until February 22, 2013 and that the hearing of the Application be scheduled for February 14, 15 and 20, 2013 (*Re Northern Securities Inc.* (2013), 36 O.S.C.B. 136).

[13] On the first day of the Application hearing, the Applicants requested that the stay of the IIROC Decision be extended pending the Commission's decision on the Application. IIROC Staff and Commission Staff did not oppose that extension. By order dated February 20, 2013, the Commission ordered that the stay be extended until 30 days after the issuance of the decision and reasons of the Commission on the Application or until further order of the Commission (*Re Northern Securities Inc.* (2013), 36 O.S.C.B. 2044).

B. PRELIMINARY MOTION

1. The New Evidence Motion

Applicants' Motion

[14] On the first day of the Application Hearing, the Applicants brought a motion to introduce new evidence that was not before the IIROC Panel. The new evidence included an affidavit of Alboini sworn January 31, 2013, an affidavit of Glen McFarland sworn February 1, 2013, and the biographies of two members of the IIROC Panel. The new evidence related to:

(a) financial commitments received by Alboini from third party investors;

(b) background financial information regarding the cross guarantees between the Jaguar Main Account and Jaguar Project Accounts;

(c) fees received by NSI through its dealings with the Jaguar Project Accounts;

(d) the consequences and impact of the IIROC Decision on sanctions and costs on the Applicants; and

(e) the biographies of two members of the IIROC Panel.

[15] The Applicants submitted that if the Commission determined that it should intervene in the IIROC Decision because one or more of the grounds set out in *Re Canada Malting Co.* (1986), 33 9 O.S.C.B. 3566 ("***Canada Malting***") applied (see paragraph 49 of these reasons), then any evidence would be admissible, not just new and compelling evidence.

[16] The Applicants submitted that there must be a "full record" before the Commission in order for the Commission to make any determination on the Application. The Applicants submitted that there was not a "full record" without the new evidence they proposed to introduce. The Applicants also submitted that they had taken a restrained approach in determining the new evidence that should be before the Commission on the Application.

IIROC Staff's Submission

[17] IIROC Staff submitted that there were two issues on the motion that the Commission must decide: (i) the scope of the Commission's discretion to admit new evidence on a hearing and review under section 21.7 of the Act, and (ii) whether the new evidence proposed to be introduced was "new and compelling" evidence that should be admitted.

[18] IIROC Staff submitted that any new evidence must be "new and compelling" evidence that was not before the IIROC Panel (in accordance with the fourth ground set out in Canada Malting; see paragraph 49 of these reasons). Once it is

determined that the evidence is "new and compelling", then the Commission has the discretion whether to admit it or not. IIROC Staff submitted that none of the evidence proposed to be introduced was "new and compelling" and that all of that evidence could have been put before the IIROC Panel at the IIROC Hearing.

[19] IIROC Staff submitted that the evidence referred to in Alboini's affidavit was not new because it was known to the Applicants at the time of the IIROC Hearing on the merits, and it was not compelling because it would not have changed the IIROC Panel's decision.

[20] IIROC Staff also submitted that the evidence in the affidavit of Glen McFarland was not new because it was available to the Applicants at the time of the IIROC Hearing and was not compelling because it was hearsay, unaudited and wholly unsupported by any documentary evidence.

[21] IIROC Staff also submitted that the biographies of the two IIROC Panel members were not admissible on the Application because it is not open to or appropriate for the Commission to examine the degree of expertise of individual panel members. Further, that information was not "new and compelling".

Commission Staff's Submissions

[22] Commission Staff supported the IIROC request not to admit the new evidence and made the following submissions.

[23] Commission Staff noted that Canada Malting establishes the grounds upon which the Commission may interfere with the decision of a self-regulatory organization ("**SRO**").

[24] Commission Staff submitted that the new evidence relating to the background of the members of the IIROC Panel should not be admitted because the proper time and place to have impugned the experience of those panel members was at the IIROC Hearing. Commission Staff referred to the decision in *Re Youden* [2005] I.D.A.C.D. No. 52 ("***Youden***"), where the expertise of an Investment Dealers Association ("**IDA**") panel was objected to at the time the hearing was taking place. In *Youden*, the respondent argued that the IDA panel did not possess the necessary specialized expertise to adjudicate the case. That panel found that it did possess the necessary expertise (*Youden*, *supra*, at paras. 75 and 77) and summarized the relevant law as follows:

> In *Re Gareau*, *supra*, the law concerning both the application of the appropriate standards and the composition of hearing panels in relation to self-governing professions was, in our opinion, correctly set out. At page 14 of that decision, the Hearing Panel stated:
>
> > Also with respect to appropriate standards, superior courts in Canada have made clear that members of self-governing professions are uniquely and best qualified to establish the standards of professional conduct. Thus, a hearing panel of three, two of whom are members or former members of the profession, possess a specialized knowledge with respect to both ethics and standards that can be applied in a particular case. In *Re Milstein and Ontario College of Pharmacy. Et al.* (1977), 72 D.L.R. (3d) 2, Corey J., of the Ontario High Court, confirmed this principle and went on to say at p. 234:
> >
> > > Members of the profession can best determine whether the conduct of a fellow member has fallen below the requisite standards and determine the consequences. The peers of the professional person are deemed to have and, indeed, they must have special knowledge, training and skills that particularly adapts them to formulate their own professional standards and to judge the conduct of a member of their profession. No other body could appreciate as well the problems and frustrations that beset a fellow member.
>
> …
>
> Similarly in *Ripley and the Investment Dealers Assoc. (Business Conduct Committee)*, [1990] N.S.J. No. 295, the Nova Scotia Supreme Court stated:
>
> > I agree with the respondent's statement that to require that evidence be given in proof of such issues as basic ethics and honesty would be an affront to the common sense, experience and intelligence of every professional Disciplinary Committee.
>
> (*Youden*, *supra*, at para. 76)

[25] Commission Staff submitted that the same principles apply to IIROC and Commission panels.

Law Regarding "New and Compelling" Evidence

[26] The Commission has addressed in previous decisions what constitutes "new and compelling" evidence for purposes of *Canada Malting* and the Commission's discretion to admit such evidence.

[27] In *Re HudBay Minerals Inc.* (2009), 32 O.S.C.B. 3733 ("***HudBay***"), the Commission stated that, on a hearing and review under section 21.7 of the Act, the Commission has original jurisdiction to make a decision and can in its discretion admit new evidence that was not before the decision maker below. The Commission stated at paragraph 112 of *HudBay* that:

> … In our view, we are entitled to consider not only the information and documents that were before the TSX in making its decision but also the additional information and evidence before us on this Application *(recognizing, however, that the Commission has the discretion to determine the evidence that it is prepared to admit in a review under section 21.7 of the Act)*.
>
> [emphasis added]

[28] The Commission has taken a restrained approach in exercising its discretion to allow new and compelling evidence to be tendered. Specifically, in *Hahn*, the Commission emphasized that it is "… concerned with parties classifying as new, evidence which that party knew or ought to have known at the time of the [ruling below]" (*Hahn*, *supra*, at para.196). Further, the Commission addressed what is meant by "new and compelling evidence":

> Absent, compelling explanatory evidence to the contrary, we are of the view that in the circumstances of this case, *"new" means information that was not known to the party purporting to introduce it as new at the time of the SRO's decision*. …
>
> In our view, that information would be considered *"compelling" if it would have changed the SRO's decision, had it been known at the time of the decision*.
>
> [emphasis added]
>
> (*Hahn*, *supra*, at paras.197 and 198)

2. Decision on the New Evidence Motion

[29] In an oral ruling on February 14, 2013, we dismissed the Applicants' motion to tender new evidence.

[30] There is no general right of a party to introduce additional evidence on an application to us under section 21.7 of the Act. In order to establish that we should permit the introduction of additional evidence, the applicable test is whether or not that evidence is "new and compelling" within the meaning of *Canada Malting*.

[31] With respect to the five categories of new evidence proposed to be introduced (referred to in paragraph 14 above), we found that the first three categories were not new evidence. That evidence could have been submitted to the IIROC Panel in the IIROC Hearing. Further, we doubted whether that evidence would have been compelling within the meaning of *Hahn* (see paragraph 28 above).

[32] With respect to whether evidence on the impact of the sanctions imposed on the Applicants is new or compelling evidence, we note that evidence could have been submitted to the IIROC Panel in connection with its consideration of potential sanctions. The potential impact of sanctions on the Applicants was a relevant consideration for the IIROC Panel in imposing sanctions and the IIROC Panel was alive to that issue. The Applicants were also aware that the potential impact of sanctions on the Applicants would be an issue. Further, we do not accept that, as a general principle, a respondent should be entitled after the imposition of sanctions to submit new evidence as to the impact that those sanctions would have on the respondent. (This proposition does not apply to the hearing *de novo* on sanctions and costs as a result of our conclusion in paragraph 305 of these reasons (see paragraph 344 of these reasons).

[33] In our view, it was not appropriate for us to inquire into the specific expertise of the members of the IIROC Panel. Absent extraordinary circumstances, a panel constituted by IIROC should be treated as having the necessary expertise to address the matters before it. Further, if the Applicants wished to challenge the expertise of the IIROC Panel, that challenge should have been made to the IIROC Panel at the commencement of the IIROC Hearing, not after the hearing on the merits and after sanctions were imposed. In any event, that evidence was not new and was unlikely to have been compelling within the meaning of *Hahn*.

[34] Based on the foregoing, we did not permit the introduction by the Applicants of the evidence referred to in paragraph 14 above).

C. ISSUES RAISED BY THE APPLICATION

[35] The principal issues we must determine on this hearing and review are the following:

1. What is the standard of review applicable to our consideration of the Application?

2. Did the IIROC Panel proceed on an incorrect principle or err in law in making its findings on Counts 1, 2, 3 and/or 5(a)?[1]

3. Was the sanctions and costs hearing procedurally unfair to the Applicants and were the sanctions and costs imposed on the Applicants proportionate to their misconduct?

4. Was there a reasonable apprehension that the members of the IIROC Panel were biased?

D. RELEVANT LAW

1. Mandate of the Commission and Authority to Review Decisions of an SRO

[36] Section 21.7 of the Act authorizes the Commission to conduct a hearing and review of a decision of an SRO, such as IIROC. That section states:

> **21.7(1) Review of decisions** – The Executive Director or a person or company directly affected by, or by the administration of, a direction, decision, order or ruling made under a by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized exchange, recognized self-regulatory organization, recognized quotation and trade reporting system, recognized clearing agency or designated trade repository may apply to the Commission for a hearing and review of the direction, decision, order or ruling.
>
> **(2) Procedure** – Section 8 applies to the hearing and review of the direction, decision, order or ruling in the same manner as it applies to a hearing and review of a decision of the Director.

[37] Subsection 8(3) of the Act provides that, upon a hearing and review, the Commission may confirm the decision or make such other decision as it considers proper. That section states:

> **8(3) Power on review** – Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper.

[38] The Commission's power on review must be exercised in accordance with the two fundamental purposes of the Act: (i) to provide protection to investors from unfair, improper or fraudulent practices, and (ii) to foster fair and efficient capital markets and confidence in capital markets (Section 1.1 of the Act).

[39] In addition, the Act sets out important principles that the Commission will apply in pursuing the purposes of the Act. Relevant to this matter are the following principles:

> …
>
> 2. The primary means for achieving the purposes of this Act are,
>
> …
>
> iii. Requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.
>
> …
>
> 4. The Commission should, subject to an appropriate system of supervision, use the enforcement capability and regulatory expertise of recognized self-regulatory organizations.
>
> (Section 2.1 of the Act)

[1] Based on the evidence and submissions to us, none of the other grounds for intervention based on *Canada Malting* were in issue (see paragraphs 49 and 50 of these reasons).

2. Recognition and Role of SROs

[40] SROs, such as IIROC, operate within a regulatory framework, subject to the oversight of the Commission. Each SRO regulates its own members and industry and is recognized by the Commission by order. The *IIROC Recognition Order*, (2008) 31 O.S.C.B. 5615, as amended, (the "**Recognition Order**") states that:

> The Commission recognizes IIROC as a self-regulatory organization pursuant to subsection 21.1(1) of the Act ...
>
> (Recognition Order, *supra*, at p. 5616)

[41] The Recognition Order states that IIROC has an obligation to:

> …
>
> c. establish, administer and monitor its rules, policies and other similar instruments (Rules);
>
> d. enforce compliance with its Rules by Dealer Members and others subject to its jurisdiction;
>
> …
>
> (Recognition Order, *supra*, at p. 5615)

[42] The Recognition Order contains detailed terms and conditions with which IIROC must comply in carrying out its regulatory functions, including requirements that IIROC regulate to serve the public interest in protecting investors and market integrity and that IIROC establish and maintain rules ("**IIROC Rules**" or "**Rules**") that (i) are designed to prevent fraudulent and manipulative acts and practices, (ii) promote just and equitable trading practices, and (iii) impose a duty to act fairly, honestly and in good faith.

[43] IIROC is required by the Act to "regulate the operations and the standards of practice and business conduct of its members and their representatives in accordance with its by-laws, rules, regulations, policies, procedures, interpretations and practices" (subsection 21(4) of the Act). This role has been recognised in the case law The Court stated in *Re Derivative Services Inc.*, [1999] I.D.A.C.D. No. 29 ("***Derivative Services***") at para. 27; (2002), 25 O.S.C.B. 8279 (O.S.C); aff'd [2005] O.J. No. 2118 (Div. Ct.); leave to appeal to Court of Appeal denied) that:

> Once recognized, stock exchanges and SRO's are required to "regulate the operations and the standards of practice and business conduct" of their members and their members' representatives in accordance with their by-laws, rules, regulations, policies, procedures, interpretations and practices (OSA, ss. 21(4) and 21.1(3)). The OSC may make any decision that it considers to be in the public interest with respect to any of such rules and practices (OSA, ss. 21(5) and 21.1 (4)), and a recognized stock exchange or SRO must obtain approval of the Commission before it may surrender its recognition (s. 21.4)

[44] IIROC is required under the Recognition Order to carry out its regulatory functions and to adopt Rules to do so. The terms and conditions to which IIROC is subject include the following:

> **8. Performance of Regulatory Functions**
>
> a. IIROC must set Rules governing members and others subject to its jurisdiction.
>
> b. IIROC must administer and monitor compliance with the Rules and securities laws by members and others subject to its jurisdiction and enforce compliance with the Rules by Dealer Members, including ATSs, and others subject to its jurisdiction. In addition, IIROC will provide notice to the Commission of any violations of securities legislation of which it becomes aware.
>
> **9. Rules**
>
> a. IIROC must establish and maintain Rules that:
>
> …
>
> (ii) are designed to:

(A) ensure compliance with securities laws,

(B) prevent fraudulent and manipulative acts and practices,

(C) promote fair and equitable principles of trade and the duty to act fairly, honestly and in good faith,

…

(G) provide for appropriate discipline of those whose conduct it regulates;

…

(Recognition Order, *supra*, Appendix A at p. 7)

[45] Accordingly, IIROC has an obligation (i) under the Act to regulate the standards of practice and business conduct of its members, and (ii) under the Recognition Order to establish, administer, and enforce Rules related to the proper business conduct of IIROC members.

[46] The Commission has oversight responsibility with respect to IIROC and the implementation and enforcement of its Rules. The Commission has the following authority, among others, with respect to IIROC Rules:

> **Commission powers** – The Commission may, if it is satisfied that to do so would be in the public interest, make any decision with respect to any by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized self-regulatory organization.
>
> (Subsection 21.1(4) of the Act)

Under section 21.7 of the Act, any person directly affected by a direction, decision, order or ruling of an SRO may apply to the Commission for a hearing and review of the direction, decision, order or ruling.

[47] Accordingly, IIROC operates within a regulatory framework under which the Commission exercises substantial regulatory oversight. The proper enforcement by IIROC of its Rules is an important regulatory function that is exercised by IIROC in the best interests of investors and Ontario capital markets.

3. Grounds for Intervention in an SRO's Decision

[48] A hearing and review under section 21.7 of the Act is broader in scope than an appeal, which is usually limited to determining whether there has been an error in law or the contravention of a principle of natural justice (*Re Boulieris* (2004), 27 O.S.C.B. 1597 ("***Boulieris***") at para. 30; *Re Magna Partners Ltd.* (2011) 34 O.S.C.B. 8697 ("***Magna Partners***") at para. 41; and *Re Taub* (2007), 30 O.S.C.B. 4739 ("***Taub***") at para. 31).

[49] While the Commission has broad discretion under section 21.7 of the Act to intervene in a decision of an SRO, in practice the Commission has taken a more restrained view of that discretion. The Commission has held that there are five grounds upon which the Commission may intervene in a decision of an SRO. Those five grounds were established in *Canada Malting*, which was a hearing and review by the Commission of a decision of the Toronto Stock Exchange (now TSX). Those grounds are the following:

> 1. the [SRO] has proceeded on an incorrect principle;
>
> 2. the [SRO] has erred in law;
>
> 3. the [SRO] has overlooked material evidence;
>
> 4. new and compelling evidence is presented to the Commission that was not presented to the [SRO]; and
>
> 5. the Commission's perception of the public interest conflicts with that of the [SRO].
>
> (*Canada Malting*, *supra*, at 3587)

[50] The principal question on the Application is whether the IIROC Panel proceeded on an incorrect principle or erred in law. The introduction of new evidence was addressed separately on a motion brought by the Applicants (see paragraph 14 of these reasons). We have no reason to believe that the IIROC Panel overlooked material evidence or that our perception of the public interest conflicts with that of the IIROC Panel.

[51] The *Canada Malting* test has been endorsed in a number of subsequent Commission decisions, including *Boulieris*, *supra*, at para. 31, *HudBay*, *supra*, at para. 105, *Re Kasman and Anderson*, (2009) 32 OSCB 5729 at para. 44 and *Magna Partners*, *supra*, at para. 45.

[52] The Panel in *HudBay* commented on the Commission's jurisdiction where one of the grounds for intervention in *Canada Malting* applies:

> If the Commission concludes after considering and assessing these grounds that it ought to intervene in a decision pursuant to section 21.7 of the Act, the Commission then exercises original jurisdiction with respect to the ensuing hearing and review, as opposed to a more limited appellate jurisdiction (*Taub*, *supra*, at para. 29; *Re Boulieris* (2004), 27 O.S.C.B. 1597 ("*Boulieris*") at para. 28). As a result, the hearing and review is in the nature of a hearing *de novo* and new evidence may be tendered.
>
> In a hearing *de novo*, the Commission is free to substitute its own judgement for that of the TSX (*Taub*, *supra*, at para. 30). Such a hearing and review is broader in scope than an appeal, which is usually limited to determining whether there has been an error in law or whether a rule of natural justice has been contravened (*Taub*, *supra*, at para. 31 and *Boulieris*, *supra*, at para. 30).
>
> However, the Commission may also intervene if a decision is not made fairly; for example, where the Commission finds there was no evidence upon which the relevant conclusions could be supported (*Security Trading Inc. and the Toronto Stock Exchange* (1994), 17 O.S.C.B 6067 at 6105; see also *Berry*, *supra*, at para. 60).
>
> As noted above, the Commission may also intervene in a decision of a self-regulatory organization when that decision does not reflect the Commission's view of the public interest.
>
> (*HudBay*, *supra*, at paras. 106 to 109)

[53] Accordingly, when one of the grounds established in *Canada Malting* applies, the Commission may confirm the decision under review or make such other decision as the Commission considers proper. In that event, the Commission is free to substitute its judgment for that of the SRO (*Boulieris*, *supra*, at para. 29; aff'd (2005), 198 O.A.C. 81 (Div. Ct.) at para. 32 and *HudBay*, *supra*, at paras. 106 to 109).

4. Deference to IIROC Decisions

[54] It is only in rare circumstances that the Commission will intervene in an SRO decision. To do so, the Commission must be satisfied that the applicant has met the "heavy burden" and high threshold of demonstrating that its case fits within at least one of the five grounds for intervention identified in *Canada Malting*.

[55] The Commission stated in *HudBay* that:

> We recognize, however, that if the Commission is too interventionist in reviewing decisions made by an exchange [SRO], that would introduce an unacceptable degree of uncertainty in our regulatory regime and in capital markets. In *Canada Malting*, the Commission stated:
>
> > The TSE supported the Applicants in their request for standing. However, it went on to note the difficulty that would be created for listed companies if the TSE could be second-guessed by the OSC on the initiative of a company's shareholders every time a notice for filing is accepted under By-law 19.06 [the predecessor of section 604 of the TSX Manual].
> >
> > If the right of appeal meant that the OSC were to review every decision of the TSE on the merits, then companies issuing securities would be faced with the possibility of subsequently being forced to unwind the transaction or face delisting or trading sanctions on the basis that the Commission had decided to substitute its discretion for that of the TSE under By-law 19.06. In our view, this would introduce an unacceptable degree of uncertainty into the capital markets.

> (*Canada Malting*, *supra*, at 3588 and 3589)
>
> We agree with the caution reflected in that statement. Only in very rare circumstances should the Commission substitute its decision for that of the TSX. Subject to the discussion below, before the Commission intervenes in a decision of the TSX pursuant to section 21.7 of the Act, it should ensure that the applicant has met the heavy burden of demonstrating that its case fits squarely within at least one of the five grounds for intervention identified in *Canada Malting*.
>
> (*HudBay*, *supra*, at para. 114; see also *Re Vitug* (2010), 33 O.S.C.B. 3965) ("***Vitug***") at para. 44)

[56] Therefore, in practice, the Commission takes a restrained approach to the exercise of its discretion in connection with an application under section 21.7 of the Act:

> The Commission generally shows deference to the decisions of the TSX, particularly in the areas of the TSX expertise. We recognize the important role that the TSX plays within our regulatory framework. The Commission's authority under section 21.7 of the Act should not be used as a means to second-guess reasonable decisions made by the TSX. *The Commission will not substitute its own view for that of the TSX simply because the Commission might have reached a different conclusion in the circumstances.*
>
> [emphasis added]
>
> (*HudBay*, *supra*, at para. 103)

[57] The Commission takes this restrained approach in recognition of the specialized knowledge and expertise of an SRO. The Commission affords particular deference to an SRO decision when the SRO is interpreting and applying its own rules. The Commission "recognizes that the SROs are uniquely positioned to hear the facts and decide a case based on their expertise" (*Vitug*, *supra*, at para. 45).

[58] The Supreme Court of Canada has acknowledged the specialized role that SROs such as IIROC play within the securities regulatory framework. IIROC, as an SRO, is charged with regulating and disciplining its members who are engaged in "a highly specialized activity which requires specific knowledge and expertise" (*Pezim v. British Columbia (Superintendent of Brokers)* [1994] 2 S.C.R. 557 at para. 60).

[59] In *Derivative Services*, the Commission commented on its reliance on SROs in regulating capital markets:

> … Recognition as an [SRO] is premised on the expertise of an industry organization like the Association which can establish standards of business conduct for its members, frequently higher than those that would be imposed by the OSC, and which may bring to bear on technical issues and other matters a deeper understanding of industry practices, both in its rulemaking and in disciplinary and approval proceedings. The legislative scheme is also premised on a greater likelihood of compliance by members and their personnel with rules established and enforced by the private sector through its self-regulatory activities, but subject to regulatory supervision by the OSC.
>
> (*Derivative Services*, *supra*, at para. 62)

[60] The British Columbia Securities Commission has commented on IIROC's particular expertise:

> The Commission has recognized IIROC as a self-regulatory body under section 24 of the Act. Section 26 requires a recognized self-regulatory body "to regulate the operations, standards of practice and business conduct of its members." This includes disciplining members for contraventions of the self-regulatory body's rules. As a matter of administrative practice, the Commission relies on IIROC to perform this function and has done so for many years. Over that time, IIROC has developed considerable expertise in dealing with member discipline matters.
>
> (*Re Dirk Christian Lohrisch*, 2012 BCSECCOM 237 at para. 23)

[61] Accordingly, the Commission recognizes IIROC's specialized knowledge and expertise and will give a high level of deference to decisions of an IIROC panel within its area of expertise, including factual determinations and decisions related to the interpretation and application of IIROC Rules. In this respect, an IIROC panel is entitled to (i) establish appropriate standards of conduct through the interpretation and application of IIROC Rule 29.1, and (ii) conclude that IIROC Rules impose obligations of honesty and fairness on a Dealer Member in its dealings with other Dealer Members (see paragraph 253 of these reasons).

Further, an IIROC panel has a broad discretion to control its own hearing processes. The Commission will not intervene in any such IIROC decision simply because it might have made a different decision (*Hahn*, *supra*, at paras. 81 and 83; and *HudBay*, *supra*, at para. 103).

5. Standard of Proof on a Balance of Probabilities

[62] It is well settled that the standard of proof in proceedings before the Commission is the civil standard of proof on a balance of probabilities. That means that the Commission determines whether a fact or matter is more likely than not to have occurred.

[63] In *F.H. v. McDougall*, the Supreme Court of Canada stated that "the evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test" (*F.H. v. McDougall*, [2008] S.C.J. No. 54 at para. 46).

6. Relevant IIROC Rules

[64] The IIROC Decision refers to and makes findings under a number of different provisions of the IIROC Rules and under IDA By-law 29.1. The relevant provisions of these Rules and the IDA By-law are set out in Schedule A to these reasons.

7. Specialized Industry Knowledge

[65] As discussed above, the case law has recognized that hearing panels of an administrative tribunal and a disciplinary board of a self-governing profession have specialized knowledge and can establish and apply appropriate standards:

> [W]ith respect to appropriate standards, superior courts in Canada have made clear that members of self-governing professions are uniquely and best qualified to establish the standards of professional conduct. Thus, a hearing panel of three, two of whom are members or formers members of the profession, possess a specialized knowledge with respect to both ethics and standards that can be applied in a particular case. In *Re Milstein and the Ontario College of Pharmacy, et al.* (1977), 72 D.L.R. (3d) 2, Corey J., of the Ontario High Court, confirmed this principle and went on to say at p. 234:
>
> Members of the profession can best determine whether the conduct of a fellow member has fallen below the requisite standards and determine the consequences. The peers of the professional person are deemed to have and, indeed, they must have special knowledge, training and skills that particularly adapts them to formulate their own professional standards and to judge the conduct of a member of their profession. No other body could appreciate as well the problems and frustrations that beset a fellow member.
>
> (*Re Gareau*, [2005] I.D.A.C.D. No. 25 ("***Re Gareau***") at para. 29)

[66] However, relying on expert industry knowledge is not a substitute for evidence. Specialized industry knowledge is of assistance to understand evidence, legal requirements and standards but it cannot create and fill gaps in evidence. The British Columbia Superior Court has stated that:

> For those two reasons I am satisfied that the adjudicators erred. Firstly, in conducting the extrapolation and using it as a basis for its decision without giving the petitioners the opportunity of leading evidence or making submissions on the subject. Secondly, by utilizing their own knowledge and training as a substitution for evidence that was essential to bridge the gap between the reading at the time of the test and the reading at the time of the driving. In my opinion the use of specialized training cannot be a substitute for evidence. It should not be used to bridge a gap in evidence. Specialized training may be of assistance in understanding and evaluating evidence but it is not a substitute for evidence. Perhaps this distinction is subtle but in my view it is critical.
>
> (*Dennis v. British Columbia (Superintendent of Motor Vehicles)*, [1999] B.C.J. No. 1568 (SC) at para. 25).

That principle is undoubtedly correct.

[67] Courts and tribunals can take judicial notice of certain facts. Judicial notice is described as follows:

> Judicial notice is the acceptance by a court or judicial tribunal, in a civil or criminal proceeding, without the requirement of proof, of the truth of a particular fact or state of affairs. Facts which are (a) so notorious or generally accepted as not to be the subject of debate among reasonable

> persons; or (b) capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy, may be noticed by the court without proof of them by any party. The practice of taking judicial notice of facts is justified. It expedites the process of the courts, creates uniformity in decision-making and keeps the courts receptive to societal change. Furthermore, the tacit judicial notice that surely occurs in every hearing is indispensable to the normal reasoning process.
>
> (Sopinka, Lederman & Bryant, *The Law of Evidence in Canada*, 3d ed. (Markham: LexisNexis, 2009), at page 1268)

[68] Accordingly, the test to establish judicial notice is a high one.

8. Expert Evidence

[69] In its decision and reasons dated May 18, 2012, the IIROC Panel refused to allow the Applicants to submit as evidence an expert report or call an expert witness to address the industry practice with respect to the use of an accumulation account (see *Re Northern Securities* (2012) IIROC 35). Expert testimony is generally permitted only where the evidence is relevant and necessary to assist the trier of fact in making a decision (*R. v. Mohan*, [1994] 2 S.C.R. 9 ("***Mohan***") at para. 17). The Court stated in *Mohan* that:

> This pre-condition is often expressed in terms as to whether the evidence would be helpful to the trier of fact. The word "helpful" is not quite appropriate and sets too low a standard. However, I would not judge necessity by too strict a standard. What is required is that the opinion be necessary in the sense that it provide information "which is likely to be outside the experience and knowledge of a judge or jury"; as quoted by Dickson J. in *R. v. Abbey*, *supra*. As stated by Dickson J., the evidence must be necessary to enable the trier of fact to appreciate the matters in issue due to their technical nature. In *Kelliher (Village of) v. Smith*, [1931] S.C.R. 672, at p. 684, this Court, quoting from *Beven on Negligence* (4th ed. 1928), at p. 141, stated that in order for expert evidence to be admissible, "[t]he subject-matter of the inquiry must be such that ordinary people are unlikely to form a correct judgment about it, if unassisted by persons with special knowledge". More recently, in *R. v. Lavallee*, *supra*, the above passages from *Kelliher* and *Abbey* were applied to admit expert evidence as to the state of mind of a "battered" woman. The judgment stressed that this was an area that is not understood by the average person.
>
> (*Mohan*, *supra*, at para. 22)

[70] In our view, the legal principles applicable to the admission of expert evidence are accurately and appropriately described in the IIROC Panel's reasons (see the discussion commencing at paragraph 244 of these reasons relating to the expert evidence proposed to be introduced by the Applicants).

9. Procedural Fairness

[71] The Applicants were entitled to a high level of procedural fairness in the conduct of the IIROC Hearing. Procedural fairness has two branches:

(i) the right to be heard; and

(ii) the right to an independent and impartial decision-maker.

The right to be heard includes the right to adequate notice of the issues to be addressed by the IIROC Panel and the effective opportunity to put forth evidence and submissions pertinent to the questions in issue. The rule against bias requires an independent and impartial decision-maker.

10. Test for Reasonable Apprehension of Bias

[72] The Applicants submit that the IIROC Panel displayed bias. The test for determining whether bias exists was established by the Supreme Court in *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623 ("***Newfoundland Telephone***") where the Court stated:

> To ensure fairness the conduct of members of administrative tribunals has been measured against a standard of reasonable apprehension of bias. The test is whether a reasonably informed bystander could reasonably perceive bias on the part of the adjudicator.
>
> (*Newfoundland Telephone*, *supra*, at para. 22)

[73] Whether a reasonable apprehension of bias exists must be "evaluated through the eyes of the reasonable, informed, practical and realistic person who considers the matter in some detail" (*R. v. R.D.S.* [1997] 3 S.C.R. 484 ("***R.D.S.***") at para. 37). The reasonable person for purposes of this test is "not a 'very sensitive or scrupulous' person, but rather a right-minded person familiar with the circumstances of the case" (*R.D.S.*, *supra*, at para. 36). Justice de Grandpre in *Committee for Justice and Liberty et al v. National Energy Board*, [1978] 1 S.C.R. at p. 394 ("***National Energy Board***") characterized the proper test as what an informed person, viewing the matter realistically and practically, and having thought the matter through, would have concluded (*National Energy Board* at p. 372).

[74] The Commission applied the test for reasonable apprehension of bias in *Re Norshield* (2009), 32 O.S.C.B. 1249 ("***Norshield***") (appeal dismissed *Xanthoudakis v. Ontario Securities Commission*, 2011 ONSC 4685 (Div. Ct.)). In *Norshield*, the Commission reviewed and summarized the case law regarding reasonable apprehension of bias:

> We also take note that Mr. Justice Cory, in *R.D.S.*, *supra*, at para. 111, commented on the test for finding a reasonable apprehension of bias in *Committee for Justice and Liberty*. In discussing the test set out by Mr. Justice de Grandpré as set out above, Mr. Justice Cory added the following:
>
> > This test has been adopted and applied for the past two decades. It contains a two-fold objective element: the person considering the alleged bias must be reasonable, and the apprehension of bias itself must also be reasonable in the circumstances of the case. See Bertram*, supra*, at pp. 54-55; *Gushman*, *supra*, at para. 31. Further the reasonable person must be an informed person, with knowledge of all the relevant circumstances, including "the traditions of integrity and impartiality that form a part of the background and apprised also of the fact that impartiality is one of the duties the judges swear to uphold": *R. v. Elrick*, [1983] O.J. No. 515 (H.C.), at para. 14. See also *Stark*, *supra*, at para. 74; *R. v. Lin*, [1995] B.C.J. No. 982 (S.C.), at para. 34. [Emphasis in original]

[75] Mr. Justice Cory also found that the onus was on the applicant to prove that a reasonable apprehension of bias existed (see *R.D.S.*, *supra*, at para. 114). The threshold for finding real or perceived bias is high, because such a finding calls into question an element of judicial integrity:

> Indeed an allegation of reasonable apprehension of bias calls into question not simply the personal integrity of the judge, but the integrity of the entire administration of justice.
>
> (*R.D.S.*, *supra*, at para. 113; *Norshield*, *supra*, at paras. 62-63)

[76] There is a presumption that judges will properly carry out their oath of office (see *R.D.S.*, *supra*, at para. 117). Similarly, there is a presumption that members of the Commission will act fairly and impartially in discharging their adjudicative responsibilities. The Ontario Court of Appeal has held that the presumption of fairness and impartiality applies to Commissioners:

> Securities Commissions, by their very nature, are expert tribunals, the members of which are expected to have special knowledge of matters within their jurisdiction. They may have repeated dealings with the same parties in carrying out their statutory duties and obligations. *It must be presumed, in the absence of any evidence to the contrary, that the Commissioners will act fairly and impartially in discharging their adjudicative responsibilities and will consider the particular facts and circumstances of each case.* [Emphasis added]
>
> (*E. A. Manning Ltd. v. Ontario Securities Commission* (1995), 23 O.R. (3d) 257 (C.A.) ("***E. A. Manning***") at p. 267)

[77] These principles apply to the question whether the IIROC Panel displayed a reasonable apprehension of bias as alleged by the Applicants.

11. Proportionality of Sanctions Imposed

Lack of Proportionality

[78] When determining sanctions to be imposed on a respondent, an SRO (and the Commission) must apply the principle of proportionality. That means that the sanctions imposed must be proportionate to both the specific conduct of the respondent, and to the particular circumstances of the respondent including, for instance, the size of the respondent and the impact sanctions may have. The failure to impose proportionate sanctions constitutes an error in principle or in law within the meaning of *Canada Malting*. In *Magna Partners*, *supra*, the Commission concluded that there was a lack of proportionality in the

sanctions imposed by an IIROC hearing panel and substituted what it considered to be the appropriate sanctions in the circumstances.

E. SUBMISSIONS OF THE PARTIES

[79] The following is a summary of the key submissions made by each party on the issues before us.

1. Summary of the Applicants' Submissions

Standard of Review and Deference

[80] The Applicants submitted that *Canada Malting* does not prescribe a reasonableness standard for review as would apply to appellate review under the principles in *Dunsmuir v. New Brunswick (Board of Management)*, [2008] 1 S.C.R. 190 ("***Dunsmuir***"). Rather, the standard is correctness on all legal, procedural and jurisdictional issues. Further, in the Applicants' submission, the Commission should defer only to factual determinations made by the IIROC Panel where those factual determinations are based on its specialized expertise. The Applicants submitted that, regardless of the IIROC Panel's specialized expertise, factual determinations should receive no deference if those factual findings were not based on any evidence or if the IIROC Panel overlooked or disregarded material evidence.

[81] The Applicants submitted that if the Commission finds that one or more of the grounds in *Canada Malting* apply, the Commission may address the matter by way of a hearing *de novo* and can consider new evidence.

Count 1

IIROC Panel's Decision

[82] The IIROC Panel found that Alboini, as UDP and an RR at NSI, engaged in a trading practice which improperly obtained access to credit for his client, Jaguar, and in doing so risked the capital of both NSI and Penson, its carrying broker, thereby engaging in business conduct unbecoming or detrimental to the public interest, contrary to IIROC Rule 29.1 (IIROC Decision, *supra*, at para. 143).

[83] The IIROC Panel set out four reasons for its finding that Jaguar's access to credit was "improper": (i) NSI's average price accumulation account (the "**TA Account**") was used improperly to obtain access to credit for Jaguar, (ii) Jaguar was not creditworthy when the securities were purchased in the TA Account, (iii) Alboini acted in a conflict of interest between his duties to NSI and his financial interest in Jaguar, and (iv) Alboini misled Penson about Jaguar's creditworthiness (IIROC Decision, *supra*, at paras. 45-69). The IIROC Panel stated that it "need be successful on only one of these issues for the Panel to conclude that the access to credit was "improper"" (IIROC Decision, *supra*, at para. 45).

[84] The Applicants disputed all four of the reasons supporting the IIROC Panel's conclusion that the use of the TA Account was improper. The Applicants also disputed the IIROC Panel's finding that Alboini's actions posed a risk to the capital of both NSI and Penson.

Alboini did not improperly obtain credit for Jaguar

The TA Account was used appropriately

[85] The Applicants submitted that, under NSI's policies and procedures, an average price accumulation account such as the TA Account was to be used as follows:

> … to accumulate stock in inventory in cases where clients do not wish small fills for larger orders. These accounts are to be used only for institutional accumulation or in the occasional circumstances for a large order from an individual. The trailer of the order must be marked indicating the name of the client and the fact that the trade was completed as an average price trade.
>
> (IIROC Decision, *supra*, at para. 54)

[86] The Applicants submitted that investment dealers maintain client accumulation accounts to facilitate trading by non-retail customers. The circumstances in which a client accumulation account may be used are not prescribed by IIROC rules. One purpose of a client accumulation account is to allow customers to acquire a large position in a security for an average price where the position is accumulated over a period extending beyond a single trading session. Clients may also use a client accumulation account to acquire a "toehold" position in a security over the course of several trading sessions in anticipation of a take-over bid or engaging in a shareholder activist campaign. The Applicants were using the TA Account to purchase securities

for this purpose. NSI had opened 10 separate project accounts, each related to a separate share accumulation program in respect of a different issuer. Different clients of NSI had interests in the various project accounts (we refer to the 10 project accounts collectively as the "**Project Accounts**"). Using a client accumulation account preserves anonymity because trade tickets used for the accumulation trades do not identify the client by name or account number. The Applicants submitted that the TA Account was properly used by Alboini and NSI for these purposes.

[87] The IIROC Panel found, based on the evidence before it, that the orders made in the TA Account for the various Project Accounts were not large orders, but rather were day orders that were accumulated and assigned an average price for ticketing purposes. The IIROC Panel found that Alboini's use of the TA Account was not in accordance with either NSI's policies and procedures or accepted industry practice (see paragraph 225 of these reasons).

[88] The Applicants submitted that the TA Account was used appropriately because (i) using the TA Account to acquire "toehold" positions was proper, and (ii) the payment for shares accumulated in the TA Account was proper.

[89] The Applicants submitted that there was nothing wrong with Jaguar using the TA Account to acquire confidential "toehold" positions in securities over the course of several trading sessions. The Applicants submitted that as long as the customer has committed to acquire the accumulated position, the customer is the beneficial owner of the securities even though they are in a form of "house" account (in this case, the "house" account was NSI's TA Account).

[90] The Applicants took issue with the IIROC Panel's finding that "the orders in the TA Account were "not large orders" but were "day orders" that were accumulated and assigned an average price for ticketing purposes" (IIROC Decision, *supra*, at para. 60). The Applicants submitted that neither the NSI Policy Manual nor any IIROC rule, interpretation or notice provides that orders needed to be for a fixed number of shares rather than all available shares up to a specific threshold. According to the Applicants, the latter type of order would be an example of a large order and not a day order.

[91] The Applicants submitted that the IIROC Panel erred in finding that the orders for the Virtek, Tiomin, and HudBay shares (each related to a different Project Account) were not large orders. The Applicants submitted that they were clearly large orders in the context of the project objectives.

[92] The Applicants submitted that the payment scheme for shares accumulated in the TA Account was proper. The Applicants noted that IIROC Member Regulation Notice MR-0280 – *Average Price Accounts-Margin Requirements* ("**Notice MR-0280**") contemplates circumstances in which a member firm can advance credit to a customer between the settlement date of accumulation trades and the ticketing out of the accumulated position to the client. In light of this, the Applicants submitted that there was no basis to conclude that it was improper for a customer to have obtained this credit if the member was willing to advance it (see the discussion of this issue commencing at paragraph 236 of these reasons).

[93] The Applicants submitted that the IIROC Panel made an error in law by relying on its own industry knowledge of what is considered acceptable "ticketing out" practices. "Ticketing out" refers to the transfer of a security position in an accumulation account to the client. When the securities are "ticketed out", the client pays for the securities. Specifically, the Applicants objected to the following statement made by the IIROC Panel:

> … It is industry practice to ticket out when a trade has concluded and to collect funds at that point. If the account is being used for a true accumulation, payment might be delayed until the accumulation has been completed if the creditworthiness of the client is not in question but it should never be delayed beyond completion of the accumulation. …
>
> (IIROC Decision, *supra*, at para. 63; see paragraph 238 of these reasons).

[94] The Applicants submitted that, since no evidence as to the "industry practice" was tendered at the IIROC Hearing, it was inappropriate for the IIROC Panel to have made such a central finding as a matter of judicial notice.

Jaguar was creditworthy

[95] The Applicants made four submissions to support their position that Jaguar was creditworthy at the time of the purchases in the TA Account.

[96] First, the Applicants submitted that the IIROC Panel erred in disregarding Alboini's personal guarantees of Jaguar's obligations to NSI. The Applicants submitted that Alboini had personally guaranteed Jaguar's obligations to NSI since November 19, 2007 and that he had a net worth in excess of $5 million, which was more than sufficient to satisfy Jaguar's maximum under-margin position.

[97] Second, the Applicants submitted that the IIROC Panel erred by not taking into account the participation of outside investors in three Project Accounts. According to the Applicants, Jaguar had substantial commitments from outside investors for three of the accumulations in the TA Account.

[98] Third, the Applicants submitted that the IIROC Panel incorrectly tied its assessment of Jaguar's creditworthiness to an assessment of whether it held sufficient "marginable" securities or cash to cover the purchases in the TA Account. The Applicants submitted that, according to Notice MR-0280, customer margin does not become relevant to accumulation trades until the position is ticketed out to the customer.

[99] Fourth, the Applicants submitted that the IIROC Panel erred in concluding that Jaguar could not dispose of its holdings in Lakeside Steel and Royal Laser (two of the Project Accounts), thereby rendering Penson unable to enforce its rights to sell those securities to cover the liabilities in the TA Account. The Applicants submitted that under section 2.8 of National Instrument 45-102 – *Resale of Securities*, the holdings in Lakeside Steel and Royal Laser could have been sold at any time by Jaguar or Penson. The Applicants further submitted that the IIROC Panel was wrong to conclude that section 93.4 of the Act applied to restrict the sale of the Lakeside shares. According to the Applicants, section 93.4 of the Act did not prohibit Jaguar from pledging shares as security to Penson pursuant to the account agreement, nor did it prevent Penson from enforcing its security interest through the sale of those shares.

Alboini did not have a conflict of interest

[100] The Applicants submitted that Alboini was not in a conflict of interest position. According to the Applicants, the IIROC Panel concluded that there was a conflict of interest because it ignored Alboini's financial stake in NSI. The Applicants submitted that Alboini, his company, and his wife had invested approximately $5.6 million in NSI's parent (NFC) by 2008. Alboini's personal investment in Jaguar was much smaller, approximately $1.4 million.

[101] The Applicants' argument was that because Alboini held a larger financial interest in NSI than in Jaguar, Alboini did not have a conflict of interest in not ticketing out the purchases in the TA Account. (NSI had an obligation to fund the carrying costs of those purchases until they were ticketed out.) In any event, the Applicants submitted that any conflict of interest on the part of Alboini was immaterial.

Alboini did not mislead Penson about Jaguar's creditworthiness

[102] The Applicants submitted that there were four reasons why the IIROC Panel was wrong to conclude that Penson was misled about Jaguar's creditworthiness.

[103] First, the Applicants submitted that the IIROC Panel did not have evidence before it to support its finding that Penson was misled. The Applicants noted that IIROC Staff did not call any witness from Penson. In the Applicants' submission, IIROC Staff had to establish by evidence that Penson was misled. Having failed to provide any such evidence, the IIROC Panel's conclusion cannot stand.

[104] Second, the Applicants submitted that the IIROC Panel should have drawn an adverse inference from IIROC Staff's decision not to call any witness to testify on behalf of Penson. The Applicants referred to *Levesque v. Comeau* [1970] S.C.R. 1010 as support for their submission that such an adverse inference ought to have been drawn.

[105] Third, the Applicants submitted that the IIROC Panel erred in concluding that Alboini used the TA Account to "hide" Jaguar's trading from Penson. According to the Applicants, Penson would have seen the accumulation trades in the TA Account as they occurred and would have become aware that Jaguar was the client as soon as the position was ticketed out. The Applicants submitted that Penson was alerted via email that outside lenders were participating in certain of the acquisitions through the Project Accounts and it should have known that the funds were subject to a *Quistclose Trust*. [A *Quistclose* trust is a trust created when a creditor has lent money to a debtor for a particular purpose. In the event that the debtor uses the money for any other purpose, the money is held in trust for the creditor. Any inappropriately applied money can then be traced and returned to the creditor. The name of such a trust is based on the House of Lords decision in *Barclays Bank Ltd v. Quistclose Investments Ltd.* [1968] UKHL 4 (31 October 1968)].

[106] Fourth, the Applicants submitted that the IIROC Panel erred in its understanding and conclusion with respect to the "cross guarantees" between the Jaguar Main Account and the Project Accounts. The Applicants submitted that Penson was alerted by e-mail that outside investors were participating in certain of the Project Accounts and Penson should have known that the funds were subject to a *Quistclose Trust*.

[107] The Applicants submitted that the IIROC Panel's decision is unclear why it concluded that Alboini misled Penson with respect to cross-guarantees. The Applicants submitted that the "cross guarantees" were not dependent on Jaguar's eligibility for margin or the liquidity of Jaguar's portfolio investments. Further, the Applicants submitted that Jaguar was both the guarantor

and the party whose obligations were guaranteed, so any cross-guarantee was meaningless. Penson had full recourse to assets in any of the Jaguar accounts.

Alboini's actions did not pose a risk to NSI's or Penson's capital

[108] The Applicants submitted that Penson and NSI were in the business of taking on reasonable market risks. It was reasonable for NSI to have taken on the risk exposure through the trading in the TA Account and Alboini was best placed to weigh the risks and benefits. The Applicants submitted that because NSI itself was the only stakeholder that was affected (other NSI clients were not subject to any risk because their accounts were carried by Penson), it was not appropriate for IIROC to second-guess NSI's business judgment in this regard.

[109] The Applicants also submitted that Penson had the responsibility for accounting for the required margin for all NSI customer accounts and Penson had the benefit of a comfort deposit from NSI.

There was no risk to the capital of Penson

[110] The Applicants submitted that Penson paid for the shares accumulated in the TA Account. Therefore, Penson was aware of its cash position at all times. Accordingly, Alboini was not the cause of any unforeseen risk to Penson. There was no evidence that Alboini was aware of how Penson was treating the securities accumulated in the TA Account as a matter of providing margin or for purposes of its regulatory capital. The Applicants submitted that there was no risk to Penson because Jaguar was not a client of Penson; NSI was the client.

There was no risk to the capital of NSI

[111] The Applicants submitted that it was reasonable for NSI to have taken on the risk of exposure to a Jaguar default in order to obtain the financial benefits from the market accumulations in the TA Account. The Applicants submitted that Alboini was best placed to weigh the risks and benefits of those purchases.

Count 2

IIROC Panel's decision

[112] The IIROC Panel found that Vance, as Chief Compliance Officer, failed to adequately supervise Alboini's trading activity involving Jaguar and other NSI clients, contrary to IIROC Rules 1300.1, 1300.2, and 2500. Specifically, the IIROC Panel found that Vance failed to make sufficient inquiries as a result of the following red flags: (i) Alboini opening the 10 new Project Accounts for Jaguar; (ii) the new client application forms ("**NCAFs**") for the 10 Project Accounts were incomplete; and (iii) the investors in the Project Accounts were also NSI clients (IIROC Decision, *supra*, at para. 105).

Vance did not fail to adequately supervise Alboini's trading activity

[113] Vance submitted that he understood the reason why the Project Accounts were opened and that the opening of multiple Project Accounts was not a "red flag" because doing so was not contrary to NSI's policies and procedures, any IIROC Rule or any requirement of applicable securities law.

[114] Vance also submitted that none of the missing information on the NCAFs was linked to any of the issues regarding Alboini's trading that was the subject of the IIROC Hearing.

[115] Vance submitted that the fact that outside investors in the Project Accounts were NSI clients was not a "red flag" because investors in Jaguar and NFC projects were usually NSI clients. It was simply Alboini's practice, for the sake of administrative convenience, to have outside investors open accounts at NSI. Vance therefore saw nothing unusual or untoward in NSI clients being investors in the Project Accounts. Furthermore, the investors were sophisticated market participants and there was not a single instance in which they suffered any loss as a result of their participation in the Jaguar projects.

[116] Vance also noted that he had no responsibility for supervising Alboini's activities as an officer and director of Jaguar.

[117] In any event, Vance submitted that IIROC Rules 1300.1, 1300.2 and 2500 pertain only to Dealer Members and not to individuals as directors, officers or employees of a Dealer Member. Accordingly, the IIROC Panel did not have jurisdiction to impose sanctions on Vance under Count 2.

Count 3

IIROC Panel's decision

[118] The IIROC Panel found that Alboini, as UDP, and Vance, as Chief Operating Officer, repeatedly failed to ensure that NSI corrected deficiencies found in three IIROC business conduct compliance reviews and one trading conduct review (the deficiencies were: failures in external employee account supervision, failure to maintain adequate grey and restricted lists and procedures, failure to maintain adequate physical barriers to contain corporate finance information, failure to develop and maintain a 90-day training programme for new recruits and failure to adequately supervise trading conduct, including audit trail, order markers, grey lists and short sale markers), thereby engaging in conduct unbecoming or detrimental to the public interest, contrary to IDA By-law 29.1 and IIROC Rule 29.1 (IIROC Decision, *supra*, at para. 143).

[119] The Applicants submitted that the IIROC Panel did not have a legal or factual basis upon which to conclude that Alboini and Vance failed to ensure that NSI corrected the deficiencies.

The IIROC Panel did not have jurisdiction to find repeated deficiencies

[120] The Applicants submitted that while IIROC can investigate or bring proceedings based on UMIR violations that occurred prior to the merger of the IDA and Market Regulation Services Inc. ("**RS**"), a proceeding under IIROC Rules alleging repeat deficiencies cannot be founded on UMIR violations that occurred prior to the merger. The Applicants submitted that the IIROC Panel lacked the jurisdiction to find repeated deficiencies under IIROC Rule 29.1 that reached back before the merger of the IDA with RS because, before the merger, there was a different regulatory regime under which Rule 29.1 did not apply to UMIR.

The IIROC Panel Applied the Wrong Standard

[121] The Applicants submitted that the IIROC Panel did not make any findings with respect to the alleged deficiencies. Instead, the IIROC Panel referred to Dunsmuir and deferred to IIROC Staff's conclusions because those conclusions were not arbitrary, unreasonable, contrary to law or beyond its jurisdiction. In other words, the IIROC Panel acted as if it was an appeal tribunal instead of as a tribunal exercising original jurisdiction. The Applicants also submitted that Questrade did not relieve the IIROC Panel from the obligation to make its own independent findings and determinations.

[122] Accordingly, the Applicants submitted that the IIROC Panel applied the wrong standard and should have made findings based on the evidence before it and should not have deferred to the position of IIROC Staff.

[123] The Applicants also submitted that IIROC merely provides guidelines regarding grey and restricted lists and there are no laws or rules relating to them. Further, the Applicants submitted that a Dealer Member implements policies and procedures for information containment under OSC Policy 33-601 in order to afford a dealer a defence under subsection 175(3) of the regulations to the Act for alleged breaches of section 76 of the Act. Accordingly, the maintenance of grey and restricted lists is not a legal requirement.

[124] The Applicants also submitted that the IIROC Panel did not take NSI's corrective measures into account in assessing whether NSI responded appropriately to the alleged deficiencies.

Count 5(a)

IIROC Panel's decision

[125] The IIROC Panel found that NSI, Alboini, as UDP, and Chornoboy, as CFO, filed or permitted to be filed with IIROC inaccurate monthly financial reports that failed to account for leasehold improvement costs thereby misstating NSI's risk adjusted capital contrary to IDA By-law 17.2 and IIROC Rule 17.2 (IIROC Decision, *supra*, at para. 143).

[126] Chornoboy admitted at the IIROC Hearing that he made errors in preparing the financial reports (IIROC Decision, *supra*, at para. 137). The IIROC Panel concluded that he therefore admitted that he breached IDA By-law 17.2 and IIROC Rule 17.2.

[127] Alboini disputed that he was responsible or culpable for this conduct.

The IIROC Panel did not have a legal basis for its finding

[128] The Applicants submitted that Alboini, as UDP, was not responsible for every error on the part of every employee of NSI and is entitled to rely on Chornoboy and NSI's auditors. The Applicants submitted that IIROC Rule 17.2 does not apply to individuals, but only to the Dealer Member itself.

Procedural Fairness and Bias

[129] The Applicants submitted that the IIROC Panel breached the principle of procedural fairness and acted in a biased manner, thereby rendering its decision void.

The proper test for reasonable apprehension of bias

[130] The Applicants submitted that the proper test for determining whether bias exists was that articulated in *National Energy Board* (see paragraph 73 of these reasons). The Applicants also submitted that they brought a motion before the IIROC Panel on May 18, 2012 alleging bias which was as soon as they determined that bias could be an issue.

Comments made by Members of the IIROC Panel

[131] The Applicants identified three series of comments made by the IIROC Panel that the Applicants submitted demonstrated a reasonable apprehension bias.

[132] First, the Applicants submitted that the members of the IIROC Panel made extraneous comments about the public perception of IIROC in imposing sanctions, including allegedly disparaging comments made by Alboini reported in the media with respect to a previous IIROC enforcement proceeding against NSI. The Applicants submitted that those statements were extraneous to the determination by the IIROC Panel of appropriate sanctions in this proceeding. The Applicants submitted that consideration of such an irrelevant matter causes a panel to lose jurisdiction.

[133] Second, the Applicants submitted that the IIROC Panel was influenced by an extraneous, and therefore irrelevant, consideration when a member of the IIROC Panel commented on the costs that would be borne by IIROC Dealer Members not a party to the proceeding if costs were not paid by the Applicants.

[134] Third, the Applicants submitted that the IIROC Panel was dismissive of the one-year ban from registration in all capacities that had been requested by IIROC Staff against Alboini. The Applicants submitted that this evidenced bias because IIROC Staff didn't request a longer ban and there was no evidentiary basis for imposing a lifetime ban on Alboini as UDP.

The exclusion of expert evidence

[135] The Applicants submitted that by taking the position that the IIROC Panel had the expertise to decide the issues on Count 1, the IIROC Panel acknowledged that expert evidence was required or at least would have been of value. In the Applicants' submission, by denying the Applicants the opportunity to adduce their own expert evidence, there was a breach of procedural fairness to them.

[136] Further, the Applicants submitted that by acting as both triers of fact and as experts, the IIROC Panel effectively shielded its expert opinion from scrutiny and prevented cross-examination by the Applicants on them.

The IIROC Panel's consideration of NSI's Risk Trend Report

[137] IIROC prepares a risk trend report ("**RTR**") for all member firms that assesses a firm's level of regulatory risk. An RTR sets out IIROC's conclusion as to the risk rating for each firm. That report is confidential and is used only by IIROC for its own purposes, although a copy is sent to the Dealer Member.

[138] IIROC Staff did not introduce the NSI RTR into evidence, but references were made to it in the testimony of Ms. Jensen and IIROC Staff produced the standard form cover document that is attached to all RTRs which provides that the RTR is a confidential document.

[139] While the NSI RTR was not in evidence, the Applicants submitted that (i) the IIROC Panel erred in treating the breach of confidence with respect to the NSI RTR as an evidentiary matter rather than an issue of procedural fairness, and (ii) the IIROC Panel was improperly influenced by the conclusion in the RTR that NSI was a high risk firm. The Applicants submitted that this resulted in a breach of procedural fairness.

[140] The Applicants also submitted that the Applicants had a legitimate expectation that the RTR would not form part of the evidence against them at the IIROC Hearing because IIROC had promised that the NSI RTR would not be used against them (because all such reports are confidential). By treating the breach of confidence that resulted from the references to the NSI RTR by witnesses as an evidentiary matter, the breach of confidence was never cured.

[141] The Applicants also submitted that the NSI RTR risk rating was not relevant to the issues before the IIROC Panel. By permitting references to this irrelevant evidence, the IIROC Panel exceeded its jurisdiction. Further, the references to the NSI RTR were a breach of the duty of fairness because the Applicants were barred from directly rebutting the report's conclusions.

[142] The Applicants also submitted that the IIROC Panel's imposition on Alboini of a lifetime UDP ban demonstrated that the "high risk stigma" from the NSI RTR influenced the decision of the IIROC Panel.

Limitation Period

Counts 1 and 3 were statute barred

[143] The Applicants submitted that the agreement between IIROC and its Dealer Members is an "arbitration agreement" within the meaning of the *Arbitration Act, 1991*, S.O. 1991, c. 17 ("***Arbitration Act***"). A claim pursuant to an arbitration agreement may be statute barred under the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B ("***Limitations Act***").

[144] The Applicants submitted that under the *Limitations Act*, IIROC was required to commence its proceeding within two years of the date of its discovery of the claim. On this basis, the limitation period with respect to Counts 1 and 3 had expired before the IIROC proceeding was commenced.

Sanctions and Costs

Financial penalties cannot be imposed

[145] The Applicants submitted that a penalty under an agreement is not enforceable if: (i) there is an inequality of bargaining power between the parties, and (ii) the penalty is unfair (*Birch v. Union of Taxation Employees*, Local 70030, 93 O.R. (3d) 1(C.A.) ("***Birch***") at para. 45). The Applicants submitted that there is no question that there is an inequality of bargaining power between IIROC and its members and that imposing fines for "public interest" violations of IIROC Rule 29.1, particularly if the conduct does not involve theft, fraud, or any other tortious or criminal act, is unfair. Therefore, the financial penalties imposed by the IIROC Panel are not enforceable. The Applicants also noted that the Commission itself cannot impose financial sanctions for conduct contrary to the public interest; in order to do so, there must be a breach of Ontario securities law.

The sanctions imposed were not proportionate

[146] The Applicants submitted that the primary purpose of sanctions is to ensure that the outcome of the matter conforms to industry expectations (*Mills (Re)* [2001] I.D.A.C.D. No. 7, April 7, 2001 ("***Mills***")); the ultimate purpose being prevention rather than punishment. The Applicants submitted that the financial sanctions imposed have no deterrent value at all, and will seriously impair, if not prevent, Alboini and NSI from salvaging and rebuilding NSI's brokerage business. Specifically, the sanctions imposed affected the Applicants' livelihood, damaged their reputations and suspended their business.

[147] The Applicants submitted that the IIROC Panel's punitive approach to sanctions is evidenced by the fact that it imposed sanctions on Alboini greater than those requested by IIROC Staff. For Count 1, IIROC Staff requested a one-year suspension of Alboini from registration in all capacities. Instead, the IIROC Panel ordered a two-year suspension from registration in all capacities and a permanent UDP ban. For Count 3, IIROC Staff requested a six-month suspension of Alboini from serving as UDP (to be served concurrently with the suspension in relation to Count 1). Instead, the IIROC Panel ordered a one-year suspension from registration in all capacities (to be served concurrently with the two-year suspension in relation to Count 1) and a permanent UDP ban.

The Costs imposed by the IIROC Panel

[148] The Applicants submitted that costs are an element of sanctions and should be taken into account in determining the overall disposition of a matter. The Applicants also submitted that pursuing a defence on the merits to IIROC allegations should not result in increased costs to the Applicants. Further, the Applicants submitted that costs for outside legal counsel retained by IIROC Staff should not be passed on to the Applicants.

2. Summary of IIROC Staff's Submissions

Standard of Review

[149] IIROC Staff submitted that the Commission should only intervene in the IIROC Decision if the Applicants establish that they have met the heavy burden of showing that the Application falls within one of the five grounds identified in *Canada Malting*.

[150] IIROC Staff also submitted that the Commission, in practice, takes a "restrained approach" to applications for a hearing and review of a decision of an SRO under section 21.7 of the Act (see, for instance, *Boulieris*, *HudBay*, and *Taub*, *supra*). Further, IIROC Staff submitted that the Commission will show greater deference to a decision of an SRO with respect to issues squarely within the SRO's expertise or jurisdiction.

Count 1

IIROC Decision

[151] IIROC Staff submitted that the IIROC Panel's findings are supported by the evidence adduced at the IIROC Hearing. Specifically, the IIROC Panel found that Alboini, as UDP and an RR at NSI, engaged in a trading practice that improperly obtained access to credit for his client, Jaguar, and in doing so risked the capital of both NSI and Penson, its carrying broker, thereby engaging in business conduct unbecoming or detrimental to the public interest, contrary to IIROC Rule 29.1 (IIROC Decision, *supra*, at para. 143)

[152] IIROC Staff also submitted that the IIROC Panel was correct in finding that Alboini's actions posed a risk to the capital of both NSI and Penson.

The TA Account was used improperly

[153] IIROC Staff made two submissions in support of its submission that Alboini's use of the TA Account was improper.

[154] First, IIROC Staff submitted that the TA Account was used by NSI to accumulate shares, which improperly provided free (and otherwise unavailable) margin financing to Jaguar. IIROC Staff submitted that the TA Account should not have been used in this manner because the provision of otherwise unavailable financing is not the purpose of an average price accumulation account. According to IIROC Staff, and as observed by the IIROC Panel in the IIROC Decision, the purpose of an average price accumulation account is:

> … to accumulate stock in inventory in cases where clients do not wish small fills for large orders. These accounts are to be only for institutional accumulation or in the occasional circumstances for a large order from an individual. The trailer of the order must be marked indicating the name of the client and the fact that the trade was completed as an average price trade.
>
> (IIROC Decision, *supra*, at para. 54, quoting the NSI Policies and Procedures Manual)

[155] IIROC Staff submitted that there was no reason to leave two large blocks of Virtek shares in the TA Account until September 25, 2008 (when such shares had been purchased on September 4, 2008 and September 10, 2008), other than to give Jaguar free financing at a cost to NSI. That is not the purpose for which an average price accumulation account should be used. IIROC Staff submitted that Alboini, on behalf NSI, delayed the ticketing out of shares from the TA Account until after financing to purchase the securities was in place, which was often well after the purchases were made in the TA Account.

[156] Second, IIROC Staff noted that the Applicants submitted that the IIROC Panel made an error in law by relying on its own industry knowledge of acceptable "ticketing out" practices. IIROC Staff submitted that IIROC panels frequently make findings regarding appropriate standards in the absence of express rules or policies. IIROC Staff noted that Alboini himself testified that, because of the IIROC proceeding, he changed the practice and began to ticket out earlier. IIROC Staff submitted that this demonstrated that Alboini recognized that the previous ticketing out practice was improper.

Jaguar was not creditworthy

[157] IIROC Staff made two submissions in support of its submission that Jaguar was not creditworthy at the time of the trades in the TA Account.

[158] First, IIROC Staff submitted that there was no evidence before the IIROC Panel as to Alboini's net worth. Therefore, it is not true that the IIROC Panel disregarded evidence that Alboini had personally guaranteed Jaguar's obligations. Further, IIROC Staff submitted that Alboini's supposed personal guarantee of NSI's liabilities is irrelevant to the question of whether Jaguar had sufficient cash or marginable securities to pay for the trades made in the TA Account at the time those trades were made. There was no evidence that Alboini's supposed personal guarantee complied with IIROC Rule 100.15, which imposes requirements that must be met when a person is guaranteeing a client account. One of those restrictions is that a guarantee of a client account must be approved by IIROC. There was no evidence that IIROC approved Alboini's guarantee.

[159] Second, IIROC Staff submitted that the IIROC Panel did, in fact, take into account the participation of outside investors in the various Project Accounts. This is evident from the summary of the investor funds in the various Project Accounts. The IIROC Panel addressed this issue in the IIROC Decision as follows:

> The account statements for the Jaguar Main Account and for the Jaguar Project Accounts as well as the spreadsheet summary of all trading in the accounts contained in Exhibit 7 clearly established that when Alboini arranged to purchase the securities for the various projects, Jaguar did not have the cash or marginable securities to pay for the securities and that Alboini knew that was the case.

> This is established by the cross-examination testimony of Alboini and Chornoboy and by the trade record documents referred to above.
>
> (IIROC Decision, *supra*, at para. 46)

Alboini's Conflict of Interest

[160] IIROC Staff also submitted that Alboini had a conflict of interest between his responsibility to NSI and his financial interest in Jaguar. IIROC Staff noted that the Applicants submitted that the IIROC Panel ignored Alboini's financial interest in NSI. IIROC Staff submitted that Alboini, as UDP, RR, and CEO at NSI, had an obligation not to take any action that would knowingly expose NSI's credit to out-of-the-ordinary risk, or breach IIROC rules or guidelines. IIROC Staff submitted that Alboini had an obligation as UDP of NSI to ensure the creditworthiness of Jaguar at the time of the trades in the TA Account. Alboini's trades in the TA Account exposed NSI's credit to out-of-the-ordinary risk in order to facilitate trades on behalf of Jaguar, thereby putting Jaguar's interests ahead of NSI's. IIROC Staff submitted that Alboini's financial stake in NSI had no bearing on whether his actions knowingly exposed NSI's credit to out-of-the-ordinary risk or breached IIROC rules or guidelines.

Penson was misled

[161] IIROC Staff made three submissions with respect to the IIROC Panel's finding that Penson was misled regarding Jaguar's creditworthiness.

[162] First, IIROC Staff submitted that the IIROC Panel's findings regarding the cross-guarantees were based on oral testimony and on various e-mails, and not, as argued by the Applicants, on a set of assumptions. Specifically, the IIROC Panel noted that Alboini testified at the IIROC Hearing that there would have been no way for Penson to know that the client placing the orders in the TA Account was Jaguar (IIROC Decision, *supra*, at para. 64).

[163] Second, Vance e-mailed Penson in late September 2008 advising that cross-guarantees existed under which two of the Project Accounts had guaranteed the Jaguar Main Account (IIROC Decision, *supra*, at para. 65). That was not the case. IIROC Staff also noted that an e-mail from Vance to Penson was in evidence that stated "we have cross guaranteed the three (3) Jaguar accounts" (IIROC Decision, *supra*, at para. 65). IIROC Staff also submitted that Alboini was aware that Penson was treating the Jaguar Main Account and two of the Project Accounts as if cross-guarantees existed. There is no evidence that Alboini did anything to correct Penson's misunderstanding.

[164] Third, IIROC Staff submitted that the Applicants' submissions with respect to the *Quistclose Trust* are without merit because they (i) disregard Chornoboy's evidence that Penson required the cross-guarantees for credit purposes, and (ii) do nothing to address Alboini's improper conduct in relation to the guarantees and the treatment by Penson of the Jaguar accounts for credit purposes.

Alboini's conduct exposed NSI and Penson to credit risk

[165] The IIROC Panel concluded that Alboini's conduct exposed the capital of both NSI and Penson to credit risk. IIROC Staff submitted that between August 1, 2008 and November 28, 2008, Jaguar's overall security position was under-margined for all but eight days. That exposed both Penson and NSI to significant credit risk.

[166] IIROC Staff also submitted that, at one point, the aggregate unmargined liabilities of Jaguar in the TA Account and other Jaguar accounts at NSI was $2,964,012, which was enough to erode the entire comfort deposit of approximately $1.7 million maintained by NSI with Penson. That swamped the risk adjusted capital of NSI by a significant margin. The unmargined liabilities exposed NSI to significant risk because NSI would have been deficient in its risk adjusted capital.

[167] In addition, IIROC Staff noted that during at least half of the period at issue, the Jaguar liabilities swamped the "required to margin" ("**RTM**") limit of $700,000 set by Penson. That was the limit imposed by Penson on the total under-margin position of all NSI clients.

[168] IIROC Staff submitted that the evidence adduced at the IIROC Hearing demonstrated that the factors referred to in paragraph 249 of these reasons contributed to exposing NSI and Penson to unusual risk.

[169] Based on the foregoing, IIROC Staff submitted that the Application should be dismissed as it relates to Count 1.

Count 2

IIROC Panel's decision

[170] The IIROC Panel found that Vance, as Chief Compliance Officer, failed to adequately supervise Alboini's trading activity on behalf of Jaguar and other NSI clients, contrary to IIROC Rules 1300.1, 1300.2, and 2500. Specifically, the IIROC Panel found that Vance failed to make sufficient inquiries in response to the following red flags: (i) Alboini opened the 10 new Project Accounts for Jaguar; (ii) the NCAFs for those accounts were incomplete; and (iii) the majority of investors with interests in the Project Accounts were also NSI clients (IIROC Decision, *supra*, at para. 105). IIROC Staff submitted that the IIROC Panel was correct in making these finding.

Vance failed to adequately supervise Alboini's trading activity

Vance's response to the alleged Red Flags

[171] IIROC Staff submitted that Vance had a due diligence obligation under IIROC Rule 1300.1 and should have made further inquiries and not just accepted Alboini's explanations as to why the 10 new Project Accounts were opened.

[172] IIROC Staff also submitted that Vance's failure to ensure the missing information on the NCAFs for the 10 Project Accounts did not meet minimum supervision standards under IIROC rules and was an inadequate response. IIROC Rule 2500 requires that proper documentation be completed when new accounts are opened. The evidence at the IIROC Hearing showed that Vance approved the new accounts (i) with missing NCAFs; (ii) with no registered representative signature (for one of the Project Accounts); (iii) with numerous missing support documents that Vance claimed "may be misfiled"; (iv) with no CCO or senior officer signatures for two other Project Accounts; and (v) four other Project Accounts were opened without compliance department approval (IIROC Decision, *supra*, at para. 105).

[173] IIROC Staff submitted that, by not addressing the fact that investors in the Project Accounts were also NSI clients, Vance's conduct was contrary to the obligations of a Chief Compliance Officer. In support of this submission, IIROC Staff relied on the finding of the IIROC Panel referred to in paragraph 263 of these reasons.

Vance was responsible under IIROC Rule 38.7

[174] IIROC Staff submitted that the IIROC Panel did have jurisdiction to impose sanctions on Vance under Count 2 because, pursuant to IIROC Rule 38.7, Vance was required to monitor and assess compliance by the Dealer Member, and individuals acting on its behalf, with the Rules and applicable securities laws (see IIROC Rule 38.7(h)(i) in Schedule A).

[175] Based on the foregoing, IIROC Staff submitted that the Application should be dismissed as it relates to Count 2.

Count 3

Failure of Alboini and Vance to ensure that NSI corrected deficiencies identified during IIROC compliance and trading reviews

[176] IIROC Staff submitted that the IIROC Panel had evidence before it to properly conclude that Alboini and Vance repeatedly failed to correct the deficiencies found by IIROC Staff in three business conduct compliance reviews and one trading conduct review.

[177] IIROC Staff submitted that the allegation with respect to Count 3 related to the Applicants' failure to correct compliance deficiencies identified by IIROC Staff and not RS as submitted by the Applicants. The conduct in question was within the jurisdiction of IIROC because the conduct occurred after June 1, 2008 (the date of the merger of the IDA and RS to form IIROC) so that any allegation that there was a failure to ensure that deficiencies were corrected was fully within the ambit of the rules of the merged organization.

The IIROC Panel did not improperly defer to IIROC Staff

[178] IIROC Staff submitted that the Applicants' submissions to the effect that the IIROC Panel did not make any findings with respect to the deficiencies ignore the findings made by the IIROC Panel. Specifically, IIROC Staff submitted that the Applicants ignore the statement referred to in paragraph 271 of these reasons as a basis for the IIROC Panel's findings in respect of Count 3:

[179] Further, IIROC Staff submitted that the IIROC Panel did in fact have a legal basis for its deficiency findings. Specifically, the IIROC Panel described the deficiencies found by IIROC Staff in respect of the "physical barriers issue". The final

2007 Business Conduct Compliance report provides that "at the time of the 2007 examination, the floor plans of the new office … did not demonstrate adequate controls to contain potential material and non-public information as follows:

- A 5 foot wall was the only divider between the Corporate Finance area and the rest of the Member.
- The computer service room was located within the Corporate Finance area.
- There were two entrances to the Corporate Finance area. One was pass card access only. The other was a divider separating Corporate Finance from other departments, which did not adequately prevent access by other employees.
- The Head of Private Client division [*sic*] was also acting in the capacity of an Investment Banker, and his office was located within the retail area."

(IIROC Decision, *supra*, at para. 121)

[180] IIROC Staff submitted, contrary to the Applicants' position, that the IIROC Panel did take the Applicants' corrective measures into account. IIROC Staff relied in this respect on the following statement from the IIROC Decision:

> This Panel has considered all the actions taken by the Respondents, particularly those of Vance after he joined NSI, and has concluded that they do not outweigh the extensive evidence of the Respondents failure to obey legal and reasonable findings and directives from IIROC, the intentional substitution of their own view of what was required for that of IIROC and the failure to understand, or intentional disregard of, the relationship between the regulator, IIROC, and the Respondents as the regulated parties.
>
> (IIROC Decision, *supra*, at para. 133)

[181] IIROC Staff submitted that NSI did not, over a period of six years, correct the deficiencies identified by IIROC Staff. Accordingly, IIROC Staff submitted that the Application should be dismissed as it relates to Count 3.

Count 5(a)

IIROC Panel's decision

[182] The IIROC Panel found that NSI, Alboini, as UDP of NSI, and Chornoboy, as CFO of NSI, filed or permitted to be filed inaccurate monthly financial reports that failed to account for leasehold improvement costs, thereby misstating NSI's risk adjusted capital contrary to IDA By-law 17.2 and IIROC Rule 17.2 (IIROC Decision, *supra*, at para. 143).

[183] At the IIROC Hearing, Chornoboy freely admitted that he made the errors described in Count 5(a) (IIROC Decision, *supra*, at para. 137). As a result, IIROC Staff submitted that the IIROC Panel was correct in finding that Chornoboy and Alboini breached IIROC Rule 17.2.

[184] In response to the Applicants' submission that IIROC Rule 17.2 applies only to Dealer Members and not to individuals, IIROC Staff submitted that the conduct covered by Rule 17.2 is carried out by an individual and that cases against individuals have been brought under this rule for years. For example, IIROC Staff submitted that the panel in Re Phillips [2011] IIROC No. 34 held that "a member is defined to include a registered representative under Rule 29.1".

[185] IIROC Staff also noted that IIROC Rule 29.1 explicitly states that "each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member" must comply with the Rules.

[186] Accordingly, IIROC Staff submitted that the Application should be dismissed as it relates to Count 5(a).

Procedural Fairness

[187] IIROC Staff submitted that the IIROC Panel did not breach the principle of procedural fairness in conducting the IIROC Hearing.

[188] IIROC Staff agreed with the Applicants that the accepted test for bias is established in *National Energy Board*. However, IIROC Staff noted that the Court in that case stated that the grounds for a reasonable apprehension of bias "must, however, be substantial". IIROC Staff also submitted that bias must be "evaluated through the eyes of the reasonable, informed,

practical and realistic person who considers the matter in some detail" (*R.D.S.*, *supra*, at para. 37). Further, a finding of bias must be based on the entire factual record.

No reasonable apprehension of bias

[189] IIROC Staff addressed the three series of comments made by the IIROC Panel that the Applicants claim demonstrate that the IIROC Panel's judgment was tainted by a reasonable apprehension bias (i.e., comments about the public perception of IIROC in imposing sanctions, comments regarding the potential costs borne by non-party Dealer Members as a result of the IIROC proceeding, and comments dismissive of the one-year ban of Alboini proposed by IIROC counsel (see the discussion commencing at paragraph 311 of these reasons)).

[190] IIROC Staff submitted that these comments simply showed that the IIROC Panel was working through the issues and that it would be unrealistic to expect a hearing panel to never comment about any peripheral matter.

Exclusion of expert evidence

[191] IIROC Staff submitted that the IIROC Panel declined to admit the expert evidence proposed to be submitted by the Applicants with respect to the use of an accumulation account on the grounds that it was not necessary. That was a discretionary decision fully within the jurisdiction of the IIROC Panel.

[192] IIROC Staff also rejected the Applicants' suggestion that the IIROC Panel, by excluding expert evidence, shielded its expertise from challenge. IIROC Staff submitted that the Applicants did not demonstrate that the IIROC Panel used its specialized knowledge as a substitute for evidence. Rather, the IIROC Panel used its decision making discretion exactly as it was supposed to.

The Confidential Risk Trend Report

[193] IIROC Staff made five submissions as to why the IIROC Panel did not consider the NSI RTR in a way that caused procedural unfairness.

[194] First, IIROC Staff submitted that the Applicants did not object to Ms. Jensen's evidence about that report during her cross-examination. (That submission appears to be inconsistent with the IIROC transcript related to this issue.)

[195] Second, IIROC Staff noted that, in its decision on the Applicants' motion (on May 18, 2012), the IIROC Panel concluded that the NSI RTR would be treated as an evidentiary matter and would be ignored. Further, IIROC Staff noted that the NSI RTR itself was never part of the evidence at the IIROC Hearing.

[196] Third, IIROC Staff submitted that hearing panels have a broad discretion to control their own process and that discretion gives them the ability to admit or exclude evidence and to assign it as much weight as they consider appropriate.

[197] Fourth, IIROC Staff submitted that the NSI RTR was not the only source of information that might classify NSI as a "high risk" firm. IIROC Staff submitted that the other sources of such information included:

(a) an e-mail dated December 24, 2009 from Mike Prior to Vance, Murray Lund and Maureen Jensen in which Mr. Prior stated "[d]ue to the previous regulatory history with regards to trade supervision and compliance at NSI, *IIROC has classified NSI as a high risk firm* and has adjusted resources and scope accordingly" [emphasis added];

(b) a Sales Compliance Review Head Office Risk Assessment Checklist where NSI was given an average risk ranking of 4.07 on a scale of "1 (very little risk) to 5 (extremely high risk)";

(c) a trade desk review of NSI dated November 3, 2008 where it was noted that "[t]his firm is ranked extremely risky by the FC department";

(d) a sales compliance review supporting document entitled "Head Office SCR Planning Checklist" in which NSI was given a post-Sales Compliance Review average risk ranking of 3.71"; and

(e) NSI 2008 financial and operations compliance examination report where it was noted that "IIROC continues to rank NSI as higher risk relative to all IIROC dealer members due to senior management's lack of progress in dealing with the above issues."

[198] Finally, IIROC Staff submitted that there is a presumption that a hearing panel will act fairly and impartially and there is insufficient evidence to rebut that presumption in this case (*E. A. Manning*, *supra*, at p. 11).

Limitations Period

The Application of the Limitations Act

[199] IIROC Staff submitted that this proceeding is not an arbitration and is not conducted pursuant to an arbitration agreement. IIROC Staff submitted that under the standard form agreement between IIROC and each Dealer Member, that member submits to the disciplinary process set out in the IIROC Rules.

[200] Accordingly, IIROC Staff submitted that section 52 of the *Arbitration Act* does not apply to this proceeding.

Sanctions and Costs

[201] IIROC Staff submitted that the IIROC Panel was within its jurisdiction to impose financial penalties for a breach of IIROC Rule 29.1 because the IIROC Rules expressly contemplate the ability to impose a fine for a contravention of IIROC Rules. Rules 20.33 and 20.34 expressly provide that, upon the conclusion of a disciplinary proceeding, a hearing panel may impose, among other things, a fine for a failure to comply with the provisions of any IIROC Rule.

[202] IIROC Staff submitted that the IIROC Panel based its sanctions on appropriate principles and provided extensive reasons as to the factors that it took into consideration in reaching its decisions. Further, IIROC Staff submitted that IIROC panels should be given a high level of deference with respect to their sanctions decisions (*Re Benarroch*, (2011) 34 O.S.C.B. 2041, at para. 5).

[203] IIROC Staff submitted that the sanctions imposed were appropriate and proportionate to the conduct involved.

[204] IIROC Staff also submitted that the IIROC Panel's costs order was not out of line with the costs assessed in other contested IIROC Hearings. For example, in *Re Shanahan*, [2006] I.D.A.C.D. No. 5, an IIROC Hearing Panel awarded a total of $214,688.15 in costs against three respondents after a lengthy hearing.

[205] Based on the foregoing submissions, IIROC Staff submitted that the Application should be dismissed.

3. Summary of Commission Staff's Submissions

[206] Commission Staff supported the submissions made by IIROC Staff and limited their own submissions to the specific matters summarized below.

[207] Commission Staff submitted that, despite the broad scope of a hearing and review under section 8 of the Act, there is "a high threshold to meet in demonstrating that a decision of an SRO should be overturned" (*Re George Benarroch, et al*, (2010) 33 O.S.C.B. 12043 at para. 18). Commission Staff submitted that, in practice, the Commission takes a "restrained approach" to its jurisdiction under section 8 (*Vitug*, *supra*, at para. 44).

[208] In particular, Commission Staff submitted that factual determinations attract significant deference because SROs possess a unique expertise (*Vitug*, *supra*, at para. 45; *HudBay*, *supra*, at paras. 103-104; *Boulieris*, *supra*, at paras. 29-30, and *Hahn*, *supra*, at para. 195).

[209] Commission Staff stated that the Commission relies on the expertise of SROs to assist it in regulating Ontario's capital markets (*Derivative Services*, *supra*, at page 13).

[210] Commission Staff also submitted that an applicant has a heavy burden of showing that its case falls within one of the five grounds identified in *Canada Malting*. This heavy burden is imposed on applicants to promote certainty and to recognize an SRO's expertise [see *Canada Malting*, *supra*, at paras. 25-27 and *HudBay*, *supra*, at para. 114).

Count 1

Industry Standards

[211] Commission Staff submitted that several IIROC and IDA decisions have required hearing panels to draw conclusions as to appropriate industry standards in the absence of an express rule or policy. These include the decisions in *Re Gareau*, *supra*, at paras. 29-31, *Re Youden*, *supra*, at para. 76, and *Re Van Hee*, 2008 IIROC 25 at para. 47.

Procedural Fairness

The test for bias

[212] Commission Staff adopted the submissions of IIROC Staff as to the test for determining whether a reasonable apprehension of bias has arisen.

[213] Commission Staff also submitted that the Applicants should have made the allegations of bias to the IIROC Panel, which was not done. Commission Staff submitted that the Applicants should not be allowed to wait for the result of the sanctions and costs hearing and then, having lost, "cry foul" through an allegation of bias.

[214] Commission Staff addressed the three series of comments made by the IIROC Panel that the Applicants claim demonstrated that the IIROC Panel's judgment was tainted by a reasonable apprehension bias (i.e., extraneous comments about the public perception of IIROC, including Alboini's allegedly disparaging comments reported in the media with respect to a previous IIROC enforcement proceeding against NSI, comments regarding the potential costs that would be borne by non-party Dealer Members as a result of the IIROC proceeding, and comments dismissive of the one-year registration ban of Alboini requested by IIROC Staff).

[215] Commission Staff submitted that these comments should be viewed in context. None of the comments – taken individually or together – gave rise to a reasonable concern as to bias in the mind of a reasonable person informed of the circumstances. Accordingly, the IIROC Panel was not and could not be perceived to be biased against the Applicants.

[216] Commission Staff also submitted that the comments made by the IIROC Panel do not come close to the comments that were found to be biased by the Ontario Court of Appeal in *Shoppers Mortgage & Loan v. Health First Wellington Square Ltd.* [1995] O.J. No. 1268 ("***Shoppers***") and *Sorger v. Bank of Nova Scotia* [1998] O.J. No. 2071. Commission Staff referred to the Ontario Court of Appeal's assessment of the comments made by the trial judge in Shoppers:

> It is unnecessary to enumerate and quote from the countless interventions by the trial judge, a ground of appeal which overlaps with the ground of appeal based on premature, anticipatory rulings on the admissibility of evidence indicating a prejudgment of the issues. Generally, the record is punctuated by statements of the trial judge to defence counsel such as:
>
> > You're wasting my time.
> >
> > You are scraping the bottom of the barrel.
> >
> > You're clutching at straws.
> >
> > You're fighting an uphill battle.
> >
> > You have got a pretty desperate case.
>
> Rather than attempting to weigh each intervention separately, one has to consider their cumulative effect.
>
> (*Shoppers*, *supra*, at para. 8)

Sanctions

Financial penalties imposed

[217] Commission Staff submitted that, in arguing that the financial penalties imposed by the IIROC Panel are unenforceable, the Applicants misconstrued the nature of the relationship between IIROC and its members. As voluntary members of IIROC, the Applicants entered into a contractual commitment to abide by IIROC's constitution, regulation, rules and by-laws.

[218] Further, Commission Staff submitted that *Birch* (the authority cited by the Applicants to support their position that the sanctions imposed by the IIROC Panel were "unconscionable") dealt with imposing financial sanctions on union members who crossed picket lines. That case has no application in this matter where we are dealing with a regulatory proceeding where members are expressly subject to regulatory obligations enforced through sanctions.

[219] Commission Staff submitted that the Application should be dismissed.

F. ANALYSIS

1. Introduction and Standard of Review

[220] The IIROC proceeding raised a large number of complex legal and factual issues that were required to be addressed by the IIROC Panel. It is clear from the IIROC Decision and the IIROC Panel's reasons that the panel carefully considered and addressed the terms of the various Counts and the legal issues raised by them, and made appropriate findings of fact based on the evidence. The IIROC Panel's reasons are comprehensive and clearly set forth the IIROC Panel's analysis and rationale for its findings and conclusions. Subject to the specific matters we address in these reasons, we defer to the conclusions reached by the IIROC Panel, which fall squarely within the IIROC Panel's expertise and authority.

[221] We must give a high level of deference to decisions of an SRO, such as IIROC, in the areas of its expertise (see the decisions referred to in paragraphs 54 to 61 of these reasons). In reviewing the IIROC Decision, we must be guided by the grounds for intervention by the Commission set out in *Canada Malting* (see paragraph 49 and following of these reasons).

[222] We will examine each of the different Counts addressed in the IIROC Decision applying the *Canada Malting* principles.

2. Count 1 – Alboini Improperly Obtained Access to Credit for Jaguar

[223] The IIROC Panel concluded that Alboini as UDP and an RR at NSI engaged in a trading practice through the use of the TA Account that allowed Jaguar to improperly obtain access to credit (while it was not creditworthy within the meaning of the industry) and in doing so risked the capital of both NSI and Penson.

[224] The IIROC Panel properly noted that there are several elements to Count 1: whether the trading practice obtained access to credit for Jaguar and, if so, whether that trading was improper and whether it risked the capital of both NSI and Penson.

[225] The IIROC Panel found that Alboini's use of the TA Account was not in accordance with either NSI's policies and procedures or accepted industry practice. Specifically, the IIROC Panel found:

> The NSI manual states that the TA Account must be used for "accumulations … where clients do not wish small fills for large orders." The reasons for such an approach, which is in keeping with industry practice in the Panel's opinion, are to avoid putting one large order into the market which could influence upward the price the buyer might have to pay, to avoid the inconvenience and excessive paperwork which would be required for multiple small orders rather than a single ticket and to facilitate average price fills when an institutional order is to be prorated amongst the clients [*sic*] internal accounts. *By its own terms the TA Account was never intended as a source of financing to purchase shares in situations where funds were not available on a T+3 basis.* It was IIROC's position that the orders placed by Alboini in the TA Account on behalf of Jaguar were not "large orders" that were worked by the trade desk over an extended period of time, but rather were day orders that were filled seriatim and simply aggregated and assigned an average price for ticketing purposes usually at month end. The trade summary above shows that in some months during the relevant period, very few trades took place.
>
> The Panel agrees with IIROC's position that the orders in the TA Account were not large orders, but were day orders that were accumulated and assigned an average price for ticketing purposes. It is the Panel's conclusion that this trading activity in the TA Account was not in accordance with accepted industry practice regarding the use of client average price accumulation accounts, nor with NSI's manual *and was nothing more than Jaguar free-riding on Penson's capital. This was an improper use of the TA Account.*
>
> [emphasis added]
>
> (IIROC Decision, *supra*, at paras. 60 and 61)

[226] The IIROC Panel concluded that Alboini's use of the TA Account obtained access to credit for Jaguar that Jaguar would not otherwise have been able to obtain. The IIROC reasons state that:

> ... It is clear that Alboini's trading practice gained Jaguar access to credit and thus enabled it to purchase securities which it could not otherwise acquire.
>
> (IIROC Decision, *supra*, at para. 44)

Was the Access to Credit Improper?

[227] The IIROC Panel addressed whether gaining that access to credit for Jaguar was improper. The Panel set out four reasons why it considered that trading practice to be improper:

(a) Jaguar was not creditworthy at the time of the purchases in the TA Account;

(b) Alboini had a conflict of interest in making the purchases;

(c) the trading was an inappropriate use of the TA Account; and

(d) Alboini misled Penson as to Jaguar's creditworthiness.

There was a fifth ground that alleged that there was a transfer of money directly from a client account to a "pro account" without written authorization. The IIROC Panel concluded with respect to that issue that:

> … The Respondents took the position that this transfer was of no particular importance because the transaction was processed by Penson, not NSI, and that the transfers of client money into the Vulcan and Titan Project accounts was authorized by the client opportunity documents. The Panel has concluded that these transfers of client money to pro accounts, while inappropriate, were largely the result of sloppy documentation and procedures and are not a factor in determining whether Jaguar's access to credit was "improper". However, this incident again reflects negatively on the multiple roles that Alboini played with the parties involved.
>
> (IIROC Decision, *supra*, at para. 70)

[228] We agree with the IIROC Panel's statement that IIROC needed to be successful in establishing only one of the matters referred to in paragraph 227 above in order for the Panel to conclude that the access to credit obtained by Jaguar was improper (IIROC Decision, *supra*, at para. 45).

[229] The IIROC Panel made the following findings with respect to the issues identified in paragraph 227 above:

(a) "It is the Panel's conclusion that Jaguar was not creditworthy when it purchased the securities in the TA Account which were destined for the Jaguar Project Accounts and that Alboini should not have initiated the trades knowing that Jaguar was not creditworthy. This factor alone would be sufficient to establish that Alboini's gaining access to credit was improper …" (IIROC Decision, *supra*, at para. 51);

(b) "... Furthermore as UDP and CEO, Alboini owed a fiduciary obligation to NSI to protect the interests of NSI. In this case, Alboini let his interests in making money for Jaguar and himself take precedence over his obligations to NSI, rather than the other way around. This conflict is another factor leading the Panel to conclude that the access to credit was "improper"" (IIROC Decision, *supra*, at para. 53);

(c) "The Panel agrees with IIROC's position that the orders in the TA Account were not large orders, but were day orders that were accumulated and assigned an average price for ticketing purposes. It is the Panel's conclusion that this trading activity in the TA Account was not in accordance with accepted industry practice regarding the use of client average price accumulation accounts, nor with NSI's manual *and was nothing more than Jaguar free-riding on Penson's capital.* This was an improper use of the TA Account" (see paragraph 225 above and the IIROC Decision, *supra*, at para. 61); [emphasis added]

(d) "... a far more important factor was Alboini misleading Penson into thinking it could treat the Jaguar Main Account and the Jaguar Project Accounts as if they were one account" (IIROC Decision, *supra*, at para. 65). "... [i]t is the Panel's conclusion that Alboini's failure to correct Penson's misimpression about the propriety of treating the Jaguar accounts as one was improper and was a factor in getting Jaguar access to credit" (IIROC Decision, *supra*, at para. 69); and

(e) "Based on the Panel's conclusions regarding the issues relating to Jaguar's lack of creditworthiness, Alboini's conflict of interest, the inappropriate use of the TA Account and Alboini's misleading Penson regarding the treatment of Jaguar Main Account and the Jaguar Project Accounts as described above, the Panel's decision is that Jaguar's access to credit was "improper" for the purposes of Count 1" (IIROC Decision, *supra*, at para 71).

Whether Jaguar was creditworthy

[230] The IIROC Panel made the following finding with respect to Jaguar's creditworthiness:

> The account statements for the Jaguar Main Account and for the Jaguar Project Accounts as well as the spreadsheet summary of all trading in the accounts contained in Exhibit 7 clearly established that when Alboini arranged to purchase the securities for the various projects, *Jaguar did not have the cash or marginable securities to pay for the securities and that Alboini knew that was the case.* This is established by the cross-examination testimony of Alboini and Chornoboy and by the trade record documents referred to above. There were securities in the Jaguar Main Account, but these were not marginable and frequently were subject to certain restrictions and valuation issues which were relevant to the issue of the risk to the credit of NSI and Penson (discussed below). *Jaguar was not creditworthy by the standards of the investment industry at the time it purchased the securities.*
>
> Knowing the creditworthiness of a client before executing trades on its behalf and only executing trades for creditworthy clients *is a basic obligation of registered securities dealers* and in particular is an obligation of the client's RR. This was admitted by Alboini in his cross-examination …
>
> [emphasis added]
>
> (IIROC Decision, *supra*, at paras. 46 and 47)

[231] We find that it was within the Panel's expertise and authority to come to the conclusion referred to in paragraph 230 above based on the evidence before it. The IIROC Panel found that "Jaguar did not have the cash or marginable securities to pay for the securities and that Alboini knew that was the case" (see paragraph 230 above). As a result, Jaguar could not have made the purchases directly in reliance on its own creditworthiness and was able to make the purchases only through the TA Account. The question the IIROC Panel was addressing was whether Jaguar was creditworthy by industry standards. Whether a client is creditworthy is a basic requirement addressed in the IIROC Rules. A client's margin position is a basic element of assessing the creditworthiness of a client and managing the credit risk related to a client's trading. The IIROC Panel had ample evidence and was entitled to conclude, as it did, that Jaguar was not creditworthy by those standards.

[232] In reaching that conclusion, it appears to us that the IIROC Panel was addressing the appropriate industry standards in the circumstances and did not rely on the doctrine of judicial notice.

[233] Whether or not Alboini had guaranteed Jaguar's obligations and had other personal financial resources to address any deficiency does not affect the IIROC Panel's conclusion.

Alboini's Conflicts of Interest

[234] The IIROC Panel also concluded that there was a conflict of interest between Alboini's obligations as UDP, RR and CEO of NSI and his interests as CEO and a shareholder of Jaguar. Specifically, the IIROC Panel stated:

> … As CEO and a shareholder of Jaguar, Alboini saw opportunities for Jaguar to make money by purchasing the various securities that ultimately ended up in the Jaguar Project Accounts. If Jaguar were successful in these projects Alboini would benefit financially. As UDP, RR and CEO at NSI, it is Alboini's obligation not to take any action that would knowingly expose NSI's (or Penson's) credit to out-of-the-ordinary risks, or breach any IIROC rules or guidelines. In this case, it is the Panel's conclusion (as outlined in Paragraph 72 – 81 below), that Alboini's actions in the TA Account on behalf of Jaguar exposed NSI's credit to out-of-the-ordinary risks.
>
> IIROC Dealer Member Rule 38.5 provides that the UDP must "supervise the activities of the Dealer Member that are directed towards ensuring compliance with [IIROC] rules and applicable securities law requirements …" and must "promote compliance by the Dealer Member, and individuals acting on its behalf, with [IIROC] rules and applicable securities laws." *While IIROC was unable to point to any IIROC rule or securities law that specifically required the UDP or RR to ensure the creditworthiness of clients or not expose the credit of the Dealer Member to unnecessary risks, this was, and remains a basic and obvious obligation, well recognized by industry participants as illustrated by the know-your-client process.* Furthermore as UDP and CEO, Alboini owed a fiduciary obligation to NSI to protect the interests of NSI. In this case, Alboini let his interests in making money for Jaguar and himself take precedence over his obligations to NSI, rather than the other way around. This conflict is another factor leading the Panel to conclude that the access to credit was "improper".

[emphasis added]

(IIROC Decision, *supra*, at paras. 52 and 53)

[235] It is clear that the IIROC Panel found that Alboini had multiple roles and that those roles created potential conflicts of interest. Alboini's decisions to delay any "ticketing out" of securities in the TA Account (see paragraph 238 below) imposed carrying costs on NSI and exposed NSI to credit risk while also benefiting Alboini as a shareholder of Jaguar. It is not an adequate response to this concern to say that Alboini was in the best position to assess all of the risks to NSI, Penson and Jaguar and the competing financial interests involved. It is clear that Alboini had multiple roles that potentially created conflicts of interest. There does not appear to have been any evidence that Alboini appropriately addressed those conflicts. The IIROC Panel was entitled to conclude, as it did, that those conflicting interests made the trading in the TA Account improper.

Was the trading an inappropriate use of the TA Account?

[236] The IIROC Panel concluded that NSI's use of the TA Account was "nothing more than Jaguar free-riding on Penson's capital. This was an improper use of the TA Account" (see paragraph 225 of these reasons and IIROC Decision, *supra*, at para. 61). That was perhaps the IIROC Panel's most important finding.

[237] The IIROC Decision states that as early as July, 2008, the Jaguar Main Account was restricted by Penson because that account "… had been undermargined for twenty consecutive days …" (IIROC Decision, *supra*, at para. 35). By early August, however, the account was unrestricted. Between August and November, 2008, "… instead of buying the securities in the Jaguar Main Account or in the Jaguar Project Accounts, neither of which held sufficient funds to make the acquisitions, Alboini placed the orders in the NSI average price accumulation account …" held at Penson (IIROC Decision, *supra*, at para. 37).

[238] In their reasons, the IIROC Panel also addressed the issue of ticketing out. "Ticketing out" refers to the transfer of securities from an accumulation account to the client. When the securities are "ticketed out", the client pays for the securities. The IIROC Panel made the following statement with respect to ticketing out:

> The Panel agrees with the IIROC position. It is industry practice to ticket out when a trade has concluded and to collect funds at that point. If the account is being used for a true accumulation, payment might be delayed until the accumulation has been completed if the creditworthiness of the client is not in question, but it should never be delayed beyond completion of the accumulation. It is industry practice to get paid for an order on as timely a basis as possible. Indeed a member should not even take an order unless it has good reason to believe it will be paid for on a timely basis. Delaying the ticketing out until month end could only benefit Jaguar, could not be in the best interests of NSI (or Penson) and is an inappropriate use of the TA Account.
>
> (IIROC Decision, *supra*, at para. 63)

[239] When the IIROC Panel concluded that NSI's use of the TA Account was Jaguar "free riding" on Penson's capital, it meant that Alboini was making purchases through the TA Account on behalf of Jaguar that Jaguar would not otherwise have been able to make directly. Those purchases were made through the credit advanced by Penson as a result of the trading in the TA Account. Alboini knew that Jaguar did not have the cash or marginable securities to pay for the purchases in the TA Account. That exposed Penson to credit risk related to the trading by Penson in the TA Account and it exposed NSI to the same risks because the TA Account was an NSI account. The IIROC Decision states that "[u]ntil Jaguar actually paid for the securities, the regulatory capital of both was at risk …" (IIROC Decision, *supra*, at para. 75).

[240] The IIROC Panel noted that there was a gap in understanding between NSI and Penson with respect to how the TA Account was viewed:

> … The "gap" in understanding was that Penson viewed the TA account as a principal account of NSI (and therefore had no margin/capital responsibilities), whereas NSI viewed the TA account as a client account (and therefore the margin/capital responsibilities belonged to Penson). The end result was that neither Penson nor NSI provided margin/capital in respect of the TA account during the August-November 2008 period.
>
> (IIROC Decision, *supra*, at para. 40)

[241] The IIROC Panel did not, however, determine which of Penson or NSI should have allocated regulatory capital for the transactions in the TA Account. Further, the IIROC Panel concluded that it was not necessary to decide whether Alboini knew of and exploited the gap in understanding.

[242] We note that there is nothing improper in a Dealer Member providing credit to a client through trading in an accumulation account. The IIROC Panel found the trading in the TA Account to be improper because (i) Jaguar was not creditworthy at the time of the trades, and (ii) delaying ticketing out the securities in the TA Account until month-end was an inappropriate use of the TA Account and could only benefit Jaguar (because Jaguar was required to fund the purchases in the TA Account only when the securities were ticketed out) (see paragraph 238 above and IIROC Decision, *supra*, at para. 63).

[243] In our view, it was within the expertise and authority of the IIROC Panel to assess the use by Alboini of the TA Account and to come to the conclusion that use was improper for the reasons referred to in paragraph 242 above.

[244] We note that the IIROC Panel refused to allow NSI and Alboini to introduce expert evidence that would have included evidence as to the accepted practice in the industry related to the use of an accumulation account (see paragraph 69 of these reasons). The use of an accumulation account was clearly an important issue in this proceeding and one upon which we would likely have wanted to receive further evidence with respect to industry practice. The question on this Application is not, however, whether we would have permitted expert or other evidence on that issue. The question is whether the IIROC Panel was entitled to make the decision it did with respect to Alboini's use of the TA Account and whether that decision was procedurally unfair to the Applicants because they were not permitted to tender expert evidence on the point.

[245] The threshold for permitting expert evidence is a high one (see paragraph 69 of these reasons). The legal question is whether expert evidence was necessary to enable the IIROC Panel to appreciate the matters in issue and to make the decisions that it did. The IIROC Panel concluded that such evidence was not necessary (the Panel also questioned other aspects of the proposed expert evidence including the qualifications of the proposed expert). Ultimately, it was for the IIROC Panel to determine whether the use by Alboini of the TA Account was improper in the circumstances; that was not a matter for the opinion of an expert. We find that the IIROC Panel was entitled to conclude that expert evidence as to industry practice in the use of an accumulation account was not necessary in the circumstances. In our view, the IIROC Panel was also entitled to conclude that "[d]elaying the ticketing out [of the securities in the TA Account] until month end … is an inappropriate use of the TA Account" (see paragraph 238 above and IIROC Decision, *supra*, at para. 63).

[246] We note that the Applicants were able to make submissions to the IIROC Panel as to the appropriate use of an accumulation account and as to ticketing out securities from it.

[247] On balance, we do not find the IIROC Panel's decision to exclude the Applicants' proposed expert evidence to have been procedurally unfair to the Applicants.

Misleading Penson

[248] The IIROC Panel came to the conclusion that Penson was misled by Alboini "into thinking it could treat the Jaguar Main Account and the Jaguar Project Accounts as if they were one account" (IIROC Decision, *supra*, at para. 65). While the IIROC Panel concluded that Alboini misled Penson, no witness testified at the IIROC Hearing on behalf of Penson. We acknowledge that the evidence before the Panel on this issue was not the best evidence available in the circumstances (which would have been the testimony of a senior officer of Penson with knowledge of the facts who testified whether Penson was actually misled). We note, however, that there was evidence before the IIROC Panel upon which it could rely in coming to the conclusion that Alboini misled Penson, including the testimony of Alboini referred to in the IIROC reasons (see IIROC Decision, *supra*, at paras. 68 and 69). We do not know whether Penson took the position that it was misled by Alboini. We note, however, that the IIROC Panel concluded that Penson granted credit to Jaguar through the trading in the TA Account in circumstances in which it would not otherwise have done so. In our view, the IIROC Panel was entitled in these circumstances to conclude that Alboini misled Penson.

Risk to NSI and Penson

[249] The IIROC Panel found that the following factors contributed to exposing NSI and Penson to out-of-the-ordinary credit risk:

(a) the time the securities were held in the TA Account without being ticketed out to and paid for by Jaguar;

(b) the lack of creditworthiness of Jaguar;

(c) the fact that had NSI been required to put up margin for the purchases in the TA Account it would have exceeded the "required to margin amount" established by Penson (see paragraph 167 of these reasons);

(d) the speculative nature of the securities held by Jaguar in the Jaguar Main Account; and

(e) the speculative and illiquid nature of the securities being purchased for the Project Accounts through the TA Account.

(see IIROC Decision, *supra*, at paras. 77 to 80)

[250] There was evidence before the IIROC Panel that Jaguar's overall securities position was under-margined for all but eight days during the period from August 1, 2008 to November 28, 2008 (see paragraph 165 of these reasons). Further, at one point, the aggregate unmargined liabilities of Jaguar in the TA Account and other Jaguar accounts at NSI was $2,964,012 which was more than the comfort deposit of approximately $1.7 million maintained by NSI with Penson. The unmargined liabilities exposed NSI to significant risk because NSI would have been deficient in its regulatory capital had it accounted for those liabilities (see paragraphs 166 and 167 of these reasons).

[251] In our view, the IIROC Panel was entitled to conclude that the "… access to credit created by Alboini's trading practice as described above, caused the capitals of both NSI and Penson to be put at greater risk than would have occurred had the TA Account not been used for the Jaguar Project Account purchases" (IIROC Decision, *supra*, at para. 81). The factors that created this risk are those set out in paragraph 249 above.

[252] We understand, however, that Jaguar's trading in the TA Account did not ultimately result in any financial loss to NSI or Penson and that both those parties derived financial benefits from the trading.

[253] The IIROC Panel also concluded that "Dealer Members owe a duty to each other to deal honestly and fairly in accordance with generally accepted industry standards (so long as those standards are not below their obligation to the public interest) so as not to expose other Dealer Members or their employees to unnecessary and unexpected risks" (IIROC Decision, *supra*, at para. 84). The Panel concluded that "Alboini's actions fell very far below the standards that would or should be acceptable to member firms" (IIROC Decision, *supra*, at para. 85). One factor in making that finding was the IIROC Panel's conclusion that "Alboini's failure to correct Penson's misimpression about the propriety of treating the Jaguar accounts as one was improper and was a factor in getting Jaguar access to credit" (IIROC Decision, *supra*, at para. 69; see paragraph 229(d) above).

Conclusions

[254] The IIROC Panel considered the evidence before it and made findings that the use by NSI and Alboini of the TA Account was improper in light of industry standards. We are satisfied that there was evidence before the IIROC Panel upon which it was entitled to come to the conclusions referred to in paragraph 229 of these reasons. The IIROC Panel has specialized knowledge and expertise with respect to conduct in the securities industry and is entitled to interpret and apply IIROC Rules. The IIROC Panel was entitled to apply that knowledge and expertise to interpret the evidence and submissions before it and to come to the conclusion that the trading in the TA Account was improper and caused out-of-the-ordinary risks to NSI's and Penson's capital.

[255] In our view, the IIROC Panel did not rely on judicial notice in reaching its conclusions on Count 1.

[256] Count 1 alleges that Alboini engaged "in business conduct unbecoming or detrimental to the public interest" (IIROC Rule 29.1). IIROC has particular knowledge and expertise in interpreting and applying that standard. The fact that there is no definition of what "unbecoming business conduct" may be does not prevent an IIROC panel from interpreting and applying that standard. In *Youden*, the absence of a definition of "misconduct" did not prevent an IDA panel from addressing and applying that concept. *Youden* quotes the following passage from *Re Gareau*:

> …
>
> Finally, the courts have made clear that the absence of a definition of misconduct does [not] prevent a disciplinary tribunal from considering whether there has been misconduct in a particular case. In *Re Matthews and Board of Directors of Physiotherapy* (1987), 61 O.R. (2d) 475, the Ontario Court of Appeal stated:
>
> > The absence of such a definition requires the board to judge the appellant by the objective standards of his own profession. Although these standards are unwritten, they are nonetheless real and it is within the jurisdiction of the appellant's professional brethren who constitute the board to determine in the particular case if he has fallen below that standard.
>
> …
>
> (*Youden*, *supra*, at para. 76)

[257] Accordingly, the IIROC Panel was entitled to interpret and apply the concept of "unbecoming business conduct" and to determine whether Alboini's conduct fell within it. The IIROC Panel was entitled to conclude, as it did, that Alboini's conduct constituted conduct unbecoming or detrimental to the public interest contrary to IIROC Rule 29.1.

[258] Based on our conclusions in paragraphs 254 and 257 above, we find that the IIROC Panel did not make an error in principle or in law that would warrant our intervention in relation to Count 1. We therefore defer to the IIROC Panel's decision with respect to Count 1.

3. Count 2 – Vance Failed to Adequately Supervise Alboini's Trading

[259] IIROC Staff alleged that Vance, as NSI's Chief Compliance Officer, failed to adequately supervise Alboini's trading activity involving Jaguar and other NSI clients, contrary to IIROC Rules 1300.1, 1300.2 and 2500, because he did not make sufficient inquiries in response to the following five alleged red flags:

(a) Alboini opened 10 new Project Accounts for Jaguar between August and November 2008;

(b) the new client application forms (NCAFs) for the 10 new Project Accounts were incomplete, including the absence of any indication as to whether or not any third parties held a beneficial interest in the accounts;

(c) transfers of funds were effected between NSI retail client accounts and pro accounts of Jaguar, without proper documentation to do so;

(d) Vance was aware that a "majority of the investors" in the Project Accounts were also NSI clients; and

(e) over two million shares of a particular issuer were traded from a pro account into a retail client account on one day.

(IIROC Decision, *supra*, at para. 95)

[260] The IIROC Panel found that Vance failed to make sufficient inquiries regarding the matters referred to in clauses (a), (b) and (d) of paragraph 259 above, and thereby breached IIROC Rules 1300.1, 1300.2 and 2500 (IIROC Decision, *supra*, at para. 106). However, with respect to the matters referred to in clauses (c) and (e) of that paragraph, the IIROC Panel found that "Vance was never faced with [these] red flag[s]". Therefore, if those were the only red flags referred to in Count 2, the IIROC Panel "could not conclude that the allegation against Vance was established" [emphasis in original] (IIROC Decision, *supra*, at paras. 105(c) and 105(e)).

[261] The IIROC Panel provided specific reasons for its findings. The IIROC Panel had evidence before it of (i) missing NCAFs for the Project Accounts, (ii) Vance's approval for the opening of accounts with no RR signature, (iii) numerous missing NCAF support documents that Vance claimed "may be misfiled", (iv) two Project Accounts opened with no CCO or senior officer signatures, and (v) four other Project Accounts opened without compliance department approval (IIROC Decision, *supra*, at para. 105(b)). The IIROC Panel stated that it was not a sufficient excuse for Vance to say that he was unaware of missing third party information. The IIROC Panel also found that Vance should have made further inquiries regarding the incompleteness of the NCAFs and his failure to do so was a failure by Vance to properly supervise Alboini's trading activity, as alleged in Count 2 (IIROC Decision, *supra*, at para. 105).

[262] The IIROC Panel concluded that "Vance's testimony made clear the fact that he took little initiative to ensure compliance within NSI" with Rules 1300.1, 1300.2 and 2500 (IIROC Decision, *supra*, at para. 105(b)).

[263] With respect to this finding, the IIROC Panel also stated:

> Good business practice requires that a CCO be extra-careful to ensure proper disclosure documentation is on file and that NSI clients have been fully advised of the corporate relationships when they are investing with Jaguar, a firm in which the NSI UDP exercises control and has a personal financial interest. Vance's testimony demonstrated a lack of situational awareness and little interest in questioning *what should have been a major compliance concern at NSI.* This was a red flag which should have caused Vance to make more diligent inquiries into all the circumstances of the client investments in the Jaguar Projects to ensure that the clients were fully advised and knew what they were doing. Failure to do so was a failure on his part to properly supervise Alboini's trading activity, as alleged.
>
> [emphasis added]
>
> (IIROC Decision, *supra*, at paras. 105(d))

[264] The Applicants submitted that the opening of the 10 Project Accounts and the fact that a majority of the investors in those accounts were NSI clients were not red flags because there was nothing unusual about Alboini opening those accounts or that NSI clients had an interest in them. While that may be the case, IIROC Rules specifically address the account opening

process. The IIROC Panel found that Vance should have made more diligent inquiries related to the Project Accounts, particularly given Alboini's multiple roles and his potential conflicts of interest. In our view, it makes no difference that the account opening deficiencies referred to in paragraph 261 above were not directly related to Alboini's trading conduct alleged in Count 1. Those deficiencies did relate to the Project Accounts and should have led Vance to make further enquiries.

[265] Count 2 relates to the allegation that Vance, as CCO, failed to supervise Alboini's trading activity contrary to IIROC Rules 1300.1, 1300.2 and 2500. That Count does not expressly refer to IIROC Rule 38.7 which imposes obligations on a CCO. In this respect, the IIROC Panel stated that:

> … However, Respondents' counsel never made any objection to the applicability of Rules 1300.1, 1300.2 and 2500 to Vance's conduct even after the issue was raised by the Panel in the hearing. At all times, the hearing proceeded on the basis that Rules 1300.1, 1300.2 and 2500 applied to the conduct of Vance. Consequently, it is the decision of the Panel that the Respondents have suffered no procedural unfairness due to the absence of Rule 38.7 from the wording of Count 2 and have waived their right to object to the application of Rules 1300.1, 1300.2 and 2500 to Vance's conduct.
>
> (IIROC Decision, *supra*, at para. 98)

[266] We agree with the IIROC Panel's conclusion that there was no procedural unfairness to Vance in these circumstances. Vance knew throughout that it was his conduct as CCO in supervising Alboini's trading activity and the opening of the Project Accounts that was the subject of Count 2.

[267] Further, in our view, there was an adequate evidentiary foundation upon which the IIROC Panel could conclude that Vance failed to adequately supervise Alboini's trading. The IIROC Panel's finding that Vance's failure to adequately respond to the red flags referred to in paragraph 259 (a), (b) and (d) of these reasons, including the failure to make further inquiries, is sufficient to establish the allegation in Count 2. We find that the IIROC Panel did not make an error in principle or in law that would warrant our intervention in relation to Count 2. We therefore defer to the IIROC Panel's decision with respect to Count 2.

4. Count 3 – Repeated Failures to Remedy Deficiencies

[268] The central factual issue in respect of Count 3 is whether NSI, Alboini and Vance each repeatedly failed to ensure that deficiencies identified by IIROC in three business conduct compliance reviews (a "**BCC review**") and one trading conduct compliance review (a "**TCC review**") were corrected by NSI. The particulars of these deficiencies are set out in the IIROC Decision, which states:

> The NOH [notice of hearing] contains the following particulars in relation to Count 3:
>
> i. Between 2004 and 2008, Staff of the IDA, RS [Market Regulation Services Inc.] and subsequently IIROC conducted three BCC reviews (formerly known as "sales compliance reviews") and one TCC review of NSI. Each of the deficiencies listed below (in paragraph 109.iv) was raised with NSI, including with Vance after his employment at NSI commenced in October 2006.
>
> ii. Final reports for the above-mentioned compliance reviews were issued as follows:
>
> a. on March 22, 2005, the final 2004 Sales Compliance Review listing the below deficiencies was sent to NSI;
>
> b. on May 23, 2007, the final 2006 Sales Compliance Review listing the below deficiencies was sent to NSI;
>
> c. on April 30, 2009, the final 2007 Business Conduct Review listing the below deficiencies was sent to NSI; and
>
> d. on February 8, 2010, a letter was sent to NSI, making reference to a report issued in December 2008 that listed the below Trading Conduct Compliance deficiencies, of which several were repeats from previous trading conduct compliance reviews.
>
> iii. I IROC gave NSI ample opportunity to address the outstanding deficiencies in the firm's daily business and supervision of its employees. Despite some efforts and repeated assurances by NSI that the deficiencies would be addressed, and notwithstanding a settlement reached with RS in May 2008 regarding trading conduct failings from 2003 to 2005, NSI, Alboini and Vance failed to address the deficiencies during the material time.

iv. NSI's conduct during the material time included the following:

a. failing to maintain current and accurate information about and properly supervise employees' external securities accounts;

b. failing to maintain adequate grey and restricted lists and failing to ensure proper procedures were created and followed regarding use of the lists;

c. failing to maintain adequate physical barriers in its office space to contain corporate finance information;

d. failing to develop and maintain a firm-specific 90-day training program to complement the Canadian Securities Institute program; and

e. failing to adequately supervise trading conduct, including audit trail, order markers, grey lists and short sale markers.

v. As UDP, Alboini was ultimately responsible for NSI's conduct during the material time, including its deficiencies in the firm's daily business and supervision of its employees.

(IIROC Decision, *supra*, at para. 109)

[269] We note that two of the final reports referred to in paragraph 268 above were issued before the merger of the IDA and RS on June 1, 2008 to form IIROC.

[270] IIROC Staff had the onus of establishing that the alleged deficiencies occurred and that there were failures to remedy them. The IIROC Panel stated that:

> *The critical issue is, by what standard is the Panel to determine whether the deficiencies alleged by IIROC existed and, if so, whether they were corrected.* The Panel has decided that the existence of a deficiency and whether it has been corrected must be determined by the regulator, IIROC, in accordance with applicable laws and its published rules, regulations, policies and bulletins and, in particular, its interpretation thereof. This is a complex industry with numerous members in a variety of circumstances; this requires that many of the applicable laws, rules and policies must be of general application, requiring flexibility and interpretation to fit differing circumstances. If a Member or registrant believes that IIROC is mistaken in this regard, their only option is to ignore IIROC's position and, as in this case, be open to IIROC taking disciplinary proceedings; otherwise they must comply with the IIROC position.
>
> [emphasis added]
>
> (IIROC Decision, *supra*, at para. 115)

[271] We note that evidence regarding all of the alleged deficiencies was presented to the IIROC Panel and that repeat deficiencies were acknowledged by Vance (IIROC Decision, *supra*, at paras. 111 and 112). However, the IIROC Decision discusses only the evidence regarding the deficiency of failing to maintain adequate physical barriers. The IIROC Decision states:

> There is no need to outline the history of each of the deficiencies in these reasons, but the Panel notes for the record that the evidence at the hearing clearly establishes the legal basis for IIROC's deficiency findings and that NSI, Alboini and Vance failed to correct such deficiencies. However, the Panel will review the issue of physical barriers (referred to in paragraph 109 iv (c)) to illustrate our conclusions.
>
> (IIROC Decision, *supra*, at para. 119)

[272] While we might have preferred the IIROC Panel to have specifically addressed in its reasons more than one of the alleged deficiencies, the IIROC Panel had evidence before it regarding all of the deficiencies and stated that there was evidence constituting a legal basis for IIROC's conclusions. In our view, there are no grounds for us to intervene in the IIROC Decision on Count 3 based on the failure of the IIROC Panel to address each of the separate deficiencies in its reasons.

[273] IIROC Staff submitted that the statement set out in paragraph 271 above means that the IIROC Panel made an independent finding that the deficiencies referred to occurred and were not corrected. We do not accept that submission. The

Panel concluded that the evidence established "the legal basis for IIROC's deficiency findings …" That does not constitute an independent finding by the IIROC Panel that the deficiencies occurred and were not corrected. The IIROC Panel stated expressly the standard of review it was applying in deciding whether the deficiencies existed and whether they were corrected (see paragraphs 270 and 274 of these reasons and our conclusion in paragraph 278 below).

[274] In reaching its conclusion with respect to Count 3, the IIROC Panel was influenced by the standard of review set out in *Dunsmuir* in assessing IIROC Staff's allegations. The IIROC Decision states that:

> ... What are the limits on IIROC's ability to compel Members and registrants to follow its interpretations and directives? The case of *Dunsmuir v. New Brunswick* [2008] 1 S.C.R. 190, 2008 SCC 9 reestablished the principles for judicial review of tribunal decisions. Ours is not a case of judicial review and this Panel is not saying that it is applying *Dunsmuir*, but this Panel is influenced by the principles stated in *Dunsmuir* and *we have concluded that the ability of IIROC to compel Members and registrants to obey its interpretations and directives is subject to the condition that IIROC's interpretation may be overturned by an IIROC disciplinary hearing panel (or the OSC on appeal) if the panel (or the OSC) finds the interpretation to be arbitrary or unreasonable, contrary to law or beyond its jurisdiction.* It is this Panel's view that none of the deficiencies found, nor corrective instructions given by IIROC in this case were unreasonable, arbitrary, contrary to law or beyond its jurisdiction, and consequently the Respondents are compelled to obey IIROC's determination of the existence of deficiencies, its corrective instructions and its findings that the deficiencies had not been corrected.
>
> [emphasis added]
>
> (IIROC Decision, *supra*, at para. 117)

[275] The IIROC Panel was required to determine based on the evidence before it whether the allegations by IIROC Staff with respect to Count 3 were established. While IIROC Staff through its reviews may have come to conclusions about the alleged repeated deficiencies, the IIROC Panel should not have addressed that allegation as if it were sitting on a judicial review applying a *Dunsmuir*-like standard of review (see paragraph 274 above). While the IIROC Panel stated that it was not applying *Dunsmuir*, it also said that it was influenced by the principles in *Dunsmuir*.

[276] The question to be determined by the IIROC Panel was not whether IIROC Staff's position and interpretation of IIROC rules with respect to the deficiencies was unreasonable, arbitrary, contrary to law or beyond its jurisdiction. That constitutes a standard of judicial review. The question was whether IIROC Staff had established on the balance of probabilities that repeated deficiencies had occurred and were not corrected. In our view, the IIROC Panel made an error in law in concluding that it could overturn an IIROC Staff decision or interpretation only if the interpretation was "unreasonable, arbitrary, contrary to law or beyond its jurisdiction."

[277] This is an important point. IIROC Staff made an administrative, and not an adjudicative, decision when it decided that deficiencies had occurred and were not corrected. That administrative decision was being reviewed by the IIROC Panel as an independent adjudicator (in the same way this Commission reviews administrative decisions of Commission Staff). That review is an important element of the oversight role of an IIROC panel (or of a Commission panel). In our view, no deference was owed by the IIROC Panel to the decisions and interpretations of IIROC Staff (in the same way that no deference is owed by a panel of the Commission to decisions and interpretations made by Commission Staff).

[278] When we read all of the portions of the IIROC Decision related to Count 3, we believe that it is clear that the IIROC Panel did not make independent findings that deficiencies had occurred and were not corrected. The IIROC Panel found instead that IIROC's position with respect to the occurrence and correction of the alleged deficiencies was not unreasonable, arbitrary, contrary to law or beyond its jurisdiction.

[279] The IIROC Panel also stated:

> In the case of *Re Questrade Inc.* [2009] I.I.R.O.C. No.49, IIROC found that a continual refusal to comply with IIROC rules was a breach of IIROC Rule 29.1. Questrade appealed to the OSC, (*Re Questrade Inc.* (2011), 34 OSCB 2595) arguing that its deliberate refusal to follow the IDA's interpretation of the rules was not a deliberate refusal to follow the rules themselves, that IDA's findings, guidance or interpretations do not have the effect of a rule and were not binding on Questrade per se. The OSC disagreed with Questrade and ruled that Questrade was required to follow the IDA interpretation. That case is very persuasive to the Panel in this case. It is this Panel's conclusion that, subject to the condition stated in paragraph 117 [referred to in paragraph 274 of these reasons], *Members and registrants ultimately must follow IIROC's interpretation of all applicable laws, published rules, policies and bulletins etc. and are not entitled to simply disagree*

> *with IIROC or follow their own interpretation. It is IIROC, not NSI, Alboini or Vance, which determines the existence of deficiencies in NSI practices and whether they have been corrected.*
>
> [emphasis added]
>
> (IIROC Decision, *supra*, at para. 116)

[280] In *Questrade*, however, the District Council made an independent finding that Questrade had failed to comply with IIROC Rules. The reasons of the Commission state that:

> The District Council found that Questrade failed to comply with the rules when it made no attempts to collect the required margin from its online FX trading clients. Dealing with an issue that falls squarely within IIROC's expertise, the District Council concluded that Spot FX contracts are not exempt from regulatory margin requirements. The IIROC District Council made no error in law and proceeded on no incorrect principle; the decision of the District Council falls squarely within its area of competence and expertise.
>
> (*Re Questrade Inc.* (2011), 34 OSCB 2595 at para. 25)

In this case, we have concluded that the IIROC Panel did not make independent findings that deficiencies had occurred and were not corrected (see paragraph 278 above).

[281] We would add that the conclusion in *Questrade* is undoubtedly correct that regulatory consequences flow from a refusal by a registrant to comply with a regulatory requirement. IIROC may well take the position that Dealer Members have an obligation to comply with the reasonable determinations or directions of IIROC Staff. In this case, the IIROC Panel expressed concerns regarding the Applicants' "… failure to obey legal and reasonable findings and directives from IIROC, the intentional substitution of their own view of what was required for that of IIROC and the failure to understand, or intentional disregard of, the relationship between the regulator, IIROC, and the Respondents as the regulated parties" (IIROC Decision, *supra*, at para. 133). However, those matters were not the allegations made by IIROC Staff in Count 3. The IIROC Panel recognized in its reasons that Count 3 required IIROC Staff to establish that there were deficiencies under IIROC Rules and repeated failures to correct them (see paragraph 270 above). The onus remained on IIROC Staff throughout to prove its allegations in Count 3. If an IIROC Dealer Member disagrees with an interpretation of IIROC Staff, that Dealer Member takes the risk that a proceeding will be brought against it to establish the breach and that the breach will be found to have occurred. The IIROC Panel was right when it stated that "… [i]f NSI, Alboini and Vance choose not to comply with IIROC's determination that there were deficiencies and that they have not been corrected, they are subject to disciplinary proceedings ..." (IIROC Decision, *supra*, at para. 129). However, the question before the IIROC Panel was whether Count 3 as alleged by IIROC Staff was established; not whether IIROC Staff's interpretation of IIROC Rules was unreasonable, arbitrary, contrary to law or beyond its jurisdiction. In our view, the IIROC Panel made no independent findings in that respect.

[282] We find that the IIROC Panel made an error in law when it came to the conclusions set out in paragraphs 270 and 274 of these reasons. Accordingly, we set aside the IIROC Panel's decision with respect to Count 3.

5. Count 5(a) – Filing of Inaccurate Monthly Financial Reports

[283] The particulars of Count 5(a) are as follows:

> The NOH stated the following particulars regarding Count 5(a):
>
> a) NSI found new premises for its Toronto office in 2007 and retained a contractor to make improvements. The contractor proceeded with its work and issued invoices to NSI from time to time in 2007 and early 2008. After deducting an interim payment made by NSI, the final cost of the contractor's work was $521,515.55.
>
> b) Chornoboy was responsible for reviewing the contractor's invoices and arranging for payment. Chornoboy failed to record the liabilities owing to the contractor on NSI's monthly financial reports and its annual financial statements. The invoices were properly liabilities of NSI, unless and until a different amount was agreed upon or ordered by a court, and they ought to have been recorded.
>
> c) As a result of failing to properly record the liabilities to the contractor, NSI's Monthly Financial Reports filed with IIROC were inaccurate for the 13 months from February 2008 to February 2009. Importantly, by not recording the liabilities, NSI concealed six instances in which it was in early warning for the purpose of IIROC Dealer Member Rule 30.

> d) As UDP, Alboini was ultimately responsible for the failures to properly record NSI's liabilities and for the breach of IIROC Dealer Member Rule 30.
>
> (IIROC Decision, *supra*, at para. 136)

[284] Chornoboy admitted the facts alleged in Count 5(a) and "that he erred in his accounting treatment" of the costs of the leasehold improvements (IIROC Decision, *supra*, at para. 137). Accordingly, the issue for the IIROC Panel was whether Alboini as UDP had responsibility for Chornoboy's conduct referred to in Count 5(a).

[285] The IIROC Panel recognized that Alboini's role as UDP did not make him responsible or culpable for every error by a person under his supervision. The IIROC Panel stated that:

> There are two factors which lead this Panel to conclude that Alboini should be held culpable under Count 5(a) as alleged. Firstly, the failure in reporting arose out of the leasehold improvements to the new premises of NSI (the move that was reported by Vance to IIROC when indicating that the physical barriers deficiency would be corrected and which is referred to in Count 3 above). *There can be no issue that Alboini was aware of the move and its cost, which involved payment of over $500,000 in settlement of the claim of the construction firm which did the leasehold improvements. This was simply too significant a number for Alboini not to be aware of it given the size of NSI and its very small executive team at NSI.* [emphasis added]
>
> Secondly, in their closing argument, Respondents' counsel admitted that Alboini reviewed the Monthly Financial Reports (MFRs), but said he was unaware of the error. There is no direct evidence that he was aware of the error, but given the following factors:
>
> - his involvement in the move to the new premises;
> - the size of the settlement;
> - the size of the error relative to the totals in the MFRs;
> - the fact that he reviewed the MFRs with Chornoboy;
> - this was a substantial error made by a senior member of the firm,
>
> it is the Panel's conclusion that Alboini failed to supervise the activities of, and promote compliance by NSI and Chornoboy with IIROC rules regarding proper reporting in its MFRs as alleged.
>
> (IIROC Decision, *supra*, at paras. 140 and 141)

[286] In the circumstances, it was not enough for Alboini to simply say that he was unaware of the error. The onus was on Alboini to establish that his reliance on Chornoboy was reasonable and that he took appropriate steps to ensure that the MFRs were accurate. The IIROC Panel concluded that Alboini was ultimately responsible for Chornoboy's error. Given the materiality of the amounts paid for the leasehold improvements, Alboini's knowledge of those amounts and his review of the MFRs, the IIROC Panel was entitled to conclude, as it did, that Alboini was culpable with respect to Count 5(a).

[287] In our view, the IIROC Panel made no error in principle or in law in making its findings with respect to Count 5(a) based on the evidence before it. In the circumstances, we defer to the IIROC Panel's decision as to Count 5(a).

6. Procedural Fairness Regarding the Sanctions and Costs Hearing

Decision of the IIROC Panel

[288] The IIROC Panel issued its decision on the merits on July 23, 2012. That decision was as follows:

> The Panel makes the following findings against NSI, Mr. Alboini, Mr. Vance, and Mr. Chornoboy
>
> **Count 1:** Between August and November 2008, Alboini, as Ultimate Designated Person and a Registered Representative at NSI, engaged in a trading practice which improperly obtained access to credit for his client, Jaguar Financial Corporation, and in doing so risked the capital of both NSI and its carrying broker, thereby engaging in business conduct unbecoming or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1;

> **Count 2:** Between August and November 2008, Vance, as Chief Compliance Officer, failed to adequately supervise Alboini's trading activity involving Jaguar Financial Corporation and other NSI clients, contrary to IIROC Dealer Member Rules 1300.1, 1300.2 and 2500;
>
> **Count 3:** From 2006 to 2010, NSI, Alboini, as Ultimate Designated Person, and Vance, as Chief Compliance Officer, repeatedly failed to ensure that NSI corrected deficiencies found in three business conduct compliance reviews and one trading conduct review, thereby engaging in conduct unbecoming or detrimental to the public interest, contrary to IDA By law 29.1 and IIROC Dealer Member Rule 29.1.
>
> **Count 5(a):** NSI, Alboini, as Ultimate Designated Person, and Chornoboy, as Chief Financial Officer from February 2008 to February 2009, filed or permitted to be filed inaccurate Monthly Financial Reports which failed to account for leasehold improvement costs, thereby misstating NSI's risk adjusted capital, contrary to IDA By-law 17.2, and IIROC Dealer [sic].
>
> (IIROC Decision, *supra*, at para. 143)

[289] No reasons were provided supporting these findings prior to the sanctions and costs hearing held on October 11 and 12, 2012.

Applicants' Objection

[290] A chart showing the sanctions and costs requested by IIROC Staff and the sanctions and costs imposed on the Applicants is attached as Schedule B to these reasons. The sanctions and costs imposed on Alboini were those requested by IIROC Staff, except that (i) on Count 1, IIROC Staff requested a one-year suspension of Alboini in all categories, and the IIROC Panel imposed a two-year suspension in all categories and a permanent UDP ban, (ii) on Count 3, IIROC Staff requested a six-month suspension of Alboini as UDP and the IIROC Panel imposed a one-year suspension in all categories and a permanent UDP ban, and (iii) on Count 5(a), IIROC Staff requested a fine for Alboini of $35,000 and the IIROC Panel imposed a fine of $25,000. The sanctions and costs imposed on NSI, Vance and Chornoboy were those requested by IIROC Staff, except that for Vance (x) on Count 2, IIROC Staff requested a fine of $35,000 and the IIROC Panel imposed a fine of $25,000, and (y) on Count 3, IIROC Staff requested a fine of $50,000 and the IIROC Panel imposed a fine of $25,000. All of the costs orders requested by IIROC Staff were granted.

[291] Prior to the sanctions and costs hearing, the Applicants objected to that hearing proceeding before the reasons for the IIROC Panel's findings were issued. In this respect, the IIROC Panel made the following comment:

> After delivering its decision, the Panel indicated that full reasons for the decision would follow in due course and invited counsel to suggest dates for the penalty phase of the hearing. Respondents' counsel took the position that they could not properly address the matter of the appropriate penalties until they had seen the Panel's full reasons for the decision and that dates for the penalty phase should not be determined until after they had an opportunity to review the Panel's reasons. The Respondents' counsel did not cite any authority whatsoever for their position, no IIROC rules, no cases and no legal principles.
>
> (IIROC Decision, *supra*, at para. 144)

[292] At the sanctions and costs hearing, the Respondents again asserted that:

> It is fundamentally unfair to expect the respondents to be able to make meaningful submissions as to the appropriate sanctions and costs in the absence of reasons showing how and why the Hearing Panel arrived at its findings on the merits hearing.
>
> (IIROC Decision, *supra*, at para. 146)

[293] There was another relevant exchange at the IIROC sanctions and costs hearing with respect to this issue:

> Mr. Walsh: [member of the IIROC Panel] What you're asking for is reasons on a decision as to the merits. What we're supposed to be here today doing is having submissions on penalty.

Mr. Kaufman: [counsel to the Applicants]	That's what we're trying to do. We're trying to deal with the degree and significance of the misconduct which Mr. Douglas [counsel to IIROC] said is relevant. So we are dealing with that from a blameworthy perspective to try to show you why we don't think it's as blameworthy as Mr. Douglas says. But we're doing that in the context of not having the reasons on the facts, so we don't know what your reasons are. We know what Mr. Douglas' arguments are. So in the sense, we are trying to argue things without the facts from your reasons and trying to do the best we can. It is not procedurally fair, in my view. It isn't.
The Chairman [of the IIROC Panel]:	Let me answer that. The fact that the Respondents decided to change counsel after the full case was heard is not our problem and it's not Mr. Douglas' problem. You're stuck with the situation that was created by your client. He's the one who changed horses. Mr. Brush raised exactly the same issue. We told him he was wrong. And the fact that you weren't here to listen to the facts, that's not anybody's problem. Respondents and their counsel were here. They listened to the facts; they listened to the arguments; we made a decision. All you need to know now is what those facts are and what our decision was. The facts are there. We didn't –
Mr. Kaufman:	I need to know your reason [*sic*].
The Chairman:	No, you don't. You just need to know the facts –
Mr. Kaufman:	I fundamentally disagree.
The Chairman:	Well, I'm not the least bit surprised.
Mr. Kaufman:	Right. It's a fundamental administrative law of principle [*sic*].
The Chairman:	No, it's not.
Mr. Kaufman:	It is.

(Transcript, IIROC Sanctions Hearing, October 11, 2012 at page 161, line 10 to page 162, line 25)

[294] The IIROC Panel dismissed the Applicants' objections and stated that:

> This Panel agrees with the IIROC position on these matters, and reiterates its conclusion that the Respondents did not require the reasons for its decision on the merits prior to dealing with sanctions issues.
>
> This Panel also noted that, despite their protestations to the contrary, the Respondents were able to present full, complete and meaningful submissions on the sanctions issues in this case.
>
> (IIROC Decision, *supra*, at paras. 150 and 151)

[295] We understand that there have been a number of proceedings in which IIROC panels have bifurcated the merits hearing and the sanctions and costs hearing and have provided reasons on the merits before the sanctions and costs hearing. However, there does not appear to be an IIROC policy in this respect and, according to IIROC Staff, there have also been many circumstances in which IIROC panels have not done so.

[296] This issue goes to the question of procedural fairness to the Applicants. The question is whether the Applicants were given a meaningful opportunity to address and make submissions on the question of sanctions and costs?

[297] In this case, the matters at issue were complex and there were many factual and legal issues in respect of which the IIROC Panel made findings contrary to the submissions of the Applicants. Further, one of the issues that the IIROC Panel was required to address at the sanctions and costs hearing was whether the sanctions and costs imposed were proportionate to the

conduct and circumstances of the Applicants. It seems to us that it would have been difficult for the Applicants to effectively address the issue of proportionality without the reasons and detailed findings on the merits by the IIROC Panel. We note in this respect that the Applicants strenuously objected before the IIROC Panel that proceeding with the sanctions and costs hearing without the benefit of the reasons on the merits was unfair to them.

[298] In our view, in these circumstances, the IIROC Panel should have provided reasons on the merits prior to the sanctions and costs hearing in order to permit the Applicants to effectively make submissions. As noted in paragraph 71 of these reasons, the Applicants were entitled to a high level of procedural fairness which includes the right to be heard. In our view, the failure of the IIROC Panel to provide reasons on the merits before the sanctions and costs hearing was unfair to the Applicants in the circumstances. We note in this respect that the question is not whether in the IIROC Panel's view the Applicants were able to make effective submissions in the circumstances (see paragraph 294 of these reasons).

[299] We also note that the Commission's Rules of Procedure address this issue. Under the Commission's Rules of Procedure, a separate hearing must be held to determine sanctions and costs unless the parties otherwise agree (Commission's *Rules of Procedure*, section 17.3(1)). Those rules also require that a date for a sanctions hearing shall be set "[f]ollowing the issuance of the reasons for the decision on the merits …" (Commission *Rules of Procedure*, section 17.3(2)). Those rules do not, of course, apply to the IIROC Hearing. We would add that where a pending transaction is being challenged before the Commission, the Commission may well make a decision whether or not to cease trade that transaction before it issues detailed reasons on the merits.

More Severe Sanctions against Alboini

[300] This concern is heightened by the fact that the Panel imposed more severe suspensions on Alboini than were requested by IIROC Staff (see paragraph 290 above and Schedule B). With respect to Count 1, the IIROC Panel imposed on Alboini a two year suspension from registration in all capacities and a permanent UDP ban when IIROC Staff had requested a one year suspension from registration in all capacities. With respect to Count 3, the IIROC Panel imposed on Alboini a one-year suspension from registration in all capacities (to be served concurrently with the two year suspension in relation to Count 1) and a permanent UDP ban when IIROC Staff had requested a six-month suspension from serving as UDP. Those sanctions were in addition to a total fine of $625,000, disgorgement of commissions of $240,000 and costs of $125,000.

[301] It is clear, as a matter of law, that the IIROC Panel was not bound by the sanctions and costs proposals made by IIROC Staff and that it had the discretion to impose the sanctions and costs it considered appropriate and proportionate to the conduct involved. Having said that, IIROC Staff's requested sanctions and costs were a relevant consideration.

[302] IIROC's disciplinary sanctions guidelines discuss the circumstances in which a permanent ban should be imposed upon a Dealer Member. That guideline includes section 4.3 which states:

> A permanent ban from approval of an individual or the termination of membership or expulsion from the Corporation is a severe economic penalty and should generally be reserved for cases where:
>
> - the public itself has been abused;
> - where it is clear that a respondent's conduct is indicative of a resistance to governance;
> - the misconduct has an element of criminal or quasi-criminal activity; or
> - there is reason to believe that the respondent could not be trusted to act in an honest and fair manner in all their dealings with the public, their clients, and the securities industry as a whole.

In addition, "recommended sanctions" for breaches of IIROC Rule 29.1 include "in egregious cases" consideration of the imposition of a permanent prohibition.

[303] The IIROC Panel concluded that "… Alboini's conduct was quite intentional and amounted to a systematic attempt to improperly benefit Jaguar, in which he had a financial interest, at the risk and expense of NSI and Penson" and that conduct could be "characterized as manipulative and deceptive" … (IIROC Decision, *supra*, at para. 187). The IIROC Panel also concluded that Alboini's conduct was "deceitful and self-serving" and that he engaged in egregious conduct (IIROC Decision, *supra*, at para. 208). That conduct included the failure of the Applicants "to obey legal and reasonable findings and directives from IIROC" (IIROC Decision, *supra*, at para. 133).

[304] The IIROC Panel addressed at the sanctions and costs hearing whether Alboini's conduct indicated a "resistance to governance" and whether there was reason to believe that NSI and Alboini "… could not be trusted to act in an honest and fair manner in all of their dealings with the public, their clients and the securities industry as a whole" (IIROC Decision, *supra*, at

para. 197). The IIROC Panel concluded that "this factor is relevant to Alboini". The IIROC Panel also concluded "… that there is sufficient evidence that Alboini could not be effectively controlled by anyone brought into, or currently in NSI, or by any restriction on him other than a suspension" (IIROC Decision, *supra*, at para. 206). *While there were findings made by the IIROC Panel that supported these conclusions (including those referred to in paragraph 303 above), Alboini would have been unaware of those findings until the reasons on the merits were issued (which was, of course, after the sanctions and costs hearing).* Further, while being ungovernable is a relevant consideration when an IIROC panel is considering imposing a permanent ban pursuant to IIROC Sanctions Guidelines, it does not appear that Alboini was aware, prior to the sanctions and costs hearing, that a permanent ban was being considered by the IIROC Panel. IIROC Staff did not request such a ban. Accordingly, Alboini would not have known in advance of the sanctions and costs hearing that his resistance to governance or ungovernability would be an issue at that hearing and he would not have known what findings the IIROC Panel was relying on to support a permanent ban. That knowledge would have been important to Alboini in formulating his submissions on sanctions and costs. The result of these circumstances was that, to a significant extent, Alboini went into the sanctions and costs hearing on an uninformed basis.

Conclusions

[305] In our view, based on the conclusion in paragraph 298 above, and, in the case of Alboini, in light of the circumstances referred to in paragraphs 300 and 304 above, we find that the conduct of the sanctions and costs hearing was procedurally unfair to the Applicants. That constitutes an error in law within the meaning of *Canada Malting*. Accordingly, we set aside the IIROC Panel's sanctions and costs imposed on the Applicants.

[306] Given our conclusion in paragraph 305 above, we do not have to address the Applicants' submissions on (i) the proportionality of the sanctions and costs imposed by the IIROC Panel, or (ii) the costs awarded by the IIROC Panel, including the submissions in paragraph 148 of these reasons.

7. Reasonable Apprehension of Bias

[307] The Applicants allege that a reasonable apprehension of bias on the part of the IIROC Panel arose as a result of comments made by the members of the IIROC Panel during the sanctions and costs hearing.

[308] The parties do not disagree about the applicable test for determining whether a reasonable apprehension of bias on the part of the IIROC Panel arose in the circumstances. That test is substantially the same whether one applies *Newfoundland Telephone*, *R.D.S.* or *National Energy Board* (see paragraphs 72 and 73 of these reasons). What is disputed is whether the comments made by members of the IIROC Panel during the sanctions and costs hearing gave rise to a reasonable apprehension of bias.

[309] We note that there is a presumption that an IIROC panel will act fairly and impartially (see paragraph 76 of these reasons). Accordingly, the onus is on the Applicants to establish the contrary and the threshold for finding bias is a high one (see paragraph 75 of these reasons).

[310] The comments of the members of the IIROC Panel alleged by the Applicants to give rise to a reasonable apprehension of bias can be grouped into the following categories (i) comments about the public perception of IIROC in imposing sanctions, including allegedly disparaging comments made by Alboini and reported in the media with respect to a previous IIROC enforcement proceeding against NSI, (ii) comments about the costs of the IIROC proceeding that would be borne by other IIROC Dealer Members if those costs were not paid by the Applicants, and (iii) comments that were dismissive of the one-year ban from registration requested by IIROC Staff for Alboini.

Comments as to Public Perception of IIROC

[311] The comments about the public perception of IIROC in imposing appropriate sanctions arose during a discussion about the principle of general deterrence and industry expectations that appropriate penalties will be imposed by IIROC. The IIROC Panel questioned how it would be perceived by the public if IIROC imposed the lower penalties requested by Alboini's counsel.

[312] In our view, the reference to the public perception of appropriate sanctions would not generally raise a reasonable apprehension of bias in the mind of a reasonable person, fully informed of the circumstances. The Commission has held that general deterrence can be taken into account in determining appropriate sanctions (*Donnini (Re)* (2002), 25 O.S.C.B. 6225 at para. 178). The Supreme Court of Canada emphasized the important role of general deterrence in *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 ("***Cartaway***"). In *Cartaway*, the Supreme Court of Canada stated that deterrence is "… an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventive" (at para. 60). Further, the Supreme Court has noted that deterrence may be specific to the respondent or general to the public at large. The Supreme Court stated in *Cartaway* that:

> Deterrent penalties work on two levels. They may target society generally, including potential wrongdoers, in an effort to demonstrate the negative consequences of wrongdoing. They may also

> target the individual wrongdoer in an attempt to show the unprofitability of repeated wrongdoing. The first is general deterrence; the second is specific or individual deterrence: see C. C. Ruby, *Sentencing* (5th ed. 1999). In both cases deterrence is prospective in orientation and aims at preventing future conduct.
>
> (*Cartaway*, *supra*, at para. 52)

[313] The Commission has also addressed the relevance of industry expectations in imposing appropriate sanctions:

> Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its members to expect for the conduct under consideration, it may undermine the goals of the Association's disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus the responsibility of the District Council in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that its primary purpose is prevention, rather than punishment.
>
> (*Mills*, *supra*, at p. 3)

[314] Accordingly, the IIROC Panel was entitled to consider general deterrence and public and industry expectations in imposing sanctions in this matter.

[315] The IIROC Panel also referred to certain allegedly disparaging comments made by Alboini and reported in the media with respect to a previous IIROC enforcement proceeding against NSI. This included a comment by one of the members of the IIROC Panel that:

> … there was a public response from NSI basically – how do I put it in nice words – well, basically rubbing IIROC's nose into the fact that, 'You know what? You guys were all wrong. You were offside. It just goes to prove that we're not going to be bullied around and whatever.'
>
> (Transcript, February 15, 2013 at page 334, lines 13 to 24)

Alboini did not deny making the statements.

[316] It seems to us that if such comments are made in the media, the comments are in the public domain and the person making them should not generally be able to complain if the comments are raised later by another IIROC panel considering imposing sanctions on the same person. The comments made are not wholly irrelevant in considering the imposition of sanctions. They may have been relevant to the question of what sanctions would likely deter NSI and Alboini from similar conduct in the future.

[317] Having said that, those statements were not the subject matter of the IIROC proceeding and, based on the extensive reasons for sanctions and costs in the IIROC Decision, the IIROC Panel does not appear to have been influenced by them in imposing sanctions and costs.

Other Comments

[318] The IIROC Panel also made comments that, absent an award of costs against the Applicants, the costs of the IIROC proceeding would be borne by other IIROC Dealer Members. Those comments arose during a discussion of IIROC's ability to require a Dealer Member to pay IIROC's costs after a contested hearing. The authority of an IIROC panel to order a member to pay costs after a disciplinary proceeding is set out in IIROC Rule 20.49. It is obvious that if costs are not recovered by IIROC pursuant to a cost award, those costs will indirectly be paid by other IIROC Dealer Members. The Commission has recognized this result in similar circumstances. In Re Costello, the Commission stated that "… costs that are not recovered will come indirectly, through the Commission's cost recovery funding arrangements, from fees paid by other participants in the capital markets" (at para. 41). We find that it was not irrelevant or inappropriate for the IIROC Panel to identify this issue in the sanctions and costs hearing.

[319] The Applicants also submitted that the comments by the IIROC Panel dismissing the IIROC Staff request for a one-year suspension of Alboini gave rise to an appearance of bias. In our view, the IIROC Panel was not required to impose sanctions consistent with IIROC Staff's recommendations. Subject to our conclusion in paragraph 305 above with respect to procedural fairness, the Panel was entitled to impose the full range of sanctions available under IIROC Rules and to express its views on the appropriateness of the sanctions requested by IIROC Staff.

Conclusions

[320] In our view, all of the comments made by the members of the IIROC Panel (referred to in paragraph 310 above) were acceptable exchanges between members of a hearing panel and legal counsel in discussing issues related to the imposition of sanctions and costs. We would not want to discourage members of a panel from raising issues and questions that may concern them in imposing sanctions and which legal counsel would want an opportunity to address. Further, it would be unrealistic to expect a hearing panel never to comment on matters that may be peripheral or extraneous to the relevant considerations. In our view, the comments made by members of the IIROC Panel do not rise to the level of the comments in Shoppers (see paragraph 216 of these reasons).

[321] We find that the comments made by the members of the IIROC Panel referred to in paragraph 310 above, either individually or when considered together, would not lead an informed, reasonable person with knowledge of all the circumstances to reasonably perceive that the IIROC Panel was biased against the Applicants or had prejudged the matter of sanctions and costs. Accordingly, those comments do not give rise to a reasonable apprehension of bias on the part of the IIROC Panel.

[322] We note that the appropriate time for raising issues related to bias is at the hearing when the issue first arises. The Federal Court of Appeal has stated that:

> Parties are not normally able to complain of a breach of the duty of procedural fairness by an administrative tribunal if they did not raise it at the earliest reasonable moment. A party cannot wait until it has lost before crying foul.
>
> (*Kozak v. Canada (Minister of Citizenship and Immigration)*, [2006] 4 F.C.R. 377 at para. 66)

[323] A motion that included an allegation of bias on the part of the IIROC Panel was brought by the Applicants before the IIROC Panel on May 18, 2012 during the IIROC Hearing (see paragraph 325 below). In addition, the Applicants expressed concerns to the IIROC Panel with respect to bias in connection with (i) the motion related to the proposed introduction of the Applicants' expert evidence (see paragraph 69 of these reasons), and (ii) comments made at the sanctions and costs hearing. On balance, we believe that was sufficient in this case to satisfy the obligation referred to in paragraph 322 above.

8. Other Submissions Made by the Applicants

[324] We will address briefly certain of the other submissions made by the Applicants.

The Risk Trend Report

[325] The Applicants objected to the references by certain witnesses during the IIROC Hearing to IIROC's confidential NSI RTR and brought a motion during the IIROC Hearing to stay the IIROC proceeding on the grounds of procedural unfairness, reasonable apprehension of bias and/or abuse of process (see *Re Northern Securities* (2012) IIROC 33 (the "**IIROC Motion Decision**") and the Applicants' submissions commencing at paragraph 137 of these reasons).

[326] The NSI RTR was not introduced in evidence at the IIROC Hearing.

[327] The IIROC Panel made the following statement with respect to the confidentiality of the NSI RTR:

> … the use of the report is restricted as follows: …
>
> Neither the Dealer member [sic] nor IIROC, nor any person acting on behalf of either of them, shall assert, use or rely on the Report or any of its contents in any legal or regulatory proceeding (including proceedings by IIROC in respect of the Dealer Member or any of its Approved Persons) provided that nothing shall prevent:
>
> > IIROC from instituting or maintaining any such proceeding or other regulatory action as a result of its authorized investigations and reviews of its Dealer Members which may be based on facts or information which are the same or similar to information contained in the report or received by IIROC otherwise than in connection with the preparation or delivery of the Report; or …"
>
> The Panel ruled that Exhibit 14 prohibited any reference to the NSI RTR and its contents, which were confidential and should not have been revealed by Ms Jensen. Regarding the witness who was testifying, Ms Sainsbury could ask questions about, and the witness could testify regarding facts upon which the report was based but could not refer to the RTR itself or its contents. *It is to be*

> *noted that the NSI RTR which Ms Jensen apparently referred to, was not in evidence (and in fact never went into evidence).*
>
> [emphasis added]
>
> (IIROC Motion Decision, *supra*, at paras. 8 and 9)

[328] An applicant must meet a high standard of proof to establish that a stay should be granted on the grounds alleged by the Applicants. The IIROC Motion Decision states in this respect that:

> In our case, the admission of the reference to the high risk rating in the RTR (which is merely IIROC's rating of NSI, and does not establish as a fact that NSI is high risk), in the context of the large volume of evidence to be considered, particularly where it can and will be ignored, does not in any way "compromise the very fairness of the process", "amount to a gross or shocking abuse of the process", or "offend society's sense of justice". This breach of confidentiality should be treated as an evidentiary matter and will be ignored by this panel. Granting a stay of proceedings is not warranted.
>
> (IIROC Motion Decision, *supra*, at para. 26)

[329] The IIROC Panel concluded that:

> It is the decision of this Panel that the evidence of Ms Jensen, that NSI was rated as a high risk firm, contained in an RTR (and any such evidence in Mr. Latka's testimony) does not give rise to a stay of proceedings on any of the grounds invoked by the Respondents, procedural unfairness, reasonable apprehension of bias and/or abuse of process. Rather it is to be treated as an evidentiary matter. If the Panel had known about its confidentiality prior to it being referenced in Ms Jensen's testimony, it would have been ruled inadmissible; since its confidential nature was disclosed after going into evidence it will be given no weight by the Panel. Similarly, any such reference in Mr. Latka's testimony will be ignored by this Panel.
>
> (IIROC Motion Decision, *supra*, at para. 40)

[330] The NSI RTR was not used or relied on by IIROC in the IIROC proceeding. The IIROC Hearing had nothing to do with whether NSI was a high risk Dealer Member. No such allegation was made by IIROC Staff and the IIROC Panel did not make any such finding. Further, any such finding would have been irrelevant to the findings of the IIROC Panel or its decision on sanctions and costs. A high risk rating does not mean that a firm has or will breach IIROC Rules or commit some other misconduct. Accordingly, in our view, the question is whether the references to NSI's high risk rating were so prejudicial to the Applicants as to render the IIROC Hearing procedurally unfair to them or constitute an abuse of process.

[331] It is well recognized in the case law that a judge or adjudicator can exclude prejudicial information they have heard. In *Philip v. Philip*, [2005] O.J. No. 3367 ("***Philip***"), the Court stated:

> Even if there was widespread knowledge of this matter, which I do not believe there is, trial judges are all the time aware of evidence about a matter that they must erase from their minds in deciding a case. In both civil and criminal matters trial judges sometimes hear on a *voir dire* evidence that they subsequently rule to be inadmissible at the trial that they are hearing in a judge alone trial. For example, a judge may rule a confession or a statement, that would otherwise be incriminating against an accused person, inadmissible at the trial proper. In a judge alone trial, the judge must completely put from his or her mind such a confession ruled inadmissible because of a Charter breach, when deciding whether the Crown has established beyond a reasonable doubt that the accused person committed a crime.
>
> As another example, potential jurors are often asked if they know something about a matter because there has been widespread publicity about it. Jurors will often admit that they have read about a matter in a newspaper. They are then asked whether they could put aside that information and decide the matter solely on the evidence heard at a trial. Jurors have to do that just as do trial judges.
>
> (*Philip*, *supra*, at paras. 9 and 10)

[332] The Commission has adopted this principle. In *Re Gaudet* (1990), 13 O.S.C.B. 1405, the Commission commented that its Commissioners are able to disregard information that is not in evidence before them:

> The same considerations are true for commissioners of the Ontario Securities Commission who through reading the financial press and in other ways will often be aware of allegations and of other proceedings but, like judges, should be able to approach a hearing in an objective manner. Moreover, commissioners should be fully aware that they are to hear and determine a matter based on the evidence placed before them. Even jurors are considered far less vulnerable to prejudice today than in the past. As a five-member Ontario Court of Appeal stated in *R. v. Hubbert* (1975) 11 O.R. (2d) 464 (upheld by the Supreme Court of Canada) at p. 477: "In this era of rapid dissemination of news by the various media, it would be naive to think that in the case of a crime involving considerable notoriety, it would be possible to select 12 jurors who had not heard anything about the case. Prior information about a case, and even the holding of a tentative opinion about it, does not make partial a juror sworn to render a true verdict according to the evidence."
>
> (*Re Gaudet*, *supra*, at page 6)

[333] The references in the evidence to the NSI RTR were far less prejudicial than a judge hearing and having to disregard a confession (as in *Philip*). The IIROC Panel stated that it would ignore the NSI RTR and there is nothing to suggest that the IIROC Panel did not do so. We agree with the IIROC Panel's legal analysis and conclusions set forth in its Motion Decision. In our view, there are no valid grounds for us to conclude that the references to the NSI RTR significantly prejudiced the Applicants or rendered the IIROC Hearing procedurally unfair or an abuse of process. Applying *Canada Malting*, there are no grounds for us to intervene in the IIROC Decision on this basis.

Limitation Act does not apply

[334] To become an IIROC Dealer Member, a firm enters into a standard form agreement with IIROC. That agreement obligates the Dealer Member to comply with IIROC Rules. While the basis of that relationship is contractual, the relationship is established within a regulatory context which includes the reliance by the Commission on IIROC's regulatory role and the terms and conditions imposed by the Commission on IIROC in the Recognition Order (see the discussion commencing at paragraph 40 of these reasons). In our view, the sanctions and costs imposed by IIROC on Dealer Members where there is a breach of IIROC Rules is not a contractual penalty subject to the *Limitations Act*. Those sanctions and costs are imposed as a result of breaches of regulatory requirements reflected in the IIROC Rules approved by the Commission. Further, a Dealer Member expressly agrees to comply with IIROC Rules and that regulatory framework.

IIROC Proceeding Not an Arbitration

[335] Further, a hearing before an IIROC panel does not constitute an arbitration for purposes of the *Arbitration Act*. Under that Act, an arbitration agreement "means an agreement by which two or more persons agree to submit to arbitration a dispute that has or may arise between them." In our view, the agreement by which a Dealer Member agrees to comply with IIROC Rules is not an agreement to submit a dispute to arbitration. An arbitration addresses the contractual rights and obligations between parties to an agreement. An IIROC hearing is regulatory in nature and involves considerations beyond the mere contractual rights and obligations of the parties or any private dispute between them.

IIROC Rule 38.7

[336] IIROC Rule 38.7 sets out the obligations of a CCO. That Rule provides that a Chief Compliance Officer must, among other obligations, "establish and maintain policies and procedures for assessing compliance with the Rules and applicable securities laws by the Dealer Member and individuals acting on its behalf" (IIROC Rule 38.7(h) (i)) and must "… monitor and assess compliance by the Dealer Member, and individuals acting on its behalf, with the Rules and applicable securities laws …" (IIROC Rule 38.7(h) (ii)).

[337] The IIROC Decision made the following comments regarding IIROC Rule 38.7:

> Count 2 contains allegations that Vance, as Chief Compliance Officer (CCO), failed to adequately supervise Alboini's trading activity, contrary to IIROC Rules 1300.1, 1300.2 and 2500. The Panel noted that these rules address primarily the conduct of a dealer member and not specifically that of a CCO, although there are some references to certain obligations of supervisors. The conduct of a CCO is dealt with in IIROC Rule 38.7 which is not referred to in Count 2. However, Respondents' counsel never made any objection to the applicability of Rules 1300.1, 1300.2 and 2500 to Vance's conduct even after the issue was raised by the Panel in the hearing. At all times, the hearing proceeded on the basis that Rules 1300.1, 1300.2 and 2500 applied to the conduct of Vance. Consequently, it is the decision of the Panel that the Respondents have suffered no procedural unfairness due to the absence of Rule 38.7 from the wording of Count 2 and have waived their right to object to the application of Rules 1300.1, 1300.2 and 2500 to Vance's conduct.
>
> (IIROC Decision, *supra*, at para. 98)

[338] IIROC Rules 1300.1, 13002 and 2500 refer primarily to obligations of a "Dealer Member", although there are some references to the obligations of a "Supervisor". We note, however, that IIROC Rule 29.1 provides that:

> … For the purposes of disciplinary proceedings pursuant to the Rules, each Dealer Member shall be responsible for all acts and omissions of each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member; and *each of the foregoing individuals shall comply with all rules required to be complied with by the Dealer Member.*
>
> [emphasis added]

[339] As CCO of NSI, Vance was required to comply with IIROC Rule 38.7. Further, pursuant to IIROC Rule 29.1, he was obligated to comply with all Rules that applied to NSI as a Dealer Member.

[340] While IIROC Rules 38.7 and 29.1 were not referred to expressly in Count 2, it is clear that Count related to Vance's role as CCO in supervising Alboini's trading activity and the IIROC Hearing proceeded on that basis. In our view, the IIROC Hearing was not procedurally unfair to Vance for that reason. There are no grounds for us to intervene in the decision of the IIROC Panel referred to in paragraph 337 above pursuant to *Canada Malting*.

Deficiencies that occurred prior to the formation of IIROC

[341] The Applicants also submitted that the IIROC Panel's finding on Count 3 was affected by the merger of the IDA and RS that formed IIROC on June 1, 2008. The Applicants submitted that it is not possible to have repeat deficiencies for purposes of IIROC Rule 29.1 that reach back to conduct that occurred before the merger of the IDA and RS because, at that time, a different regulatory regime applied. Given our conclusion in paragraph 305 of these reasons, we do not need to address that issue.

Financial Sanctions

[342] The IIROC Rules provide that an IIROC hearing panel can impose, among other sanctions, a fine for the failure to comply with the provisions of any IIROC Rule (IIROC Rule 20.33). In our view, that includes a contravention of IIROC Rule 29.1.

9. Conclusions

[343] Based on the finding in paragraph 282 of these reasons, we have set aside the IIROC Panel's decision on Count 3. We refer that matter back to IIROC for disposition. IIROC shall be entitled to decide whether Count 3 shall be re-heard in a trial *de novo* before a different IIROC panel. Given the nature of Count 3, the practical challenges in rehearing it and the level of sanctions imposed by the IIROC Panel in respect of it, we might have simply dismissed Count 3. However, we have concluded, on balance, that IIROC should have the option to decide whether Count 3 should be re-heard if IIROC considers that to be important from a regulatory perspective. Any such decision to re-hear Count 3 shall be made by IIROC, and communicated to NSI, Alboini and Vance, on or before February 14, 2014, or by such other date as may be agreed to by those Applicants, failing which Count 3 shall be dismissed.

[344] Based on the finding in paragraph 305 of these reasons, we have set aside the sanctions and costs imposed by the IIROC Panel on the Applicants. We will hold a hearing *de novo* solely on the question of the appropriate sanctions and costs to be imposed on the Applicants based on the findings of the IIROC Panel (including the findings referred to in paragraph 303 of these reasons), other than its finding with respect to Count 3. The parties shall be entitled to make submissions solely on appropriate sanctions and costs in the circumstances. The parties will be entitled to submit further evidence related to sanctions and costs. In this respect, the Applicants may introduce new evidence of the nature referred to in clauses (a) to (d) of paragraph 14 of these reasons. The submission of all such evidence is subject to our discretion to exclude it. For greater certainty, we will proceed with the sanctions and costs hearing regardless of whether IIROC decides to have Count 3 re-heard in a trial de novo before a different IIROC panel.

[345] The parties should contact the Office of the Secretary within 30 days to set a date for the sanctions and costs hearing and for a pre-hearing conference. The parties may apply to us for direction related to any matter arising from this decision.

Dated at Toronto this 19th day of December, 2013.

"James E. A. Turner"
James E. A. Turner

"Judith N. Robertson"
Judith N. Robertson

SCHEDULE A

RELEVANT PROVISIONS OF IIROC MEMBER RULES AND IDA BY-LAWS

IIROC Rule 20 - CORPORATE HEARING PROCESSES

20.33 Approved Persons

(1) Upon conclusion of a disciplinary hearing, a Hearing Panel may impose the penalties set out at 20.33(2) if, in the opinion of the Hearing Panel, the Approved Person:

(a) failed to comply with or carry out the provisions of any federal or provincial statute, regulation, ruling or policy relating to trading or advising in respect of securities or commodities;

(b) failed to comply with the provisions of any Rule or Ruling of the Corporation; or

(c) failed to carry out an agreement or undertaking with the Corporation.

(2) Pursuant to subsection (1), a Hearing Panel may impose any one or more of the following penalties upon the Approved Person:

(a) a reprimand;

(b) a fine not exceeding the greater of:

(i) $1,000,000 per contravention; and

(ii) an amount equal to three times the profit made or loss avoided by such Approved Person by reason of the contravention;

(c) suspension of approval for any period of time and upon any conditions or terms;

(d) terms and conditions of continued approval;

(e) prohibition of approval in any capacity for any period of time;

(f) termination of the rights and privileges of approval;

(g) revocation of approval;

(h) a permanent bar from approval with the Corporation; or

(i) any other fit remedy or penalty.

20.34 Dealer Members

(1) Upon conclusion of a disciplinary hearing, a Hearing Panel may impose the penalties set out at Rule 20.33(2) if, in the opinion of the Hearing Panel, the Dealer Member:

(a) failed to comply with or carry out the provisions of any federal or provincial statute, regulation, ruling or policy relating to trading or advising in respect of securities or commodities;

(b) failed to comply with the provisions of any Rule or Ruling of the Corporation;

(c) failed to carry out an agreement or undertaking with the Corporation; or

(d) failed to meet liabilities to another Dealer Member or to the public.

(2) Pursuant to subsection (1), a Hearing Panel may impose any one or more of the following penalties upon the Dealer Member:

(a) a reprimand;

(b) a fine not exceeding the greater of:

(i) $5,000,000 per contravention; and

(ii) an amount equal to three times the profit made or loss avoided by the Dealer Member by reason of the contravention;

(c) suspension of the rights and privileges of the Dealer Member (and such suspension may include a direction to the Dealer Member to cease dealing with the public) for any period of time and upon any conditions or terms;

(d) terms and conditions of continued Membership;

(e) termination of the rights and privileges of Membership;

(f) expulsion of the Dealer Member from membership in the Corporation; or

(g) any other fit remedy or penalty.

20.49 Assessment of Costs

(1) In addition to imposing any of the penalties set out in Rule 20.33, Rule 20.34 or Rule 20.45, the Hearing Panel may assess and order any Corporation Staff investigation and prosecution costs determined to be appropriate and reasonable in the circumstances.

(2) Costs shall not be assessed where the Hearing Panel has not made a finding against the Respondent based on any of the grounds set out at Rule 20.33(1) or Rule 20.34(1) or where an expedited decision is quashed upon review pursuant to Rule 20.48(1).

IIROC Rule 29 - BUSINESS CONDUCT

Rule 29.1 of the IIROC Dealer Member Rules states:

29.1. Dealer Members and each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member (i) shall observe high standards of ethics and conduct in the transaction of the business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the Board.

For the purposes of disciplinary proceedings pursuant to the Rules, each Dealer Member shall be responsible for all acts and omissions of each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member; and each of the foregoing individuals shall comply with all rules required to be complied with by the Dealer Member.

IIROC Rule 38 - COMPLIANCE AND SUPERVISION

38.5 Ultimate Designated Person

(a) A Dealer Member must designate an individual who is approved under the Corporation's rules in the category of Ultimate Designated Person and who shall be responsible to the Corporation for the conduct of the firm and the supervision of its employees and to perform the functions described in paragraph (c).

(b) A Dealer Member must not designate an individual to act as the firm's Ultimate Designated Person unless the individual is:

(i) the chief executive officer or sole proprietor of the Dealer Member;

(ii) an Officer in charge of a division of the Dealer Member, if the activity that requires the firm to register under provincial or territorial securities laws occurs only within the division, or

(iii) an individual acting in a capacity similar to that of an Officer described in paragraph (a) or (b).

(c) The Ultimate Designated Person must

(i) supervise the activities of the Dealer Member that are directed towards ensuring compliance with the Corporation's Dealer Member rules and applicable securities law requirements by the firm and each individual acting on the Dealer Member's behalf, and

(ii) promote compliance by the Dealer Member, and individuals acting on its behalf, with the Corporation's Dealer Member rules and applicable securities laws.

38.7 Chief Compliance Officer

(a) Every Dealer Member must designate an individual who is approved under the Corporation's rules in the category of Chief Compliance Officer to perform the functions described in paragraph (h).

(b) A Dealer Member must not designate an individual to act as the firm's Chief Compliance Officer unless the individual is one of the:

(i) an Officer or partner of the Dealer Member;

(ii) the sole proprietor of the Dealer Member.

(c) A Dealer Member may appoint the Ultimate Designated Person to act as the Chief Compliance Officer.

(d) Where a Dealer Member is organized into two or more separate business units or divisions, a Dealer Member may, with the approval of the Corporation, designate a Chief Compliance Officer for each separate business unit or division.

(e) The Chief Compliance Officer must have the qualifications required under Rules, Part I, section A.2B.

(f) Notwithstanding subsection (a), a Dealer Member may, with the Corporation's approval, designate an Officer as Acting Chief Compliance Officer if the Chief Compliance Officer terminates his or her employment with the Dealer Member and the Dealer Member is unable to immediately designate another qualified person as Chief Compliance Officer provided that, within 90 days of the termination of the previous Chief Compliance Officer:

(i) the Acting Chief Compliance Officer meets the requirement of subsection (e) and is designated by the Corporation as Chief Compliance Officer; or

(ii) another qualified person is designated Chief Compliance Officer by the Dealer Member and is approved by the Corporation.

(g) The Corporation may grant to a Dealer Member an exemption from subsection (e) where it is satisfied that the nature of the Dealer Member's business is such that the qualification is not relevant to the Dealer Member and that to do so would not be prejudicial to the interests of the Dealer Member, its clients, the public or the Corporation. In granting such an exemption, it may impose such terms and conditions as it considers necessary.

(h) The Chief Compliance Officer of a Dealer Member must do all of the following:

(i) establish and maintain policies and procedures for assessing compliance with the Rules and applicable securities laws by the Dealer Member and individuals acting on its behalf;

(ii) monitor and assess compliance by the Dealer Member, and individuals acting on its behalf, with the Rules and applicable securities laws;

(iii) report to the Ultimate Designated Person as soon as possible if the Chief Compliance Officer becomes aware of any circumstances indicating that the firm, or any individual acting on its behalf, may be in non-compliance with the Rules or applicable securities laws and

(A) the non-compliance creates a reasonable risk of harm to a client;

(B) the non-compliance creates a reasonable risk of harm to the capital markets; or

(C) the non-compliance is part of a pattern of non-compliance;

(iv) submit an annual report to the firm's board of directors, or individuals acting in a similar capacity for the firm, for the purposes of assessing compliance by the firm, and individuals acting on its behalf, with the Corporation's Dealer Member Rules and applicable securities laws.

(i) The Chief Compliance Officer must have access to the Ultimate Designated Person and the board of directors (or equivalent) at such times as the Chief Compliance Officer may consider necessary or advisable in view of his or her responsibilities.

IIROC Rule 100 - MARGIN REQUIREMENTS

100.15 – ACCOUNT GUARANTEES

The margin required in respect of the account of a customer of a Dealer Member which is guaranteed in accordance with this Rule 100.15 may be reduced to the extent that there is excess margin in the accounts of the guarantor held by the Dealer Member calculated on an aggregated or consolidated basis and provided the Dealer Member has received the written consent of the customer to provide the guarantor with the customer's account statement, at least quarterly. Where the customer objects to provide such written consent, the Dealer Member shall notify the guarantor in writing of the customer's objection.

In calculating margin reductions for guaranteed accounts, the following rules shall apply:

(a) Guarantees in respect of customers' accounts by shareholders, registered representatives or employees of the Dealer Member shall not be accepted, unless paragraph (b) is applicable and has been complied with, or in the case of guarantees by shareholders, there is public ownership of the securities held by the shareholder and the shareholder is not an employee, registered representative, partner, director or officer of the Dealer Member or the holder of a significant equity interest in respect of the Dealer Member or its holding company within the meaning of Rule 5.4;

(b) Guarantees in respect of customers' accounts by partners, directors or officers of the Dealer Member shall only be accepted on the following basis:

(i) The self-regulatory organization having prime audit jurisdiction in Canada over the Dealer Member shall expressly approve the guarantee in writing by providing separate written approval and the release of the guarantee shall only be effective upon receipt of the express approval of the self-regulatory organization given in the same manner;

(ii) The guarantor shall not be permitted to transfer cash, securities, contracts or any other property from the accounts of the guarantor in respect of which the margin reduction is based without the prior written approval of the self-regulatory organization referred to in clause (b)(i);

(iii) The provisions of Form 1, Schedule 4, shall apply to the customer's account regardless of the guarantee and, if the account has been restricted and subsequently fully margined, no trading shall occur in the account until the guarantee is released in accordance with clause (b)(i) above;

(c) Guarantees in respect of accounts of partners, directors, officers, shareholders, registered representatives or employees by customers of the Dealer Member shall not be accepted;

(d) Paragraphs (a), (b) and (c) do not apply to guarantees by any of the persons referred to therein in respect of accounts of members of the immediate families of such persons nor to guarantees in respect of the accounts of any of the persons referred to therein by members of their immediate families;

(e) In determining the margin deficiency of the account of any client, a guarantee in respect of the account may be accepted for margin purposes unless and until in connection with the annual audit, the confirmation requirements shall not have been satisfied in accordance with Rule 300.2(a)(vi). If the audit confirmation requirements for an account have not been satisfied, the margin reduction shall not be allowed until a confirmation is received or a new guarantee agreement is signed by the customer;

(f) A general guarantee in respect of the accounts of a customer, and a guarantee or guarantees from one or more customers in respect of more than one account, will not be accepted unless supported by proper documentation sufficient to establish the identity and liability of each guarantor and the accounts and customers in respect of which each guarantee is given;

(g) A guarantee in respect of an account of a customer shall only be accepted for margin if it directly guarantees the customer's obligations under such account, and a guarantee in respect of an account of a customer who

in turn, directly or indirectly, provides a guarantee in respect of another account shall not be accepted for margin purposes in the latter account;

(h) No guarantee shall be accepted unless it is by enforceable written agreement, binding upon the guarantor, its successors and assigns and personal legal representatives and containing the following minimum terms:

(i) The prompt payment on demand of all present and future liabilities of the customer to the Dealer Member in respect of the identified accounts shall be unconditionally guaranteed on an absolute and continuing basis with the guarantor being jointly and severally liable for the obligations of the customer;

(ii) The guarantee may only be terminated upon written notice to the Dealer Member, provided that such termination shall not affect the guarantee of any obligations incurred prior thereto;

(iii) The Dealer Member shall not be bound to demand from or to proceed or exhaust its remedies against the customer or any other person, or any security held to secure payment of the obligations, before making demand or proceeding under the guarantee;

(iv) The liability of the guarantor shall not be released, discharged, reduced, limited or otherwise affected by (A) any right of set-off, counterclaim, appropriation, application or other demand or right the customer or guarantor may have, (B) any irregularity, defect or informality in any obligation, document or transaction relating to the customer or its accounts, (C) any acts done, omitted, suffered or permitted by the Dealer Member in connection with the customer, its accounts, the guaranteed obligations or any other guarantees or security held in respect thereof including any renewals, extensions, waivers, releases, amendments, compromises or indulgences agreed to by the Dealer Member and including the provision of information by the Dealer Member to the guarantor as permitted in clause (i) of this Rule 100.15, or (D) the death, incapacity, bankruptcy or other fundamental change of or affecting the customer; provided that in the event the guarantor shall be released for any reason from the guarantee it shall remain liable as principal debtor in respect of the guaranteed obligations;

(v) The guarantor waives in favour of the Dealer Member any notices as to the terms and conditions applicable to the customer's accounts or agreements or dealings between the Dealer Member and the customer, or relating in any way to the status or condition or transactions or changes in the customers' accounts, agrees that the accounts as settled or stated between the Dealer Member and the customer shall be conclusive as to the amounts owing, and waives any rights of subrogation until all guaranteed obligations are paid in full;

(vi) All securities, monies, commodity futures contracts and options, foreign exchange contracts and other property held or carried by the Dealer Member for the guarantor shall be pledged or a security interest granted therein to secure the payment of the guaranteed obligations, with the full ability of the Dealer Member to deal with such assets at any time, before or after demand under the guarantee, to satisfy such payment;

(i) The guarantor shall receive from the Dealer Member, at least quarterly, the customer's account statement or statements, in respect of the accounts to which the guarantee relates, provided the guarantor does not object in writing to receiving such information. The Dealer Member shall disclose to the guarantor in writing that the suitability of transactions in the customer's account will not be reviewed in relation to the guarantor.

IIROC Rule 1300- SUPERVISION OF ACCOUNTS

1300.1.

Identity and Creditworthiness

(a) Each Dealer Member shall use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted.

(b) When opening an initial account for a corporation or similar entity, the Dealer Member shall:

(i) ascertain the identity of any individual who is the beneficial owner of, or exercises direct or indirect control or direction over, more than 10% of the corporation or similar entity, including the name, address, citizenship, occupation and employer of each such beneficial owner, and whether any such

beneficial owner is an insider or controlling shareholder of a publicly traded corporation or similar entity; and

(ii) as soon as is practicable after opening the account, and in any case no later than six months after the opening of the account, verify the identity of each individual identified in (i) using such methods as enable the Dealer Member to form a reasonable belief that it knows the true identity of each individual and that are in compliance with any applicable legislation and regulations of the Government of Canada or any province.

(c) Subsection (b) does not apply to:

(i) a corporation or similar entity that is or is an affiliate of a bank, trust or loan company, credit union, caisse populaire, insurance company, mutual fund, mutual fund management company, pension fund, securities dealer or broker, investment manager or similar financial institution subject to a satisfactory regulatory regime in the country in which it is located

(ii) a corporation or similar entity whose securities are publicly traded or an affiliate thereof.

(d) The Corporation may, at its discretion, direct Dealer Members that the exemption in subsection (c) does not apply to some or all types of financial institutions located in a particular country.

(e) When opening an initial account for a trust, a Dealer Member shall:

(i) ascertain the identity of the settlor of the trust and, as far as is reasonable, of any known beneficiaries of more than 10% of the trust, including the name, address, citizenship, occupation and employer of each such settlor and beneficiary and whether any is an insider or controlling shareholder of a publicly traded corporation or similar entity.

(ii) as soon as is practicable after opening the account, and in any case no later than six months after the opening of the account, verify the identity of each individual identified in (i) using such methods as enable the Dealer Member to form a reasonable belief that it knows the true identity of each individual and that are in compliance with any applicable legislation and regulations of the Government of Canada or any province.

(f) Subsection (e) does not apply to a testamentary trust or a trust whose units are publicly traded.

(g) If a Dealer Member, on inquiry, is unable to obtain the information required under subsections (b)(i) and (e)(i), the Dealer Member shall not open the account.

(h) If a Dealer Member is unable to verify the identities of individuals as required under subsections (b)(ii) and (e)(ii) within six months of opening the account, the Dealer Member shall restrict the account to liquidating trades and transfers, payments or deliveries out of funds or securities only until such time as the verification is completed.

(i) No Dealer Member shall open or maintain an account for a shell bank.

(j) For the purposes of section (i) a shell bank is a bank that does not have a physical presence in any country.

(k) Subsection (i) does not apply to a bank which is an affiliate of a bank, loan or trust company, credit union, other depository institution that maintains a physical presence in Canada or a foreign country in which the affiliated bank, loan or trust company, credit union, other depository institution is subject to supervision by a banking or similar regulatory authority.

(l) Any Dealer Member having an account for a corporation, similar entity or trust other than those exempt under subsections (c) and (f) and which does not have the information regarding the account required in subsections (b)(i) and (e)(i) at the date of implementation of those subsections shall obtain the information within one year from date of implementation of subsections (b) and (e).

(m) If the Dealer Member does not or cannot obtain the information required under subsection (l) the Dealer Member shall restrict the account to liquidating trades and transfers, payments or deliveries out of funds or securities until such time as the required information has been obtained.

(n) Dealer Members must maintain records of all information obtained and verification procedures conducted under this Rule 1300.1 in a form accessible to the Corporation for a period of five years after the closing of the account to which they relate.

Business Conduct

(o) Each Dealer Member shall use due diligence to ensure that the acceptance of any order for any account is within the bounds of good business practice.

Suitability determination required when accepting order

(p) Subject to Rules 1300.1(t) and 1300.1(u), each Dealer Member shall use due diligence to ensure that the acceptance of any order from a client is suitable for such client based on factors including the client's current financial situation, investment knowledge, investment objectives and time horizon, risk tolerance and the account or accounts' current investment portfolio composition and risk level. If the order received from a client is not suitable, the client must, at a minimum, be advised against proceeding with the order.

Suitability determination required when recommendation provided

(q) Each Dealer Member, when recommending to a client the purchase, sale, exchange or holding of any security, shall use due diligence to ensure that the recommendation is suitable for such client based on factors including the client's current financial situation, investment knowledge, investment objectives and time horizon, risk tolerance and the account or accounts' current investment portfolio composition and risk level.

Suitability determination required for account positions held when certain events occur

(r) Each Dealer Member shall, subject to Rules 1300.1(t) and 1300.1(u), use due diligence to ensure that the positions held in a client's account or accounts are suitable for such client based on factors including the client's current financial situation, investment knowledge, investment objectives and time horizon, risk tolerance and the account or account(s)' current investment portfolio composition and risk level whenever one or more of the following trigger events occurs:

(i) Securities are received into the client's account by way of deposit or transfer; or

(ii) There is a change in the registered representative or portfolio manager responsible for the account; or

(iii) There has been a material change to the client's life circumstances or objectives that has resulted in revisions to the client's "know your client" information as maintained by the Dealer Member.

Suitability of investments in client accounts

(s) To comply with the requirements under Rules 1300.1(p), 1300.1(q) and 1300.1(r), the Dealer Member must use due diligence to ensure that:

(i) The suitability of all positions in the client's account is reviewed whenever a suitability determination is required; and

(ii) The client receives appropriate advice in response to the suitability review that has been conducted.

Suitability determination not required

(t) Each Dealer Member that has applied for and received approval from the Corporation pursuant to Rule 1300.1(v), is not required to comply with Rules 1300.1(p), 1300.1(r) and 1300.1(s), when accepting orders from a client where no recommendation is provided, to make a determination that the order is suitable for such client.

(u) Each Dealer Member that executes a trade on the instructions of another Dealer Member, portfolio manager, investment counsel, limited market dealer, bank, trust company or insurer, pursuant to Section I.3 of Rule 2700 is not required to comply with Rule 1300.1(p).

Corporation approval

(v) The Corporation, in its discretion, shall only grant such approval where the Corporation is satisfied that the Dealer Member will comply with the policies and procedures outlined in Rule 3200. The application for approval shall be accompanied by a copy of the policies and procedures of the Dealer Member. Following such approval, any material changes in the policies and procedures of the Dealer Member shall promptly be submitted to the Corporation.

1300.2.

(a) A Dealer Member must designate a Supervisor to be responsible for the opening of new accounts and for establishing and maintaining procedures acceptable to the Corporation for account supervision to ensure that the handling of client business is within the bounds of ethical conduct, consistent with just and equitable principles of trade and not detrimental to the interests of the securities industry. As part of this supervision each new account must be opened pursuant to a new account form which includes the applicable information required by Form No. 2 for Retail Customer accounts, Institutional Customer accounts and for accounts exempt from suitability reviews.

(b) Where a Dealer Member conducts more than one of retail business, institutional business and suitability-exempt business under Rules 1300.1(t) and 3200.B, the Dealer Member may designate separate Supervisors for each type of business.

(c) The Supervisor designated under this section or another Supervisor assigned the responsibility for doing so in the policies and procedures of the Dealer Member must approve and record the approval of the opening of an account prior to or promptly after the completion of any transaction.

IIROC Rule 2500 - MINIMUM STANDARDS FOR RETAIL CUSTOMER ACCOUNT SUPERVISION

Section II of Rule 2500 states:

To comply with the "Know-Your-Client" rule each Dealer Member must establish procedures to maintain accurate and complete information on each client. The first step towards compliance with this rule is completing proper documentation when opening new accounts. Accurate completion of the documentation when opening a new account allows both the Registered Representative and the supervisory staff to conduct the necessary review to ensure that recommendations made for any account are appropriate for the client and in keeping with his investment objectives. Maintaining accurate and current documentation will allow the Registered Representative and the supervisory staff to ensure that all recommendations made for any account are appropriate for the client and in keeping with the client's investment objectives.

[…]

1. A Dealer Member must complete an account application for each new customer that conforms to the account information requirements of this Rule.

[…]

4. A Dealer Member must maintain a complete set of documentation regarding each account. The Registered Representative(s) handling an account must maintain a copy of the account application. […]

Section III of Rule 2500 states:

B. Supervision of Account Activity

A Dealer Member must have systems and procedures to supervise trading activity in retail accounts. The supervision must provide reasonable assurance that the Dealer Member is meeting its regulatory obligations, including those to clients such as suitability and gatekeeper obligations such as preventing market abuses. […]

SCHEDULE B

SANCTIONS AND COSTS IMPOSED BY THE IIROC PANEL

	Sanctions and Costs Requested by IIROC Staff	Sanctions and Costs Imposed by the IIROC Panel
ALBOINI		
Count 1	$500,000	$500,000
	One year suspension from registration in all capacities	Two year suspension from registration in all capacities Permanent ban as UDP
	Disgorge commissions	Disgorge commissions
Count 2	N/A	N/A
Count 3	$100,000	$100,000
	Six months suspension from serving as UDP of NSI (to be served concurrently with other suspensions)	One year suspension from registration in all capacities (to be served concurrently with other suspensions) Permanent ban as UDP
Count 5(a)	$35,000	$25,000
Costs	$125,000	$125,000
NSI		
Count 3	$250,000	$250,000
Count 5(a)	$50,000	$50,000
Costs	$150,000	$150,000
VANCE		
Count 2	$35,000 Three months suspension from registration in any supervisory capacity	$25,000 Three months suspension from registration in any supervisory capacity
Count 3	$50,000	$25,000
Costs	$50,000	$50,000
CHORNOBOY		
Count 5(a)	$25,000	$25,00
Costs	$15,000	$15,000

3.1.4 Kolt Curry et al. – ss. 37, 127, 127.1

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

AND

IN THE MATTER OF
KOLT CURRY, LAURA MATEYAK,
AMERICAN HERITAGE STOCK TRANSFER INC., and
AMERICAN HERITAGE STOCK TRANSFER, INC.

REASONS AND DECISION ON SANCTIONS AND COSTS
(Sections 37, 127 and 127.1 of the Securities Act)

Hearing:	October 10, 2013		
Decision:	December 20, 2013		
Panel:	James D. Carnwath, Q.C.	–	Commissioner and Chair of the Panel
Appearances:	Jonathon Feasby Cameron Watson Harald Marcovici	–	For Staff of the Ontario Securities Commission
	Jeffrey Larry	–	For the Respondents

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REASONS AND DECISION ON SANCTIONS AND COSTS

I. INTRODUCTION

[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 determine whether it is in the public interest to order sanctions and costs against Kolt Curry ("**Curry**"), Laura Mateyak ("**Mateyak**"), American Heritage Stock Transfer Inc. ("**AHST Ontario**") and American Heritage Stock Transfer, Inc. ("**AHST Nevada**") (collectively, the "**Respondents**"). AHST Ontario and AHST Nevada will be collectively referred to in these reasons and decision as the "AHST Companies".

[2] On January 27, 2012, the Commission issued a Notice of Hearing, pursuant to sections 127 and 127.1 of the Act, in connection with a Statement of Allegations filed on the same day by Staff of the Commission ("**Staff**"), to consider whether it was in the public interest to make certain orders against Sandy Winick ("**Winick**"), Andrea Lee McCarthy ("**McCarthy**"), Curry,

Laura Mateyak ("**Mateyak**"), Gregory J. Curry ("**Greg Curry**"), AHST Ontario, AHST Nevada, BFM Industries Inc. ("**BFM**"), Liquid Gold International Corp. (aka Liquid Gold International Inc.) ("**Liquid Gold**") and Nanotech Industries Inc. ("**Nanotech**").

[3] On April 1, 2011, the Commission issued a temporary cease trade order (the "**Temporary Order**") against AHST Ontario, AHST Nevada, BFM, Winick, McCarthy, Curry, Mateyak and a company named Denver Gardner Inc. ("**Denver Gardner**"). The Temporary Order was amended and extended from time to time. On March 23, 2012, the Commission ordered that Denver Gardner be removed as a respondent in the matter and that the Temporary Order, as amended, be extended until the conclusion of the hearing on the merits. On October 29, 2012, the Temporary Order was amended to allow for a personal carve-out for McCarthy to sell the securities in her Registered Retirement Savings Plan (as defined in the *Income Tax Act* (Canada)) with the Independent Planning Group.

[4] On March 23, 2012, the Commission scheduled the dates for the hearing on the merits in the matter, commencing on November 12, 2012. 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 would proceed as a written hearing. On November 2, 2012, Staff filed an Amended Statement of Allegations and the Commission issued an Amended Notice of Hearing on the same day.

[5] On January 21, 2013, on consent of Staff and counsel for McCarthy, BFM and Liquid Gold, the Commission granted Staff's application to sever the matter, as against McCarthy, BFM and Liquid Gold (the "**McCarthy Respondents**"), and the matter was adjourned to a date to be fixed by the Office of the Secretary of the Commission in consultation with counsel.

[6] On April 12, 2013, on consent of Staff and counsel for Curry, Mateyak and AHST Ontario, the written hearing on the merits was converted to an oral hearing, pursuant to Rule 11.5 of the *Rules of Procedure*.

[7] On May 15, 2013, Staff appeared and counsel for Curry, Mateyak, AHST Ontario and AHST Nevada appeared and advised the Panel that an Agreed Statement of Facts (the "**Agreed Facts**") had been reached for the Respondents.

[8] On May 16, 2013, on the request of Staff and counsel for Curry, Mateyak and AHST Ontario, the Commission ordered that the hearing as against the Respondents be severed from the main proceeding in the matter and scheduled a sanctions and costs hearing for the Respondents on August 27, 2013. After reading the Agreed Facts, the Panel found that:

1. from May of 2009 through August of 2010, Kolt Curry, AHST Ontario and AHST Nevada traded and engaged in or held 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;

2. from May of 2009 through August of 2010, Kolt Curry, AHST Ontario and AHST Nevada distributed securities of Nanotech 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*;

3. from September 28, 2009 through August of 2010, Kolt Curry, AHST Ontario and AHST Nevada made statements that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship with Kolt Curry, AHST Ontario or AHST Nevada that were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made, contrary to section 44(2) of the *Act*;

4. Mateyak, being a director and officer of AHST Ontario, did authorize, permit or acquiesce in the commission of the violations of sections 25, 53 and 44(2) of the *Act*, as set out above, by the AHST Companies or by the employees, agents or representatives of the AHST Companies, contrary to section 129.2 of the *Act* and contrary to the public interest;

5. Kolt Curry, being a directing mind and *de facto* director and officer of AHST Ontario, and a director and officer of AHST Nevada, did authorize, permit or acquiesce in the commission of the violations of sections 25, 53 and 44(2) of the *Act*, as set out above, by the AHST Companies or by the employees, agents or representatives of the AHST Companies, contrary to section 129.2 of the *Act* and contrary to the public interest; and

6. the conduct of Kolt Curry, Mateyak, AHST Ontario and AHST Nevada contravened Ontario securities law and is contrary to the public interest.

(*Re Sandy Winick et al.* (2013), 36 O.S.C.B. 5508)

[9] On August 7, 2013, the Commission issued its reasons and decision with respect to the hearing on the merits of Winick and Greg Curry (*Re Winick* (2013), 36 O.S.C.B. 8202). The Commission issued an accompanying order on the same day, which scheduled the sanctions and costs hearing and the filing of submissions with respect to these two respondents, and extended the Temporary Order against Winick until the conclusion of the proceeding (*Re Winick* (2013), 36 O.S.C.B. 8192).

[10] On August 26, 2013, after informing Staff and counsel for the Respondents that the Commission was no longer available to hold a hearing on August 27, 2013, the Commission ordered that the sanctions and costs hearing for the Respondents take place on September 12, 2013.

[11] Counsel for the Respondents filed a motion, pursuant to Rules 3 and 9 of the *Rules of Procedure*, to adjourn the sanctions and costs hearing scheduled for September 12, 2013 (the "**Adjournment Motion**"). On September 12, 2013, Staff and counsel for the Respondents appeared and made submissions on the Adjournment Motion. Staff also requested that the Notice of Hearing be amended to include a request for an order under section 37 of the *Act*, which was consented to by counsel for the Respondents. On September 12, 2013, the Commission ordered that the matter be adjourned and take place on October 10, 2013 and ordered that Staff may file an Amended Notice of Hearing that includes a request for an order under section 37 of the *Act*.

[12] On September 26, 2013, the Commission issued a Notice of Hearing With Respect to Sanctions, which included notice that the Commission would consider an order under subsection 37(1) of the *Act* at the sanctions and costs hearing.

[13] On October 10, 2013, Staff and counsel for the Respondents appeared and made submissions on sanctions and costs before the Commission (the "**Sanctions and Costs Hearing**").

[14] These reasons and decision on sanctions and costs include my findings with respect to the Respondents, being Curry, Mateyak, AHST Ontario and AHST Nevada.

II. BACKGROUND – THE AGREED STATEMENT OF FACTS

[15] The background facts stated in this section are taken from the Agreed Facts for the Respondents. The Respondents in this matter were involved with a scheme (the "**Nanotech Letter Scheme**") that took place from May 2009 through August 2010 (the "**Material Time**").

A. Kolt Curry

[16] Curry incorporated AHST Nevada in November 2004 at Winick's suggestion. Curry was a director, the secretary and the treasurer of AHST Nevada from the date of its incorporation until the present. Curry was initially also the president of AHST Nevada. AHST Nevada registered with the United States Securities Exchange Commission (the "**SEC**") as a transfer agent in December 2004. The Nevada Secretary of State has listed AHST Nevada's corporate status as "inactive" since March 2009 (Agreed Facts, above at para. 19). Curry is married to Mateyak and, until the fall of 2009, he lived with her in Ontario.

[17] Curry incorporated AHST Ontario in February 2005 and was the president, secretary and general manager of the company until November 2006, when he appointed Mateyak to replace him. Curry was the directing mind and *de facto* director and officer of AHST Ontario during the Material Time.

[18] Following the date of its incorporation, AHST Ontario continued to make annual filings with the SEC under the registration number granted to AHST Nevada. The AHST Companies provided transfer agency services for approximately 20 companies whose securities traded on the Over-the-Counter Bulletin Board and Pink Sheets. These services included maintaining shareholder registers for clients and arranging for the transfer of stock certificates. The transfer agency business was given to Curry by Winick.

[19] Mateyak attended at a branch of HSBC Bank with Curry and McCarthy, signed documents appointing herself as signing authority on accounts registered to AHST Ontario and held herself out as "director", "administrative officer" and "chairman of the board" of AHST Ontario, which were offices she did not hold (Agreed Facts, above at para. 22).

[20] McCarthy was Winick's girlfriend during the Material Time and lived with him at a home in Stoney Creek, Ontario. When Curry left Canada and temporarily moved to Thailand in the fall of 2009, he moved the corporate records of AHST Ontario to the basement of the home shared by Winick and McCarthy.

B. Nanotech Industries Inc.

[21] Nanotech is a company incorporated under the laws of the State of Wyoming with its head office in Bangkok, Thailand. Since March 14, 2009, the Secretary of State of Wyoming has formally listed Nanotech as an inactive corporation. During the Material Time, Nanotech held itself out as a company engaged in natural resource development in oil, gas and precious metals.

The Respondents did not confirm whether Nanotech ever operated in a business or had any assets during the Material Time. In 2006, the AHST Companies began acting as Nanotech's transfer agent at the request of Winick. Shortly after taking over the transfer agent services for Nanotech, Winick advised Curry that Nanotech had an unpaid dividend and wished to pay that dividend in shares and share purchase warrants.

[22] During the Material Time, Curry and the AHST Companies made the necessary stock certificates and arranged for their printing. The stock certificates were sent out to a list of recipients provided by Winick under the cover of a letter from the AHST Companies (the "**Nanotech Letter**"). Curry and the AHST Companies, with the assistance of McCarthy, printed the stock certificates and sent letters from Ontario to over 10,000 addresses in Europe, Asia, Africa and Australia. Winick drafted the Nanotech Letter and provided it to Curry in near completed form. Curry and the president of AHST Nevada at the time filled in certain missing information, including the names and addresses of the shareholders provided by Winick, and sent out the letter.

[23] The Nanotech Letter invited shareholders to complete and sign warrant certificates, which would entitle the recipient of the letter to convert the warrants into 25,000 common shares of Nanotech for $68,750. The letter stated that at the time it was written, the shares of Nanotech were trading at $4.93, suggesting an investor could realize an immediate and substantial profit. Neither Curry nor the AHST Companies ever conducted an independent inquiry to determine the accuracy of the statement that a dividend had been declared, but unpaid, by Nanotech.

C. Laura Mateyak

[24] Staff did not allege that Mateyak was involved in sending out the Nanotech Letter. However, Mateyak allowed herself to be placed on record as an officer and bank signing authority of AHST Ontario, although she knew she was taking those responsibilities as a nominee. She deferred any decisions to Curry, who was the *de facto* director and officer of the company.

D. Results of the Nanotech Letter Scheme

[25] Although the Nanotech Letter contemplated that Nanotech shareholders would pay the AHST Companies directly on behalf of Nanotech for any warrants they wished to exercise, the AHST Companies never accepted any payment. The AHST Companies and Curry made it clear to those who inquired about the investment, that the AHST Companies were strictly a transfer agent and would not provide any advice, execute any trades or receive any money on behalf of Nanotech. None of the AHST Companies, Curry or Mateyak received any money from any of the persons to whom the Nanotech Letter was addressed and sent to.

III. THE PARTIES' SUBMISSIONS

[26] Staff seeks sanctions and costs as follows:

1. an order pursuant to clause 2 of subsection 127(1) of the *Act* that trading in any securities by Kolt Curry, AHST Nevada and AHST Ontario cease permanently;

2. an order pursuant to clause 2 of subsection 127(1) of the *Act* that trading in any securities by Mateyak cease for a period of five years;

3. an order pursuant to clause 2.1 of subsection 127(1) of the *Act* that the acquisition of any securities by Kolt Curry, AHST Nevada and AHST Ontario is prohibited permanently;

4. an order pursuant to clause 2.1 of subsection 127(1) of the *Act* that the acquisition of any securities by Mateyak is prohibited for a period of five years;

5. an order pursuant to clause 3 of subsection 127(1) of the *Act* that any exemptions contained in Ontario securities law do not apply to Kolt Curry, AHST Nevada and AHST Ontario permanently;

6. an order pursuant to clause 3 of subsection 127(1) of the *Act* that any exemptions contained in Ontario securities law do not apply to Mateyak for a period of five years;

7. an order pursuant to clause 7 of subsection 127(1) of the *Act* that Kolt Curry and Mateyak resign any position that they hold as a director or officer of an issuer;

8. an order pursuant to clause 8 of subsection 127(1) of the *Act* that Kolt Curry be prohibited permanently from becoming or acting as a director or officer of any issuer;

9. an order pursuant to clause 8 of subsection 127(1) of the *Act* that Mateyak be prohibited for a period of five years from becoming or acting as a director or officer of any issuer;

10. an order pursuant to clause 8.2 of subsection 127(1) of the *Act* that Kolt Curry be prohibited permanently from becoming or acting as a director or officer of a registrant;

11. an order pursuant to clause 8.2 of subsection 127(1) of the *Act* that Mateyak be prohibited for a period of five years from becoming or acting as a director or officer of a registrant;

12. an order pursuant to clause 8.4 of subsection 127(1) of the *Act* that Kolt Curry be prohibited permanently from becoming or acting as a director or officer of an investment fund manager;

13. an order pursuant to clause 8.4 of subsection 127(1) of the *Act* that Mateyak be prohibited for a period of five years from becoming or acting as a director or officer of an investment fund manager;

14. an order pursuant to clause 8.5 of subsection 127(1) of the *Act* that Kolt Curry be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

15. an order pursuant to clause 8.5 of subsection 127(1) of the *Act* that Mateyak be prohibited for a period of five years from becoming or acting as a registrant, as an investment fund manager or as a promoter;

16. an order pursuant to section 37 of the *Act* that Kolt Curry be prohibited permanently from telephoning from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or any class of securities;

17. an order pursuant to section 37 of the *Act* that Mateyak be prohibited for a period of five years from telephoning from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or any class of securities;

18. an order pursuant to clause 6 of subsection 127(1) of the *Act* that the Respondents are thereby reprimanded;

19. an order pursuant to clause 9 of subsection 127(1) of the *Act* that Kolt Curry, AHST Nevada and AHST Ontario pay an administrative penalty of $100,000 for which they shall be jointly and severally liable, to be designated for the allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*;

20. an order pursuant to clause 9 of subsection 127(1) of the *Act* that Mateyak pay an administrative penalty of $20,000 to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*; and

21. an order pursuant to subsection 127.1 of the *Act* that Kolt Curry, AHST Nevada, AHST Ontario and Mateyak pay $60,000, for costs of the hearing, for which they shall be jointly and severally liable with any amount ordered to be paid by Sandy Winick in this matter.

[27] Counsel for the Respondents submit that the offences of the AHST Companies are not serious nor egregious, and that they effectively amount to a failure to carry out sufficient and appropriate due diligence to ensure that the Nanotech Letter that Winick drafted was accurate in all material respects. Counsel submits that a lifetime trading ban against Curry sends a very strong deterrent message. Moreover, in her written submissions, Mateyak submits that the five-year trading sanctions requested by Staff are sufficient to accomplish the Commission's sanctioning objectives, including deterring others from similar conduct. The Respondents take no issue with respect to the non-monetary sanctions requested by Staff. However, counsel for the Respondents submits that the administrative penalties requested by Staff are excessive, and more appropriate penalties would be in the range of $20,000 for Curry and $2,500 for Mateyak. Counsel also submits that a costs order of $15,000 would be appropriate against Curry, and that no costs order is appropriate with respect to Mateyak.

IV. THE LAW

[28] The Commission's mandate, set out in section 1.1 of the *Act*, is to (i) provide protection to investors from unfair, improper or fraudulent practices; and (ii) foster fair and efficient capital markets and confidence in capital markets.

[29] I n making an order in the public interest under section 127 of the *Act*, the Commission's jurisdiction should be exercised in a protective and preventative manner. The Commission's purpose in making such orders was expressed by the Commission in *Re Mithras Management Ltd.*:

> … the role of this Commission is to protect the public interest be removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to

> the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts … We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be ...
>
> (*Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at 1610-1611)

[30] This view was endorsed by the Supreme Court of Canada, which described the Commission's public interest jurisdiction as follows:

> …the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the [Commission] under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets.
>
> (*Re Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at para. 43)

[31] The Commission has previously considered the following as factors that the Commission should consider when imposing sanctions:

1. the seriousness of the allegations proved;
2. the respondents' experience in the marketplace;
3. the level of a respondent's activity in the marketplace;
4. whether or not there has been a recognition of the seriousness of the improprieties;
5. whether or not the sanctions imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets;
6. whether the violations are isolated or recurrent;
7. the size of any profit (or loss) avoided from the illegal conduct;
8. the size of any financial sanction or voluntary payment when considering other factors;
9. the effect any sanction might have on the livelihood of the respondent;
10. the restraint any sanction may have on the ability of a respondent to participate without check in the capital markets;
11. the reputation and prestige of the respondent;
12. the shame, or financial pain, that any sanction would reasonably cause to the respondent;
13. the remorse of the respondent; and
14. any mitigating factors.

(*Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746-7747; *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 at 1136; *Re M.C.J.C. Holdings Inc.* (2003), 26 O.S.C.B. 8206 at para. 55; *Erikson v. Ontario (Securities Commission)*, [2003] O.J. No. 593 (Div. Ct.))

[32] The Commission may also consider general and specific deterrence in crafting appropriate sanctions. The Supreme Court of Canada has held that the "weight given to general deterrence will vary from case to case and is a matter within the discretion of the Commission" (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at paras. 60 and 64).

[33] In determining the appropriate sanctions to impose upon the Respondents, I have considered the case law mentioned above and I have also considered previous decisions of the Commission, including: *Re Ahluwalia* (2013), 36 O.S.C.B. 617; *Re*

Axcess Automation LLC (2013), 36 O.S.C.B. 2919; *Re Gold-Quest International* (2010), 33 O.S.C.B. 11179; *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030; *Re Ochnik* (2006), 29 O.S.C.B. 3929; *Re Rowan* (2009), 33 O.S.C.B. 91; and *Re Sabourin* (2010) 33 O.S.C.B. 5299. With regards to costs, I have also considered the factors set out in Rule 18.2 of the *Rules of Procedure*.

V. ANALYSIS

A. Kolt Curry, AHST Ontario and AHST Nevada

[34] Staff requests an administrative penalty of $100,000 to be payable on a joint and several basis by Curry and the AHST Companies. Counsel for the Respondents request that the administrative penalty imposed on Curry should be lowered to $20,000. I disagree.

[35] Although no investors took the bait, the possibility of widespread losses by potential investors was significant, given that the Nanotech Letter was sent to over 10,000 addresses around the world. The misconduct of Curry and the AHST Companies led to multiple breaches of the *Act* and was found to be contrary to the public interest. Curry was also instrumental in the preparation and distribution of the Nanotech Letter. I therefore find that Staff's requested administrative penalty of $100,000 against Curry and the AHST Companies, payable on a joint and several basis, is appropriate to meet the needs of specific and general deterrence and is proportional to the circumstances of these respondents.

[36] With regards to costs, Staff highlighted a correction to its bill of costs (the "**Bill of Costs**"), which is found as an attachment to the Affidavit of Laura Fisher, sworn August 26, 2013. The Bill of Costs outlines the hearing and investigation costs with respect to three matters involving three groups of respondents: (i) the Respondents, (ii) the McCarthy Respondents and (iii) Winick and Greg Curry. At the Sanctions and Costs Hearing, Staff corrected the total value of the litigation costs with respect to the three matters from $279,350 to $271,025 (Transcript, October 10, 2013, p. 7, ll. 6-23). I accept that the total litigation costs for the three matters amounts to the corrected value of $271,025.

[37] Staff submits that the Respondents should be jointly and severally liable to pay $60,000 of the $271,025. Counsel for the Respondents submits that a lower costs order of $15,000 should be imposed on Curry and no costs order should be imposed on Mateyak. Counsel also notes that the Respondents have entered into the Agreed Facts, Curry attended the Commission for a voluntary interview and the Bill of Costs does not allocate any time spent in relation to Mateyak.

[38] I find that Staff properly allocated the total hearing costs related to the Respondents in this matter and discounted such amounts accordingly. The total requested amount of $60,000 reflects the following discounts: no time is claimed relating to the investigation of this matter; no time is claimed for the time spent preparing for or drafting submissions for the Sanctions and Costs Hearing; and no claim is made for disbursements incurred throughout this matter. The time spent by students-at-law and assistants are also excluded. I find that Staff has produced a conservative calculation of costs.

[39] I order that Curry, AHST Ontario and AHST Nevada shall pay, on a joint and several basis, the amount of $60,000 for the costs incurred in the hearing in this matter.

[40] Staff also submits that any costs order imposed on the Respondents should be ordered on a joint and several basis with any amounts payable by Winick that are ordered in a separate hearing. I do not find it appropriate to make such an order. A costs order made pursuant to section 127.1 of the *Act* is not a sanction. Its purpose is to recover the costs of a hearing or investigation from persons or companies that failed to comply with Ontario securities law or have acted contrary to the public interest. Curry was a respondent in this matter, which involved a hearing on the merits that was conducted separately from that of Winick. In these circumstances, I find that it is not appropriate to make an order that would recover the costs incurred in a separate matter.

B. Laura Mateyak

[41] Mateyak testified at the Sanctions and Costs Hearing on October 10, 2013. Mateyak is 34 years old and was born in the Philippines. When she was nine years old, she moved to Thailand, where she resided until she came to Canada at the age of 20. Mateyak has never worked in Canada. She has two children and is expecting a third child at the end of November 2013. She is married to Curry, who is currently incarcerated in Brooklyn, New York.

[42] She and her children live with her mother-in-law in Aurora, Ontario. Her mother-in-law owns the house that she lives in. She and her husband were paying rent to her mother-in-law, but now that Curry is in jail, she has been unable to pay rent and the house has been listed for sale. She has no idea where she will live if the house is sold. Mateyak has one bank account that has about $1,200, which has been frozen by the Commission. She owes about $13,000 on her credit card. She has no investment trading accounts, no retirement savings plans and has never traded in stocks or securities.

[43] Staff submits that Mateyak was an essential player in the Nanotech Letter Scheme and requests an administrative penalty of $20,000. I disagree. Mateyak merely followed the instructions of her husband, as anyone would have done given her domestic circumstances. I find that a $2,500 administrative penalty, as proposed by her counsel, is appropriate. The various five-year trading and market participation bans against Mateyak meets the needs of specific and general deterrence.

[44] With regards to costs, Mateyak did little or nothing to contribute to the costs of the hearing in this matter. I agree with counsel for the Respondents that there should be no order as to costs against Mateyak.

VI. CONCLUSION

[45] For the reasons above, I find that it is in the public interest to order the following sanctions, which are proportionate to the Respondents' conduct, reflect the seriousness of the Respondents' non-compliance with Ontario securities law and are intended to deter the Respondents and other like-minded people from engaging in similar misconduct.

[46] I will issue a separate order giving effect to my decision on sanctions and costs, as follows:

1. pursuant to clause 2 of subsection 127(1) of the *Act*, trading in any securities by Curry, AHST Ontario and AHST Nevada shall cease permanently;

2. pursuant to clause 2 of subsection 127(1) of the *Act*, trading in any securities by Mateyak shall cease for a period of five years;

3. pursuant to clause 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by Curry, AHST Ontario and AHST Nevada shall be prohibited permanently;

4. pursuant to clause 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by Mateyak shall be prohibited for a period of five years;

5. pursuant to clause 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law shall not apply to Curry, AHST Ontario and AHST Nevada permanently;

6. pursuant to clause 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law shall not apply to Mateyak for a period of five years;

7. pursuant to clause 6 of subsection 127(1) of the *Act*, Curry and Mateyak are reprimanded;

8. pursuant to clause 7 of subsection 127(1) of the *Act*, Curry and Mateyak shall resign any position that they hold as a director or officer of an issuer;

9. pursuant to clause 8 of subsection 127(1) of the *Act*, Curry shall be prohibited permanently from becoming or acting as a director or officer of any issuer;

10. pursuant to clause 8 of subsection 127(1) of the *Act*, Mateyak shall be prohibited for a period of five years from becoming or acting as a director or officer of any issuer;

11. pursuant to clause 8.5 of subsection 127(1) of the *Act*, Curry shall be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

12. pursuant to clause 8.5 of subsection 127(1) of the *Act*, Mateyak shall be prohibited for a period of five years from becoming or acting as a registrant, investment fund manager or as a promoter;

13. pursuant to clause 9 of subsection 127(1) of the *Act*, Curry, AHST Ontario and AHST Nevada shall pay, on a joint and several basis, an administrative penalty of $100,000 for their non-compliance with Ontario securities law, to be designated for allocation or for use by the Commission, pursuant to subsection 3.4(2)(b) of the *Act*;

14. pursuant to clause 9 of subsection 127(1) of the *Act*, Mateyak shall pay an administrative penalty of $2,500 for her non-compliance with Ontario securities law, to be designated for allocation or for use by the Commission, pursuant to subsection 3.4(2)(b) of the *Act*;

15. pursuant to subsection 127.1 of the *Act*, Curry, AHST Ontario and AHST Nevada shall pay, on a joint and several basis, $60,000 for the costs incurred in the hearing of this matter;

16. pursuant to subsection 37(1) of the *Act*, Curry shall be prohibited permanently from telephoning from a location in Ontario to any residence located in or out of Ontario for the purpose of trading in any security or in any class of securities; and

17. pursuant to subsection 37(1) of the *Act*, Mateyak shall be prohibited for a period of five years from telephoning from a location in Ontario to any residence located in or out of Ontario for the purpose of trading in any security or in any class of securities.

DATED at Toronto this 20th day of December, 2013.

"James D. Carnwath"

3.1.5 Moncasa Capital Corporation and John Frederick Collins

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

AND

IN THE MATTER OF
MONCASA CAPITAL CORPORATION and JOHN FREDERICK COLLINS

REASONS AND DECISION ON SANCTIONS AND COSTS

Hearing:	July 11, 2013		
Decision:	December 20, 2013		
Panel:	Edward P. Kerwin	–	Commissioner
Appearances:	Tamara Center	–	For the Ontario Securities Commission
		–	No one appeared for the respondents Moncasa Capital Corporation and John Frederick Collins

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REASONS AND DECISION ON SANCTIONS AND COSTS

I. History of the Proceeding

[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 it is in the public interest to make an order with respect to sanctions and costs against John Frederick Collins ("Collins") and Moncasa Capital Corporation ("Moncasa") (collectively, the "Respondents").

[2] The hearing on the merits in this matter took place on January 21, 22, 23, 24 and March 13, 2013. None of the Respondents appeared or participated in the hearing on the merits.

[3] The decision on the merits was issued on May 17, 2013 (*Re Moncasa Capital Corporation et al* (2013), 36 O.S.C.B. 5320 (the "Merits Decision")).

[4] Following the release of the Merits Decision, a hearing was held on July 11, 2013, to consider sanctions and costs (the "Sanctions and Costs Hearing"). Staff of the Commission ("Staff") appeared at the Sanctions and Costs Hearing.

[5] None of the Respondents appeared or participated in the Sanctions and Costs Hearing. Staff informed the Commission that the Respondents were served with the Order setting down the Sanctions and Costs Hearing. In the circumstances, I am satisfied that notice of the Sanctions and Costs Hearing was served on the Respondents, and that I am entitled to proceed in their absence in accordance with subsection 7(1) of the SPPA and Rule 7.1 of the Commission's Rules. I also note that the Respondents did not appear or participate in the hearing on the merits in this matter (see Merits Decision, *supra* at paras. 13 to 20).

[6] Staff provided written submissions dated June 7, 2013, along with a Book of Authorities, and Staff's Sanctions Compendium, which includes a copy of the Merits Decision, Total Bill of Costs, Bill of Costs sought by Staff, an Affidavit of Yolanda Leung, sworn June 5, 2013 with appended dockets and copies of invoices for disbursements. The Respondents did not file any materials for the Sanctions and Costs Hearing.

[7] These are my Reasons and Decision as to the appropriate sanctions and costs to order against the Respondents.

II. The Merits Decision

[8] The Merits Decision addressed the following issues:

1. Did the Respondents trade in securities without registration in breach of subsection 25(1)(a) of the Act (for the time period from April 1, 2008 to September 27, 2009) and subsection 25(1) of the Act (for the time period from September 28, 2009 to May 16, 2011) and contrary to the public interest?

2. Did the Respondents engage in a distribution of securities without a prospectus in breach of subsection 53(1) of the Act and contrary to the public interest?

3. Did the Respondents engage in fraud in breach of subsection 126.1(b) of the Act and contrary to the public interest?

4. Did Collins make false and/or misleading statements to the Commission in breach of subsection 122(1)(a) of the Act and contrary to the public interest?

5. Did Collins authorize, permit or acquiesce in breaches of subsections 25(1)(a) (during the time period from April 1, 2008 to September 27, 2009), 25(1) (during the time period from September 28, 2009 to May 16, 2011), 53(1) and 126.1(b) of the Act by Moncasa, such that he is deemed to also have not complied with Ontario securities law pursuant to section 129.2 of the Act?

(Merits Decision, *supra* at para. 21)

[9] Upon reviewing all the evidence, the applicable law and the submissions made, the Panel concluded in the Merits Decision that:

(a) Moncasa and Collins breached subsection 25(1)(a) of the Act during the time period from April 1, 2008 to September 27, 2009 and subsection 25(1) of the Act during the time period from September 28, 2009 to May 16, 2011;

(b) Moncasa and Collins breached subsection 53(1) of the Act;

(c) there were no exemptions available to either Moncasa or Collins;

(e) Moncasa and Collins breached section 126.1(b) of the Act;

(f) Collins breached subsection 122(1)(a) of the Act;

(g) pursuant to section 129.2 of the Act, Collins is deemed to have not complied with Ontario securities law, having authorized or permitted Moncasa's breaches of subsections 25(1)(a) during the time period from April 1, 2008 to September 27, 2009 and 25(1) during the time period from September 28, 2009 to May 16, 2011, 53(1) and 126.1(b) of the Act; and

(h) Moncasa and Collins acted contrary to the public interest.

(Merits Decision, *supra* at para. 174)

[10] It is that conduct and those findings and conclusions that I must consider when determining the appropriate sanctions to impose in this matter.

III. Sanctions and Costs Requested by Staff

[11] Staff has requested that the following order be made against the Respondents:

(a) that trading in any securities by the Respondents cease permanently, pursuant to paragraph 2 of section 127(1) of the Act;

(b) that acquisition of any securities by the Respondents is prohibited, permanently, pursuant to paragraph 2.1 of section 127(1) of the Act;

(c) that any exemptions contained in Ontario securities law do not apply to the Respondents permanently, pursuant to paragraph 3 of section 127(1) of the Act;

(d) that the Respondents be reprimanded, pursuant to paragraph 6 of section 127(1) of the Act;

(e) that Collins resign one or more positions that he holds as a director or officer of any issuer, registrant or investment fund manager, pursuant to paragraphs 7, 8.1 and 8.3 of section 127(1) of the Act;

(f) that Collins be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, pursuant to paragraphs 8, 8.2 and 8.4 of section 127(1) of the Act;

(g) the Respondents be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter, pursuant to paragraph 8.5 of section 127(1) of the Act;

(h) that Respondents pay an administrative penalty of $400,000 for failure to comply with Ontario securities law, pursuant to paragraph 9 of section 127(1) of the Act;

(i) that Respondents disgorge to the Commission the sum of $1,231,800 obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of section 127(1) of the Act;

(j) the Respondents be ordered to pay a portion of the costs of the Commission investigation and the hearing in the amount of $280,721.02, pursuant to section 127.1 of the Act;

(k) the Respondents be permanently prohibited to call at a residence or telephone from a location in Ontario to a residence located in or out of Ontario for the purpose of trading in any security or derivative or in any class of securities or derivatives, pursuant to section 37 of the Act; and

(l) such other order as the Commission may deem appropriate.

[12] Staff also requested that any amounts ordered for disgorgement and administrative penalties be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act.

[13] In Staff's submission, the sanctions requested are appropriate in light of the Respondents' conduct and take into account the multiple breaches of the Act that occurred. Staff submits that there is a need to send a strong message to the Respondents and the public at large. Staff further submits that orders removing the Respondents permanently from the capital markets, significant administrative penalties and disgorgement of all funds obtained from the fraudulent investment scheme are proportionate to the Respondents' misconduct, and will send a message to the Respondents and to like-minded individuals that involvement in these types of fraudulent schemes will result in severe sanctions. In addition, Staff submits that the amount of costs claimed is reasonable and appropriate in the circumstances.

IV. The Law on Sanctions

[14] Pursuant to section 1.1 of the Act, the Commission has the mandate to: (i) provide protection to investors from unfair, improper or fraudulent practices; and (ii) foster fair and efficient capital markets and confidence in capital markets. As stated by the Supreme Court of Canada in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission*, [2001] 2 S.C.R. 132 ("*Asbestos*"), the Commission's public interest mandate is neither remedial nor punitive; instead, it is protective and preventive, and it is intended to prevent future harm to Ontario's capital markets (at para. 42). Specifically:

> … the above interpretation is consistent with the scheme of enforcement in the Act. The enforcement techniques in the Act span a broad spectrum from purely regulatory or administrative sanctions to serious criminal penalties. The administrative sanctions are the most frequently used sanctions and are grouped together in s. 127 as "Orders in the public interest". Such orders are not punitive: *Re Albino* (1991), 14 O.S.C.B. 365. Rather, the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the OSC under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets: *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600. In contradistinction, it is for the courts to punish or remedy past conduct under ss. 122 and 128 of the Act respectively: see D. Johnston and K. Doyle Rockwell, *Canadian Securities Regulation* (2nd ed. 1998), at pp. 209-11.
>
> …
>
> … pursuant to s. 127(1), the OSC has the jurisdiction and a broad discretion to intervene in Ontario capital markets if it is in the public interest to do so. … In exercising its discretion, the OSC should consider the protection of investors and the efficiency of, and public confidence in, capital markets generally. In addition, s. 127(1) is a regulatory provision. The sanctions under the section are preventive in nature and prospective in orientation.
>
> (*Asbestos*, *supra* at paras. 43 and 45 [emphasis added])

[15] In determining the appropriate sanctions to order in this matter, it is important to keep in mind the Commission's preventive and protective mandate set out in section 1.1 of the Act, and consider the specific circumstances in this case and ensure that the sanctions are proportionately appropriate with respect to the circumstances facing the particular respondents (*Re M.C.J.C. Holdings*, (2002), 25 O.S.C.B. 1133 at 1134).

[16] The case law sets out the following list of non-exhaustive factors that are important to consider when imposing sanctions:

(a) the seriousness of the allegations proved;

(b) the respondent's experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been a recognition of the seriousness of the improprieties;

(e) the need to deter a respondent, and other like-minded individuals, from engaging in similar abuses of the capital markets in the future;

(f) whether the violations are isolated or recurrent;

(g) the size of any profit gained or loss avoided from the illegal conduct;

(h) any mitigating factors, including the remorse of the respondent;

(i) the effect any sanction might have on the livelihood of the respondent;

(j) the effect any sanction might have on the ability of a respondent to participate without check in the capital markets;

(k) in light of the reputation and prestige of the respondent, whether a particular sanction will have an impact on the respondent and be effective;

(l) the size of any financial sanctions or voluntary payment when considering other factors.

(*Re M.C.J.C. Holdings*, *supra* at 1136 and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746)

[17] The applicability and importance of each factor will vary according to the facts and circumstances of each case.

[18] Deterrence is another important factor for the Commission to consider when determining appropriate sanctions. In *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 ("*Cartaway*"), the Supreme Court of Canada explained that deterrence is "… an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventive" (at para. 60). Further, the Supreme Court emphasized that deterrence may be specific to the respondent or general to deter the public at large:

> Deterrent penalties work on two levels. They may target society generally, including potential wrongdoers, in an effort to demonstrate the negative consequences of wrongdoing. They may also target the individual wrongdoer in an attempt to show the unprofitability of repeated wrongdoing. The first is general deterrence; the second is specific or individual deterrence: see C. C. Ruby, *Sentencing* (5th ed. 1999). In both cases deterrence is prospective in orientation and aims at preventing future conduct.
>
> (*Cartaway*, *supra* at para. 52)

[19] As stated above, the sanctions imposed must be protective and preventive. The role of the Commission is to impose sanctions that will protect investors and the capital markets from exposure to similar conduct in the future. As articulated by the Commission in *Re Mithras Management Inc.* (1990), 13 O.S.C.B. 1600:

> … the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.
>
> (*Mithras*, *supra* at 1610 and 1611)

V. Appropriate Sanctions in this Case

1. Specific Sanctioning Factors Applicable in this Matter

[20] Overall, the sanctions imposed must protect investors and the Ontario capital markets by barring or restricting the respondents from participating in those markets in the future.

[21] In considering the sanctioning factors set out above in the case law, the following specific factors and circumstances are relevant in this matter:

(a) The seriousness of the allegations: The Respondents breached a number of key provisions of the Act. Individually and collectively, these are serious breaches.

The Respondents engaged in unregistered trading and an illegal distribution of securities without a prospectus (Merits Decision, *supra* at paras. 78 and 85). Solicitations and sales of securities were made without regard to registration, prospectus and disclosure requirements of the Act. This damages the integrity of the capital markets. The Respondents' conduct undermined public confidence in the capital markets and shows blatant disregard for the rule of law and Ontario's securities regime.

It was also found that the Respondents engaged in fraudulent conduct affecting 57 individuals who invested in Moncasa. As stated in paragraph 119 of the Merits Decision.

> Investors relied on the false and fabricated information about Moncasa and its business activities when deciding whether to invest in the company. […] the following facts are indicators that fraud was taking place: existence of false information in corporate documents, press releases and marketing and promotional materials; lack of financial documentation and failure to provide company and financial information to investors; the use of aliases; and the use of high pressure sales tactics to coerce investors to invest and to increase their investment. These fraudulent acts caused deprivation to investors. Through the investment scheme, Moncasa raised a total of approximately $1,200,000 from investors. I note that these investors lost their funds and were not paid back.

Further, as stated in paragraph 146 of the Merits Decision:

> Collins deceived investors by misrepresenting his qualifications, expertise, and experience and Moncasa's business activities and use of funds. Collins also misled investors by representing to them that Moncasa operated a successful and growing business. Investors were deprived of their funds as a result of false and misleading statements. Furthermore, Collins misappropriated investor funds by spending at least $327,773.52 of those funds on personal expenses, and with the exception of the USD $69,052.20 payment for the right to use a single property in the Dominican Republic for four one-week periods annually, the remaining investor funds were used to pay salespeople and to otherwise further the activities of the Moncasa boiler room operation.

The fraudulent conduct of the Respondents caused significant harm to investors and deprived investors of their funds. The scope and magnitude of the fraudulent conduct is an important consideration when determining appropriate sanctions.

The Commission has previously held that fraud is "one of the most egregious securities regulatory violations", both "an affront to the individual investors directly targeted" and something that "decreases confidence in the fairness and efficiency of the entire capital market system." (*Re Al-Tar Energy Corp.* (2010), 33 O.S.C.B. 5535 at para. 214)

In addition, Collins misled Commission Registration Staff and Commission Enforcement Staff (Merits Decision, *supra* at paras. 150 to 163). Specifically, misleading statements were made about: (1) the ongoing sales of Moncasa shares, (2) the role of Moncasa salespeople, (3) commissions paid to Moncasa salespeople, (4) Collin's relationship with Abel Da Silva, and (5) Moncasa's previous relationships with investors. Misleading the Commission is a serious violation of the Act. In particular, the Commission has held that the act of misleading Staff is a particularly egregious violation of the public interest (*Re Koonar* (2002), 25 O.S.C.B. 2691 at 2692).

(b) The Respondents' experience in the marketplace: The Commission has held that a breach of Ontario securities law by a registrant is serious because the offender is aware of the importance of securities law for the capital markets (*Re Rowan* (2010), 33 O.S.C.B. 91 at para. 145).

Neither of the Respondents was registered with the Commission when investors were sold Moncasa securities, however, Collins was previously registered as a salesperson with Marchment & MacKay Limited from February 2, 1994 to November 21, 1997, and with C.J. Elbourne Securities Inc. from November 28, 1997 to June 30, 2000. He also made further unsuccessful attempts to register in 2000, 2007 and 2008 (Merits Decision, supra at paras. 47 to 51).

As a former registrant, Collins had a higher level of awareness of securities law requirements and the importance of those requirements to the capital markets. This is an important consideration to take into account when imposing sanctions on Collins.

(c) The Respondents' activity in the marketplace: The Commission has considered a number of factors in assessing the scale of a respondent's misconduct and their activity in the marketplace, including the number of investors affected, the amount of investor funds raised, the amount lost by investors, whether the misconduct was repeated, and the period of time over which it occurred. In this case, the unlawful conduct was carried out across Canada, over a period of three years, and resulted in the loss of $1,231,800 from 57 investors. The Respondents' conduct also demonstrates their ability to plan and execute a securities fraud scheme using sophisticated marketing tools.

(d) Whether there has been a recognition of the seriousness of the improprieties: The Respondents did not attend the merits hearing or sanctions hearing. In addition, the actions of the Respondents during the investigation stage provide no basis to conclude that they have recognized the seriousness of their improprieties or that they have any remorse for the consequences of their conduct. In particular, Collins misled Staff throughout the investigation to try to conceal his inappropriate actions. Specifically, the Panel found at paragraphs 150, 154, 157, 161 and 163 of the Merits Decision that Collins made misleading statements to Staff regarding ongoing sales of Moncasa's shares, the role of Moncasa's salespeople, commissions paid to Moncasa salespeople, Collins' relationship with Abel Da Silva, and Moncasa's previous relationship with investors. Instead of recognizing the seriousness of these improprieties, Collins misled Staff and did not take responsibility for his and Moncasa's actions.

(e) The size of any profit made from the illegal conduct: Of the $1,231,800 raised from investors, most of the investor funds were used "to further the activities of the Moncasa boiler room operation" (Merits Decision,

supra at para. 135). The Panel also found that Collins misappropriated $327,773.52 of investor funds, which represented a misappropriation for personal use of 26.6% of the $1,231,800 raised from investors.

(f) Deterrence: As set out above in paragraph 18 of this decision, deterrence is an important factor to consider. In this case, specific deterrence for Collins is an important factor to consider because, as a former registrant, Collins had a higher level of awareness of securities law requirements and the importance of those requirements to the capital markets, yet he still engaged in conduct which breached securities law.

(g) The restraint any sanctions may have on the ability of a Respondent to participate without check in the capital markets: As stated above, the Respondents engaged in a fraudulent scheme and fraud has been found to be one of the most egregious violations of securities law. The Respondents' conduct has been so harmful that they should be prevented from participating in the capital markets in any capacity. As confirmed by the Divisional Court "[p]articipation in the capital markets is a privilege, not a right" (*Erikson v. Ontario (Securities Commission)* (2003), 26 O.S.C.B. 1622 (Div. Ct.) at paras. 55 and 56). Such a right should not be extended to those who commit fraud.

2. Trading and Other Prohibitions

Permanent Bans

[22] Staff requested permanent trading and registration bans be imposed on the Respondents and permanent director and officer bans be imposed on Collins. Staff submits that permanent bans are appropriate when the conduct at issue involves fraud. In addition, Staff submits that carve-out exceptions for personal trading in registered accounts are not appropriate when fraudulent conduct is engaged in because the Respondents' fraudulent conduct demonstrates that they cannot be trusted to participate in the capital markets in even a limited capacity.

[23] As set out in paragraphs 144 to 146 of the Merits Decision, the Respondents engaged in a fraudulent scheme. As discussed above at paragraph 21 of these reasons, this is very serious misconduct.

[24] In *Mithras*, the Commission explained that the removal of individuals from the capital markets is an effective mechanism for protecting the public. Methods include banning persons from trading, and from becoming officers, directors and registrants. This prevents such persons from participating in the capital markets through positions of control or direction within a company and from interacting with investors.

[25] In past cases, the Commission has issued permanent bans in "boiler room" schemes where many investors were harmed and large sums of money were raised by respondents (see for example *Re Limelight Entertainment Inc.*, (2008), 31 O.S.C.B. 12030 ("*Limelight*"), *Re Al-Tar Energy Corp.* (2011), 34 O.S.C.B. 447 ("*Al-Tar*") and *Re Allen et al* (2006), 29 O.S.C.B. 3944).

[26] Taking all of this into consideration, I find that the Respondents' conduct has been so harmful that they should be prevented from participating in the capital markets in any capacity. It is therefore appropriate to order that the Respondents be permanently banned from trading or acquiring securities and permanently banned from becoming or acting as a registrant, as an investment fund manager or as a promoter. In addition, Collins is also permanently banned from becoming or acting as a director or officer of any issuer, registrant or investment fund manager. The imposition of such permanent bans will ensure that Collins will not be put in a position of direction or trust with any issuer or with investors. This is important because the misconduct in this matter took place when Collins created Moncasa and used the corporate entity as part of a scheme to defraud the public.

[27] Further, exemptions in Ontario securities law shall not apply to the Respondents permanently.

[28] The combined sanctions of permanent trading bans and a permanent prohibition of acting as a director or officer of any issuer, registrant or investment fund manager and permanent ban from acting as a registrant, as an investment fund manager or as a promoter, are together intended to provide general and specific deterrence to help ensure that similar conduct does not take place in the future.

Reprimand

[29] As set out in paragraph 174 of the Merits Decision, the Respondents engaged in unregistered trading, an illegal distribution of securities, fraud and Collins misled the Commission and was found to have not complied with Ontario securities law, having authorized or permitted Moncasa's breaches of the Act. This conduct was contrary to the public interest.

[30] I find it appropriate that the Respondents be reprimanded. The reprimand is intended to provide strong censure of the Respondents' misconduct and to impress on the public the importance of complying with securities law.

[31] The Respondents are hereby reprimanded for the conduct set out in the Merits Decision.

3. Administrative Penalty

[32] Paragraph 9 of subsection 127(1) of the Act provides that a person or company that has not complied with Ontario securities law can be ordered to "pay an administrative penalty of not more than $1 million for each failure to comply".

[33] The Commission has held that an administrative penalty should be of a magnitude sufficient to ensure effective specific and general deterrence. The goals of specific and general deterrence are most effectively met by administrative penalties that are proportional to each respondent's culpability in the matter. Important considerations in determining an administrative penalty may include: the scope and seriousness of a respondent's misconduct; whether there were multiple and/or repeated breaches of the Act; whether the respondent realized any profit as a result of his or her misconduct; the amount of money raised from investors; the harm caused to investors; and the level of administrative penalties imposed in other cases (*Re Goldpoint Resources Corporation et al* (2013), 36 O.S.C.B. 1464 at para. 75; and *Limelight*, *supra* at paras. 71 and 78).

[34] Staff seeks an administrative penalty in the amount of $400,000 against the Respondents on a joint and several basis. In cases involving the illegal distribution of securities, unregistered trading, misrepresentations, and particularly in cases involving fraudulent conduct, the Commission has awarded significant administrative penalties in order to have the intended deterrent effect.

[35] At the same time, however, in imposing an administrative penalty, the Commission must consider the level of administrative penalties imposed in other similar cases where comparable harm was done to investors (*Limelight*, *supra* at para. 71). I have considered the cases referred to me by Staff, including *Al-Tar*, *supra*, *Re Merax Resource Management Ltd. et al* (2012), 35 O.S.C.B. 11545, *Re Richvale Resources Corp.* (2012), 35 O.S.C.B. 10699 and *Re Empire Consulting Inc.* (2013), 36 O.S.C.B. 2327. I find the amount proposed by Staff ($400,000 to be paid joint and several by Moncasa and Collins) to be consistent with the orders imposed in other Commission cases dealing with similar misconduct and proportional to the circumstances and conduct of each Respondent.

[36] Considering the amount ordered to be disgorged (discussed below) together with the totality of the sanctions imposed including permanent bans, and balancing the magnitude of the harm committed by the Respondents in the amount of $1,231,800 raised from 57 investors, the quantum of $400,000 (joint and several against Collins and Moncasa) will serve the necessary specific and general deterrent purposes.

[37] Therefore, the Respondents shall pay an administrative penalty in the amount of $400,000 on a joint and several basis and this amount shall be designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b)(i) or (ii) of the Act.

4. Disgorgement

[38] Paragraph 10 of subsection 127(1) of the Act provides that a person or company that has not complied with Ontario securities law can be ordered to disgorge to the Commission "any amounts obtained" as a result of the non-compliance.

[39] The Commission has previously held that "all money illegally obtained from investors can be ordered to be disgorged, not just the 'profit' made as a result of the activity". As explained in *Limelight*, *supra* at paragraph 49:

> We note that paragraph 10 of subsection 127(1) of the Act provides that disgorgement can be ordered with respect to "any amounts obtained" as a result of non-compliance with the Act. Thus, the legal question is not whether a respondent "profited" from the illegal activity but whether the respondent "obtained amounts" as a result of that activity. In our view, this distinction is made in the Act to make clear that all money illegally obtained from investors can be ordered to be disgorged, not just the "profit" made as a result of the activity. This approach also avoids the Commission having to determine how "profit" should be calculated in any particular circumstance. Establishing how much a respondent obtained as a result of his or her misconduct is a much more straightforward test. In our view, where there is a breach of Ontario securities law that involves the widespread and illegal distribution of securities to members of the public, it is appropriate that a respondent disgorge all the funds that were obtained from investors as a result of that illegal activity. In our view, such a disgorgement order is authorized under paragraph 10 of subsection 127(1) of the Act.

[40] The *Limelight* case sets out a non-exhaustive list of disgorgement factors to consider at paragraph 52, which include:

(a) whether an amount was obtained by a respondent as a result of non-compliance with the Act;

(b) the seriousness of the misconduct and the breaches of the Act and whether investors were seriously harmed;

(c) whether the amount that a respondent obtained as a result of non-compliance with the Act is reasonably ascertainable;

(d) whether the individuals who suffered losses are likely to be able to obtain redress; and

(e) the deterrent effect of a disgorgement order on the respondents and other market participants.

[41] The *Limelight* case also states that Staff has the onus to prove on a balance of probabilities the amount obtained by a respondent as a result of his or her non-compliance with the Act. Subject to that onus, any risk of uncertainty in calculating disgorgement should fall on the wrongdoer whose non-compliance with the Act gave rise to the uncertainty (*Limelight*, *supra* at para. 53).

[42] Staff takes the position that the Respondents should be ordered to disgorge $1,231,800 (the entire amount raised by investors), on a joint and several basis.

[43] Applying the *Limelight* factors set out above, I find that it is appropriate to order that the Respondents disgorge $1,231,800 on a joint and several basis, based on consideration of the following factors:

(a) the entire amount of investor funds raised was obtained as a result of the Respondents' illegal distribution of securities and fraudulent conduct;

(b) the Respondents' misconduct was very serious and investors were seriously harmed by the fraud perpetrated by the Respondents;

(c) the amount obtained by the Respondents has been precisely ascertained, $1,231,800 represents the total amount raised as a result of Moncasa's illegal investment solicitation activities from 57 investors (Merits Decision, *supra* at para. 57);

(d) it does not appear likely that investors will be able to recoup any of their losses and as set out in paragraph 142 of the Merits Decision, Moncasa raised "… $1,231,800 from investors, none of which has been returned" to investors; and

(e) a disgorgement order for the entire amount raised by the Respondents would have a significant specific and general deterrent effect.

[44] It is also appropriate that the entire amount of $1,231,800 be disgorged on a joint and several basis since Collins effectively controlled Moncasa and used the company as a vehicle to perpetrate the illegal distribution and fraud. Collins was the sole director, officer, majority shareholder of Moncasa, and its directing mind. Effectively Collins and Moncasa acted as one and the same and as a result, together, they should disgorge the investor funds obtained on a joint and several basis.

[45] Therefore, the Respondents shall disgorge, on a joint and several basis the amount of $1,231,800 and this amount shall be designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b)(i) or (ii) of the Act.

5. Section 37 of the Act

[46] Staff has requested pursuant to subsection 37(1) of the Act that the Respondents be permanently prohibited from calling at a residence or telephoning from a location in Ontario to a residence located in or out of Ontario for the purpose of trading in any security or derivative or in any class of securities or derivatives.

[47] Subsection 37(1) of the Act, as amended on December 8, 2010, states as follows:

> **Order prohibiting calls to residences**
>
> **37.** (1) The Commission may by order suspend, cancel, restrict or impose terms and conditions on the right of any person or company named or described in the order to call at a residence or telephone from a location in Ontario to a residence located in or out of Ontario for the purpose of trading in any security or derivative or in any class of securities or derivatives.

[48] Prior to December 8, 2010, subsection 37(1) was substantially identical except it did not refer to derivatives.

[49] An order prohibiting calls to residences is a forward-looking order to protect the public and is appropriate when the conduct at issue involves a scheme whereby investors are cold-called and solicited by telephone.

[50] In the Merits Decision, the Panel found that investors were cold-called by Collins and Moncasa's salespeople (Merits Decision, *supra* at paras. 71, 72 and 162). Specifically, Collins and Moncasa's salespersons systematically phoned individuals whose names were obtained from "a list of 5,000 names that the Respondents had purchased from Dunhill, which is a company that compiles lists with the contact information of potential investors" (Merits Decision, *supra* at para. 54).

[51] This conduct involved a systematic process of solicitation and sale of Moncasa securities by telephone, and it is therefore appropriate to make an order under subsection 37(1) of the Act to prevent the Respondents permanently from calling at a residence or telephoning from a location in Ontario to a residence located in or out of Ontario for the purpose of trading in any security or derivative or in any class of securities or derivatives.

VI. Costs

[52] Pursuant to section 127.1 of the Act, the Commission has the discretion to order a person or company to pay the costs of the investigation and hearing if the Commission is satisfied that the person or company has not complied with the Act or has not acted in the public interest. Rule 18.2 of the Commission's Rules of Procedure (2010), 33 O.S.C.B. 8017 sets out a number of factors a Panel may consider in exercising its discretion to order costs.

[53] Staff requested, pursuant to subsection 127.1 of the Act, that the Respondents be ordered to pay, jointly and severally, $280,721.02 to cover the costs related to the investigation and merits hearing ($268,905.00) and disbursements ($11,816.02) in this matter. Staff calculates their costs as follows:

Staff	Total Hours	Rate	Total Costs
Craig Gallacher (Investigation Staff)	792	$185	$146,520.00
Tamara Center (Senior Litigation Staff)	597	$205	$122,385.00
TOTAL	**1389**		**$268,905.00**
Disbursements			**$11,816.02**
Total Costs			**$280,721.02**

[54] In support of this request, Staff provided a Sanctions Compendium which included Staff's Bill of Costs, an affidavit of Yolanda Leung dated June 5, 2013, detailed dockets (as required by Rule 18.1(2)(b) of the Commission's *Rules of Procedure*) which included timesheets with dates, numbers of hours worked and details of the tasks performed by each of the individuals listed in the bill of costs) and detailed invoices for disbursements.

[55] Staff explained that its costs were calculated in accordance with Staff's schedule of hourly rates for various members of Staff of the Enforcement Branch ($205 an hour for Litigation Staff and $185 for Investigation Staff). Staff submits that they have taken a conservative approach to calculating costs. The Bill of Costs reflects the fact that numerous other individuals assisted with the assessment, investigation and litigation of this matter. In fact, total Staff costs for this matter amounted to $500,377.27, and Staff took a conservative approach and only requested costs for a total amount of $280,721.02 for the following two individuals from Staff for their work during the investigation and merits hearing stage: Craig Gallacher (Investigation Staff) and Tamara Center (Senior Litigation Staff). Staff did not seek costs for time spent on settlement negotiations, time spent by students-at-law, law clerks and assistants, time spent on preparing for the sanctions hearing and time spent by other accountants and litigation counsel.

[56] During the hearing, Staff explained that high costs in this matter are due to complexities that arose during the investigation stage, which were a result of Collins providing the Commission with misleading information that prolonged the investigation process. According to Staff, there are no facts that would mitigate the costs in this matter.

[57] In the circumstances, I find that it is appropriate to order that the Respondents pay costs, jointly and severally, in the amount of $280,721.02. I have reviewed Staff's documents in support of their costs request and I find that the costs requested are reasonable. There are no factors present that would mitigate costs in this matter for the Respondents.

VII. Decision on Sanctions and Costs

[58] I consider that it is important in this case to: (1) impose sanctions that reflect the seriousness of the securities law violations that occurred in this matter; and (2) impose sanctions that not only deter the Respondents but also like-minded people from engaging in future conduct that violates securities law.

[59] I will issue a separate order giving effect to our decision on sanctions and costs, as follows:

(a) trading in any securities by the Respondents cease permanently, pursuant to paragraph 2 of section 127(1) of the Act;

(b) the acquisition of any securities by the Respondents is prohibited permanently, pursuant to paragraph 2.1 of section 127(1) of the Act;

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

(d) the Respondents be reprimanded, pursuant to paragraph 6 of section 127(1) of the Act;

(e) Collins resign all positions that he holds as a director or officer of any issuer, registrant or investment fund manager, pursuant to paragraphs 7, 8.1 and 8.3 of section 127(1) of the Act;

(f) Collins is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, pursuant to paragraphs 8, 8.2 and 8.4 of section 127(1) of the Act;

(g) the Respondents are prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter, pursuant to paragraph 8.5 of section 127(1) of the Act;

(h) the Respondents are required to pay on a joint and several basis an administrative penalty in the amount of $400,000 for failure to comply with Ontario securities law, pursuant to paragraph 9 of section 127(1) of the Act, which amount is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;

(i) the Respondents are required to disgorge on a joint and several basis to the Commission the amount of $1,231,800 obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of section 127(1) of the Act, which amount is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;

(j) the Respondents pay on a joint and several basis costs in the amount of $280,721.02, that were incurred by or on behalf of the Commission in respect of the investigation and the hearing of this matter, pursuant to section 127.1 of the Act; and

(k) the Respondents are permanently prohibited to call at a residence or telephone from a location in Ontario to a residence located in or out of Ontario for the purpose of trading in any security or derivative or in any class of securities or derivatives, pursuant to section 37 of the Act.

DATED at Toronto this 20th day of December 2013.

"Edward P. Kerwin"

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
Blue Horizon Industries Inc.	09 Dec 13	20 Dec 13	20 Dec 13	
Golden Phoenix Minerals, Inc.	18 Dec 13	30 Dec 13		
Platmin Limited	09 Dec 13	20 Dec 13		23 Dec 13
Reef Resources Ltd.	10 Dec 13	23 Dec 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
Stans Energy Corp.	09 Dec 13	20 Dec 13	20 Dec 13		

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
Strike Minerals Inc.	19 Sept 13	01 Oct 13	01 Oct 13		
Strike Minerals Inc.[1]	18 Nov 13	29 Nov 13	29 Nov 13		
Stans Energy Corp.	09 Dec 13	20 Dec 13	20 Dec 13		

Note:
[1] New respondent was added to the MCTO against Strike Minerals Inc.

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Chapter 5

Rules and Policies

5.1.1 OSC Rule 91-506 Derivatives:Product Determination

ONTARIO SECURITIES COMMISSION RULE 91-506
DERIVATIVES: PRODUCT DETERMINATION

Application

1. This Rule applies to Ontario Securities Commission Rule 91-507 – *Trade Repositories and Derivatives Data Reporting*.

Excluded derivatives

2. (1) A contract or instrument is prescribed not to be a derivative if it is

(a) regulated by,

(i) gaming control legislation of Canada or a jurisdiction of Canada, or

(ii) gaming control legislation of a foreign jurisdiction, if the contract or instrument

(A) is entered into outside of Canada,

(B) is not in violation of legislation of Canada or Ontario, and

(C) would be regulated under gaming control legislation of Canada or Ontario if it had been entered into in Ontario;

(b) an insurance or annuity contract entered into,

(i) with an insurer holding a licence under insurance legislation of Canada or a jurisdiction of Canada and regulated as insurance under that legislation, or

(ii) outside of Canada with an insurer holding a licence under insurance legislation of a foreign jurisdiction, if it would be regulated as insurance under insurance legislation of Canada or Ontario if it had been entered into in Ontario;

(c) a contract or instrument for the purchase and sale of currency that,

(i) except where all or part of the delivery of the currency referenced in the contract or instrument is rendered impossible or commercially unreasonable by an intervening event or occurrence not reasonably within the control of the parties, their affiliates or their agents, requires settlement by the delivery of the currency referenced in the contract or instrument,

(A) within two business days, or

(B) after two business days provided that the contract or instrument was entered into contemporaneously with a related security trade and the contract or instrument requires settlement on or before the relevant security trade settlement deadline,

(ii) is intended by the counterparties, at the time of the execution of the transaction, to be settled by the delivery of the currency referenced in the contract within the time periods set out in subparagraph (i), and

(iii) does not allow for the contract or instrument to be rolled over;

(d) a contract or instrument for delivery of a commodity other than cash or currency that,

(i) is intended by the counterparties, at the time of execution of the transaction, to be settled by delivery of the commodity, and

(ii) does not allow for cash settlement in place of delivery except where all or part of the delivery is rendered impossible or commercially unreasonable by an intervening event or occurrence not reasonably within the control of the counterparties, their affiliates, or their agents;

(e) evidence of a deposit issued by a bank listed in Schedule I, II or III to the *Bank Act* (Canada), by an association to which the *Cooperative Credit Associations Act* (Canada) applies or by a company to which the *Trust and Loan Companies Act* (Canada) applies;

(f) evidence of a deposit issued by a credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* or a similar statute of Canada or a jurisdiction of Canada (other than Ontario) applies or by a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act* or a similar statute of a jurisdiction of Canada (other than Ontario); or

(g) traded on an exchange recognized by a securities regulatory authority, an exchange exempt from recognition by a securities regulatory authority or an exchange that is regulated in a foreign jurisdiction by a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding.

(2) For the purposes of paragraph (1)(g), an exchange does not include a derivatives trading facility.

Investment contracts and over-the-counter options

3. A contract or instrument, other than a contract or instrument to which section 2 applies, that is a derivative, and that is otherwise a security solely by reason of being an investment contract under paragraph (n) of the definition of "security" in subsection 1(1) of the Act, or being an option described in paragraph (d) of that definition, that is not described in section 5, is prescribed not to be a security.

Derivatives that are securities

4. A contract or instrument, other than a contract or instrument to which any of sections 2 and 3 apply, that is a security and would otherwise be a derivative is prescribed not to be a derivative.

Derivatives prescribed to be securities

5. A contract or instrument that is a security and would otherwise be a derivative, other than a contract or instrument to which any of sections 2 to 4 apply, is prescribed not to be a derivative if such contract or instrument is used by an issuer or 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.

5.1.2 OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting

ONTARIO SECURITIES COMMISSION RULE 91-507
TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING

PART 1
DEFINITIONS AND INTERPRETATION

Definitions

1. (1) In this Rule

"asset class" means the asset category underlying a derivative and includes interest rate, foreign exchange, credit, equity and commodity;

"board of directors" means, in the case of a designated trade repository that does not have a board of directors, a group of individuals that acts in a capacity similar to a board of directors;

"creation data" means the data in the fields listed in Appendix A;

"derivatives dealer" means a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in derivatives in Ontario as principal or agent;

"derivatives data" means all data related to a transaction that is required to be reported pursuant to Part 3;

"Global Legal Entity Identifier System" means the system for unique identification of parties to financial transactions developed by the Legal Entity Identifier System Regulatory Oversight Committee;

"Legal Entity Identifier System Regulatory Oversight Committee" means the international working group established by the Finance Ministers and the Central Bank Governors of the Group of Twenty nations and the Financial Stability Board, under the Charter of the Regulatory Oversight Committee for the Global Legal Entity Identifier System dated November 5, 2012;

"life-cycle event" means an event that results in a change to derivatives data previously reported to a designated trade repository in respect of a transaction;

"life-cycle event data" means changes to creation data resulting from a life-cycle event;

"local counterparty" means a counterparty to a transaction if, at the time of the transaction, one or more of the following apply:

(a) the counterparty is a person or company, other than an individual, organized under the laws of Ontario or that has its head office or principal place of business in Ontario;

(b) the counterparty is registered under Ontario securities law as a derivatives dealer or in an alternative category as a consequence of trading in derivatives;

(c) the counterparty is an affiliate of a person or company described in paragraph (a), and such person or company is responsible for the liabilities of that affiliated party;

"participant" means a person or company that has entered into an agreement with a designated trade repository to access the services of the designated trade repository;

"reporting counterparty" means the counterparty to a transaction as determined under section 25 that is required to report derivatives data under section 26;

"transaction" means entering into, assigning, selling or otherwise acquiring or disposing of a derivative or the novation of a derivative;

"user" means, in respect of a designated trade repository, a counterparty (or delegate of a counterparty) to a transaction reported to that designated trade repository pursuant to this Rule; and

"valuation data" means data that reflects the current value of the transaction and includes the data in the applicable fields listed in Appendix A under the heading "Valuation Data".

(2) In this Rule, each of the following terms has the same meaning as in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*: "accounting principles"; "auditing standards"; "publicly accountable enterprise"; "U.S. AICPA GAAS"; "U.S. GAAP"; and "U.S. PCAOB GAAS".

(3) In this Rule, "interim period" has the same meaning as in section 1.1 of National Instrument 51-102 *Continuous Disclosure Obligations*.

PART 2
TRADE REPOSITORY DESIGNATION AND ONGOING REQUIREMENTS

Trade repository initial filing of information and designation

2. (1) An applicant for designation under section 21.2.2 of the Act must file a completed Form 91-507F1 – *Application For Designation and Trade Repository Information Statement*.

(2) In addition to the requirement set out in subsection (1), an applicant for designation under section 21.2.2 of the Act whose head office or principal place of business is located outside of Ontario must

(a) certify on Form 91-507F1 that it will provide the Commission with access to its books and records and will submit to onsite inspection and examination by the Commission,

(b) certify on Form 91-507F1 that it will provide the Commission with an opinion of legal counsel that

(i) the applicant has the power and authority to provide the Commission with access to its books and records, and

(ii) the applicant has the power and authority to submit to onsite inspection and examination by the Commission.

(3) In addition to the requirements set out in subsections (1) and (2), an applicant for designation under section 21.2.2 of the Act whose head office or principal place of business is located in a foreign jurisdiction must file a completed Form 91-507F2 – *Submission to Jurisdiction and Appointment of Agent for Service of Process*.

(4) Within 7 days of becoming aware of an inaccuracy in or making a change to the information provided in Form 91-507F1, an applicant must file an amendment to Form 91-507F1 in the manner set out in that Form.

Change in information

3. (1) Subject to subsection (2), a designated trade repository must not implement a significant change to a matter set out in Form 91-507F1 unless it has filed an amendment to Form 91-507F1 in the manner set out in that Form at least 45 days before implementing the change.

(2) A designated trade repository must file an amendment to the information provided in Exhibit I (Fees) of Form 91-507F1 in the manner set out in the Form at least 15 days before implementing a change to the information provided in the Exhibit.

(3) For a change to a matter set out in Form 91-507F1 other than a change referred to in subsection (1) or (2), a designated trade repository must file an amendment to Form 91-507F1 in the manner set out in that Form by the earlier of

(a) the close of business of the designated trade repository on the 10th day after the end of the month in which the change was made, and

(b) the time the designated trade repository publicly discloses the change.

Filing of initial audited financial statements

4. (1) An applicant must file audited financial statements for its most recently completed financial year with the Commission as part of its application for designation under section 21.2.2 of the Act.

(2) The financial statements referred to in subsection (1) must

(a) be prepared in accordance with one of the following

(i) Canadian GAAP applicable to a publicly accountable enterprise,

(ii) IFRS, or

(iii) U.S. GAAP, if the person or company is incorporated or organized under the laws of the United States of America,

(b) identify in the notes to the financial statements the accounting principles used to prepare the financial statements,

(c) disclose the presentation currency, and

(d) be audited in accordance with

(i) Canadian GAAS,

(ii) International Standards on Auditing, or

(iii) U.S. AICPA GAAS or U.S. PCAOB GAAS if the person or company is incorporated or organized under the laws of the United States of America.

(3) The financial statements referred to in subsection (1) must be accompanied by an auditor's report that

(a) expresses an unmodified opinion if the financial statements are audited in accordance with Canadian GAAS or International Standards on Auditing,

(b) expresses an unqualified opinion if the financial statements are audited in accordance with U.S. AICPA GAAS or U.S. PCAOB GAAS,

(c) identifies all financial periods presented for which the auditor's report applies,

(d) identifies the auditing standards used to conduct the audit,

(e) identifies the accounting principles used to prepare the financial statements,

(f) is prepared in accordance with the same auditing standards used to conduct the audit, and

(g) is prepared and signed by a person or company that is authorized to sign an auditor's report under the laws of a jurisdiction of Canada or a foreign jurisdiction, and that meets the professional standards of that jurisdiction.

Filing of annual audited and interim financial statements

5. (1) A designated trade repository must file annual audited financial statements that comply with the requirements in subsections 4(2) and 4(3) with the Commission no later than the 90th day after the end of its financial year.

(2) A designated trade repository must file interim financial statements with the Commission no later than the 45th day after the end of each interim period.

(3) The interim financial statements referred to in subsection (2) must

(a) be prepared in accordance with one of the following

(i) Canadian GAAP applicable to a publicly accountable enterprise,

(ii) IFRS, or

(iii) U.S. GAAP, if the person or company is incorporated or organized under the laws of the United States of America, and

(b) identify in the notes to the financial statements the accounting principles used to prepare the financial statements.

Ceasing to carry on business

6. (1) A designated trade repository that intends to cease carrying on business in Ontario as a trade repository must make an application and file a report on Form 91-507F3 – *Cessation of Operations Report For Trade Repository* at least 180 days before the date on which it intends to cease carrying on that business.

(2) A designated trade repository that involuntarily ceases to carry on business in Ontario as a trade repository must file a report on Form 91-507F3 as soon as practicable after it ceases to carry on that business.

Legal framework

7. (1) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures reasonably designed to ensure a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities.

(2) Without limiting the generality of subsection (1), a designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures that are not contrary to the public interest and that are reasonably designed to ensure that

(a) such rules, policies and procedures and the contractual arrangements are supported by the laws applicable to those rules, policies, procedures and contractual arrangements,

(b) the rights and obligations of a user, owner and regulator with respect to the use of the designated trade repository's information are clear and transparent,

(c) the contractual arrangements that it enters into and supporting documentation clearly state service levels, rights of access, protection of confidential information, intellectual property rights and operational reliability, and

(d) the status of records of contracts in its repository and whether those records of contracts are the legal contracts of record are clearly established.

Governance

8. (1) A designated trade repository must establish, implement and maintain written governance arrangements that

(a) are well-defined, clear and transparent,

(b) set out a clear organizational structure with consistent lines of responsibility,

(c) provide for effective internal controls,

(d) promote the safety and efficiency of the designated trade repository,

(e) ensure effective oversight of the designated trade repository,

(f) support the stability of the broader financial system and other relevant public interest considerations, and

(g) properly balance the interests of relevant stakeholders.

(2) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures reasonably designed to identify and manage existing and potential conflicts of interest.

(3) A designated trade repository must publicly disclose on its website

(a) the governance arrangements established in accordance with subsection (1), and

(b) the rules, policies and procedures established in accordance with subsection (2).

Board of directors

9. (1) A designated trade repository must have a board of directors.

(2) The board of directors of a designated trade repository must include

(a) individuals who have an appropriate level of skill and experience to effectively and efficiently oversee the management of its operations in accordance with all relevant laws, and

(b) appropriate representation by individuals who are independent of the designated trade repository.

(3) The board of directors of a designated trade repository must, in consultation with the chief compliance officer of the designated trade repository, resolve conflicts of interest identified by the chief compliance officer.

(4) The board of directors of a designated trade repository must meet with the chief compliance officer of the designated trade repository on a regular basis.

Management

10. (1) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures that

(a) specify the roles and responsibilities of management, and

(b) ensure that management has the experience, competencies, integrity and mix of skills necessary to discharge its roles and responsibilities.

(2) A designated trade repository must notify the Commission no later than the 5th business day after appointing or replacing its chief compliance officer, chief executive officer or chief risk officer.

Chief compliance officer

11. (1) The board of directors of a designated trade repository must appoint a chief compliance officer with the appropriate experience, competencies, integrity and mix of skills necessary to serve in that capacity.

(2) The chief compliance officer of a designated trade repository must report directly to the board of directors of the designated trade repository or, if so directed by the board of directors, to the chief executive officer of the designated trade repository.

(3) The chief compliance officer of a designated trade repository must

(a) establish, implement, maintain and enforce written rules, policies and procedures to identify and resolve conflicts of interest,

(b) establish, implement, maintain and enforce written rules, policies and procedures to ensure that the designated trade repository complies with securities legislation,

(c) monitor compliance with the rules, policies and procedures required under paragraphs (a) and (b) on an ongoing basis,

(d) report to the board of directors of the designated trade repository as soon as practicable upon becoming aware of a circumstance indicating that the designated trade repository, or an individual acting on its behalf, is not in compliance with the securities laws of a jurisdiction in which it operates and one or more of the following apply:

(i) the non-compliance creates a risk of harm to a user;

(ii) the non-compliance creates a risk of harm to the capital markets;

(iii) the non-compliance is part of a pattern of non-compliance;

(iv) the non-compliance may have an impact on the ability of the designated trade repository to carry on business as a trade repository in compliance with securities legislation,

(e) report to the designated trade repository's board of directors as soon as practicable upon becoming aware of a conflict of interest that creates a risk of harm to a user or to the capital markets, and

(f) prepare and certify an annual report assessing compliance by the designated trade repository, and individuals acting on its behalf, with securities legislation and submit the report to the board of directors.

(4) Concurrently with submitting a report under paragraph (3)(d), (3)(e) or (3)(f), the chief compliance officer must file a copy of the report with the Commission.

Fees

12. All fees and other material costs imposed by a designated trade repository on its participants must be

(a) fairly and equitably allocated among participants, and

(b) publicly disclosed on its website for each service it offers with respect to the collection and maintenance of derivatives data.

Access to designated trade repository services

13. (1) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures that establish objective, risk-based criteria for participation that permit fair and open access to the services it provides.

(2) A designated trade repository must publicly disclose on its website the rules, policies and procedures referred to in subsection (1).

(3) A designated trade repository must not do any of the following:

(a) unreasonably prohibit, condition or limit access by a person or company to the services offered by the designated trade repository;

(b) permit unreasonable discrimination among the participants of the designated trade repository;

(c) impose a burden on competition that is not reasonably necessary and appropriate;

(d) require the use or purchase of another service for a person or company to utilize the trade reporting service offered by the designated trade repository.

Acceptance of reporting

14. A designated trade repository must accept derivatives data from a participant for a transaction in a derivative of the asset class or classes set out in the designated trade repository's designation order.

Communication policies, procedures and standards

15. A designated trade repository must use or accommodate relevant internationally accepted communication procedures and standards in order to facilitate the efficient exchange of data between its systems and those of

(a) its participants,

(b) other trade repositories,

(c) exchanges, clearing agencies, alternative trading systems, and other marketplaces, and

(d) other service providers.

Due process

16. For a decision made by a designated trade repository that directly adversely affects a participant or an applicant that applies to become a participant, the designated trade repository must ensure that

(a) the participant or applicant is given an opportunity to be heard or make representations, and

(b) it keeps records of, gives reasons for, and provides for reviews of its decisions, including, for each applicant, the reasons for granting, denying or limiting access.

Rules, policies and procedures

17. (1) The rules, policies and procedures of a designated trade repository must

(a) be clear and comprehensive and provide sufficient information to enable a participant to have an accurate understanding of its rights and obligations in accessing the services of the designated trade repository and the risks, fees, and other material costs they incur by using the services of the designated trade repository,

(b) be reasonably designed to govern all aspects of the services offered by the designated trade repository with respect to the collection and maintenance of derivatives data and other information on a completed transaction, and

(c) not be inconsistent with securities legislation.

(2) A designated trade repository must monitor compliance with its rules, policies and procedures on an ongoing basis.

(3) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures for sanctioning non-compliance with its rules, policies and procedures.

(4) A designated trade repository must publicly disclose on its website

(a) its rules, policies and procedures referred to in this section, and

(b) its procedures for adopting new rules, policies and procedures or amending existing rules, policies and procedures.

(5) A designated trade repository must file its proposed new or amended rules, policies and procedures for approval in accordance with the terms and conditions of its designation order, unless the order explicitly exempts the designated trade repository from this requirement.

Records of data reported

18. (1) A designated trade repository must design its recordkeeping procedures to ensure that it records derivatives data accurately, completely and on a timely basis.

(2) A designated trade repository must keep, in a safe location and in a durable form, records of derivatives data in relation to a transaction for the life of the transaction and for a further 7 years after the date on which the transaction expires or terminates.

(3) Throughout the period described in subsection (2), a designated trade repository must create and maintain at least one copy of each record of derivatives data required to be kept under subsection (2), in a safe location and in a durable form, separate from the location of the original record.

Comprehensive risk-management framework

19. A designated trade repository must establish, implement and maintain a written risk-management framework for comprehensively managing risks including business, legal, and operational risks.

General business risk

20. (1) A designated trade repository must establish, implement and maintain appropriate systems, controls and procedures to identify, monitor, and manage its general business risk.

(2) Without limiting the generality of subsection (1), a designated trade repository must hold sufficient insurance coverage and liquid net assets funded by equity to cover potential general business losses in order that it can continue operations and services as a going concern in order to achieve a recovery or an orderly wind down if those losses materialize.

(3) For the purposes of subsection (2), a designated trade repository must hold, at a minimum, liquid net assets funded by equity equal to six months of current operating expenses.

(4) A designated trade repository must identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern and assess the effectiveness of a full range of options for an orderly wind-down.

(5) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures reasonably designed to facilitate its orderly wind-down based on the results of the assessment required by subsection (4).

(6) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures to ensure that it or a successor entity, insolvency administrator or other legal representative, will continue to comply with the requirements of subsection 6(2) and section 37 in the event of the bankruptcy or insolvency of the designated trade repository or the wind-down of the designated trade repository's operations.

System and other operational risk requirements

21. (1) A designated trade repository must establish, implement, maintain and enforce appropriate systems, controls and procedures to identify and minimize the impact of all plausible sources of operational risk, both internal and external, including risks to data integrity, data security, business continuity and capacity and performance management.

(2) The systems, controls and procedures established pursuant to subsection (1) must be approved by the board of directors of the designated trade repository.

(3) Without limiting the generality of subsection (1), a designated trade repository must

(a) develop and maintain

(i) an adequate system of internal controls over its systems, and

(ii) adequate information technology general controls, including without limitation, controls relating to information systems operations, information security and integrity, change management, problem management, network support and system software support,

(b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually

(i) make reasonable current and future capacity estimates, and

(ii) conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner, and

(c) promptly notify the Commission of a material systems failure, malfunction, delay or other disruptive incident, or a breach of data security, integrity or confidentiality, and provide a post-incident report that includes a root-cause analysis as soon as practicable.

(4) Without limiting the generality of subsection (1), a designated trade repository must establish, implement, maintain and enforce business continuity plans, including disaster recovery plans reasonably designed to

(a) achieve prompt recovery of its operations following a disruption,

(b) allow for the timely recovery of information, including derivatives data, in the event of a disruption, and

(c) provide for the exercise of authority in the event of an emergency.

(5) A designated trade repository must test its business continuity plans, including disaster recovery plans, at least annually.

(6) For each of its systems for collecting and maintaining reports of derivatives data, a designated trade repository must annually engage a qualified party to conduct an independent review and prepare a report in accordance with established audit standards to ensure that it is in compliance with paragraphs (3)(a) and (b) and subsections (4) and (5).

(7) A designated trade repository must provide the report prepared in accordance with subsection (6) to

(a) its board of directors or audit committee promptly upon the completion of the report, and

(b) the Commission not later than the 30th day after providing the report to its board of directors or audit committee.

(8) A designated trade repository must publicly disclose on its website all technology requirements regarding interfacing with or accessing the services provided by the designated trade repository,

(a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and

(b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.

(9) A designated trade repository must make available testing facilities for interfacing with or accessing the services provided by the designated trade repository,

(a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and

(b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.

(10) A designated trade repository must not begin operations in Ontario unless it has complied with paragraphs (8)(a) and (9)(a).

(11) Paragraphs (8)(b) and (9)(b) do not apply to a designated trade repository if

(a) the change to its technology requirements must be made immediately to address a failure, malfunction or material delay of its systems or equipment,

(b) the designated trade repository immediately notifies the Commission of its intention to make the change to its technology requirements, and

(c) the designated trade repository publicly discloses on its website the changed technology requirements as soon as practicable.

Data security and confidentiality

22. (1) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures reasonably designed to ensure the safety, privacy and confidentiality of the derivatives data.

(2) A designated trade repository must not release derivatives data for commercial or business purposes unless

(a) the derivatives data has otherwise been disclosed pursuant to section 39, or

(b) the counterparties to the transaction have provided the designated trade repository with their express written consent to use or release the derivatives data.

Confirmation of data and information

23. (1) A designated trade repository must establish, implement, maintain and enforce written rules, policies and procedures to confirm with each counterparty to a transaction, or agent acting on behalf of such counterparty, that the derivatives data that the designated trade repository receives from a reporting counterparty, or from a party to whom a reporting counterparty has delegated its reporting obligation under this Rule, is accurate.

(2) Despite subsection (1), a designated trade repository need only confirm the accuracy of the derivatives data it receives with those counterparties that are participants of the designated trade repository.

Outsourcing

24. If a designated trade repository outsources a material service or system to a service provider, including to an associate or affiliate of the designated trade repository, the designated trade repository must

(a) establish, implement, maintain and enforce written rules, policies and procedures for the selection of a service provider to which a material service or system may be outsourced and for the evaluation and approval of such an outsourcing arrangement,

(b) identify any conflicts of interest between the designated trade repository and a service provider to which a material service or system is outsourced, and establish, implement, maintain and enforce written rules, policies and procedures to mitigate and manage those conflicts of interest,

(c) enter into a written contract with the service provider that is appropriate for the materiality and nature of the outsourced activity and that provides for adequate termination procedures,

(d) maintain access to the books and records of the service provider relating to the outsourced activity,

(e) ensure that the Commission has the same access to all data, information and systems maintained by the service provider on behalf of the designated trade repository that it would have absent the outsourcing arrangement,

(f) ensure that all persons conducting audits or independent reviews of the designated trade repository under this Rule have appropriate access to all data, information and systems maintained by the service provider on behalf of the designated trade repository that such persons would have absent the outsourcing arrangement,

(g) take appropriate measures to determine that a service provider to which a material service or system is outsourced establishes, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan in accordance with the requirements under section 21,

(h) take appropriate measures to ensure that the service provider protects the safety, privacy and confidentiality of derivatives data and of users' confidential information in accordance with the requirements under section 22, and

(i) establish, implement, maintain and enforce written rules, policies and procedures to regularly review the performance of the service provider under the outsourcing arrangement.

PART 3
DATA REPORTING

Reporting counterparty

25. (1) The reporting counterparty with respect to a transaction involving a local counterparty is

(a) if the transaction is cleared through a recognized or exempt clearing agency, the recognized or exempt clearing agency,

(b) if the transaction is not cleared through a recognized or exempt clearing agency and is between two derivatives dealers, each derivatives dealer,

(c) if the transaction is not cleared through a recognized or exempt clearing agency and is between a derivatives dealer and a counterparty that is not a derivatives dealer, the derivatives dealer, and

(d) in any other case, each local counterparty to the transaction.

(2) A local counterparty to a transaction must act as the reporting counterparty to the transaction for the purposes of this Rule if

(a) the reporting counterparty to the transaction as determined under paragraph (1)(c) is not a local counterparty, and

(b) by the end of the second business day following the day on which derivatives data is required to be reported under this Part, the local counterparty has not received confirmation that the derivatives data for the transaction has been reported by the reporting counterparty.

Duty to report

26. (1) A reporting counterparty to a transaction involving a local counterparty must report, or cause to be reported, the data required to be reported under this Part to a designated trade repository.

(2) A reporting counterparty in respect of a transaction is responsible for ensuring that all reporting obligations in respect of that transaction have been fulfilled.

(3) A reporting counterparty may delegate its reporting obligations under this Rule, but remains responsible for ensuring the timely and accurate reporting of derivatives data required by this Rule.

(4) Despite subsection (1), if no designated trade repository accepts the data required to be reported by this Part, the reporting counterparty must electronically report the data required to be reported by this Part to the Commission.

(5) A reporting counterparty satisfies the reporting obligation in respect of a transaction required to be reported under subsection (1) if

(a) the transaction is required to be reported solely because a counterparty to the transaction is a local counterparty pursuant to paragraph (b) or (c) of the definition of "local counterparty",

(b) the transaction is reported to a designated trade repository pursuant to

(i) the securities legislation of a province of Canada other than Ontario, or

(ii) the laws of a foreign jurisdiction listed in Appendix B; and

(c) the reporting counterparty instructs the designated trade repository referred to in paragraph (b) to provide the Commission with access to the derivatives data that it is required to report pursuant to this Rule and otherwise uses its best efforts to provide the Commission with access to such derivatives data.

(6) A reporting counterparty must ensure that all reported derivatives data relating to a transaction

(a) is reported to the same designated trade repository to which the initial report was made or, if the initial report was made to the Commission under subsection (4), to the Commission, and

(b) is accurate and contains no misrepresentation.

(7) A reporting counterparty must report an error or omission in the derivatives data as soon as technologically practicable upon discovery of the error or omission, and in no event later than the end of the business day following the day of discovery of the error or omission.

(8) A local counterparty, other than the reporting counterparty, must notify the reporting counterparty of an error or omission with respect to derivatives data relating to a transaction to which it is a counterparty as soon as technologically practicable upon discovery of the error or omission, and in no event later than the end of the business day following the day of discovery of the error or omission.

(9) A recognized or exempt clearing agency must report derivatives data to the designated trade repository specified by a local counterparty and may not report derivatives data to another trade repository without the consent of the local counterparty where

(a) the reporting counterparty to a transaction is the recognized or exempt clearing agency, and

(b) the local counterparty to the transaction that is not a recognized or exempt clearing agency has specified a designated trade repository to which derivatives data in respect of that transaction is to be reported.

Identifiers, general

27. A reporting counterparty must include the following in every report required by this Part:

(a) the legal entity identifier of each counterparty to the transaction as set out in section 28;

(b) the unique transaction identifier for the transaction as set out in section 29;

(c) the unique product identifier for the transaction as set out in section 30.

Legal entity identifiers

28. (1) A designated trade repository must identify each counterparty to a transaction that is required to be reported under this Rule in all recordkeeping and all reporting required under this Rule by means of a single legal entity identifier.

(2) Each of the following rules apply to legal entity identifiers

(a) a legal entity identifier must be a unique identification code assigned to a counterparty in accordance with the standards set by the Global Legal Entity Identifier System, and

(b) a local counterparty must comply with all applicable requirements imposed by the Global Legal Entity Identifier System.

(3) Despite subsection (2), if the Global Legal Entity Identifier System is unavailable to a counterparty to a transaction at the time when a report under this Rule is required to be made, all of the following rules apply

(a) each counterparty to the transaction must obtain a substitute legal entity identifier which complies with the standards established March 8, 2013 by the Legal Entity Identifier Regulatory Oversight Committee for pre-legal entity identifiers,

(b) a local counterparty must use the substitute legal entity identifier until a legal entity identifier is assigned to the counterparty in accordance with the standards set by the Global Legal Entity Identifier System as required under paragraph (2)(a), and

(c) after the holder of a substitute legal entity identifier is assigned a legal entity identifier in accordance with the standards set by the Global Legal Entity Identifier System as required under paragraph (2)(a), the local counterparty must ensure that it is identified only by the assigned legal entity identifier in all derivatives data reported pursuant to this Rule in respect of transactions to which it is a counterparty.

Unique transaction identifiers

29. (1) A designated trade repository must identify each transaction that is required to be reported under this Rule in all recordkeeping and all reporting required under this Rule by means of a unique transaction identifier.

(2) A designated trade repository must assign a unique transaction identifier to a transaction, using its own methodology or incorporating a unique transaction identifier previously assigned to the transaction.

(3) A designated trade repository must not assign more than one unique transaction identifier to a transaction.

Unique product identifiers

30. (1) For the purposes of this section, a unique product identifier means a code that uniquely identifies a derivative and is assigned in accordance with international or industry standards.

(2) A reporting counterparty must identify each transaction that is required to be reported under this Rule in all recordkeeping and all reporting required under this Rule by means of a unique product identifier.

(3) A reporting counterparty must not assign more than one unique product identifier to a transaction.

(4) If international or industry standards for a unique product identifier are unavailable for a particular derivative when a report is required to be made to a designated trade repository under this Rule, a reporting counterparty must assign a unique product identifier to the transaction using its own methodology.

Creation data

31. (1) Upon execution of a transaction that is required to be reported under this Rule, a reporting counterparty must report the creation data relating to that transaction to a designated trade repository.

(2) A reporting counterparty in respect of a transaction must report creation data in real time.

(3) If it is not technologically practicable to report creation data in real time, a reporting counterparty must report creation data as soon as technologically practicable and in no event later than the end of the business day following the day on which the data would otherwise be required to be reported.

(4) Despite subsections (2) and (3), a local counterparty that is required to act as reporting counterparty to a transaction under subsection 25(2) must report the creation data relating to the transaction in no event later than the end of the third business day following the day on which the data would otherwise be required to be reported.

Life-cycle event data

32. (1) For a transaction that is required to be reported under this Rule, the reporting counterparty must report all life-cycle event data to a designated trade repository by the end of the business day on which the life-cycle event occurs.

(2) If it is not technologically practicable to report life-cycle event data by the end of the business day on which the life-cycle event occurs, the reporting counterparty must report life-cycle event data no later than the end of the business day following the day on which the life-cycle event occurs.

Valuation data

33. (1) For a transaction that is required to be reported under this Rule, a reporting counterparty must report valuation data, based on industry accepted valuation standards, to a designated trade repository

(a) daily, based on relevant closing market data from the previous business day, if the reporting counterparty is a derivatives dealer or a recognized or exempt clearing agency , or

(b) quarterly, as of the last day of each calendar quarter, if the reporting counterparty is not a derivatives dealer or a recognized or exempt clearing agency.

(2) Valuation data required to be reported pursuant to paragraph 1(b) must be reported to the designated trade repository no later than 30 days after the end of the calendar quarter.

Pre-existing transactions

34. (1) Despite section 31 and subject to subsection 43(5), for a transaction required to be reported pursuant to subsection 26(1) that was entered into before July 2, 2014 and that had outstanding contractual obligations on that day

(a) a reporting counterparty to the transaction is required to report only that creation data indicated in the column entitled “Required for Pre-existing Transactions” in Appendix A, and

(b) the creation data required to be reported pursuant to paragraph (a) must be reported no later than December 31, 2014.

(2) Despite section 32, for a transaction to which subsection (1) applies, a reporting counterparty’s obligation to report life-cycle event data under section 32 commences only after it has reported creation data in accordance with subsection (1).

(3) Despite section 33, for a transaction to which subsection (1) applies, a reporting counterparty’s obligation to report valuation data under section 33 commences only after it has reported creation data in accordance with subsection (1).

Timing requirements for reporting data to another designated trade repository

35. Despite the data reporting timing requirements in sections 31, 32, 33 and 34, where a designated trade repository ceases operations or stops accepting derivatives data for a certain asset class of derivatives, the reporting counterparty may fulfill its reporting obligations under this Rule by reporting the derivatives data to another designated trade repository, or the Commission if there is not an available designated trade repository, within a reasonable period of time.

Records of data reported

36. (1) A reporting counterparty must keep transaction records for the life of each transaction and for a further 7 years after the date on which the transaction expires or terminates.

(2) A reporting counterparty must keep records referred to in subsection (1) in a safe location and in a durable form.

PART 4
DATA DISSEMINATION AND ACCESS TO DATA

Data available to regulators

37. (1) A designated trade repository must, at no cost

(a) provide to the Commission direct, continuous and timely electronic access to such data in the designated trade repository’s possession as is required by the Commission in order to carry out the Commission’s mandate,

(b) accept and promptly fulfil any data requests from the Commission in order to carry out the Commission’s mandate,

(c) create and make available to the Commission aggregate data derived from data in the designated trade repository's possession as required by the Commission in order to carry out the Commission's mandate, and

(d) disclose to the Commission the manner in which the derivatives data provided under paragraph (c) has been aggregated.

(2) A designated trade repository must conform to internationally accepted regulatory access standards applicable to trade repositories.

(3) A reporting counterparty must use its best efforts to provide the Commission with access to all derivatives data that it is required to report pursuant to this Rule, including instructing a trade repository to provide the Commission with access to such data.

Data available to counterparties

38. (1) A designated trade repository must provide counterparties to a transaction with timely access to all derivatives data relevant to that transaction which is submitted to the designated trade repository.

(2) A designated trade repository must have appropriate verification and authorization procedures in place to deal with access pursuant to subsection (1) by non-reporting counterparties or a party acting on behalf of a non-reporting counterparty.

(3) Each counterparty to a transaction is deemed to have consented to the release of all derivatives data required to be reported or disclosed under this Rule.

(4) Subsection (3) applies despite any agreement to the contrary between the counterparties to a transaction.

Data available to public

39. (1) A designated trade repository must, on a periodic basis, create and make available to the public, at no cost, aggregate data on open positions, volume, number and price, relating to the transactions reported to it pursuant to this Rule.

(2) The periodic aggregate data made available to the public pursuant to subsection (1) must be complemented at a minimum by breakdowns, where applicable, by currency of denomination, geographic location of reference entity or asset, asset class, contract type, maturity and whether the transaction is cleared.

(3) A designated trade repository must make transaction level reports of the data indicated in the column entitled "Required for Public Dissemination" in Appendix A for each transaction reported pursuant to this Rule available to the public at no cost not later than

(a) the end of the day following the day on which it receives the data from the reporting counterparty to the transaction, if one of the counterparties to the transaction is a derivatives dealer, or

(b) the end of the second day following the day on which it receives the data from the reporting counterparty to the transaction in all other circumstances.

(4) In disclosing transaction level reports required by subsection (3), a designated trade repository must not disclose the identity of either counterparty to the transaction.

(5) A designated trade repository must make the data required to be made available to the public under this section available in a usable form through a publicly accessible website or other publicly accessible technology or medium.

(6) Despite subsections (1) to (5), a designated trade repository is not required to make public any derivatives data for transactions entered into between affiliated companies as defined under subsection 1(2) of the Act.

PART 5
EXCLUSIONS

40. Despite any other section of this Rule, a local counterparty is under no obligation to report derivatives data for a transaction if,

(a) the transaction relates to a derivative the asset class of which is a commodity other than cash or currency,

(b) the local counterparty is not a derivatives dealer, and

(c) the local counterparty has less than $500,000 aggregate notional value, without netting, under all its outstanding transactions at the time of the transaction including the additional notional value related to that transaction.

41. Despite any other section of this Rule, a counterparty is under no obligation to report derivatives data in relation to a transaction if it is entered into between

(a) Her Majesty in right of Ontario or the Ontario Financing Authority when acting as agent for Her Majesty in right of Ontario, and

(b) an Ontario crown corporation or crown agency that forms part of a consolidated entity with Her Majesty in right of Ontario for accounting purposes.

PART 6
EXEMPTIONS

42. A Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 7
EFFECTIVE DATE

Effective date

43. (1) Parts 1, 2, 4, and 6 come into force on December 31, 2013.

(2) Despite subsection (1), subsection 39(3) does not apply until December 31, 2014.

(3) Parts 3 and 5 come into force July 2, 2014.

(4) Despite subsection (3), Part 3 does not apply so as to require a reporting counterparty that is not a derivatives dealer to make any reports under that Part until September 30, 2014.

(5) Despite the foregoing, Part 3 does not apply to a transaction entered into before July 2, 2014 that expires or terminates not later than December 31, 2014.

Appendix A to OSC Rule 91-507 – Trade Repositories and Derivatives Data Reporting
Minimum Data Fields Required to be Reported to a Designated Trade Repository

Instructions:

The reporting counterparty is required to provide a response for each of the fields unless the field is not applicable to the transaction.

Data field	Description	Required for Public Dissemination	Required for Pre-existing Transactions
Transaction identifier	The unique transaction identifier as provided by the designated trade repository or the identifier as identified by the two counterparties, electronic trading venue of execution or clearing agency.	N	Y
Master agreement type	The type of master agreement, if used for the reported transaction.	N	N
Master agreement version	Date of the master agreement version (e.g., 2002, 2006).	N	N
Cleared	Indicate whether the transaction has been cleared by a clearing agency.	Y	Y
Clearing agency	LEI of the clearing agency where the transaction was cleared.	N	Y
Clearing member	LEI of the clearing member, if the clearing member is not a counterparty.	N	N
Clearing exemption	Indicate whether one or more of the counterparties to the transaction are exempted from a mandatory clearing requirement.	Y	N
Broker	LEI of the broker acting as an intermediary for the reporting counterparty without becoming a counterparty.	N	N
Electronic trading venue identifier	LEI of the electronic trading venue or, if not available, the name of the electronic trading venue where the transaction was executed.	Y (Only "Yes" or "No" shall be publicly disseminated)	Y
Inter-affiliate	Indicate whether the transaction is between two affiliated entities.	N	N
Collateralization	Indicate whether the transaction is collateralized. Field Values: • Fully (initial and variation margin required to be posted by both parties), • Partially (variation only required to be posted by both parties), • One-way (one party will be required to post some form of collateral), • Uncollateralized.	Y	N
Identifier of reporting counterparty	LEI of the reporting counterparty or, in case of an individual, its client code.	N	Y
Identifier of non-reporting counterparty	LEI of the non-reporting counterparty or, in case of an individual, its client code.	N	Y

Data field	Description	Required for Public Dissemination	Required for Pre-existing Transactions
Counterparty side	Indicate whether the reporting counterparty was the buyer or seller. In the case of swaps, other than credit default, the buyer will represent the payer of leg 1 and the seller will be the payer of leg 2.	N	Y
Identifier of agent reporting the transaction	LEI of the agent reporting the transaction if reporting of the transaction has been delegated by the reporting counterparty.	N	N
Reporting counterparty derivatives dealer or non-derivatives dealer	Indicate whether the reporting counterparty is a derivatives dealer or non-derivatives dealer.	N	N
Non-reporting counterparty local counterparty or not local	Indicate whether the non-reporting counterparty is a local counterparty or not.	N	N
A. Common Data	• These fields are required to be reported for all derivative transactions even if the information may be entered in an Asset field below. • Fields do not have to be reported if the unique product identifier adequately describes those fields.		
Unique product identifier	Unique product identification code based on the taxonomy of the product.	Y	N
Contract type	The name of the contract type (e.g., swap, swaption, forwards, options, basis swap, index swap, basket swap, other).	Y	Y
Underlying asset identifier 1	The unique identifier of the asset referenced in the contract.	Y	Y
Underlying asset identifier 2	The unique identifier of the second asset referenced in the contract, if more than one. If more than two assets identified in the contract, report the unique identifiers for those additional underlying assets.	Y	Y
Asset class	Major asset class of the product (e.g., interest rate, credit, commodity, foreign exchange, equity, etc.).	Y	N
Effective date or start date	The date the transaction becomes effective or starts.	Y	Y
Maturity, termination or end date	The date the transaction expires.	Y	Y
Payment frequency or dates	The dates or frequency the transaction requires payments to be made (e.g., quarterly, monthly).	Y	Y
Reset frequency or dates	The dates or frequency at which the price resets (e.g., quarterly, semi-annually, annually).	Y	Y
Day count convention	Factor used to calculate the payments (e.g., 30/360, actual/360).	Y	Y
Delivery type	Indicate whether transaction is settled physically or in cash.	N	Y

Data field	Description	Required for Public Dissemination	Required for Pre-existing Transactions
Price 1	The price, yield, spread, coupon, etc., of the derivative. The price/rate should not include any premiums such as commissions, collateral premiums, accrued interest, etc.	Y	Y
Price 2	The price, yield, spread, coupon, etc., of the derivative. The price/rate should not include any premiums such as commissions, collateral premiums, accrued interest, etc.	Y	Y
Price notation type 1	The manner in which the price is expressed (e.g., percent, basis points, etc.).	Y	Y
Price notation type 2	The manner in which the price is expressed (e.g., percent, basis points, etc.).	Y	Y
Price multiplier	The number of units of the underlying reference entity represented by 1 unit of the contract.	N	N
Notional amount leg 1	Total notional amount(s) of leg 1 of the contract.	Y	Y
Notional amount leg 2	Total notional amount(s) of leg 2 of the contract.	Y	Y
Currency leg 1	Currency(ies) of leg 1.	Y	Y
Currency leg 2	Currency(ies) of leg 2.	Y	Y
Settlement currency	The currency used to determine the cash settlement amount.	Y	Y
Up-front payment	Amount of any up-front payment.	N	N
Currency or currencies of up-front payment	The currency in which any up-front payment is made by one counterparty to another.	N	N
Embedded option	Indicate whether the option is an embedded option.	Y	N
B. Additional Asset Information	These additional fields are required to be reported for transactions in the respective types of derivatives set out below, even if the information is entered in a Common Data field above.		
i) Interest rate derivatives			
Fixed rate leg 1	The rate used to determine the payment amount for leg 1 of the transaction.	N	Y
Fixed rate leg 2	The rate used to determine the payment amount for leg 2 of the transaction.	N	Y
Floating rate leg 1	The floating rate used to determine the payment amount for leg 1 of the transaction.	N	Y
Floating rate leg 2	The floating rate used to determine the payment amount for leg 2 of the transaction.	N	Y
Fixed rate day count convention	Factor used to calculate the fixed payer payments (e.g., 30/360, actual/360).	N	Y
Fixed leg payment frequency or dates	Frequency or dates of payments for the fixed rate leg of the transaction (e.g., quarterly, semi-annually, annually).	N	Y

Data field	Description	Required for Public Dissemination	Required for Pre-existing Transactions
Floating leg payment frequency or dates	Frequency or dates of payments for the floating rate leg of the transaction (e.g., quarterly, semi-annually, annually).	N	Y
Floating rate reset frequency or dates	The dates or frequency at which the floating leg of the transaction resets (e.g., quarterly, semi-annually, annually).	N	Y
ii) Currency derivatives			
Exchange rate	Contractual rate(s) of exchange of the currencies.	N	Y
iii) Commodity derivatives			
Sub-asset class	Specific information to identify the type of commodity derivative (e.g., Agriculture, Energy, Freights, Metals, Index, Environmental, Exotic).	Y	Y
Quantity	Total quantity in the unit of measure of an underlying commodity.	Y	Y
Unit of measure	Unit of measure for the quantity of each side of the transaction (e.g., barrels, bushels, etc.).	Y	Y
Grade	Grade of product being delivered (e.g., grade of oil).	N	Y
Delivery point	The delivery location.	N	N
Delivery connection points	Description of the delivery route.	N	N
Load type	For power, load profile for the delivery.	N	Y
Transmission days	For power, the delivery days of the week.	N	Y
Transmission duration	For power, the hours of day transmission starts and ends.	N	Y
C. Options	These additional fields are required to be reported for options transactions set out below, even if the information is entered in a Common Data field above.		
Option exercise date	The date(s) on which the option may be exercised.	Y	Y
Option premium	Fixed premium paid by the buyer to the seller.	Y	Y
Strike price (cap/floor rate)	The strike price of the option.	Y	Y
Option style	Indicate whether the option can be exercised on a fixed date or anytime during the life of the contract (e.g., American, European, Bermudan, Asian).	Y	Y
Option type	Put/call.	Y	Y
D. Event Data			
Action	Describes the type of action to the transaction (e.g., new transaction, modification or cancellation of existing transaction, etc.).	Y	N

Data field	Description	Required for Public Dissemination	Required for Pre-existing Transactions
Execution timestamp	Where the transaction was executed on a trading venue, the time and date of execution, expressed using Coordinated Universal Time (UTC).	Y	Y (If available)
Post-transaction services	Indicate whether the transaction resulted from a post-transaction service, such as compression or reconciliation.	N	N
Clearing timestamp	The time and date the transaction was cleared, expressed using UTC.	N	N
Reporting date	The time and date the transaction was submitted to the trade repository, expressed using UTC.	N	N
E. Valuation data	These additional fields are required to be reported on a continuing basis for all reported derivative transactions, including reported pre-existing transactions.		
Value of contract calculated by the reporting counterparty	Mark-to-market valuation of the contract, or mark-to-model valuation.	N	N
Valuation date	Date of the latest mark-to-market or mark-to-model valuation.	N	N
Valuation type	Indicate whether valuation was based on mark-to-market or mark-to-model.	N	N

Appendix B to OSC Rule 91-507 – Trade Repositories and Derivatives Data Reporting
Equivalent Trade Reporting Laws of Foreign Jurisdictions
Subject to Deemed Compliance Pursuant to Subsection 26(5)

The Commission has determined that the laws and regulations of the following jurisdictions outside of Ontario are equivalent for the purposes of the deemed compliance provision in subsection 26(5).

Jurisdiction	Law, Regulation and/or Instrument

FORM 91-507F1
OSC RULE 91-507 – *TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING*

APPLICATION FOR DESIGNATION
TRADE REPOSITORY
INFORMATION STATEMENT

Filer: ☐ **TRADE REPOSITORY**

Type of Filing: ☐ **INITIAL** ☐ **AMENDMENT**

1. Full name of trade repository:

2. Name(s) under which business is conducted, if different from item 1:

3. If this filing makes a name change on behalf of the trade repository in respect of the name set out in item 1 or item 2, enter the previous name and the new name.

   Previous name:

   New name:

4. Head office

   Address:

   Telephone:

   Facsimile:

5. Mailing address (if different):

6. Other offices

   Address:

   Telephone:

   Facsimile:

7. Website address:

8. Contact employee

   Name and title:

   Telephone number:

   Facsimile:

   E-mail address:

9. Counsel

   Firm name:

   Contact name:

   Telephone number:

   Facsimile:

E-mail address:

10. Canadian counsel (if applicable)

Firm name:

Contact name:

Telephone number:

Facsimile:

E-mail address:

EXHIBITS

File all Exhibits with the Filing. For each Exhibit, include the name of the trade repository, the date of filing of the Exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect shall be furnished instead of such Exhibit.

Except as provided below, if the filer files an amendment to the information provided in its Filing and the information relates to an Exhibit filed with the Filing or a subsequent amendment, the filer must, in order to comply with section 3 of OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting (the "TR Rule"), provide a description of the change, the expected date of the implementation of the change, and file a complete and updated Exhibit. The filer must provide a clean and blacklined version showing changes from the previous filing.

If the filer has otherwise filed the information required by the previous paragraph pursuant to section 17 of the TR Rule, it is not required to file the information again as an amendment to an Exhibit. However, if supplementary material relating to a filed rule is contained in an Exhibit, an amendment to the Exhibit must also be filed.

Exhibit A – Corporate Governance

1. Legal status:

   ☐ Corporation

   ☐ Partnership

   ☐ Other (specify):

2. Indicate the following:

   1. Date (DD/MM/YYYY) of formation.

   2. Place of formation.

   3. Statute under which trade repository was organized.

   4. Regulatory status in other jurisdictions.

3. Provide a copy of the constating documents (including corporate by-laws), shareholder agreements, partnership agreements and other similar documents, and all subsequent amendments.

4. Provide the policies and procedures to address potential conflicts of interest arising from the operation of the trade repository or the services it provides, including those related to the commercial interest of the trade repository, the interests of its owners and its operators, the responsibilities and sound functioning of the trade repository, and those between the operations of the trade repository and its regulatory responsibilities.

5. An applicant that is located outside of Ontario that is applying for designation as a trade repository under section 21.2.2(1) of the Act must additionally provide the following:

1. An opinion of legal counsel that, as a matter of law the applicant has the power and authority to provide the Commission with prompt access to the applicant's books and records and submit to onsite inspection and examination by the Commission, and

2. A completed Form 91-507F2, Submission to Jurisdiction and Appointment of Agent for Service.

Exhibit B – Ownership

A list of the registered or beneficial holders of securities of, partnership interests in, or other ownership interests in, the trade repository. For each of the persons listed in the Exhibit, please provide the following:

1. Name.

2. Principal business or occupation and title.

3. Ownership interest.

4. Nature of the ownership interest, including a description of the type of security, partnership interest or other ownership interest.

In the case of a trade repository that is publicly traded, if the trade repository is a corporation, please only provide a list of each shareholder that directly owns five percent or more of a class of a security with voting rights.

Exhibit C – Organization

1. A list of partners, officers, governors, and members of the board of directors and any standing committees of the board, or persons performing similar functions, who presently hold or have held their offices or positions during the previous year, indicating the following for each:

    1. Name.

    2. Principal business or occupation and title.

    3. Dates of commencement and expiry of present term of office or position.

    4. Type of business in which each is primarily engaged and current employer.

    5. Type of business in which each was primarily engaged in the preceding five years, if different from that set out in item 4.

    6. Whether the person is considered to be an independent director.

2. A list of the committees of the board, including their mandates.

3. The name of the trade repository's Chief Compliance Officer.

Exhibit D – Affiliates

1. For each affiliated entity of the trade repository provide the name and head office address and describe the principal business of the affiliate.

2. For each affiliated entity of the trade repository

    (i) to which the trade repository has outsourced any of its key services or systems described in Exhibit E – Operations of the Trade Repository, including business recordkeeping, recordkeeping of trade data, trade data reporting, trade data comparison, data feed, or

    (ii) with which the trade repository has any other material business relationship, including loans, cross-guarantees, etc.,

    provide the following information:

1. Name and address of the affiliate.

2. The name and title of the directors and officers, or persons performing similar functions, of the affiliate.

3. A description of the nature and extent of the contractual and other agreements with the trade repository, and the roles and responsibilities of the affiliate under the arrangement.

4. A copy of each material contract relating to any outsourced functions or other material relationship.

5. Copies of constating documents (including corporate by-laws), shareholder agreements, partnership agreements and other similar documents.

6. For the latest financial year of any affiliated entity that has any outstanding loans or cross-guarantee arrangements with the trade repository, financial statements, which may be unaudited, prepared in accordance with:

    a. Canadian GAAP applicable to publicly accountable enterprises;

    b. IFRS; or

    c. U.S. GAAP where the affiliated entity is incorporated or organized under the laws of the U.S.

Exhibit E – Operations of the Trade Repository

Describe in detail the manner of operation of the trade repository and its associated functions. This should include, but not be limited to, a description of the following:

1. The structure of the trade repository.

2. Means of access by the trade repository's participants and, if applicable, their clients to the trade repository's facilities and services.

3. The hours of operation.

4. A description of the facilities and services offered by the trade repository including, but not limited to, collection and maintenance of derivatives data.

5. A list of the types of derivatives instruments for which data recordkeeping is offered, including, but not limited to, a description of the features and characteristics of the instruments.

6. Procedures regarding the entry, display and reporting of derivatives data.

7. Description of recordkeeping procedures that ensure derivatives data is recorded accurately, completely and on a timely basis.

8. The safeguards and procedures to protect derivatives data of the trade repository's participants, including required policies and procedures reasonably designed to protect the privacy and confidentiality of the data.

9. Training provided to participants and a copy of any materials provided with respect to systems and rules and other requirements of the trade repository.

10. Steps taken to ensure that the trade repository's participants have knowledge of and comply with the requirements of the trade repository.

11. A description of the trade repository's risk management framework for comprehensively managing risks including business, legal, and operational risks.

The filer must provide all policies, procedures and manuals related to the operation of the trade repository.

Exhibit F – Outsourcing

Where the trade repository has outsourced the operation of key services or systems described in Exhibit E – Operations of the Trade Repository to an arms-length third party, including any function associated with the collection and maintenance of derivatives data, provide the following information:

1. Name and address of person or company (including any affiliates of the trade repository) to which the function has been outsourced.

2. A description of the nature and extent of the contractual or other agreement with the trade repository and the roles and responsibilities of the arms-length party under the arrangement.

3. A copy of each material contract relating to any outsourced function.

Exhibit G – Systems and Contingency Planning

For each of the systems for collecting and maintaining reports of derivatives data, describe:

1. Current and future capacity estimates.

2. Procedures for reviewing system capacity.

3. Procedures for reviewing system security.

4. Procedures to conduct stress tests.

5. A description of the filer's business continuity and disaster recovery plans, including any relevant documentation.

6. Procedures to test business continuity and disaster recovery plans.

7. The list of data to be reported by all types of participants.

8. A description of the data format or formats that will be available to the Commission and other persons receiving trade reporting data.

Exhibit H – Access to Services

1. A complete set of all forms, agreements or other materials pertaining to access to the services of the trade repository described in Exhibit E.4.

2. Describe the types of trade repository participants.

3. Describe the trade repository's criteria for access to the services of the trade repository.

4. Describe any differences in access to the services offered by the trade repository to different groups or types of participants.

5. Describe conditions under which the trade repository's participants may be subject to suspension or termination with regard to access to the services of the trade repository.

6. Describe any procedures that will be involved in the suspension or termination of a participant.

7. Describe the trade repository's arrangements for permitting clients of participants to have access to the trade repository. Provide a copy of any agreements or documentation relating to these arrangements.

Exhibit I – Fees

A description of the fee model and all fees charged by the trade repository, or by a party to which services have been directly or indirectly outsourced, including, but not limited to, fees relating to access and the collection and maintenance of derivatives data, how such fees are set, and any fee rebates or discounts and how the rebates and discounts are set.

CERTIFICATE OF TRADE REPOSITORY

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this _____ day of _____, 20____

_____
(Name of trade repository)

_____
(Name of director, officer or partner – please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity – please type or print)

IF APPLICABLE, ADDITIONAL CERTIFICATE OF TRADE REPOSITORY THAT IS LOCATED OUTSIDE OF ONTARIO

The undersigned certifies that

(a) it will provide the Commission with access to its books and records and will submit to onsite inspection and examination by the Commission;

(b) as a matter of law, it has the power and authority to

i. provide the Commission with access to its books and records, and

ii. submit to onsite inspection and examination by the Commission.

DATED at _____ this _____ day of _____, 20____

_____
(Name of trade repository)

_____
(Name of director, officer or partner – please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity – please type or print)

FORM 91-507F2
OSC RULE 91-507 – *TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING*

TRADE REPOSITORY SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

1. Name of trade repository (the "Trade Repository"):

   _____

2. Jurisdiction of incorporation, or equivalent, of Trade Repository:

   _____

3. Address of principal place of business of Trade Repository:

   _____

4. Name of the agent for service of process for the Trade Repository (the "Agent"):

   _____

5. Address of Agent for service of process in Ontario:

   _____

6. The Trade Repository designates and appoints the Agent as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the activities of the Trade Repository in Ontario. The Trade Repository hereby irrevocably waives any right to challenge service upon its Agent as not binding upon the Trade Repository.

7. The Trade Repository agrees to unconditionally and irrevocably attorn to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) any proceeding in any province or territory arising out of, related to, concerning or in any other manner connected with the regulation and oversight of the activities of the Trade Repository in Ontario.

8. The Trade Repository shall file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before the Trade Repository ceases to be designated or exempted by the Commission, to be in effect for six years from the date it ceases to be designated or exempted unless otherwise amended in accordance with section 9.

9. Until six years after it has ceased to be a designated or exempted by the Commission from the recognition requirement under subsection 21.2.2(1) of the Act, the Trade Repository shall file an amended submission to jurisdiction and appointment of agent for service of process at least 30 days before any change in the name or above address of the Agent.

10. This submission to jurisdiction and appointment of agent for service of process shall be governed by and construed in accordance with the laws of Ontario.

Dated: _____

_____
Signature of the Trade Repository

_____
Print name and title of signing
officer of the Trade Repository

AGENT

CONSENT TO ACT AS AGENT FOR SERVICE

I, _____ (name of Agent in full; if Corporation, full Corporate name) of _____(business address), hereby accept the appointment as agent for service of process of _____(insert name of Trade Repository) and hereby consent to act as agent for service pursuant to the terms of the appointment executed by _____ (insert name of Trade Repository) on _____ (insert date).

Dated: _____

_____
Signature of Agent

_____
Print name of person signing and, if Agent is not an individual, the title of the person

FORM 91-507F3
OSC RULE 91-507 – *TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING*

CESSATION OF OPERATIONS REPORT FOR TRADE REPOSITORY

1. Identification:

   A. Full name of the designated trade repository:

   B. Name(s) under which business is conducted, if different from item 1A:

2. Date designated trade repository proposes to cease carrying on business as a trade repository:

3. If cessation of business was involuntary, date trade repository has ceased to carry on business as a trade repository:

Exhibits

File all Exhibits with the Cessation of Operations Report. For each exhibit, include the name of the trade repository, the date of filing of the exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect shall be furnished instead of such Exhibit.

Exhibit A

The reasons for the designated trade repository ceasing to carry on business as a trade repository.

Exhibit B

A list of all derivatives instruments for which data recordkeeping is offered during the last 30 days prior to ceasing business as a trade repository.

Exhibit C

A list of all participants who are counterparties to a transaction whose derivatives data is required to be reported pursuant to OSC Rule 91-507 – Trade Repositories and Derivatives Data Reporting and for whom the trade repository provided services during the last 30 days prior to ceasing business as a trade repository.

CERTIFICATE OF TRADE REPOSITORY

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this _____ day of _____ 20 _____

_____
(Name of trade repository)

_____
(Name of director, officer or partner – please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity – please type or print)

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
11/20/2013	5	120D Senior Debt Limited Partnership - Limited Partnership Interest	2,000,000.00	2,000,000.00
11/29/2013	4	Alabama Graphite Corp. - Units	70,000.00	875,000.00
11/27/2013	7	Apparel Holding Corp. - Common Shares	4,577,040.00	216,000.00
11/15/2013	24	AQM Copper Inc. - Common Shares	3,682,550.00	33,477,727.00
11/25/2013	63	AT&T Inc. - Notes	983,550,000.00	983,550,000.00
11/27/2013	3	AT&T Inc. - Notes	44,499,000.00	N/A
11/29/2013	1	Bank of Montreal - Notes	2,000,000.00	N/A
12/04/2013	3	Boreal Agrominerals Inc. - Common Shares	50,000.00	250,000.00
12/02/2013	5	Canadian Commercial Mortgage Origination Trust 2 - Certificates	84,998,300.00	5.00
11/29/2013	47	Convalo Health International, Corp. - Units	450,000.00	4,500,000.00
12/10/2013	2	Costanine Metal Resources Ltd. - Common Shares	3,240.00	36,000.00
11/28/2013	3	Cozumo, Inc. - Units	1,797,250.00	39,500.00
12/02/2013	17	Decade Resources Ltd. - Common Shares	1,604,999.75	28,000,000.00
11/26/2013	58	Domtar Corporation - Notes	279,525,213.27	250,000,000.00
11/18/2013	52	Econo-Malls Limited Partnership #16 - Limited Partnership Interest	6,226,749.30	N/A
11/25/2013	12	Enthrive Inc. - Common Shares	460,585.00	15,352,833.00
11/25/2013	59	Equicapita Income Trust - Trust Units	1,276,270.00	1,276,270.00
11/21/2013	26	EquiGenesis 2013 Preferred Investment LP - Units	12,229,500.00	372.00
11/24/2013	10	Exclamation Investments Corporation - Common Shares	300,000.00	3,000,000.00
11/14/2013	75	Falco Pacific Resource Group Inc. - Units	5,105,197.00	12,045,999.00
11/29/2013	1	First Nickel Inc. - Common Shares	60,000.00	4,000,000.00
12/02/2013	1	First Reliance Real Estate Investment Trust - Units	20,000.00	1,573.81
11/28/2013	17	Focus Ventures Ltd. - Units	1,500,000.00	12,500,000.00
06/15/2011	17	FoodChek Systems Inc. - Common Shares	194,700.00	77,880.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
11/21/2013	55	Ford Credit Canada Limited - Notes	500,000,000.00	500,000.00
07/25/2012	1	Fortress Calgary 2011 Ltd. - Notes	25,000.00	N/A
11/27/2013	1	Fortress Capital Pointe 2013 Inc. - Loan Agreements	200,000.00	N/A
07/26/2012	2	Fortress King Charlotte 2010 Limited - Notes	200,000.00	N/A
11/26/2013	37	Gateway Casinos & Entertainment Limited - Notes	200,000,000.00	200,000,000.00
11/26/2013	33	GC-Global Capital Corp. - Receipts	2,166,080.00	7,736,000.00
11/21/2013	2	Golden Nugget, Inc. - Notes	18,910,800.00	N/A
12/02/2013	9	Golden Share Mining Corporation - Common Shares	517,000.00	2,872,222.00
12/04/2013	1	Goldman Sachs Bank AG - Certificates	106,495.00	1,000.00
11/29/2013	109	Harbour First Mortgage Investment Trust - Trust Units	6,713,000.00	67,130.00
11/29/2013	3	Imperial Capital Partners Ltd. - Capital Commitment	4,000,000.00	N/A
11/29/2013	33	Integrated Team Solutions PCH Partnership - Bonds	324,512,000.00	N/A
05/15/2013	3	Investco Sustainable Food Fund L.P. - Limited Partnership Units	400,858.84	397.00
12/03/2013	245	Kelt Exploration Ltd. - Receipts	101,060,000.00	12,400,000.00
11/13/2013	7	Kings Castle Limited Partnership - Limited Partnership Units	546,602.00	10,302.00
12/02/2013	2	Leisureworld Senior Care Corporation - Common Shares	6,999,998.40	564,516.00
11/29/2013	2	Leisureworld Senior Care Unit Trust - Trust Units	1,000.00	200.00
11/18/2013	6	LiveQoS Inc. - Debentures	1,342,600.00	1,342,600.00
11/26/2013	12	LiveWorkPlay Winnipeg Developments Ltd. - Bonds	510,000.00	510.00
11/27/2013	3	Lloyds Bank plc - Notes	15,867,072.00	N/A
11/27/2013	124	Lyfe Kitchen Retail (Canada) Trust - Trust Units	1,720,370.68	109,508.00
12/02/2013	1	Mainstreet Mezzanine Fund II, L.P. - Debentures	15,951,000.00	1.00
11/15/2013	28	MedX Health Corp. - Common Shares	1,344,328.87	12,748,366.00
11/22/2013 to 11/25/2013	43	Mountain Province Diamonds Inc. - Common Shares	29,446,000.00	5,889,200.00
11/29/2013	39	New Look Eyewear Inc. - Common Shares	24,999,995.20	2,155,172.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
11/29/2013	8	New Wave Energy Services Group Ltd. - Common Shares	698,700.00	411,000.00
11/30/2013	1	Newstart Financial Inc. - Notes	180,000.00	180,000.00
12/03/2013	11	Northstar Gold Corp. - Units	560,000.00	6,187,500.00
12/02/2013	1	NVIDIA Corporation - Note	2,126,800.00	1.00
11/26/2013	2	Pacific Rubiales Energy Corp. - Notes	26,367,500.00	1,300,000,000.00
11/28/2013	4	Pancontinental Uranium Corporation - Units	252,222.27	3,603,175.00
11/27/2013 to 11/28/2013	20	Perfect Lithium Corp. - Units	384,250.00	1,537,000.00
12/02/2013	3	Polar Sapphire Ltd. - Preferred Shares	1,000,000.00	500,000.00
11/21/2013	53	Quindell Portfolio plc - Common Shares	355,239,791.00	1,315,789,000.00
11/28/2013	3	Rainmaker Mining Corp. - Units	110,000.00	2,200,000.00
12/10/2013	3	Regional Management Corp. - Common Shares	2,469,750.00	75,000.00
12/02/2013	1	Residential Reinsurance 2013 Limited - Note	1,595,100.00	1.00
11/25/2013	2	Rubikloud Technologies Inc. - Debentures	35,548.00	2.00
11/18/2013	2	Safe Bulkers, Inc. - Common Shares	968,407.63	125,000.00
12/09/2013	1	Sage Gold Inc. - Common Shares	20,000.00	400,000.00
11/27/2013 to 12/05/2013	50	SIF Solar Energy Income & Growth Fund - Units	1,733,000.00	17,330.00
11/20/2013	2	Skandinaviska Enskilda Banken AB - Notes	10,435,703.95	10,000,000.00
11/15/2013	25	Skyline Apartment Real Estate Investment Trust - Units	3,265,939.50	246,486.00
11/20/2013	16	Small Potatoes Urban Delivery Inc. - Units	4,450,916.25	3,296,975.00
12/11/2013	15	Souche Holding Inc. - Common Shares	1,124,394.40	2,810,986.00
07/24/2013	20	Spartan BioScience Inc. - Common Shares	1,960,616.36	2,896,392.00
11/22/2013	3	Spire US Limited Partnership - Limited Partnership Units	4,358,329.50	35,298.64
12/03/2013	1	Stanley Black & Decker, Inc. - Debenture	5,331,000.00	1.00
12/05/2013	3	Sudbury Mill CLO Ltd. - Notes	83,488,087.80	78,481,000.00
11/18/2013	2	The Bank of New York Mellon Corporation - Notes	3,020,050.21	2,900,000.00
11/29/2013	1	The Goldman Sachs Group Inc. - Notes	5,299,500.00	5,000,000.00
11/29/2013	1	The McElvaine Investment Trust - Trust Units	200,000.00	10,078.36
10/01/2013	2	The Presbyterian Church in Canada - Units	150,539.41	10,144.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
11/29/2013	60	Tim Hortons Inc. - Notes	450,000,000.00	450,108.00
11/26/2013	1	Timbercreek Mortgage Investment Corporation - Common Shares	5,000,000.00	508,647.00
11/21/2013	43	Toyota Credit Canada Inc. - Notes	499,810,000.00	500,000,000.00
12/03/2013	1	Tricon XI A, L.P. - Limited Partnership Units	1,000,000.00	10.00
12/03/2013	2	Tricon XI B-2 Feeder LP - Limited Partnership Units	30,000,000.00	600.00
12/03/2013	1	Tricon XI B, L.P. - Limited Partnership Units	500,000.00	10.00
12/03/2013	2	Tricon XI C, L.P. - Limited Partnership Units	265,000.00	5.30
11/29/2013	8	Tyree & D'Angelo Partners Fund I LP - Limited Partnership Interest	3,020,715.00	50,000,000.00
11/26/2013 to 11/29/2013	10	UBS AG, Jersey Branch - Certificates	4,180,278.29	10.00
12/02/2013	8	Valeant Pharmaceuticals International, Inc. - Notes	12,069,590.00	8.00
11/26/2013 to 11/29/2013	61	Virtutone Networks Inc. - Units	1,500,000.00	6,000,000.00
11/08/2013	4	Vista Gold Corp. - Common Shares	3.00	N/A
11/26/2013	6	VRX Worldwide Inc. - Common Shares	125,000.00	2,500,000.00
11/12/2013	17	VW Credut Cabadam Ubc, - Notes	200,782,000.00	40,000.00
07/11/2013	21	Walton CA Highland Ridge Investment Corporation - Common Shares	498,670.00	49,867.00
07/11/2013	8	Walton CA Highland Ridge LP - Limited Partnership Units	732,469.00	69,547.00
07/11/2013	12	Walton FLA Ridgewood Lakes LP - Limited Partnership Units	778,125.23	73,882.00
11/15/2013	1	WG Limited - Notes	5,000,000.00	5,000,000.00
11/26/2013	2	Yahoo! Inc. - Notes	2,109,400.00	N/A
11/20/2013	10	zulily, inc. - Common Shares	1,999,173.00	87,000.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
1832 AM Canadian Preferred Share LP
1832 AM Global Completion LP
1832 AM North American Preferred Share LP
Scotia Global Low Volatility Equity LP
Scotia Total Return Bond LP
Scotia U.S. Low Volatility Equity LP
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated December 17, 2013
Receipted on December 19, 2013
Offering Price and Description:
Series I Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
1832 Asset Management L.P.
Project #2147587

Issuer Name:
Brompton 2014 Flow-Through Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated December 18, 2013
NP 11-202 Receipt dated December 19, 2013
Offering Price and Description:
Maximum: $35,000,000.00 - 1,400,000 Limited Partnership Units
Price per Unit: $25
Minimum Subscription: $5,000.00 (200 Units)
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
GMP Securities L.P.
National Bank Financial Inc.
Scotia Capital Inc.
Raymond James Ltd.
Canaccord Genuity Corp.
Burgeonvest Bick Securities Limited
Desjardins Securities Inc.
Dundee Securities Ltd.
Mackie Research Capital Corporation
Promoter(s):
Brompton Flow-Through Management Ltd.
Brompton Funds Limited
Project #2148145

Issuer Name:
CI Financial Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated December 20, 2013
NP 11-202 Receipt dated December 20, 2013
Offering Price and Description:
$1,500,000,000.00
Debt Securities (unsecured)
Subscription Receipts
Preference Shares
Common Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2148966

Issuer Name:
CMP 2014 Resource Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated December 20, 2013
NP 11-202 Receipt dated December 20, 2013
Offering Price and Description:
Maximum: $100,000,000.00 - 100,000 Limited Partnership Units
Price per Unit: $1,000.00
Minimum Subscription: $5,000.00 (Five Units)
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
Dundee Securities Ltd.
TD Securities Inc.
Burgeonvest Bick Securities Limited
Canaccord Genuity Corp.
Desjardins Securities Inc.
GMP Securities L.P.
Raymond James Ltd.
Promoter(s):
Goodman GP Ltd.
Goodman & Company, Investments Counsel Inc.
Project #2148912

Issuer Name:
DHX Media Ltd.
Principal Regulator - Nova Scotia
Type and Date:
Preliminary Short Form Prospectus dated December 18, 2013
NP 11-202 Receipt dated December 18, 2013
Offering Price and Description:
$133,309,841.00 - 28,363,796 Common Shares
Price: $4.70 per Offered Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp
RBC Dominion Securities Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #2147964

Issuer Name:
Energy Leaders Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated December 19, 2013
NP 11-202 Receipt dated December 20, 2013
Offering Price and Description:
Warrants to Subscribe for up to * Units at a Subscription Price of $ * per Unit
Underwriter(s) or Distributor(s):
-
Promoter(s):
Harvest Portfolios Group Inc.
Project #2148630

Issuer Name:
Friedberg Asset Allocation Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated December 16, 2013
NP 11-202 Receipt dated December 19, 2013
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
Friedberg Mercantile Group Ltd.
Friedberg Mercantile Group Ltd.
Promoter(s):
Toronto Trust Management Ltd.
Friedberg Mercantile Group Ltd.
Project #2148121

Issuer Name:
Friedberg Global-Macro Hedge Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated December 16, 2013
NP 11-202 Receipt dated December 19, 2013
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
Friedberg Mercantile Group Ltd.
Friedberg Mercantile Group Ltd.
Promoter(s):
Toronto Trust Management Ltd.
Friedberg Mercantile Group Ltd.
Project #2148123

Issuer Name:
MRF 2014 Resource Limited Partnership
Principal Regulator - Alberta
Type and Date:
Preliminary Long Form Prospectus dated December 19, 2013
NP 11-202 Receipt dated December 20, 2013
Offering Price and Description:
Maximum: $75,000,000.00 – 3,000,000 Units
Minimum: $5,000,000.00 – 200,000 Units
PRICE: $25.00 PER UNIT MINIMUM SUBSCRIPTION: $2,500.00 (One Hundred Units)
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
TD Securities Inc.
Manulife Securities Incorporated
Canaccord Genuity Corp.
GMP Securities L.P.
Middlefield Capital Corporation
Dundee Securities Ltd.
Raymond James Ltd.
Promoter(s):
Middlefield Resource Corporation
Project #2148977

Issuer Name:
NCE Diversified Flow-Through (14) Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated December 18, 2013
NP 11-202 Receipt dated December 18, 2013
Offering Price and Description:
Maximum: $75,000,000.00 - 3,000,000 Limited Partnership Units
Minimum: $5,000,000.00 - 200,000 Limited Partnership Units
Subscription Price: $25.00 per Unit
Minimum Subscription: 200 Units
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Manulife Securities Incorporated
Desjardins Securities Inc.
Raymond James Ltd.
Burgeonvest Bick Securities Ltd.
Dundee Securities Ltd.
Laurentian Bank Securities, Inc.
Mackie Research Capital Corporation
Promoter(s):
Petro Assets Inc.
Project #2147901

Issuer Name:
Scotia Conservative Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated December 16, 2013
NP 11-202 Receipt dated December 19, 2013
Offering Price and Description:
Series A Units
Underwriter(s) or Distributor(s):
Scotia Securities Inc.
Scotia Securities Inc.
Promoter(s):
1832 Asset Management L.P.
Project #2147514

Issuer Name:
Scotia Floating Rate Income Fund
Scotia Mortgage Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated December 16, 2013
NP 11-202 Receipt dated December 19, 2013
Offering Price and Description:
Series I and Series M Units
Underwriter(s) or Distributor(s):
Scotia Securities Inc.
Promoter(s):
1832 Asset Management L.P.
Project #2147508

Issuer Name:
Sprott 2014 Flow-Through Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated December 19, 2013
NP 11-202 Receipt dated December 20, 2013
Offering Price and Description:
Maximum: $50,000,000.00 - 2,000,000 Limited Partnership Units
Price per Unit: $25.00
Minimum Subscription: $5,000.00 (200 Units)
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Desjardins Securities Inc.
Manulife Securities Incorporated
Raymond James Ltd.
Sprott Private Wealth L.P.
Promoter(s):
Sprott 2014 Corporation
Project #2148702

Issuer Name:
Way Ventures Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated December 18, 2013
Receipted on December 18, 2013
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2147916

Issuer Name:
WestCap Investments Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated December 18, 2013
NP 11-202 Receipt dated December 19, 2013
Offering Price and Description:
Maximum of 5,000,000 Common Shares
Minimum of 2,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Raymond James Ltd.
Promoter(s):
Majid Mangalji
Project #2148351

Issuer Name:
B.E.S.T. Total Return Fund Inc.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated December 17, 2013
NP 11-202 Receipt dated December 19, 2013
Offering Price and Description:
Class A shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2133715

Issuer Name:
Castle Mountain Mining Company Limited
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated December 18, 2013
NP 11-202 Receipt dated December 19, 2013
Offering Price and Description:
$5,000,050.00 - 9,091,000 Common Shares
$0.55 per Offered Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
GMP Securities L.P.
Dundee Securities Ltd.
MacQuarie Capital Markets Canada Ltd.
MGI Securities Inc.
Promoter(s):
-
Project #2145894

Issuer Name:
Exemplar Canadian Focus Portfolio
Exemplar Diversified Portfolio
Principal Regulator - Ontario
Type and Date:
Amended and Restated Final Long Form Prospectus dated December 11, 2013 amending and restating the Long Form Prospectus dated April 29, 2013
NP 11-202 Receipt dated December 18, 2013
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
BLUMONT CAPITAL CORPORATION
Project #2031967

Issuer Name:
EXPLOR RESOURCES INC.
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated December 18, 2013
NP 11-202 Receipt dated December 20, 2013
Offering Price and Description:
$8,193,298.00
Offering of 81,932,980 Rights to Subscribe for up to 81,932,980 Common Shares at a Price of $0.10 per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2143455

Issuer Name:
Fortis Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated December 20, 2013
NP 11-202 Receipt dated December 20, 2013
Offering Price and Description:
$1,594,000,000.00
4.00% Convertible Unsecured Subordinated Debentures represented by Instalment Receipts
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Desjardins Securities Inc.
Promoter(s):
-
Project #2146051

Issuer Name:
Front Street Global Balanced Income Class
Front Street Tactical Bond Class
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated December 10, 2013
NP 11-202 Receipt dated December 18, 2013
Offering Price and Description:
Series A, Series B, Series F, Series H, Series I and Series X Shares @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Front Street Capital 2004
Project #2110691/2067903

Issuer Name:
Meritas U.S. Equity Fund
Principal Regulator - British Columbia
Type and Date:
Amendment #1 dated December 11, 2013 to Final Simplified Prospectus, Annual Information Form and Fund Facts dated April 19, 2013
NP 11-202 Receipt dated December 18, 2013
Offering Price and Description:
Series A and F Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2026454

Issuer Name:
NexGen Canadian Balanced Growth Registered Fund
NexGen Canadian Balanced Growth Tax Managed Fund
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated December 10, 2013 to Final Simplified Prospectuses, Annual Information Form dated May 31, 2013
NP 11-202 Receipt dated December 17, 2013
Offering Price and Description:
Regular, Regular F, High Net Worth, High Net Worth F, Ultra High Net Worth
and Institutional Front End Load, Deferred Load and Low Load
Capital Gains Class, Return of Capital Class, Dividend Tax Credit Class and Compound Growth Class
Underwriter(s) or Distributor(s):
NexGen Financial Limited Partnership
Promoter(s):
NEXGEN FINANCIAL LIMITED PARTNERSHIP
Project #2049281

Issuer Name:
Platinum Group Metals Ltd.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated December 19, 2013
NP 11-202 Receipt dated December 19, 2013
Offering Price and Description:
CAN$175,230,000.00
148,500,000 Common Shares
Price: CAN$1.18 per Offered Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
GMP Securities L.P.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Barclays Capital Canada Inc.
PI Financial Corp.
Raymond James Ltd.
Dundee Securities Ltd.
Promoter(s):
-
Project #2145281

Issuer Name:
Portland Advantage Fund
Portland Canadian Balanced Fund
Portland Canadian Focused Fund
Principal Regulator - Ontario
Type and Date:
Amended and Restated Final Simplified Prospectuses and Annual Information Form dated December 16, 2013 amending and restating the Simplified Prospectuses and Annual Information Form dated September 27, 2013
NP 11-202 Receipt dated December 17, 2013
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Portland Private Wealth Services Inc.
Promoter(s):
-
Project #2104818

Issuer Name:
Portland Global Banks Fund (formerly Copernican British Banks Fund)
Portland Global Income Fund (formerly Global Banks Premium Income Trust)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated December 16, 2013
NP 11-202 Receipt dated December 17, 2013
Offering Price and Description:
Series A, Series A2, Series F and Series G Units
Underwriter(s) or Distributor(s):
Mandeville Private Client Inc.
Mandeville Wealth Services Inc.
Mandeville Private Client Inc.
Promoter(s):
Portland Investment Counsel Inc.
Project #2127144

Issuer Name:
Trilogy Energy Corp.
Principal Regulator – Alberta
Type and Date:
Final Short Form Base Shelf Prospectus dated December 19, 2013
NP 11-202 Receipt dated December 19, 2013
Offering Price and Description:
$300,000,000.00
Debt Securities
Common Shares
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2146441

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change of Registration Category	Cornerstone Asset Management L.P.	From: Portfolio Manager, Exempt Market Dealer & Commodity Trading Manager To: Exempt Market Dealer & Commodity Trading Manager	December 17, 2013
Surrender (Consent to Suspension)	Banack Capital Group Ltd.	Exempt Market Dealer	December 19, 2013
New Registration	Bluecrest Capital Management (Canada) Limited / Gestion De Capitaux (Canada) Bluecrest Limitee	Portfolio Manager and Commodity Trading Manager	December 19, 2013

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